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# *Commission Meeting*

of

## RECREATIONAL SPORTS AND LEISURE ACTIVITIES LIABILITY STUDY COMMISSION

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**LOCATION:** Room 319  
State House  
Trenton, New Jersey

**DATE:** September 27, 1996  
10:00 a.m.

**MEMBERS OF COMMISSION PRESENT:**

Alexander J. Drago, Esq. Chairman  
Kenneth G. Andres Jr., Esq.  
Judith Bokman  
Anthony T. DiSimone  
Roy Gillian  
Philip Kirschner, Esq.  
Mel Narol, Esq.  
Lary I. Zucker, Esq.



**ALSO PRESENT:**

Paul Bent (Aide to Senator Robert W. Singer)  
Todd B. Dinsmore (Aide to Senator John H. Adler)  
Yolette C. Ross (representing Assemblyman Sean F. Dalton)

Craig B. Bleifer, Esq.  
Secretary to the Commission

*Meeting Recorded and Transcribed by*  
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**ALEXANDER J. DRAGO, ESQ. (Chairman):** Good morning, ladies and gentlemen.

Before we get into the witnesses we have here today, we have minutes from November 21, 1995 which were circulated this morning. They are not lengthy. So, hopefully, you will have an opportunity to review them. If anybody has any questions or comments on them, please, we could discuss that now, or if not, someone could make a motion to approve the minutes.

MR. NAROL: So moved.

MR. KIRSCHNER: Seconded.

MR. DRAGO: Okay. All in favor? (affirmative responses)

All opposed? (no response)

Okay, unanimous.

We've been given a number of items to put in the record from Mr. Zucker.

Before I do that, at the second-to-the-last meeting I believe, when Assistant Commissioner Leonard Katz of the Department of Labor testified, we had asked him to provide us with some follow-up information. Some of it had to do with a list of particular rides that have been closed down for injuries or accidents during particular years, a number of new operators, and a definition of the accident categories on the various documents he had given us before. We have his response to us, and we'll make it part of the record. We will circulate it by mail to the members of the Commission.

From Lary Zucker, we've received a copy of the Amusement Riders Safety and Liability Act, Chapter 12, which was adopted in Pennsylvania, a

copy of a similar act which was not passed or was passed and vetoed -- Lary, I forget -- in New Jersey.

MR. ZUCKER: Assembly Bill No. 917 is a third and final version of an act that was passed by both the Senate and the Assembly in New Jersey back in 1992 and was conditionally vetoed by Governor Florio. In his conditional veto message, he recommended the establishment of this Commission.

MR. DRAGO: And also, we've received from Lary a copy of Ohio Statute 1711.55 which also deals with some type of a rider code of conduct. Those items will be circulated to you in the same package as Mr. Katz's letter. We also received from Lary a copy of a publication of the IAPA. Which is what?

MR. ZUCKER: Yes, that's the International Amusement Parks Association. That's our national Association that's represented around the world, and this is the -- our government relations committee have adopted this code to try to make it uniform.

MR. DRAGO: Okay. All right. This is their March newsletter which discusses this Uniform Riders Safety Act and a copy which I was also provided with. So all those things will be circulated to you in the mail after this meeting.

My understanding is that we have four witnesses here today, Cynthia Jacob, on behalf of the New Jersey State Bar Association, Anne McHugh, who is an attorney from Mr. Narol's office, and Mr. Sklodowski and his mother or just--

MR. ZUCKER: Both or one will be here.

MR. DRAGO: Okay. The last two, Mr. Sklodowski and his mother, have not arrived yet. I know Ms. Jacob is here, so we will start with her testimony.

**CYNTHIA M. JACOB, ESQ.:** Thank you.

Good morning, Mr. Chair, members of the Recreational Sports and Leisure Activities Liability Study Commission, Senators, Assemblymen, ladies and gentlemen of the staff.

I'm Cynthia Jacob. I'm the President of the New Jersey State Bar Association.

On behalf of the 19,000 members of the New Jersey State Bar Association, I would like to thank you for the opportunity to speak here today about the recreational sports and leisure liability industry and its relationship to New Jersey's civil justice system.

We have given you a detailed statement outlining the legislative and historical perspective giving rise to your Commission, which I will not repeat here in the interest of saving your time and my voice. You have the unenviable task before you of attempting to balance the competing interests of the amusement industry, the insurance industry, and the civil justice system.

At the heart of your charge, though, is the one overriding interest that prevails over all others, namely, the safety of children, parents, families, and everyone who comes to New Jersey or is in New Jersey for pleasure, enjoyment, entertainment, and fun.

On behalf of our 19,000 members, I'd like to commend all of you for approaching your charge with an open mind. But it's important that the Commission continue to broaden its dialogue with legal scholars, victims, court

personnels, and other attorneys, as well as review the laws and the experiences of other states to ascertain how they have responded to these issues. For that reason, the Bar Association respectfully urges this Commission to obtain the appointment of a retired judge to complete the statutory members of the Commission as mandated by the resolution that created the Commission.

One issue you are charged with is examining the effectiveness of lawsuits against the recreational sports and leisure activity industry, particularly whether unnecessary and/or frivolous litigation poses a real burden on the industry.

I am here to tell you that lawsuits against the amusement industry do not constitute a litigation crisis. There is no burden placed on the industry posed by the litigation.

I respectfully draw your attention to the recent statistics released by the Administrative Office of the Courts that indicate that the number of civil lawsuits in New Jersey has decreased 26 percent since 1991.

The New Jersey Bar Association urges the Commission to recognize the obligation of the business community to provide a safe environment for patrons and the role that civil litigation plays in policing that obligation. A safe environment should be a paramount concern; providing statutory immunity will lessen that concern on behalf of the industry. The Bar Association therefore urges the Commission to reject the concept of statutory immunity and the assumption of risk doctrine and permit these issues to be addressed through New Jersey's common law which is based upon fair and reasonable standards of liability.

We believe that personal injury lawsuits, which are based upon those fair and reasonable standards of liability, are an effective deterrent of future negligent or wrongful conduct, that they encourage safety for future patrons, and justly compensate those who have been wrongfully and clearly injured. Because safety concerns are at the very heart of the Commission's charge, the Commission should examine not only the industry perspective, but also the effectiveness of lawsuits upon the amusement industry in encouraging the industry to provide and maintain a safe environment for all consumers. Also by promoting and enforcing uniform safety standards, the State of New Jersey ensures that all recreational sports and leisure activity industry members compete on an even playing field.

The New Jersey Bar Association also urges the Commission to maintain and keep an open mind and to investigate other possible factors that are driving up the cost of business not only in this industry, but in other industries, namely, inflated insurance costs, poor investment decisions, and inefficient administrative practices in the insurance industry. These are problems that absolutely will not be solved by the granting of any type of immunity.

Finally, we urge the Commission to pay special attention to the recently enacted Comprehensive Tort Reform legislation which made significant changes to New Jersey's civil justice system. As a result, much of your work may have already been completed by this tort reform because these new laws provide significant relief to the amusement park industry in New Jersey.

Just for one brief example, we all know that they place a cap on punitive damages. We believe that the laws that have recently been enacted more than help what you're trying to achieve.

I thank you for allowing me on behalf of the Bar Association for this opportunity to address the Commission. I'm confident that working together we can come up with a sound analysis of the issues and concerns raised by the legislation that issued your charge and direction on these issues. We have already provided you with our analysis of some of these issues in our statement. I commend that statement which is in far greater detail than this brief statement here this morning to you because it does outline our feelings, our thoughts, and, indeed, our sound, factual analysis of the situation.

I thank you. If there are any questions, I'm glad to answer them as well as I am able.

MR. DRAGO: Questions anyone?

MR. GILLIAN: One question. On your 26 percent reduction--

MS. JACOB: Yes.

MR. GILLIAN: --in suits, do you consider a lawsuit a suit that goes to trial?

MS. JACOB: No. A lawsuit is a suit that is actually filed that may never go to trial. As you probably know, about 90 percent of all civil lawsuits in this State are settled. But when we say lawsuits, we mean filed, not gone through to a jury trial.

MR. GILLIAN: Okay.

MS. JACOB: And that is a significant--

MR. GILLIAN: Yes.

MS. JACOB: --reduction in cases that are actually stamped with a filing stamp by the clerk of Superior Court.

MR. GILLIAN: As an operator, I truly praise the State inspection organization for the drop, because they, over the years, have done a tremendous job in the way they inspect and keep all the operators in-- You know, I think that's where that really comes from.

MS. JACOB: Well, it's a critical-- Safety is a critical component and a critical concern. But I think you can take from the statistics that if the actual filings are 26 percent, the filings against your industry are most likely that as well, which is reflective of safety concerns, and we want to make sure that those safety concerns continue to be enforced by the safety inspectors.

Sir?

MR. DiSIMONE: You say 26 percent of the filed lawsuits. How does that relate to numbers? You have some--

MS. JACOB: I have not given you the numbers, and frankly, I'm not prepared to give them to you, but we can provide them, if you'd like, by way of a letter. That's very easy to do. Would you like that?

MR. DiSIMONE: Yes.

MS. JACOB: We'll do that.

MR. DRAGO: Mr. Kirschner.

MR. KIRSCHNER: Yes. Do you know specifically how many lawsuits where there has been that same decrease in the number specifically against the recreation and amusement industry?

MS. JACOB: Unfortunately, the Administrative Office of the Courts does not keep statistics relating to specific kinds of lawsuits other than

civil versus criminal. Because they do not keep the statistics, and it would be interesting if they did, we cannot give them to you, because we derive our statistics directly from the Administrative Office. But we will be glad to give you actual numbers by year which will show the decrease.

MR. KIRSCHNER: Thank you.

MR. DRAGO: Mr. Zucker.

MR. ZUCKER: Ms. Jacob. Good morning.

My name is Lary Zucker. As one of the 19,000 members of your organization, I'm pleased that the Bar Association is taking an interest in this issue. I know it's traditionally been a role of our Association, but I'm glad you're here, and I'm glad to have your organization's input.

MS. JACOB: Thank you.

MR. ZUCKER: But I have a question for you.

MS. JACOB: Go right ahead.

MR. ZUCKER: I understand that it's the Bar Association's position to basically oppose assumption of risk-type legislation or the reimposition of the traditional assumption of risk contributory negligence and statutory immunity, any legislation that would tend to have or to contain those types of provisions. And I might even agree with you on that. That's not the point. But putting those aside for a second, there is another type of legislation, I think, that we are going to be considering -- another alternative to the traditional assumption of risk reimposition that we are going to be considering -- and I'd like to find out if the Bar Association has a position on this type -- on this provision, and that is rider responsibility.

Back in 1992, a piece of legislation passed both Houses of the Legislature here in New Jersey -- it was A-917 -- that contained a comprehensive code of rider responsibility. The legislation only applied to amusement parks, and I know our mandate is broader than amusement parks, but let's just use that for an example for the purposes of this question. Governor Florio decided to conditionally veto that section of the bill, the rider responsibility section of the bill. And by the way, in the A-917, it was tied to a complete bar; that is, if a rider violated the code of rider responsibility, then it was a complete bar to suit under certain circumstances. That legislation has served as a model for other states.

Pennsylvania recently enacted a piece of legislation applying to amusement parks only that included a code of rider responsibility that was not tied to a complete bar but tied to a comparative negligent standard. So that evidence of violation of the code of rider responsibility could be introduced on a comparative negligence basis.

The reason why the industry, I believe, thinks this is important is that the manufacturers are subject to the ASTM standards, the standards that are imposed by the American Society of Testing and Manufacturing. There are comprehensive regulations that Roy Gillian just eluded to that govern the conduct of the operators of New Jersey, but there's nothing to, right now, govern the conduct of the riders.

If we are interested in preventing and reducing the number of accident victims -- and I think we all are here as part of our mandate -- it occurs to me that a code of rider responsibility tied to a comparative negligence and separate and apart from any kind of immunity imposition or an absolute

bar to a law might be an alternative that the Commission might consider. And I'm talking about a code of rider responsibility that would contain the type of responsibilities that the original bill contained and also the Pennsylvania bill that followed contained.

Just as an example -- so that we can have something for the record and so you can understand my question -- the rider responsibility-- For example, a rider shall not board or dismount from an amusement ride except at a designated area if one is provided. A rider shall not throw or expel any object from an amusement ride. A rider shall not act in a manner contrary to posted or stated warnings while boarding, riding, or dismounting from an amusement ride. A rider shall not engage in any act or activity of frolicking or horseplay which may tend to injure others.

It occurs to me that a code of rider responsibility tied to requirements to post signage to notify riders of their responsibilities would have had the potential to reduce the number of accident victims. In other words, an educated rider is a safe rider and not just a safe rider for himself or herself, but for all other riders on the ride. That happens to be the position that was taken in Pennsylvania. Because not only did they pass this legislation, but in conjunction with this legislation with the Department of Agriculture, which oversees the entire amusement industry, published the really interesting full-color booklet on rider safety and distributed these to all the fixed amusement parks around the State of Pennsylvania.

I don't know if that's a solution, but that's certainly one of the alternatives that this Commission is going to be considering. My question has been very long because I wanted to explain the whole concept of rider

responsibility as opposed to the type of immunity statute that the Bar Association would oppose. Do you have any position right now without studying the issue on whether or not the Bar Association would oppose or perhaps could be convinced that a rider responsibility law might be in the interest of everyone in the State?

MS. JACOB: Okay. First off, I think that a rider responsibility concept, as you've explained it, would be embraced by the comparative negligence doctrine under which we operate presently. What you're talking about, I would be fearful, might create a presumption that if a person somehow violated this code of rider responsibility, it would be a prima facie case that they had been negligent. So the question is, how would we treat in the courtroom rider responsibility?

Certainly nothing prevents various operators from posting their own rider responsibility, and I think every single one of us who's been to an amusement park has seen something already posted that says, "No horseplay," "Get on, get off at the same time." In other words, I'm not sure what rider responsibility as a codified concept would do that we haven't already got in our law by way of comparative negligence and, also, by way of voluntary act on the part of the industry. Would this insulate them completely? No, I think not. It would just be another element that would feed into comparative negligence. And of course, the overriding issue is rider responsibility balanced against the industry responsibility for safety. And ultimately, we have to try to balance those two issues.

I believe our position would be that the overriding interest must be the safety of the industry from the very beginning. Certainly nothing would

prevent, as I said, any amusement park person from posting their own code. But the question is, does that somehow shift the burden in a comparative negligence situation or does it affect the burden in a comparative negligent situation? Our courts are not real excited about presumptions. You would have to go some to produce presumptions. So what would this produce from an evidentiary point of view? I don't know, but it's something that has to be considered.

MR. ZUCKER: It has to be considered, and I understand that. In the Pennsylvania statute, in the way it's treated, it says that proof that a rider sustained an injury in the course of knowingly acting contrary to the rider code of conduct shall be evidence of comparative negligence in a suit against the operator by that rider.

MS. JACOB: So it's a presumption.

MR. ZUCKER: It's not a presumption. It's evidence of comparative negligence. So in other words, as I interpret this act -- and I also do some work in Pennsylvania because I'm admitted to the Pennsylvania Bar -- as I understand this act is being applied, it's evidence, it's not a presumption. There is no presumption sent to the jury in the form of a jury charge that says, if there is a violation of the code of rider responsibility -- if you throw and expel an item, and it came back and hit you in the head, for example -- that there is a presumption that that rider is negligent.

By the time it gets to court, I think the rider responsibility law has almost lost its impact. Because what we really want to try to do is affect the behavior of riders in the park itself when they're on the ride -- before they get on their ride -- to make them understand that this is not just a local rule. It's

not just, you know, Roy Gillian Wonderland Pier saying, “This is a good idea. If you don’t do this-- That it’s a State law that says you must follow these directions, and if you don’t, there is some penalty to be paid.”

Now, in Ohio since 1993 has had a rider responsibility section. It actually criminalizes failing to follow posted and heeded warnings. A park can actually prosecute a rider for a misdemeanor offense if they fail to follow posted or heeded warnings. I’m not suggesting that that’s an alternative that this Commission is going to consider. That’s the extent to which at least one state has seen fit to try to influence and have an impact on their behavior.

But I don’t see this as kind of a zero sum situation where it’s either rider responsibility or operator responsibility. If you add to one, you subtract from the other. I think they complement each other. I think that they go hand in hand. And even in the legislation that passed in Pennsylvania and the legislation that passed in New Jersey, it specifically stated that there was nothing in this act, nothing in the rider responsibility that in any way relieved an operator’s responsibility for complying with all industry standards and regulation and reasonable conduct.

So I think that’s something we’re going to consider. You also -- in your statement which I read -- raised another very good point, uniformity of law. I have to admit, I’ve done a little bit of research into this, and the law is not, at the current time, what I would describe as uniform. But there has been an effort made on an industry basis to promulgate a uniform law, and that was set forth and summarized in this capital carousel which I would commend to your attention. I hope you’ll have a chance to take a look at this Uniform Rider Safety Act, and let us know your position on this. If not a position, at

least, your reaction to that type of legislation. I would really appreciate that. I would find that very helpful.

MS. JACOB: Well, Mr. Zucker, there is no question that our Bar Association has worked over the past two administrations regarding legislation of this type with the Legislature, and we continue to work with the Legislature wherever possible. You know we are vocal.

MR. ZUCKER: Oh, I know that.

MS. JACOB: And we know that we come forward with positions. We've worked on codes for operators. They, too, are important. I would say that if rider responsibility is something this Commission becomes truly interested in, I can guarantee you that the New Jersey State Bar Association will take reasoned, considered position after research and after hashing out with both defense counsel and plaintiff's counsel, both of whom we represent. I guarantee you, and I promise you that.

MR. ZUCKER: Good.

MS. JACOB: So, please, call on us. We are glad to give you our position, and we will always give it to you in a well-researched form that represents either a consensus or it may represent two different views. Because as you know, we represent both plaintiffs and defense in personal injury matters in our Bar Association.

MR. ZUCKER: I know that.

MS. JACOB: You have assurances of our assistance.

MR. ZUCKER: Thank you very much.

MS. JACOB: You're welcome.

MR. DRAGO: Anybody else? Okay.

Thank you, Ms. Jacob, we appreciate it. Thank you very much.

MS. JACOB: Thank you.

MR. DRAGO: Ms. McHugh.

**ANNE P. McHUGH, ESQ.:** Good morning, ladies and gentlemen.

MR. DRAGO: Good morning.

MS. McHUGH: Can you hear me? My voice is carrying? I don't have the benefit of Cynthia Jacob's great voice.

I'm a partner in the firm of Pellettieri, Rabstein and Altman, and I have specialized over the years in litigation involving the amusement park industry and water safety. I am also on the Board of ATLA New Jersey, that's the Association of Trial Lawyers of New Jersey, which serves, as you know I'm sure in part at least, the interests of the personal injury plaintiffs bar. This, I believe, gives me some familiarity not only with what my firm is doing, but what other lawyers are doing in the area of water safety and amusement park litigation. In addition, I have served for the past 12 years on a national ATLA committee, an exchange group as it's called, which, too, addresses the issue of aquatic safety, water theme parks, and amusement parks. This, I believe, provides me at least with some sort of a national perspective as to what's happening in the industry at large.

I'd like to take a few minutes of your time this morning, if I might, to share with you my perceptions regarding the need, if any, for any regulatory change in the amusement park industry or any change in our legal system, which would either expand or contract the rights of litigants in this arena.

I think it's important to note first -- and I ask you to note this in your deliberations and your considerations -- that the amusement parks of

today are very different animals than the amusement parks of the 1950s and the 1960s. We have seen these changes in New Jersey which, I believe, mirrors the national scene. We have seen the advent of what we call the theme park with special emphasis on water rides and other thrills, which engage the rider in a very different way than the carousel or the bumping car of yesteryear.

This is important for you to recognize in your considerations and your deliberations as you move forward with your charge. I say that because these rides -- and I'm sure that the industry members here can confirm it -- involve the rider, as I said, in a very different way. They are much more physical. They are much more aggressive. They are much more dangerous, and they are much more hazardous. It is important, because I think with that danger and that hazard the responsibility of the owner, the manufacturer, and the operator of that ride increases.

Supervision and the quality of maintenance of these parks are critical to the safety of our children and the young adults who are out there daily using these rides. You will find that these rides are frequently understaffed. They are staffed with inexperienced young people supervising them. And they are staffed with people, frankly, who are often not able or not willing to do their job.

Hopefully, if Craig Sklodowski's mother gets here, she'll be here to give testimony to you today. She will tell you about her son, Craig, who was rendered a quadriplegic, because the operators of a water theme park, in Beach Haven, New Jersey, failed to do their job.

Craig Sklodowski did nothing other than what he was instructed to do, to go down a water slide headfirst. Craig was then catapulted off of that

water slide at a speed of approximately 23 miles per hour. He was thrown in to what turned out to be less than three feet of water. He struck his head on the bottom of the splash pool. He broke his neck, and it left him in a wheelchair for life.

Craig's accident should never have happened. It happened because the water level in that splash pool was not being properly monitored by the young, inexperienced, and easily distracted staff who were on duty that day. The water in these splash pools -- and I think there are members of this committee (*sic*) that know and understand that and can share that with the members who are not in the industry, but the water in these splash pools must be maintained so that it backwashes into the flume and provides what's called hydrodynamic breaking power. That was not done in the case of Craig Sklodowski. The water level dropped, and the rider goes headfirst, as he did, and gravity took its course causing the kind of injury that he incurred, quadriplegia.

Who is to do the monitoring of these rides? I submit that it falls on the shoulders of the owners and the operators. I submit that for two reasons: One, they're the ones that are making money as they sell these tickets for \$4 or \$6 or \$7 to the young people who use the rides. Two, the State of New Jersey, Department of Labor, Office of Safety Compliance simply does not have the staff -- the professional and nonprofessional staff -- to ensure that these rides are being properly maintained, supervised, and monitored when they are being used by our children and young people.

During the course of Mr. Sklodowski's lawsuit, which I represented him, I had the occasion to depose the engineer who was then with

the Office of Safety Compliance. And his testimony to me was simply, "I can't do it. I can't monitor all of these rides. I can't be bothered with whether or not a ride should be used headfirst, as opposed to feetfirst. I can't analyze the design. I don't have the time. I don't have the resources. I must leave that to the manufacturer or the operator or the owner to determine those critical questions of safety. I don't have the resources."

So the safety and well-being of our children and our young adults rests in the hands of the manufacturers, the owners, and the operators. And it is our children and young people who are using these parks. It's not you and I. It's not the folks sitting around this table deliberating on these issues. We're talking about children, we're talking about teenagers, and we're talking about young people in their early 20s, by and large, frequently on school picnics or other social outings, not supervised, not with Mom and not with Dad who might otherwise, if they were there, tell the youngster, "You're not going to go on that ride. It's too dangerous," or, "You're not going headfirst, go feetfirst."

So the question is -- and I think this is one of the questions that this Commission is deliberating on: Is there any reason that the owners or the operators of these parks should be less accountable or afforded more protection under our laws? Remember, the key to the safe use of many of these parks lies in responsible supervision and maintenance. And I submit that our present system of justice serves as a positive incentive to these amusement park owners and operators to ensure that the safety of our children is paramount.

Are there hundreds of frivolous, personal injury lawsuits being brought against amusement parks here in New Jersey? Is there a crisis in this

entertainment industry? At least in my experience in litigating in this area for the past 15 years, that is not the case.

I have seen -- and I think this was corroborated by the statistics provided to you by the State Bar through Ms. Jacob. I have seen a decline in the number of suits over the past five years relative to the growth in population and the growth of this industry, a substantial, real decline. I didn't know it was 26 percent until this morning, but there is a decline.

Suits against the amusement parks are costly endeavors. I know that from personal experience. Experts, engineers, and recreational specialists are all involved. Our entire firm has become far more discriminating in what it will accept as a personal injury lawsuit involving an amusement park.

We have, over the years, litigated against Action Park, Great Adventure, several of the water theme parks at the shore, and elsewhere in New Jersey. None of these cases are ever easy. And I know of no runaway verdicts in the State of New Jersey against amusement parks.

Now, I have not, as of recently, looked at the jury verdict review sheets, but certainly that's information available to the Commission, and I can provide that if you choose. But I know of none, and I did research it when I was doing the Craig Sklodowski case to determine what the verdicts were, and there were none. There were no runaway verdicts in the State of New Jersey against any of these water theme parks or Action Park or Great Adventure or any of them.

These cases are difficult cases. The conduct of the participant is always at issue in these cases. There are no runaway verdicts because the very

nature of the thrill-seeking experience serves as a temperance to a runaway verdict in this case.

But the bottom line here is whether or not the current system of justice is serving its goal of delivering justice. I submit that it is, and that it is doing so effectively. When and if a youngster clowns around or does something improper, that will be considered by a jury. When and if an operator fails to provide appropriate supervision or monitor the water level of a splash pool, that, too, will be considered by a jury, and it should be. So under the present system of justice, the conduct of the rider is considered by the jury and will be determined by the jury.

If safety is, indeed, a primary consideration of this Commission, and I am sure that it is, then what I would ask the Commission to do is seek additional resources for the Office of Safety Compliance. This is something that should be considered seriously by the Governor. Engineers, inspectors, and qualified personnel can help avoid and prevent accidents, but an understaffed Office of Safety Compliance that now, I am told, as of this morning, no longer has a professional engineer on staff cannot provide that kind of preventive medicine.

It will prevent these accidents. It will prevent the kind of injury that was suffered by Craig Sklodowski and his family. And it will prevent the kind of cost to the taxpayers of New Jersey to care for these injured victims. So an ounce of medicine is worth a lot. And if this Commission is concerned about safety, as I know it is, it will consider seriously the question of adding resources to the Office of Safety Compliance in order to ensure that these rides are being inspected, overseen, properly designed, and used in a safe manner.

Ms. Sklodowski is here. She's prepared to address you, to talk about the effect that this kind of injury has had on her and her family and her life and the cost, which is a cost, a tremendous cost.

I have nothing further to add. If anyone has any questions, I'd be happy to address them.

MR. DRAGO: Questions?

MR. DiSIMONE: You mentioned that there wasn't a staff engineer currently attached to the safety inspection. It has been my experience, with insurance matters, that the way that business is being done more often with major companies is to -- because of the specialization in engineering -- that individual subcontract engineers will be brought in on a specific situation where they would have some depth in the one specific area.

To give an example, certainly someone who has a mechanical engineering background in an amusement ride would not have the depth of knowledge that someone -- if he was trained in masonry or construction of that type. So that's -- I would think -- what the Department is doing, is bringing in specialists when a specific area has to be reviewed.

MS. McHUGH: That's not, that's not--

MR. DiSIMONE: In construction-- I know when erection of certain types of amusement rides are being done in the Wildwoods and in Cape May County and in Atlantic County, an engineering study has to be provided by the installer, by the operator, by the owner, and then it is reviewed if it's an unusual ride -- some of the rides that come out of Europe. The Department has had it reviewed by not in-house engineers, someone who has more of a propensity of knowledge of it.

MS. McHUGH: Well, that's not been my experience in deposing this engineer on more than one occasion. He told me that the only thing the State looks for, basically, is structural integrity of the ride. That's all that they could possibly address. That means: Is the ride going to fall down on top of somebody or is it going to hold up? But as for whether or not that ride should be used headfirst or feetfirst or whether or not the velocity of the human body, as it goes off of that water slide for example, is too high or whether or not there should be a deeper pool at the bottom of that water flume or a foam pad at the bottom of that water flume -- these are design considerations that have been traditionally left to the manufacturers and the operators of the ride. I-- Under oath, I've been told that they simply didn't have the staff to get into those safety considerations. Their only considerations went to structural integrity, and I think that's still the case today, because this is only a few years back, and I haven't seen anything that would lead me to conclude that they have consulted with physicists to make a determination as to how the ride is going to be used and should be used. It's just not being done. Now, I think it should be done.

MR. GILLIAN: I would just like to make a comment. We operated our water park the last 10 years. We've never had a major accident as you described. The first year we did operate we found out that one of the pools did not have enough water in and that was corrected.

But again, I will support your request. As far as this Board goes, I think the State does need more people on staff. I've been a part of the Amusement Ride Safety Board for about-- Well, four governors have appointed me to that Board. I've been involved, and I know the ins and outs

of it. They started with about 18 inspectors back in the '70s, and they are now down to approximately 7 or 8 of them -- I think that's out on the road. And some of the in-house people that never went out on the road are now out there.

But again, I think a lot was learned -- a lot of those water parks were designed by the same person, you know. I think, again, what's happened it's a very sad thing. There's nobody in our park that can go down headfirst. That's just a rule that nobody goes headfirst on those top slides. So, I mean again, I can't deny what you testified to. I think the operation-- The operators are required to be responsible. I think most of them nowadays are. From the thousands and thousands of people that go down these things, it's just sad that something like this has happened, and there is no answer to it.

I must say that I have feelings for the person that was hurt. But again, I think that's something that if we have any responsibility that the State could supply more funds, we surely should do it.

MS. McHUGH: And my point really is, I think, that the present legal system acts as an incentive to the operators of the rides to do it responsibly. Because they know that if they don't, accidents will happen, and that injuries will have to be paid for. So there is an incentive to ensure that the staff is properly supervising, trained, whatever. The legal system should serve that goal. That is the goal that it should serve, and I think it is doing it in the best way it can -- not perfectly, nothing is perfect certainly.

Mr. Zucker, I would like to just make one comment if I might to that long question you posed to Ms. Jacob, and I join in her response wholeheartedly. I just would like to add that in terms of this code of responsibility that is being considered -- in terms of having a code of

responsibility for the rider -- that I think the Commission has to look at who's using the ride. We're talking about children and teenagers, for the most part, and young adults. A code of responsibility, whether it's posted or it's not posted, frankly, I don't think -- whether it's going to serve the interest that you wish it to serve, I seriously doubt, under these circumstances. It's not as if somebody 55 says, "Gee whiz, I better not do that because" -- if somebody 55 might even say it or maybe wouldn't-- "I better not go down that ride or throw this thing over the ride because, if I do, I won't be able to sue at a later date."

No youngster is going to really put that together and conform his or her behavior accordingly. If there is a code, it doesn't have to be memorialized in legislation, which is really, I think, designed more to immunize the industry from lawsuits than anything else. The code is the code. If you're doing something unreasonable under the circumstances under our law, whether you're 12 years old or you're 84 years old, that will be considered by the jury. You can post your rules and regulations and design them for yourself and tailor them to your ride, but that should be something that is, I would say, sui generis to each and every ride and each and every operation. I think it will be much more meaningful if it was tailored to the specifics. And if a youngster was found violating one of the rules and regulations that was posted at Maureys Pier or something like that, that's evidential. That will be in the case. His or her comparative fault would be adjudged by that jury under the present system.

MR. ZUCKER: If I may respond, thank you for that response, because I was going to ask you if you heard my very long question to Ms. Jacob.

Our offices have litigated amusement rides cases in the past, and I think we have a few going on right now. So I know of your expertise in this area. I, too, tend to handle a lot of these types of cases, and I know what you are talking about. I happen to agree that lawsuit threat-- The claim does have a deterrent effect and does influence the behavior of operators. That's a given. Let's not even debate that issue. But what I would like to find out is how you think the comparative negligence standard, which we will get involved in, in a typical case at trial, how that has an impact on a typical rider's behavior to keep them from engaging in some sort of misconduct.

I must tell you this. Your belief that the people around this table do not patronize amusement parks is incorrect, at least as far as I'm concerned. I have a house in Ocean City. I have a 12-year-old son and a 9-year-old daughter, and I now have a 1-year-old son. We're there. We're at the amusement parks, at the water slides all the time. I'd say in a three-month summer period we're probably there 12 or 15 times. So we're there all the time. We go to all of them, because I like to patronize them all.

MS. McHUGH: No, I'm not-- I agree, adults use them, too, but--

MR. ZUCKER: We all use them. I go there, and I think about rider responsibility. I think about code of conducts when I'm going to these parks. It's an occupational hazard. I just do. I don't believe that the comparative negligence ever enters into the minds of the people who are coming down the slides who may be engaging in some misconduct or even on a Ferris wheel and decide to disconnect a lightbulb or throw something off--

MS. McHUGH: I would agree.

MR. ZUCKER: --but--

MS. McHUGH: I agree with you. It doesn't enter into anybody's mind.

MR. ZUCKER: --a State-mandated statute telling them what to do would avoid having to get involved, I think, in comparative negligence, because it would avoid claims in the first place. Now, I'm not sitting here advocating the Ohio solution, criminalize it. Tell people if you violate a stated or posted warning, you're guilty of a misdemeanor. I'm not suggesting that as a standard, but I think that something more may be required than, you know, a sign saying, "Roy Gillian suggests that you don't throw anything off a Ferris wheel" or "Roy Gillian suggests that you don't try to increase the speed of your sliding vehicle as you're going down the water slide, because it may injure yourself or others."

Something from the State is, I think, still in play. Something that the Commission's going to consider. Pennsylvania considered it. Other states have considered it. I think the whole process is an educational process. I think it's the educational value of these signs and the educational value of a rider code of responsibility that may have an impact on reducing the number of accident victims, which is something that we're all seeking.

So I heard what you had to say, and I understand your position. I think that it's going to be very valuable to remember what you said when we discuss this issue, because I'm not sure that rider responsibility is off the table or it's not something we're going to give careful consideration to.

MS. McHUGH: Well, there's one thing else I would like to add to that as well. I agree with you, Mr. Zucker, that people, youngsters particularly, adults -- nobody's thinking about comparative negligence, and I

don't think anybody's thinking about lawsuits when they use these rides one way or another.

So I don't believe that posting a rider responsibility law is going to affect anybody one way or another for the same reasons you say that the law of comparative negligence, if it were posted, wouldn't have any effect on anybody either.

You're also introducing in this industry a separate standard, all right. There should be a code of responsibility with respect to everything we do, all right, with the respect to how we utilize a product or how we drive our cars or how we conduct ourselves in a number of fields and endeavors. But now we're introducing, for the benefit of this industry, an entertainment industry that makes money, okay, off of the young people, the children, and young adults who use these rides, a separate standard, in essence, saying there's a special code of responsibility for you people who come to these amusement parks.

Why? Why should there be a separate code there, other than anyplace else? We all ought to act reasonably under the circumstances, whether we're a child, a young adult, a middle-aged person. When we're driving our cars, when we're using a product, when we're going to an amusement park. But to introduce a separate code puts more of the onus on the child. The burden is placed with the child and commensurate with that is to relieve the industry to some extent. We have to be candid. That is going to be the end result when we're before a court of law.

We don't have a separate code in other areas, the law. I would submit that this is not one where we should have one.

MR. ZUCKER: Well, I don't know if I would describe it as a burden. I think that it has educational value, motivational value and is not necessarily a burden, but this is something that we're going to have to discuss.

Thank you.

MR. ANDRES: Ms. McHugh, is there no "code of responsibility" for riders now under the law in the State of New Jersey?

MS. McHUGH: There is a code of responsibility, I think as it now exists. That is to use the ride -- depending on what ride you're talking about -- in a manner that is reasonable under the circumstances. If there's a sign posted that you're to belt yourself into the Ferris wheel, fine. If there's a sign posted that you're to use a pad when you go down this water flume, then use that pad. If it says go feetfirst, go feetfirst. The code of responsibility is established by the particular ride and the rules and regulations that govern that individual, particular ride. It's virtually impossible, I would submit, to encompass the amusement park industry in a code of responsibility.

MR. ANDRES: When you talk about a code of responsibility -- I'm not sure that we're simply using this as a buzzword. The comparative negligence concept that you have been talking about, doesn't that impose, in effect, a code of responsibility on the children who use the rides?

MS. McHUGH: It does, but what I think Mr. Zucker's referring to is that he feels that somehow or another the youngster's behavior will be conformed by posting, you know, public law 285 from whatever session. You know, as I've said, I think that in terms of actual litigation in terms of a case that's being tried in front of a jury, the code of responsibility is in the Comparative Negligence Act.

MR. ANDRES: So that's law that's already existing in the State of New Jersey?

MS. McHUGH: That's right, which exists and covers not just the conduct at an amusement park, but every other way in which we conduct ourselves in our daily affairs.

MR. ANDRES: I know that one of the issues that the Commission will review is what has been called frivolous lawsuits, and we heard the statistics dealing with the reduction of approximately 26 percent. What is your personal experience now as a person who has a good deal of expertise in this area? Do you see lawsuits in this area going down?

MS. McHUGH: I see them going down. I would be surprised if it didn't, in this area particularly, exceed 26 percent, because the cost of litigating to a plaintiff's attorney in this area is so high. I would be surprised if it wasn't in excess of 26 percent. I mean, all attorneys are more discriminating, I think, today -- personal injury attorneys generally -- in what they accept in terms of a case to be litigated just because of the cost of litigation.

MR. ANDRES: Would you, please, explain for the record -- and I know that you're familiar in this area -- when you litigate personal injury matters of this type, do you frequently do them on a contingent-fee basis?

MS. McHUGH: It's always done on a contingent-fee basis. So, therefore, I'm a risk taker in that sense, which is all the more reason to be discriminating in what you take. If somebody, you know, has a hangnail, you're not going to -- as a result of using a ride -- you're not going to get involved in that kind of litigation. They have to be cases involving substantial

injury and good liability. Otherwise, attorneys are not going to take them, and they're not taking them. Not only in this jurisdiction, but nationally it's down. It's just not cost effective for a firm to get involved in this kind of litigation. I would seriously doubt that there's very much frivolous litigation at all.

MR. ANDRES: What's the practical effect if a plaintiff's attorney takes a frivolous lawsuit to that plaintiff and that plaintiff's attorney?

MS. McHUGH: Well, there can be two effects. You know, we have a frivolous lawsuit statute, which a defendant may avail himself or herself of, and the other would be a loss to the attorney both in time and costs expended on the suit. So if it's a frivolous case and it has no merit, it goes nowhere and the attorney gets nothing.

MR. ANDRES: Thank you, Ms. McHugh.

Thank you, Mr. Chairman.

MR. GILLIAN: One last comment. Again, I'm back to not an actual lawsuit, but yet the initial letter from the attorney. It just seems to me that the attorneys in our area know that if they write the letter, they're going to get some money. It just -- because our insurance company does not-- They'll just automatically pay rather than fight the thing or -- unless it's a major accident. Like I say, I've never had a serious, real major accident. I just think that this past year is the least I've had and, I guess, since I've been operating. Whether we're just running it better or whether the attorneys are starting to be more discriminatory, I don't know. But any time I do get one, it just seems they always get paid, and the attorney will get 50 percent of whatever the insurance company pays. I think--

MS. McHUGH: Which area-- Are you talking about Cape May?

MR. GILLIAN: I'm in Ocean City. Yes.

MS. McHUGH: In Ocean City?

MR. GILLIAN: Yes. But I've been told there's about one lawyer for every 300 people in our area. I don't know whether it's true or not.

MS. McHUGH: Well, you said there's been a drop in the last year. It may well be a combination of both things. I think attorneys are more discriminating. You've experienced, yourself, a drop in the last year.

I haven't experienced that with insurance companies. I've litigated against Maureys Pier many times and believe me, they don't pay. They don't just write checks.

MR. GILLIAN: Well, see what--

MS. McHUGH: The old idea of the nuisance value--

MR. GILLIAN: See, Maureys takes pride in every-- They fight every case.

MS. McHUGH: Yes.

MR. GILLIAN: I just don't. I just pay insurance, and I like to go home and sleep at night. We try to run a good business. But the ones we get, I'm sure they do pay off because I never get any answers back. I've got one case pending right now that was two years ago. That's the only case that I'm involved with now, and it really wasn't that serious. But they're asking for 50 grand, so that sounds serious.

MS. McHUGH: I understand.

MR. GILLIAN: Yes.

MS. McHUGH: But you're obviously running--

MR. GILLIAN: Well, I try--

MS. McHUGH: --a safe and careful operation.

MR. GILLIAN: I think most of the permanent operators in the State of New Jersey really try now, because it's so much on our mind and our New Jersey Association. We meet monthly, and we try to operate safely.

MS. McHUGH: I believe that. I believe that. I think that the legal system serves as an incentive--

MR. GILLIAN: Right.

MS. McHUGH: --because if your staff fails you--

MR. GILLIAN: That's right.

MS. McHUGH: --then it falls on your shoulders. Okay. And as I pointed out to the Commission, and it really is a very, very serious matter, that we're talking about a different kind of ride today. So that your staff has to be ever vigilant--

MR. GILLIAN: Absolutely.

MS. McHUGH: --and well trained and responsive. If they're not, we're going to have accidents, and they're going to be very serious.

MR. GILLIAN: That's our whole key--

MS. McHUGH: But I commend you for operating a safe park, because it's clear that you're doing that.

MR. DiSIMONE: A number of things that you mentioned that kind of struck a note with me. Number one, insurance companies today are not looking as much at lawsuits in their decision as to whether insure somebody or not, but their exposure to a lawsuit or the propensity of a lawsuit. They don't experience right anymore. Say, well, last year we lost so much

money because of injuries on amusement park rides. They say we could lose so much money or have so much of an exposure. That's number one.

Secondly, when they find that there is an exposure, like diving boards, you can't hardly get any insurance companies to write your motel with a swimming pool if it's got a diving board. You're going to have to get rid of the diving board, because of the lawsuits that have been involved in it.

Furthermore, the discussion of lawsuits and the decrease in the number of lawsuits doesn't decrease the dollar amount being paid out. Insurance companies complain it's not so much individualizing the numbers and percentages. How much is being paid out? Is it three times as much as 1990? Is it four times as much as 1990? The reason I say that is that many insurance companies will not insure water slides any longer. Many insurance companies will require their own engineering staff to go down to amusement parks when a ride that's unknown to them, new, or different design or some other structure. If they don't like it, they're not going to insure you, and you're not going to be able to operate with that thing there. Or they're going to say, "Okay, we're going to insure everything but this particular ride or this particular operation that you have."

So it's not the numbers so -- first we looked at it from percentages as it is what the effect is. The effect of the burden of having a safe operating park, like Roy has, is that he's going to avoid those things that insurance companies and liability would expose him to. Actually, rides are much safer than they were 25 years ago or 30 years ago, because there weren't the lawsuits and there weren't the inspection requirements and there weren't the propensity

of knowledge on how to operate back then. I think we are a lot more sophisticated in this industry today.

Insurance companies certainly are. Their engineering staffs have ballooned. They're huge. They take up, in a large sense, the concern of the operator because, otherwise, he's not going to be able to operate. The bank won't allow him to operate a mortgage if he isn't insured properly. So I think there's a lot of things that have to be looked at a little more from different facets.

Putting a cap on punitive damages and expecting that personal injury lawsuits are going to make things safer aren't necessarily true for the fact that if there's tremendous money to be made out of bungee jumping, nobody can insure bungee jumping in the State of New Jersey. Now you can't have bungee jumping anymore. So it's a thrill that's put itself out of its own existence by the nature of what it was.

I think there is a concern that those things that we have in our experience don't necessarily -- shouldn't always -- equate with the responsibility of somebody. I think we're looking for responsibility all the time, whether that be on the part of -- in this particular instance -- the operator or the owner versus the rider. If we're going to have horseback riding, then somebody is going to have to assume some responsibility. Otherwise, nobody is going to be able to ride a horse again.

Now is that a good thing? Well, we don't dive anymore. Is that a good thing? I don't know. How important is it to our experience to have these things?

MS. McHUGH: Well, I can't really-- I know that you're charged with an equestrian mission as well. I can't speak to that-- You know I don't have the personal experience with that kind of litigation. I do know that some of what you are talking about is embraced by the concept of risk management. I think that's an important societal goal. If an insurance company comes to a motel and says, "We're not going to insure you with this diving board, because we've had 50 different patrons who are drinking their martinis out by the motel, dive off the board, and break their necks, and now we're paying," that's good. That's a positive for our society, because we don't need to have the expense associated with catastrophic injury. That's not a positive. That's something that comes out of the pockets of everyone sitting around this table when a young person is seriously injured bungee jumping. There are some risks that are simply not worth taking. That's the insurance industry doing its job for society, when it does risk management like that and comes in and says, "We'll insure this ride and this ride and this ride because you're doing it right, but we're not going to do bungee jumping. People are breaking their necks, and we won't do that." And when somebody breaks their necks, as you'll hear from Ms. Sklodowski, the cost is astronomical.

So I think it's all of us doing our jobs, our respective jobs, to make a safer, better place to live in.

MR. DRAGO: Anybody else? (no response)

I understand your concern about perhaps enacting something or recommending something that might give the amusement industry the impression, either explicitly or implicitly, that they're off the hook so to speak. They don't act as safe anymore or be as responsible.

I'm trying to get a handle on your sense of the following, assuming that there was some type of statute or act crafted or created that in no way, shape, or form changed the responsibility which presently exists on industry. Doesn't change it one iota. The only thing the act does do is codify certain conduct that most people would agree you should not engage in, in an amusement park. And that if you violate one of those codes, that can come in and be used against you at a trial. If the industry has to act up to the same standard they always did, but all you do is look the other way towards the plaintiff or the injured party, what is the negative issue you see with that?

MS. McHUGH: Well, I think I've said it, you know, in a couple of different ways.

MR. DRAGO: The one way, I know, is that you felt that perhaps the industry would think--

MS. McHUGH: That's one.

MR. DRAGO: --but let's assume-- Let's take that out of the picture that the act says this doesn't change what the industry has to do.

MS. McHUGH: First of all, I don't think you can reasonably codify conduct in this industry, okay. Secondly, I don't think there should be a separate standard established for what we will know to be young people and children. All right. I think that violates certain tenets of our judicial system. Thirdly, I don't think it's going to conform behavior. I don't think it will have one wit of effect on behavior. As Lary said, people don't think about comparative fault, and they don't think about lawsuits when they're doing these rides or when they're doing something they shouldn't be doing.

MR. DRAGO: No one on this Commission -- not that there's been any study yet about conformity, or lack thereof, of people who read signs or don't read signs-- So I don't think any of us can give an opinion now about whether or not posting those signs would have any effect, and I'm not sure if your experience-- You have any data you can share with us to talk about the conformity of peoples' actions after they read signs?

MS. McHUGH: Well, I know of some general studies, but I don't know of anything that would be specific to this--

MR. DRAGO: Okay.

MS. McHUGH: --with respect to warnings. I mean, warnings have some effect, presumably.

MR. DRAGO: That's why they are on everything we buy nowadays.

MS. McHUGH: Yes, warnings do. But putting it in a code-- putting it in the green book--

MR. DRAGO: No green book-- I'm sorry, what I mean, in a code that has to be posted in an amusement park conspicuously on every ride.

MS. McHUGH: If the industry-- If it pushes the industry into a lethargic position, which I think it may very well do, because they're going to be focused--

MR. DRAGO: Okay. But I don't want to take it out of the equation. Let's assume we can craft something. Maybe we can't. Let's assume we can craft something that doesn't make the industry blink -- they do exactly what they're doing now. Maybe they'll even do it better. I just want to try and focus on the one side. Now, you say, why are we looking at the

amusement industry. I mean, I'd like to have a bill that says everybody has to conform in everything they do in life to the right way to act. There's a lot of people who tell you, "Well, I never realized that was the wrong thing to do."

That's why I think people should read warnings on cans. So if you're at trial and the plaintiff says, "Well, I never read the can," you can't then debate, well, should he or shouldn't he or whatever. Most people would agree if there's a warning, you should read it. But our Commission is charged with looking at this industry, and that's what we're charged to do. I think we're not forced to do it, but if we find that perhaps it's a good thing to do, and it only affects this industry, then that's what we're charged to recommend. I don't think we're allowed to say, "Well, because this won't have application to the auto industry or the construction industry, then it's not a good thing to do." That's another concern I have from what you're saying.

MS. McHUGH: But my understanding of the mission of the Commission was -- the genesis of this was a belief that there are a lot of frivolous lawsuits filed that insurance is impossible to obtain. That this industry needs to be examined, because it needs special protection or special treatment. And I say that the present judicial system provides an incentive for the industry to give the kind of protection that children and young people need and should have in our society. Safety comes first.

MR. DRAGO: I agree with you 100 percent.

MS. McHUGH: There's no need to, under the present law, to change that. The focus really, when you're dealing with young people and children and you're dealing with the industry and the operators -- they're in a better position to control conduct. The burden and the onus should rest with

them. They're making the money. They're the ones that are profiting by this industry, and they're the ones that should bear the larger share of the burden. They're more experienced. They're adult, presumably, and they know what they're doing. They're the ones that should bear the burden and not place it on the rider any more than the rider is already required by law to conform his or her conduct in a certain way under the circumstances -- in a reasonable way under the circumstances. And that covers a lot including following instructions posted by the operator of any specific ride tailored to that particular ride.

MR. DRAGO: Is there some age at which you believe a person should be viewed in the light of, well, you should have known better, maybe 13 may be too young? Is there some age in your mind, generally, you would find that people should be held accountable -- 17, 18, 20 something?

MS. McHUGH: As I understand the law today, it's somewhat of a sliding scale. You're judged if you're a youngster, a child-- You are judged by the standards applicable to your age. All right. But if you're 18 or 19 or 20 or 21, you're judged by the standard of an adult.

In the case of Mr. Sklodowski, he was a young adult.

MR. DRAGO: How old was he? I'm sorry, I don't know how old he was.

MS. McHUGH: I believe Craig was 20.

**SOPHIE SKLODOWSKI:** (speaking from audience) He was 22.

MS. McHUGH: Twenty-two at the time. While I agree with Mr. Zucker that adults do use these rides, I'm frequently at these parks, too, not for the same reason possibly, but I do make observations as to who uses the rides, and there are adults there. I don't want to mislead the Commission in

that regard but, by and large, the bulk of the population that are using these water theme parks are young adults, teenagers, and children, and many of them unsupervised at the time.

Thank you.

MR. DRAGO: Thank you.

MS. McHUGH: This is Ms. Sklodowski, Craig Sklodowski's mother. Craig can't be with us today, unfortunately. He has decubitus ulcers, and he's been very sick for the last several weeks. So he would have liked to have been here, but she'll share with you her comments. Okay.

MR. DRAGO: Ma'am, would you give us your first name?

MS. SKLODOWSKI: Sophie.

MR. DRAGO: I'm sorry.

MS. SKLODOWSKI: Sophie.

MR. DRAGO: Okay. The normal spelling of Sophie?

MS. SKLODOWSKI: S-O-P-H-I-E.

MR. DRAGO: Okay. And the last name?

MS. SKLODOWSKI: S-K-L-O-D-O-W-S-K-I.

MR. DRAGO: I see you have papers. Do you have a prepared statement to read and then, we may ask you questions? If you just want to talk to us or however you want to handle it is fine.

MS. SKLODOWSKI: Okay. I'm the mother of Craig Sklodowski, who was rendered a quadriplegic due to a result of a water slide accident, Thundering Surf in Beach Haven, six years ago.

Craig cannot be here today, as you were told, because of a medical problem he has results of his condition. But I'm here to share some problems

which families, like ourselves, suffer when a son or a daughter, like Craig, is injured in a catastrophic injury.

Let me say that Ms. McHugh has told you that Craig did nothing wrong when he used the water slide. The operators of the ride failed Craig. He did not fail them. The severity of Craig's injury has consumed our household since it's happened, physically, emotionally, and economically.

As parents, Tom and I both had the emotional strength to deal with the immediate needs of Craig, but we did not have the physical strength and the economic well-being to care for him. Needless to say, Craig's health care needs were always on our minds, and never a day went by when we did not concern ourselves with how we'd continue with him in the future.

My husband was employed at the time of the accident but had lost his job due to downsizing. When that job went, the health insurance benefits-- We had to struggle with to provide for. Even without HMO policies, we were not eligible for attendant care services that-- We had to rely on the State to provide us for help in meeting Craig's daily needs. That meant we only had help four hours a day, because my husband was forced to retire at the age of 50 due to a severe coronary. He could not lift Craig or move Craig, and everything fell on me. Four hours of attending care in these circumstances is not enough.

If it hadn't been for the recovery Craig made recently in his lawsuit, we would still be struggling and personally providing financial support. I simply could not have given my financial circumstances and my physical limitations. I do have a job, and if I had to have a job with a company, I would have lost it. Since I own my own business, I could come and go as I pleased.

With Craig now in his financial status, it does help a little bit since I do have to pay somebody else to cover for me.

This meant that Craig had to go on living on Medicaid and then eventually was a ward of the State. Craig's medical bills in this case exceeded \$400,000. Some of these bills were paid by the State through Medicaid, and some are paid by our HMO plan, and then some were paid personally by my husband and myself.

When Craig settled his case, these bills to the State and the insurance company were paid back. Craig's recovery made it -- in this lawsuit -- means that he is no longer on Medicaid, he pays for his own health insurance, and pays for his own attendance care or whatever is not covered by insurances. He is not a ward of the State, and he is working toward becoming a productive citizen with opportunities similar to those of other young people. He has taken a keen interest in computers, and he's trying to continue in his education in that area. He is now in the process of trying to open his own business.

Although Craig lives with daily physical problems which often sets him back to become independent, Craig's father, Tom, and I met his best-- I might add that his best friend died in February. When my husband died, he died in peace knowing that Craig was provided for and will remain without the Medicare and Medicaid system.

Because of my son, I ask this Commission to consider that the way these amusement parks are operated and supervised is critical. The cost of these mistakes to our family, in part particularly to Craig, is astronomical. The cost of these mistakes to the citizens of New Jersey has been high as well. I ask

that this Commission to consider to do what has to be -- to happen -- that this lawsuit has not been filed.

What would have happened if Craig was left with an aging mother and no financial support? What would have happened if the people who carelessly operated this ride and caused his injury were not brought before a court of law and made to account for their neglect? I ask you to, please, consider these things for all the children and adults in New Jersey.

MR. DRAGO: Anyone have any questions?

MS. SKLODOWSKI: Can I add that--

MR. DRAGO: Sure.

MS. SKLODOWSKI: --from observations after Craig was hurt -- and any ride -- I have seen people lose control going down rides -- down the water slide. I've watched them go up, start out the normal way, and come down the wrong way from just the forces of their body having no control. They cannot help themselves on these rides. They are so forceful on any of them. They are very forceful, and I do have even pictures that show how a person started up at the top the normal way and ended up coming down the direct opposite -- was completely turned around from just from the force from going down the slide.

MR. DRAGO: Thank you very much.

That's the end of the testimony for the day. Before we discuss, I guess, witnesses, is there anything, any other matters any member of the Commission wants to bring up and discuss?

Mr. Narol.

MR. NAROL: There's just a pending matter, Mr. Chair, dealing with the appointment of a retired judge, as Ms. Jacob indicated in her statement as well, and I know I've brought this up at several meetings during the course of our deliberation. I'm just wondering about the status of that--

MR. DRAGO: I called the people at the Appointments Office. So if other members of the Commission want to directly write to the Appointments Office and copy us on a letter, that's fine with me. I call, I call and say we need. I don't get noticed.

MR. NAROL: Mr. Chairman, would you mind if the State Bar Association made a direct contact?

MR. DRAGO: Fine with me.

MR. NAROL: Maybe that will help as well.

MR. DRAGO: That's fine with me.

Any other matters before we discuss witnesses? (no response)

To the issue of witnesses: I would solicit from the Commission any names of any other future witnesses, proposed witnesses, or any other means by which we should publicize or some other way to let the public know that we are interested in taking testimony. My thought has always been that since every interest group that would have some involvement or some concern with these issues is represented on this Commission that individual Commission members and, perhaps, the groups they represent, would provide witnesses to testify on these issues. I don't know if the Commission members have sort of maxed out, so to speak, on their circuit of witnesses who they could bring in and give us very, very relevant testimony that's important for us to hear. I don't know if we've exhausted that yet or what else, perhaps, we

should do. I mean, I don't know what effect a truly public notice would have. I think this thing has gotten press coverage in the last four or five or six meetings, I think. So I open it up to your ideas.

MR. ZUCKER: Well, I'll jump in. I--

MR. DRAGO: It wasn't much of a battle to jump in. (laughter)

MR. ZUCKER: I'm sorry if I interrupted anybody. I'd like to schedule a working session of the Commission. I'd like to have a chance to look at the testimony, but I think that given a period of time when we could all do that, after that, we should probably sit down and meet and begin to discuss some legislative proposals and maybe move forward with some actual wording. If somebody else-- If one of Commission members knows of another witness, we could certainly take testimony, but, I think, it's time to begin and sit down and hash out what we've heard and try to come up with some kind of a consensus as to what we want to produce. Because I think we've heard from, if not every interest group, at least a broad enough spectrum of conflicting views that we all know what the issues are.

MR. DRAGO: Anybody else have any comment on that suggestion?

MR. NAROL: Would we have the opportunity to be provided with copies of all the testimony before that session?

MR. DRAGO: Yes. We have only one transcript for each session. We will provide copies of the previous transcripts to all the Commission members either from their office or we'll just sort of copy what we have and circulate it.

MR. GILLIAN: I would join in part with what Mr. Zucker said. It would make sense at this point for us to have a session and talk about what we've heard so far. That might generate, perhaps, some more witnesses that we might want to call. We can always, at that time, decide where we're going in terms of direction, because we've never had that kind of session.

MR. DRAGO: Fine. I'm sorry.

MR. NAROL: I'd just like to make a comment. I agree that it's time to do something. I've been part of this thing every since the beginning. I've watched it go through the Legislature and get to the desk of the Governor. I've got 18 years of elected office behind me, and I-- The comments that you come up with-- If somebody can't make a decision, they form a committee. It seems to me that when the Governor vetoed this, the way he did, it was just the idea that it was getting to close to election time. He didn't want to make the decision, when he formed this Commission, but part of that Commission was supposed to report back within six months. You know, here it is -- what? -- a couple of years, year and a half? I don't know.

Without a doubt, I mean, we've been talking about our industry, the amusement industry, that has been the father of all this that brought it to this far, and I think when they asked us to form it, then they said, you know, make it broader and cover everything you could possibly think of, and that's quite tough to do. It looks like we're down to two industries, basically the equestrian industry and the amusement industry, that has a lot going for it.

I know every month we have a meeting, and they ask what we've been doing. It's hard for me to give any kind of an answer to our Board, you know, of what goes on with this particular Commission. I've almost come to

the fact that it's just a futile waste of time, you know. So unless we can really get together and actually try to do something, then -- that's my opinion -- I think it's going no where.

MR. GILLIAN: Let me just add one thought to my prior comment with regard to the appointment of the retired judge which is required by the statute. Technically, we've never been formally fully constituted without that slot. I wonder out loud whether we should try to make a formal effort and ask the Chair to write another letter, if you have already directed to the appropriate people, expressing the concern of the Commission as a whole that we are concerned that the appointment has not been made. We would like that person to be able to at least read the transcripts and be part of the deliberative process.

MR. DRAGO: That's fine. I'll write such a letter, and then if anybody else wants to send one on top of it, that's fine, also.

MR. GILLIAN: Is your reasoning for saying that that maybe we start our six months from the time that that fellow's appointed?

MR. NAROL: No, no, I-- Well, that's technically what the statute says. I'm more concerned that we have a retired judge. We have that perspective on the Commission. After all, the Legislature wanted a retired judge, so we had the judicial perspective of what happens in the courtroom. Some of the issues today we're dealing with, comparative negligence, how that applied, and how a code would impact comparative negligence. Here, on that issue, we'd have a judge saying, "Here's how it works in the courtroom. In my 20 years as a trial judge, this is what would happen and what would not

happen.” So I’d just like to have that person’s input. It’s a valuable asset to this Commission.

MR. KIRSCHNER: Yes, I would echo the sentiments. We are not operating in a vacuum, and it has taken a good bit of time to be here. I think you, Mr. Chairman, have bent over backwards to try to accommodate all points of view. I can tell you that there are legislators who have a number of bills in on this particular subject who have, I think, shown great patience in holding off on trying to move their bills forward to see what, if any, recommendations this Commission has.

I think it’s time to tell them and the body at large whether, in fact, we have any recommendations, whether we will agree to a consensus, whether we won’t. Then, the final decision of course will always be in the Legislature and the Governor’s hand. But that time has come.

MR. DRAGO: Lary.

MR. ZUCKER: I have a specific suggestion. I guess I’ll make it in the form of a motion. I would suggest that we schedule a working session sometime for the next six weeks from today’s date. Within that six-week period, I think we should circulate two sets of documents among the Commission members:

- 1) Any legislative proposals that are currently in the hopper in either the Assembly or the Senate, so that we can all begin to get an idea of what’s in, so that we can intelligently review what’s in and maybe react to what’s already in the hopper.

2) The second set of documents is any specific legislative proposal that any one of the Commission members wants the Commission, as a whole, to consider.

I know I have several legislative proposals that I would like the Commission to consider. So, only because we've got to start somewhere-- If we just sit around and talk, we'll do nothing but talk. I think we ought to have an opportunity to review legislation, review proposals, and have something to talk about.

MR. DRAGO: That's fine. I know a number of meetings ago, at the end of one of the meetings, I suggested that throughout this process if anybody had anything of a legislative nature or recommendations, they could circulate it. We could start thinking about it. The only thing we've ever gotten was the Uniform Riders Safety Act. I think some people felt my mentioning it back then was a little premature--

MR. ZUCKER: Right.

MR. DRAGO: --so I think we are at the point now where--

MR. ZUCKER: With today's testimony, I've submitted the Pennsylvania Act, the Ohio Act, and the Uniform Riders Safety Act in its final version. I think I'd like these to be considered, at a working session, to at least give us a framework and give us some items on the agenda.

MR. DRAGO: Okay. The Chair tends to agree with the comments made already. Anybody have any objection to scheduling a working session at this point?

MS. BOKMAN: I have something to say.

MR. DRAGO: I'm sorry.

MS. BOKMAN: I have something to say.

MR. DRAGO: Sure, I'm sorry.

MS. BOKMAN: I am not familiar enough with the Office of Safety Compliance. I wonder if we have a working session-- I don't know if we can have someone-- I think that's an area we all want to look at. It seemed to be something that you all had an interest in, aside from the fact that we need a code of conduct, which I agree with. But I wonder, because I'm not familiar enough -- unless somebody else is familiar -- with how that office runs and what their recommendations would be if we can speak with someone.

UNIDENTIFIED MEMBER OF COMMISSION: Maybe we could have that person as a witness.

UNIDENTIFIED MEMBER OF COMMISSION: That was Commissioner Katz.

MR. NAROL: Mr. Chair, I don't think that we've had a witness now that you mentioned that. It was actually a person in the field who does the inspections. That person might be very helpful for us.

MS. BOKMAN: See, I tend to think that someone who's actually out in the field can really give us a lot of advice as to what really goes on, where his problems -- what he sees is going on rather than someone that's in the office and just has the paper pass by. They may see it differently.

MR. GILLIAN: Just to explain that office -- the field people that do the inspections, they carry all the information back. Leonard Katz is the person in charge of all the information that they gather. And they keep rather thorough records of every accident, you know, and then they class it as the amusements -- whether it's kiddie ride, major ride, or a spectacular ride. They

publish a report at the end of every season of how many accidents they've had, and then they put them in a class as to the seriousness of them. They do have all these type of records, and I think they would be willing to work with us.

Just to add on there, I wish you would all read the one I got from the Washington office just to give you a little background. Our international association has worked for a number of years to try to come up with code of conduct. We were kind of the first ones to start it many years ago to get where -- as far as we are, and then we're finding out that other states have now come in and surpassed us. But what they have done-- They have people on our staff in Washington that works with the State and with the Federal government as far as these things. I just wish you would all read them and maybe -- so that we can consider that. If we do adopt something like that, this is something that is being considered in other states. The international association is trying to get this throughout the United States.

MR. DRAGO: I would imagine the field inspectors-- This is sort of slow time or downtime.

MR. GILLIAN: Yes, well, in the wintertime they inspect boilers.

MR. DRAGO: Okay, so say perhaps we can get someone for the next meeting to answer any specific questions that members might have and hopefully wouldn't be taken away from something that important.

MR. GILLIAN: Joe Palazone is probably the number two man up here, and he has been to our place, himself, twice this year. So, I mean, this is a first. Usually, he was an office person, too, but he's even been out on the--

MR. ZUCKER: Maybe what we should do is schedule Joe Palazone or someone from his office followed immediately, that same day, with a working session--

MR. DRAGO: That's fine.

MR. ZUCKER: --so we can address the concerns of the Commission members and, also, get a talk.

MR. DRAGO: Okay, let's pick a date. Any particular days bad for anyone?

MR. NAROL: I have a suggestion. It's a little bit far in the future for a date, but Thanksgiving week the courts are closed or slow. That's also peoples' time off, but maybe that Monday of that week might be a good day before people might go away for vacation. I'm just looking at--

MR. DRAGO: That's the 25th.

MR. GILLIAN: After Thanksgiving?

MR. NAROL: No, before Thanksgiving.

MR. DRAGO: November 25th is the Monday before Thanksgiving.

MR. NAROL: If that's a good time or not.

MR. KIRSCHNER: You have to check, that may-- Even though that's a Monday of that week, that may be a Legislative Session hearing.

MR. DRAGO: No. November 25.

MR. ANDRES: I know that I will not-- I will be on vacation that week.

MR. DRAGO: The whole week?

MR. ANDRES: Yes. I'm stealing that week precisely because of that issue.

MR. NAROL: The week prior to that is our international -- is bad for me because our international meeting is in New Orleans.

MR. DRAGO: Okay. Well, the-- We either move it up to early November, which is six weeks from now, November 11th-- It's going to be either November 11th, or then it's going to be the first week of December.

MR. NAROL: I won't be here November 11th.

MR. GILLIAN: I can't.

MS. BOKMAN: Veterans Day.

MR. DRAGO: It's Veterans Day? Well then, do you want to jump to December 2?

MR. ANDRES: Sold.

MR. DRAGO: December 2nd.

MR. ZUCKER: What about earlier in November?

MR. DRAGO: Well, that's what I was trying to figure out.

MR. NAROL: I'd also like to leave a little time, Mr. Zucker, just because maybe we can get this match on board, so I would prefer a little bit later to give us that opportunity.

MR. ZUCKER: That's a good point.

MS. BOKMAN: Well, does it have to be that Monday? How about the week of the 11th?

MR. DRAGO: Well, how about December 3?

MR. GILLIAN: What day?

MR. DRAGO: It's a Tuesday.

MR. NAROL: Tuesday, December 3rd?

MR. DRAGO: Yes. Okay. So the next meeting will be Tuesday, December 3. We'll make it for 10:30 to give us a little more time.

MR. ZUCKER: Alex, do you want to set a-- Some sort of soft deadline for submitting proposals or submitting any material that we should be discussing at the open session.

MR. DRAGO: First, the pending legislation that we want to circulate amongst ourselves, who can we get that from?

MR. ZUCKER: Can we get it-- Do we have a legislative assistant? Is there somebody assigned to the Commission? If not, we have several Assemblymen and Senators. We can go through their offices.

MR. DRAGO: We've been asking for that, we--

MR. ZUCKER: We can go to the Bill Room and get--

MR. DRAGO: Okay, so-- We can get those within a couple of weeks. I'll circulate them with all the stuff I talked about today.

MR. ZUCKER: All right. So you are going to be responsible for circulating the pending legislation.

MR. DRAGO: Yes, and the previous transcripts. Peoples' proposed legislation or proposed whatever you want to call it that you want us to review, I mean, get it to us at least 10 days before that date so we all have time to review it.

MR. ZUCKER: Fine. Should we submit it to you or circulate it?

MR. DRAGO: It would-- If you send it just to us, and you don't have photocopying capability for this many people -- and this is just as general

comment -- then just note that to me, and we'll circulate it around for you. If you can make copies and circulate it, that would be appreciated.

MR. ZUCKER: Fine.

MR. DRAGO: Either way it doesn't matter to us.

Anything else from any member of the Commission? Okay.

I see there's a hand in the back.

**PETER GUZZO:** (speaking from audience) Yes, Mr. Chairman. With your indulgence, may I ask a question?

MR. DRAGO: Certainly.

MR. GUZZO: My name is Peter Guzzo. I've testified representing Consumers For Civil Justice in the past, and as you probably recall, a number of times I have asked that, through the Chair, that the Commission would be interested in approaching the Department of Insurance to have someone from the Department testify or present data as to -- and this has come up in a number of comments by members of the Commission -- in terms of the claims experience and claims made against the different industries involved in this study.

As you know, one of the assumptions that led to the grades in this study is that there is an insurance problem and that insurance is hard to obtain. And that's being driven by excessive litigation and excessive claim payments.

May I just ask the question first? Has anything been addressed or any material received from the Department of Insurance?

MR. DRAGO: We made contact with the Department of Insurance on a number of occasions to get a witness to testify. I think that

Department has gone through a lot of manpower -- person power changes I should say -- over the course of our Commission's tenure. They've never really had an opportunity to provide us with a witness. Personnel changed. There was scheduling problems, so we made an effort, but we've never been able to obtain a witness from the Commission.

MR. GUZZO: Mr. Chairman, I just think that Consumers for Civil Justice in conjunction with the New Jersey Courts Council did take it upon yourself in a joint letter to address a request to the Department of Insurance asking the questions that are asked by way of the legislation creating this Commission. And we did receive a response. The response we received was based on ISO data. And for those of you who know the insurance industry, ISO is a rate-collecting service organization for a number of major insurance companies. They did provide us an answer. Basically, their answer said because it is an unregulated industry and the rates are not regulated, they do not have sufficient data to draw a conclusion one way or the other.

I raise this because I think if there is a premise -- that this is being driven by insurance prices -- I would hope the Commission would take the opportunity or have the opportunity to have the Department come in and address this question so that, when you want to work a meeting, you had the information at hand to make a right decision. I'd be glad to present you with the letter that we received. I will check with the horse council, that will-- So address the letter and if they are willing to release this, I'll provide it to the members of the Commission. But I think you really need to give and take from someone coming from the Department before you and then take that into a working session.

MR. ZUCKER: Pete, if-- Sorry, Mr. Chair, may I? Do you want to respond? Go ahead. I'm sorry.

MR. DRAGO: I was just going to say your comments are noted for today. If you can get the document and submit it to us, we'll make it part of the record.

MR. GUZZO: I'll be glad to.

MR. DRAGO: We made our efforts with the Insurance Department. We never got a witness and that's where we are.

MR. GUZZO: Mr. Chairman, just an-- Not to dispute that, I worked five years for the Department of Insurance, and I know that whenever a legislative body asked for someone from the Department of Insurance to come forward, someone always came forward. I can't imagine that even with the reorganization had gone through, that they would not honor your request, if the request was made forcefully enough.

MR. DRAGO: Mr. Guzzo, you're welcome to try on your own.

MR. GUZZO: I don't sit with your power, Mr. Chairman. My request-- I used to get the requests.

MR. DRAGO: You're too smitten with whatever power I don't have. (laughter)

MR. GUZZO: I used to, as Director of Legislative Affairs in the Department of Insurance-- I used to get the requests, and there were times I wish we didn't have to come and testify. But I don't think I would ever have been brazen enough to say, "We're not going to honor your request," from a legislative Commission created by law.

I don't know if you have subpoena powers. I don't know if you were going to ask for subpoena powers, but I would think, before you make a decision crucial to the rights of victims and consumers in this State, that you have before you every bit of information that you need.

MR. DRAGO: Thank you.

MR. GUZZO: Thank you.

MR. NAROL: Mr. Chair, let me just follow up on that comment. It does seem to be reasonable that we write another letter if we've written one before to the Commissioner of Insurance, from the Chair again, or maybe perhaps through another governmental agency to get to the Department of Insurance and formally, if we haven't done it before, ask for a representative.

If you have a name of someone, Mr. Guzzo, who's responded to your letter, that might be a starting point. I think it is important. We've heard a lot about insurance. This letter will now be made part of the record. Let's explore the issue a little bit. Again, I don't want to forestall the working session. We should do it in conjunction with that.

MR. DRAGO: Fine. We'll do that.

Anything else from anybody? (no response)

Okay, we stand adjourned.

Thank you everybody.

**(HEARING CONCLUDED)**