

PUBLIC HEARING
before
NO-FAULT STUDY COMMISSION

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Held:
July 21, 1977
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

Senator Alexander J. Menza, Chairman
William K. Duncan
Samuel Hagar
David Green
George Connell
Senator Barry T. Parker
Assemblyman Donald DiFrancesco
Assemblyman Thomas J. Deverin

New Jersey State Library

ALSO:

Peter P. Guzzo, Research Associate
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Laurine Purola, Research Associate
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SENATOR ALEXANDER J. MENZA (Chairman): This is a public hearing of the Legislative Commission, created by Senate Concurrent Resolution No 68, approved May 23, 1977, to study three broad areas: (1) the automobile accident compensation system as provided for in the "New Jersey Automobile Reparation Reform Act", the so-called no-fault auto insurance act; (2) auto insurance ratemaking; and (3) the residual market. Today's public hearing is the first of two on no-fault auto insurance. A second hearing will be held on July 28th in the Union County Court House in Elizabeth. There will be three other public hearings on auto insurance ratemaking and the residual market at dates to be announced.

My name is Alexander Menza. I am a member of the State Senate and I chair the Committee. To my right is Mr. Samuel Hagar. He is Vice Chairman. He is associated with Jacobson, Goldfarb, Scott, Inc. Mr. William Duncan a member of our Committee is Executive Vice President of the Shore Motor Club of South Jersey. Mr. David Green, a member of our Committee, is President of Motor Club of America. Mr. George Connell is here. He is an attorney representing attorneys and the Bar Association. Other members of our Commission are Senator Barry Parker, Assemblyman Donald DiFrancesco, and Assemblyman Thomas Deverin.

I have a list of persons who have indicated their desire to testify. If there are others in the Chamber who wish to testify, will you please so indicate to Laureen Purola, our aide, or Pete Guzzo, both of whom are serving as staff to this Commission.

As each witness is called, we ask that he sit at this desk in the front row and speak into the microphone. We also ask that he first identify himself by stating his name, address, and the organization, if any, that he represents. If the witnesses have prepared statements, we further request that they make copies available to the Commission. Prepared statements need not be read in full. Witnesses may request that they be made part of the record and they will be considered by this Commission.

After each witness has made his statement, members of the Commission may have some questions and we trust that each witness will make himself available to answer these questions. No questions from the audience will be permitted and no questions may be directed to the members of the Commission.

Before we proceed, I have just one quick comment. There are Commissions, and there are Commissions, and there are Commissions in the State of New Jersey; some do a great deal and some do absolutely nothing. We intend to do a great deal. We intend to have our report ready by the latter part of September or October. The members of the Commission are persons who voluntarily asked to be on the Commission and are just a few of the approximately 40 who made a request to be members of the Commission.

It is anticipated - and this we will discuss at a future time - that we will have an advisory committee discuss this issue. We intend to take as much testimony with regard to our area of concern as possible. We intend to go throughout the entire State and we intend, at the end of all of this, to issue what we think will be a meaningful report and the necessary bills evolving therefrom.

Would any members of the Commission like to address the audience?

(Negative response)

The first three witnesses will testify together. Keep in mind,

gentlemen, that when you testify, you each have to get to that microphone. The other microphones are shut off. They are operated by the desk up here. These three witnesses are from the major trade associations and will testify concurrently and answer questions jointly: Grover Czech, American Insurance Association, William Fox, American Mutual Insurance Alliance, and John Nangle, National Association of Independent Insurers. After their testimony, the next witness will be Morris Brown, Committee for the Reform of Civil Litigation and after him, Julius Borrus, Insurance Brokers' Association. Will Mr. Czech, Mr. Nangle, and Mr. Fox please come forward?

J O H N J. N A N G L E: Mr. Chairman, my name is John Nangle. I am Counsel for the National Association of Independent Insurers. Although the National Association of Independent Insurers writes about 50% of the insured automobiles in the State of New Jersey, I am here with my colleagues who represent virtually the entire industry, with the exception of a few companies in the State of New Jersey.

SENATOR MENZA: Excuse me. Let me remind you that we don't have a stenographer right now. Believe it or not, there are two stenographers and they are out of town today at another hearing. So, we are working with a recorder which is picked up on that microphone only. It is unfortunate but this is typical of some of the conditions that we in the Legislature work under from time to time.

MR. NANGLE: Mr. Chairman, I have submitted for the record - and I ask leave to have it incorporated into the record - a full statement covering all of the questions raised by the Commission, charging the witnesses to answer them point by point.

With that, I will just summarize the highlights of my statement, with your permission, Mr. Chairman.

SENATOR MENZA: Yes.

MR. NANGLE: The automobile picture in the State of New Jersey can only be described as the worst of all worlds: The public is concerned about high premiums at the same time the insurance companies are paying out about \$1.30 for every dollar they take in; a stifling prior approval law, which is administered by a hostile and politically motivated insurance department; a no-fault insurance law which is completely out of balance with the realities of a prudent benefit level coupled with a logical tort threshold; an availability of insurance problem which will become worse as these underlying problems are left unsolved, compounding this unfavorable climate with a band-aid solution which has proven disastrous elsewhere - sponsored by the present administration and insurance department - in the name of a Reinsurance Facility.

The Rating Law and the Residual Market problem will be the subject of future hearings of this Committee and we anticipate addressing those problems at that time. We are grateful for the opportunity to share with you our ideas concerning the reforms which must be implemented to the New Jersey Automobile Reparations Act to deter future escalation of automobile costs to consumers and company surpluses alike.

We are discussing today proposed changes to the New Jersey No-Fault Law. They must be substantive changes. They must be real changes. They should not be mere palliatives which will ease the pain, but allow the cancer to grow unchecked. Unfortunately, though, if these substantive changes are not made to

the present law, we will continue to discuss temporary measures in the area of availability and the underlying causes and problems will get worse.

New Jersey, at the present time, has a very, very rich benefit package and virtually no trade-off in the tort limitation area. It is in the latter two items that this Committee can be very helpful in responding in their recommendations with a sensible and balanced "benefit" to "tort threshold" relationship.

The trick in determining what the benefit level should be versus the tort restriction carve-out is the "balance" between benefit and tort limitation, or the "trade off." In our opinion, New Jersey has the worst "balance" or "trade off" of any no-fault law in the nation.

I will now comment upon the specific subjects related to the reparations system from which this Committee has requested our views.

Placing a limit on medical costs -- Because the no-fault is compulsory and every citizen in the State of New Jersey must carry it, we feel that the benefit package should be adequate to cover a vast majority of the injured with full medical and a realistic limit of wage loss. To provide for unlimited medical, for instance, is a very rich package and requires everyone, rich and poor alike in New Jersey, to pay the higher cost of this excessive coverage. A \$50,000 total benefit package of no-fault benefits for basic economic losses would adequately cover the essential medical, wage and other expenses of most accident victims. For example, about 99% of the injured would be reimbursed for all of their medical expenses and their lost earnings up to a limit of \$1,000 per month. Additional benefits would be available on an optional basis for those who feel they need this protection at a reasonable price.

The next subject is the role of compensation to an injured person on the degree of fault. I put the next request in the same answer - "changing the existing \$200 tort liability threshold by increasing it monetarily or replacing it with a verbal threshold." The \$200 soft tissue tort threshold is a joke. As a matter of fact, the experience of our companies in all states which have a dollar threshold is that a dollar threshold is nothing more than a target for plaintiffs' to overcome to establish their right to sue. This generates more loss dollars into the system which is an irony to say the least because one of the purposes of the first party benefits, payable to all who are injured, is to preclude the necessity to sue for the less significant injuries. The plaintiffs' bar will, undoubtedly, be down here to tell you that they represent the consumer and that tampering with the threshold will be taking away the basic rights of an individual for regress of injury. Remember, after no-fault we are paying for medical and wage losses to 100% of the people who are injured, whereas before, under the tort system, we were paying the medical and wage loss on something less than 50% of the people. So, a lot more dollars are going out in the form of first party medical and wage loss payments. We have to make these dollars available from someplace else and the only place you can get them is by limiting the right to collect for non-economic loss. This means that New Jersey should limit the right to a third party claim only in those cases involving death, permanent and significant disfigurement, loss of a body member, total disability for 90 or more consecutive days, or a medically determinable serious and permanent injury. The words "serious" and "total disability" should be defined.

Such a tort limitation coupled with a \$50,000 benefit package would be a very well balanced package, indeed.

The next subject is the use of collateral sources to help pay for injuries from auto accidents. Automobile no-fault benefits must be primary as to any other available benefits, if automobile insurers are to implement sound disability and medical management strategies. Making other benefits primary over auto insurance benefits also creates great inefficiencies in claims administration.

Most health insurance policies do not cover the full cost of medical care. Most contain deductible provisions as well as co-insurance requirements. When health insurance is made primary, the auto insurer must reimburse the insured for those items of losses which are not paid by the health insurer. Accordingly, the auto insurer, as well as the health insurer, must establish a claim file and the auto insurer must investigate those elements of losses which are not covered under the health insurance contract.

On the other hand, no-fault should provide for the full reimbursement of medical losses up to a certain aggregate limit. To the extent that the expenses incurred in any one case for the medical care remains within the limit, health insurers do not have to create a file if automobile insurance is made primary. In fact, health insurers would seldom become involved in the reimbursement of any medical losses resulting from auto injuries if the no-fault law provides for \$50,000 medical and wage loss benefits.

Should PIP benefits be limited to the named insured, spouse, and resident members of the families or extended to all occupants of the insured's car? -- We believe that insurance should follow the automobile and not the individual in an accident. The present law in New Jersey provides for the insurance to follow the individual in an accident. This is inefficient and unfair for two reasons:

First, the operator of an automobile is involved in an accident. His insurance company must respond by opening up a file, investigating the liability possibilities, estimating and settling the physical damage claim and receiving and paying the PIP on the operator. Efficiency then requires that this same company merely receive and pay the PIP claims of all the occupants in the automobile. Under the present law, if four passengers are riding with the insured in a car pool and an accident occurs and all of them are injured, it is quite possible that five insurance companies would necessarily open up a file and go through the same motions to a limited degree that the original insurer on the automobile would have had to do in the first place.

The second reason it is unfair is because policyholders want a rating system which reflects their good driving record. Of course, bad drivers do not want to be penalized for their accidents, however, it is extremely unfair not to charge accident-prone drivers more than those vast majority of risks which are accident free, thereby making these more responsible drivers subsidize the proorer ones. Amending the present New Jersey no-fault law to put the responsibility on the vehicle instead of the individuals would reflect the proper exposure to loss to each vehicle insured.

Should no-fault be extended to motorcycles, trucks, buses, taxis, and other fleet vehicles? -- No-fault benefits should not be extended to any other category than to the private passenger motor vehicle.

The present no-fault law wisely excludes motorcycles, however, a New Jersey appellate case, *Hoglin v. Nationwide*, has held that an injured motorcyclist may receive PIP benefits under an available automobile insurance policy. I believe that this interpretation was unintended under the present law and some amendatory language to the present law might be in order to clarify this.

Truck occupants are virtually all covered under some form of workers' compensation and, therefore, there would be no need to amend the present law to include trucks. As a matter of fact, to include trucks under the no-fault law would reap an unjustified windfall to them because when they are involved in an accident it is almost always attendant with injury consequences in the private passenger vehicle.

Extending coverage of the no-fault law to buses would be highly undesirable under the present New Jersey statute, whereby insurance follows the individual. Therefore, I suggest that added impetus to an amendment, which would amend the no-fault benefits to follow the vehicle, would correct an inequity in this area and, thereby, if that is accomplished, and only if that is accomplished, it would be desirable to include buses and taxis under the no-fault provisions.

Mr. Chairman, on the last two questions regarding fraud and deceit and increases in auto premiums, time has precluded me from being able to come up with those figures but I have written our people in the ivory tower in Chicago - the people who are responsible for those items - and I have asked them to expedite them for me so that I can submit them to this Committee for inclusion in the record.

I did not comment - I did in my statement, but not orally - on property damage no-fault. I assume somebody else will do that. But, I did include it in my statement. Thank you, sir.

SENATOR MENZA: Thank you, Mr. Nangle. Would the Committee want to question each witness individually?

ASSEMBLYMAN DEVERIN: I would like to ask Mr. Nangle a question. Mr. Nangle, in one part of your statement you say \$1,000 threshold would be a great balance and later on in the statement you say--

MR. NANGLE: No, sir.

ASSEMBLYMAN DEVERIN: Later on in the statement you say any dollar threshold is a joke.

MR. NANGLE: I didn't intend to say that it would be a great balance, sir. What I said was it would be a balance. I'm sorry. I didn't say it would be a great threshold, I said it would be a -- I was pointing out an example of balance and trade off and I said that if you had a \$2,000 medical benefit package and, for instance, a \$1,000 threshold, you could - you may have - a balanced package.

As a matter of fact, the Governor of Massachusetts - and we do not support this - has suggested that the \$2,000 benefit level that they have in Massachusetts with the \$500 threshold works up there. We don't think so but at least it is on record that he has said that.

I was merely giving you a for instance, or an example, of what may be a balance. I also said that if you are going to have unlimited medical, as you do in New Jersey, you probably should have a balanced threshold - take away all right of tort recovery. It is the two ends of the spectrum.

ASSEMBLYMAN DEVERIN: In one paragraph you do say \$1,000 threshold would make a good balance with \$2,000 on the medical package.

MR. NANGLE: I wasn't suggesting that as a proposal. I was suggesting that as something that may be in balance.

ASSEMBLYMAN DEVERIN: Another question about something that concerns me--

MR. NANGLE: I wish I hadn't.

ASSEMBLYMAN DEVERIN: But you did say it. "The public is concerned about high premiums at the same time the insurance companies are paying out about \$1.30 for every dollar they take in." Now, how much of that \$1.30 is for property damage - a dented fender or a broken windshield, etc.?

MR. NANGLE: Well, I believe that \$1.30 - and I plan to submit that for the record too - is on the PIP and the bodily injury premium.

ASSEMBLYMAN DEVERIN: Is that exclusively?

MR. NANGLE: Exclusively.

ASSEMBLYMAN DEVERIN: Property damage has nothing to do with the premium?

MR. NANGLE: Well, it does have a lot to do with the total premium. It is about 60% or 70% of the total premium but I am referring here to the PIP. I will have figures for you on that.

ASSEMBLYMAN DEVERIN: Just one more question. How many-- And I have read this in so many articles where you refer to the case of one boy, I guess it is, who was -- You are going to pay payments until 2,000. How many cases do you have like that?

MR. NANGLE: I'm sorry, sir, I didn't understand your question.

ASSEMBLYMAN DEVERIN: How many cases do you have similar to the young man who was damaged in 1977 and will be paid medical benefits until the year 2,000? How many cases, overall, do you have like that?

MR. NANGLE: I can submit some figures on over \$25,000 losses. There, again, it was an example of a paraplegic. We have quite a few paraplegics in Michigan and New Jersey that have come under the no-fault law. My point in the statement is that your premium was generated on loss factors in 1974, '75, and '76. You got a dollar premium for that injury and you are still paying for it in the year 2,000, and this is assumed to be an inflated dollar.

ASSEMBLYMAN DEVERIN: But those cases are very few and far between?

MR. NANGLE: Yes, sir, they are but--

ASSEMBLYMAN DEVERIN: Of that magnitude, right?

MR. NANGLE: They are horrendous but they are there.

ASSEMBLYMAN DEVERIN: You know, the Governor has a bill on his desk where the PIP limitation is \$75,000?

MR. NANGLE: No, sir. That is a-- That bill on his desk limits a company's - and it is a very necessary provision for the smaller companies - initial exposure to \$75,000. It is still an unlimited package but the excess of \$75,000, in effect - although it goes through the UCJ Fund - falls upon all of the other companies in proportion to the amount of business they write in the State. So, it is not a limit.

ASSEMBLYMAN DEVERIN: Do you consider that an improvement?

MR. NANGLE: Personally, I consider that an improvement but I don't

consider that the answer.

ASSEMBLYMAN DEVERIN: Okay. Thank you.

MR. HAGAR: I just have one question, John. In your testimony, on page 4 - page 5, excuse me - you indicated a \$50,000-- Is that a combined threshold for dollar wage loss as well as medical benefits?

MR. NANGLE: Yes, it is.

MR. HAGAR: Would it be your option that they be allowed to purchase additional insurance?

MR. NANGLE: Absolutely. Yes, sir, that is a mandatory offer.

SENATOR MENZA: You know, I always wondered what the impact of no-fault in New Jersey has been on the insurance companies. Are the insurance companies making money or losing money? You are going to say they are losing money but that is not going to be good enough for the Commission this time. We would like to have this documented thoroughly.

This group that you represent - these various insurance companies - are they losing money as a result of no-fault?

MR. NANGLE: They are losing money in the State of New Jersey as a result of no-fault.

SENATOR MENZA: Has there been a dramatic difference, for example, from a couple of years prior to the no-fault law as compared to the present time?

MR. NANGLE: To be quite frank, Mr. Chairman, I have heard some people, over a cup of coffee, say "the good old days" but I have been out in the east now for ten years, representing my companies in New Jersey and I can't remember when they had so-called "good old days." They had a problem in '69 and '70 and finally they got some rate relief in the '70's, so I think they did have a breather there in the early '70's.

SENATOR MENZA: The problem I have, Mr. Nangle, is, maybe in the "good old days" the profit was disproportionate. I would like to know - and if you can possibly do so, please submit this to the Commission - just with these companies you represent, have they been making money or have they been losing money? We would like to have their profit and loss from the years prior to no-fault and the years after no-fault.

MR. GREEN: Commissioner, I would like to answer that. Our company, in three years, lost over \$15 million, the greater part due to no-fault. We have doubled our employees. We have doubled our claim department and I can tell you that companies are losing money. Selected Risk has lost better than \$5 thousand last year and they are going to continue with the present system.

SENATOR MENZA: Mr. Green, I take it that we are all going to look at this subject very objectively.

MR. GREEN: No, you asked and I would like to give you first hand information.

SENATOR MENZA: All right, but how about if we get it documented? I think that would be a good idea.

MR. NANGLE: Mr. Chairman, in your last question you say, "What is the actual profit margin in New Jersey for auto insurers?" Of course, that could be a statutory margin but I plan to give you some figures and we could extend that back and incorporate that as part of that question.

SENATOR MENZA: All right. Two very quick questions. Page 2, "A stifling prior approval law which is administered by a hostile and politically

motivated insurance department", I find that quite interesting. Tell us about the hostile and politically motivated insurance department.

MR. NANGLE: In what sense?

From the Commissioner's own public statements, it is obvious to us that he starts from a position of obvious hostility towards anything - any rate filing, any facility for writing residual market business - that the insurance companies attempt to do. He has constantly, in the press and in the media - and solely to the press and to the media and, of course in public forums, where he can - taken shots at the - unfair shots - insurance industry. We are not thin skinned but I think this Committee should know that that situation goes on. You know, fair regulation-- We are regulated by 50 different states and compared to the other states, the attitude of the insurance department here is one of open hostility -- manifestos that are strictly "shoot from the hip" for the media. You never lost a vote nor made an enemy by raising hell with the insurance companies and he found that out. None of it, of course, can be backed up. The facts are to the contrary. The fact of the matter is, the insurance industry considers it to be a very hostile insurance department. It is not a healthy situation.

MR. DUNCAN: Mr. Nangle, I remember you from your last appearance at the last "go-around" in 1972. That is when we had those hearings. If you were to separate the many issues we are supposed to look at, I find it interesting that we are now doing the same thing that we did in 1971/'72 before we came to report. If you were to say what is important about this entire problem, wasn't it availability of insurance that originally drove this Commission - the original Commission - to come up with no-fault? And, if you were to separate the two problems - the kind of system we have now and the companies ability to get a proper rate - where would you-- In what perspective would you put that? Would the second part of our hearings, dealing with rating, have more impact necessarily than the first part, which is no-fault?

MR. NANGLE: Sir, I don't think the two are exactly mutually exclusive but, certainly, it is true; availability was a problem and the no-fault was an attempt to have the insurance industry and the public have the best of both worlds - the public better served, more expedited dollars, and the insurance industry given a shot at a fair profit. By the time that bill was kicked out and signed by the Governor, it was nothing like we had anticipated. There was an unlimited medical, which we said back in '72 - and we will say it today - is a horror, and a threshold that is a joke. My statement speaks to the balance. You must have a balance. If you are going to have unlimited medical - and I do not suggest that - you are going to have to do away virtually with all tort altogether. But, \$200 is certainly a joke under the circumstances.

Now, availability is a palliative. If companies have a fair shot at making money, if they have an insurance department that is, you know, tough but administered properly, and if you have a legislature that, you know, isn't easy but is protecting the public and is not out to just tear the legs off the insurance industry, you have a climate in a state where insurance company managements are going to say, "Hey, we have a situation where we have a shot at making a profit" and there won't be an availability problem.

Covering up these serious problems by talking about reinsurance facilities and JUA's-- We proposed JUA's but they are even more expensive. The

Assigned Risk Plan -- I know, everybody thinks it is the worst form of writing residual market business. In our opinion, it is not. It is the cheapest and fairest. But, everybody has it in their mind that it is the bad system. So, we are not going to defend it. We go ahead and say, "Okay, we have to have something to counter-balance this horrible reinsurance facility, we will come up with a JUA, which is more expensive."

In order of priority, you have the rating. We would propose - and will propose - a competitive rating law. Now, that doesn't mean we can run free and run rampant. A competitive rating law still has regulation in it.

MR. DUNCAN: I gather that what you are saying is, no matter what we talk about with no-fault-- I think one of the questions I put to you at that time - as I did most of them - is, if we made no change in the system and we took "med" pay and we raised the limits on "med" pay and we added wage loss to it, that we are really coming around. At that time I put to you fellows: "Well, if we left the system alone and played around with "med" pay, would you folks still say that your main question was your ability to get a rate that you can live with?" Do you still say that whatever this system is, that is the basic problem?

MR. NANGLE: No, I--

MR. DUNCAN: Or has it become worse with no-fault?

MR. NANGLE: I would have to qualify that, sir. You cannot add more coverage and pay everybody with increased "med" pay and disability. We call that add-on no-fault. You have to carve it out and take it away from someplace else and the only place you can take it away from is the tort liability -- tort restriction. Now, it is not to the insurance industry's benefit - and believe me, and you know this yourself - to be able to charge what we have to charge, no matter what the law says. It would cost the average automobile insurance policyholder in the State of New Jersey \$1,800. What good is that for us to be able to get the \$1,800? Nobody would be paying it. Everybody would be screaming and you would only nationalize insurance. We would rather charge one-fourth what we are charging right now and still have a shot at making a fair profit. We are charging a lot now, although it is not enough, and we are still not making a profit. So, why shouldn't we, if we can straighten out these other things, balance the no-fault law?

MR. DUNCAN: By that you mean a verbal threshold and a \$50,000 cap?

MR. NANGLE: A verbal threshold and a \$50,000 cap.

MR. DUNCAN: That answers my question.

ASSEMBLYMAN DEVERIN: May I ask one more question? Let me ask you just a couple of hypothetical questions. Supposing we had no no-fault insurance. Supposing in 1972 we had just disbanded and did nothing. Would you be in a better position today in the insurance companies? Would the people in this State be in a better position for the availability of insurance and for better coverage?

MR. NANGLE: Let me answer that by saying this, Mr. Deverin: The No-Fault Package has cost the insurance companies one heck of a lot of money and the insurance industry would be better off in that regard, yes. The public, I am not sure. As I say, we have a lot of things that are operating against the insurance climate in the State of New Jersey and one is the attitude of the insurance department. You know, you can't put a dollar value on that. But, as

manager of a company, would you voluntarily commit your surpluses to an environment that is out to get you?

ASSEMBLYMAN DEVERIN: I am not sure that the Commission is going to answer, or handle, that particular question.

MR. NANGLE: No, but I am trying to answer your question as to whether or not we would be better off.

ASSEMBLYMAN DEVERIN: When you say your profits are worse now, do you put inflation into it - the cost of a hospital, the cost for a broken fender? Is that all considered?

MR. NANGLE: That's part of it, yes. Inflation certainly is a high--

ASSEMBLYMAN DEVERIN: Do you remember back in '72 that you weren't strongly opposed to no-fault, if I remember rightly?

MR. NANGLE: Mr. Deverin, we still propose no-fault, but sensible no-fault, balanced no-fault. We would never, in our wildest dreams, suggest the type of no-fault that came off of the New Jersey floor.

ASSEMBLYMAN DEVERIN: Well, it came out of the Committee a little different than the floor. It was amended.

MR. NANGLE: I understand that, sir. But, that is the problem with all legislation, as we all know.

ASSEMBLYMAN DEVERIN: Let me ask you one more question. Do me a favor, describe for me what a verbal threshold is, in your opinion.

MR. NANGLE: What is a verbal threshold?

ASSEMBLYMAN DEVERIN: Yes. Describe a verbal threshold for me.

MR. NANGLE: May I read a verbal threshold?

ASSEMBLYMAN DEVERIN: Sure.

MR. NANGLE: On page 8 I say, "This means that New Jersey should limit the right to a third party claim only in those cases involving death, permanent and significant disfigurement, loss of a body member, total disability for 90 or more consecutive days, or a medically determinable serious and permanent injury." As an aside I say, "The words 'serious' and 'total disability' should be defined." Now, this is a verbal threshold with a disability time limit on it - 90 consecutive days.

ASSEMBLYMAN DEVERIN: Do you think if a guy is sick for 86 days he won't stretch it to 90 to make the verbal threshold if he really wants to beat you out of something?

MR. NANGLE: I am sure he will. But is awfully hard to be sick for 86 days because his boss is going to want him to come back to work.

ASSEMBLYMAN DEVERIN: Do you think the verbal threshold will do away with all of the problems of no-fault?

MR. NANGLE: Mr. Deverin, I have heard testimony from a U.S. Attorney in Florida and a State's Attorney in Florida who concluded that you can't write a threshold that the sharp plaintiffs' attorneys and the fraudulent doctors down there won't somehow overcome. We don't feel that strongly. We think that a verbal threshold, properly administered by the courts-- Now, we have a problem in Michican, for instance. They say it is a great threshold. Congress says it is a great threshold. It is a very loose threshold because of the language. This is a lot tighter threshold that I propose here.

But, the courts have decided - and I guess most of us could

have said that they would have done this, but there is still some shock and dismay within industry - that it is up to a jury to decide what is serious and what is permanent and what is total, and all of these things. So, you may be compounding your problem with something like that if you have a liberal court. So, every case goes to the jury twice to see whether or not it has reached the threshold and then, at some later date, how much the injury should be paid. So, we are still searching.

SENATOR MENZA: Mr. Connell.

MR. CONNELL: Mr. Nangle, as you know this Commission is charged with the duty of exploring the effect and the possibility of changing, or amending, the threshold, which you referred to as a joke.

MR. NANGLE: Yes, sir.

MR. CONNELL: Now, are you familiar with the statistics that were released by the Department of Insurance which indicate that as of March 7, 1977 that portion of the BI premium was reduced from 1972 to 1977 by 12.8%? Are you familiar with those figures?

MR. NANGLE: I have heard the Department's figures on that.

MR. CONNELL: So, it would indicate that this joke threshold that you referred to, in that sense, is at least doing part of its job. It has reduced the premium rate that the people are paying for the bodily injury recovery.

MR. NANGLE: I am not sure that it has reduced it, sir. Maybe that is what the premium is and that is all the Department has allowed the companies to charge.

MR. CONNELL: In any event, the people - the consumers - are being charged less as of this moment than they were in 1972.

MR. NANGLE: If you accept the fact that the insurance companies are losing more.

MR. CONNELL: Okay. Now, are you also aware-- Being so hep on this threshold, the threshold was supposed to reduce litigation. Are you aware of the fact that in New Jersey it has, in fact, accomplished that result?

MR. NANGLE: I have heard that from some sources, yes.

MR. CONNELL: From some sources. Are you familiar with the no-fault automobile insurance experience - United States Department of Transportation, June '77--

MR. NANGLE: I certainly am.

MR. CONNELL: --Table 3-20, in which it specifically explores the New Jersey experience with respect to its threshold? Have you read it?

MR. NANGLE: I didn't specifically read it for New Jersey.

MR. CONNELL: Oh, I see. You didn't bother to pay attention.

MR. NANGLE: No, sir, but I read that report and if you read the entire report you will see that it hedges and that--

MR. CONNELL: Supposing I read you the fact - and this is on page 53 of the DOT Report - that the percentage of automobile negligence cases added in New Jersey and the Superior and county courts - which is our upper trial court - has declined from 55.8% in 1970 to 43.3% in 1976. This is the Department of Transportation Report.

Page 54 of the same report, dealing with automobile negligence complaints added in the District Court, which is the court of lower jurisdiction -- \$3,000. The threshold was drafted with the idea in mind of getting rid of

the nuisance suites.

Department of Transportation Report, 1970 -- The percentage of automobile accident cases added in the District Court was 10.7% and in 1976 it was 4%. That is a reduction of almost 6%.

Total cases added in 1976 -- 293,917 were added in the District Court and 11,715 of those were automobile negligence cases.

Would you say, sir, that according to those statistics in the United States Government Study that it does prove that our joke threshold has, in fact, helped to eliminate the nuisance suit?

MR. NANGLE: I am not prepared to answer that report. I am very critical of that report on other grounds. Maybe Mr. Czech will answer that.

MR. CONNELL: I refer, sir, again to the same report, page 55, on which there is an analysis of the Department's study of New Jersey. It states, "However, the marked acceleration of this decline in the Superior and County Courts and in the County District Courts after 1973..." - and they are referring to New Jersey - "...and the consistency of this accelerated decline from county to county in New Jersey, does suggest that the No-Fault Law is a significant contributor to the reduction in motor vehicle torts in New Jersey." Now, that is prepared by the Federal Government.

SENATOR MENZA: Next. Check. You realize, of course, Mr. Connell, that it is very difficult for a lawyer to cross examine another lawyer. He will never answer and you will never make your points. So--

MR. CONNELL: I know, but I just want to get this straightened out here. We are charged with the responsibility and this gentleman comes in as a witness and testifies that we have a joke threshold. I think it is incumbent upon us as Commissioners to find out whether it is, in fact, a joke threshold or whether it is "a silly threshold" - as it was referred to by someone else. Is it doing its job or isn't it?

I submit, sir, that I am entitled to continue my questioning.

SENATOR MENZA: Yes, so ahead.

MR. CONNELL: Now, when they talk about Michigan, Mr. Nangle, I am not too familiar with that. They talk about the fact that in Michigan the premium level has remained rather stable. You have heard that said. Maybe your studies will reflect that. Do they? Are you familiar with that?

MR. NANGLE: Once again, in Michigan there is a terrible rate inadequacy.

MR. CONNELL: I'm sorry--?

MR. NANGLE: There is a rate inadequacy in the State of Michigan.

MR. CONNELL: Well, I am talking about newspaper stories in this state. They hold up Michigan as a model and New Jersey as "the worst no-fault law in the nation." Now, all I want to know is, are you familiar with the fact that they do claim that the Michigan premium level has remained consistent?

MR. NANGLE: Mr. Connell, I will answer that question by saying that if the Insurance Department here in New Jersey said that all companies will now charge half of what they are charging, you could say in the newspapers the next morning that insurance rates have gone down by one-half. That is about the extent of what the Michigan thing is.

MR. CONNELL: In other words, you don't agree, then, with the charge that -- or the allegation that Michigan's premiums have remained level?

MR. NANGLE: I agree that they remained level but it is a level by fiat.

MR. CONNELL: Okay. When they talk about the Michigan rate level being stable, are they discounting the rates that they are presently charging by the increase in inflation? Are they discounting that rate by the percentage of an inflationary increase?

MR. NANGLE: I am not sure I understand that question, sir.

MR. CONNELL: I was just curious. You made a reference to that on page 13. "What has been the rate increase in auto premiums since enactment of 'no fault' after discounting the inflationary factor and what is the actual profit?" That is the question you asked but you said you didn't have time to answer it. All I am asking you, sir, in your nationwide experience, is, do you know whether, then they talk about Michigan - which they hold up as a model no-fault law - they are discounting their rates by the inflationary increase when they talk about the rate being stable?

MR. NANGLE: I am not sure what the media or what the department has done when they put that out. As I say, I don't even know whether you can get these figures. But, I am asking our people in Chicago to see if they can't get some together that are credible for this Committee. I seem to agree with you, Mr. Connell, that the Michigan Law may not be the best in the world.

MR. CONNELL: I am not saying that it is or it is not. I don't know enough about it. I am trying to get some information for the rest of the Commission members here. But, it has been referred to in our papers as being a model no-fault law and we are trying to find out why they claim it to be that.

MR. NANGLE: They say the same thing in the Congress of the United States.

MR. CONNELL: Yes.

SENATOR MENZA: I would like to hear from the next witness so we can move this along. Mr. Czech?

Mr. Nangle, would you keep yourself available, please?

MR. NANGLE: Sure.

SENATOR MENZA: Mr. Grover Czech, American Insurance Association.

GROVER CZECH: Good morning, Mr. Chairman and members of the Commission. My name is Grover Czech. I represent the American Insurance Association.

SENATOR MENZA: Excuse me. Will the reporters present please check with Pete and Laurine during the break. They will give you all the statements. Okay? Just write the story right for once, okay? I'm sorry.

MR. CZECH: All right. We are a national trade association whose membership consists of about 150 of the large stockholder owned property-casualty companies. They do business in all 50 states and many of them, of course, do business in New Jersey, with several having their home offices here. In addition to the NAI's rough approximation of 50% of the auto market, our companies write about one-third of the auto market. So, you do have here, along with Bill Fox of the Alliance, just about the entire auto market represented this morning.

John Nangle covered a great deal of the things that I would have said and I agree for the most part with what John said. We differ in some areas. What I will do, for the benefit of the Committee, is to summarize my statement and hit the points that I emphasize and that John didn't. Then I have made

some notes on some of the questions that came up that I can respond to, perhaps, a little differently than John did.

One thing I did in the first part of my statement, just for the benefit of the Committee, was to outline, briefly, the original reasons for the no-fault concept. Now, I won't go through those because I think everyone is well aware of those and we are really not here to justify the no-fault concept - I don't think. I think we are here to look at the present law and to try to identify the deficiencies and to improve it and make it work better for the benefit of the public in New Jersey.

One thing I will say before we get started is, I appreciate and noted Senator Menza's remarks this morning that the Study Commission intended to be a serious Commission and to make recommendations and, hopefully, accomplish something. We have had several legislative hearings over the past year or two on no-fault and on the other insurance related issues. The Governor's conference took place at Drumthwacket and all of these issues have been discussed in great detail and we are hoping now that this Commission will serve as a focal point to bring all of this together, make some recommendations, and actually take some action in the Legislature to help improve the - as John Nangle put it and I agree with him 100% - disastrous situation here in New Jersey in not only the automobile insurance market but in other areas as well. - although what your Commission is trying to aim at is auto insurance.

I think the first point I would like to make is, there were some questions raised about the impact of no-fault on insurance companies' profits and I would not say that no-fault itself has had a negative impact on profits or has caused the losses. What has caused the losses has been a whole myriad of related factors, including the tremendous unanticipated and unprecedented inflation that took place in '73 and '74 - the double digit inflation - that simply wasn't anticipated in the rates the companies had established. For about two years or three years - as a matter of fact, the last three years - companies have lost, cumulatively, almost \$9 billion in underwriting and that is completely unprecedented in the history of the insurance industry, which is one of the oldest in the country. That is not all due to no-fault; it is due to inflation and the inability of the companies to quickly adjust their rates to reflect that rapid inflation. This is due largely, in part, to prior approval rating laws.

I have attached to my statement a brief summary of the impact of inflation and no-fault on auto insurance rates in some of the states. You can see in there that, based on some of the studies that we have done, no-fault actually has helped with the rate situation rather than added to the problem.

SENATOR MENZA: May I just interrupt you? I want to make sure I heard that clearly. Are you saying that the losses that the insurance companies have experienced in the last few years have not been from no-fault but, in fact, from the inflationary spiral?

MR. CZECH: What was the last part of that statement?

SENATOR MENZA: But, in fact, has been as a result of the inflationary spiral?

MR. CZECH: To a great extent it has been the result of inflation. Now, I am not saying that no-fault -- I am not sure unlimited medical is a major part of it. I am not sure at all that no-fault has been a major factor.

It has, obviously, been a part of it. There has been some fraud in some states. There have been some costs that perhaps you wouldn't have had with the liability system. But, I would say a large percentage - maybe 90% as a rough guess - of the losses are from inflation and these other factors.

MR. CONNELL: 90% would you say?

MR. CZECH: I would say so. I don't think the no-fault concept can be faulted at all in any significant way for the losses that have taken place in the last two or three years.

SENATOR MENZA: Would that be the same--

MR. CZECH: With the exception of the weak thresholds now. Obviously, that is a problem.

SENATOR MENZA: Please forgive me for interrupting you, but would that statement hold true for the State of New Jersey, that 90% of the--

MR. CZECH: Well, that is not an accurate statement. I was trying to give some impact. A large percentage of the losses are due to inflation.

SENATOR MENZA: A large percentage of the losses the insurance companies are experiencing is from inflation and not from no-fault? Is that also the case then in New Jersey?

MR. CZECH: Oh, yes. It is true nationwide. Now, I want to emphasize that the main fault with the no-fault laws, with regard to the losses that are occurring as a result of no-fault, come from an inadequate threshold - primarily - again, because you haven't limited enough - as John was emphasizing - this balance that has to exist between the benefits package and the no-fault law. The first part no-fault benefits a company is paying out has to be balanced by having a very adequate, or tight, tort threshold so that you reduce the litigation, you reduce the litigation cost - the frictional cost - and you reduce the pain and suffering that you are paying out. So, those savings that you accomplish over here, you can use to pay the first party benefits over here. Now, that, for the most part in most of the states, or in all of the states, has not been adequate, with perhaps the exception of Michigan, in terms of getting the savings on the bodily injury premiums that you need to make the personal injury protection premiums, or payments. That is really the problem with no-fault. It is the threshold.

Again, without reading my statement, getting back to the New Jersey no-fault law specifically, it is working well in many ways in that it is paying first party benefits promptly and fully, to the extent that the law requires, to all automobile accident victims, as opposed to somewhat less than half - as, again, John Nangle emphasized - under the prior tort system. So, in that regard it is functioning as the concept said it would. But, again, it is not functioning as it should in terms of the tort threshold because you are not getting the savings on the bodily injury side that you need to make the payments on the no-fault side. So, we are also taking John's position - a tightening of the threshold to one of a verbal threshold. We agree, word for word, with the threshold that he read. This was worked on by the three trade associations and State Farm and that language was developed by us. In fact, I have attached to my statement nine amendments to the no-fault law itself that we worked up six or seven months ago and have submitted to the Governor's office and to the various legislative committees, which the industry agrees with and agrees would help improve the no-fault law.

Now, specifically, to answer some of the questions that came up with regard to the threshold that Mr. Connell was raising, I took a fairly close look at this. I tried to compare the New Jersey results under no-fault with regard to the bodily injury premiums, which is really what you are affecting when you have a threshold. You are reducing the liability suits, which is what the bodily injury premium pays for, and you are impacting the personal injury protection no-fault benefits on the other side.

Now, I took the Michigan statistical data which I have available to me. This is something that the National Association of Insurance Commissioners required on the part of the industry back during the energy crisis. What it is is, it requires the industry to report quarterly on the loss data under no-fault and under auto insurance generally. It shows what we call pure premiums - pure premium losses. It has nothing to do with rates. It simply shows the number of dollars paid out for bodily injury and for personal injury protection losses, exclusive of expenses. It is pure premiums - simply those dollars of loss that are paid out.

I am going to have to read some of this to give continuity to it and to specifically address what Mr. Connell was talking about. If you look at the fast track data for New Jersey, the pure premium for bodily injury coverage has declined 12.1% since 1972. Now, this is less than the rate of inflation, which has been about 50% since that time. So, what Mr. Connell says is true, there has been some impact. The threshold has had some impact on the bodily injury claim.

MR. CONNELL: Excuse me. I was just quoting from a report.

MR. CZECH: All right. Well, what the report says is true, that the threshold obviously has had some impact on the bodily injury premium but it hasn't had enough, and I will get to that later.

If you look at the number of dollars that are still being paid out in bodily injury and you compare it to Michigan and countrywide, it is considerably greater than it should be. So, what this means is, basically, the threshold has done some good but it hasn't done enough. It is a very weak threshold.

But, the number of bodily injury suits has declined. The average payment per claim has been increasing. It has increased 25 1/2% from the end of 1975 to the first quarter of 1977. That is a tremendous increase.

Now, comparing Jersey's results to Michigans, which does have a strong verbal threshold, this clearly demonstrates the impact that a verbal threshold will have on both bodily injury premiums and the reduction in tort suits. Jersey's BI premium is now 12% higher - I am on page 4 - than it was prior to no-fault in 1972. That is \$47.10 in March, 1977, versus \$42.00 in 1972. So, the BI premium is actually higher now than it was under prior no-fault.

Michigan's bodily injury pure premiums, in contrast, show an absolute reduction of nearly 50% from the pre-no-fault level in 1972. Their bodily injury premium is now \$18.66 in March of '77 -- not premium, but pure premium losses that are being paid out, versus \$36.26 prior to no-fault. So, you can see the dramatic impact that the Michigan verbal threshold has had on bodily injury premiums.

In '72, in Michigan, a total of 52,000 claims were paid under the bodily injury liability coverage. In the year ending last March only 6,500 claims were paid. That is a drop of 87 1/2% in the number of claims - bodily

injury claims in Michigan - under that tight verbal threshold.

New Jersey has also experienced a 56% decline in the frequency of bodily injury liability claims but this is not meaningful enough in terms of savings when you compare that with the constant increase in the size of claims and the increase in the dollar payout.

Again, if you look at the top of page 4, just since the end of '75 to the beginning of '77 it has increased 25%.

SENATOR MENZA: May I interrupt you? I am a little confused. You say that Michigan's great impact was on premiums and the fact that there were less court cases and then you go on to say that the number of claims paid dropped from \$52 thousand to \$6 thousand. How about the person who was injured? How is he gaining in Michigan? Forget the premiums for a minute. Forget the court litigation. Because I am convinced the courts are there for a reason. I am not concerned about the number of cases in a court room. How is the consumer benefiting in Michigan? How is the person who is injured benefiting?

MR. CZECH: Okay. That is the whole basis of the concept of no-fault. No-fault is paying everybody now. It is paying 100% of auto accident victims, while under the prior no-fault system it was only paying less than 50% of those who were injured. Only those who were free from fault were theoretically compensated under the tort system - the liability system. Now, under no-fault, everybody who is injured in an auto accident situation is compensated for their economic loss. They are compensated for their wage loss, up to a certain amount. They are compensated for their medical payments. In Michigan they have unlimited medical replacement services, and all of the other things that no-fault compensates.

SENATOR MENZA: But they are primarily - particularly in Michigan - not compensated for pain and suffering.

MR. CZECH: That's right. Now, again, that is the concept of no-fault. To be able to afford to pay all these people you have to do away with general damages.

SENATOR MENZA: Well, that is the concept of no-fault coupled with the threshold. You know, at a certain point you say to a fellow, yes, you go ahead; you have a right to sue for pain and suffering.

MR. CZECH: Right.

SENATOR MENZA: You know, here is a classic example: In 1955 I hurt my back in the army. It can't be picked up in an x-ray. It still kills me every once in a while. I am twisted once a week or once a month, whatever it may be. What about my situation?

MR. CZECH: About what?

SENATOR MENZA: What about my situation? I go to a doctor. This is the result of an automobile accident. I go to a doctor two or three times and he says, go home and go in the bath tub and take care of yourself and for the next 10 years I suffer from this terrible back. And, I do, in fact, have a terrible back. What about me? Is it fair that I get my \$30 for my three visits or should I not have a right to sue the fellow who struck me?

MR. CZECH: That, again, is the argument that always comes up when you are talking about the no-fault concept. It depends upon how you write the threshold, whether that kind of injury would pierce the threshold. It depends upon the threshold. I don't have the Michigan threshold here in front of me.

I don't know how that would impact. But, you are always going to have that kind of a situation. Certainly, there is always going to be someone who is adversely affected by a threshold. They may only collect \$60 in medical and not be able to get a penny in pain and suffering, even though they do have pain and suffering.

SENATOR MENZA: No matter what the threshold is, there are an awful lot of poor people and an awful lot of honest people who just don't meet the threshold.

MR. CZECH: Well, if you read, in fact, this report that Mr. Connell was quoting from this morning - the DOT Report-- This is the most recent one. If you read the earlier one as well, that really started the whole no-fault concept, they have a whole section in there on how this impacts on the poor. One of the basis for no-fault was that it favorably impacts on the poor. Under the liability system they didn't fare well at all. Oftentimes they didn't get a lawyer under a liability situation and went totally uncompensated, not only for pain and suffering but for their economic loss as well. Now, they are being compensated for total economic loss and, to some extent, for pain and suffering when they pierce the threshold.

You have to remember the original no-fault concept was a pure concept of having no tort at all. It was completely doing away with tort and paying everyone unlimited medical and paying for their economic loss - again, doing away with pain and suffering.

We don't have any true no-fault anywhere. We have a modified no-fault, or partial no-fault, system in all of the states, some more than others. New Jersey is the smallest threshold in the entire country.

MR. DUNCAN: Mr. Czech, just a question in my mind. I listen to lawyers talk. I have heard that - let's assume you had a \$5,000 threshold here now - when cases go to the jury and the jury knows that it is a \$5,000 threshold they take that into consideration. Is there any logic to that? This would sort of negate the whole question of thresholds. Would juries take that into consideration, do you think? And, if you had a friendly county that tends to want to pay out, that, indeed, it would be stretched by the jury itself?

I am not arguing the point for or against, but to bring some discussion on whether dollar thresholds or verbal thresholds, or for that matter any thresholds are really workable at this time.

MR. CZECH: Well, I am not sure that has any bearing on it. You don't get to the jury until you pierce the threshold in any event and the jury is making its determination based on the evidence that has been introduced as to losses. So, I am not really sure how that psychology works. I can't really--

MR. DUNCAN: Well, can I sum up my understanding of your testimony as, the companies you represent think that the no-fault law that exists in New Jersey is compensating the public properly, quicker, and that, indeed, you agree that the court claims have gone down and that that is a hidden savings to the system but that there are, perhaps, some holes in the no-fault which could be specific - a cap and some different approach to a threshold that you think would fix this system? You don't see this system being taken out at all? You would like to continue with no-fault, at least in the way it is here in New Jersey, with some adjustments?

MR. CZECH: That is a very good summary of what I am saying.

MR. DUNCAN: Right. Would that be if you couldn't - not to get into the other part - get a sort of use and file type law? Or, is that tied in and part of what you are saying?

MR. CZECH: Well, there are a lot of problems, obviously. If you improve the no-fault law, it is going to help. You are not going to see any impact on premiums in terms of a reduction for several reasons. One is that there is a rate filing pending now for 35% overall. Bodily injury premium is somewhere in there. There is an increase filed for that. So, even if you do something about the threshold, all that is going to do is impact on the smaller rate increase. Obviously, consumers will benefit by paying less premiums than they otherwise would have but you are not going to see any reductions. Obviously, it will do some good in terms of the premium and in terms of what companies are having to pay out and in terms of their losses.

If you really want to fix the problem in New Jersey, you are going to have to get at the whole rating situation - the residual market in no-fault. As John Nangle said - and I agree with this 100% and I don't mean to say anything unkind about the gentlemen from the Insurance Department that are here today - there is an attitude in this State on the part of the regulator that is totally at odds with the insurance industry. There is a tremendous lack of cooperation and coordination and anything that we try to do is opposed. Of course, it works the other way around also; almost anything they try to do is opposed. But, there is no working together. There are no rational solutions that are being proposed from the regulator, as is done in other states. So, really, until you get at that basic problem, the whole situation is not going to be fixed. At the base of it all is rates. There is no question about it. That is the basis of the availability problem. Companies are losing money.

MR. DUNCAN: Do you see any hope of saving any more money? In other words, if the objective of this Commission was to fix the holes and make it work, will it necessarily save money and reduce rates? Is there anything we can do to reduce rates?

MR. CZECH: To reduce rates?

MR. DUNCAN: Yes. For instance, will a cap and another verbal threshold, taking out the inflation factor, in effect reduce them?

MR. CZECH: No. You are not going to see any absolute reduction. In other words, if someone is paying \$30 on a premium today, they are not going to pay \$28 tomorrow - or \$26. Instead of paying \$40 next year, they may pay only \$35. That is the kind of impact it is going to have. They will pay less than they otherwise would but not less than they are now.

MR. CONNELL: Excuse me. I am just trying to get straightened out here. This fast track data that you gave us, is that with respect to the BI claims? It has nothing to do with the PIP?

MR. CZECH: There is one there for BI and there is one for PIP. There should be two separate sheets.

MR. CONNELL: Apparently we only have the bodily injury, not the PIP.

MR. CZECH: If you flip that over, on the second sheet--

MR. CONNELL: There is a second sheet? That is the PIP?

MR. CZECH: It should be PIP.

MR. CONNELL: Okay.

MR. CONNELL: Now, am I correct - I have to assume this - when I say that in New Jersey, as we understand it - or as I understand it on the figures submitted - approximately 22% of our premium dollar is devoted to the BI, \$15/\$30 limits that the consumer presently spends? Now, do I understand you correctly - that by changing our threshold to a verbal threshold it will result in a reduction of that 22%, is that what you said?

MR. CZECH: Clearly it should.

MR. CONNELL: Well, clearly it should but if it should, how much will it result in a reduction?

MR. CZECH: There is no way that I can sit here and tell you that. It is like saying if the State of New Jersey decides to reduce 'x' number of employees in the budget next year, what that is going to do to the overall budget.

MR. CONNELL: Would you expect it to be reduced by more than say 5% of the present \$64.80 that we are presently paying?

MR. CZECH: I hesitate to say. What you would have to do to get a reading on that - that is, have some actuaries cost it. You would have to have a specific threshold with specific words in it.

MR. CONNELL: Well, I thought you had all that because you are telling us that we have to change our threshold because it will save on the BI portion of the premium dollar, which then can be thrown over into the PIP portion to help compensate for these inflationary bills for medical and hospital costs. Now, how much are we going to save on the 22%?

MR. CZECH: Let me say this, without holding me to any specific amounts, because I haven't asked anyone to cost any threshold--

MR. CONNELL: Well, how can you come here and say our threshold is not good then if you haven't costed it?

MR. CZECH: Because we can tell it is no good. If you look at the Jersey results compared to Michigan, with different thresholds and the pure premiums that are paid under bodily injury, there is obviously a difference, a significant difference.

MR. CONNELL: Oh, well let's talk about that for a second. A pure premium, as I understand your figures, in Michigan is \$47.10. I assume you are talking about basic limits?

MR. CZECH: No, that is not what pure premium is. It is \$18.66 for bodily injury.

MR. CONNELL: What?

MR. CZECH: It is \$18.66 in Michigan for bodily injury.

MR. CONNELL: I'm sorry. I am talking about New Jersey. It is \$18.66 in Michigan and it is \$47.10 in New Jersey, according to your fast track figures.

MR. CZECH: Right.

MR. CONNELL: Which is approximately about \$29.00 difference - correct?

MR. CZECH: Yes.

MR. CONNELL: Which would amount to a saving of how much per day, about, 7¢ or 8¢ a day for the consumer? Is that what it would amount to?

MR. CZECH: That is your arithmetic. I don't know. I would have to figure it out.

MR. CONNELL: Well, all you have to do is divide it by \$3.65 and it comes somewhere in that area. I am not a mathematician. So, your position is

that the citizens of this State should do away with this "joke" threshold and completely give up the right to sue and this Commission should so recommend, with a possible cost saving of \$27 or \$28 a year, divided by \$3.65, or whatever it is. Is that what your recommendation is, with no factual backup as to how much we are going to save on the bodily injury premium after we do that?

MR. CZECH: Well, again, this is a policy position that you are going to have to address. It has been addressed in other states and they have reached decisions. You are going to have to do that.

I will say - and don't hold me to this - that in New York, when they were going through this wrestling in the last few weeks over the changing of the threshold there, they didn't end up changing it very well, in fact they made it worse. But, there were some estimates that the impact on bodily injury premiums was anywhere from 5% to 20%, depending on the kind of threshold that was written. So, it depends upon--

MR. CONNELL: Excuse me, I understood that 5% to 20% was for the whole package.

MR. CZECH: No. They were talking about the impact on bodily injury.

MR. CONNELL: Just on BI?

MR. CZECH: On BI.

ASSEMBLYMAN DEVERIN: Mr. Czech, you say - and I have to go back to something Mr. Nangle said before - that there is a dramatic difference in the premium from '75 in Michigan compared to -- And, we don't have that in New Jersey.

MR. CZECH: Now remember, this is--

ASSEMBLYMAN DEVERIN: I gathered from Mr. Nangle that it went from \$21.00 to \$18.66 for bodily injury.

MR. CZECH: Yes.

ASSEMBLYMAN DEVERIN: Which is a dramatic difference.

MR. CZECH: Right.

ASSEMBLYMAN DEVERIN: Which is a great difference. I gather from Mr. Nangle's conversation that in Michigan there was a freeze, or something, with the premiums?

MR. CZECH: There was a rate reduction at the time the law was passed - as there was in Jersey - of 15%.

ASSEMBLYMAN DEVERIN: Yes, but since that time--

MR. CZECH: It has only been one year.

ASSEMBLYMAN DEVERIN: Where?

MR. CZECH: You are comparing. I don't know. Maybe I misunderstood what you said. But, you said in Michigan it wasn't as great as it was because of what they did with the premiums - they froze the premiums?

ASSEMBLYMAN DEVERIN: No, I think he said there was a premium inadequacy.

MR. CZECH: As there is in New Jersey.

ASSEMBLYMAN DEVERIN: Yes.

MR. CZECH: Do you mean there is a hostility in the Insurance Department there like there is in New Jersey?

ASSEMBLYMAN DEVERIN: Well, there is a refiling that has been pending for several months now in Jersey for a 35% overall increase and a bodily injury

increase of - I have it here somewhere - somewhat less than 35% of the basic limits and about 140% increase for your increased limits on bodily injury, which, again, shows the weakness in the threshold because as you get to your higher limits in bodily injury, the premium increase is 140% - at least that is what has been filed for. That would indicate there is a significant problem with the threshold.

MR. CZECH: It is not that Michigan has a better no-fault law, but it is that there was a freeze on the premiums.

ASSEMBLYMAN DEVERIN: I beg your pardon?

MR. CZECH: The dramatic increase came because of the rate reduction built into the law and because the premiums haven't changed in a year.

There have been increases. I think a fair statement would be that, obviously, as John said - and I am not totally familiar with this - there is a premium rate inadequacy in Michigan. But, again, what you have to remember is, these figures that I am giving you don't have anything to do with premiums. These are pure losses paid out. These are dollars that insurance companies pay out to claimants. They have nothing to do with premiums. This is not rate-making material. This shows losses paid. Regardless of rate increases, or rate decreases, or whatever, those figures are unaffected by that. That is why they are useful figures. You don't have to worry about what the rate situation is. It simply shows dollars paid out.

ASSEMBLYMAN DEVERIN: Yes, but you said there was a dramatic decrease in Michigan when there wasn't in New Jersey.

MR. CZECH: Yes.

ASSEMBLYMAN DEVERIN: But you increased your payments - or paid losses - in Michigan by almost 6 to 1.

MR. CZECH: Under PIP?

ASSEMBLYMAN DEVERIN: Yes, under bodily injury. In '75 you used to pay out \$15,000 and now you are paying out \$55,000 and your premium went down. So, you must be in worse shape in Michigan than you are in New Jersey.

MR. CZECH: No. That pure premium for bodily injury is per paid claim. It is per car, basically. It is \$18.66. When you compare that to New Jersey per car it is \$47.00.

MR. CONNELL: Is that what the consumer's bill reflects, \$18.66?

MR. CZECH: No, this is not premiums. Again, this is pure losses paid. It doesn't have anything to do with premiums. It will relate to it generally but there are a lot of other things that go into premiums. That is why I tried to give you this information because it is pure losses. It doesn't show administrative expenses and it doesn't show loss development - all the way through.

ASSEMBLYMAN DEVERIN: Let me ask a quick question. You said New York changed and they made it worse. What change did they make in New York to make it worse? They went to a verbal threshold, didn't they?

MR. CZECH: Yes. The old threshold had \$500 and a compound fracture. Now they did away with the \$500 figure but they put in any fracture. So, if you break a finger, you pierce the threshold.

ASSEMBLYMAN DEVERIN: But it is a verbal threshold they have in New York now?

MR. CZECH: It is a verbal threshold.

ASSEMBLYMAN DEVERIN: And that is worse than a dollar threshold?

MR. CZECH: Well, that particular threshold may be worse than the present threshold. That remains to be seen. But, in the opinion of many, that fracture language weakens it.

MR. HAGAR: Looking at this pure premium data from Michigan, first of all, pure premium in this sense would be the same as we were used to in New Jersey for Workmen's Compensation statistics, am I correct?

MR. CZECH: That's right.

MR. HAGAR: If you look at the dollar expenditure, you are talking about, in 1977, \$13 million under bodily injury and \$55 thousand in '76, which is a total of about \$68 million. If you look under the personal injury - which didn't reflect - you have higher dollars paid out, actually, in total in the current year because it has been shifted, which I think is what your point is, from the bodily injury to the personal injury protection, is that correct?

MR. CZECH: That's right.

MR. HAGAR: Isn't it a fact that the theory behind personal injury, in any event, is to eliminate the need but not the right to sue?

MR. CZECH: Exactly.

MR. HAGAR: That the person is compensated not because he has to go to court to be paid but because he can be paid without the necessity for going to court, isn't that the thrust behind it?

MR. CZECH: That's right.

MR. HAGAR: So that the statistics you are introducing here seem to reflect that fact, not to get bogged down in the statistics but in the overall summation, is that correct?

MR. CZECH: That's right. I don't want to get bogged down. What it shows, basically, is a flow of the pay-out from bodily injury prior to no-fault to the personal injury protection after no-fault. Companies are simply paying out without regard to fault.

MR. HAGAR: Does New Jersey reflect similar shifting?

MR. CZECH: Oh, yes.

MR. HAGAR: Not as significant but, nonetheless, the trend is there?

MR. CZECH: Oh, yes. It reflects a significant shift. The thing you have to remember about the liability situation too is the individual gave up the right to sue but it was a right where you may or may not make recovery. Today he does.

MR. CONNELL: Mr. Czech, do have any data that shows how different levels of thresholds would have affected the filing of a tort claim, based on actual claim files?

MR. CZECH: I don't have that now. I am not sure anyone does.

MR. CONNELL: Do you know if anyone has gone into claim files to explore that?

MR. CZECH: They did during the DOT study. That information is in the original--

MR. CONNELL: Is it in this March 1977 DOT study?

MR. CZECH: No, it is in the original DOT study.

MR. CONNELL: It is in the original one? They didn't do it in the renewal?

MR. CZECH: No. Now, there is a new study underway.

MR. CONNELL: Well, if no one has that material, do you think it would be wise for this Commission to go into a study of our closed claims files?

MR. CZECH: Well, you could do that. I think you could also get an estimate from the Insurance Department and from the Insurance Services Office as to the impact any given verbal threshold or dollar threshold would have on bodily injury premiums. You could get that. To the best of their ability they could give you that.

MR. DUNCAN: Another question, just to clear up my mind. The logic of reducing bodily injury rate, depending upon thresholds, depends upon the shift to PIP, correct?

MR. CZECH: Right.

MR. DUNCAN: The more losses that are shifted to PIP, the lower the bodily injury rate.

MR. CZECH: Right.

MR. DUNCAN: But in the overall cost, as you move the losses to PIP, actually you might be reducing the BI and increasing the PIP so that the overall policy is merely going down in one area and up in another, is that correct?

MR. CZECH: Well, to some extent. But, you have to remember when you get away from the BI you are getting away from litigation - the expensive process of litigation - and there are societal costs as well. You have your court congestion. You have your court costs. You have the delay in payment - 16 months on the average prior to the no-fault law. You are doing away with all of those problems when you go to a no-fault system. You are compensating people within 30 days, or so, of their injury.

MR. DUNCAN: So, you are saying a dollar paid out under PIP is paid out with less expense than dollars paid out under bodily injury?

MR. CZECH: Yes. There is no question about that - both direct expense and indirect expense are less under no-fault than they are under liability.

MR. DUNCAN: Right. So, what I am to assume here if I am the guy buying insurance is, you are saying you really can come off with a lower cost package if we have good no-fault/PIP benefits that will allow you to collect the dollar you spent and that, in effect, with a different threshold there will be less coming out of the system. Do you still go along with the DOT system that said small claims are over-compensated and large claims are under-compensated?

MR. CZECH: No question about it. The most recent study reiterates that.

MR. DUNCAN: Does it still exist under no-fault?

MR. CZECH: No.

MR. DUNCAN: Do, in fact, bad thresholds cause that condition to go on?

MR. CZECH: Under the cases that pierce the threshold, I would assume that is probably still true. The larger cases are being over-compensated.

MR. DUNCAN: All right. Now, suppose that in this situation we assume that I have a scratched arm and I go to a doctor for a \$10 visit to have the scratched arm bandaged. I can't sue. But, if I keep going back because he suspects an infection and I run the bill over \$200, I am going to find that now I have a right to sue. This would not be a proper approach and it is your feeling that you would like to get rid of that type of an arrangement, for the so-

called "whip-lash" thing.

MR. CZECH: Just to correct one thing I just said, I think under no-fault the over-compensation of small claims to a large extent is done away with unless they pierce the threshold. Then, say, if you have a \$250 medical case, perhaps once you get into the tort system you may get in, again, into a situation where the small cases are being over-compensated and the larger cases, perhaps, being under-compensated by the tort system. No-fault doesn't do that; it evens it out. No matter what your economic situation is, no matter what your ability or financial condition is to obtain an attorney or obtain counsel - or whatever - you are going to be compensated equally under no-fault rather than unequally under the liability system.

Again, the DOT study went into this aspect of it as well. That is one of the reasons they supported no-fault.

There are a couple of other points in my statements.

SENATOR MENZA: Mr. Czech, may I ask you a question? I am not so well versed in insurance as some of these gentlemen but I have been a politician for a long time and it seems to me that the insurance companies' position is not totally altruistic. It is interesting to note that you say the rates will eventually go down, or stabilize, but they will not go down now.

I ask you, number one, why wouldn't they go down if we changed it totally tomorrow? Why wouldn't they go down to \$30 or \$28? And, secondly, I presume if we change the threshold or changed no-fault, let's say in a manner similar to Michigan's, insurance companies will thereby make more money. And, yet, you started your remarks by stating that 90% of your problems in the insurance industry, with regard to income, have been caused as a result of inflation and not because of no-fault.

In other words, no-fault has had a very small impact on rates and insurance losses and income, isn't that correct?

MR. CZECH: I wouldn't say small but in a relative sense--

SENATOR MENZA: Relatively small?

MR. CZECH: It is relatively small.

SENATOR MENZA: And if we change no-fault in a certain fashion, that very small impact will remain a small impact but will help you pick up the money that has been affected by inflation, isn't that correct? That is overly simplistic, I realize that but you are answering yes.

MR. CZECH: Yes. You said something I think should be addressed in this whole scheme of things. There is probably feeling - and I think you touched on it - that improvement in the no-fault law, in no-fault itself, will help insurance companies make more money. That is not necessarily true. We are regulated by the State, either under prior approval or generally the rate filings here in New Jersey cannot obtain anymore, I believe, than a 2 1/2% or 3 1/2% factor for underwriting profit. So, we are not going to make any more than that anyway.

SENATOR MENZA: Why, then, do you want a change in the no-fault law?

MR. CZECH: So that the system will work better. We are trying to--

SENATOR MENZA: The people of New Jersey will gain thereby? Is that why? Because that is unique for insurance companies to be so altruistic.

MR. CZECH: It is really not. Believe me, we try to structure our

position so that they fit public policy in a way that we can justifiably pursue them. We are not going to try to do anything that goes against public policy.

SENATOR MENZA: You see, we have been hearing for years and years and years - and I have read some ads recently in the New York Times - from the insurance industry and I came across this because I am involved in the psychiatric community. Blue Cross and Blue Shield always say things like we are losing a fortune if you go this way and their statistics demonstrate this, and so forth. It is funny we never get statistics - we never really hear this-- You know, this is the very first time I heard that the insurance companies - and I know you are speaking for many of them, I am sure you have the credentials to back up what you are saying - are losing money not because of no-fault, or they are not making - there is a difference, by the way, between losing money and not making as much as you made before - money because of the terrible inflation in our society. You stated that to me at least four times. You answered that, "Yes, that is the case." At least we are starting with a wave of honesty.

MR. CZECH: There is no question, that is a major problem. Again, this no-fault picture is a small piece of the pie. You have to fix that and you have to fix all the other pieces to get everything working right.

SENATOR MENZA: It is a very small piece of the pie, isn't it?

MR. CZECH: Well, I wouldn't say very small, I would say it is a significant piece that has to be addressed. In addition to the threshold, there is another problem in the bill, Senator Menza, that I would just like to speak on briefly, and that is the unlimited medical. Our Association and our companies originally supported unlimited medical. We thought that we could handle it and to some extent many of our companies still can. But, there are also many who feel they have a problem with it, particularly the smaller companies. They had to establish incredibly large reserves to handle these paraplegics. You are going to have to set up a reserve for one million dollars, or more. You really don't know how much it is going to be if you are taking care of someone over a lifetime.

SENATOR MENZA: We are very familiar with that aspect of it. The only one who wants some limit to medical is David Green, I think.

MR. CZECH: No, we are all interested in it, I think. And, John touched on this bill, 1380, that passed the Legislature and is sitting on the Governor's desk. We are very much opposed to that. We think that is the wrong approach to it. If you want, address the problem, put a flat cap on the unlimited medical of \$50, \$75 or \$100 thousand - something that will compensate the majority of injured victims but, yet, give the companies some definite end where they know what the liability is going to be. Then, require them, if you want to, to offer coverage above \$100 thousand, up to \$1 million. Companies would be willing to do that.

MR. CONNELL: Mr. Czech, part of our study has to do with physical damage costs here, which take up about 65% or 70% of the premium dollar. Do you have any recommendations along those lines?

CZECH: That is a tough problem. We have been wrestling with that ourselves in our Association and we really don't have any answers to it. We have joined - or I am not sure we did, we thought about joining one time in an amicus brief with one of the large auto companies who was suing General Motors

and some of the auto companies because of some anti trust implications on crash parts and the Federal Trade Commission has been involved in this too. Everyone is trying to get a handle on the cost of crash parts.

MR. CONNELL: Do you agree with what they just presently did in New York, where the carrier, as I understand it - I only know what I read in the New York Times - has to go out and take a picture of the car before they write it, or examine the car? Do you think that will help?

MR. CZECH: Well, it may help but we don't agree with it because we think it is going to cost as much, if not more, to go through that process of verification than you are actually saving on the other end.

Now, whenever you set up a scheme like that to get at fraud, or whatever, you really have to be careful that you don't set up something that costs more than the savings that actually may accrue from the whole process that you are going through. I think that is what is going to happen in New York. That is as expensive as can be, to send somebody out to verify the existence of every car. There are a lot of cars in New York.

MR. CONNELL: One more question. Is it possible for an insurance company to have an underwriting loss but have a profit? In other words, isn't it true that a good deal of the companies actually have had - and I won't use the word reasonable, I don't know what reasonable profits are - profits while incurring an underwriting loss? Could you explain how you give investment profit to the rating system, if any?

MR. CZECH: Well, I can explain that process, I think satisfactorily, to the Commission. Obviously, companies do make money on investment income. In fact, if it wasn't for investment income a lot of them wouldn't have survived the last three years with the \$9 billion in the underwriting profits. That is the only thing that saved a lot of companies. In that process of losing \$9 billion in underwriting, a lot of them also lost money overall. Their investment income was not enough to give them an overall profit. And, there have been many companies in the last three years that have suffered total losses - period - factoring in both investment income and underwriting. It was a mixed bag; some did and some didn't. But, there were a lot that did lose and when that happens the only way they can pay those claims is out of their surplus. They have surplus set aside. They have to go into that to pay claims. So, that happens.

But, what you have today is some improvement in the situation. I think last year's results showed the companies only lost about \$2 1/2 billion - or whatever it was.

MR. DUNCAN: Is that underwriting?

MR. CZECH: Underwriting.

MR. DUNCAN: But they made profits, though?

MR. CZECH: They made profits, overall, because of their investment income. Again, in New Jersey the Insurance Department does factor in, in some way, the possibility and the potential investment income that companies are supposedly going to make in the rate filing.

MR. DUNCAN: I am not quite clear about that. What you are saying is that the State of New Jersey says that some of the profits that are made on investment income must be given to the rating program and you are happy with this arrangement?

MR. CZECH: We are what?

MR. DUNCAN: You are happy with that kind of an arrangement?

MR. CZECH: No, we are not happy with that kind of an arrangement.

MR. DUNCAN: You are not happy with it?

MR. CZECH: We generally acquiesce to it but it is so unpredictable that the company doesn't know whether it is going to have an investment profit or not. There was a time in '73 when they didn't. If that is already factored into the rate and you lose money in underwriting and you lose money in investments, your rate is already inadequate because they have factored in an investment profit but, yet, you are suffering an investment loss. And, it doesn't work the other way around. If you have an investment loss, they don't factor that into your rate filing. You don't get it back. You have lost it. That is a misconception that exists here in New Jersey. I am glad you brought that point up. The Commissioner particularly says this all the time and it is just totally wrong. And, the trial lawyers say this. It is just an incorrect statement. They are saying that companies are raising premiums to recover investment losses - stock market losses. That is just simply against the rating law. Companies can't do that. The only thing you get in a rate increase is the ability to prevent future losses. You can't recover past losses. Once you have lost money, either investment income or underwriting, you have lost it; there is no way you can get it back. And, no matter what anybody says in any state in the country, that just doesn't happen in a rate increase.

MR. DUNCAN: That answers my question.

SENATOR MENZA: Tom, do you have something else?

ASSEMBLYMAN DEVERIN: I was a member of the first Commission and it is very nice to hear somebody be so frank and so honest with us. But, I remember so well the insurance companies - most of them backed the no limit medical in those days. I am glad to hear someone admit it to me and I admire your frankness, Mr. Czech.

SENATOR MENZA: May we hear from Mr. Fox now? We are going to break at 12:15 and come back at 1:00 and the 1 o'clock witness will be Mr. Brown followed by Mr. Stern.

I am sorry, Mr. Fox, we are running quite behind.

W I L L I A M F O X: Senator Menza, members of the Commission, Laurine, members of the Commission, gentlemen: We had discussed, earlier, briefing the statement in view of the pressures of time. I am William Fox, Jr. I am Vice President of the Alliance of American Insurers. Our Organization originally was known as the American Mutual Insurance Alliance and is a national association of more than 100 insurance companies, providing automobile, homeowners, workers' compensation and other forms of personal and business insurance. Many of our member companies provide coverage for the New Jersey insurance buying public.

I might add, as an aside, that while I am sitting here with two distinguished colleagues, there was no collaboration on any of our parts. I didn't see their statements. They didn't see mine. You will find, though, that on most issues I would agree with both Mr. Nangle and Mr. Czech.

I will do this in less than 10 minutes. During the past several months I have appeared on numerous occasions before the Legislature to comment on the insurance problems currently facing New Jersey motorists.

During those appearances I have tried to carefully document some of the programs that could beneficially work to help alleviate those problems.

Today, at your request, I will confine my remarks to the subject of what changes should be made in New Jersey's existing no-fault laws.

Let me begin my general overview of New Jersey no-fault with a discussion of the \$200 tort liability threshold. I don't need to describe it to you. A preliminary sample of available automobile insurance company claim experience we analyzed shows, however, that the average no-fault medical bill being submitted by New Jersey drivers is \$279 - more than enough to exceed the \$200 threshold and start a lawsuit for "pain and suffering."

The sample also shows that the New Jersey no-fault law is generating higher medical and hospital costs compared to no-fault costs in comparable eastern urban states like New York.

I offer you the following statistics to illustrate the dimensions of the no-fault problems: The average total no-fault claim in New Jersey is running about 57 percent higher than in New York. The New Jersey figure was \$991 compared to New York's \$631. This includes doctors' bills, hospital bills and lost wages or salary.

In New Jersey the average no-fault hospital bill was \$712, compared to \$406 in New York - 75 percent higher.

The average New Jersey no-fault bill for doctors and hospitals combined was \$899, compared to \$508 for New York - a difference of 75 percent.

These statistics were as of 1975 and current costs, based on inflation alone, are most likely even higher. Automobile insurance could become a high-priced luxury for even the safe driver in New Jersey if the present no-fault law is not changed to discourage padded medical bills and eliminate unnecessary lawsuits which are ultimately reflected in higher insurance premiums.

In this respect, the Alliance offers the following remedial proposals which can help alleviate the difficult auto insurance situation in the State:

The \$200 threshold in the present law should be replaced with a verbal threshold allowing lawsuits only for cases involving carefully defined serious injury or death. The result has been that too many lawsuits are still being filed despite the availability of unlimited no-fault medical benefits without resorting to a lawsuit.

No-fault auto insurance should be subject to a medical fee schedule as we now have for Workers' Compensation. There is presently no limit on what a hospital may charge auto accident victims.

Penalties should be imposed for health care providers who deliberately overcharge no-fault victims for their services.

The New Jersey no-fault law went into effect in 1973. It was enacted by the legislature in order to bring about prompt payment of economic losses to persons injured in auto accidents, to eliminate most lawsuits for bodily injury arising out of auto accidents in New Jersey, thereby easing the burdens on the courts, and to bring about insurance premium savings for New Jersey motorists.

While we were in agreement with the first two objectives, the Alliance seriously questioned whether the law, which provided for unlimited first-party medical benefits with only a \$200 threshold, could deliver any legitimate premium savings. During several appearances before the legislature and in several study reports filed with the legislature, we cautioned that the combination of unlimited medical benefits and low threshold would not allow the no-fault concept to work as well as it should.

Unfortunately, our doubts were well taken. These unlimited medical payments in combination with an unrealistic threshold has compounded the problem of inflated claim costs with only a slight reduction in lawsuits in New Jersey. This combination has inhibited the New Jersey law from working as it was supposed to.

Fortunately, the Legislature has just passed a bill limiting medical payments from an insurance company to \$75,000 with any monies above that amount to come from an all-industry pool to which all insurers must contribute. This change in the no-fault law is expected to alleviate the financial pressure on the smaller insurance company in New Jersey and to make it easier for such companies to find reinsurance they may need at an affordable rate. This legislation is now before Governor Byrne. A recent Federal Department of Transportation study noted this small company problem and suggested the kind of solution now before the Governor.

Also pending is legislation to change the \$200 threshold to a verbal threshold and to establish a medical fee schedule for no-fault cases in order to help control unwarranted costs. This is the bill - A-3164 - sponsored by Assemblyman Bornheimer. The Alliance has testified several times in favor of this measure. The bill, however, still remains in the Assembly Insurance Committee.

This Study Commission has asked for comment on the use of collateral sources in paying for no-fault injuries. At present, auto insurance is the primary payer. To change the law to force people to accept Blue Cross or accident and health coverage as the primary source to basic insurance for medical expenses caused by car accidents, would be the ultimate consumer ripoff. Such a move would only shift the cost of insurance - not lower it - and would also force non-car users to subsidize those who own and drive cars. Once consumers understand this, it is doubtful they would like it.

If duplicate coverage or double payments for the same accident is an intolerable waste, then the solution is easy - Blue Cross can simply stipulate that it will not pay benefits where no-fault auto insurance is available.

Making Blue Cross pay for auto accidents will not reduce no-fault auto insurance costs significantly. Most likely, it will eventually increase no-fault premiums since each insurance claim would have to be investigated to determine if any other insurance benefits existed. Also, such a proposal would force drivers to exhaust their Blue Cross-Blue Shield, or other hospital-medical benefits, which may be sorely needed later for non-auto accident related sickness or injuries.

In Maryland, an experiment to have Blue Cross administer auto no-fault claims and coverage for the Maryland Auto Insurance Fund was disastrous. The State finally dropped Blue Cross in 1974 because of their poor service performance.

And, in Pennsylvania Blue Cross-Blue Shield was recently in a real dilemma. Their Philadelphia Plan couldn't agree with most of the hospitals in the area on contract terms. So, meanwhile if you had Blue Cross coverage it paid only modest amounts instead of the full service benefits the policy called for. The Blue Cross subscriber had to pick up the difference out of his own pocket. Is this the kind of situation we want to force on auto insurance policyholders in New Jersey?

One more point: Auto insurance companies in New Jersey pay state taxes on no-fault premiums collected from their customers. Blue Cross pays no such taxes and would not do so if they are given a monopoly over auto accident medical insurance.

In this respect, it is significant to note that in Michigan and Pennsylvania where no-fault law lets the customer choose whom he wants to be the primary payer of auto accident injuries, nearly all drivers choose no-fault over Blue Cross.

On the question of extending the no-fault law to cover commercial vehicles, we would favor such a move and suggest a loss transfer mechanism - subrogation - be set up to balance the equities so that operators of trucks, buses and taxi fleets do not pay less for no-fault at the expense of the State's passenger car operators.

As regards coverage of PIP benefits, we would like the law to cover all occupants of an insured vehicle and not just the named insured, spouse and resident relatives.

In the area of tort, the present New Jersey law provides for a comparative negligence provision of the Wisconsin type. This means that if a person is not more at fault than the other person or persons involved in the accident, he or she should be able to recover a proportionate amount of damages, i.e., if one is 40 percent at fault, they are entitled to 60 percent of damages. This seems more socially beneficial and productive than the contributory negligence system it replaced where any degree of fault barred recovery for serious injury involving non-economic loss.

On the question of no-fault property damage, insurance department and independent surveys have shown that car owners were much more negative toward no-fault in Michigan and Massachusetts where the law applied to vehicle damage as well as bodily injury, compared to states where no-fault applies to bodily injury only. Some 45 percent of Michigan car owners said that no-fault was not desirable, compared with only 30 percent who favored such a law. In Massachusetts, 34 percent said no-fault was not desirable, compared with 48 percent who favored it. Massachusetts has since dropped no-fault property damage.

Our own studies have shown that extending no-fault to cover vehicle damage will raise the price of vehicle damage coverage for most motorists at the outset and for all motorists eventually. This substantiates Massachusetts experience with no-fault vehicle damage which I indicated had to be abandoned.

The problem of high vehicle damage repair costs remains a pernicious one.

Insurance companies are fighting the rising cost of auto repairs by urging auto body shops to repair damaged parts whenever possible instead of replacing them with more expensive new parts. In addition, the insurance industry encourages body shops to use demonstrated new methods of repair, especially with aluminum and plastic parts.

The insurance industry also supports Federal regulations requiring auto manufacturers to build more crash-resistant cars. For example, the Insurance Institute for Highway Safety, which has the support of the bulk of U.S. auto insurers, continues to stress the importance of implementing strict standards for front and rear bumpers on new cars. The Insurance Institute

recently testified before a House subcommittee hearing that tests show new car bumpers actually flout the intent of Federal regulations for damage-resistant bumpers. IIHS tests show that 1977 model cars still incur many hundreds of dollars worth of needless damage in corner bumps as low as five miles per hour.

As regards cost and price experience, the recent DOT Report I mentioned earlier stated that - and I think this is vital to your whole study - "No-Fault reform implies a trade-off between cost saving features and higher economic loss benefits. Depending on the trade-off chosen, any particular No-Fault plan can result in higher premiums, lower premiums, or no change at all. Benefit maximizing No-Fault plans must be accompanied by strong cost saving features if insurance prices are to be held in check."

This has not been the case in New Jersey. Discounting inflation, the problem of accident and claim frequencies and severities, the inadequate threshold and increases in jury awards and claim settlements, have helped boost insurance costs higher. Based on limited data, DOT - and this is the study that Mr. Connell has - roughly estimates that no-fault premiums have increased 86 percent in the Newark area - 70 percent attributable to inflation and 16 percent to no-fault. In rural New Jersey the increase was 121 percent - 84 percent attributable to inflation and 37 percent due to no-fault.

In conclusion, let me say that all-in-all New Jersey--

SENATOR PARKER: Excuse me. How can that be?

MR. FOX: Pardon me?

SENATOR PARKER: I don't understand 84 plus 37. Yes, that totals it. Okay, I'm sorry.

MR. FOX: Okay, I'm glad it does. I don't have my calculator with me.

In conclusion, let me say that all-in-all New Jersey and other no-fault states have been a laboratory for experimentation with the no-fault idea. We are finding out what works and what does not and will have an opportunity to remedy any deficiencies without total disruption of the insurance mechanism or of consumer wants and needs. It would seem that this state-by-state process is preferable to having a new and untested system forced on the states through an inflexible national program of Federal standards.

I hope you will find this information helpful in your deliberations and I thank you for the opportunity to comment on this important issue. I would be happy, if possible, to answer any questions. If I don't know the answer, I will get it for you.

SENATOR MENZA: Senator Parker.

SENATOR PARKER: On page 2 you refer to what I believe is one of the major problems - the hospital costs and the medical costs. You indicated on the next page that New Jersey Workmens' Compensation had a medical pay-out schedule. I am not aware of such a schedule.

MR. FOX: I think there is some kind of a guideline schedule.

SENATOR PARKER: No. The only thing in Workmens' Compensation that might be applicable would be the lack of free choice of physician, or hospital. That is why I wanted to ask that question first.

MR. FOX: Since you have mentioned the medical fee schedule and amendments to the New York no-fault law have been mentioned, in the so-called

reform package in New York, where there is a fee schedule for workmens' comp, they have included as a break on the cost of medical a workmens' compensation fee schedule. We don't necessarily need a workers' compensation fee schedule, perhaps the Blue Cross-Blue Shield schedule would do.

SENATOR PARKER: How do you propose to hold down medical costs without a fee schedule, or without limiting the free choice of physician?

MR. FOX: There is no way to limit it without a fee schedule and, frankly, free choice of physician, in some cases, could limit medical costs. But, I think we are past the day. I don't think free choice of physician in workers' comp has that much effect on cost. I think it is basically used in a lot of states so that an employee can get immediate, proper treatment, rather than any limitation of cost.

ASSEMBLYMAN DEVERIN: You know, there is no medical fee. The free choice of doctors would do nothing but really up the cost of workmens' compensation. The Federal program - the Longshoremens' Act - has free choice of doctors in it. It is a much more expensive program than New Jersey Workmens' Compensation. So, there are no medical fees that I know of. I don't know how you can say that in your statement.

MR. FOX: Well, we could use a medical fee schedule. The Commission could design a medical fee schedule. They could take a workers' compensation fee schedule from another state. They could take a Blue Shield or a Blue Cross fee schedule.

SENATOR PARKER: In that regard, if that is so what happens is, under Medicaid and Blue Cross-Blue Shield, and the others, the individual then has to pay the difference. It doesn't reduce the doctors' fees.

MR. FOX: With unlimited medical you say the person would have to pay?

SENATOR PARKER: They do now. They pay the difference. The doctor still bills you \$100 for his visit and the Blue Cross only pays \$68 of it.

MR. FOX: That is why I said you have your choice. The Commission could design a fee schedule which they feel is adequate and a doctor could not charge more than that. This is the only way you can limit cost.

ASSEMBLYMAN DEVERIN: How do you make a doctor participate in a fee schedule if he doesn't want to? Blue Cross can't make them do it.

MR. FOX: His membership in Blue Shield is voluntary; he doesn't have to belong.

SENATOR PARKER: Bill, one further thing. All three of you witnesses have indicated that you want a verbal limitation and no threshold.

MR. FOX: I disagree, Senator Parker. It is not no threshold; it is serious and permanent injury.

SENATOR PARKER: Are you familiar with the Workmens' Compensation statute in New Jersey and the definition of partial permanent disability?

MR. FOX: Yes.

SENATOR PARKER: How do you feel that would limit lawsuits in the light of the experience under our Workmens' Compensation law?

MR. FOX: I am sure there is a disagreement as to what a permanent partial loss is under the New Jersey Workmens' Compensation Law. We get back again to the statement that was made earlier: The small claims are overpaid and the larger claims are underpaid.

SENATOR PARKER: Well, that is the claim that Workmens' Compensation

makes.

MR. FOX: Well, that's it.

SENATOR PARKER: I don't understand how all of you feel that that is going to lessen litigation and lessen cost because my experience is that everything is paid in Workmens' Compensation and the same cry is being made there. I don't understand how that is going to hold your cost down.

MR. FOX: Senator Parker, you participated in several Workmens' Compensation studies. There was voluminous testimony on this subject. The same thing is happening today. I don't know what the answer is, except to change the rules.

MR. GREEN: Bill, I would like to ask you a question. You are familiar with Puerto Rico, aren't you?

MR. FOX: Not very well. I have never been there.

MR. GREEN: Well, in Puerto Rico, because of overutilization and fraud, etc. in their medical payment claims, they are developing a program of creating a Medical Evaluation Committee, consisting of a psychiatrist, a surgeon, a neurologist, an internist, and so forth and they are going into the question of fixing certain fees and so forth. Would you suggest something like that in New Jersey?

MR. FOX: That is what I had in mind but, as Senator Parker says, unless you make it mandatory and unless it is in the statute, the doctor will back bill you.

MR. CONNELL: Mr. Fox, we have heard the term "trade-off" used a number of times here this morning and I am curious, have you done any studies as to what effect a verbal threshold would have in New Jersey with respect to premium savings?

MR. FOX: No, I have not.

MR. CONNELL: You have not. But, you do recommend a change in the threshold without any actuarial data to back up a savings?

MR. FOX: I think that the Commission, before they decide what they should do, should have that information.

MR. CONNELL: I am asking you, Mr. Fox, whether you have it?

MR. FOX: I don't have it. This is a trade association. It is not a rating organization. That should come from the rating organization.

MR. CONNELL: And you don't have that information from any rating organization?

MR. FOX: I don't have that.

MR. CONNELL: So, the citizens of this State are the ones that are going to be trading off if they accept these recommendations?

MR. FOX: No. These are strictly recommendations for your action. We are not saying "do this" or "do that."

MR. CONNELL: No, but you used the term trade-off and I think it is incumbent upon this Commission to advise the Legislature exactly what the citizens are trading off for what.

MR. FOX: I agree with you.

MR. CONNELL: And so far no one has told us what any cost savings will actually appear, if there is "this trade-off."

MR. FOX: I think you have right with you the Insurance Department that can secure that data for you.

MR. CONNELL: Thank you. Can you secure some of that data for us and supply it? You know, everybody here has been critical of our Insurance Department and saying that the Legislature and everybody has been relying on the Insurance Department. Well, why not have the industry supply us with some information? We are going to rely on the Insurance Department. Can you supply us with some information?

MR. FOX: I am sure that the Insurance Department will secure the information from the companies, review it, test it, before they make any recommendation to the Commission.

Ultimately, it comes from the companies to the Department.

SENATOR MENZA: One last question which I would like to address to all of you. What do you people think about the New Jersey system? It has been characterized as the worst in the nation. Be objective and try to tell the truth. Of course, you are telling the truth, but be objective. What do you think? Is it the worst in the nation?

MR. FOX: I honestly have not had enough experience in other than a handful of states. Of the states in which I have been operating in recent years, I would say it is the worst of those states.

SENATOR MENZA: Mr. Nangle?

MR. NANGLE: Mr. Chairman, don't take my word for it, take the Department of Justice's word. In the report they released last December or January, they tore the system up in rating the situation up here.

SENATOR MENZA: The Department of Justice?

MR. NANGLE: The Department of Justice.

MR. DUNCAN: Was that rating or no-fault?

MR. NANGLE: That was on the rating.

MR. DUNCAN: Oh, we are not talking about rating here; we are talking about no-fault.

MR. NANGLE: By the way, if I may - just to answer one question you had - I would be the last one in the world to say that we were doing this strictly for altruism. I will not deny that some of our people are profit motivated. They way we are going now we are drowning and we may have a chance if we improve the no-fault law.

Senator Magnuson, down there in Washington, will tell this Commission what you will do if he has his way and they have not characterized New Jersey as having a desirable situation. They have held up Michigan as the closest answer to the world's problems in no-fault. Everybody thought no-fault on the national level was dead but, believe me, it is not. They are having House and Senate hearings all this week and they are trying to kick it out of the House by the end of this month - kick it out of the House Committee. We haven't got the votes to defeat national no-fault. That is one of the reasons why this Association - our Association - is anxious to have New Jersey and any other state who has problems with their experimentation do something sensible and in a sane way to answer the Federal critics because they are very close to telling New Jersey what they are going to do and there is no ifs, ands, or buts about it. And, they will do it.

SENATOR MENZA: I take it the insurance industry does not want no-fault on a national level?

MR. NANGLE: That is not exactly true and Mr. Czech may climb all over

me for that. The National Association of Independent Insurers wants the regulation of the insurance business to stay with the states. We think that even in a state like New Jersey the Insurance Department knows the problems and the demography and the geography and the people and the needs of the people of that state a hell of a lot better than some Federal bureaucrat does who wants everything on one form, one rate, one this, one that, from New York to Wyoming. We have fought the Federal standards approach. We have proposed and we favor the balanced benefit level and threshold approach, that is, the no-fault approach in the states. We think the experimentation should go on in the states.

SENATOR MENZA: You will take the lesser bureaucracy?

MR. NANGLE: It has been described differently than that but that is about it.

MR. CZECH: Mr. Chairman?

SENATOR MENZA: Briefly, Mr. Czech, we are going to break now.

MR. CZECH: I don't want to debate Federal no-fault but our Association is on record - we have been ever since the beginning - favoring a Federal no-fault bill, although we have favored state action as well. But, we haven't seen any adequate state action so we are still pushing, very strongly, for a Federal no-fault law. Individual companies who are members of my fellow trade associations do support the Federal no-fault bill.

You asked a question about New Jersey's no-fault law in regard to other states. In one way, it is as good as, and better than, other states in that you have high benefits and you have unlimited medical. In that regard it is serving the consumers very well - the consumers of New Jersey. But, on the other hand, it doesn't have the tort threshold and in that regard it is the worst. It is a \$200 threshold and there are some states that have what is called an "add-on" where you simply buy additional first party benefits. But, they can't be compared to New Jersey because they are minimal first party benefits of maybe \$2,000, or \$3,000, or --

SENATOR MENZA: You put it all together and strike a mean and it is fair; it is not best and it is not the worst, I would think.

MR. FOX: This is the Magnuson bill: \$100,000 medical and rehabilitation expenses alternatively and \$250,000 for longer than 2 years; \$12,000 wage loss; \$7,300 loss of services; \$1,000 survivors benefits with an adjustment upward or downward depending upon the state's per capita income; insurers must offer up to \$1 million in coverage with minimal residual liability of \$1,530, but the tort threshold is 6 months of continuous total disability. Other exceptions to the tort exemption are death, permanent loss of an important bodily function, significant scarring or disfigurement, and other serious and permanent injury.

SENATOR MENZA: We know. We read the Star Ledger. Thank you very much. We will convene again at 1:05 and Mr. Brown will be the first witness.

(lunch break)

AFTER LUNCH

SENATOR MENZA: Members of the Commission, we have five more witnesses and we would like to break at a reasonable time. Mr. Brown was

slated for 11:00.

Mr. Brown is an attorney and a Trustee for the Committee for the Reform of Civil Litigation. He has a prepared statement which is before all of you.

M O R R I S B R O W N: Mr. Chairman, members of the Commission, I do have a prepared statement. You have a copy. I would like after that - it is a brief statement - to make some comments outside the statement after having heard some of the testimony this morning and having thought some more about what I might have included in the statement. I also, for the record, would like to note that I am appearing on behalf of the Association of Trial Lawyers of America, New Jersey Branch, with a membership in excess of 900 in New Jersey. For the record also, I noted that when the insurance representatives testified, each of them wore a jacket. You will note that I didn't. I suppose they are either cooler or more cold blooded than I am, or we are, and I hope you will forgive me for not having that jacket on.

I am pleased to appear before this initial hearing of your distinguished Commission established to study no-fault automobile insurance and related questions. The fact that you are holding this and a similar hearing in Elizabeth only a relatively short time after the Commission was constituted, serves as a tribute to your serious intent.

I want to make special note of the fact, on behalf of our Committee, that we called for enactment of this Commission as soon as we were reconstituted some months ago.

The Committee for Reform in Civil Litigation first was organized in 1971, as an ad hoc group largely composed of attorneys, in an effort to separate some of the facts concerning automobile insurance from the many slogans that were being advanced, particularly those dealing with the concept of so-called no-fault. We were not organized as "aginners." Our objective was to attempt to gain for the public some of the benefits of the new ideas that were being advanced in the insurance field without unfair sacrifice of the right of the average citizen to obtain justice in the courts of law.

We think that the no-fault plan which became effective on January 1, 1973 has gone a long way toward meeting the objectives studied by the Commission in 1971 and 1972. We think New Jersey, more than most other states, has achieved meaningful benefits at fair costs for the citizens of this State who might be injured in automobile accidents.

Today, again, we see that our law and the concepts which the Commission worked for are under renewed attack and the parallels with 1971 are striking. The panacea-filled millennium is at hand: If only citizens would not use the courts to sue, we would have the answer to our prayers - lower insurance costs. This can be carried one logical step forward: If you take away the right of people to sue - that is, innocent people - for injuries caused by careless people, we wouldn't even need insurance against lawsuits because there would be no lawsuits.

Indeed, insurance costs have risen, but not because of New Jersey's "defective" no-fault law. We heard that testimony today very clearly from portions of the insurance industry. Most importantly, costs have not risen because of the fact that people may make claims for personal injury.

I am pleased to leave with you our basic position paper attached to

this statement, headed, "Wrong Target, Wrong Weapon." Not only do the statistics in this paper show that the percentage of the premium dollar attributable to personal injury dropped substantially, but that the actual cost of the mandatory bodily liability coverage has dropped some 12% between 1972 and 1977 - an era of marked inflation in almost any other area. This statement, by and large, speaks for itself. Unfortunately, these facts and many others that sustain the present approach in automobile insurance have been obscured by sloganeering rhetoric and selective use of information.

There are, in the next paragraph, certain statements which you may read. At the time of the Commission hearings in 1971 and 1972, you may remember - some of you were members of that Commission - that the Commission recommended a \$100 threshold. Our Committee was discussing, very seriously, the \$500 threshold as was set in Massachusetts. The difference, as you know, is that in Massachusetts the \$500 threshold does not exclude, in computing it, hospital costs, x-ray costs, and diagnostic costs. But, in New Jersey, when the proposed bill came to the Legislature, the threshold was increased \$200, which excluded hospital costs, x-ray costs, and diagnostic costs.

A second and major misstatement of fact has to do with the reduction in law suits. Some of the most shrill advocates of jettisoning the present system cite the fact that there has been only a slight decrease in auto cases in the Superior and County Courts from 1971-'72 to 1975-'76. But, what they don't say is that automobile cases in these higher courts dropped from 53% to 43% of total new cases. But, more importantly, automobile accident cases in the District Courts were reduced by more than 57% - from 9.4% of all cases to only 4%, which took out of the system those so-called nuisance cases which were alluded to earlier, I think, by Mr. Connell during his questioning of a witness. This is a striking development with substantial savings to the taxpayers, to litigants and to the court system - a saving that is conveniently overlooked by the sloganeers.

These are but two examples of the verbal extravagances which are being employed, we think, to achieve a political result instead of factual determinations that are necessary in simple justice to the people of New Jersey. We know that your study will delve much deeper into this complex question and we are confident that you will come up with answers that are fair to all.

Now, I heard earlier in testimony that there was some comment in the local newspapers by people studying the question in Washington and by people who testified as experts before a committee in Washington, which stated that New Jersey has the worst no-fault law in the nation. I take exception to that. As a matter of fact, on the very same day that the Star Ledger carried such an article, headlined "New Jersey No-Fault Rated 'Worst'", there was in the New York Times, Sunday, June 19th, an article which carried a statement from the DOT Study, which Senator Magnuson, Chairman of the Senate Commerce Committee released just that day, and that study confirmed - and I read from it - that "The DOT study confirms that good no-fault laws are working efficiently and effectively to compensate auto accident victims, Senator Magnuson said." It then goes on to list the states where no-fault laws are working effectively and efficiently and they are Colorado, Connecticut, Florida, Georgia, Hawaii, Kansas, Kentucky, Massachusetts, and, to skip over some, New Jersey. So, apparently the DOT Study does not agree with the statements made by our

erstwhile expert, and some other people.

As a matter of fact, I understand from the testimony that we had here this morning from insurance industry representatives that they apparently agree that is so.

In New Jersey, if we have the worst system, we are compensating people who deserve to be compensated in all justice, fairly and reasonably. That is what we are doing. We learn that under PIP injured persons are getting paid their medical and lost income at a relatively rapid rate. Eighty five percent of all victims are getting their medical bills paid in a very short period of time.

The nuisance law suits that we were so concerned about - and I believe rightfully so - are out of the system. We are not concerned about that and no one now, that I have heard speak, indicates that that is a problem here in the State of New Jersey. We have enacted a comparative negligence law as a result, I believe, of a recommendation by the Commission and as a result of the recommendation of trial lawyers, which takes care of the problem that was talked about, that injured persons are not compensated because of the difficulty with the Contributory Negligence law.

The proponents of an increased threshold, or a verbal threshold, offer us what appears on the surface to be a simplistic panacea, but upon hearing the testimony today, it is obvious that that is not the answer. That cannot be the answer because no one has testified, nor in the many months that I have heard this issue discussed have I heard anyone come forth with any proof or any statistics or any projections that, by increasing the threshold by even one dollar or by changing the threshold to a verbal threshold, or, indeed, by taking away the right of anybody to sue - any innocent person to sue - for personal injury, one dollar of premium will be reduced to the general public.

Now, the insurance industry has enough money and enough influence to speak for themselves. They came here today with three competent, intelligent, knowledgeable men to testify before this Committee, from the insurance industry's point of view - and there is no question about that.

The Commissioner of Insurance attempts in this State - and I think he has done an excellent job - to protect the driving public and I commend the Commissioner for doing that. But, there is one interest lacking in almost every hearing and that interest is the interest of the innocently injured victim of an automobile accident - that person who may have been injured innocently as a result of a careless, or reckless, motorist and the only voice that that person has - that person who is the perspective victim of an automobile accident - is the trial lawyer.

I have heard a lot of things said about the trial lawyer and the personal interest of trial lawyers in this matter and I demur because while we have an indirect interest, as everybody does who does a job, we try to do the best job we possibly can for our clients in an effort to see that they are properly compensated for any injuries, pain, suffering, and disability within the framework of the law and in all justice. And, we are the only ones that can appear before a Commission, such as this, to present to such a Commission their point of view. There is no other organized group that can do it and we are proud to be able to have the opportunity to appear here and present their point of view. Not only that, we also, together with the Commissioner, present

the point of view of those people. No one in the insurance industry tells us that if there is a verbal threshold, or if all suits were thrown out, that the senior citizen will have available insurance and affordable insurance. Isn't that the goal we are seeking - to help the senior person who has to pay excessive amounts or who has to be put under an assigned risk plan? No one tells us that the youth under 25 years of age will have available and affordable insurance if what the insurance industry tells to do is done. No one tells us that the poor person will have available or affordable insurance if he lives in Newark or if he lives in a ghetto in Camden or, indeed, even in the City of Perth Amboy, where I practice law. I have not been told that and I think this Commission has not been told that and I think no one has been told that. I think until we are assured - this Commission and the people of this State and the Legislature of this State - that there will be affordable, available insurance, only then should we even think about taking away the rights of innocently injured people. To take away those rights, as I am told, as a trade-off without assuring us that there is any kind of a trade-off is wrong and unjust and unfair and it is obviously an effort to increase the profits of the insurance industry. And, there is nothing wrong with their trying to do that, as long as we recognize that that is what we are dealing with, on a pure economic basis. Then let's get it out into the open and let's say to the person tomorrow - to you or to members of your family, or any of your friends who may be injured in an automobile accident today, or tomorrow, or next week - that we have taken your right away to make claim for your personal injury, sustained innocently by you as the result of a careless or negligent driver, because there was some commensurate compensation on the other side of the ledger. Then, let us say to that injured person what that commensurate adjustment on the other side of the ledger was and let us tell him - or let him ask us - "well, that was merely to increase the profits of some insurance company."

Now, I say that as an exaggeration, perhaps. But, it is too simplistic to simply say let us study the issue of thresholds in order to solve the problem that exists. That is not the only problem, as members of this Commission know. The problems have been spoken of by the insurance industry this morning. First, inflation, inflation which increases costs of damage to motor vehicles.

Mr. Connell spoke of statistics. The premium, as the statistics show from the Insurance Commissioner's office, for property damage - for damage to steel, chrome, iron, and metal - increased by some 78% and the premium for personal injury decreased by some 12%.

Now, we are dealing with premiums. Is it for us to say let us not deal with how to meet those costs in order to reduce premiums, in order to fix up a piece of metal, rather than dealing with fixing up a body which was injured, or compensating someone for paid that was suffered?

So, we have inflation. We have increased costs of property. We have the issue of increased costs for medical, increased costs for hospital, increased costs in every particular area. Let us see that issue and see whether a determination can be made because therein, as I understand the testimony from the insurance industry, lies the problem.

We are dealing with open rating. Is it right or isn't it right? I don't have any answer to that but will it do the job or won't it do the job?

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We have the issue of a facility. Will that help the problem or will it not help the problem? That is an issue that may or may not help the consumer -motorist and the public in this particular area with this particular problem.

And, we also have - as Mr. Green noted earlier and I heard him note again - the problem of unlimited medical. Should there or should not there be a cap? Should there or should not there be a reinsurance provision over a certain amount so that the small insurance company, or any insurance company, can spread out the risk that has been so difficult to assert or take in, as it were, prior to this time.

I say to this Commission that nowhere, yet, has it been shown to anybody that by increasing any threshold and taking the rights of innocent people away this problem will in any way be solved. The Michigan experience hasn't done it, as I understand it, and it is not being done and I submit that this Commission should consider the interest of the innocent victim in a greater degree because that is what we are dealing with more than pure economic factors.

I thank you for permitting me to appear before you and I would be happy to try and answer any questions you may have.

MR. GREEN: Senator, may I ask a question? Mr. Brown, you mentioned before the affordability of insurance.

MR. BROWN: Excuse me?

MR. GREEN: You mentioned affordability of insurance. Now, just what is your definition of affordability?

MR. BROWN: I think affordability is a relative term, as you know, Mr. Green. But, as we know it in the State of New Jersey and as I understand what the insurance industry is saying and what the Commissioner's report from Mr. Klein said, that premiums are so high that insurance is not affordable and the public thinks that insurance is not affordable. The insurance industry doesn't care whether it is affordable or not. They are interested in making a profit and I think that is perfectly proper. They ought to have a profit.

MR. GREEN: I don't agree with you because we may price ourselves out of existence. But, would you go so far as the State of Hawaii which says affordability, if you are on relief, is you pay no insurance premium? Would you go that far in New Jersey?

MR. BROWN: I doubt that I would go that far.

MR. GREEN: That's all.

MR. DUNCAN: Mr. Brown, are you happy with the \$200 - is your organization happy - threshold? In your estimation is it working because it shows some reduced court cases?

MR. BROWN: Not only some. It shows substantially reduced calendar congestion. There is no claim anywhere, as I understand it, that there is any further calendar congestion resulting from automobile cases. Our group feels that the \$200 threshold was thought through well. If I had a choice, I would probably go back to no threshold, personally, but I will say to you that we feel that it is working well and working well in the State of New Jersey.

Now, Mr. Jaffey's articles have constantly referred to "ripoffs." Well, let me say I think when he talks about ripoffs, he talks about ripoffs by any - well, I shouldn't refer to individuals - people who do say the doctors

are ripping off the public. I don't think that is true. I think the inflationary pressure reaches there.

What I do say is, if anyone is cheating, lying, stealing, or thieving, that person ought to be caught and punished. I don't think there is any question about that.

The fact that there is a \$200 threshold, I disagree with-- I think statistics show that there are those who do but, by and large, people are honest. They don't go out to get over \$200 in medical bills.

MR. DUNCAN: Are you saying there is no fraud - that is little or no fraud going on?

MR. BROWN: I think that that is true and I think that there are certain instances which were referred to in the newspapers of \$75 thousand, or \$50 thousand, in fraud. That has absolutely nothing to do with the \$200 threshold and if those people are guilty of fraud, they ought to be caught and punished.

MR. DUNCAN: But, you don't feel that there would be people that would - unscrupulous people-- And, I will mention that there are unscrupulous doctors as there are unscrupulous lawyers and agents and what have you.

MR. BROWN: Everybody.

MR. DUNCAN: But there is not a certain amount, under this \$200 tort, that would tend to stretch it to the \$200 in order to get into the arena of suit? Does it or doesn't it exist?

MR. BROWN: I would assume it does but I would assume not in any majority of cases.

MR. DUNCAN: Ten percent?

MR. BROWN: In every area of the law where people make claim, in every area where the law permits claims to be made, there are those that will exaggerate claims or those who will take a witness stand and not tell the truth and we have dealt with that for hundreds of years. It is the court system and the jury system that is designed to weed out those people who are exaggerating their claim. I think the jury system has done that well over 400 years.

MR. DUNCAN: How can you respond to a cap? Do you have any feelings on that, or does your association have any feelings on that?

MR. BROWN: Our association came out in favor of it - when it was introduced at \$25,000 - with reinsurance, as proposed, over \$25,000. It was increased to \$75,000 and we are in favor of that.

MR. DUNCAN: Well, in fact, then the companies and attorneys, as such, are really not that far apart. You agree with the companies on a cap. It seems that companies would like a reasonable cap. Do you believe that in any kind of a situation where claims are above \$100,000 insurance companies should be forced to pay into a fund so that amounts above that would be taken care of out of this fund, or do you like the idea that a person gets \$100,000 and then purchases higher amounts?

MR. BROWN: In terms of PIP?

MR. DUNCAN: PIP. Strictly speaking.

MR. BROWN: I really have not come to any serious conclusion about that because I haven't heard the arguments on either side. If I did, I might then come to some rational conclusion.

MR. DUNCAN: Well, how does your association feel about the File and Use law, as opposed to some type of a Use and File, even though we are not in it?

MR. BROWN: Again, I don't know all of the facts attendant to that problem. As I indicated earlier, those are problems which I believe this Commission should consider. It may be that the Commissioner can better help you than I. I would also, if I were you, sit and listen to the arguments and the statistics and make a conclusion based upon that. But, I do not have a conclusion about that today.

MR. DUNCAN: Just one final question. Attorneys, in effect, earn money from the system even if it doesn't go to suit on the assumption they represent clients for a fee, so that part of the system goes to attorneys, even though it is not in suit, isn't that true? Or, am I wrong in assuming that?

MR. BROWN: Do you mean in terms of third party claims?

MR. DUNCAN: Yes.

MR. BROWN: Oh, I say there are many cases that are settled prior to suit, sure.

MR. DUNCAN: Would there be anything in the allegation that an unnaturally low threshold would actually help attorneys in the essence that with a low threshold, companies would tend to settle rather than go to suit?

MR. BROWN: I think that has no bearing on the issue.

MR. DUNCAN: It has no bearing, nor no truth?

MR. BROWN: No.

MR. DUNCAN: Thank you very much.

MR. BROWN: Thank you.

ASSEMBLYMAN DEVERIN: Mr. Brown, if that fraudulent person or that unscrupulous person is out there in the law field or the medical field, don't you think they could be just as fraudulent or unscrupulous with the verbal threshold as they can with the dollar threshold?

MR. BROWN: There is no question. If testimony were required that there was permanent disability, or substantial disability - I mean just words and concepts - if we have an unscrupulous person with an unscrupulous doctor, the unscrupulous person can testify and the doctor can testify, in my opinion, that there is substantial or permanent disability.

ASSEMBLYMAN DEVERIN: So, if there is fraud, a change in the threshold is not going to do away with it?

MR. BROWN: In that regard, no.

MR. CONNELL: Mr. Brown, representing the trial lawyers, in fact what you are saying is, with a verbal threshold you will be in court testing the meaning of the adjectives?

MR. BROWN: I think there will be a lot more litigation in order to test, in every case, what that means in that particular context of facts.

MR. DUNCAN: Isn't that in front of a jury now in Michigan?

MR. BROWN: It will be but it may even require, as somebody said here, two trials instead of one.

MR. DUNCAN: We could get an answer to that though, couldn't we - as a result of that?

MR. BROWN: But, in every case you wouldn't want two trials, would

you?

MR. DUNCAN: No.

MR. BROWN: The first trial would be to determine whether there was a substantial permanent injury so that you could proceed to damages. I mean you might then require three trials: One for liability, one for the question of whether the threshold was met, and the third for the amount of damages. That would just increase the case load.

MR. HAGAR: Mr. Brown, you mentioned available and affordable insurance, the inference being that such is the case here - that people can afford it and that it is available here in New Jersey and I don't think that is true at the present time.

MR. BROWN: I don't think I said that.

MR. HAGAR: Well, you indicated that--

MR. BROWN: I didn't say that in New Jersey we have available and affordable insurance. I think that we have a situation that presents somewhat of a problem. What I am saying is that the senior citizen today has a problem getting insurance. What I am saying to you is that youth under 25 has a problem getting insurance and the ghetto dweller - the minority, the poor - has a problem.

What I am saying to you is that if we are dealing with the entire problem, what the proponents of no-fault are telling us is that there is such a problem and the solution is in increasing the threshold or in having a verbal threshold. That's going to solve it. That is the panacea. What I am saying to you is, that is not the panacea. Let them come forth and tell us that by increasing the threshold, or changing the threshold there will be affordable or available insurance. Nobody has said that. None of them have said that. And, it seems to me that the problem will be worse, not better. No one has come forward and said that the premium is going to be reduced to stay at the same level.

You will remember in 1972, when that statute was passed - I think it was May 20th or June 20th - to be effective on January 1, 1973, because of what we were told, because of what the Commission was told, contained in that statute was a mandatory reduction of 15% of the bodily injury premium - I think I am right about that.

MR. DUNCAN: That was not recommended by our Commission.

MR. BROWN: Okay, but because the Legislature was convinced - and I have in my file here, a press release from the Governor in November of 1972 telling us that because of the information that the Governor's office received, that was mandated and premiums will be less by 15%, and as time went on you will see that with the experience of no-fault in New Jersey, premiums will decrease even further. Obviously, history proved that not to be the fact. I have that press release with me here. I can tell you what date it was from the Governor. I think it was November 20, 1972. It is here somewhere.

MR. GREEN: Mr. Brown, you mentioned that arbitrary reduction. It wasn't based on fact or statistics, or otherwise, because it took the companies three years to recover back what they had to reimburse for policies effective on January 1, 1973. The guesstimates at that time were way out of line.

MR. BROWN: That's right. The insurance industry - Did those proponents at that time pull the wool over all of our eyes, or not?

MR. GREEN: I think they sold it on the basis that it was going to cost less and it had to cost more.

MR. BROWN: That's right. You knew it and I knew it.

MR. CONNELL: Mr. Brown, there are three members of that Commission sitting here today. They knew it too. Nowhere in that Commission report did we ever say -- right, Tom?

ASSEMBLYMAN DEVERIN: That was an amendment on the floor, Mr. Brown.

MR. CONNELL: We never said that it would save money. We hoped it would.

MR. DUNCAN: What was the source-- You just held up a piece of paper and said that everyone was told that there was information from somewhere that indicates that such a reduction was possible. What was the source of that, can you tell us?

MR. BROWN: I don't know.

MR. DUNCAN: You don't know?

MR. BROWN: I know that it was mandated by the Legislature.

MR. GREEN: Well, I'll tell you, it was sold like snake oil. It was a cure for everything and it was going to cost you less.

MR. BROWN: That's right. You would get everything and you would have to pay less, that's what we were told then.

ASSEMBLYMAN DEVERIN: If I may, I would just like to tell you how that really happened - or how I think it happened. At that time, if you will remember, Massachusetts, or some other state, had just finished their no-fault thing and they built into their study a 15% reduction and when it hit the floor here in Trenton, the Assemblymen thought that would be a good idea and that is how it really came about.

SENATOR MENZA: We are all aware of the historical background to that. I was in the Assembly, wide awake, listening to Assemblyman Stewart, while you were sound asleep.

Now, are there any other questions of Mr. Brown?

(no questions)

Thank you so much, Mr. Brown.

MR. BROWN: Thank you very much.

SENATOR MENZA: Mr. Julius Borrus, please, of the Insurance Brokers Association.

J U L E S A. B O R R U S: Thank you, gentlemen.

I am Jules A. Borrus, President of the Insurance Brokers Association of New Jersey, a professional association, representing the 16,000 licensed insurance brokers in this State and the only true representative of the consuming public (the ones that have to live with and pay for the rules, policies and legislation set forth by the companies, the Department of Insurance of this State and the Legislature itself). And we bear the abuse of the consuming public. I am speaking to you only in that capacity.

The purpose of this hearing is for a discussion of the present no-fault law and how it can be made more workable and livable. We cannot, however, let this opportunity go by without saying that reform of the no-fault law is not going to either reduce rates or correct the present situation of the auto insurance problems by itself. But it will be a giant step in this direction.

The areas of the present law which need immediate attention are:

1. Limit on medical payments to \$75,000 by the company with provision to purchase additional protection, if desired, by an assured or other means of funding a claim over \$75,000. The present law is unlimited.

I would also like to point out at this time, gentlemen, that in April of this year, both the Senate and Assembly have passed S 1380, which would place a company's limit of medical payments to \$75,000 and this bill has been sitting on the Governor's desk for quite some time, awaiting his signature.

To continue --

2. Subrogation of medical payments by companies, the same as is done with collision insurance.

3. Even more important - the scheduling of medical fees, doctors and hospitals, which should be as nondiscriminatory as other medical plans.

4. In addition to the above, a medical review board should be established to review the charges for services by doctors and hospitals to see that there is no fraud or deceit by them.

5. The only way no-fault can ever work will be with a verbal threshold, not a monetary one. By verbal threshold, I mean no grounds for suit unless an individual is maimed, dies, is disfigured or disabled for a minimum of 60 days or longer or is permanently disabled, the permanent disability being on a defined basis.

6. Activation of the arbitration clause in the present law. (Middlesex County is the only county that participates and uses arbitration now.)

7. Perhaps a concept of contingent fees for attorneys is no longer viable and should be on an hourly charge with the plaintiff paying legal fees and services for the defendant if he is not successful in court.

Gentlemen, as recently as Saturday, July 16th, the newspapers of this State carried a report by Secretary of Transportation Brock Adams, severely criticizing the New Jersey No-Fault Law and stating that the federal government should not use it as a national model. Let's correct the inequities in our law now before it is done by the federal government for us. It is time for this State, New Jersey, to be a leader.

I thank you for allowing our Association to express our views on this very important subject.

SENATOR MENZA: Before you proceed, the Commission has addressed a letter to Mr. Brock Adams. We will give it to the press. We are asking him to explain

his reasons for characterizing New Jersey's No-Fault Law as one that simply does not work and as one of the worst. Based upon the Department of Transportation's study, we don't look too bad.

You know, sir, what the Commission is concerned about is some people incorporating some catch phrases that have been used in the past, either by an official in Washington or by a newspaper man, and then people get carried away with the concept.

Only a few people have said it is the worst in the nation. Many have said it is a very good law. We are asking for a detailed explanation from Brock Adams. His conclusion is erroneous based upon the DOT report. If he is right, he should give us some additional information.

By the way, as far as your comment in item 7 is concerned, I would be more than happy to work on an hourly charge. I have been practicing 19 years now.

MR. CONNELL: Mr. Chairman, may I advise Mr. Borrus that our present Supreme Court Rule 121-7, specifically subparagraph (b), presently provides that an attorney shall not enter into a contingent fee arrangement without first having advised the client of the right, and afforded the client an opportunity, to retain him under an arrangement whereby he would be compensated on the basis of the reasonable value of his services. Then it goes on under (c) to a sliding fee scale.

I think it has been the experience of most attorneys that the average person coming in from the street to hire an attorney does not want to retain him on a reasonable hourly charge. He would rather have the lawyer roll the bones with him. If they win, the lawyer gets paid; if they lose, the lawyer doesn't get paid.

That has already been taken care of by our Supreme Court.

SENATOR MENZA: Assemblyman Deverin.

ASSEMBLYMAN DEVERIN: Mr. Borrus, how do you describe, for instance, "permanently disabled and permanent disability"? How would you describe it?

MR. BORRUS: That could be described in three different ways, I guess. One way is a person who can't go about his normal functions or retain his normal workload; that may be a permanent disability. You have people who cannot go back to their normal occupations. It can be a partial disability if he cannot go back to his normal occupation, but he can be employed gainfully in another area.

ASSEMBLYMAN DEVERIN: A loss of an arm is a partial disability - partial-permanent.

MR. BORRUS: To a truck driver it may be permanent. To a crane operator, it would be permanent.

ASSEMBLYMAN DEVERIN: But to someone who works in an office, it may not be.

MR. BORRUS: That is possible.

ASSEMBLYMAN DEVERIN: He can't sue.

MR. BORRUS: He can sue. I think the degree would have to be spelled out by this Commission. I have no knowledge of how to do that.

ASSEMBLYMAN DEVERIN: I am not a lawyer. With regard to the contingent fee, as a layman and a poor man, and as most poor people sue, if you didn't have the contingent fee, I don't think half the poor people in the State would ever get a chance to go to court. If they had to go to a lawyer and plunk down \$500, they

would never go to court because they don't have the \$500. So I am not sure about the contingent fee - and I am not a lawyer and I am not defending the lawyers. I think the contingency fee is something that has to be if the poor, the guy in the ghetto and the older person has a chance to recover some of his damages. It is not only true in no-fault, but in malpractice or anything else. If you don't have a contingency arrangement, the guy will never go to court. He will never be able to afford the down payment or whatever money he has to put into it.

MR. BORRUS: Assemblyman Deverin, would you possibly agree that maybe the ways of getting into court are so easy these days --- Looking at the same reports that everybody has been alluding to, in the three-year period, the cases ran in the courts from 692,000 to 835,000.

SENATOR MENZA: So what? What is so offensive - and I address this not only to you but to the next speakers -- what is so offensive about a person going to court to insure his rights whether they be on a contract or for an injury that he sustained as a result of someone else's tort? If the answer that you are going to give or anyone is going to give is simply because we are clogging up the courts, that's absurd. I can't buy that.

MR. BORRUS: I am not saying that, sir.

SENATOR MENZA: You know for 200 years or more, we have lived with a tort concept. This has been developed from the Anglo-Saxon law. If you strike someone, he can be sued for punitive or compensatory damage. If you strike with an automobile, you can be sued for compensatory damages. What is so bad or what is so wrong or what is so offensive about permitting someone to go to court to be compensated?

You see, the reason that we have these compromise, no-fault laws throughout the states is because it is very difficult to break away from hundreds of years of tradition. We are saying, on one hand, we are going to balance it and shift the burden to society generally; and, on the other hand, we are not going to deny someone his right to go to court. This is where the crux of the problem is. It may be terribly unfair. For example, if I lose my left hand and I still can write with my right hand and since I have a big mouth and I am a lawyer, my economic status hasn't been affected at all really. But why should I not have a right to go to court for the loss of my hand or, for that matter, the loss of my finger or for the loss of my fingernail or because I feel miserable for two weeks? Why not? What is so wrong about my taking my risk? I don't know.

MR. BORRUS: I think maybe standards should be set, as you mentioned - and that's what I am calling for - in defining "permanent disabilities." There is a definition in the Workmen's Compensation Law as to the degree of disabilities. I am sure of that.

SENATOR MENZA: There is no relevancy to the comp law, no matter what the Assemblyman says. You know in compensation law, except for the very serious accident, people are not being paid for permanent injury. For all intents and purposes, they are being paid for discomfort, pain and suffering. I can never understand in compensation law where you are going to have 10,000 or I dare say 50,000 cases from the insurance company with zero percentage, the same 50,000 cases from the petitioners' attorneys, with, say, 10 percent, and in all cases he gets 2 1/2 percent of total permanency. That's absurd.

MR. GREEN: Senator, we are not going to get very far by discussing the contingent fee. That has been with us. We are going to have another session where

somebody else will run that one.

SENATOR MENZA: Okay.

MR. GREEN: Let's get down to no-fault."

MR. CONNELL: Okay. I just wanted to say this: Mr. Borrus, you are aware of the fact that our present law, 39:6-88, does contain a verbal threshold.

". . . exemption from tort liability if the injured party has sustained death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a bodily member in whole or part." Your sole quarrel is with the \$200 soft tissue threshold.

MR. BORRUS: That is correct. I believe the \$200 threshold in this time of inflation is so easy to meet and has been met throughout not only this State, but by New York State. I showed to you an article that appeared in the April 27, 1977, New York Post where they stated the average medical bill on claims filed - and they had a \$500 threshold - was \$509. Also I mentioned a medical fee schedule. They pointed out how no-fault with its unlimited medical, without any controls on medical payments --- I will pull out one. Hospital charges in Manhattan where a patient was being treated under workmen's compensation were \$2,548. Similar treatment for similar type injuries as a result of an auto accident were \$12,316.

SENATOR MENZA: Mr. Borrus, I have a question. This confuses me. If fraud permeates the system so much now, then why hasn't someone in the past few years done something real about it? Now, when you say fraud, I would think that a doctor may very well feel this way: If you have \$100 worth of insurance, I will treat to \$100 worth of insurance. It can't hurt. It is like lentil soup to the Italians and chicken soup to the Jewish people.

If he doesn't have insurance, he tells the patient to go home and take a hot bath; but if he has insurance, he will say, "Come here and I will give you some whirlpool treatments," heat treatments or whatever they do. Is that fraudulent? Now we are dealing with conceptual things. Is it fraudulent? For example, if I have insurance right now and I injure my back, the doctor could say, "Keep coming back to me," and I may say, "Listen, I feel safe with this guy. He has got the equipment there. He's a physician. He knows what he is doing and he is taking care of my back." If I don't have insurance, I would probably say, "Doc, I can't afford it." He would say, "Okay. You go home and take a hot bath and put wet towels around you," and all that other kind of jazz. Is the former fraudulent or is the latter right?

MR. BORRUS: Isn't that possibly abusing the benefits as they were designed?

SENATOR MENZA: When I think about fraudulent action, I think about a guy who is not really hurt and he is just fooling around. He is going and saying, "Hi," to the doctor and then going home. But it would seem to me that what the people are doing is saying, "Hey, listen, I'm covered under PIP and I am going to get treated. I have an opportunity for once to get full and complete treatment. If you want to give me an electrocardiogram even though I have a back injury, go ahead and do it."

MR. GREEN: Senator, I would like to answer you on that. Before no-fault came in, the soft tissue injuries of sacroiliac, sprain, and whiplash - I am talking about minor whiplash - etc., were pretty much nuisance claims; but now on medical, we get physical therapy the first day. We have had cases where you get 25 or 30 days of physical therapy, at \$25 a day. So now we are confronted with overutilization

to the point of \$2,000 or \$2,500 for medical. I am just hitting the medical profession on that. We have complained to the Medical Societies. They have washed their hands of it. They won't set up a Peer Committee for it. Then come in the cases -- for example, we had one case of a woman who slipped on the stairs and claimed she was getting out of her car. Before we found that out, we paid \$2,000 in bills, etc. There are so many of them.

As I started to cite the setup in Puerto Rico, they had a case where a fellow burned his hand in the house. He came out to his car, took the radiator cap off and claimed that he was scalded there and not in the house. We can give you hundreds and hundred of cases like that. Those are the cases about which we are complaining. It is mostly due to overutilization, excessive doctor charges, hospital charges.

We had a case in Middlesex. A lady insured of ours was insured for an Oldsmobile. She worked for a doctor. She borrowed his Volkswagen, which everybody refers to as Hitler's revenge, because the minute that strikes a fixed object, the doors come open and fire sets in. Ordinarily, if insurance had followed the car, we wouldn't have been in on that. This lady had burns over 75 percent of her body. She lost two legs below the knee and one arm below the elbow. She lived for two months. We paid \$75,000 for hospital treatment and medical treatment for burns alone. If this lady had lived for years, I don't know how much it would have reached. It might have reached a seven figure number. That is what we are complaining about - the overutilization. And there is a hell of a lot of fraud in some of these cases. I am not concerned about the innocent case. The innocent case we will have with us and we ought to pay those. But those who through greed or otherwise are getting something to which they are not entitled are the ones we object to.

MR. CONNELL: Mr. Borrus, the reason the \$100 threshold for soft tissue was originally recommended by the Commission was to keep it low, not to encourage people or doctors, if you want to accuse them of being fraudulent, of running up bills. The reason the collateral source rule was built in the act -- it makes no difference where you have unlimited medical personal injury benefits and a claimant goes to a doctor and is treated to the tune of \$1,500 or \$2,000, that bill does not get into evidence at the trial. It is kept out. So, by eliminating the threshold, as long as you continue the medical, you are going to have this problem. But the threshold, itself, does not create that fraud problem that you referred to because the \$500 or \$750 bill does not go into evidence. The jury doesn't know about it.

MR. BORRUS: Mr. Connell, would you answer this question for me: If there was a Medical Review Board to look over the fees charged by doctors which could say whether they are excessive or not, would you be inclined to agree with something like that?

MR. CONNELL: Absolutely. The State Bar supports that, I understand.

MR. BORRUS: I think that is one of the big areas that the insurance companies --- I am talking about the consumer here who comes and says, "I can't get insurance." There is no available market right now. I am trying to make it available to him so we can go out and sell it.

MR. CONNELL: This Commission is mandated to study that problem, because so far no one has told us yet today how a change in the threshold will increase the affordability and the availability of the policies. Thank you.

MR. BORRUS: I would like to mention one more thing, if I may, Mr. Chairman.

Everybody has been alluding to and mentioning the rate reduction that was mandated when the law came into effect January 1st, 1973. There are two other points that I think ought to be pointed out.

One, on previous policies under the old liability system, medical was a separate on your insurance policies, if you can remember back to your insurance policies at that time. The limits were \$1,000, \$2,000 or \$5,000 maximum medical. When the companies paid out the \$5,000 - and the companies should be answering this, not I - they closed the book. So there was no experience factors, no ratings, nothing to say they ever paid out more than \$5,000. They were willing to live with unlimited medical at that time. Now that experience has proven otherwise, I think this is one of the reasons we have to have a cap on medical.

I would also like to point out to the Commission - I know it is not your realm - but our Insurance Department is understaffed. It is shocking that the New Jersey Department of Insurance, which brings into the coffers of New Jersey \$54 million through various sources, operates on a budget of approximately \$2,400,000 and is not computerized to keep statistics. I think that is another area that has to be worked on.

SENATOR MENZA: Thank you, Mr. Borrus.

Mr. Braddock of Braddock Insurance Agency, Tuckerton and Taunton Road, Medford, New Jersey. I don't know why I am reading the whole address here, but I am. Do you have a statement, sir?

J. STANLEY BRADDOCK, JR.: No, I don't have a prepared statement, gentlemen. As you have correctly indicated, I am here representing myself and I don't have a large staff that was capable of preparing this. I was called last week and asked if I would come.

I am J. Stanley Braddock, Jr. of the J. S. Braddock Agency in Medford, New Jersey, which is in South Jersey. I have served in the past in a three-state - New York, New Jersey and Connecticut - insurance study commission, which eventually recommended no-fault insurance in this and the other two states. As a result, I guess, of my work there, I was privileged to serve on the Implementation Committee for the State of New Jersey on the Public Relations Committee, and had an opportunity to testify back in those days before your prior Commission that set this up.

Before I go any further, I would like to say this -- I was going to save this until last, but it seems to me that we have heard so much about this -- I think our basic no-fault law in the State of New Jersey is good. I don't think that we can't make some improvements in it. But as I thought about what we would talk about here today or what I would try to talk about, I tried to review in my mind how we got to no-fault in the first place. What were the factors that we had to consider that made any of us want to study the automobile insurance mess, as it was called in the papers, in the press, in the trades, through all of our professions back in the late '60's and into the early '70's, and brought us to no-fault in this State and so many others?

Of course, we have referred to the Department of Transportation and its original studies back then - and I have volumes on my shelves back in the office - of the need to treat people fairly and properly at the time that they had claims. Those needs are still in existence today. I think they are even more important today, as we have more automobile traffic. The automobile is a necessity. None of

us would deny that. We must have automobiles and we have fantastic numbers of them riding the roads at all times. There are going to be accidents. Part of the problem that led us to this was the fact that there were so many accidents and cars travelling in such numbers and at such speeds that it was very difficult to determine who was at fault in accidents.

The innocent victim, the consumer, was in many cases not being paid at all or being paid inadequately in major cases and overpaid in minor cases. Families were wrecked.

So as we go back to it, I came to the conclusion today, as I did so many years ago as we all did, that no-fault is important and that our New Jersey no-fault is good. And I hope that Secretary of Transportation Brock Adams can give us a logical explanation of why he says it isn't good, because I think we agree that it is.

We have talked about threshold, and I would like to touch on that for just a moment if I may. Other states, if we can believe some of the material that we have had, that have higher thresholds claim that they have better results than we have here. On that basis alone, I would wonder if the \$200 threshold is adequate or proper in the State of New Jersey. Certainly, federal guidelines from the Department of Transportation have indicated that it is not.

You have indicated that your Commission recommended a \$100 threshold. I think at one point, there was ---

MR. DUNCAN: Not all of us.

MR. BRADDOCK: Not all of you?

I think at one point in the compromise, there was a \$1,000 threshold bandied around. In any event, it ended up at \$200. If \$200 was correct then, is it still correct today? Certainly, inflation, which I will speak about in just a moment, would have increased that about 50 percent in the meantime. Shouldn't we at least have taken that into consideration, if nothing else?

Our Trial Lawyers' Association - and Morris Brown testified, I thought, very adequately to this - indicated that we have had substantial court reduction in cases. I don't have those statistics. I would be interested to know if there are still nuisance cases above the \$200 threshold that would be cut out at \$1,000, or cut out with a verbal threshold. I don't know. I think they ought to be thought about.

Certainly, Assembly Bill 3164, which has been introduced, I believe, in this Legislature, indicates that we should go to the verbal threshold. I would be willing to work with any group that would study this further. I think it needs to be looked into.

The Cap Bill, I think, is something we ought to talk about, Senate 1380, passed by both the Senate and the Assembly in this State, and, as I understand it, it is on the Governor's desk waiting for signature. That bill would cap our payments to the companies at \$75,000, allowing the smaller companies, some of our New Jersey-based companies, I might hasten to add, to stay in business and to be able to accept risks - a sharing, a reinsurance, if you will, of this. I think this would be good. Now is it the perfect bill? I am not sure that it is. It may be that it isn't funded properly. But we have got to take a look at it.

I think we have to come down to talk a word about costs because I think

that is part of the mandate that this Commission has, to look at costs. Insurance companies don't really set rates. They ask for rates, of course. But the rates are made on our streets and highways, in our doctors' offices and in hospitals around this State. I thought about insurance companies on my way up here today and it seems to me they are very much like a wallet. Money comes in and money goes out. It is like us with our earnings. We take in so much earnings and we have so much to pay out; and when our payouts exceed what we take in, we have got problems. Our insurance companies are telling us that they have reached that point in many instances - and I think that needs to be looked at. Certainly, the results nationally, which I don't think any of us can refute, over the last three years would show that this is true. And our companies tell us that New Jersey is worse than most states, as far as that is concerned.

These are some of the things that we need to look at. We should take a look at the companies that have left New Jersey - the Gateway that failed, the GEICO that has pulled out, the other companies that have just pulled out of the State and said, "We don't want to write automobile insurance in this State anymore," and the companies in my office that say, "No, you can't write any new automobile insurance because we are paying out more money than we are taking in, and we are just not going to let you write it." Yes, there is a market, the residual market - the Automobile Insurance Plan. But is that the place we want 10, 12, 13, 14, whatever percent of our drivers in? I don't think that a good consumer marketplace in any business belongs in the so-called residual area. And I think that we need to take a look at some of those kinds of things.

Maybe A 3164 has some ideas in it with verbal threshold, which mandates medical review, which mandates the 85 percent of wage loss in the first \$5200. I am not sure that I agree with that personally, but it certainly should be looked at.

We have talked about affordable and available insurance and I would be willing to talk to that if you would like. Now I am sure that you have been beaten to death, perhaps, with statistics, but maybe we ought to just think about them for a moment. I talked about the over-all cost-of-living index and it is up approximately 50 percent - 48.3 percent nationally from 1967 to 1974. In the period of '67 to '75, certainly all other costs that auto insurance pays for, with the exception of one that I can find, have risen faster than auto insurance premiums have. Auto repairs and maintenance are up 79 1/2 percent; medical care, 73.5; semi-private hospital rooms, 145.4 percent increase; physicians' fees, up 74 percent; crash parts, 115.5 percent. The 1976 standard automobile that we could buy in a showroom at \$4438 bought in pieces today at a body shop would cost \$19,979 - four or five times the cost. That is something that I think we ought to take a look at.

Auto insurance premiums over that same period of time were up 48 1/2 percent. They didn't keep pace with the cost of living or any of the things that auto insurance pays for. The only item that I can find that was less than that was funeral services at 45.8 percent. It hasn't gone down at all, and I think we need to talk about that, but it hasn't risen quite as fast as some other things.

We talked about available and affordable. And we talked about that back in 1971 and 1972 at the time we were developing our first no-fault. My association that I was with at that time when I testified stated then publicly that we felt that no-fault would help to reduce costs from adequate rates, but we didn't have adequate rates then. And, of course, we bought a 15 percent reduction, as we all

know. Then we had the press that we heard about here earlier that costs would go down. Well, that is a relative term. Now based on the Consumer Price Index, auto insurance premiums have gone down in that period of time because they have risen less quickly than has the Consumer Price Index or other things. So we are still getting a buy, aren't we?

Things that insurance companies have to pay for have risen much, much, much faster than the premiums from the statistics that I have been able to see. I am not a statistician. I am here representing myself and the customers in my South Jersey area that have to buy insurance and find it difficult to find, but basically they like the no-fault concept.

I think it is working here and maybe you gentlemen will be able to help us find a few little ramifications that will make it better. But let's put the focus - and hopefully you men will - on where it really belongs; and that is looking into the things that we have to pay for. Can you do anything about that? Can we?

MR. DUNCAN: Lee, just one question: You are a practicing agent-broker.

MR. BRADDOCK: Yes.

MR. DUNCAN: You have a good risk, one who has had no accidents, but he happens to live in Trenton. You can't place that man, can you? It wouldn't matter what no-fault was. You just couldn't place him.

MR. BRADDOCK: It depends on the time of the month, I would say, more than anything else.

MR. DUNCAN: When the moon is high, you can place him?

MR. BRADDOCK: Right.

MR. DUNCAN: In effect then, what you are saying is that, as good or bad as the plan is, it never addressed itself to availability; and that seems to be our problem, among other things. If you were to separate the no-fault problems from the rating problems on a scale from 1 to 10, where would you put no-fault to rating as the thing that this Commission has to attack the most and the quickest?

MR. BRADDOCK: I would say it would be number one.

MR. DUNCAN: The no-fault?

MR. BRADDOCK: The rating.

MR. DUNCAN: You would put the rating as number one.

MR. BRADDOCK: Yes. The no-fault law, itself, I would put way down the scale. I think we have a good law.

MR. DUNCAN: So if we attack the rating, you feel that we will get a good portion of our problems solved. Do you have a suggested threshold, personally?

MR. BRADDOCK: If I had to personally set a threshold, it would be a verbal threshold.

MR. DUNCAN: Even in view of what you read about and what you have heard today about the questionability of verbal thresholds? Or do you feel that some threshold is better than no threshold?

MR. BRADDOCK: I think that some threshold is better than no threshold, certainly. We have heard that already a \$200 threshold, supposedly, has reduced the nuisance claims. It was the Trial Lawyers who told us that. And I have to believe them. They have the statistics. How much further would we have to raise it to cut out the rest of the nuisance claims?

MR. DUNCAN: What cap do you recommend?

MR. BRADDOCK: Cap?

MR. DUNCAN: Yes - 25, 50, 75, 100 thousand dollars?

MR. BRADDOCK: Well, I am personally satisfied with the one that we have.

MR. DUNCAN: Wait a minute. What cap?

MR. BRADDOCK: The \$75,000 one that was passed by the Senate and the Assembly.

MR. DUNCAN: You are happy with that \$75,000 cap.

MR. BRADDOCK: Yes.

MR. DUNCAN: What about claims over and above - the right to buy additional coverage?

MR. BRADDOCK: We are talking two different things. Let's get it straight. I think the unlimited as far as the consumer is concerned - when I buy insurance, I ought to buy the unlimited. Now the pooling arrangement above \$75,000 is the bill I would like to see the Governor sign.

MR. DUNCAN: Who would pay for that?

MR. BRADDOCK: Obviously, it has to be paid for by the people who use it. It has to be paid for in auto insurance premiums, not like in Hawaii.

MR. DUNCAN: Thank you.

SENATOR MENZA: Thank you very much, sir. We are going to take a 10-minute break. We will be back in ten minutes. We have only two more speakers.

(Ten-minute Recess.)

SENATOR MENZA: I would repeat very quickly that, in order to satisfy the South Jersey people, our third hearing will be in South Jersey - Atlantic City.

Mr. Honig will be our next witness.

EMANUEL A. HONIG: Thank you, Mr. Chairman, and members of the Commission, for inviting the New Jersey State Bar Association to appear and testify as to our findings and position on reforming the New Jersey No-Fault Law.

As the 1972 Commission so strenuously and competently worked in resolving the past problems of automobile insurance, you are again faced with the responsibility of addressing a seemingly more serious problem on the same subject. We are confident that your efforts and judgment will be as sound.

The New Jersey State Bar Association represents approximately 12,000 New Jersey lawyers. Probably no more than 10 percent of our members have practices substantially concentrated in automobile negligence litigation. Consequently, I believe we can concern ourselves with the protection of the public interest in this matter at least as much as with the concerns of our negligence trial bar. A representative of this Association, well qualified to speak to the technical issues which concern you, will present these matters to you.

I wish to address myself to a few general questions which I believe should concern you in your deliberations.

First, the public must realize that we could devise an automobile reparation system which could compensate every injured party for all possible losses, without regard to fault. But the cost of such a system would be astronomical and it would, therefore, be wholly impractical. We could also so restrict the right to recovery as to cut insurance costs very substantially and eliminate most of the delay and cost of resolving disputes by litigation. But this too would deprive the public of its right to be compensated for injury or loss. Your problem is to draw a line which will provide an equitable balance between these two extremes.

Second, the New Jersey State Bar Association stands at the forefront in opposing practices which actually encourage or countenance fraud by anyone, including

lawyers, in the operation of an automobile reparations system. We urge that anyone who is guilty of such conduct be prosecuted and that our profession be purged of any such wrongdoers, although we believe the accusations of such practices have been grossly overstated and that the new disciplinarian enforcement system about to be established by our Supreme Court will adequately protect the public from misconduct by lawyers.

I must point out to you that it is the duty of every lawyer who learns of such fraud by another lawyer to report that lawyer to an Ethics Committee or face disciplinary action himself. I suggest that the media or anyone else who has knowledge of improper conduct let us know the facts immediately. We shall see to it that all such cases are properly and speedily processed.

Finally, I caution you and the public that we should not unthinkingly preclude compensation to injured parties for pain and suffering. Pain from injury in an automobile accident, no matter how caused, may be of tremendous consequence to an injured party and will often destroy the whole quality of life of one who suffers such pain.

You do not have an easy task to balance these rights of the public and you should not idly deprive the public of this important and traditional right. Our Association believes that you should proceed cautiously and that, until you can satisfy yourself that any change in the existing law will materially reduce insurance costs or increase realized benefits to the public, you should refrain from changing the law merely to satisfy the clamor of some of its critics.

I will be pleased to answer any questions directed to those remarks; but, at the conclusion of those questions, or if there are none, I would then like to introduce the Honorable Richard A. Grossman, who will present the findings of the Bar Association regarding the issues at hand. Judge Grossman is an active trial practitioner and has had extensive experience in this area of the law. He has served on the Ocean County bench. He is a Trustee of the New Jersey State Bar Association and a member of our Special Committee on Automobile Reparations. Thank you.

SENATOR MENZA: Thank you, sir.

We will hear from Mr. Grossman at this time.

R I C H A R D A. G R O S S M A N: Members of the Commission, I have a prepared text which, in an effort to save time, I will read to you.

I would like to state, however, at the outset that I have been here through several speakers. I was contacted last week and asked if I would appear before you. Starting at that time, I prepared what few thoughts I had. I am struck by the fact that, when you hear what I have to say, it will echo what has already been introduced to you by lawyers and nonlawyers alike, that is, without consultation, without discussing our views. I can only say that I think much of what I have to say represents a consensus of the people who have appeared before you and I suspect will appear before you in the future.

This Commission has been constituted, as I understand it, to study two questions. The first is how well the Automobile Reparations Act has worked in the State of New Jersey since its inception in January, 1973. The second question is: How can the Act be improved?

The answer to the second question, and indeed that of the first, must depend upon the goals sought to be obtained by the adoption of this legislation. The

first goal was to make available to the motoring public of this State insurance to compensate victims of automobile accidents. The second goal was to provide this insurance at the lowest possible rate. The third goal was to reduce the amount of litigation in our courts. I must pause for a moment and state that the first goal could have been accomplished independently of the third. Apparently, there was a feeling that a significant number of people were being injured in a particular type of activity without adequate protection for medical expenses and loss of income.

In an atmosphere of "we know what is best for the public," the legislatures of a number of states decided to compel a substantial proportion of the population of those states, namely those owning automobiles, to carry insurance to protect themselves against a particular set of calamities. Now, I suppose, that could have been done in another way. All of the citizens of the states could have been compelled to purchase accident, major medical and income protection policies with special clauses for added protection if a policyholder was injured as the result of an automobile accident. However, in the collective wisdoms of the legislatures of these various states, they confined the area of insurance protection to those policies insuring automobiles only. It also narrowed the field of companies writing said insurance to those carriers providing liability coverages in the respective states.

Having decided upon the type of insurance desired, attention was then given to goal number two. It was suggested that a practical way to reduce the premiums for such insurance would be to limit the right to sue for pain, suffering and disability. It was agreed that the companies would save money otherwise diverted for defense and payment of these claims. This money would be used to reduce the overall premium. As a consequence of solving goal number two, goal number three would follow, in that there would be fewer numbers of cases commenced in the courts.

I recollect that in 1971 and 1972 - and, by the way, I was not a practicing attorney in those years - the leaders of the trial bar tried to tell the legislatures of the various states that the method of achieving goal number two by preventing a certain number of people from bringing law suits was both unfair and probably illusory. So long as carriers were required to provide unlimited medical insurance and substantial other benefits in an era of disturbing inflation and skyrocketing medical and hospital costs, our modest premiums were an impossibility. In a sense, the public was deceived into believing that it could obtain such widespread benefits for less money than they were already paying for automobile insurance. For the most part, those leaders of the trial bar were ignored, their contentions pigeonholed in the cubicle of human thought marked, "Special Interest Group - Do Not Heed."

Here we are some four years later considering what has been referred to as a crisis in the automobile insurance industry. The crisis concerns itself with the insurers telling government and the public that they cannot continue to write accident and disability insurance with such generous benefits without raising their premiums. Please forgive a few members of the trial bar as they exclaim, "We told you so."

From a review of statistics available, it must be concluded that goals numbers one and three have been achieved, but not number two. Payment of medical expense benefits under PIP protection has increased on an average over 60 percent since the inception of the Act until the present. Premiums for this sort of protection have increased between 15 and 16 percent. Along with this has come the

rapid rise in the increased cost of automobile repairs, maintenance and parts, which has caused a premium increase of 63 percent since 1972 in that portion of the motorist's premium bill dealing with collision, comprehensive, etc. Compared to this are the figures showing an approximate 50 percent drop in automobile negligence cases filed in the District Court of this State and a decreased percentage of automobile negligence cases compared to all others in the County and Superior Courts. This fact resulted in a decrease of almost 13 percent in that portion of the premium dollar dealing with liability insurance. If one will examine his or her own automobile insurance, it will be discovered that the portion allotted to liability coverage does not constitute a major portion of that entire premium bill. The same premium dollar paid in 1972 cannot purchase insurance for unlimited medical bills and spare parts at 1977 prices. You get what you pay for in this world, and that includes the world of automobile insurance as well.

There are those who advocate a solution to the "problem" or the "crisis" by further restricting the rights of those injured in accidents to sue the wrongdoer for pain, suffering and disability. There are those who say that if the \$200 threshold for the institution of suits in court brought some relief in the premium dollar, a \$400 threshold would bring twice as much relief, and perhaps a verbal threshold, total relief.

These, I suspect, are the same people who said the present Automobile Reparations Act was needed and would accomplish all three goals. There is much emotionalism and very little logic in these contentions.

As will be seen from some of the facts mentioned above, the impact of the number of lawsuits filed plays a relatively minor part in the premium dollar. While it is undoubtedly true that eliminating more lawsuits would save some money for the insurance companies, it is also true that more money could be saved by eliminating all lawsuits. The same could be said for homeowners' insurance, malpractice insurance, admiralty insurance, and just about any other field of human endeavor.

The thought that one who suffers injury or damage at the hands of a wrongdoer should not be able to seek compensation from that wrongdoer might work well in the Soviet Union or mainland China, but it is not socially acceptable to the citizens of this country. In fact, there is a substantial moral problem with imposing any threshold whatever.

Imagine, if you will, two identical accidents involving two identical victims and two identical injuries. Victim A goes to Dr. Jones who treats Victim A to the tune of \$200. Victim B goes to Dr. Smith who cures his patient for only \$190. "A" is permitted to sue for pain, suffering and disability and could conceivably collect a judgment for several thousand dollars. Victim B, who has the exact amount of pain, suffering and disability as Victim A, cannot sue and gets nothing. That same hypothetical situation can be recounted time and time again with thresholds of \$500, \$1,000 and any figure one wishes to mention.

Let us examine for a moment that remedy of all panaceas, the proposed National No-Fault Act. That Act has a verbal threshold, as I understand it, meaning that one cannot sue for pain and suffering unless he or she has sustained serious and permanent disability, defined as causing ninety consecutive days of being unable to attend to one's daily affairs. That means that someone who is laid up for only

seventy-five days has not suffered a terrible and crushing personal injury. That is truly a startling concept. Who is to determine and say what is a serious and permanent disability? I am reminded of the old saw about the difference between tragedy and comedy - the difference being the one who suffers the accident as opposed to the one witnessing it. Time and time again, I have heard physicians in court describe their patients' complaints of pain in the most objective and sterile of terms. They cannot know the extent to which that particular injury has disrupted the life of the patient and his or her entire family. Who, then, will be the guardians of human suffering to determine which people can sue and which cannot under the verbal threshold?

I read an article recently written by Mr. Herb Jaffe of the Ledger. He cited with enthusiasm the fact that in Michigan (a verbal threshold state) \$18.53 represented the "pure premium" for the bodily injury portion of the no-fault policy. In New Jersey, he said, the same coverage cost \$44.24. Assuming the figures to be accurate, are they meaningful? One cannot compare muskmelons with pears in order to call one a lemon. How many accidents per capita in each state? What were the average jury verdicts in each state? Has Michigan done away with intrafamily immunity in auto accidents, as has New Jersey? Lastly, so what? Even if there were parity in every category I have just mentioned, does the difference of \$25.71 per year, or seven cents a day, create a crisis in the insurance industry?

Consider, if you will, another aspect of the proposed increase in the amount of the threshold. Apparently, some insurance companies have complained of over-treatment by physicians and hospitals of victims of automobile accidents. Presumably, one of the motives for this would be to meet a threshold so that a lawsuit could be instituted. Meanwhile, the companies are paying greater PIP benefits than would ordinarily be justified. If there is a grain of truth to these allegation - and I suspect there is - what would be the result if the threshold is raised to a higher figure? The logical assumption is that treatments will become extended in an effort to meet the threshold. Not only will there not be a substantial reduction in the number of cases filed, but the amounts paid for PIP benefits would be increased, thereby again increasing the premium dollar.

One last thought in connection with the concept of restricting a person's right to sue another for negligent or purposeful misconduct. Very little attention has been given to the prophylactic benefit of lawsuits arising out of fault. The plain fact of the matter is that one who negligently causes injury to another, and is sued, probably will adopt a more careful course of conduct in the future. This applies in automobile cases as well as malpractice and other situations. People do not like to be sued, whether they have insurance or not. There is fear of insufficient insurance, placing their own assets in jeopardy, fear of cancellation of insurance, and in general a disagreeable feeling of being accused of improper conduct. There is a great social good in reminding people through lawsuits that they must take care in the operation of their automobiles.

Going back for a moment to the problem of over-treatment, it has been suggested that doctors and attorneys who participate in purposeful attempts to over-treat victims of automobile accidents be reviewed by a Fraud Committee or Commission. The State Bar Association endorses this proposal. I have some personal reservations concerning the same. As far as lawyers are concerned, there is an existing and

well-functioning system for investigating attorneys who have engaged in unethical conduct and for severely disciplining those who have been found guilty of such conduct. I believe that some apparatus exists in the medical profession along the same lines. I even have grave reservations concerning the name of this committee. Anyone called before a body known as a Fraud Committee must be presumed to have participated in a fraud. If indeed a fraud has been committed, there are criminal laws dealing with the same. There does not, upon swift reflection, appear to me to be any difference between this situation and that of abuses in the Medicare system and in connection with private insurance plans. Again, I reiterate these are my personal views and they are not necessarily shared by the New Jersey State Bar Association.

In summary, the New Jersey Bar Association recommends that limits be placed upon benefits payable for PIP protection. In conjunction with that, it is also recommended that a fee schedule for physicians and hospitals be implemented along the lines of Blue Cross and Medicare. Further, consideration might be given to combining the PIP benefits with other forms of accident and disability insurance, offering deductible plans to motorists.

It should be noted that many motorists, in addition to paying for PIP protection, also have Blue Cross-Blue Shield and major medical plans. Should they sustain injury as a result of an automobile accident under the present system, they would not really be getting the full benefit of their premium dollars.

One other aspect of the present law might be considered by this Commission. I have had personal experience with cases involving nominal injuries as a result of automobile accidents. A patient might be seen on a few occasions by a treating physician whose total bill might be a hundred, less than a hundred, or one hundred and fifty dollars; however, that doctor may have ordered a neck collar, a back brace and medications for pain or to relax muscles. When the devices and the medication were added to the amount of the doctor's bill for treatment, the total came to over two hundred dollars. Currently, persons such as this are permitted to institute suits even though they had no permanent disability and the injury was confined solely to the soft tissue. It would appear that these are the exact types of cases the present law sought to keep out of the courts. A more judicious drafting of the Act would prevent these cases from being instituted in the future.

Lastly, and for the reasons already mentioned by me, the New Jersey State Bar Association opposes any change in the present threshold limits for instituting suit. And I thank you.

SENATOR MENZA: Judge Grossman, at one point in your presentation, you state these were your personal views and you were not speaking on behalf of the Bar Association. Towards the end, you apparently were speaking for the Bar Association.

MR. GROSSMAN: Only with regard to the committee. We have presented a position paper. That position paper was voted upon by the Board of Trustees and adopted. I merely state that with regard to that one committee, I had some personal reservations. There really is no machinery that has been specified as to how that would operate, what teeth it would have in it, or anything else. Right now, I have some reservations.

SENATOR MENZA: The position paper is one that is entitled, "New Jersey State Bar Association's Position Paper - Re: Reform of the No-Fault Law."

(Position Paper can be found beginning on page 28X)

MR. GROSSMAN: Correct.

SENATOR MENZA: That is the official document of the Bar Association?

MR. GROSSMAN: That is correct, and it is on file with this Commission.

SENATOR MENZA: How about a copy of your talk, Judge?

MR. GROSSMAN: I did not bring copies, but copies will be made available by the Bar Association.

MR. GREEN: Will they be distributed to us?

MR. GROSSMAN: And distributed to you - yes, sir.

SENATOR MENZA: Any questions, gentlemen?

MR. DUNCAN: Judge, very quickly then, I note in the position paper there is no question about a cap on medical expenses being one of the recommendations.

MR. GROSSMAN: Yes, sir.

MR. DUNCAN: Do they have a dollar figure?

MR. GROSSMAN: No, sir.

MR. DUNCAN: Fifty, one hundred, seventy-five?

MR. GROSSMAN: It would seem to me - again a personal view - that this must be a product of the insurance industry, satisfying the Commission and the Legislature as to what is a feasible cap to effect a lower premium goal. I don't know.

MR. DUNCAN: And you want no adjustment of the \$200 tort threshold?

MR. GROSSMAN: That is correct.

MR. DUNCAN: But you are satisfied with the \$200 figure?

MR. GROSSMAN: I am not personally satisfied with a threshold at all, but I am satisfied that the \$200 threshold, if there must be one, has effected the purposes that it was intend to effect in this State.

MR. DUNCAN: Does the Association - and I don't see it here - take any position on a use and file - the right for the company to put a premium into effect?

MR. GROSSMAN: No.

MR. DUNCAN: Why would you take a position on some of the things and not on that?

MR. GROSSMAN: Well, I can't tell you what the Bar Association did. Mr. Connell may be able to. But I can tell you why I personally have not taken any position.

MR. DUNCAN: I am told the Chairman of that Committee is next to me and he would like to answer that.

MR. CONNELL: The reason for that is very simple. This Committee that I am the Chairman of is the Automobile Reparations Committee. We did not indulge in a study of the rating system, prior approval or any of the other factors. We were primarily concerned at that time on the issue of the threshold. And that is the reason for the position paper.

MR. DUNCAN: Thank you.

MR. GROSSMAN: Thank you, gentlemen. It has been a very hot day.

SENATOR MENZA: Thank you very much.

Mr. William Rue, Independent Mutual Agents, and our last speaker.

W I L L I A M M. R U E: My name is William Rue. I am an independent insurance agent from Trenton. I am testifying today on behalf of the Independent Mutual Insurance Agents Association of New Jersey, a professional trade association, representing approximately 4,600 independent agents and their employees presently doing business in this State. I am currently serving as President of this Association.

I would like to begin this very brief statement today by assuring you that IMA firmly supports the no-fault concept, and we did, in fact, play a significant role in getting our present law passed back in 1972. In our opinion, the law has served the public of our State admirably well in accomplishing its primary objective - namely, fast and equitable payment of accident victims for their losses. The citizens of New Jersey are no longer faced with the prospect of total financial disaster when they are injured on our highways. The law also appears, to at least some degree, to have decreased the amount of automobile accident litigation reaching our courts.

However, we do feel that certain amendments are necessary to make the law function to its fullest possible efficiency and thereby bring the greatest possible benefits to our motoring public. Specifically, we recommend the following changes:

1. We believe that there should be some kind of cap on no-fault medical benefits as far as our insurance companies are concerned. This is particularly important to our smaller domestic companies, some of whom have been literally backed into a corner by the tremendous losses which can and do occur under the unlimited medical benefits provision of the existing law. Note that a bill which would do just this is already in the hands of our Governor. This is Senate Bill 1380, which would establish a ceiling of \$75,000 on individual company payments on any one claim, with the remainder of any medical expenses being picked up by the State's Unsatisfied Claim and Judgment Fund. We recommend that Governor Byrne sign this measure into law immediately.

2. In conjunction with the above point, we do not advocate any ultimate reduction in the unlimited medical benefits presently available to the public under the no-fault law. However, we do suggest that you consider capping the total amount available under basic Personal Injury Protection and offer the remaining coverage, up to the unlimited level, as an option at a reasonable additional premium. While we don't want to take away from the public any benefits which have already been granted them, we do think that the system would work out in a more equitable manner for all concerned if this suggestion were carried out.

3. We view the present \$200 tort threshold as being probably the weakest link in the law as it now exists. It is simply far too easy, in terms of today's inflated economy, to reach the \$200 level of medical expenses and thereby take an automobile accident case into court. This defeats what is probably the second most important object of the law - namely, reduction of auto insurance costs by cutting down on the amount and the costs of litigation. On the basis of this reasoning, we strongly recommend that the tort threshold be greatly strengthened. This should be done either by going to a much larger dollar threshold or to a strong verbal threshold.

We think our three suggestions would help to at least contain the presently skyrocketing cost of automobile insurance. However, we do wish to warn the Commission that difficulties with our no-fault law represent only a single facet of a very complex problem, and we are not going to solve our overall problem until we deal with all the other facets in a constructive manner. We see as other elements of the bigger picture, at least the following two things:

1. Solution to the problem of how to deal with the rapidly growing residual market; i.e., the so-called assigned risk plan.

2. The problem of rate inadequacy currently confronting our companies and revision of the existing rating mechanism to deal effectively with that problem.

We thank you for permitting us to testify today, and we hope that our suggestions will receive some favor. If I can answer any questions, I will be happy to do so.

SENATOR MENZA: Thank you, sir. Any questions?

MR. DUNCAN: Bill, we are not on the subject yet, but you put together two of the bigger things in the picture. You put down the solution of the problem of how to deal with the rapidly growing residual market, as part of the bigger problem, and the problem of rate inadequacy. Do you think if we addressed number two, the rate inadequacy, it would take care of number one to some degree and we would have less of a problem?

MR. RUE: Yes, I think it probably would.

MR. DUNCAN: Thank you.

MR. CONNELL: Mr. Rue, on page 3, you say, "We think our three suggestions would help to at least contain the presently skyrocketing cost of automobile insurance, if not actually lower it." Now your third proposal deals with the threshold. Do you have any actuarial data, if the threshold in this State were changed from its verbal threshold and the \$200 soft tissue injury threshold, how much it would change the cost, either by way of reduction or by way of stabilization? Do you have any data?

MR. RUE: No, I don't have any data on that.

MR. CONNELL: You don't. Thank you.

SENATOR MENZA: Mr. Stern, we have heard all day about capping and 1380, which is presently on the Governor's desk. I would like very much to have some kind of figures, indicating the effect 1380 would have on the industry and the effect of capping with regard to the cost to the public. Do you understand what I am asking? I don't want the information necessarily now; you can submit it in writing. In other words, take a relatively small or medium-sized company, such as Motor Club, for example, or Allstate or State Farm. How does 1380 relate to them? I am just interested in some of the information we heard in the Judiciary Committee that time and also the capping aspect. How much would it cost the public?

MR. GREEN: Well, I can answer that for Motor Club and pretty much for Selected Risk. It will save each of us a little over a billion dollars, which can go back to the consumer as a reduction in our rates. The consumer has to gain by it because our reinsurance costs are going to be saved, and that would be reflected in a downward rate. The consumer still has his unlimited medical. It doesn't affect him at all. But the policy-paying consumer does get a break.

SENATOR MENZA: I just get a funny feeling that it is not as simplistic as that because I did hear some other testimony in the Judiciary Committee. So I would like to have some kind of information for the Commission as soon as possible.

That concludes the hearing for today. Thank you so much for bearing with us in this heat. Our next public meeting will be on July 28th, in the Freeholders Room of the Union County Court House, at 10:00 A.M. All persons are invited to testify. We ask that you contact our aides prior thereto. If the Ledger wants, it can print the fact that we really would like to get laymen to come before us, not only lawyers and insurance people, but the guy on the street who is paying the premium. Thank you.

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STATEMENT OF
JOHN J. NANGLE, COUNSEL
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
BEFORE THE
NEW JERSEY NO-FAULT STUDY COMMISSION
TRENTON, NEW JERSEY

July 21, 1977

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NAII is a voluntary national trade association of some 411 insurers of all types, both stock and non-stock, whose membership provides a representative cross-section of the casualty and fire insurance business in America. Our companies range in size from the smallest one-state entrepreneurs to the very largest national writers; they reflect all forms of merchandising -- independent agency, exclusive agency, and direct writer -- and they include companies serving not only the general market, but also those specializing in serving particular consumer groups such as farmers, teachers, government employees and military personnel. About 110 of our members are licensed to write automobile insurance in New Jersey, and we estimate that our members write approximately 50% of the insured automobiles in the state of New Jersey, so you can see the vital interest we have in the outcome of this committee's recommendations.

1 The automobile insurance picture in the state of New Jersey can only be described as the worst of all worlds. /

New Jersey State Library

- * ¶ The public is concerned about high premiums at the same time the insurance companies are paying out about \$1.30 for every dollar they take in. ^k
- * ¶ A stifling prior approval law, which is administered by a hostile and politically motivated insurance department/
- * A no-fault insurance law, which is completely out of balance with the realities of a prudent benefit level coupled with a logical tort threshold.
- * An availability of insurance problem, which will become worse as these underlying problems are left unsolved, compounding this unfavorable climate with a band-aid solution that has proven disastrous elsewhere (sponsored by the present Administration and insurance department) in the name of a Reinsurance Facility.

The Rating Law and the Residual Market problem will be the subject of future hearings of this committee, and we anticipate addressing those problems at that time. We are grateful for the opportunity to share with you our ideas concerning the reforms, which must be implemented to the New Jersey Automobile Reparations Act to deter future escalation of automobile costs to consumers and company surpluses alike.

We are discussing today proposed changes to the New Jersey no-fault law. They must be substantive changes, they must be real changes -- they should not be mere palliatives which will ease the pain, but allow the cancer to grow unchecked. Unfortunately, though, if these substantive changes are not made to the present law, we will continue to discuss temporary measures in the area of availability and the underlying causes and problems will get worse.

When we talk about automobile premiums, we are, of course, talking about PIP, BI, PD and the collision and comprehensive coverages. Physical damage coverages make up 50% to 60% of the policy premium. In this area, we are all aware of the tremendous increases in auto repair and crash parts. This, too, is another subject that should be considered perhaps in some other forum. As bill payers, we are at the mercy of inflation, in the PIP and bodily injury area with escalating hospital and medical costs. As if these factors were not bad enough, New Jersey, at the present time, has a very, very rich benefit package and virtually no trade off in the tort limitation area. It is in the latter two items that this committee can be very helpful in responding in their recommendations with a sensible and balanced "benefit" to "tort threshold" relationship.

The concept of no-fault was not necessarily one to relieve court congestion or expedite third party payments to claimants. These goals, of course, would be valuable and desirable secondary

effects to those of us who favor no-fault at the state level. Before no-fault, it was felt that under the liability system, less than half of the injured people involved in an accident were being compensated for their medical and wage losses. This is so because in every accident, one party was determined at fault, and the only recourse that person had for his injuries was under the first party Medical Payments coverage of the policy. The other half were entitled to recovery for their medical and wage loss benefits from the negligent party. The figure was less than 50% in this category because off the top were those drivers who were involved in one-car accidents or were just plain uninsured. To sell this new no-fault concept, the proponents used to good advantage the arguments that if it was desirable to see that anyone, regardless of fault, was paid for their medical and wage losses, the trade off, premium wise, must necessarily come from restrictions on the right to sue in tort. The rationale for this thinking was that the DOT Study found that companies were, by and large, settling many small and trivial bodily injury claims for nuisance value, and thereby overpaying those cases, and at the same time, because most people carried a limited amount of bodily injury coverage, i.e., \$15,000/\$30,000, the very serious injuries were being undercompensated.

The trick in determining what the benefit level should be viz the tort restriction carve-out is the "balance" between benefit and tort limitation, or the "trade off". To put it

simply, if you had a benefit level of \$2,000 for medical and wage loss you may have a "balance" if you peg the right to sue at something like a \$1,000 threshold level. On the other side of the spectrum, if you have an unlimited medical benefit package, as we have in New Jersey, the right to sue in tort should be limited to a very miniscule percentage of cases, if at all -- to accommodate this "balance". In our opinion, New Jersey has the worst "balance" of any no-fault law in the nation.

I will now comment upon the specific subjects related to the reparations system from which this committee has requested our views.

Placing a Limit on Medical Costs

Because the no-fault is compulsory and every citizen in the state of New Jersey must carry it, we feel that the benefit package should be adequate to cover a vast majority of the injured with full medical and a realistic limit of wage loss. To provide for unlimited medical, for instance, is a very rich package and requires everyone, rich and poor alike in New Jersey, to pay the higher cost of this excessive coverage. A \$50,000 total benefit package of no-fault benefits for basic economic losses would adequately cover the essential medical, wage and other expenses of most accident victims. For example, about 99% of the injured would be reimbursed for all of their medical expenses and their lost earnings up to a limit of \$1,000 per

month. Additional benefits would be available, on an optional basis, for those who feel they need this protection at a reasonable price.

Unlimited medical is an enigma to the casualty insurance company. In those rare cases of brain damage, spinal cord damage, limb loss, paraplegic, quadraplegic injury treatment and subsequent rehabilitation costs, especially in younger people with longer life expectancy, we are presently obligating a case in the 1977 file which must still meet payments in the year 2000. With tremendous medical inflation, we are being whipped into an unfortunate corner. For every dollar collected in 1977, by the year 2000, we are conservatively going to pay \$4.00 -- maybe \$8.00 more -- we really can't predict precisely how much more. The point is, that you will never again collect that \$77.00 for that \$77.00 injury, but you must, up there in 2000, pay five, six, seven and eight times that. The result is we never catch up.

Then there is the problem of reinsurance -- medium size and smaller companies require the purchase of reinsurance, if they can obtain it at all, for unlimited coverage, which puts them at a competitive disadvantage with their larger competitors. I might add that these medium size and smaller companies, and we represent most of them, serve a very substantial amount of

the insurance market in New Jersey and because they are not giants, try to be more innovative and competitive, which results in a better deal for the consumer in the long run. With some arrogance among staff people in Washington, I have heard it said that if they can't cut it -- they should get out. I'm sure that this thinking would not be reflected among the members of this distinguished panel. Getting reinsurance to cover the writing of the unknown, to unlimited coverage, as opposed to the calculable margin of a reasonable rate that they can pay with a \$50,000 medical cap would allow these companies to be a viable influence in the future availability of an insurance market in New Jersey.

The Role of Compensation to an Injured Person on the Degree of Fault

Changing the Existing \$200 Tort Liability Threshold by Increasing it Monetarily or Replacing it with a Verbal Threshold

| The \$200 soft tissue tort threshold is a joke. As a matter of fact, the experience of our companies in all states which have a dollar threshold is that a dollar threshold is nothing more than a target for plaintiffs' to overcome to establish their right to sue. This generates more loss dollars into the system, which is an irony to say the least because one of the purposes of the first party benefits, payable to all who are injured, is to preclude the necessity to sue for the less significant injuries. The plaintiffs' bar will, undoubtedly, be down here to tell you that they represent the consumer and that tampering with the threshold will be taking away the basic rights of an individual

for regress of injury. Remember, after no-fault that we are paying for medical and wage losses to 100% of the people who are injured, whereas before, under the tort system, we were paying the medical and wage loss on something less than 50%. So, a lot more dollars are going out in the form of first party medical and wage loss payments. We have to make these dollars available from some place else, and the only place you can get them is by limiting the right to collect for non-economic loss. This means that New Jersey should limit the right to a third party claim only in those cases involving death, permanent significant disfigurement, loss of a body member, total disability for 90 or more consecutive days or a medically determinable serious and permanent injury. The words "serious" and "total disability" should be defined.

Such a tort limitation coupled with a \$50,000 benefit package would be a very well balanced package.

Extending No-Fault Coverage to Collision

Whereas balanced no-fault elsewhere has met with acceptance of the public -- including property damage in the no-fault law has failed miserably. Personal conversations with adjusters, friends and public opinion polls tell us that when people get clobbered by a drunk from the rear end, through no fault of theirs, they do not want to sacrifice their \$100 or \$250 deductible to a theoretical system. They want their money

back. That is understandable. Besides, the problems which gave rise to all of this talk about no-fault to begin with, were in the bodily injury area and not found in the property damage cover.

The Use of Collateral Sources to Help Pay for Injuries from Auto Accidents

Automobile no-fault benefits must be primary as to any other available benefits, if automobile insurers are to implement sound disability and medical management strategies. Making other benefits primary over auto insurance benefits also creates great inefficiencies in claims administration.

Most health insurance policies do not cover the full cost of medical care. Most contain deductible provisions as well as co-insurance requirements. When health insurance is made primary, the auto insurer must reimburse the insured for those items of losses which are not paid by the health insurer. Accordingly, the auto insurer, as well as the health insurer, must establish a claim file and the auto insurer must investigate those elements of losses which are not covered under the health insurance contract.

On the other hand, no-fault laws should provide for the full reimbursement of medical losses up to a certain aggregate limit. To the extent that the expenses incurred in any one case for the medical care remains within the limit, health insurers do not have to create a file if automobile insurance is made primary. In fact, health insurers would seldom become involved

in the reimbursement of any medical losses resulting from auto injuries if the no-fault law provides for \$50,000 medical and wage loss benefits.

It has been alleged that the administrative costs of health insurance are substantially lower than automobile insurance and thus, total insurance savings could be achieved under a system which makes health insurance primary. Such assumptions are incorrect. Under no-fault insurance, the auto insurers are required to provide not only medical benefits, but a host of other benefits and coverages including disability, household expenses, replacement services, liability exposure, property damage and collision. The incremental administrative costs attributable to medical benefits are considerably smaller than the cost of administering health insurance. Accordingly, the most cost efficient administrative system is the one which makes automobile insurance primary.

Another important reason to make automobile insurance primary is because such primacy allows the auto insurer to maximize claims management by coordinating medical and wage disability benefits. This gives the auto insurer much greater incentive to assist the injured in reducing the disability and returning to gainful employment. Such coordination would not be possible under a system which would make health insurance benefits primary.

Should PIP Benefits be Limited to the Named Insured, Spouse and Resident Members of the Families or Extended to all Occupants of the Insured's Car?

We believe that insurance should follow the automobile and not the individual in an accident. The present law in New Jersey provides for the insurance to follow the individual in an accident. This is inefficient and unfair for two reasons:

* An operator of an automobile is involved in an accident. His insurance company must respond by opening up a file, investigating the liability possibilities, estimating and settling the physical damage claim and receiving and paying the PIP on the operator. Efficiency then requires that this same company merely receive and pay the PIP claims of all the occupants in the automobile. | Under the present law, if four passengers are riding with the insured in a car pool and an accident occurs and all of them are injured, it is quite possible that five insurance companies would necessarily open up a file and go through the same motions to a limited degree that the original insurer on the automobile would have had to do in the first place. A

* Policyholders want a rating system which reflects their good driving record. Of course, bad drivers do not want to be penalized for their accidents, however, it is extremely unfair not to charge accident prone drivers more than those vast majority of risks which are accident free, thereby making these

more responsible drivers subsidize the poorer ones. Amending the present New Jersey no-fault law to put the responsibility on the vehicle instead of the individuals, would reflect the proper exposure to loss to each vehicle insured.

Should No-Fault be Extended to Motorcycles, Trucks, Buses, Taxis and other Fleet Vehicles?

No-fault benefits should not be extended to any other category than to the private passenger motor vehicle.

The present no-fault law wisely excludes motorcycles, however, a New Jersey appellate case, Hoglin v. Nationwide, has held that an injured motorcyclist may receive PIP benefits under an available automobile insurance policy. I believe that this interpretation was unintended under the original law, and some amendatory language to the present law might be in order to clarify this.

White
ESP

Truck occupants are virtually all covered under some form of workers' compensation, and therefore, there would be no need to amend the present law to include trucks. As a matter of fact, to include trucks under the no-fault law would reap an unjustified windfall to them because when they are involved in an accident, it is almost always attendant with injury consequences in the private passenger vehicle.

Extending coverage of the no-fault law to buses would be highly undesirable under the present New Jersey statute, whereby insurance follows the individual. Therefore, I suggest

that added impetus to an amendment, which would amend the no-fault benefits to follow the vehicle, would correct an inequity in this area, and thereby, if that is accomplished, and only if that is accomplished, it would be desirable to include buses and taxis under the no-fault provisions.

*V. Bull
only*

How Much "Fraud and Deceit" in There, If Any -- Particularly Billing Practices by Doctors and Hospitals Allegedly Inflating Claims to Raise the Monetary Threshold Above \$200 so Lawsuits Can be Started.

What Has Been the Rate of Increase in Auto Premiums Since Enactment of "No-Fault" After Discounting the Inflationary Factor, and What is the Actual Profit Margin in New Jersey for Auto Insurers?

*NO
Answer*

On these last two questions, Mr. Chairman, because of the shortness of time to prepare for this hearing, and because these facts and data are not immediately available, I cannot comment upon them at this time. I have directed inquiries to our departments that handle these things and ask permission at this time to follow up on my testimony here with submission into the record of the findings and answers to them.

Thank you very much for the opportunity to be heard on this very important subject, and I would like to extend the courtesy of our association and its expertise in any specific inquiry or information need that this committee may feel necessary in their deliberations.

Statement of
American Insurance Association
Before The
New Jersey No-Fault Study Commission

By
Grover E. Czech
Mid-Atlantic Regional Vice President

State House Assembly Chamber
Trenton, New Jersey

July 21, 1977

10 A.M.

The American Insurance Association is a trade group whose membership consists of 147 stockholder owned property-casualty companies doing business in all 50 states. Many of our member companies do a great deal of business in New Jersey and several have their home offices located in the state. AIA companies account for approximately 45% of the property/casualty market in New Jersey, including roughly one-third of the automobile business.

We appreciate this opportunity to offer our comments to this study commission and are hopeful that your efforts will result in an improved no-fault law that will better serve the needs of the New Jersey motoring public.

Before making any specific comments on this subject, I think it is useful to briefly review the original purpose and intent of the no-fault concept as it applies to an automobile insurance reparations system. No-fault came about because of serious criticism of the tort liability system. That system suffered from crowded court calendars with delays of up to two years in having a case heard, it was criticized for being too expensive in terms of legal and administrative costs, for not returning enough of the premium dollar to injured auto accident victims, for overcompensating small claims and seriously undercompensating larger claims and for only compensating those accident victims proven to be free from fault. No-fault was to improve on the liability system in that all injured automobile accident victims would be promptly and fully compensated, up to the limits of their coverage, for their economic loss without regard to fault. Auto accident victims gave up their right to sue, (only partially under the New Jersey Law with its \$200 threshold) and possibly recover, but gained the right to immediate and full compensation for medical, wage and other economic loss.

In order to finance this system of compensating all accident victims for their losses as opposed to only compensating those not at fault or 50% of all accident victims, the expensive process of fault determination through litigation had to be eliminated except for very serious injuries and for losses in excess of no-fault coverages. Essentially then, the dollars saved in litigating liability claims, where only half the victims would be compensated, were used to pay no-fault benefits to all accident victims. Most actuaries agreed this concept would work, if it was structured properly, and would result in auto insurance premiums equal to, or less than, existing equivalent insurance premiums. (Pre no-fault premiums = bodily injury liability coverage + medical payments coverage + uninsured motorists coverage -- no-fault premiums for equivalent coverages = bodily injury coverage + personal Injury Protection (PIP)). We are convinced the actuaries were correct and even though the record has been muddled somewhat by unanticipated and unprecedented inflation over the past few years the fact remains that the no-fault concept for auto insurance is a better system both in terms of compensating auto accident victims and in terms of favorably impacting on auto insurance premiums.

I have attached to my statement a brief summary indicating the impact of no-fault and inflation on auto insurance rates. The summary indicates that even including rate increases through March of 1976, auto insurance rates in most no-fault states were approximately the same or somewhat lower than they were under the fault system. In New Jersey, for example, most insurers reduced their rates by approximately 27% when no-fault became effective four years ago. GEICO dropped its rates by 33%. Even with increases

granted since then, average rates for bodily injury insurance are still lower today than they were in 1972. (\$64.80 versus \$74.29).

The New Jersey no-fault law is working well in one respect in that it is compensating all accident victims fully and promptly for their economic losses. The law remains defective and imbalanced however, and while it includes a generous first party benefits package it does not include a meaningful restriction on lawsuits. Liability actions have not been adequately curtailed and the cost of litigation and other frictional costs associated with the liability system have not diminished to the point necessary to adequately offset the cost of the laws generous no-fault benefits and not enough to have a major impact on residual bodily injury liability rates. In essence we have both a traditional tort system and a no-fault system operating at the same time. Such a dual system is too expensive and cannot continue if the full benefits of the no-fault law are ever to be felt by New Jersey motorists.

There is evidence that the number of auto negligence cases docketed for the three years after the no-fault law went into effect have declined five to ten percent. The National Association of Insurance Commissioners Fast Track Data also indicates that the pure premium (which is total losses, exclusive of all loss adjustment expenses, divided by the number of insured vehicles), for bodily injury liability coverage has increased by 12.1% since 1972. This is less than the rate of inflation meaning that the \$200 threshold has had some impact on reducing tort suits. Nonetheless, there has been a large increase in liability losses paid and this means the threshold is not adequate.

Additionally, even though the number of bodily injury suits have declined the average payment per claim has been steadily increasing with a 25.5% increase from only the end of 1975 to the first quarter of 1977. (\$4,303 versus \$5,402)

A comparison of the New Jersey results to Michigan's which has a strong verbal threshold in its law, clearly demonstrates the impact of such a threshold on both premiums and a reduction in tort suits. While New Jerseys BI pure premium is now 12% higher than it was prior to the no-fault law in 1972, (\$47.10 in March 1977 versus \$42.00), Michigan's BI pure premiums show an absolute reduction of nearly 50% from its pre-no-fault level in 1972. (\$18.66 in March 1977 versus \$36.26)

The explanation for this phenomenal achievement lies in the Michigan laws strong threshold. In 1972, a total of 52,191 claims were paid under the bodily injury liability coverage in Michigan. In the year ending last March only 6,518 claims were paid -- a drop of 45,673, a staggering 87.5%. New Jersey also experienced a 56% decline in frequency of bodily injury liability claims but this is not meaningful in terms of savings when compared with the constant increase in the size of claims.

Clearly, what needs to be done is for the existing no-fault law to be amended replacing the \$200 threshold with a verbal or descriptive provision. Absent inflation, and assuming the existence of an adequate rate, this will impact favorably on future bodily injury liability premiums.

There are other problems with the New Jersey law in addition to the threshold, one of which is particularly serious. The law presently requires insurance companies to pay unlimited medical benefits to its insureds. This requirement has become a difficult burden for many companies doing business in New Jersey and we propose that there be a maximum limit of \$50,000 on the amount of required medical expense benefits payable under the law. This change will provide adequate coverage from most insureds and permit companies to offer excess medical payments coverage to consumers who wish to purchase additional protection above \$50,000. At the same time it will limit the total exposure to an amount any financially responsible insurance company can adequately handle. Such amendment would also provide a greater element of predictability in the rate making process that is lacking under present law.

In this regard I would urge the commission to seriously consider this approach as opposed to the approach taken in Senate Bill 1380. That proposal has passed both Houses of the legislature but has not yet been signed by the Governor. The approach taken in that bill will not serve to reduce insurance costs to the public but will spread the cost over all companies doing business in the state. The bill will force companies to pay for the losses of their competitors and in effect forces larger insurers to subsidize reinsurance premiums that smaller companies will no longer have to purchase. It is a most undesirable and anticompetitive approach and we ask the commission to give our amendment in this regard its very serious attention.

We have other concerns about the no-fault law as well. One area is that of fraudulent claims. We don't know the extent of it but we would certainly support some mechanism to discourage such claims. Frankly, part of the problem is existing statutory provisions penalizing insurers for delay in payment of claims. This contributes to the problem by making insurers hesitant about denying claims and it also does not give them proper time in some instances to properly investigate and evaluate the merits of a claim. I would caution the commission however, against setting up some elaborate mechanism to handle this problem. Any solution must be cost effective, that is it must not cost more or even as much as present losses resulting from fraudulent claims.

Clearly something is wrong with the system, PIP pure premiums increased 32.7% from first quarter 1976 to 1977 and the average PIP loss went up 17.3% for the same period. This is compared to a countrywide increase of 22.1% and 5.9% respectively. BI pure premium and average loss for the same period increased 12.2% and 19.1%. Countrywide the same figures are 7.6% and 10.7%. Part of the explanation for this is a weak threshold with other reasons being a high benefits package, over utilization of auto insurance, inflation and outright fraud.

Another concern we have is that of a recent court decision which included motorcycles under the no-fault law. We feel this was not the original intention of the legislation, with good reason, and we think the law should be amended clarifying this exclusion.

During the past year, in conjunction with the other trade associations and State Farm, we have made our own independent study of the New Jersey no-fault law and have prepared certain amendments to the law; some of which I have discussed in my statement. Of particular importance is the language creating a verbal threshold, the language limiting medical benefits payments to \$50,000 and the exclusion of motorcycles. In all there are nine amendments some substantive and some technical and I am making them available to the commission. I might add that this language has been carefully drafted by insurance experts who are involved in the actual day to day process of handling claims. I must emphasize that the creation of a verbal threshold is a most difficult undertaking and words must be chosen carefully so as not to encourage the very litigation the no-fault concept is intended to reduce to a minimum. This language has been drafted specifically with regard to the handling and administration of claims and with regard to minimizing litigation.

We appreciate this opportunity to comment and we will be glad to try and provide the commission with any additional information you may require.

GEC/dgd

7/77

New Jersey State Library

NEW JERSEY DEPARTMENT OF INSURANCE

AUTOMOBILE BODILY INJURY LIABILITY

PRIVATE PASSENGER CARS

PAID LOSSES PER INSURED CAR YEAR ENDED

<u>Year Ended</u>	<u>Number of Paid Claims Per 100 Cars</u>	<u>Average Payment Per Claim</u>	<u>Average Payment Per Car</u>
December 31, 1973	2.13	1,798	\$38.30
December 31, 1974	1.65	2,202	36.33
December 31, 1975	1.27	2,811	35.70
June 30, 1976	1.13	3,196	36.11

March 7, 1977

NEW JERSEY DEPARTMENT OF INSURANCE
AUTOMOBILE PROPERTY DAMAGE LIABILITY

PRIVATE PASSENGER CARS

PAID LOSSES PER INSURED CAR YEAR ENDED

<u>Year</u> <u>Ended</u>	<u>Number of Paid</u> <u>Claims per 100 Cars</u>	<u>Average Payment</u> <u>Per Claim</u>	<u>Average</u> <u>Payment Per Car</u>
December 31, 1973	7.52	366	\$27.52
December 31, 1974	7.98	376	30.01
December 31, 1975	8.16	421	34.35
June 30, 1976	8.11	439	35.60

March 7, 1977

New Jersey Department of Insurance

Average Insurance Cost Per Car

Companies Using Rates of Insurance Services Office

	<u>1972</u>	<u>1977</u>	<u>Change</u>	
Bodily Injury 15/30 Limits	\$74.29	\$64.80	-12.8%	22%
Personal Injury Protection/ \$5,000 Medical Payments	<u>12.52</u>	<u>35.34</u>		12%
Total	86.81	100.14	+15.4	
Property Damage \$5,000	<u>38.34</u>	<u>53.53</u>	<u>+39.6</u>	
Total Liability	125.15	153.67	+22.8	
Collision \$100 Deductible	63.30	108.97*	+72.1	
Comprehensive ACV	<u>19.57</u>	<u>26.13*</u>	<u>+33.5</u>	65%
Total Physical Damage	<u>82.87</u>	<u>135.10</u>	<u>+63.0</u>	
Total All Coverages	208.02	288.77	+38.8	

NOTE: Bodily Injury rates were reduced and Medical Payments charges were eliminated January 1, 1973.

*Reflects rate increases and higher premiums due to higher cost of cars.

\$200 deductible collision coverage is marketed since March, 1976 with a cost reduction of approximately \$32.

COMPARISON OF BODILY INJURY CLAIM FREQUENCIES FOR INDICATED YEARS IN STATES WITHOUT A NO-FAULT STATUTE
 BASED UPON THE EXPERIENCE OF ALL COMPANIES IN EACH STATE AS COMPILED BY INSURANCE SERVICES OFFICE AND
 NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

	1972			1973			1974		
	CARS	CLAIMS	FREQ	CARS	CLAIMS	FREQ	CARS	CLAIMS	FREQ
CALIFORNIA	1 956 193.	40 216.	2.06.	2 020 206.	42 470.	2.09.	2 115 084.	42 052.	1.77.
MISSOURI	1 187 758.	20 172.	1.70.	1 247 916.	19 912.	1.60.	1 295 914.	15 786.	1.52.
OHIO	2 964 707.	16 282.	1.58.	2 177 256.	47 190.	1.49.	3 402 026.	44 048.	1.27.
PENNSYLVANIA	3 512 616.	57 707.	1.64.	3 781 853.	60 226.	1.59.	3 899 522.	54 276.	1.37.
TEXAS	2 747 693.	64 169.	1.61.	4 272 503.	68 693.	1.61.	4 390 185.	63 725.	1.46.
WISCONSIN	1 967 011.	19 408.	2.00.	1 029 952.	18 435.	1.73.	1 039 727.	16 254.	1.62.
TOTAL	14 573 973.	248 556.	1.71.	15 519 791.	256 954.	1.66.	16 142 468.	227 141.	1.47.

% change in Claim Frequency
 1972-1973 (-3%)

% change in Claim Frequency
 1972-1974 (-14%)

2/1/74

RESTRICTIONS ON LAWSUITS	PRE-NO-FAULT YEAR	NO-FAULT							
		1ST YEAR		2ND YEAR		3RD YEAR		4TH YEAR	
		CARS	FREA	CARS	FREA	CARS	FREA	CARS	FREA
LOUISIANA - Barred except in cases of death or serious injury or unless economic loss over \$500.	842678 . 1.17	897776 . 32	-73%						
MASSACHUSETTS - Barred except in cases of serious injury or death, unless medical or hospital bills over \$400	962617 . 2.15	950299 . 22	-62%	1027335 . 65	-70%	1019481 . 71	-67%		
NEW HAMPSHIRE - None	171008 . 1.12	177977 . 71	-19%	191596 . 87	-22%	207113 . 88	-21%	219555 . 85	-24%
FLORIDA - Barred unless medical & related expenses over \$1000, or in cases of serious injury or death.	1985554 . 2.30	2370441 . 53	-73%	2501629 . 69	-70%	2785379 . 62	-73%	2873732 . 77	-66%
GEORGIA - Barred unless reasonably incurred medical expenses or value of economic loss exceeds \$500, or except in cases of serious injury, death or any injury resulting in disability which prevents performance of normal occupational duties for 10 or more consecutive days.	1411999 . 1.16	1568807 . 93	-21%						
ILLINOIS - Barred except in cases of death or serious injury, unless maximum 1st party benefits are exhausted, or unless the amount paid or accrued exceeds the medical, rehabilitative limit.	228767 . 1.73	283378 . 36	-79%						
KANSAS - Barred except in case of death or serious injury or unless medical expenses exceeds \$500.	821121 . 90	821516 . 41	-54%	922297 . 41	-54%				
MARYLAND - None	1267889 . 1.73	1352622 . 1.84	-5%	1508094 . 1.74	-10%	1575446 . 1.67	-13%		

RESTRICTIONS ON LAWSUITS

RE-NO-FAULT YEAR

NO-FAULT

CARS

FREQ

1ST YEAR

CARS

FREQ

2ND YEAR

CARS

FREQ

3RD YEAR

CARS

FREQ

4TH YEAR

CARS

FREQ

MICHIGAN - Barred except in cases of death or serious injury, when economic losses exceed allowable amounts under personal protection no-fault, or in cases of intentional or caused harm.

1505772

126

307620

44

-76%

3238125

21

-89%

MINNESOTA - For legally incurred economic losses, permitted when the time & dollar limit on 1st party no-fault benefits are exceeded. For pain & suffering, barred except in cases of serious injury or death unless medical expenses over \$2000.

1095599

141

1164846

41

-71%

NEVADA - Suits for general damages barred except in cases of death or serious injury or unless medical benefits exceed \$750.

192206

171

212995

48

-54%

231954

51

-53%

NEW JERSEY - Allowed only when doctors' bills for soft tissue injury exceed \$200, or in cases of injury or death.

2275215

238

2389606

151

-37%

2594814

127

-46%

2604452

91

-62%

NEW YORK - Barred except in cases of death or serious injury, or when reasonable & customary charges for necessarily performed medical, hospital and related services exceed \$500.

4741227

273

4852614

126

-54%

4825741

138

-49%

OREGON - None

806998

174

826431

171

-2%

874358

155

-11%

952788

124

-23%

1007747

135

-22%

43X

UTAH - Barred except in cases of death or serious injury or unless medical expenses over \$500.

406221

129

452995

67

-48%

475057

70

-46%

NOTE: Description of Restrictions on Lawsuits taken from chart prepared by Insurance Information Institute

LAW DIVISION - SUPERIOR AND COUNTY COURTS

TOTAL AUTO NEGLIGENCE CASES ADDED
AS A PERCENTAGE OF ALL CIVIL CASES ADDED*

COUNTY-BY-COUNTY DATA COURT YEARS 1970-1976

Court Years Ending August 31

COUNTY	1970 ^{1/}	1971 ^{1/}	1972 ^{1/}	1973 ^{1/}	1974	1975	1976
Atlantic	47%	54%	48%	41%	27%	34%	31%
Bergen	50%	53%	51%	49%	43%	39%	39%
Burlington	58%	60%	55%	53%	51%	44%	43%
Camden	69%	65%	62%	58%	54%	48%	53%
Cape May	33%	34%	34%	31%	24%	19%	22%
Cumberland	64%	63%	55%	50%	51%	41%	43%
Essex	51%	52%	47%	48%	49%	45%	41%
Gloucester	64%	68%	64%	62%	62%	53%	57%
Hudson	56%	55%	55%	53%	53%	52%	48%
Hunterdon	41%	45%	34%	36%	31%	30%	28%
Mercer	55%	56%	51%	52%	48%	42%	42%
Middlesex	68%	66%	66%	62%	57%	52%	54%
Monmouth	61%	58%	59%	58%	51%	48%	46%
Morris	49%	54%	50%	47%	43%	33%	31%
Ocean	57%	53%	52%	51%	45%	40%	37%
Passaic	52%	50%	49%	47%	46%	42%	42%
Salem	59%	55%	51%	39%	41%	36%	29%
Somerset	39%	44%	39%	37%	37%	30%	33%
Sussex	53%	44%	45%	32%	33%	29%	23%
Union	56%	54%	53%	52%	49%	47%	45%
Warren	47%	41%	60%	37%	32%	24%	23%
STATE* TOTAL	56%	56%	53%	52%	48%	44%	43%

* County percentages calculated by dividing total auto negligence cases added (new as well as reinstatements) in the county by the total of all civil cases added in the county for each court year.

State Total percentage calculated by dividing the State Total of auto negligence cases added (new as well as reinstatements) by the State Total of all civil added for each court year.

1/ Data on cases added for court years 1970-1973 excludes cases added by transfer or reinstatement. Those reinstatements and transfers represented such a negligible proportion (0.5%) of all cases added, their exclusion will not significantly affect this analysis of changing percentages of auto negligence cases added relative to total civil cases added.

COUNTY DISTRICT COURTS

NEW AUTO NEGLIGENCE COMPLAINTS FILED (INCLUDING REINSTATEMENTS) AS A PERCENTAGE OF ALL COMPLAINTS ADDED*

COUNTY-BY-COUNTY DATA COURT YEARS 1970-1976

Court Years Ending August 31

COUNTY	1970	1971	1972	1973	1974	1975	1976
Atlantic	8.7%	9.3%	7.5%	7.7%	5.5%	3.4%	2.9%
Bergen	12.0%	11.7%	11.3%	9.5%	6.4%	4.7%	4.4%
Burlington	8.5%	7.7%	6.7%	6.0%	5.1%	4.2%	2.9%
Camden	9.8%	8.4%	8.2%	7.8%	6.4%	4.0%	3.3%
Cape May	7.4%	7.2%	8.0%	5.8%	3.4%	2.8%	3.0%
Cumberland	8.5%	8.1%	7.5%	7.6%	5.2%	4.1%	3.3%
Essex	11.0%	10.0%	9.3%	7.6%	6.2%	4.9%	4.1%
Gloucester	8.3%	8.3%	8.0%	8.0%	5.8%	3.9%	3.1%
Hudson	10.4%	10.0%	9.5%	8.5%	7.3%	5.7%	5.5%
Hunterdon	5.6%	5.7%	4.6%	3.8%	3.0%	2.8%	2.7%
Mercer	9.2%	8.4%	7.9%	6.5%	5.1%	3.3%	2.5%
Middlesex	12.4%	10.7%	9.8%	9.4%	7.1%	5.3%	4.4%
Monmouth	12.0%	9.5%	7.8%	8.0%	4.8%	4.3%	3.0%
Morris	9.9%	9.9%	8.6%	7.0%	5.8%	4.9%	3.8%
Ocean	9.8%	8.9%	6.6%	7.3%	4.5%	3.6%	2.6%
Passaic	9.7%	10.5%	10.9%	8.3%	5.8%	5.1%	4.4%
Salem	2.9%	2.5%	3.0%	2.7%	2.2%	2.2%	1.0%
Somerset	9.7%	9.1%	7.6%	6.1%	5.5%	3.9%	3.4%
Sussex	7.2%	6.3%	6.8%	5.4%	4.4%	2.8%	2.3%
Union	14.8%	12.8%	12.6%	10.6%	8.1%	5.9%	6.1%
Warren	9.6%	7.1%	6.7%	7.3%	4.6%	4.1%	2.6%
STATE* TOTAL	10.7%	10.0%	9.4%	8.1%	6.1%	4.7%	4.0%

* County percentages calculated by dividing new auto negligence complaints filed (including transfers and excluding reinstatements) in the county by the total of all complaints added for each court year.

State Total percentage calculated by dividing the State Total of new auto negligence complaints filed (including transfers and excluding reinstatements) by the State Total of all complaints added for each court year.

Examining the data for the County District Courts, total auto negligence complaints added (including reinstatements) for court years 1970-1972 amounted to 89,076 out of a total of 692,252 of all complaints added. For court years 1974-1976, total auto negligence complaints amounted to 52,192 out of a total of 835,522 complaints added. Thus, for the three years prior to the enactment of this legislation, auto negligence complaints represented 12.9 per cent of the total complaints added, while, for the three full years after the enactment of this legislation, auto negligence complaints comprised only 6.2 per cent of the complaints added in the District Courts. It should also be noted that the number of total auto negligence complaints added averaged 29,692 for 1970-1972 (pre-enactment) and 17,397 for 1974-1976 (post-enactment).

Examining new auto complaints filed (including transfers and excluding reinstatements) a similar pattern emerges of a decreasing proportion of auto negligence cases to total District Court complaints added. New auto negligence complaints filed for court years 1970-1972 amounted to 69,265 out of the total of 692,252 complaints added. From court years 1974-1976, new auto negligence complaints filed amounted to 40,817 out of the total of 835,522 complaints added. Accordingly, for the three years prior to the enactment of this law, new auto negligence complaints represented 10.0 per cent of the total filings in the District Court, while, for the three full years after the enactment of "No Fault," new auto negligence complaints represented 4.9 per cent of the total filings. The number of new auto negligence complaints averaged 23,088 for 1970-1972 (pre-enactment) and 13,606 for 1974-1976 (post-enactment).

COUNTY DISTRICT COURTS Complaints Filed

Court Year Ending August 31	New Auto Neg. Filed (Including Transfers) ^{5/}	Inactive Auto Neg. Complaints Added ^{5/}	Total Auto Neg. Complaints Added ^{5/}	Total Of All Complaints Added	New Auto Neg. Complaints As Percentage Of Total Of All Complaints Added	Total Auto Neg. Complaints As Percentage Of Total Of All Complaints Added
1970	23,120	5,503	28,623	215,491	10.7%	13.3%
1971	23,714	7,412	31,126	237,548	10.0%	13.1%
1972	22,431	6,896	29,327	239,213	9.4%	12.3%
1973 ^{6/}	20,292	6,333	26,625	251,743	8.1%	10.6%
1974	15,948	5,048	20,996	260,664	6.1%	8.1%
1975	13,154	3,480	16,634	280,941	4.7%	5.9%
1976	11,715	2,847	14,562	293,917	4.0%	5.0%

Conclusions

This caseload data supports the conclusion that the proportion of automobile negligence cases relative to the total caseload has diminished since the "No Fault" law went into effect. This is true both in the Law Division of the Superior and County Courts as well as in the County District Courts. The number of auto negligence cases filed has decreased also: a slight decrease in Superior Court auto negligence cases added and a substantial decrease in complaints filed in the County District Courts. County-by-county data presented on the following three pages also follows a consistent pattern: the proportion of auto negligence cases added relative to the total cases added has decreased in both civil courts for every county.

Although these decreases have occurred since the "No Fault" law went into effect, it would be inaccurate to attribute these decreases solely to the effect of the "No Fault" law. In order to state precisely the effect of this law on the courts, it would be necessary to review individual cases as well as define, quantify, and statistically eliminate all interacting factors which could affect the filings of automobile negligence cases. These factors include increases in automobile registrations, changes in the amount deductible for each collision, the gasoline shortage and the subsequent reduction of maximum speed limits, increased safety equipment in cars, changes in the law or the amount of other litigation being filed in these courts, as well as changes in policy by insurance companies processing claims. In the County District Courts, for example, the dramatic decline in automobile negligence filings may be in part attributable to the present \$200 minimum threshold for special medical costs.^{7/}

^{5/} Does not include auto negligence complaints filed in the Small Claims Division.

^{6/} Law became effective January 1, 1973.

^{7/} H.J.S.A. 39:6A-8.

TRENDS IN FILING OF AUTOMOBILE NEGLIGENCE CASES
BEFORE AND AFTER THE ENACTMENT OF NO FAULT LEGISLATION

The New Jersey Automobile Reparation Reform Act, generally referred to as the "No Fault" law, went into effect on January 1, 1973. See N.J.S.A. 39:6A-1 et seq.

Data on auto negligence cases added in the Law Division of the Superior and County Courts and auto negligence complaints filed in the County District Courts are presented below for the three court years prior to the enactment of this legislation (1970-1972), court year 1973 during which the law went into effect in midyear, and the three court years after the "No Fault" law went into effect.

Data on auto negligence cases added in the Law Division of the Superior and County Courts includes new cases as well as cases added by transfer or reinstatement for the court years ending 1974-1976, while data on cases added for the court years ending 1970-1973 includes new cases only. Reinstatements and transfers for court years 1970-1973 amounted to such a negligible portion of all cases added that their exclusion will not significantly affect this analysis of changing percentages of auto negligence cases added relative to total civil cases added.^{1/}

Data on auto negligence complaints filed in the County District Courts has been provided both with and without cases reinstated, since such reinstatements represent a sizeable proportion of all auto negligence complaints added.

It is assumed, but cannot be demonstrated without a case-by-case review, that reinstatements reflect duplications of filings during the same or prior years.

Both the data on cases added in the Superior and County Courts and complaints filed in the County District Courts reflect that auto negligence cases have become a smaller portion of the total civil caseload after the enactment of this law than they were before the law went into effect.

Law Division--Superior and County Courts

Examining data from the Law Division of the Superior and County Courts, auto negligence cases added for court years 1970-1972 amounted to 53,289 out of a total of 96,758 of all civil cases added. For court years 1974-1976, auto negligence cases added amounted to 47,533 out of a total of 105,355 of all civil cases added. Thus, for the three full years prior to the enactment of this law, auto negligence cases represented 55.1 per cent of the total civil caseload added, while, for the three full years after the enactment of this legislation, auto negligence cases represented only 45.1 per cent of the total civil caseload. It should also be noted that the number of auto negligence cases added averaged 17,763 for 1970-1972 (pre-enactment) and 15,851 for 1974-1976 (post-enactment).

LAW DIVISION OF THE SUPERIOR AND COUNTY COURTS
Cases Added^{2/}

<u>Court Year</u> <u>Ending</u> <u>August 31</u>	<u>Total Auto</u> <u>Neg. Cases</u> <u>Added^{2/ 4/}</u>	<u>Total of</u> <u>All Cases</u> <u>Added^{2/ 4/}</u>	<u>Total Auto</u> <u>Neg. Cases</u> <u>Added As</u> <u>Percentage</u> <u>Of All</u> <u>Cases Added</u>
1970	18,772	33,646	55.8%
1971	17,981	32,190	55.9%
1972	16,536	30,922	53.5%
1973 ^{3/}	16,343	31,595	51.7%
1974	15,591	32,168	48.5%
1975	15,956	36,201	44.1%
1976	16,006	36,966	43.3%

^{1/} Cases added by transfer or reinstatement in the Law Division of the Superior and County Courts represented only 0.5% of the total civil caseload for the court years ending 1970-1973.

^{2/} A case is added to the calendar when the first answer is filed, R.4:36-2.

^{3/} Law became effective January 1, 1973.

^{4/} Data on cases added for court years 1970-1973 excludes cases added by transfer or reinstatement. See ^{1/} supra.