

I 59
1986
vol 1

PUBLIC HEARING
before
ASSEMBLY INSURANCE COMMITTEE
on
INSURANCE PROBLEMS BEING EXPERIENCED BY PUBLIC ENTITIES

February 18, 1986
Freehold Municipal Building
Freehold, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Ralph A. Loveys, Chairman
Assemblyman Gerald H. Zecker, Vice Chairman
Assemblyman John K. Rafferty

ALSO PRESENT:

Laurinc Purola
Office of Legislative Services
Aide, Assembly Insurance Committee

New Jersey State Library

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APPENDIX

Assembly, New Jersey

ASSEMBLYMAN RALPH A. LOVEYS (Chairman): Ladies and gentlemen, we will call this meeting to order. This is the first meeting of three public hearings we on the Assembly Insurance Committee will hold regarding municipal liability insurance.

May I at this time introduce the members of the Committee that are present here today: Assemblyman Zecker, Assemblyman Rafferty, I'm Assemblyman Loveys, and this is Laurine Purola, aide to the Committee.

Presently, at this very moment, the League of Municipalities is having a meeting in Freehold regarding the same important subject matter. I am told that after 1 o'clock today that we will have a good number of people who will be testifying at this meeting, so what we will do today, right now, we will start. We have, I think, seven or eight wish to testify; we'll break for lunch, and then we'll begin again once the people from the League of Municipalities arrive on the scene.

So, I want to welcome you to the first of three public hearings which this committee will hold on the subject of municipal liability insurance. As most of you know, the problems of municipalities and other public bodies in securing affordable insurance coverage have grown more severe during the past several months. This is not a new problem. As most of you know, there were similar problems in 1968 and 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

responsibilities of litigation relating to pollution liability have caused insurers to be wary of writing insurance for public liability 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 that to be the case, but it is one of the aspects of the program which we intend to examine.

Our purpose of being here today is to learn from you what the problems are and to discuss these problems. On the basis of these discussions, we will formulate legislation which we hope will effectively deal with the problem. It is a complex issue, and we will be asking questions during the course of these hearings. We will seek your cooperation in sharing your views with us fully, so that the legislation which emerges will be something that you can support as well as something which will contribute to solving the problems which so many of you have faced in this area.

So, at this time, it gives me pleasure to welcome the Assemblyman from District 9, Assemblyman Jack Hendrickson. Jack, would you come forward, please?

A S E M B L Y M A N J O H N T. H E N D R I C K S O N, JR.:
First of all, Chairman, for me congratulate you on taking your Insurance Committee on the road to listen to the business of our State and to governmental liability insurance goes. I'll try to be brief and to the point. All the conversations in my office as an Assemblyman in the State legislative District and as a former mayor of a community like I like it. The horrendous, unconscionable amount of those municipalities, and I'm sure through your committee, will show the direction, Mysell, I would lean to the copying of the insurance as a fair amount in order to protect the municipalities, but at the same time, give the constituency and our people a federal amount of dollars comparable with the problem that might have arisen where they had to sue.

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.

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A S S E M B L Y M A N J O H N T. H E N D R I C K S O N, JR.:
First of all, Chairman, let me congratulate you on taking your Insurance Committee on the road to listen to the problems of our State as far as governmental liability insurance goes. I'll try to be brief and to the point. All the communications in my office as an Assemblyman in the Ninth Legislative District and as a former mayor of a community for, like, 12 years-- The horrendous, unconscionable increases of those municipalities, and I'm sure through your Committee, will show the direction. Myself, I would lean to the capping of the insurance at a fair amount in order to protect the municipalities, but at the same time, give the constituency and/or our people a logical amount of dollars commensurate with the problem that might have arisen wherein they had to sue. I

know that's almost dynamically, I'd say, being opposed by the New Jersey Bar Association, and they're leaning on the constitutional rights, and we as elected officials -- I don't think any of us are more protective of the constitutional right than of the public elected official.

I don't believe that our people can stand the kind of increase in costs that are being forced upon them with the horrendous increase in the cost of liability insurance. It's just one of many. And to be taken with that is the cap law. I think anything that should be passed by the Assembly -- all of the testimony that's being fed to your Committee; what your Committee, in it's wisdom, will arrive at -- at least should be relieved from the cap law. I know that it's been touted throughout the State of New Jersey that the cap law is essentially keeping the taxes down. Well, that can be said, but a good point for the municipalities had to exist with the cost of inflation, and all the problems that are inherent in the municipalities. The good elected officials that have been elected, and reelected, and elected again numerous times, take care of their constituency and keep a tax rate at a rate of affordability. I think that's our job.

So, with that, Mr. Chairman, again, I'll congratulate you. I personally lean to the capping of the insurance, but I will be the full supporter of whatever comes out of all the hearings on this Committee. Thank you very much for allowing me to testify.

ASSEMBLYMAN ZECKER: Questions, Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes. Yes, Mr. Zecker?

ASSEMBLYMAN ZECKER: Jack, have you gotten any suggestions as to what -- you alluded to the cap, but you didn't say what suggestions you would come up with as far as a dollar amount.

ASSEMBLYMAN HENDRICKSON: Well, in the first place, I alluded to releasing the cost of insurance. The mandated costs,

I don't believe, any longer should be within the caps.

ASSEMBLYMAN ZECKER: No, I don't mean that, I mean as far as liability.

ASSEMBLYMAN HENDRICKSON: All right, capping the liability-- I think, and I'm not trying -- that's a good question. I think there, perhaps, should be a step amount for the type of injury. Again, we're going back to the automobile and the soft tissue, and perhaps on a complete disfigurement or inability to work. I think also should be taken into consideration the age of that individual and the potential that individual would have in his life-span in his earnings. I'm talking about now, if we have a machinist, what his rate of pay and to bring into the factoring what perhaps he would make in his lifetime as a machinist and, perhaps as a superintendent, versus one of the professional people, perhaps an administrator, or somebody like that, working for a municipality.

I think the capability of the earning power has to be brought in there. I think it might be difficult to say, oh, a quarter of a million dollars should only be allowed. Perhaps that figure is a base figure, but I do believe, again, the capability of the life-span earnings figured on the insurance age and/or the retirement age out, because our -- in different unions and negotiation process, some people are being allowed to retire out earlier than others. I'm thinking of the 55 and out now -- along those lines. The 55 and out -- that retirement should be taken into it, because, as we all retire out our own income becomes less.

ASSEMBLYMAN RAFFERTY: I just have one question, Jack, and that is, are you aware of Pennsylvania's \$250 thousand cap on municipal governments?

ASSEMBLYMAN HENDRICKSON: Some of it.

ASSEMBLYMAN RAFFERTY: Some of it. Yeah, I--

ASSEMBLYMAN HENDRICKSON: I can't can't say that I'm--

ASSEMBLYMAN RAFFERTY: Well, I'm not either, and I was just wondering how that was working out?

ASSEMBLYMAN HENDRICKSON: No-- I threw the quarter of a mil out because of--

ASSEMBLYMAN RAFFERTY: Because of that.

ASSEMBLYMAN HENDRICKSON: --other areas. Yes.

ASSEMBLYMAN RAFFERTY: Well, maybe someone else during the course of the testimony--

ASSEMBLYMAN HENDRICKSON: Might, yes--

ASSEMBLYMAN RAFFERTY: --will shed light on this.

ASSEMBLYMAN HENDRICKSON: Shed light on it--

ASSEMBLYMAN RAFFERTY: Thank you.

ASSEMBLYMAN HENDRICKSON: But, just to-- I know that the New Jersey Bar Association, again, is leaning to the constitutional areas, and particularly since the automobile verbal threshold has been passed, but I believe we can protect that, and at the same time go to the constituency with a program that will give them a proper type of protection at a cost they can afford. I think that's our bottom line, is a cost factor of what our people out there in the residential areas can afford to live with with the amount of tax assess they're going up.

ASSEMBLYMAN LOVEYS: Thank you Assemblyman.

ASSEMBLYMAN HENDRICKSON: Thank you very much. Thank you for allowing me to testify.

ASSEMBLYMAN LOVEYS: At this time, too, I would like to ask Assemblyman Jeff Moran, from District 9, at this time come forward. Good morning, Assemblyman.

A S S E M B L Y M A N J E F F R E Y W. M O R A N: Good morning. And first of all, I'd like to personally take this opportunity to thank you for giving me the opportunity to be here.

I presently serve as an Assemblyman, which you all know, and I also serve as the Chairman of the Local Utility Authority in the Borough of Beachwood.

For the last ten years we have worked, at a regular basis, to maintain a very stable rate with excellent service. Last April, our liability insurance became due, and we sent -- sent out approximately ten proposals to different insurance companies. We received one proposal from a particular insurance company, which was not too excited about giving us the proposal, but after many discussions and meetings they agreed to give us one.

We had, prior to this, a \$1500 a year liability insurance, and the new proposal brought it up to \$24,000 -- I'm sorry, that was \$1500 a year -- and the new proposal was \$24,000, which was a difference - or an increase -- of \$22,500. This increase, in itself, represented an \$8.65 per unit increase for 1986 users of our system.

A point of interest, during the last ten years -- the life of our -- that's the life of our authority -- we did not suffer one claim at all in liability. I might also note that the new policy has a pollution exclusion to it which we could not get.

On April 15 our policy expires, and with the future holds unknown. I speak with you as an authority that has approximately 2600 customers. And many other authorities in my district and communities that have school districts as well as municipal utility authorities, and township governing bodies, are experiencing a very similar increase.

The problem that we foresee is not just something that existed in '85, it's being paramounted now in '86. As our April 15 date comes closer and closer, and we start looking at insurance increases that municipalities, school boards, and utility authorities are experiencing, we're going to be experiencing another increase of range from 20 to \$30 thousand

over and above our existing increase. Our system's users are being taxed unnecessarily because of this increase, and unfortunately we have to pass it down to them. Of the eight dollars and eighty-six-- Dollar increase-- We only increased our user charge this past year by \$4. So we, in essence, are reducing our services per unit customer by \$4.86. With the anticipated increase this coming April, with an additional 25 to 30 thousand dollars in liability insurance, we will not be able to absorb that by reducing services anymore than what they've been reduced already. It's a crisis stage; it's not just utility authorities, it's municipalities, it's school districts. And I know Mayor Nugent from South Toms River is here to speak with a very similar situation, and Kurt Booth, the Chairman of the Lacey Municipal Utility Authority is here, and Jack Hendrickson's office and my office had contacted all of our municipalities in the district to hopefully be here, and I know many of them plan on being here later on today.

I think it's something that we've got to look at, and we've got to look at seriously. I think Jack Hendrickson's point with the cap is very important, and I think something's got to be done to have courts make decisions that are fair and justifiable to all parties. I think everybody has to be represented and have their day in court and get what's properly due them.

But I think we've got to look at who's paying these bills. It's the consumer, it's the same people that, in fact, are being vindicated. I think what we've -- other thing that we've -- got to look at is we've got to look at taking outside of the cap law, the increases. And not just the increases -- and I know we've been discussing this on the floor in the Assembly for the last week and a half - two weeks -- as to reducing or eliminating the increase from '85 to '86 -- that scope of change being outside the cap. It goes further than that. It goes back many many more years. I think what we've

got to do is we've got to take a norm of the last five years, and we've got to average that together, and we've got to take that total norm and subtract it from the present fees that are being charged for liability, and that should be the number that is struck for utility authorities, school boards, and municipalities. They just cannot cope with the cap law the way it is now and the kinds of increases that we're all experiencing.

Again, I want to personally thank each and every one of you. I know your time is as valuable as ours, and I know you're out working and making a living, and your being here is appreciated by all. And on behalf of all of those people in the Ninth District, I want to personally, again, thank you for your time and your effort to try to correct this particular problem.

ASSEMBLYMAN LOVEYS: Jeff, we thank you. Any questions for Assemblyman Moran?

ASSEMBLYMAN ZECKER: The carrier for your utilities authority -- the proposed carrier -- did they tell you why they were raising the insurance?

ASSEMBLYMAN MORAN: Yes. Matter of fact, when we sent out our specs to the ten prospective companies, they all came back to us and told us the exact same thing: basically, they could not get the coverage, and the only company that would write it was Lloyd's of London. And it's just ironic that all ten insurance brokers came back with the exact same answer, and what happened was we finally got our insurance company that had us the previous year agreed that he would take us because he had been our insurance carrier for years, and he felt that we were a good risk, although he did claim to us that with the increase he was charging us he was not making a profit, he was doing that as a good will because we had been good customers. We have never had a claim, and the fact of the matter is we

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have less insurance today than what we did then, yet we have this gigantic increase.

ASSEMBLYMAN ZECKER: Who was the insurance carrier, do you recall?

ASSEMBLYMAN MORAN: Silverstein's.

ASSEMBLYMAN ZECKER: That was the broker, or was that the--

ASSEMBLYMAN MORAN: That was the carrier.

ASSEMBLYMAN ZECKER: That was the carrier. Silverstein?

ASSEMBLYMAN MORAN: Silverstein.

ASSEMBLYMAN ZECKER: I know there's a lot of them. I have never heard of that one.

ASSEMBLYMAN MORAN: Yeah. And they had--

ASSEMBLYMAN ZECKER: Did he explain to you why the increase?

ASSEMBLYMAN MORAN: Because they could not get anyone to carry it for them, and they had to go to Lloyd's of London to get it.

ASSEMBLYMAN ZECKER: Silverstein's, the broker, went to Lloyd's of London?

ASSEMBLYMAN MORAN: Yes. Correct. And I think that's pretty much the experience that most of the school boards, the municipalities, and the utility authorities are facing. We've got two things going for us right now in Ocean County and in the Ninth District -- the Ninth and Tenth District. Dover Township has coordinated an activity where we're grouping all the municipalities together, and they're researching, right now, the possibility of going with group insurance. The school districts in Ocean County-- Toms River school is presently a self-insured partially, and some of the other school districts are starting to get into that as well. And the Ocean County Utility Authority is coordinating an effort in behalf of all the utility authorities in the Ocean County area, trying to coordinate that kind of an activity there.

But the one thing about it is, legislatively, they cannot cross over. They cannot have an agreement with the school board and the municipality and the utility authority together. And this is, I think, something that we should possibly look into, about being able to bridge that gap, where utility authority, school district, and municipality can join together and seek bids for proposals jointly, or they can go in as a self-insured carrier on their own.

ASSEMBLYMAN LOVEYS: Assemblyman, that's exactly what we want to obtain by having all these hearings. We want to be able to get back to the municipalities in this State and after the hearings and after the analysis takes place, and to make those recommendations.

ASSEMBLYMAN MORAN: Excellent. Excellent.

ASSEMBLYMAN LOVEYS: It's been said over and over again, but I do feel that this is the direction that we are leaning, but we want to be sure that we are going in the right direction.

ASSEMBLYMAN MORAN: Yeah, I think that with that type of a proposal, or a conclusion, we could get out from under the realm of the carriers or the Lloyd's of Londons that carry the liabilities, so that we can carry our own. And then just carry an umbrella insurance policy, if need be, with Lloyd's of London, to carry for extenuating circumstances. And-- Jack, as President of the Mayor's Association, I know that you're very actively involved in that, and I know we've received some correspondence from you about that. I think it's the direction that we have to go.

ASSEMBLYMAN LOVEYS: Thank you, Assemblyman.

ASSEMBLYMAN MORAN: Okay. Thank you.

ASSEMBLYMAN LOVEYS: At this time may I call on Assemblyman Robert Singer, from District 10? Bob?

A S S E M B L Y M A N R O B E R T W. S I N G E R: Good morning Mr. Chairman and members of the Committee. Again, it's

nice to speak to you about the problem that's plaguing many of us. As Mayor Rafferty knows, I wear two hats also; I am also Mayor of Lakewood, which is the third largest municipality in Ocean County, and am facing the same problems that all mayors are facing today. Fortunately for us, Lakewood has been self-insured for the last five or six years. But the problem we are facing is the excess liability insurance we are able to purchase.

Prior to this past year, we were able to purchase the kind of insurance we felt we needed at the local level -- a \$20 million umbrella policy -- that covered us for catastrophic type of incidents. Unfortunately, this year to be able to have any kind of reasonable tax rate, we were only able to purchase \$5 million. We are concerned this coming spring, when our policy is up for renewal again, will we be able to get the same five million we got last year?

This is a terrible crisis. Certainly a municipality without enough insurance, you realize, is very vulnerable; we are responsible to the public, and without excess liability policies we cannot meet that obligation properly.

The self-insurance plan with other municipalities is something we're working on. As Assemblyman Moran mentioned to you, all the mayors have gotten together and we're seeing if we can get even lower rates, based on non-profit basis.

As I spoke to you last time -- and Assemblyman Moran did elude to that -- the concept of allowing us to coinsure with our school boards, with our municipal utility authorities, might also help us reduce it since we can put together a county package. Unfortunately, some things have happened in our County that are catastrophic. For example, in Jackson Township, the utility authority's -- unfortunately -- insurance was cancelled prior to the Governor's edict, and now they operate with no insurance. Their school board -- and I mentioned the last time I spoke to you about it -- had insurance coverage of liability payment of approximately

\$35,000 a year. This past year they thought they were doing the right thing and plugged in another 35,000, figuring it might double and be 70,000. When they got back their premium was over \$400,000.

I am Secretary Treasurer of the County Board of Health. We have an excess liability policy, since the existence of the Board of Health, of \$1 million. We have never once ever had a claim against us. That's a pretty good record. The policy was running the County approximately \$16,000 a year. We were notified it was going up to \$84,000, and we had 48 hours to either renew or we would be cancelled. Brick Township schools have gone up 700% in their liability insurance to the school board.

These are horror stories. And certainly, whether it has to be us grouping together on a non-profit basis to bring down the cost of insurance -- and that would be the concept of coming together -- or that you cap it -- and capping has been done; it's been done in the hospital situation in New York. They have a cap on what a hospital is liable for. We've seen it in the liquor industry in California. They've capped what a bar is liable for there. Unfortunately the amount of claims today in some places are catastrophic, and without proper insurance, of course, it would bankrupt the community, which can happen. I think we saw this thing in Jackson recently, with that Legler situation. If the insurance companies are not able to step in, it might have bankrupted the town.

Insurance is necessary, but it has to be at an affordable rate. And certainly, right now it is not affordable rate to municipalities, and to school boards, and to authorities. And we are at wit's end where we are going with this. All of us realize, and certainly the concept of verbal threshold was the tip of the iceberg of the insurance problem; it was to get the ball rolling. But the true problem facing all of us, and whether it be in the public sector, as we are

discussing today, or businessmen in the private sector, liability insurance is running rampant. And something has to be done to at least put it under control, and to become a reasonable rate. And things that we have always been taught all our lives, that insurance companies have brainwashed us to believe that experience rate had something to do with your insurance, has gone out the window. And the perfect example is our County Board of Health. That no longer takes into account what your experience rate is; have you had any claims or what size your claims-- For example, in our Township, being self-insured for the first \$200,000, you can imagine that 95 to 100% of the claims would never reach our carrier. We take care of them locally. Yet, that experience rate does not effect at all what our premium would be.

These are the kind of things that I think have to be addressed, and the kind of things we have to look at as elected officials on the State level, and hopefully, through the Committee and your hearings we'll come up with some positive action.

ASSEMBLYMAN LOVEYS: Bob, thank you. You mentioned the fact that you are also a Mayor in your district. Can you tell me, over the past years -- let's assume -- when we were not having these so-called insurance problems, who in your community was in charge of, if you will, of the risk areas? Did you have a specific board, or a specific person?

ASSEMBLYMAN SINGER: What we did was, when we put out the bid for our insurance coverage, part of that was handling our risk management. So that was an inclusive fee picking up the Township's excess insurance policy. So it was handled by professionals.

ASSEMBLYMAN LOVEYS: It was handled by professionals.

ASSEMBLYMAN SINGER: Yes, it was.

ASSEMBLYMAN LOVEYS: In other words, what you are telling me is that in your community you did actually shop for its insurance programs?

ASSEMBLYMAN SINGER: Absolutely. We shopped for insurance programs, and since we were self-insured for the first \$100,000, whoever handled the excess liability also was part of the risk management team that would take care of the claims. And they would recommend to us settlements, and of course, through our attorneys we would take care of the settlements.

ASSEMBLYMAN LOVREY: Fine, thank you, Gerry, do you have anything?

ASSEMBLYMAN ZECKE: Bob, same question. We've seen this in other municipalities. As Mayor of Lakewood, how many

years were you self-insured?

ASSEMBLYMAN SINGER: Six years.

ASSEMBLYMAN ZECKE: With that \$200,000?

ASSEMBLYMAN SINGER: Six years. We went to --

ASSEMBLYMAN ZECKE: Did you ever --

ASSEMBLYMAN SINGER: By the way, we were \$100,000

until last year. We went to \$200,000 last year.

ASSEMBLYMAN ZECKE: Did you ever break the \$200,000 or

\$200,000?

ASSEMBLYMAN SINGER: We had one incident in our

history, and unfortunately, it happened several years ago. It

was a police incident where a young man was shot by a policeman

accidentally. Unfortunately the young man was paralyzed, and

still is today, and it was a very, very large claim with insurance

of our insurance liability. The claim was \$20 million -- it

was a large claim. That was the only one I know about in

our history of any size going above that.

ASSEMBLYMAN ZECKE: It doesn't take too many \$20

million claims.

ASSEMBLYMAN SINGER: It doesn't, but we

had our insurance, a \$20 million claim, and

municipally -- remember our municipal budget is only \$10

ASSEMBLYMAN SINGER: Absolutely. We shopped for insurance programs, and since we were self-insured for the first \$200,000, whoever handled the excess liability also was part of the risk management team that would take care of the claims. And they would recommend to us settlements, and, of course, through our attorneys we would take care of the settlements.

ASSEMBLYMAN LOVEYS: Fine, thank you. Gerry, do you have anything?

ASSEMBLYMAN ZECKER: Bob, same question. We've seen this in other municipalities. As Mayor of Lakewood, how many years were you self-insured?

ASSEMBLYMAN SINGER: Six years.

ASSEMBLYMAN ZECKER: With that \$200,000?

ASSEMBLYMAN SINGER: Six years. We went to--

ASSEMBLYMAN ZECKER: Did you ever--

ASSEMBLYMAN SINGER: By the way, we were \$100,000 until last year. We went to \$200,000 last year.

ASSEMBLYMAN ZECKER: Did you ever break the 100,000 or \$200,000?

ASSEMBLYMAN SINGER: We had one incident in our history, and unfortunately it happened several years ago. It was a police incident where a young man was shot by a policeman accidentally. Unfortunately the young man was paraplegic, and still is today, and it was a very, very large claim with inside of our insurance liability. The claim was \$20 million -- it was quite a large claim. That was the only one I know about in our history of any size going above that.

ASSEMBLYMAN ZECKER: It doesn't take too many \$20 million claims--

ASSEMBLYMAN SINGER: No it doesn't. But, had we not had our insurance, a \$20 million claim against a municipality-- Remember our municipal budget is only \$28

million. A \$20 million claim against our municipality would bankrupt our municipality had we not had insurance.

ASSEMBLYMAN ZECKER: But that one was when you were carrying the \$20 million umbrella, and it did go to excess. It went right to the top of the \$20 million.

ASSEMBLYMAN SINGER: It did go to-- Right.

ASSEMBLYMAN ZECKER: After that--

ASSEMBLYMAN SINGER: As a matter of fact--

ASSEMBLYMAN ZECKER: --did they drop it--

ASSEMBLYMAN SINGER: Excuse me, let me just correct one thing--

ASSEMBLYMAN ZECKER: After that did they drop it from the \$20 million to the \$5 million umbrella?

ASSEMBLYMAN SINGER: Believe it or not, that happened prior to us having the \$20 million coverage. It happened when we only had a million dollar coverage, and the \$20 million was a structured settlement over 20 years at what a million dollars bought. It was a full policy thing. We then went to-- After they had learned about that we went to a higher thing. It didn't affect us then. This past year is when we saw the cutback -- we had to cut back down to five million. We could not get the excess liability we wanted to have.

ASSEMBLYMAN ZECKER: Did the insurance carrier give you any reason -- as the Mayor you probably asked questions, you know, why is the premium going up - did they give you any answers?

ASSEMBLYMAN SINGER: Their problems, or their concerns are, we have a landfill that is in foreclosure right now. We're closing down, like, all landfills -- there are some three to four hundred throughout the State. There are concerns about our landfills; there are concerns about our general exposure. In a larger town, where you have about three to four hundred employees -- we have a police force of over 100 policemen in Lakewood -- we certainly realize we have a lot of exposure.

Their concerns were that between the environmental concerns today, and just the general large amount of settlements, that they did just not want to give us excess liability at any cost. As a matter of fact, we had to go into the Lloyd's of London type of situation to get the five million.

We don't know what's going to happen this spring. Our insurance does not come up until the spring. Again, the self-insurance has helped us considerably, because most of the smaller claims I've been taking care of, and I only remember one claim ever getting to the carrier.

ASSEMBLYMAN LOVEYS: Jack, any questions?

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

ASSEMBLYMAN LOVEYS: Thank you, Assemblyman. We appreciate your time.

ASSEMBLYMAN SINGER: Thank you for coming and thank you for taking your time.

ASSEMBLYMAN LOVEYS: May I call on Mr. Booth, who is the Chairman of the Utilities Authority -- I think it's in Lacey Township. Mr. Booth?

K U R T H. A. B O O T H: Thank you, Assemblyman. It is quite a surprise that you called me up here, I wasn't prepared for this.

ASSEMBLYMAN LOVEYS: Do you want to tell us some of your problems, Mr. Booth, or would you rather hold them and make--

MR. BOOTH: I'd rather hold on, maybe until the next meeting, until I can prepare myself.

ASSEMBLYMAN LOVEYS: All right. Fine. Thank you very much, anyway, for being with us today.

MR. BOOTH: Thank you, sir. Thank you.

ASSEMBLYMAN LOVEYS: I know a gentleman who does want to speak at this time, Mayor Nugent from South Toms River. Mayor Nugent, nice to have you with us this morning, sir.

MAYOR JAMES A. NUGENT: In reference to the insurance problem in our town, what we're faced with right now is, due to the limitations of a cap, the figures that I have for you is this: In 1982, our total liability insurance was \$50,000 -- the cost. And this is for a small town of approximately 3900 residents. In 1983 it rose to \$54,062; in 1984 -- excuse me -- it rose to \$55,154; in 1985 it rose to \$83,879.61. The projected figure for 1986 is in excess of \$100,000. At the present rate, with the cap limitations on, our Borough, because of its size, is rather restricted in its income. Last year our in cap appropriation was \$491,000, and if you tack 5% on that, which would allow us approximately \$24,000 to increase our base. Now the increased insurance cost in 1985 has exceeded \$38,000, of which during the course of the year we had to make special emergency appropriations to cover this additional increase.

We had, according to our projected budget in 1985, we anticipated approximately \$55,000 in line item on the budget, basing it on last year's figures which had been running consistent. But in 1985, halfway through the year where our budget had already been passed at that figure of \$55,000, the new rates came in totalling \$83,000. Which means that we had to come up with an emergency appropriation of \$29,000 to cover this additional expenditure.

Now these figures reflect that in 1986 we have to make up a large portion of this money in cap as well as out of cap to cover the shortages for 1985. So the projected figures for 1986, along with the \$29,000 increase in our insurance costs, plus the emergency appropriation, means that our residents are going to be burdened with a tax increase that will amount to approximately \$47,000 to \$48,000 within cap. And on the State law under the cap, the most we can improve our tax base is at \$24,850. Therefore, our residents, already overtaxed in our area-- We're about the fourth highest paying tax rated

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community in Ocean County. And for 3000 residents who have--
Basically it's a residential town with a small shopping area
and small business area -- I mean real small. The town is
size is about one mile square, so we're rather restricted in
the amount of income-producing areas that we have available to
us. Where possible we have been advancing along these lines to
incorporate additional facilities in our town where possible.
But to date we haven't been successful. We've been plagued
with the Department of Environmental Protection, Green Acres --
we tried to self some property and Green Acres is attempting to
stop it. There are areas where we're attempting to generate
additional income into our town to offset some of the large tax
increases on our residents. But for the insurance rates the
way they're going out of sight, especially for our residents
which is a basically a lower middle income town -- And if we
continue to raise taxes, we're going to have a ghost town on
our hands.

So what I'm attempting to this Committee is to it's
possible to put the increases out of cap. If it's at all
possible. That would be a relief some of the situation,
because within the cap. if we have to go out for a referendum
in our town, as well as in other smaller towns than our size,
we'll be faced with having to go down, because our residents are
already overburdened with taxes and property taxes. We
look forward to next year, because of their situation
increases that the sewer rates in our town will be 25% or
well with insurance. We're affected everywhere, our town
education, our Social Security, our fire, our municipal
government, in fact, even our County government's affected
with the increases in insurance. And this is all piled down to the tax on the bottom
which is our taxpayer. Here's the end recipient of the bill.
He's got to come up with the dollars to afford this insurance
step by step up the ladder.

community in Ocean County. And for 3900 residents who have-- Basically it's a residential town, with a small shopping area and small business area -- I mean real small -- the town in size is about one mile square, so we're rather restricted in the amount of income-producing areas that we have available to us. Where possible we have been advancing along these lines to incorporate additional ladeables in our town where possible, but to date we haven't been successful. We've been plagued with the Department of Environmental Protection, Green Acres -- we tried to sell some property and Green Acres is attempting to stop it. These are areas where we're attempting to generate additional income into our town to offset some of the large tax increases on our residents. But for the insurance rates the way they're going out-of-sight, especially for our residents which is a basically, a lower-middle income town-- And if we continue to raise taxes, we're going to have a ghost town on our hands.

So what I am suggesting to this Committee is if it's possible to put the increases out of cap, if it's at all possible. That would help relieve some of the situation, because within the cap, if we have to go out for a referendum in our town, as well as I imagine smaller towns than our size, we'll be faced with knock down, because our residents are already overburdened as far as taxes are concerned. And to look forward to next year, because of these insurance increases, that the sewage rates in our town will also go up as well. With insurance, it affects everything: our Board of Education, our Sewage Authority, our local municipal governments, in fact, even our County government's affected with the increases in insurance.

And this is all passed down to the man on the bottom, which is our taxpayer. He's the end recipient of the bill. He's got to come up with the dollars to afford this insurance, step-by-step up the ladder.

So now, what I'm looking for is if it's possible for you to consider some sort of legislation to remove part of the burden, if it's possible, on the man at the bottom. He's carrying a large enough load as it is, and I think if it's at all possible to have some sort of relief along these lines, that's basically what I'm looking for, sir.

ASSEMBLYMAN LOVEYS: Thank you, Mayor. Gerry, do you have any questions?

ASSEMBLYMAN ZECKER: Ralph, there is legislation -- I don't know what the status of it is -- to take insurance out of the caps. That doesn't solve your--

MAYOR NUGENT: No, no.

ASSEMBLYMAN ZECKER: I mean, the taxes still go up. What is the status of that legislation?

ASSEMBLYMAN LOVEYS: It is pending legislation.

ASSEMBLYMAN ZECKER: But it's out-of-committee, or in-committee? (Committee Aide indicates it is out-of-committee) Out-of-committee, and, you know, how many sessions have we had so far? Three or four, Ralph--

ASSEMBLYMAN LOVEYS: Yeah. Let's see, the other day -- maybe some of the Assemblymen in the room can help me -- the other day Dick Zimmer's bill was to help those communities in cap whose insurance policies came due in the middle of the year, I believe.

ASSEMBLYMAN ZECKER: Yes. See, there's legislation on that. What we're looking for is a way to bring the public insurance down so it doesn't have to affect your caps. That's the real problem.

ASSEMBLYMAN LOVEYS: We understand your problem.

MAYOR NUGENT: That's basically what I'm interested in.

ASSEMBLYMAN LOVEYS: Right now, a good number of communities are experiencing the same problem. They want to get outside of the cap--

MAYOR NUGENT: See, larger municipalities and townships have a larger rate-base to base it on, and they have the areas where they can raise the taxes. But the small communities, they are the ones that are adversely affected, where it's almost a strangulation on the town. I agree, \$40,000 or \$50,000 does not mean much to a municipality or township that has a budget of \$29 or \$38 million. But to a small municipality where \$20,000 can almost kill the town financially, that's what we're faced with. It's the smaller communities that I'm electing myself to speak for, because this is the problem we're faced with.

ASSEMBLYMAN LOVEYS: Mr. Nugent, I asked Mr. Singer this, and I'll ask you too. Do you have a risk management program? Do you have a professional who does this for you -- for your community?

MAYOR NUGENT: We have our -- an insurance agency that handles us. Now, we don't have that many claims, or anything like that. We haven't had any astronomical claims. Basically, whatever claims we've had basically is a fender bender with, you know, automobile liability, or a compensation case where employees get injured. But the compensation awards we're talking are very, very minimal. There's nothing astronomical, or anything like that.

ASSEMBLYMAN LOVEYS: And you're saying what everybody else is saying, even though your experiences have been very, very small or nil, your premiums are still rising.

MAYOR NUGENT: Yes. Well, the carrier based it on the fact that we have a landfill, that presently is still in operation in our town. And we're in the process of closing it down. But because of the town's landfill in our town, the insurance carriers are afraid of the similar situation occurring as it did in Legler.

ASSEMBLYMAN LOVEYS: Well, you realize that the Insurance Commissioner did give relief in that area as far as pollution is concerned.

MAYOR NUGENT: Yes, but as far as the insurance company's concerned, as long as--

ASSEMBLYMAN LOVEYS: They're still leery of it.

MAYOR NUGENT: Yes. As long as a municipality has a landfill in their municipality area, they're a little leery about insuring. And that's what makes it expensive to go around shopping.

ASSEMBLYMAN LOVEYS: How big is your landfill, by the way?

MAYOR NUGENT: It was originally at 5.11 acres; presently it's 20 acres.

ASSEMBLYMAN LOVEYS: You can't entertain taking some other community's--

MAYOR NUGENT: No the Department of Environmental Protection wants to close us down--

ASSEMBLYMAN LOVEYS: Said no-- Okay.

MAYOR NUGENT: --because we overextended.

ASSEMBLYMAN LOVEYS: Thank you very much, Mr. Nugent.

MAYOR NUGENT: Thank you.

ASSEMBLYMAN LOVEYS: May I call on, at this time, Mr. Peter Strauss, Alliance of American Insurers? Good morning, Mr. Strauss. I hope you have a lot of solutions for us, Mr. Strauss.

P E T E R S T R A U S S: I'm just loaded with solutions, I think. My name is Peter Strauss, and I am the Government Affairs Representative for the Eastern Region of the Alliance of American Insurers.

The Alliance is a national trade association of more than 175 property and liability insurance companies, doing business in all 50 states and the District of Columbia. Many of our members are active in New Jersey markets for personal and business insurance.

We're here today to discuss the insurance problems of municipalities, public entities, school boards, and etc. and

their effects on those entities throughout the State. Recent studies have shown that insurance costs for many municipalities, towns, and other local entities have risen to the point where they have become such high risks that insurers are not able to provide coverage at any price. In other situations, some municipalities can no longer afford liability insurance premiums and have had to cut municipal services in order to retain insurance programs. And the problem is not confined to northern New Jersey or southern New Jersey, but it is statewide, and indeed, it is nationwide.

In fact, officials throughout the states around the country say that they are being swamped by a surge of multi-million dollar lawsuits, court judgments, and they are straining their budgets, forcing cutbacks in services, and in some cases threatening bankruptcy. In fact, some municipalities have declared bankruptcy and just closed-up the town.

There are several effective ways this disorder can be dealt with, including legislation to deal with tort reform, the utilization of proven risk management techniques, and the implementation of aggressive loss control programs. Simply setting up a mandatory risk sharing mechanism to force insurers to provide coverage to municipalities and school districts at artificially low rates, will not, in and of itself, cure the underlying causes of the problem. Those who favor this approach point out that these mechanisms will ease the problems of cities and towns by allowing them to readily buy insurance. Most important, mandated pooling mechanism for liability insurance in and of themselves also do not address the underlying causes of the problem.

As an example of the problem, about two weeks ago the Star-Ledger reported a story about a man whose life was saved when a New Brunswick police officer pushed him out of the way

of a car coming down the street. The man admitted his life was saved in the police report and to the newspaper reporters. About two weeks ago again that man turned around and sued the city, the police officer, and the police department for damages caused -- cuts and abrasions specifically -- to his arms when he fell as a result of being pushed out of the way of that car.

Longer lasting solutions which could help restore stability to this market have to involve changes in the tort liability system. We offer the following specifics:

Modify the doctrine of joint and several liability to cover only damages caused directly by the municipality, public entity, school board--

ASSEMBLYMAN ZECKER: Excuse me, Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes?

ASSEMBLYMAN ZECKER: (speaking to witness) You don't have copies of your testimony. I'm trying to write down your solutions--

MR. STRAUSS: I will get you copies. I'm sorry, I do not have copies.

ASSEMBLYMAN ZECKER: Okay, because you're either going to have to talk slower--

ASSEMBLYMAN LOVEYS: Peter, start again from your tort liability reform, if you will.

MR. STRAUSS: Sure. Modify the doctrine of joint and several liability. That's the doctrine which says, if you are involved at all, you can be held completely liable for whatever happens -- whatever damage has happened. We'd like to modify that doctrine to cover only damages caused directly by the public entity, be it a municipality, school district, or authority, what have you. Instead of being potentially liable for all of the judgment, as the deepest pocket in the neighborhood, the municipality or public entity would be liable only for those damages it was responsible for -- it caused.

There are those who argue that joint and several

liability have been part of the legal system for hundreds of years. But if age of a doctrine were the only criterion, taxation without representation, debtors' prison, contributory negligence, and the doctrine of sovereign immunity should never have been abolished. In this respect, New Hampshire and Vermont have abolished joint and several liability, as have Kansas, Ohio, and New Mexico. In addition, Nevada, Texas, Indiana, Louisiana, Oregon, Pennsylvania, Iowa, Minnesota, and Oklahoma have placed limitations on the doctrine.

We recommend that you establish a threshold for pain and suffering suites. In New Jersey, of course, the Tort Claims Act does not permit pain and suffering damages against a public entity. However, since environmental liability is such a big part of the municipal liability problem, we recommend that you take a look at the environmental statutes and see if a municipality cannot be held liable under those as well as under the Tort Claims Act for damages. And there we suggest that a threshold could be set at \$2500 in incurred medical expenses, plus a requirement that there was a permanent disability or disfigurement.

We recommend that you cap recoveries against public entities, and I would recommend the Governor suggesting a \$250,000 per person/\$1 million per occurrence. There are at least 28 states which have placed some kind of limitation on damage awards against municipalities, averaging about \$150,000 for each person, and \$350,000 per each occurrence. It has been estimated by the City of New York that they would have saved \$35 million a year if they had those limitations. Although the City of New York cannot possibly compare with the State of New Jersey or its municipalities, it's a rude figure; it's an awakening.

We request that you strengthen the negligence law to eliminate strict liability, or at least to limit strict liability as you have for hazardous waste cleanup contractors.

I think that that can be extended to others as well.

We'd like to see that municipal liability claims be directed to an arbitration panel, as they have done in Pennsylvania. Claims under \$40,000 go to an arbitration panel.

Establish a system of periodic payment or structured awards to replace the present lump sum system.

Ironically, the Alliance has appeared before this Legislature and others since the mid '70s on the very same municipal and other liability problems we're discussing today. The theme of our remarks was how to solve the problem before it becomes a crisis. We may have now reached a crisis stage where remedial tort reform measures can't wait much longer.

Preliminary studies show a 100% increase in the number of lawsuits filed against public officials from 1982 to 1985.

Let me stop at this point to say to you that I will be happy to provide you with a backup for everything that I'm saying. Unfortunately I had a nice long weekend, and this is the first time I had a suit on in a few days. I'm not quite prepared with the backup now, but I do have it in the office and I will be happy to send it to you.

With that increase in lawsuits against public officials and public entities came a corresponding increase in the size of judgments against the municipalities. In 1982 the largest award reported in the United States in a municipal liability case was \$230,000. In 1985 the top award was \$2 million. This does not include the judgment against Jackson Township, which was reduced from \$16 million to something like \$5.4 million. I requested the latest information on the increases on claims brought against New Jersey public entities and the increases in the severity of those claims in terms of payments. The Insurance Services Organization -- or Office, rather -- which is the data collection agency for many of the insurance companies in the State, has told me that I will be able to have those figures tomorrow. Of course I will pass them on to you as soon as I get them.

The increasing magnitude and greater frequency of lawsuits is difficult to bear for municipalities and their insurers. These trends reflect the general perception that government bodies are deep pocket defendants, and that kind of perception has caused courts to expand the scope of municipal liability coverage to include exposures never intended by insurers.

Environmental liability is the most dramatic example of the courts' liberal policy interpretations. Many pollution insurance policies -- I'm sorry -- many pollution insurance policies were written to cover only sudden, unexpected pollution incidents. But courts have interpreted policies more broadly to cover damage from long-term pollution.

And I have already covered, in detail, the other factor that has caused municipal liability insurance costs to mushroom, and that is the doctrine of joint and several liability applied retroactively. Under this doctrine, cities and their insurers are required to pay a major portion of hazardous waste cleanup costs regardless of how little they contribute. These risks may be too unpredictable to insure, quite simply. Reinsurers have withdrawn from the municipal liability market to avoid these huge exposures, leaving primary insurers with insufficient capacity to cover governmental entities.

Municipal liability exposure is so large that self-insurance is a possibility only for a few very large governments. Smaller communities don't have the financial capacity to assume these risks. And while self-insurance pooling mechanisms and reciprocals may help ameliorate the availability problem, these devices do nothing to address the nagging and serious problems arising from the tort liability system.

I would like to mention, however, that effective risk management formulated in consultation with insurers, as many municipalities have done, can go a long way towards reducing

rates and exposures. Sound municipal management, proper maintenance of streets, public property and equipment, and a centralized loss control program can cut the incidence of accidents and injuries. Although a number of municipalities do support loss control activities among their employees and at city-owned facilities, a large percentage of municipalities have no truly effective loss control program.

Municipalities usually lack the profit motive which provides the financial incentive for loss control. Their funding comes not from the competitive market, but rather from public moneys supplied by taxpayers. When expenses go up, it is often easier to raise taxes than initiate programs for cost containment. Recent complaints about tax increases, however, are causing municipalities, as well as other levels of government, to look more closely at how their funds are being spent.

In the long run, successful loss control programs will reap a double benefit for the cities. One, to reduce accidents, injuries, and other causes of damages to individuals or their rights, and two, to help hold down the cost of insurance.

In addition, municipalities can reduce costs by assuming some portion of their liability risks themselves. Larger cities in particular should consider the use of appropriate deductibles for some or all lines of insurance, while retaining insurance protection for claims exceeding a specified amount. The proper use of deductibles would, first, directly encourage loss control among each city department, and second, reduce significantly the insurance premiums which would be charged for first dollar coverage.

Moreover, cities and towns can take other steps to reduce the actual number of incidents which lead to claims against them. The adoption and enforcement of appropriate safety and health standards for city work places and public

areas, workable rules of conduct for employees, particularly in the fire and police departments, and appropriate regulations governing the actions of city boards and commissions are all essential to an effective loss control program.

By taking corrective actions such as these, government officials can minimize the current problems in municipal liability, and perhaps more importantly, can do a great deal to ease the financial burden of the taxpayer.

Additionally, the insurance industry, with the leadership of the Professional Insurance Agents Association, has been working on the problem of municipal liability insurance. The industry has prepared two white papers on the problems of municipal liability insurance, and specifically on the problems of the liability created by pollution exposures. Again, I will be happy to provide these papers to you. There are two more in the works, and as soon as they are available I will also provide those to you.

The formation of insurance pooling mechanisms or reciprocals are possible remedial measures. Also, the market assistance program scheduled to be implemented by the New Jersey Insurance Department may offer temporary help. But there should be a realization that tort reform is the best hope for lasting solutions. The insurance industry has agreed to work with the League of Municipalities, school board representatives, contractors, and others to continue to discuss the problems and potential solutions.

That concludes my remarks. I will be happy to answer any questions that you may have.

ASSEMBLYMAN LOVEYS: Peter, I have a series of questions for you. The Alliance of American Insurers -- what percentage of the insurance companies writing liability insurance would you say would fall into this category?

MR. STRAUSS: Depending on the line -- in New Jersey our companies don't write a great deal of municipal liability

insurance. In other lines we-- Percentage-wise, I would be guessing that perhaps we -- our companies -- write about six percent.

ASSEMBLYMAN LOVEYS: Six percent.

MR. STRAUSS: Yes.

ASSEMBLYMAN LOVEYS: About how many insurance companies would you say that might be?

MR. STRAUSS: From the Alliance?

ASSEMBLYMAN LOVEYS: Yeah.

MR. STRAUSS: I would-- Again, it would be a guess, but I would not say it was much more than a dozen, if it were that high.

ASSEMBLYMAN LOVEYS: I don't want you to go in to great dissertation on this, but your immediate reaction, if you will, how would the industry accept tort reform -- the insurance industry?

MR. STRAUSS: I think the--

ASSEMBLYMAN LOVEYS: Welcome open arms, running back into the marketplace--

MR. STRAUSS: I don't think that anything is going to happen immediately. Nothing happens overnight, particularly in the insurance industry. Things take time. We have to wait and see what kind of loss experience there is before anything will happen. You see that in auto insurance, you see that in workers' comp insurance. We would welcome it, I think, that as a sign of good faith, at the least, the insurance industry would be pressured to come back into the market. And I certainly would recommend to my companies that they make every effort to get back into the market. The approval -- hopefully the pending approval -- of the pollution exclusion form of the commercial general liability policy will ease the situation somewhat.

ASSEMBLYMAN LOVEYS: Okay. This question you can't answer, but I'd like your opinion anyway. If we had tort

reform, or tried to have tort reform, what would be the reaction, and how would it be accepted by the trial lawyers?

MR. STRAUSS: I would suggest to you that they might oppose the action.

ASSEMBLYMAN LOVEYS: Again, as they did the verbal threshold philosophy.

MR. STRAUSS: As they've opposed no-fault, as they've opposed verbal threshold. Trial lawyers do serve a very important purpose, and they are very necessary, however--

ASSEMBLYMAN LOVEYS: Mr. Strauss, let me ask you this, has commercial insurance deregulation, do you think, that has affected the problem area we find ourselves in today?

MR. STRAUSS: I think that in it's allowed what insurers considered to be adequate increases or necessary increases, rather it has helped, to the point that it is-- The Commercial Lines Deregulation act does not let insurers get in to and out of markets very easily. The insurance industry, as it is run, does not permit somebody to immediately drop a line of insurance. There are blatant exposures that will be carried, and will be covered. I think it has helped.

ASSEMBLYMAN LOVEYS: The deregulation-- And it's not one of the reasons why -- one of the causes for the problems that we find ourselves in.

MR. STRAUSS: I don't think so, no. Deregulation has given insurers a freer hand to decrease rates, as we have seen over the last five years, and increase rates as they have felt necessary within the last year or so.

ASSEMBLYMAN LOVEYS: Even though, Peter, you know for a fact that the reinsurers, because of no regulations at all, we had no control over them; we didn't even know where they were coming from, what they were doing there, and where they've gone.

MR. STRAUSS: Well the Commercial Lines Deregulation Act had nothing to do with reinsurance; it still doesn't.

Reinsurance is the -- particularly Lloyd's of London -- has taken a look at their markets and saw that something like 85% of their monetary losses have come from 12% of their market, which is basically North America. And they've made a business decision that unless things change they were not all that interested in writing here anymore.

ASSEMBLYMAN RAFFERTY: Mr. Chairman, through you. Could you repeat that, Peter, please?

MR. STRAUSS: Sure. And I don't have the exact figures, but I believe it's something like 85% of their monetary losses has come from 12% of their market, which is North America.

ASSEMBLYMAN LOVEYS: Is it not true, Mr. Strauss, that the insurance industry bases its rates on a nationwide review of claims and losses, and what do you think we can do -- you know, what do you think, if we did have reform in New Jersey, for example, and we showed that we reduced the litigation, don't you think we have to have some nationwide reform in this area too, or our rate structure and the way the insurance industry would gather their information and the way they would set rates, whether we did or did not act in New Jersey wouldn't make any difference anyway?

MR. STRAUSS: It's not only a nationwide situation as far as setting rates--

ASSEMBLYMAN LOVEYS: If you'll just clarify that one area. Am I right that even if we were to have tort reform, even if we were to reduce litigation in the State of New Jersey, would we still not be at the mercy of the insurance arena in their rate setting policies because they take the nationwide average of losses?

MR. STRAUSS: No, sir. In New Jersey, for municipal lines we rate according to the losses and costs in New Jersey.

ASSEMBLYMAN LOVEYS: In New Jersey only?

MR. STRAUSS: In New Jersey only. That's why the frequency of the--

ASSEMBLYMAN LOVEYS: Is this true of all the insurance companies that write liability insurance?

MR. STRAUSS: At least for those who use Insurance Services Office's data.

ASSEMBLYMAN LOVEYS: Because, quite frankly, that is not the information that I have. That is not the case.

MR. STRAUSS: I can't say that it is the case for all companies; at least for those who use Insurance Services Office's data. The frequency and severity of claims in New Jersey is the primary moving force behind their rate structure. There are other things that are thrown in. I'm not an underwriter, and I can't more fully answer the question for you.

ASSEMBLYMAN LOVEYS: I would like you to do me a personal favor--

MR. STRAUSS: Certainly.

ASSEMBLYMAN LOVEYS: --and try to find the answer to that question I just had. I see you'll be called on a little later to maybe help us out in this area, sir.

Anyone else have any questions for Mr. Strauss?

ASSEMBLYMAN RAFFERTY: Through you, Mr. Chairman, if I may, just a couple brief ones. Apparently there's been a climate -- I guess not only in New Jersey but in the United States -- to sue, sue, sue, as evidenced by your testimony that there was a 100% increase -- what were the years, from '84 was it, Mr:--

MR. STRAUSS: Eighty-two to eighty-five; a hundred percent increase--

ASSEMBLYMAN RAFFERTY: From '82 -- 100% increase. The only other -- the only question I have -- and we do have an aggressive loss control program, and that's what's so frustrating, that, you know, our claims are minimal, and what

we pay in premiums is astronomical. And the tighter we get with our safety programs and the like, it doesn't seem to have any effect with regard to our carrier. They say it doesn't make that much difference because someone of your neighbors have been hit catastrophically, and that just reflects-- In fact the--

MR. STRAUSS: Unfortunately, I'm afraid it is. The amount of litigation within the State particularly determines what the claim's frequency is going to be -- that number of claims -- and that has to be spread out among a bunch of municipalities. I would think that your loss control program, particularly if it's effective, would be reflected in your rates, as opposed to a similar municipality which did not have a loss control program.

ASSEMBLYMAN RAFFERTY: Thank you, Mr. Chairman. Thank you Mr. Strauss.

ASSEMBLYMAN ZECKER: I was going to ask that question, but Jack brought it up. It doesn't work out, Peter. This is what is upsetting me. I'm also a former Mayor and current Councilman in Clifton, and we have a situation where we have had good risk management; we've kept our claims to a minimum, and yet our \$5 million of insurance is going from this year -- or last year, \$209,000, to a quote of \$2,121,000, and that also excludes coverage on our police officers, and public officials' liability. Now, this is almost ridiculous. Here we are a well-run city, doing all of the things that you purport, and you're talking about a ten-times increase, and also reduced liability in terms of no public official or police liability coverage. So, Peter, you know, your suggestions -- and I'm sure you don't expect us to legislate loss control management to municipalities, do you?

MR. STRAUSS: That's awfully tough. No I don't.

ASSEMBLYMAN ZECKER: No. So it was one of your suggestions that municipalities--

MR. STRAUSS: Right.

ASSEMBLYMAN ZECKER: --get involved in loss control management and loss control programs. And yet I'll tell you first hand, and I'll give you statistical information where an insurance carrier in five years in the City of Clifton has not paid out dollar one on the policy -- not one dollar, Peter -- and yet they want to raise that city's premium from \$209,000 to \$2 million -- ten times higher, and not giving us any reason, other than the market is bad. Well, that's why I've been asking everyone today, have you been given a reason, you know, why the insurance is going up.

Now Peter, you know, if we're paying for problems that exist someplace else, I just want to know where those problems are. You know, if there's another state or another country that the insurance carriers are dealing with, you know, that they're having a bad experience, I think this Committee would like to know that.

MR. STRAUSS: I trust that Clifton has a landfill.

ASSEMBLYMAN ZECKER: It does not.

MR. STRAUSS: It doesn't?

ASSEMBLYMAN ZECKER: No.

MR. STRAUSS: How do you dispose of your garbage?

ASSEMBLYMAN ZECKER: We send it down to Secaucus, down to the Meadowlands.

ASSEMBLYMAN ZECKER: Part of the problem, and a big part of the problem has been -- right here in New Jersey -- is the Jackson Township decision. The environmental liability exposure of municipalities is tremendous. We don't know what it is. Therefore--

ASSEMBLYMAN ZECKER: Well see I can--

MR. STRAUSS: --we can't cover it if we can't--

ASSEMBLYMAN ZECKER: I've read a lot about that, and I can understand where, you know, if this Committee, in fact, was being set up to start up an insurance company, we would want to be able to insure for an exposure that we could measure.

MR. STRAUSS: Absolutely.

ASSEMBLYMAN ZECKER: So are you suggesting that this -- that more litigation be passed -- that more legislation, rather, be passed eliminating that exposure to insurance carriers?

MR. STRAUSS: I am suggesting that you look very closely and pass legislation that puts limits of the exposure of the municipalities. When a municipality is brought to court, it's not the insurance company's money that's being spent, it's my money and it's your money.

ASSEMBLYMAN ZECKER: Well, Peter, I agree with you on the ones that are-- I know the ones you're talking about.

MR. STRAUSS: And to limit that exposure is very important.

ASSEMBLYMAN ZECKER: I know the ones you're talking about.

MR. STRAUSS: Okay.

ASSEMBLYMAN ZECKER: But let me give you a worst-case scenario. Four or five very young, successful dentists driving along going to lunch -- or to a dentist's association -- and they're rear-ended by a fire truck, liability is not a factor here. And those four to five dentists are killed -- I mean their earnings potential are fantastic. And each case could go 2 to 3 to 4 million dollars, and probably should be paid, wouldn't you agree?

MR. STRAUSS: I would think so, yes.

ASSEMBLYMAN ZECKER: Now, how do you put a \$250,000 cap on that scenario?

MR. STRAUSS: That's very difficult.

ASSEMBLYMAN ZECKER: All right. So, I think you understand that.

MR. STRAUSS: I do understand. However, where do we stop? Who's to say that these dentists won't die of natural

causes in two years, and that their earnings potential won't be--

ASSEMBLYMAN ZECKER: Statistics.

MR. STRAUSS: Statistics, sure.

ASSEMBLYMAN ZECKER: Which insurance companies use. You know, I come 23 years from an insurance company--

MR. STRAUSS: I understand that.

ASSEMBLYMAN ZECKER: --statistics say that those dentists are going to live until they're 70 years old, right? And insurance companies do give us the argument of statistics. Unless it doesn't favor them, then they come up with the answer, well they could have died two years from now. So, I mean, you can't have it both ways Peter.

MR. STRAUSS: I agree.

ASSEMBLYMAN ZECKER: Am I right?

MR. STRAUSS: But, where do we draw the line? Where do we say that this person is getting a tremendous windfall that they may not deserve? What is the particular situation in those families? Are they going to be terribly hurt? Of course emotionally they will be, there's no question. The loss of a loved one is terrible. But, where does that leave them? What are the other insurance policies? I mean, they could have a million dollar insurance policy on the life, and that would be paid. Might be paid double in the course of an accident such like this. What about the car insurance? What will that cover? You know, there are other things besides municipal liability in that scenario that need to be taken into account. And at what point do we say, this person does not deserve a windfall because of the death of a loved one?

ASSEMBLYMAN ZECKER: So your feeling is that a quarter of a million or a half a million or some kind of cap could be reasonable because the person who really needs more money to live on should have life insurance or some other kind of coverage that he can well afford to buy.

MR. STRAUSS: I'm saying that a municipal liability cap is a responsible answer. And \$250,000 is not a bad chunk of change.

ASSEMBLYMAN LOVEYS: You know, if I may, Gerry, to your thinking on this whole subject is, there have been those who are suggesting that we mandate excess funds; that we mandate the municipalities gather together and be involved in an excess fund type arrangement. And Mr. Zecker's scenario bothers me. It should bother anybody who represents a community that might be mandated into joining such a program. So I do feel that we have to look at this very, very closely. Then again, your scenario brings out the fact that maybe there should be additional programs offered by the insurance companies for that very situation, if it were to take place. Because I think you pointed out, Gerry, in your case that this is the individual or a group of individuals who are at their potential and would, in fact, maybe gain that achievement or award by a judge or jury because of their potential in earnings. So, there's a lot of areas that we have some very, very severe questions to ask.

MR. STRAUSS: As a taxpayer, I get a little nervous when we talk about putting the municipalities themselves on the line for excess coverage.

ASSEMBLYMAN LOVEYS: We have to examine that, though.

ASSEMBLYMAN ZECKER: Peter, the two white papers--

MR. STRAUSS: Yes, sir.

ASSEMBLYMAN ZECKER: Are you going to be down in Trenton on Thursday? We are.

MR. STRAUSS: Possibly.

ASSEMBLYMAN ZECKER: Oh, okay.

MR. STRAUSS: I'll have to check my schedule.

ASSEMBLYMAN ZECKER: You know we're moving along pretty quickly, and I just would like to see the Committee get those white papers as soon as possible. And the other thing

would be your testimony -- I tried to keep up with you -- if you could give us a copy of your testimony, really as soon as possible. That would be appreciated.

MR. STRAUSS: I will express it to Laurine. It should be today.

ASSEMBLYMAN ZECKER: I think your testimony generated some questions that I'd like to ask you, you know, after I have an opportunity to look at it again.

MR. STRAUSS: Certainly.

ASSEMBLYMAN LOVEYS: You know, on the information, Peter, if you could forward those to Laurine -- maybe express mail -- we'll have them for Thursday.

MR. STRAUSS: Sure.

ASSEMBLYMAN ZECKER: Also, much of your testimony was enlightening, and I appreciate it.

MR. STRAUSS: Thank you.

ASSEMBLYMAN LOVEYS: Yeah, thank you very much.

MR. STRAUSS: Be happy to work with you at any time.

ASSEMBLYMAN LOVEYS: Appreciate it.

MR. STRAUSS: Thank you.

ASSEMBLYMAN LOVEYS: The gentleman in the front row, I think you have a lot of answers for us. Would you mind coming up and let us have your name, and maybe you could enlighten us?

F R A N K L I N A. F E L T M A N: This whole problem--

ASSEMBLYMAN LOVEYS: Can we have your name, sir?

MR. FELTMAN: Yes, my name is Franklin A. Feltman. I am a member of a large insurance agency in the State of New Jersey -- one of the largest.

ASSEMBLYMAN LOVEYS: Do you want to let us know who that agency--

MR. FELTMAN: That's the J. I. Kislak organization.

ASSEMBLYMAN LOVEYS: Fine, thank you, sir.

MR. FELTMAN: Unfortunately, and it was brought out today that we had a crisis in 1966, we had a crisis in 1977,

and the problem with our Insurance Department in the State of New Jersey is that instead of when they had the crisis in 1966 to start preparing themselves to prevent the crisis from happening again, and again when it happened in 1977 when all boards of education had that problem at that time -- and I was instrumental in having a meeting held in Trenton where we had approximately five or six carriers that met with us, and the Insurance Department, and the State Education Department. And we came up with a solving of the problem at that time.

Now we have it again in 1986, and my answer to you know is that you can't stop trying to solve your problem by just hitting it when it comes up. I think that the Insurance Department has an obligation to form segments of committees to help solve the problems between the insurance carriers, the legal end of it, all people that are involved in municipalities, or even commercial operations. You have to try to set the movements so that you're going to improve yourself as you're going along. I think that the insurance carriers have to give in a little bit too. I think one of the problems are they're asking for legislation to put caps on cases that would come up against municipalities. How about the insurance companies, such as they do in their property insurance, if you have a sizeable deductible, giving you a reduction in your cost -- why don't they do the same thing in the public liability end of it? If a municipality is willing to carry a large deductible, how about giving them a credit for that particular thing?

One of the biggest problems, I think, which occurred -- and of course the gentleman that testified here for the Alliance -- when you deregulated the insurance, you really gave them a hand where they can go wherever they want in reference to what the public liability cost is, or what the automobile cost is. And what's happened is, for five years they gave it away. They were the poorest business operations around. They

operated their companies so poorly, they were giving it away to get money and put it into investments to get returns on it. Bang -- when they got hit, they didn't set up enough reserves, they didn't set up enough surplusses, as a result, they're in bad shape. There are maybe about 200 companies that lost their ratings in the Best manual -- which is our affiliation of actually classifying how a company is. There are about 200 of them that went just defunct. They're just in bad shape; as bad as some of the banks that you're hearing about in the papers today that are getting into problems. And as a result, this is why a lot of them can't get their reinsurance because they're in such bad shape. A lot of industry has come in -- you find, like American Express bought out Fireman's Fund. They started to clean house and put it into a business operation in order to make it a successful situation. So, they've had their problems as well as what they say you have your problems in the municipalities situations. And unfortunately, what's really happened -- they talked about this umbrella -- the umbrella market has just wiped out. The sources are just very, very, very bad. They're just-- You just can't get it any more, and when you do get it, it's exorbitant.

I have a concern that I think were the first ones that went into this self-insurance bit. This was an elevator manufacturing concern -- this firm made elevators. About eight years ago they went self-insurance into an operation and had all the elevator companies throughout the country come into a self-insured program, and they all chipped into this thing and got someone to oversee the program. And when they overseed (sic) the program, they started to put safety programs into effect, and as a result, they were able to get their insurance at a very, very good basis of being able to be affordable to it.

Unfortunately, this year, one firm that I was involved with who had a \$20 million umbrella at a \$20,000 cost, had to reduce it down to a \$5 million umbrella at a \$75,000 cost.

This is the problem that is going on in the industry. No one can control it. The market, in certain fields, is washed-up. Now, unfortunately, in the State of New Jersey -- and this gentleman failed to say it -- when the State of New Jersey passed its law saying that it was mandatory to renew policies, this is when the companies in this State of New Jersey stopped writing business. They stopped writing business because they felt they didn't want to be forced to be able to renew policies. Now the law was fine; it said renew the contract, but it didn't state one thing: what you can renew it at. So what they're doing is they're taking advantage of the thing. Sure, they'll renew it, but they'll renew it for six, and seven, and eight times what the cost of the premium is.

ASSEMBLYMAN LOVEYS: Are they not doing that nationwide?

MR. FELTMAN: Well, they're not doing it-- In fact, it's a funny thing. I can name you about a half a dozen companies that have stopped writing business since October of '85 and are still not writing business in 1986. Just won't open the market. They're waiting for-- In fact, the other day, I guess, one of the courts--

ASSEMBLYMAN LOVEYS: And you're attributing a lot of this to what was done by the Governor? Is that what you said?

MR. FELTMAN: Well, no. What happened is, these carriers are unhappy with what they did. In other words they-- See, you take the State of Pennsylvania; they have no such law in effect. What they did is they probably put a cap on what they did there, but they didn't have a law which said that it's mandatory to renew their contracts. Now in Pennsylvania, we're able to write with about five, or six, or seven of our carriers. But in the State of New Jersey there's only about two or three that are open to us, otherwise you've got to go into the surplus lines market--

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ASSEMBLYMAN JOVY: Again, because they were told that they had to write the policy. Only because of that reason. Mr. FELTMAN: Right. Exactly. Only because of that reason.

ASSEMBLYMAN YECHE: And renewal. Mr. FELTMAN: And renewal. ASSEMBLYMAN YECHE: And renewal.

MR. FELTMAN: But the only weak part of it, and that's a funny thing -- one of my clients got a letter the other day, and it was a ridiculous letter. They complained to the insurance Department that this carrier was cancelling. So the insurance Department got involved and they -- a back and forth over several months, and finally they got a letter back and it said, "Yes, it is mandatory, and this carrier has to renew it." Little did they know that that company went bankrupt, so what good was it? The company is out of business.

And that's what happened in many of these cases. They're amongst the 20 carriers that just went bust. They just didn't manage themselves well. They were poor business people -- poor business people. Now, I will say this: one of the key things -- and I started it for a board of Education in Union, New Jersey, -- was maybe about eight or nine years ago -- I started a safety committee. That safety committee met once a month, and we met with the insurance carriers, we met with the fire department, we met with the police department, and we met with people that were involved in the school system of every building -- every type of person. We met and we had one meeting; we had a list of what was involved during that 30 days. And we made sure, number one, that in the educational, if there was a problem that came up because of negligence on the part of the condition, or if we came back the following month that condition was rectified. In other words, what happened was the safety program that was set up was one, not only there to sit and just hear, but was to

ASSEMBLYMAN LOVEYS: Again, because they were told that they had to write the policy. Only because of that reason.

MR. FELTMAN: Right. Exactly. Only because of that reason.

ASSEMBLYMAN ZECKER: And renewal--

MR. FELTMAN: And renew it.

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act, and to improve the program that was on that board of education to the point where it cut down on their loss ratio. They end up now getting on their compensation a \$200,000 dividend a year with the carrier that's involved because they're doing a good job of trying to keep the claims down.

We published a manual -- a safety manual -- which we worked on, and it was worked on by one of the school members of the -- a teacher -- along with the various people. This manual became a bible for every community in the State of New Jersey.

ASSEMBLYMAN LOVEYS: What I hear, loud and clear, from you is that a good risk management program works and will save money.

MR. FELTMAN: It works. It has to work, but it has to be an active one. It has to be an active one that the insurance carriers partake in, the officials in the community partake in it.

ASSEMBLYMAN LOVEYS: Are you suggesting too, sir, -- I hate to keep interrupting you -- that the majority of our municipalities, school board entities, and so forth -- do not have a good risk management program?

MR. FELTMAN: They may have what they call a risk management or safety program, but it's not one that's meeting continuously to solve the problems.

ASSEMBLYMAN LOVEYS: Are you suggesting, too, that maybe some of the insurers would come forward--

MR. FELTMAN: Oh, they'd come forth, and they'd--

ASSEMBLYMAN LOVEYS: --to work with these, and work out programs so that premiums can be reduced?

MR. FELTMAN: Every time that we've met -- and I will tell you this, and you can speak to the Township of Union, the Administrator there -- every time they meet, the compensation carrier and the public liability carrier, which is in a multi-peril section -- they have someone from their claims

section there to partake in the meeting. The police chief, the fire chief is there to cut down on all the problems that could occur that would, you know, be a hazard to the situation that's involved on that board of education. As a result, it kept them with that carrier, and that carrier is still renewing their insurance.

ASSEMBLYMAN LOVEYS: Who is that carrier?

MR. FELTMAN: Continental Casualty Insurance Company.

ASSEMBLYMAN LOVEYS: Continental?

MR. FELTMAN: Right. Now what happened, of course, is that their premiums have gone up -- there's no getting away from it -- but not as much as some of the other carriers.

Now my other suggestion-- See, these insurance carriers are taking their rates on an overall basis. He claims that they are not going nationwide (referring to Mr. Strauss). They're going into a section of taking liability claims all over the country to come up with their rates, in reference to what each state will use. Now, New Jersey will compose what it will have, Pennsylvania will have its certain rates, but the idea is that I think that what they're failing to do is, as I said before, if a risk is good, and it's willing to write it with a deductible, and has a good safety program, let's give them some form of credit, which they did five years ago in order to get the business. Let's give it credit now to keep its losses down. Use some sort of retro plan. Now when I got them to take and continue on the Union Board of Education program, we put a retro plan, which meant that, in accordance with their losses, they were being charged, but they could never go over a certain maximum involved. Now that retro plan worked out so successful, that after two years, the carrier removed the retro plan. I took their compensation out of a carrier who is a direct carrier -- Liberty Mutual-- It was in an assigned risk, and because their experience was so good, and we met with them and talked with them, they put them into a

dividend program which now, as I said, is giving them back about \$200,000 on a dividend program over the course of the year.

These are the things that you actually must work on very hard, and a business administrator in a community, whether it be a board administrator or a municipality administrator, he must work on that. Now, years ago we got into negotiations of unions, they hired a specialist to help them. They're going to have to do that again in order to work this out and help them keep their things at a low. I think what you have to do -- and it's very difficult -- you had this gentleman in who met and who represents a small percentage-- In order to really solve this problem, it really has to be solved from the point of view of getting the insurance carriers, the attorneys, and everyone involved to try to come up with a conclusion. Let's not throw these things around.

ASSEMBLYMAN LOVEYS: Sometimes, when they don't respond to an invitation, we have to introduce a bill. Then they respond.

MR. FELTMAN: Right.

ASSEMBLYMAN LOVEYS: Believe me.

MR. FELTMAN: Well, that's exactly it.

ASSEMBLYMAN LOVEYS: Something like-- That might be the situation in this case.

MR. FELTMAN: It's a hard thing. But I will say this, there are two counties, and I throw this out, the County of Bergen, and the County of Middlesex now, are starting their own self-insurance program. They've gotten a consultant and they're setting it up, and municipalities are flocking to that to try to get a program in effect to try to help them get their insurance involved.

Now, I had a problem thrown at me the other day in West Orange a gentleman had that automobile problem, which went the assigned risk. And he had come forth with about a half a

million dollars of premium. And I said, what the heck are you doing that for? I said, why don't you put it on a budget plan? I said, put it on a budget plan with AVCO or INEC, only lay out about 25 or 30% of what you have to lay down, and then at the same time, seek out and see if you can get it placed elsewhere. Now if you do get it placed elsewhere, you're on a budget plan, but -- it's a little unethical, but -- just don't make your payment on your budget plan, and as a result, it's cancelled pro rata, you're able to take it and place it into the carrier that's going to give you a good deal, and place it in the right basis. And then what you're doing there is you're getting this thing out of the assigned pool -- which they want out anyway, they don't want to have the coverage -- but you're giving yourself an opportunity not to be penalized 25% if you go ahead and give them the front money up ahead and a carrier does take it.

So that, a lot of times, what you're doing if you're shopping around, is put it on a budget plan, and then when you find someone who wants to take it you won't be penalized with that 25% penalization.

Now, they were talking about umbrellas. What we found in solving some of the umbrellas is that sometimes you can't get the big amount that you want, and you may have to write it in layers. And what you're doing when you're writing it in layers is that the second layer has that first million dollar deductible; it may be that your next layer-- Let me put it this way: the first layer may be a million, then your next layer is four million, but that four million carrier has a million dollar deductible. Now, if you go over the five million and you go to ten, that next five will have a five million dollar deductible. Now it means that your cost is going to be less because of the higher deductibles. So you have to manipulate around if you are doing that with your umbrella in order to get a better cost basis on it. Instead of

placing the whole thing at their -- at graces -- of what they want to charge you for the 15 or the \$10 million umbrella. And it's a severe thing; the markets have really closed down. And one of the things I'll tell you frankly that's closed down, and they're still saying it -- they're not writing it-- And they don't have to write any business. Because you've got to realize one thing: whatever they had on their books is going up five and six times, so why do they have to write business? They don't have to write business; they're still getting what they normally would -- and more than what they normally were having the year before in their premium status.

One of the other things, which is a very, very -- it's a problem. Companies, normally, when you had deregulation-- In other words, you couldn't charge any old premium; companies would have to file their loss information to the State. Now the State's system of gathering loss information is so outdated it's pathetic. There was a suggestion made about six months ago that they should have a central location. The central location would be computerized. Every municipality, or every board of education, would pay a fee to get involved in that data processing or that computer system. Now, when that insurance company data gets to that computer, instead of taking eight months to come up with the company's experience, it's done in a couple of days. The result is you know the status of the company; what their losses are, and so forth. Right now there's no way of finding out what the loss information is on insurance companies.

ASSEMBLYMAN LOVEYS: Is the State doing that at all now in the commercial end?

MR. FELTMAN: No, what they do-- It takes them months to get the information in on, like, on the compensation, and on the automobile rates. It takes them months to do that.

ASSEMBLYMAN LOVEYS: Well, on the automobile, they do have a closer defined system of gathering information.

MR. FELTMAN: Well, they have a defined system, but, you know, when the companies provide -- and they're supposed to provide two -- actually three years of experience in reference to this -- when they send it in, it's not -- it takes the State maybe six to eight months to come up what they feel should be the appropriate rates. There has to be a better system. It has to be done through a computer, and be done a lot faster. And that's the big problem. And there was some suggestion, about six months ago, of doing that. I wish I had the article and the information on it to do it.

But this is the real problem. I know that you're sitting here, you're trying to solve the problem, but I think in order to solve it you're going to have to get all the people involved to try to come up with some conclusions and help. Now, I went to a session about a month ago/a month and a half ago, and it was very interesting. They talked about the claim dollar. Out of a claim dollar, they figured out that 60 cents of the claim dollar went to the defending attorney, 20 cents went to the attorney that was representing the carrier, which is 80 cents, and the guy who brought in the claim -- and wasn't really going to get anything anyway, but the fact that the attorney said, look I'll take your case, and what I get for you is something found -- he got 20 cents of the dollar. And if you check your figures on losses, that's where the amount of losses are going. Sixty percent to the defendant attorney, twenty percent to the other attorney, and the poor guy who's involved in the claim, he ends up getting 20 cents on the dollar. And it's very interesting.

ASSEMBLYMAN LOVEYS: Thank you. Thank you for your testimony. Anyone out there else wish to be heard? Yes, please step forward. (speaking to woman in audience)

K A R E N K O T V A S: I promise I'll be brief. Thank you Chairman Loveys. My name is Karen Kotvas, and I represent LEGAL, which is an organization of 1000 attorneys and their

clients. I have a number of things to say but, in the interest of time -- are we pressed for time? Isn't there a hearing in Freehold?

ASSEMBLYMAN ZECKER: I'm going to have a cigarette by the back door, but I'm going to be listening and following your testimony.

MS. KOTVAS: Okay. We admit that there is a problem and that there is a tremendous problem. What I would like to talk about a little bit is a little bit of the rate-making why we do have a problem. We're talking about losses, we're talking about reserves, and we're talking about how those are written. And the majority part of this statement deals with that, and I will not take your time.

I would like to say that because of investment income, which was so great a number of years ago, companies were making incredible profits, which of course we know is not the situation today. But that situation was so incredible that companies so eager to get premiums were writing after the fact. They were writing excess liability after the fact of an accident -- as you might recall the MGM Hotel fire where people were writing those policies -- and that money went into the stock market and it generated incredible amounts of profits. But interest rates right now are not in that same category, and we are having a major, major crisis.

Now, I would like to offer something positive. Where do we go from here? What can we do? I would like to speak specifically to the gentleman who preceeded me here, and I heartily concur with him when he talks about safety and when he talks about people getting together. I'd also like to speak to the gentleman -- Mr. Strauss -- from Alliance. When he was talking about a number of tort reforms.

So, specifically, let's talk about frivolous cases. I think that with New Jersey's Tort Claims Act, these cases are currently being weeded out. I would like to talk about

prevention and safety, which as we know, as a good risk management program, should be practiced by everybody. The goal of a risk management program is not only to protect the assets and the service delivery capability as a government, but it should also minimize potential losses, as the gentleman before me said. If there is a big emphasis on safety and prevention, I think this is highly important.

I think we should realize who pays for the policies; the taxpayers do. And the towns have really been negligent. They are being sued because they poison people; because they hire child molesters; because they are not properly supervising employees.

Now, the victims of this negligence are going to be reimbursed under the current system by the municipalities, which is the taxpayers. But if you do all this tort reform, and you take away all the possibilities, it doesn't solve the problem, because the taxpayer is still going to pay for this whether it's some form of public assistance, or welfare, or social security, or disability, but something like that is going to happen.

I like his idea of credit ratings, and I suggest that you even give a reduction to a town with a good safety record. Many claims could be forestalled by proper police training, instead of allowing law officers to beat up everybody that they arrest. When you are preventing these negligent acts, you are saving the taxpayers substantial amounts of money.

But to take away the rights to do all the tort reform is going to the symptom, it's not going to the disease. The disease is that wrong things are happening. Now, I would like to suggest something to you that I hope you don't think is naive, but in the '70s, we had an enormous crisis -- as you recall -- the oil crisis. And we are a very disposable, throw-away, affluent society, and when we start talking about conservation people laughed and said we could never conserve.

Well, look what's happened today. We have an oil glut, basically because people have conserved. And I suggest to you that the crisis that we're in is just as large, with just as many ramifications as that energy crisis. The crisis that we are in -- this liability crisis -- I really feel can be addressed if people would be careful, if they would be cautious, if they would be prudent. If the accidents never occurred in the first place, then you wouldn't have the claims. And that's the positive thing I want to leave you with today, that the acts are happening, that by going to the disease itself, not the symptoms -- abolishing the tort system is not going to help the person who drinks the tainted water, the poor dentists who are rear-ended. It's not going to help them. That spill is going to happen. But it won't happen if we all get ourselves totally conscious and aware of that problem and beware of it. That's all.

ASSEMBLYMAN LOVEYS: Karen, thank you for your testimony. Do you have any questions, Jack?

ASSEMBLYMAN RAFFERTY: Just one question. There was one-- You brought up a number of instances that I thought were a little extreme. How about the individual who saves someones life, pushes them out of the way of the car and they go and see an attorney and the attorney says, let's sue. I mean there are cases on the other extreme.

MS. KOTVAS: I have to agree with you on that. That really is not--

ASSEMBLYMAN RAFFERTY: And we read about these every once in a while, and the increase in--

MS. KOTVAS: But truly an award like that cannot come into the millions of dollars. That's not going to-- I mean, if he has abrasions on his arms, if he has cuts from falling on the road, I don't really think a case like that-- I don't even think it should be administered. If someone save my life I would never do that, neither would you. But a case like that,

I don't think it's going to amount to what-- How much money can it be? And who would take it?

ASSEMBLYMAN RAFFERTY: What, if I may Mr. Chairman, through you--

ASSEMBLYMAN LOVEYS: Sure.

ASSEMBLYMAN RAFFERTY: What do you attribute to the 100% increase in litigation from 1982 to now?

MS. KOTVAS: From 1982 to 1985.

ASSEMBLYMAN RAFFERTY: I mean, 100% against municipalities and government officials?

MS. KOTVAS: I don't know, I haven't seen individual cases, but I would have to think that there are more people now than there were before, and maybe there are more things going on, and maybe people are more aware that there's more poisons, maybe the environmental liability -- maybe more people are dumping-- I mean, for example, if you have a dump where someone comes, and they have drums, and the person who's minding the dump who lets them in is making the minimum wage, and he says, "What do you have in the drums?" And the person with the drums says, "Ivory Snow," and he lets them in if somebody gives them the appropriate amount of money maybe. I mean, how can this happen? How can these toxins leak into the system? There should be some kind of supervision. Maybe, you know, proper training, maybe a bigger salary, maybe a more responsible person, but somehow, that gets into the water system. It's not right.

ASSEMBLYMAN LOVEYS: One question, Karen.

MS. KOTVAS: Yes?

ASSEMBLYMAN LOVEYS: Have you not seen, in a certain segment of your fraternity, if you will, a group that really are enticing or inviting people in to sue that people never even dreamed of suing before?

MS. KOTVAS: I've heard about it, but I've personally haven't seen it.

ASSEMBLYMAN LOVEYS: You haven't seen this in the newspapers -- some of the ads in the newspapers?

MS. KOTVAS: I've seen ads for free transportation.

ASSEMBLYMAN LOVEYS: No, I'm serious, you haven't seen ads that you can--

MS. KOTVAS: Well, if you're hurt in the workplace. I've seen those ads, yes.

ASSEMBLYMAN LOVEYS: I mean, I've seen big, blatant advertisements in the newspapers--

MS. KOTVAS: And I've heard them on the radio.

ASSEMBLYMAN LOVEYS: --"Come on, come and see us. Don't worry, we'll take care of all your -- no cost."

MS. KOTVAS: I've seen those--

ASSEMBLYMAN LOVEYS: It's this type of thing, you know, really it doesn't do your group any good. And I'm not suggesting for one moment that the majority of--

MS. KOTVAS: That I'm responsible for 26,000 lawyers, I know.

ASSEMBLYMAN LOVEYS: --professionals find themselves in that position. But I do feel -- you know, you say the safety and protection and the municipalities are at fault-- I agree with you, but I do feel that maybe your own fraternity has to do some house sweeping too, and maybe keep those in line. Because if we all do that, and work together, maybe we can solve some of these problems.

MS. KOTVAS: I think that underlies my--

MS. KOTVAS: I thank you very much for your testimony.

MS. KOTVAS: Thank you for your time.

ASSEMBLYMAN LOVEYS: I see with us today, also, is former Assemblywoman Jackie Walker. Jackie, do you want to say a few words today.

J A C Q U E L I N E W A L K E R: If I might.

ASSEMBLYMAN LOVEYS: You're more than welcome.

MS. WALKER: I don't envy you, this is the biggest crisis I think we have before us in the State of New Jersey right now. And I don't think I'm exaggerating at all.

What I tried to do is outline some of the problems and then line up some possible solutions.

ASSEMBLYMAN LOVEYS: Excuse me, Jackie, let me ask you, are you representing just yourself.

MS. WALKER: Just me.

ASSEMBLYMAN LOVEYS: Okay, fine. Thank you.

MS. WALKER: Just me and past interest in this whole area. And maybe, you know, some comments have been mentioned -- since I wasn't here before I don't know -- but let me just talk about the roots of the problem.

Several factors in combination have led to today's crisis in liability insurance. While there is some difference of opinion on the extent to which each contributes to the problem, the following are the most frequently cited factors:

A drop in the return on investments made by insurance companies. In the late 1970s, when interest rates were high, insurers eagerly wrote policies and invested the premiums. The competition for business drove down the price of insurance, but the claims continued. As a return on investments dropped with the rate of inflation, losses in the insurance industry have mounted. In the past two years, companies lost more than in the previous 25 years.

Excessive damage awards is another reason why we have high insurance rates. A small percentage of cases account for the bulk of dollar payouts. Whereas settlements for more than \$1 million were rare just five years ago, such high settlements are somewhat more common today, unfortunately. For example, drunken driving lawsuits are most commonly cited, and the pollution case involving the Jackson Township Municipal Dump is known to underwriters across the nation.

In that case, a jury returned a \$16.5 million reward to residents who sued the town on grounds that contamination

from the landfill caused them a variety of physical maladies. The award was later reduced on appeal to \$5.5 million, but that insurance company is to pay it all still troubles many insurance executives.

The standard policies covering Jackson and other towns excluded coverage for pollution liability unless it stemmed from an incident that was sudden and accidental. The companies argued that long-term dumping at a landfill could not be sudden and accidental, but the courts found otherwise.

On the pollution front, though, the industry made strides at the close of last year. Insurance Commissioner Hazel Gluck announced her support of a newly worded exclusion for pollution coverage, which should make it easier for some towns to obtain liability coverage. It should also make crystal clear what companies intend to cover. Municipalities with landfills would purchase pollution coverage separately.

The Insurance Commissioner had to reject that pollution exclusion on December 31, 1985 because of some technicality, but I believe that is still alive.

The Legislature also approved a bill signed into law by the Governor that would limit the liability for contractors cleaning pollution sites. And I refer to S-3206, Contillo. The liability market in this area has been virtually non-existent of late, and was slowing cleanup operations at the State's 400 toxic waste sites.

On December 31, 1985, Commissioner Gluck rejected a bid for a revised standard liability policy that would have provided less expensive, short-term coverage. The policy, known by the name "claims made," pays only for claims that occur within the policy term. And there are pros and cons to this approach. For instance, who does eventually pay? It would compete with other standard occurrence policies, which provided definite coverage even after policies lapse.

The difference is key for some businessmen, such as malpractice and product liability, where suits might be filed years after the incident which spurred them. Consumers would have a choice of policies -- claims made is much cheaper in the first few years -- and you could convert a claims made policy to an occurrence policy by buying what is known as "tail" coverage.

The Commissioner rejected the change, however, saying that among other things, that the industry failed to provide sufficient data on how a claims made policy would affect premiums, and that's valid.

The industry is still challenging an order issued by the State last November which prohibited companies from dropping liability policies in mid-term. The policy also prohibited mid-term premium hikes, and permitted companies to cancel risks only with the permission of the Department of Insurance. It was drafted in response to a wave of policy cancellations last year, and withstood the industry's first legal challenge although a full hearing on the case is pending. The industry argues that the State is unfairly intruding on crucial business decisions and locking firms into unprofitable business.

Another problem is the increased uncertainty about the number and the size of future claims and awards. In recent years, insurers have seen more and more plaintiffs successfully sue for events which took place many years ago, whose harmful effects are only now coming to light, for instance, sexual harassment claims against operators of child care centers, etc. As insurers find it increasingly difficult to accurately predict the nature of their client's liability, they are more and more reluctant to assume such risks.

Another problem: high administrative costs. Estimates are that only 28 to 40 cents of each medical malpractice premium dollar ultimately goes to the injured

parties. Administration, claims evaluation, and litigation costs absorb a good part of each medical malpractice insurance premium dollar.

Another problem: commercial deregulation. Deregulating the commercial insurance industry three years ago has been blamed by some for creating the current liability insurance crisis. Companies dropped the cost of their premiums while the claims increased. And then they depended on the interest from their investments, but that also dropped with the rate of inflation.

Another root of the problem: collateral source rule. Some argue that the collateral source rule results in excessive awards. This is a rule that forbids the introduction of evidence that the plaintiff is already receiving compensation from other sources. Thus, a patient may receive compensation from more than one source for a single element of loss, such as medical expenses.

The doctrine of joint and several liability. This doctrine allows a plaintiff to sue any or all of the possible defendants for the full amount of his damage. Although a plaintiff cannot collect more than his legally determined damages, he may collect it from the defendant with the most resources or the deepest pocket -- and I'm sure you've heard that term -- regardless of that defendant degree of fault. This rule often works against governments because they are considered deepest pocket defendants. For example, a city which is found to be 10% at fault in an accident may have to pay for all or most of the damages if the other defendants have no resources.

Loss of sovereign immunity. Under the doctrine of sovereign immunity, which is derived from an ancient English common law, citizens cannot sue their own government. This doctrine has been eroded substantially over the years as a result of federal, state legislative, and judicial actions.

What are some proposed solutions that are being considered? Well, they fall into three categories. Category number one: those that involve tort law revisions; number two, those that require administrative reforms; number three: those that may be taken independently by the states.

Under category number one -- those that involve tort law revisions -- there are several solutions that might be considered by this Committee.

A) Amend the joint and several liability rule to limit the liability of deep pocket defendants where their percentage of fault is relatively minor.

B) Change the collateral source rule to allow evidence to be introduced that the plaintiff has received compensation from other sources.

C) Establish pretrial panels to encourage early settlement and weed out frivolous claims.

D) Place limits on the amounts recoverable; these limits may be placed on the total amount of an award or only on the amounts recovered for non-economic losses, such as pain and suffering, disfigurement, impairment of quality of life, or punitive damages.

E) Permit courts to allow structured damages -- damages paid in installments throughout the plaintiffs period of disability, up to a lifetime -- in lieu of lump sum awards.

That's category one. Category two:

Administrative reforms: They might include the following:

A) Require the insurance companies and the self-insurers to submit basic information on their liability experience to give states understanding of the frequency and the severity of claims and the adequacy of premiums, as well as provide feedback on the effect of enacted legislation.

B) Allow insurance companies to write policies on a claims made basis rather than on an occurrence basis.

Occurrence-based insurance holds the insurance company responsible for claims resulting from the treatment rendered during that coverage period, regardless of when the claim was filed. Claims-made based insurance holds insurers responsible for claims filed only during the coverage year.

And the third and last category: independent actions that might be taken to control liability insurance costs:

A) Reassert, partially, sovereign government immunity to local governments, except in cases of clear negligence.

B) Improve risk management in order to reduce the likelihood of claims. That can take many forms. Consolidate the coverage; eliminate unnecessary risks by, you know, making sure that all the brakes on the police cars are working; join a pool like a countywide pool or a statewide pool, and finally;

C) Self-insure instead of buying liability insurance from third parties.

I don't envy any of you your jobs with this. Thank you.

ASSEMBLYMAN LOVEYS: Jackie, thank you so much. I think this is all-inclusive. Maybe you have a couple of questions, Jackie, too. Do you? (speaking to Assemblyman Zecker)

ASSEMBLYMAN ZECKER: No, no, just on the--

ASSEMBLYMAN LOVEYS: I commend you for this, thank you.

ASSEMBLYMAN ZECKER: Do you have more copies?

MS. WALKER: Yes.

ASSEMBLYMAN LOVEYS: Does anyone else at this time wish to be heard before we take a lunch break? Well, we will do that then. We will adjourn, and start again at a quarter to two.

(RECESS)

New Jersey State Library

AFTER RECESS

ASSEMBLYMAN LOVEYS: We'll open up the meeting once again. Are you ready folks? Fine.

And Mr. Robert Cabana. You're the Freehold Business Administrator?

ROBERT CABANA: That's correct.

ASSEMBLYMAN LOVEYS: Thank you, sir.

MR. CABANA: First of all, I want to thank you gentlemen and ladies for having conducted the public hearing. It's very unfortunate, I think, the fact that today was coincidentally the same day that the League of Municipalities had their seminar, if you will, on this very subject -- insurance. I was at that this morning, and that's the reason I wasn't here. I would like to tell you that there had to be in excess of 200 people at that assembly meeting.

As far as I can remember -- and I checked with a couple of people there -- outside of today's seminar -- which was, obviously of importance to everyone that was there -- the only two that I can remember of that magnitude was probably the Garcia with the Fair Labor Standards Act seminar that was held a year ago, and possibly the one on the fire inspection bureau. So, I stress to you there's no question in my mind that this subject is uppermost in the minds of a lot of people.

I may be an exception. We were blessed with an insurance rate that wasn't that excessive. Our insurance costs went up 27%. The figures I heard this morning were 200%, 500%, and 1000%. So, obviously you people know a lot more about this subject than I do. But I would like to make a couple--

ASSEMBLYMAN ZECKER: This is your-- This year's premium has gone up for the county for--

MR. CABANA: The Borough.

ASSEMBLYMAN ZECKER: The Borough. Oh, okay.

MR. CABANA: Twenty-seven percent, which is very reasonable. I mean, I'm sure you've heard--

ASSEMBLYMAN ZECKER: Who's the company? (laughter)

MR. CABANA: I might add that we, last year, had a proposal and undertook the possibility of creating a pool, also we undertook the possibility of doing self-insurance ourselves. With the population we have, and our premiums, which is approximately \$300,000, we're a borderline case. Some people would recommend that we self-insure, others would not. So, in conjunction with working with our agent -- local agent -- in town, we secured what we thought was a very favorable rate last year, and it went up only 27% this year. So we're, I think the exception rather than the rule, in this State.

What I'd like to do, if I may, is make a couple recommendations. I don't claim that they are original with me; you may have heard them this morning. But I think there's two areas that are of particular importance. One is the tort law which I am sure there is legislation pending to change it, if you will. I am not going to sit here and recommend sovereign immunity for municipalities -- I don't think we're quite in that stage. I think it would be worthwhile as Assemblymen and Senators, that you people consider some sort of a cap on tort claims. I don't sit here as anti-lawyer, but I think we have to look at the municipalities' case, and not only the attorneys and their lobby in, you know, your particular Assembly or the Senate -- whatever the case may be.

For example, in Florida, they have a limit of \$50,000 per individual case -- per individual claim, rather -- and a \$300,000 limit per occurrence. Now, someone might say, well, if there's a very serious personal injury where someone is crippled, they probably deserve more, and I agree. What they do in Florida is that they go before the Legislature, and the Legislature can create a special bill -- and I imagine they

have committees with doctors and whatever on it -- and the only way a person can exceed those limits is to go before the Legislature and have the Legislature approve that special bill.

I think the bottom line is, we appoint judges, and by doing that we allow judges to give out multi-million dollar judgments. I think those types of judgments should be in the hands of the Legislature -- the people that we elect -- and not the people that are appointed.

So I ask you to consider a revamping of the tort law, with some sort of limit on an individual case and on an individual occurrence -- there is precedent in other states. And I think the amount of judgments that are given today -- or have been given the last few years -- that maybe some consideration should be given to place a limit and not allow the judges to give out multi-million dollar claims. And it should be the prerogative of the Legislature.

The other thing is a bill, I believe it's Senate Bill 1718, which is basically the Intergovernmental Excess Insurance Coverage Bill. I don't-- I have not read the Bill. I have heard about the Bill, and what little I know about it I certainly would support it, and I can tell you that the people that were at that meeting this morning certainly supported it.

Basically what it is, is to have a statewide insurance coverage for excess insurance, something probably in excess of a half a million dollars. There would be a fund created which all municipalities, boards of education, MUA's, counties, would be allowed to join. So I guess the Department of Insurance would set up how much money is needed to run this fund, and then the municipalities and local government entities could participate. The biggest problem, I think, is the fact that pooling is very good and has worked successfully in the few cases where it is established. However, the problem today is that new pools cannot get excess insurance coverage.

Administrator Howell has been working on this for about five years. He put a group together, and lo and behold, he goes out to bid, and he didn't get any bids for the excess insurance. I think this Senate Bill 1718 -- the Intergovernmental Excess Insurance Coverage Bill -- would certainly go a long way.

And last, but not least, I personally want to thank you gentlemen. I will assume that you voted for excluding insurance increases outside the cap. I think that was very important. Not necessarily in my community, but in many of the communities in Monmouth County, and I am sure throughout the State. Thank you very much.

ASSEMBLYMAN LOVEYS: Thank you, so much. Thank you for your testimony. I guess that just about does it then. We'll conclude the hearing in Freehold, and we'll meet next Tuesday in Vineland. Thank you all for coming.

(HEARING CONCLUDED)

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NO CONCLUSION

APPENDIX

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NOTE: Insurance background portion based on "Government Liability" paper from State Information Center, The Council of State Governments December, 1985.

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Many public entities are finding that liability insurance is either unavailable or available only at extremely high costs. In 1985, many municipalities as well as the states of Colorado and Wyoming lost liability coverage. Many public entities could not renew their coverage because of staggering hikes in premium rates or because insurance companies simply would not sell them insurance at any cost.

The fluctuations in business volume that characterize the insurance industry have traditionally fluctuated between a "hard" (sellers) market and a "soft" (buyers) market. These fluctuations are part of what is known as the "underwriting cycle". Trends in underwriting cycles are ideally determined by such factors as loss potential due to risk exposure, loss records of clients, and available surplus. There are, however, other factors that enter into the decisions that contribute to why certain types of insurance are underwritten. In recent years, insurance underwriters based their underwriting practices on the investment potential of premiums. This practice became known as "cash flow underwriting". This term refers to the practice of underwriting an insurance policy based on the investment potential of the premiums rather than on the potential loss due to the inherent risk to the thing being insured. This practice of cash flow underwriting has been criticized by financial experts as well as state insurance regulators. (Whiteman, David L., "Liability Insurance Availability and Affordability Problems as a Function of Property-Casualty Insurance Market Fluctuations," Congressional Research Service publication No. 85-826 E, Library of Congress, June 28, 1985, pp. CRS 3-4.) This criticism stems from the fact that in the normal course of the market cycle investment return patterns will show fluctuations that could deplete the insurance industry's surplus. To the extent that the underwriting cycle is tied to investment returns, it will reflect the dynamics of the market as

a whole, and will be liable to any dangers that the market experiences.

A dramatic example of this kind of underwriting is the M.G.M. Hotel fire.

A liability policy was written after the fire and the insurance company was happy to get the premium money because the stock market was so profitable at that time.

In 1975, the insurance industry was in a situation similar to the one it faces today. Underwriting losses were up and investment returns were down and had been declining for three years. (Routson, Craig, "Public Risk Management in An Uncertain Market," paper presented at the 11th annual meeting of the National Conference of State General Service Officers, August 20, 1985: p.3) In 1975, the industry's returns on investments equalled underwriting losses. From 1976 to 1978, premium rates began to rise dramatically. (Routson, p.4) It was during this period that many state governments began to experiment with alternatives to buying insurance coverage. The most prominent of these alternatives was self-insurance. By 1979, the insurance industry had recovered sufficiently that it was in a healthy condition and again had a high dollar surplus available for investment (this surplus is roughly determined by the amount of assets from underwriting. (Routson, p.5) The industry was in a good position to begin an aggressive and competitive cycle in underwriting. The competitive nature of this end of the cycle began to push premium rates down and made extensive coverage available at low rates. Low rates are important initially to attract business but as time goes on, premiums are kept low in a soft market to hold a share of the market. (Whiteman, "Liability..." p.5) By 1981, due to low premiums and above average claims, the property/casualty industry began to post record losses. (Routson, "Public Risk..." p.6) At the same time, however, the industry was experiencing record returns on its investments. (Routson, p.6) Interest rates were high and investment returns high enough to keep surpluses at a level that allowed insurance

companies to underwrite more policies.

Between 1981 and 1983, these returns more than compensated for the losses, netting the industry an overall profit for those years. In 1984, however, interest rates fell and returns of \$17.3 billion from industry investments could not cover the \$21 billion lost due to cash flow underwriting. (Routson, pp.5 and 6)

The over \$3 billion loss for the insurance industry was the first net loss since the 1906 San Francisco earthquake.

To compensate for these losses, insurance companies began to sell less insurance at higher rates. (Whiteman, p.6) Reductions in the amount of insurance being sold refers not only to the dollar amount but also to the extent and types of coverage offered. Many municipalities as well as Colorado and Wyoming have had their coverage dropped by carriers who say that the level of risk exposure is too high for them to accept. ("Coping With Rising Government Liabilities", Business Week, April 28, 1985.) Part of the problem with availability of coverage stems from the fact that insurance underwriters are not allowed to sell more insurance than their existing surplus assets are able to cover by a ration of about 3 to 1. This is a general rule of thumb used by most state insurance regulators. (Whiteman, pp. 4 and 8) This ratio, called the "risk ratio", would prohibit insurance companies from underwriting much new business in a fiscal period like 1985 which began with very little, if any, surplus. The consequence is that public entities, as well as private industry, have been hit with much higher premium rates (as much as 1200 percent) and the unavailability of some types of coverage. (Work, Clemens P., "Liability Squeeze Hits Everyone", U.S. News and World Report, October 7, 1985, p. 56.) The unavailability of some types of insurance is a problem that is compounded by the fact that underwriters are now applying more realistic risk factors to the calculation of premiums rather than working from the anticipation of an investment return alone. From their standpoint, some risks that face state and

local governments are simply not acceptable at any cost.

Where do we go from here?

What positive steps can be taken?

Frivolous cases are currently weeded out in New Jersey by our Tort Claims Act which provides for the state's doctrine of sovereign immunity while specifying areas in which suit is allowed. The doctrine of sovereign immunity has traditionally held that a "sovereign" cannot be sued in its own court. This doctrine is based in the common law dictum that "the king could do no wrong."

Prevention and safety, other wise known in today's world as risk management, should be practiced by municipalities and public entities.

Risk management refers to an organized approach to protect the financial position of a jurisdiction against losses due to negligence, accidents and occurrences beyond its control. The goal of a risk management program is not only to protect the assets and service delivery capabilities of government, but also to minimize potential losses.

Let's fact the facts. Towns have been negligent. Towns have done wrong. Towns are being sued because they poison people, because they hire child molesters, because they are not properly supervising employees.

We are talking about a zero sum gain. There is no free lunch. If the victims of negligent acts are not compensated by the liability policies, they will be compensated by Social Security, S.S.I., disability or a social welfare program. The taxpayer will pay for it ultimately.

We suggest that you give a premium rate reduction to a town with a good safety record. Many claims would be forestalled by proper police training, instead of allowing law officers to beat up everybody that they arrest.

Implementing a sound risk management program would prevent negligent

acts and save taxpayers substantial amounts of money. These are the kinds of positive things that we would like to see. But to take away the right of an injured person because the companies are not making money is not right or fair.

During the oil crisis in the seventies, this nation learned to practice conservation, and in spite of our throw-away, disposable, affluent society, it worked--we did it! We learned to conserve. We are in the midst of another crisis right now with ramifications that are just as great. We can learn to be careful, cautious, prudent and to practice prevention of accidents. People can learn to be aware of safety in the workplace and to learn not to be negligent.

The insurance companies want the towns to be immune from liability for everything except for maybe a herd of wild elephants stampeding down Main Street. LEGAL feels that the rights of a victim to be made whole should not be sacrificed and the negligent, wrong do-er be immune from liability. If we all practiced prevention and safety, the hallmarks of a good risk management program, there would be no claims. The crisis will not disappear by holding municipalities and public entities immune from liability--some other form of public assistance mechanism that the taxpayer pays for will trigger. The crisis will only disappear with the elimination of negligent acts. Eliminate the wrong--institute a tough safety program--and there will be no claims because there will be no accidents, no negligent acts.

