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PUBLIC HEARING

before

NO-FAULT STUDY COMMISSION

Held:
July 28, 1977
Union County Court House
Elizabeth, New Jersey

MEMBERS OF COMMISSION PRESENT:

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

ALSO:

Peter P. Guzzo, Research Associate
Legislative Services
Aide to Commission

Laurine Purola, Research Associate
Legislative Services
Aide to Commission

New Jersey State Library

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John Collins Chairman, Health Task Force New Jersey Federation of Senior Citizens	6A
John D. Methfessel Methfessel and Werbel Rahway, New Jersey	8A
Irwin Schector	16A
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SENATOR ALEXANDER J. MENZA (Chairman): This is the second 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 rate-making; and (3) the residual market. The first hearing was held on July 21st in the Assembly Chamber of the State House in Trenton. There will be three other public hearings on auto insurance ratemaking and the residual market at dates to be announced, most likely in Atlantic City and some areas of South Jersey.

I am Alex Menza. I am a State Senator and Chairman of the Commission. Seated with me are the other members of the Commission: Mr. William K. Duncan, Shore Motor Club of South Jersey is a member of the Commission. Mr. Samuel Hagar is Vice Chairman of this Commission. He is from Jacobson, Goldfard, Scott, Inc. Other members are: Mr. David Green, President of Motor Club of America; Mr. George Connell, an attorney, a representative of the Bar Association; Honorable Barry T. Parker, a State Senator, who is apparently not here today; Assemblyman Donald DiFrancesco from Union County; and Assemblyman Thomas Deverin, also from Union County.

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 or Peter Guzzo, who are serving as staff to this Commission.

We also ask that witnesses first identify themselves by stating their names, addresses, and organizations, if any, that they represent. 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.

The list of witnesses to testify today is, as follows: The first witness will be Commissioner James Sheeran, Department of Insurance; Dick Hardenberg, Independent Insurance Agents; Norman DeNeef, Selected Risks Insurance Company; Dean Gallo, an Assemblyman; John Collins, New Jersey Federation of Senior Citizens; John Methfessel, an attorney from Union County; Robert Pike, State Farm Insurance Company; Irwin Schector, Passaic County Bar Association; and representatives from the New Jersey Independent Appraisers' Association. Any other persons who wish to testify should contact the staff.

Before we proceed, I want to comment very briefly on the Governor's statement a couple of days ago in a press conference that he had, at which he talked about the subject of no-fault. The Commission is very concerned that the Administration has made proposals without hearing first from the Commission. We get a funny feeling that we are spinning wheels and that is, in no way, our intention. We have had one executive meeting so far. We have had a public meeting and we are having another public meeting now. The members of the Commission are putting themselves out, particularly the citizen members of this Commission, and we are working very hard and intend to work very hard in an attempt to set forth, we hope, a good report, and something that can be emulated throughout the states.

Therefore, we hope that the Administration will work with us. And I can assure you, if they do not, the Commission will in no way attempt to cooperate with the Executive Branch of government with regard to this issue. I am sure, under those circumstances, that the Governor's Office will work with us.

Commissioner Sheeran, we need as part of the Advisory Committee or, at least, in some fashion, the assistance of Mr. Stern very badly. He has great credibility with members of this Commission and we must have him available to us. We have already notified him on two occasions, if I am not mistaken, and we have copies of a letter asking him to be here today. I realize that you have only one actuary. But, of course, you realize how dependent the legislators have been on Mr. Stern in the past. Therefore, we would appreciate your cooperation in that regard.

I would also ask you when you make your statement to comment on the Governor's position - just how it evolved and why we are going apparently, but hopefully not, in separate directions.

Commissioner, you are on.

COMMISSIONER JAMES J. SHEERAN: Thank you, Senator Menza and members of the Commission. I think before I start with some prepared remarks, I will address myself to the statement made by you, Senator Menza.

First of all, we discussed the matter of Phil Stern yesterday, and I also discussed it with the Governor's Office, and it is quite clear that the Administration does wish to work with you, and I think that is the only way to work. Quite clearly our objectives should be the same. We represent the same people and the same interests. As far as Mr. Stern is concerned, as I said, the only problem that we do have is that we have a number of rate applications - and I know you are familiar with them - that take up his time. He is the only source of actuarial guidance that we have in the Department in the sense of a full actuarial advisor. In addition to that, under the system that we have, he is the Hearing Officer in all cases that involve rate applications of all kinds in the casualty field. So, given the constraints that we are so used to living with in government, that is, the minimal amount of personnel that we can deal with in these matters, there is no question that not only the Governor's Office, but my office desires to work very closely with you to meet the objectives of the citizens of this State, and that is, to have the fairest insurance system available to them.

I personally have very strong feelings about those matters, and I would like to express them and pursue them. I cannot and the Administration cannot nor can the Legislature actually work separately. There is no such---

SENATOR MENZA: Just let me make it clear to you, Commissioner, the members of this Commission have been chosen very carefully. There were over forty or fifty applicants, people who wanted to be on the Commission. We have an Advisory Commission. None of us want to be working here or any place else through July, August and September. We are pushing for a deadline. We intend to go to Michigan next week to study the Michigan No Fault System. We are going down to Washington to talk to the Council and Committee there to see if we are in fact the worst in the nation as we are characterized by some persons. Therefore, perhaps our egos are affected, or perhaps to some extent we were a little bit offended.

We intend to work hard on the Commission, and we stated right at the beginning initially that this is not going to be just another Commission. That is not my style. That is not the members of the Commission's style. It is going to be, I think, a very meaningful Commission which will evolve a very meaningful report, and hopefully a package of bills. So, therefore, we desperately need the cooperation of the Commissioner's Office and the Governor's Office.

COMMISSIONER SHEERAN: Senator, you also asked about the evolution of the position of the Governor, I think. I really can't speak as to the particular events that occurred at the moment of discussing what I consider to be a very valid position in the No Fault Study, but that position has been discussed and considered by me going way back identifiably to the meeting in Drumthwacket that the Governor held - I think you are familiar with it - sometime in March.

In addition to that, I had talked to Mr. Menard about these matters prior to the Commission being formed, to my knowledge, and further I think the important part is, I went to the Governor with the matters that we are discussing

here for the purpose of asking him about our Administration position, and also I had asked to present this matter to your Commission for the purpose of study and working with you in order to develop this as a potential savings of dollars for people in the insurance market, and as I say, how it evolved out of there is something I can't discuss.

SENATOR MENZA: We understand your position.

COMMISSIONER SHEERAN: Senator, I think before I start with my prepared remarks, I would like to make something quite clear, simply because--- not that I believe the Commission doesn't understand this, but possibly the members of this audience. I think it is not clear to the public what we are discussing when we talk about so-called "No Fault Reform." I think when we talk about the threshold, many people in our State believe we are talking about the whole body of insurance. When we are talking about No Fault, many people think we are talking about the whole body of insurance and its cost to them. The fact is that we are probably dealing in the No Fault area with about 16% of the premium. The personal injury liability is about 34% of the premium. Physical damage is about 29% of the premium, and property damage is about 20% of the premium, so we are really talking about a specific area, namely, 16% when we talk about No Fault and the cost effect on premium, as we discuss this matter. And when we talk about the liability portion of the premium we are talking about 34%.

The PIP coverage, of course, does not run to the property damage areas. It simply deals with the injuries to people and the medical needs of those people. I think it also ought to be clear that when we talk of an alteration in the present threshold - or any alteration in the threshold - that this in no way in my judgement will affect the premiums for PIP, because PIP actually pays the medical costs of those injured in fault and no fault accidents, and in addition to that pays for the three other parts of that coverage which would be lost wages for a period of a year, the death benefits, and the services benefits.

Now, when we talk about the matter of a change in the threshold, what we really refer to is the change in the benefits that will go to people who are the victims of a fault accident. Therefore, what we really address ourselves to when we talk of changes in the threshold is a diminution or a lessening of the rights of people who are the victims of an accident when the other party, or other parties, was negligent and caused them damage. That is a profound issue in my judgement and one that ought to be considered with a great deal of compassion. We can see, for example, some victims who may be injured who are physically in pain, who do suffer - people in our State are not all rip-offs, and so on - and those people, if they do fall into the no fault system will get the cost of their medical, even if they are the victims of a fault accident. So, as I say, I think you have to be quite careful to deal with those people who have temporary problems and not those who will linger medical problems for many years or the rest of their lives.

As I understand it, this Commission was established primarily to recommend reforms in New Jersey's No-Fault Law, which has been variously described and condemned as ill-conceived, unworkable, and just plain bad.

Those objectives are taken from the insurance industry's vocabulary, and, I think, fairly represent its evaluation of our No-Fault Statute.

It has been speaking for some time now about the horrors of New Jersey's No-Fault Law. Most recently, it fed a considerable amount of inflammatory

propaganda to the press that purported to demonstrate how corrupt doctors, lawyers, hospitals and insureds were ripping off the system with fraudulent and inflated claims.

No names, of course, just generalized allegations sufficient to engage the public's sense of outrage.

There has been a public clamor ever since for reforming New Jersey's No-Fault System. To add to the furor in New Jersey over the state's "terrible" No-Fault Law, the industry, flushed with its victory on the home-front, turned to Congress for the coup de grace. Dutifully, a congressional committee responded.

According to the press, a congressman solemnly announced: "We have looked squarely at New Jersey in preparation for our legislation and I can safely say that No-Fault is not working there." The congressman added that New Jersey's No-Fault Law is one of the worst in the nation.

So there you have it. New Jersey's No-Fault Law must really be rotten if Congress condemns it. Adding to New Jersey's embarrassment was the lavish praise out of Washington for Michigan's No-Fault Law and the verbal threshold it mandated. Poor benighted New Jersey. But strangely enough Michigan's No-Fault Law may not really be the nostrum the nation needs. Let me read you a portion of an article that appeared in the Insurance Advocate, a trade publication, on June 18. I quote: "No-Fault Law Not Model It Purports To Be, House Unit Told Washington - Despite its being hailed as a model legislation, Michigan's No-Fault Law contains serious defects that have contributed to the steady worsening of the auto insurance market, a Michigan insurance executive said June 13 at a Federal No-Fault hearing before the U. S. House Subcommittee on Consumer Protection and Finance."

Elmer P. Simon, testifying for the Michigan Association of Insurance Companies representing 36 domestic carriers, noted that even though the Michigan motorist feels that "no-fault is better received than the total tort it replaced," the language in the 1973 law contains too many ambiguities for it to be considered necessarily as a model for any federal no-fault proposal.

The Michigan no-fault law has succeeded in speeding up the claims process and in diverting more money into the hands of the victims of serious injuries, according to Simon. But he added that the law had not reduced the number of lawsuits enough to pay for the substantially increased personal injury benefits.

Simon noted the weakness in the law's "trade-off" between the reduction of lawsuits and the generous PIP benefits allowed. The weak threshold language has not prevented an increase in lawsuits, according to Simon. The threshold phrase "serious impairment of a bodily function" invites litigation. "Immediately the plaintiff with a minor injury can inflict a three-pronged doubt: a, what is impairment; b, when is it serious; c, is the injury in any way pertinent to a body function," Simon added.

He noted that the Michigan Appellate Court had ruled that where serious impairment of a bodily function is alleged, it becomes a question for a jury to decide. He cited statistics from twenty-five representative Michigan auto writers showing an increase in threshold crossing lawsuits of 502 in 1974 to 1808 in 1975, and 3553 lawsuits in 1976. That is the end of the quote from the Michigan testimony.

In view of the industry's dim view of New Jersey's No-Fault Law, I was very much surprised, and you may have been too, when a triumverate of knowledgeable insurance industry spokesmen appeared before this Commission on July 21.

I had been led to believe by the industry that it was interested principally in changing New Jersey's monetary threshold to a verbal threshold and thereby restoring a "depressed" industry to prosperity. When the triumvirate testified before you, I expected they would lay out facts and figures to support their contention that the monetary threshold is a disaster.

Instead of dealing in generalities, as they have done with an unquestioning press, I expected them to come up with statistics and specifics that would persuade you to the extent to which this state has been misguided in its attempt to provide its citizens with a new and fairer method of compensation for automobile accident injuries.

Did you get persuasive facts and figures? Did you get specifics? Not very many. In fact, the most interesting thing you got was a statement to the effect that No-Fault is only a small part of the auto insurance problem and that, really, inflation is 90% of it.

When I first heard that, I didn't know whether to laugh or cry. I didn't know whether to cry because if inflation is 90% of the problem, then why are we investigating the unworkability of the No-Fault Law? If after months of study you come up with a proposal that will ease 10% of the No-Fault problem, which I said before is 16% of the premium, will you have thereby found answers to the twin problem of affordability and availability? I doubt it very much.

And I don't know whether to laugh, because for almost three years now I have been proclaiming that the primary problem with auto insurance rates has been inflation.

In November, 1974, when I was first constrained to permit increases in auto insurance rates, I said, "Inflation is the ogre now." I have not yet recovered from the shock of finally having the industry agree with me. But where has the industry been all this time, when it has just now awoken to the spectre of inflation? I think I know. It has been spending its time making applications for rate increases. At the same time, it has been bad-mouthing No-Fault. Why, if that is not the problem? Because I think it makes a good smoke screen. It serves to confuse the people and divert their attention from the fact that the industry is doing absolutely nothing to combat inflation - which it now agrees is the real problem.

Let me give you an example. A year ago last April I called attention to the dreadful inflation in the cost of crash parts - bumpers, fenders, et cetera. I believe that, aside from the inflation of the marketplace, there has been an artificial inflation in the cost of crash parts because of the apparent monopoly exercised by the auto manufacturers.

My plea for a Congressional investigation was greeted stonily by the auto insurance industry. I assume that, as bastions of the free enterprise system, albeit regulated, they were loathe to inhibit the unregulated free-wheeling of another free enterprise system, that being the automobile manufacturers.

In any event, the industry apparently would rather simply keep on raising the rates rather than take any positive steps to cut down those costs or continue to throw up smokescreens like the one that No-Fault has created, a gigantic rip-off.

At the Governor's conference on auto insurance at Drumthwacket last March 10, I challenged the industry to disclose its evidence of wrong-doing. I said, "If there is a rip-off by any health care providers, then I suggest that those with the evidence come forward and let the Attorney General place that

evidence before a statewide Grand Jury. If there is improper conduct, let's label it as such and let's put it before the proper investigatory agency. Let us not fool ourselves or make the public believe that this conference or the Department of Insurance is able to solve the problems of criminal fraud if it exists. Let's put the problem squarely where it belongs."

The industry, to this date, has ignored that challenge. Now, today I am going to renew that challenge. If the industry has evidence that No-Fault is being abused by doctors, lawyers, hospitals, and insureds, I challenge them to submit the evidence to your Committee. I mean evidence. I don't mean generalizations. I mean the names of doctors, lawyers, hospitals, insureds, amounts of money obtained extortionately or fraudulently, dates, fake treatments, double billings, ambulance chasing, and all the other details of the sordid practices the industry claims it is the victim of.

Let it put this evidence before you. If you are then persuaded that our monetary threshold and unlimited medical payment provisions are disasters, at least you will have been persuaded by hard evidence, not by hearsay, or innuendo, or speculation, or generalizations, or because you were faked out by a smokescreen.

But even then, using this evidence, the Commission will be able to recommend cures for what ails only 10% of the auto insurance market or possibly just some part of that 10%. I don't suppose that we should scoff at solving 10% of a problem or fraction thereof. Every little bit will help, and obviously the people out there need every bit of help we can give them. We have reached the point where many, many people drive uninsured because they cannot afford insurance.

I don't suppose, but I think it is obvious from the industry presentation to you, which apparently represents their best effort, that the people of New Jersey have been misled into believing that the No-Fault System should be radically reformed.

Here and now I say it is working as originally perceived. It is getting compensation into the hands of auto accident victims more quickly than under the tort system. It is compensating more people than under the tort system. It is providing coverage for people who before were not entitled to any payments because of injuries that were the result of no one's fault, or of their own fault. It has reduced measureably the number of court cases. However, No-Fault had the misfortune of being introduced at a time when the dam holding back inflation was about to burst. The industry will attest to that; 90% of its problem is with inflation, not No-Fault.

Any hope or promise of the prior Administration and industry that No-Fault could reduce rates was crushed beneath the cruel pace of the inflationary spiral, particularly in hospital and medical costs. Held in check by federal price controls, the costs of these services broke into double-digit gallop once the controls were lifted, an event that occurred almost simultaneously with the beginning of No-Fault in 1973.

Senator, I know that you are well aware that we have Federal controls, and I believe they limited increases in health costs to 5% before that period. And the Legislative Committee studied and worked with members of the industry, the Department and others, in developing the system that we now have developed data from.

Let me come to the question whether any changes should be made in No-Fault, particularly whether the threshold should be altered. The \$200 threshold is

condemned as being too low. It may be, but let's understand it first. We must remember that the \$200 represents medical expenses, dollars actually paid to a physician for medical treatment.

The \$200 does not include payments for hospital care, diagnostic services, X-rays and the like. Thus, it is quite possible for an injured person to run up a substantial hospital bill and other costs without incurring \$200 in medical expenses. No-Fault has never clearly been explained to the public. I believe the quotes from Washington and other sources fail to recognize that we do not include the kinds of things you do run up bills with, the hospital bills and so on. That doesn't answer the issue.

But that two hundred dollar threshold was not accepted arbitrarily. In 1972 the No-Fault Commission, with all interests represented, did a thorough job and the determination of a threshold represented the sound judgment of a group of able and dedicated people. I say that that able and dedicated group of Legislators, members of the Department, people from the industry and so on thought the matters out carefully, not, of course, knowing and being able to predict this double digit inflationary problem that we face.

They could not have foreseen what the impact of inflation would be, otherwise they might have recommended that the threshold flow with the economy, as it were, so that as medical costs increased, the threshold would increase proportionately, meaning simply to have a fluid threshold that, when the cost of health care delivery - which is far greater than the inflationary trend in other areas, consumer trends - increased, that that threshold would have flowed with it and would have been substantially higher today.

What the industry is proposing goes far beyond a mere adjusting of the threshold to reflect inflation. What the industry wants is to erode the right of the people to sue without offering anything in return for what is being taken away.

The original No-Fault law provided for a trade-off. The people would give up a portion of their right to sue for pain and suffering in return for prompt payment and protection against economic loss without regard to fault.

Now the industry's idea of reform is simply to constrict further this right to sue without a quid pro quo, without a reduced premium.

This is not my idea of reform. Instead of reform, I would call it simply a change in benefits, reducing those available to the public while increasing those available to the industry.

It must be remembered too that No-Fault was intended to provide protection in the event of less severe injuries. It was not intended to eliminate court suits in instances where the injuries were severe.

I quote from a fact sheet prepared in 1972 by the Department of Insurance and the New Jersey Automobile Reparations Advisory Council with the cooperation of insurance companies, their trade association agents and brokers: "The former right to sue for minor injuries is replaced by the right to receive PIP benefits promptly without regard to fault."

Because of inflation, changes in the threshold are necessary, however, I caution that the changes promoted by the industry are designed to alter the fundamental concept of No-Fault and the rights of people who are the victims of fault accidents without reducing the cost of insurance.

Adjustment in the threshold is necessary to keep pace with inflation and, in addition, I think the time has come for some other changes that will save dollars for insurance buyers and not take away their benefits.

In 1972, when the No-Fault Law was under consideration, Blue Cross argued vigorously that it should be the primary payer of PIP benefits. Blue Cross lost out in 1972.

Now I am recommending that this Commission investigate the feasibility of taking No-Fault protection away from the casualty insurers and giving it to Blue Cross and Blue Shield. It is quite clear that the PIP benefit - or No-Fault - is purely a health benefit. All of the health benefits flowing from automobile accidents are now being paid through the PIP portion of the insurance

policy.

PIP really provides health benefits coverage, not casualty coverage, so it would be most appropriate to turn it over to a health benefit insurer.

The most compelling argument, however, is to be found in the difference between administrative costs of the automobile insurance companies and the "Blues."

Only about 60 percent of the PIP premiums paid to the auto insurers is "pure" premium, that is, intended to pay claims. The other 40 percent is administrative expenses, including commissions, home office expenses, and so forth.

In the case of Blue Cross, its pure premium is more than 96 percent, which is astonishing, and Blue Shield is 89 percent. This means that Blue Cross pays 96 cents out of every dollar in benefits for its subscribers, and Blue Shield 89 cents, compared to 60 cents out of the auto insurance dollar. Quite obviously, Blue Cross and Blue Shield have demonstrated that they are an efficient pass-through mechanism for the health care dollar.

Another compelling cost-saving factor is that through Blue Cross and Blue Shield the State has control over the cost of hospital and medical expenses. As a result of those controls, Blue Cross pays the hospitals about 25 percent less than the other insurance carriers for the same care.

Moreover, through Blue Cross and Blue Shield, we can eliminate the possibility of duplicate payments and we can establish a system for identifying abuses by health care providers just as Medicare and Medicaid is able to do, which we can't do now because of the diffusion of interests involved in covering that matter.

I emphasize the non-profit nature of Blue Cross and Blue Shield against the dedication of the commercial auto insurers to a yearly profit of 12 or more percent. Blue Cross and Blue Shield are only entitled to the cost of doing business.

I would also suggest that Blue Cross/Blue Shield become the payer of all PIP benefits, not only hospital and medical expenses, but also the wage continuation benefits, essential services loss payments and death benefits. Being highly efficient, Blue Cross/Blue Shield should have little administrative difficulty in developing and mastering the ability to pay these benefits as well.

The auto insurance companies would still retain those coverages that are the true casualty coverages - residual bodily injury liability, property damage liability, collision and comprehensive.

If No-Fault in New Jersey is as bad as the companies say it is, they, quite logically, should applaud my proposal as an alternative to raising PIP premiums every few months. Moreover, the companies ought to be willing to acknowledge that PIP is a health benefit that casualty insurers have difficulty coping with.

I originally alluded to the extraordinary record of Blue Cross and the challenge it offered to the auto insurers at the Governor's Conference at Drumthwacket on March 10th. That was my original reference to what I am discussing here before the Committee, Senator. However, my remarks stirred little interest at that time, preoccupied as everyone was with the pervasive notion that the threshold is the only problem.

I hope that the suggestions I have made here today assist you in

devising affirmative ways to improve the way that mandated auto insurance serves the public need while keeping in mind the need for affordable costs. Thank you, Senator.

SENATOR MENZA: Thank you, Commissioner. Commissioner, an initial question: You talk about a fluid threshold, would you be in favor of the Hawaii system where the Commissioner sets the threshold each year?

COMMISSIONER SHEERAN: I think that if we started with an established threshold that is fair to the public and does give us the ability to have affordable insurance rates and we move that with the economy, if it is right in the first instance and our data proves that to be right, then we can maintain a system that is right. As a matter of fact there could be incidences - but I seriously doubt it - where you might reduce the threshold. But, I think that would be a much more fair method of approaching this.

SENATOR MENZA: Do you have a specific idea on how the threshold should be effected at this time? Should it be raised? Should it go to a verbal threshold?

COMMISSIONER SHEERAN: Senator, as I said before, it is quite clear that the original purpose of No-Fault has been met and the work of that Committee has not gone in vain. There are more people being paid faster. As you know, you used to wait years and years before you would get the money and many people were in terrible positions because of that. In addition to that, people who were the victims of No-Fault accidents received nothing. So, we left a lot of tragedies out in the street. That has been eliminated. Our court suits have been reduced and the court records will clearly indicate that. I have watched them and monitored them since I started.

So, I think that the original idea of the \$200 might have worked but for inflation. I do believe it is unquestioned that that ought to change now. I would say if we just look at the change in inflation since then, or even increases in insurance rates since then, it would have to be at least over \$300 or more.

SENATOR MENZA: This No-Fault Commission was quite surprised when one of the members of the industry stated that 90 percent of the problem - those were the words - in the insurance companies was inflation in their portfolios. Does your Department have statistics indicating that this, in fact, is the case? Has this been your position in the last four years?

COMMISSIONER SHEERAN: Well, --

SENATOR MENZA: This is the first time I have ever heard that. I, as a member of the public and also as an attorney, always thought their problems were primarily and solely No-Fault, whereas, now the Commission is being advised that it is not No-Fault after all, but it is inflation.

COMMISSIONER SHEERAN: Well, I think they are probably correct. I couldn't attest to, you know, the percentage, but certainly it has accounted for a large portion of it and I would say if you inversely looked at that and if inflation accounted for 90 percent of their problems and if health costs went up 90 percent and we have maintained a stable No-Fault threshold, that there would be sort of a reversed problem created by inflation in that there was not a tracing of that to follow the inflationary trend.

SENATOR MENZA: Have law suits, in fact, increased in Michigan in the last two years?

COMMISSIONER SHEERAN: Well, I quoted from a statement that came from the independent insurance agents of that State - the independent insurance companies of that State - and they indicate that there are many problems with it. I don't know whether they have increased, in fact, I have only monitored our own courts. Judge Simpson, I suggest, has some very fine statistics on it that are quite clear.

MR. GREEN: Senator, I would like to ask a question.

SENATOR MENZA: I figured you would have the first question.

MR. GREEN: The point I want to raise is, of the three industry representatives, Mr. Check, was the only one that came out with 90 percent. The other two disagreed with him. Mr. Check happens to be a representative of the AIA, which is strongly in favor of a Federal bill. The NAI is not for a Federal bill. I just wanted to correct that. The AIA represents less than a third of the automobile business in New Jersey.

SENATOR MENZA: If I recall, Mr. Green, Mr. Check did state that. The other two did not disagree; they were silent.

ASSEMBLYMAN DEVERIN: Mr. Chairman?

SENATOR MENZA: Yes, Mr. Deverin.

ASSEMBLYMAN DEVERIN: If I recall correctly, I think they didn't agree, but they didn't disagree either. If I remember, I asked each one of them what would happen if the threshold changed and all of them said that even if the threshold did change in No-Fault there would be no reduction in premium at all. The primary problem with the cost of insurance - and I have known it for years - has been inflation. If you just compare the cost of a hospital stay in 1970 as compared to 1977 you know it has to be inflation.

Commissioner, let me ask you a question. We appreciate that you were on the Insurance Commission. We still think we did the right thing and went in the right direction.

COMMISSIONER SHEERAN: I have no doubt about that.

ASSEMBLYMAN DEVERIN: Do you agree that if we did change the threshold from a verbal threshold to a higher dollar threshold there would be a reduction in premiums for the people in the State of New Jersey?

COMMISSIONER SHEERAN: Well, I think I will put that in an inverse way. If, in fact, there is no reduction in premium and you are reducing the benefits of the people who are victims of automobile accidents, then it would make no sense to me to change the threshold. It would be totally unfair. There is no question in my mind that if you take away a benefit there is a corresponding benefit on the other side.

I do think we should change the threshold. I don't want to be put in the position-- I think your Commission is absolutely on the right track to reopen that investigation and to look deeply into the statistics that we have developed over these years, that the courts have developed, and so on. But, I don't believe that it makes sense to deal with just removing people's benefits without thinking of the other side - "what does it save them; how can it save them; and is the savings worth it?"

ASSEMBLYMAN DEVERIN: One other thing, Commissioner. Everytime we have a hearing or go to a symposium or something on insurance, the first thing they talk about is fraud and crooked doctors and unscrupulous lawyers, etc. I don't believe that to be the case and I like what you said. I wish

someone would tell us who they are so we could find out. Do you think changing the threshold would change this? For instance, the threshold is \$200 and they say there is a lot of fakery about it and a lot of hankey pankey with the threshold, if you change the threshold will the hankey pankey disappear - if there is such a thing?

COMMISSIONER SHEERAN: Let me say this: I believe in Florida there was a major scandal down there where they had a threshold of \$1,500 - I think it was \$1,500. I am just talking now but I recall very vividly the escalation in prices there and it was quite clearly stated that there were people "ripping off" the system. They learned how to go to \$1,500. You know, that sort of thing.

ASSEMBLYMAN DEVERIN: So, if they don't go to \$200, they go to \$1,500?

COMMISSIONER SHEERAN: Yes. I really believe, as I have suggested here, that when you -- If you can locate this problem - the No-Fault problem - in the health care delivery system and the health carrier who is accustomed to dealing with the hospitals-- We control those rates today. We don't control the rates paid by automobile carriers. We actually, because of our health cost control in hospitals, reduce the cost by 25 percent to Blue Cross subscribers. Then, in the Blue Shield area, we have what they call a "reasonable, usual, and customary charge" and Blue Shield people, even though all of their medical is covered under that system, are only required to pay 80 percent of the usual, customary, and reasonable fee. So, you see money there too that is possibly to be saved.

ASSEMBLYMAN DEVERIN: There is only one thing about Blue Cross, I think, that worries me. They appeared before the Commission in 1972. I am sure some of the members will correct me if I am wrong. I think their primary interest then was that of all their bed patients, only 5 percent came from automobile accidents. What worries me about it now is whether Blue Cross really wants to be part of this and if we did follow your recommendation of turning this over to Blue Cross, would the rest of the insurance companies remain to cover the liability and comprehensive? One of the biggest problems we face is - and Senator Menza knows this - the cost of hospital care. The hospitals are drowning in some towns and hanging on by the skin of their teeth in other towns. If we did change all of this to Blue Cross and they did have their preferential rates at the hospitals again, that would again increase the hospital costs for the patient who did not have Blue Cross coverage and the hospital may then face another problem with cost. How do we overcome that if Blue Cross became the primary payer of PIP?

COMMISSIONER SHEERAN: I don't know the statistics about whether it is 5% of what they pay. I think that the hospital cost containment system - and I know Senator Menza has been working on the problem-- The thought of expanding hospital cost containment to the entire body of hospital cost, whether it be Blue Cross, Blue Shield or whatever mechanism, has been an area of great concern and I know it has been hard to bring about these kinds of changes.

But, the fact is, today when we take, for example, that 5 percent out of Blue Cross and it goes into the casualty end of the business, which is really a health problem, the 5 percent that came out of there is really now paying 25 percent more than it did before. So, it is sort of a trade off.

ASSEMBLYMAN DEVERIN: Has Blue Cross offered their opinion as to whether it is a good idea or a bad idea?

COMMISSIONER SHEERAN: Well, I have talked to Mr. Menard. I did talk to him before I knew of the Committee's activities here and I know that they have an interest in looking into the matter. I don't suggest it necessarily be confined just to Blue Cross, or whatever. But, I think it makes sense to look at it that way and I do know that he has expressed the thought that their position is about the same as it was in 1972.

ASSEMBLYMAN DEVERIN: Again, if Blue Cross became the primary payer, do you think the other insurance companies would -- would we lose some insurance companies in New Jersey?

COMMISSIONER SHEERAN: Well, again, if it is a losing proposition, and if it is not-- We are still going to deal with the casualty end of the business which is really the business that ought to be handled by the casualty companies. You know, when we changed to No Fault we then took victims who were originally covered by Blue Cross, who were not involved in fault accidents, and transferred them into the casualty system and when we did that, as I said before, instead of paying 4¢ on every dollar for administration costs, which goes into their premium - it is actually a part of it - we were paying 40¢. So, there is a lot to be thought of.

I just suggest that it is an area that we could look at and very carefully look at and we could talk to the companies. I guess I am getting a little bit of tough skin. I get so many threats to pull out of the State, and so on, everytime I talk about a rate - or whatever it is - that I begin to think that you have to stand up for the public interest. I don't believe all companies would. I don't believe that would be a pattern. I believe that is is a system and if it is fair to people and if they can't meet the competition, they ought to face up to the fact that they are not meeting the competition that we are talking about.

MR. DUNCAN: If I may, Commissioner, I have to say that there are three of us on this Commission that served on the original Commission.

SENATOR MENZA: All of whom are going to be objective this time.

MR. DUNCAN: But we do feel better when we find that our Commissioner of Insurance agrees that we did something good. We have been going around with a guilty feeling lately.

However, I cannot help but remember the meeting in which Blue Cross came in to suggest that they would like to be prime and it is right, Tom, that they used the fact that 5% of the beds - the bed capacity - was auto accidents. What was puzzling to us was that if you were a fellow who bought insurance for your employees, the fact of the matter was the system was not bearing the cost, that in fact auto insurance costs were shifted from the auto reparations system to another kind of system. God knows what would have happened if it stayed to what rates are today.

At that time, the lament of Blue Cross was that by taking away their bed bargaining capacity the rate would have to go up because they couldn't tie up that many beds. Bob Clifford was Commissioner then. He suggested - when I made this following suggestion - that it was the first thing that he had heard sensible from me up to that point. Now, my suggestion was - and it is still valid because we are saying the same thing - at the Blue's option, they could

have paid on the logic that in my wallet was my Blue Cross card and I was in an accident and I went to a hospital and I showed my Blue Cross card - whoever paid - and, thus, they would have had the bed bargaining capacity. Then, all they would have had to do was to bill the insurance company, plus a service charge. The logic was, we could have had the best of both worlds. That was not Blue Cross's desire at that time. In fact, if I remember, they were quite unhappy with it, even suggesting perhaps - if my memory is correct - that they would simply eliminate - or could eliminate automobile accidents. So, I can't help but ask the following questions. Would making Blue Cross, or any health insurance, the primary source of basic insurance for medical expenses caused by auto accidents shift the cost of insurance or lower it?

COMMISSIONER SHEERAN: I believe that, in the discussion that I have had, the potential of lowering the cost is quite great.

MR. DUNCAN: Well, who would pay? You mean your plan is to pay PIP out of the arena of automobile?

COMMISSIONER SHEERAN: That's correct.

MR. DUNCAN: I didn't even ask if Blue Cross even likes that. Have they talked to you about it?

COMMISSIONER SHEERAN: I discussed it with Mr. Menard and I did not go into depth with it because I do think it is something this Commission ought to do and I would like to work with this Commission on that.

MR. DUNCAN: In fact, Mr. Menard could also reconsider my first suggestion, five years ago, and in fact handle it and get the bed care capacity and actually reduce to the public the cost of insurance because your contention is that because the carrier is paying he is not getting the advantage of the Blue Cross rate with the hospital.

COMMISSIONER SHEERAN: Yes. There is only one problem and I would not say that we ought not think of every possible avenue in these cost saving potential areas. But, Blue Cross, as a carrier now, covers I don't know what percentage of people who drive automobiles. They may cover - I have no idea - 40% of the people going into hospitals, or something like that. So, that there is another body of people out there that I can't identify and I don't know.

But, I would say, under my thinking here, you would mandate this No Fault insurance, certainly, because I think it is the basic mandated coverage. It is the one we ought to be most concerned about and you would give them the cheapest delivery system that you could that is returning the most dollars in benefits possible.

MR. DUNCAN: Wouldn't that mean that non-car owners would be forced to subsidize those who only drive cars if Blue Cross was made primary?

COMMISSIONER SHEERAN: No, my consideration - and I don't want to get into details because I think this really is quite a complex problem - is to have a separate policy for PIP under Blue Cross that has no relationship, is a separate coverage, identified in their rate files, and followed very separately in the development of data. We do that, as you know, now with group coverage, individual coverage, and so on. So, you can pull out that data.

MR. DUNCAN: All right. Just one other question and I will yield to Sam, Mr. Chairman. After a year and one-half, Commissioner, of meeting on this thing and putting a lot of time into developing this, we found no problem

with the Department under Bob Clifford to provide Phil Stern, on the logic that he is such an expert that he could be only helpful. I don't know whether you know it but we, as a Commission, have evolved an outside Committee with specific responsibilities to work with people like Sam, with a balanced viewpoint - an objective viewpoint - so that - and I believe this would have been Phil's feeling on this - information fed to the Committee would not be biased on the part of the Department. It would almost mandate a lot of Phil's time and what was going on in Washington would mandate that we would have to work very quickly.

I am a little confused on your position on Phil Stern. Is it that he might or might not be available to the Committee, depending upon his work-load, or are there other things involved?

COMMISSIONER SHEERAN: No, there is no question. He is available to the Committee but you can't slice Phil Stern into 12 different parts. He has rate hearing schedules. He has to come up with these determinations on those. We have -- I forget the number of filings each month that have to be handled. He is the source that I deal with there. I have very little backup in that area.

MR. DUNCAN: Was that the situation five years ago also because he met with the old Commission?

COMMISSIONER SHEERAN: Well, I might say he did not have the rate increase applications. We now have maybe 15 or 20 pending; it is that sort of thing. I think if you look back at the history of the Department you will find that the problems that are there now are much different than they were.

MR. DUNCAN: Thank you very much.

COMMISSIONER SHEERAN: I don't want any misunderstanding. Mr. Stern and our Department, and me, in any way that we can help -- I believe that this Committee is well conceived; it is well oriented; and it is going to be aimed at the same objectives that we have in our Department and, I believe, that the Administration has. I think we can only solve these problems by working together but I think it would be a fault not to say that we have a problem and that there are other matters that roll on every day that we have to handle.

MR. HAGAR: On this Blue Cross, Commissioner, I realize this is a relatively new recommendation from your Department, and I don't expect you to come on with a whole bunch of statistics, because you have not had time to evolve them. I would, however, like to commend to you some existing body of information that is available to you. For instance, there is a Richard J. Barber Associates Report. That was commissioned by both the AIA and State Farm. It was published in 1976, I believe, and the gentleman who made it up is rather well qualified. Mr. Barber was the former Assistant Deputy Secretary of the Department of Transportation. He had the primary responsibility for organizing and monitoring the Department's twenty-four volume study of the motor vehicle accident compensation system. His associate was Dr. Huff, who directed and supervised the conduct of that system. Some of the information I have available comes from that source.

For instance, in Maryland they did have Blue Cross as the primary. I don't know whether you knew that or not, but in 1973 when the Maryland insurance plan evolved Blue Cross was the sole carrier for PIP benefits. I would like to quote to you some of the results.

COMMISSIONER SHEERAN: Did you say primary or sole?

MR. HAGAR: Sole and primary, whichever. You address yourself to the efficiency of Blue Cross. After one year the Maryland Department dismissed Blue Cross because of their inefficiencies, and some of the information they had was as follows: Blue Cross chose to treat the claimants, the PIP claimants, in exactly the same way as its other clients. Since letters on claim decisions were not signed, Blue Cross found that it saved personnel. By not having any correspondence done by individuals, it was impossible to question a possible error. When information in the claim file was inadequate concerning coverage, Blue Cross would return all unpaid claims to the claimant, rather than trying to get the information needed. Blue Cross was able to process only 500 PIP claims a week as compared to 1200 property claims which the Maryland Automobile Insurance Department was later able to process, including investigations. And the PIP claim cycle, from claim to payment was running from 25 to more than 40 days later than the industry.

So rather than adding to the efficiency, it in fact detracted from it. Other information that they had that they developed, there were several states, Michigan and Pennsylvania who passed No-Fault legislation after we did, and gave the people the option as to whether or not they wanted to make Blue Cross primary. So, 75% to 85% of the people chose the option of having an automobile insurance primary rather than have Blue Cross primary.

The yield, as far as the information is concerned, was that only one-third of the health insurance coverage for doctors was covered by Blue Cross-Blue Shield. Now, when you are treated for an automobile accident, a considerable amount of your treatment is going to be in a doctor's office. The Blue Cross contract, as it presently exists, does not provide for very much of those payments. In fact, they said that of all the claims that occurred, 50% of the automobile accidents resulted in claims of \$110 to \$120 or less. And in that area, because of deductibles and co-insurance, 40% to 50% of the people received no benefits whatsoever from Blue Cross-Blue Shield. Now, these were the studies not only by Maryland, but by Michigan and by Pennsylvania. So, this information is available to you. I did not have enough time to get a copy of the report for you, sir, since it just hit the papers yesterday, but I would be very happy to send it to your Department. I would suggest that you look at it.

COMMISSIONER SHEERAN: Yes, well, I can't discuss Maryland Blue Cross-Blue Shield. I do work on the rates with them. I can tell you that without question less than 4¢ of every \$1 is used for the payment of administrative costs, and if that were maintained, you would be talking about 36¢ on every \$1 to start with, and then, of course, you have to also deal with the issue of the reduced hospital costs by about 25%. So, there are a lot of features that I think ought to be investigated.

I did read a study - and I am not sure that is the one, because I did not read the whole thing, but it was commissioned, as I remember, by the auto insurance industry - yesterday, as a matter of fact, as I sorted through my correspondence, a report that was just issued through one of the trade publications, which Commissioner Sheppard of Pennsylvania had said that you can reduce your PIP costs by 40% in Pennsylvania if you simply take the action of advising us that you have chosen your health carrier as the prime carrier.

MR. HAGAR: I have that information, too, Commissioner. In fact, they give dollars and cents on it. They indicate it would be a net result of \$7.37 reduction. But then the next question is, why isn't it a complete reduction? Why wouldn't it almost wipe out entirely the savings? And the answer to that is, the automobile insurance carriers have to still identify a file; they still have to identify property damage and physical damage; and in the event that it exceeds the threshold, whatever it may be, they therefore have to prepare a file on that, so what you have going for you are two files concurrently, regardless of the seriousness of the accident.

COMMISSIONER SHEERAN: I read that too, and I would not concur with that. I don't want to--- As I say, I think it ought to be a matter of study. But it is very clear to me that in the area of no-fault accidents you may not have files that are open, and that is a substantial body of the accidents that we deal with. There is also no question that you are going to open it for other coverages anyhow where the insurance industry opens its other coverages, and there is no question that we are dealing with a pure health benefit. It is not a matter of great investigation that if there is an automobile accident there are hospital and physician costs and so on. Blue Cross would pay those. It is not investigating whether they have a responsibility. Our law requires the complete payment of that.

MR. GREEN: Commissioner, we have had an expert on Blue Cross since 1939, Herb Jaffee. Blue Cross since 1969 has been in crisis, has been bailed out by the State. Right along the Senate and House passed bills that got all kinds of rate increases. If Blue Cross should go broke, the State would have to bail them out. They wouldn't have the advantage of the New Jersey Liability and Insurance Guarantee Fund. The next thing is, Blue Cross pays no premium tax. Blue Cross pays no commission tax. Blue Cross doesn't cover rehabilitation. Blue Cross doesn't cover dental.

Now, for Blue Cross to go into a set up of this kind, they would have to go through with staffing to bring in premiums of close to \$150 million. Now, it is common knowledge in the industry that to write \$150 million, they would have to raise close to \$50 million. I would like to quote from a representative of Blue Cross. Mr. Menard was not available; however, Jefferson Lyons, Blue Cross Vice-President, said the proposal comes as a surprise. You need money to take on new lines of insurance, Lyons said. They are talking about a complex matter. Lyons said Blue Cross was suffering a \$30 million deficit at the end of March.

I just want to point out that it isn't all roses. For example, I can tell you from experience that they would have to staff examiners, investigators; they would have to go through a staffing where your 4% would not even come in the picture, and I think you ought to make a better study of it than this idea of the chart you prepared showing 4%. It will be a lot more than that, and at the same time, you are going to have to take in rehabilitation, which they don't cover today, and dental which is very important under your No-Fault, because insurance companies under No-Fault take care of every type of industry, and Blue Cross is too restrictive.

COMMISSIONER SHEERAN: Well, of course, we are dealing with a separate body of insurance with separate coverage, and it would be priced in accordance with that. I don't believe that--- I hope I am not expressing a bias here. I am simply expressing the fact that I believe that there is sufficient evidence before me, at least, to indicate that there are areas of study that could lead to substantial savings in that portion of that premium.

SENATOR MENZA: Is your proposal and the one the Governor announced the other day in writing? Is it an actual plan set out?

COMMISSIONER SHEERAN: Well, what I have here is what I have given to you. I have not felt that we should proceed with this. I am presenting it to this Commission, and I will work with you. I think that we should be "we" in a sense, and I would like to work with you to develop the information.

SENATOR MENZA: Senator Parker. He is a Republican, so he goes last.

SENATOR PARKER: First of all, in reference to this Blue Cross, isn't there a real problem in marketing? I am thinking in terms of the agents and the people who sell it. Wouldn't there have to be some commission or something? You are going to have your independent agents and your direct writers and so forth, and your regular insurers, casualty and liability insurers, writing them.

So, aren't we going to run into a problem with paying somebody a commission or paying---

COMMISSIONER SHEERAN: Yes, I think all of these things are areas that ought to be studied. I have not really looked into the marketing system. I have not gotten any information from Blue Cross as to how they would market this. Most of their--- That is a problem. I think that all has to be part of the study.

I don't throw this out without knowing that there are not problems, but I am simply suggesting that it is an area that may save dollars to people without reducing their benefits, which is important.

SENATOR PARKER: One other question. You were talking about the statistics on the reduction of civil litigation, automobile claims, in the courts and Judge Simpson having those figures. Do you have any study coincidental with those figures on jury verdicts? Has there been a reduced verdict impact in the State as a result of this?

COMMISSIONER SHEERAN: I would say, no, that is not so. What we are really finding - I could look better to our statistics - is that as the people became more aware of PIP, the smaller cases in fact were being handled through the PIP system, and we were getting higher costs for the cases that remained. The average cost for a liability claim increases in my judgement personally with the cut off on no fault going into court.

SENATOR PARKER: So to your knowledge there has been no reduction in verdicts per se?

COMMISSIONER SHEERAN: Well, I will say this: With a bodily injury, premium costs have not gone down. PIP has gone up, and so has the other body, but that is probably due to the inflation problem to a large degree.

SENATOR MENZA: Are you finished, Senator?

SENATOR PARKER: Just one more. I understand that you have in-house, or the Governor's Office, or somebody has done a study on this already, and I wonder---

COMMISSIONER SHEERAN: I have not done that. The only study I have seen is the presentation that was made to Blue Cross, I think, in 1971 or 1972 when they were making a presentation to this Committee.

SENATOR PARKER: Didn't Kline do an independent study?

SENATOR MENZA: There is a mysterious study being done on No-Fault. Assemblyman Kline told me that this super-doooper-secret No-Fault study that he did was never done by him.

COMMISSIONER SHEERAN: That is not my department.

MR. CONNELL: Commissioner, I was glad to hear you say that this Commission has an obligation to gather some actuarial data before they make any recommendations. You are specifically concerned with this problem of a trade-off which we heard a lot about a week ago today. We have heard that in No-Fault you trade-off and get somebody back in return for the trade.

Now, as I understand your proposal and your present concern with our \$200 threshold, bearing in mind we do have a verbal threshold in this State, you are concerned about the inflationary aspect of it, and in line with that, if medical costs have gone up 60% since 1970, are you saying, sir, that maybe the threshold should be tailored to 60% to accommodate for the inflated medical expense?

COMMISSIONER SHEERAN: Well, I am not making a judgement. We have a body of data available that your Commission can see, which would indicate the number of cases that have not gone on to suit that previously did, and the number of people who have gotten care who might not have gotten it in the past. I am simply saying that the idea of a fixed threshold, if you are going to use a monetary fixed threshold, then you have to - in my judgement - require, after our experience over the last four years, or provide a way of moving that threshold with the economy. Whether \$200 is the one that we ought to have started with---

Assuming that we accept \$200 as a proper figure and have the same restrictions on, for example, hospital costs and all the other items that go to make up this \$200, then, the point that you have made and suggested here is what I have tried to say, that it would, if we had followed the medical cost index, probably have been over \$300 or something like that. But I am not making a judgement as to what the proper initial amount ought to be. That should be the subject of this study.

MR. CONNELL: My question here is, has the Department made any study? For example, if the threshold were \$300, has the Department made any study as to what that will save in premiums?

COMMISSIONER SHEERAN: We have not done that yet, and I am not quite certain how that study could be made, but it does seem obvious to me that there must be some body of data that can be developed that would give indications like that.

MR. CONNELL: Has the Department made any study as to any possible cost savings if the threshold were amended to a total verbal threshold?

COMMISSIONER SHEERAN: No, we have not. You see, one of the problems with insurance - I think a problem when we originally worked with the Commission - is you deal with a lot of guesstimates as to what is going to happen in the future. You try to predict what will happen, and in this case it didn't happen; that is, we didn't have a stable economy, and that sort of thing. You need a body of data. You have to take a back look to see how effective what you did really was. You can predict what is going to happen in the future, and I am sure we can have the same kinds of predictions that you had in your past studies, but I think we could add to that an education that we have had for the past four or five years in seeing PIP develop as a concept.

MR. CONNELL: Commissioner, I would take it that you would agree with the latest June, 1977, DOT study which shows, for example, in our district court the percentage of automobile cases filed in relation to the entire percentage of filings has decreased from 10.7% to 4.0%, which totally indicates that the \$200 "joke threshold" is doing its job in that respect. Would you agree with that?

COMMISSIONER SHEERAN: Yes, well, I have read the court statistics, but I have not seen the DOT statistics, but it does sound to me as though it probably came from the court. I am not too sure.

MR. CONNELL: Would you also agree, Commissioner, with this statement on page 58 of the same report---

COMMISSIONER SHEERAN: You know, it does sound like a cross-examination.

MR. CONNELL: Well, I have to get these points across, because we were down in Washington on Friday, and all they want to do is tell us how bad we are in New Jersey, and I really don't believe we are that bad. When you ask them a question such as this in their own report, it cannot be concluded, for example, that Massachusetts' monetary threshold is a more effective tort reducer than Michigan's verbal threshold merely on the grounds that Massachusetts experienced higher percentages of post no-fault tort decline than Michigan. They go on to say that valid conclusions on the tort reducing capabilities of various thresholds would actually be based upon not only a comparison of the pre no-fault litigation but also the post no-fault. I am saying that people are going around leveling charges at that state without any real factual basis for making them.

COMMISSIONER SHEERAN: Well, I think the thing that has been more apparent to me than anything else is the lack of a clear definition of what our threshold really is, and what it was perceived to be by the Commission when it originally got together, and that is the exclusion of some very, very high cost producing areas of medicine, namely, hospitals, X-rays, diagnostic work and that sort of thing.

SENATOR MENZA: Assemblyman Di Francesco. We are now an hour and a half behind, gentlemen.

ASSEMBLYMAN DI FRANCESCO: Commissioner, first of all, do you have copies of your statement?

COMMISSIONER SHEERAN: You will have them. I just asked to testify late Monday or Tuesday, and I didn't have a chance to go over it. I have made some changes in it, and I don't think it is prudent to let it float out. It will be done probably today, and we will get them over to the Legislative offices.

ASSEMBLYMAN DI FRANCESCO: The reason why I ask is I believe you made some reference to statistics with regard to tort litigation, and I may have misunderstood, but did you have statistics that indicated that a particular segment of litigation rose in Michigan?

COMMISSIONER SHEERAN: I was quoting from the hearings in Washington, and, yes, what it did was the test the meaning of the threshold. I think in one year they had 500 some odd cases claiming that the threshold was met, and then it rose to 1800 cases, and I think it went to 3500 cases the year after that, all of them being litigated on the issue of whether or not the threshold was met.

ASSEMBLYMAN DI FRANCESCO: In other words, your point is that possibly the verbal threshold creates litigation in the interpretation there?

COMMISSIONER SHEERAN: Well, my point is that there is a body of experience, and you are going out there. There are areas to look at. I know that we all have pride in our own accomplishments or our own work, but we have to look deeply behind those statistics. That is important. There are 300 or 400 cases there now that might not have been there with some other treatment of the threshold, you see, more clear treatment of the threshold.

ASSEMBLYMAN DI FRANCESCO: It is my understanding also that you would be very reluctant today to go to a verbal threshold; is that correct?

COMMISSIONER SHEERAN: I am very reluctant to make changes until we understand exactly what they mean, and get as much information as we can as to the impact of those, and to show that we are not simply taking some benefit away from people and giving them nothing in return. That is what I am looking at now to the best of my vision.

ASSEMBLYMAN DI FRANCESCO: Is that the Governor's position?

COMMISSIONER SHEERAN: The Governor spoke for himself on this at one time. I am sure that he is interested in making changes that are meaningful to people by way of giving them a benefit, but certainly not if it means taking away from them without a return.

SENATOR MENZA: That was beautiful. We are now running an hour and a half behind. That was very good, Commissioner. You are a great politician. You did a good job.

ASSEMBLYMAN DEVERIN: One thing bothers me, or two things bother me. Under the Blue Shield cost for doctors, you are limited to a certain amount. If you have a certain operation or certain treatment, the Blue Shield gives the doctor \$186 and that is all he gets unless the driver pays the rest. Would that hold under this?

COMMISSIONER SHEERAN: Oh, no. We would design it exactly as we have now. It would be truly a no-fault policy. It would provide full medical benefits to people, and it would have a lifetime benefit if you so decided that that should be continued. I think that is something we ought to also study as you go through this, and all those things would be the same. There is no reason to change it.

ASSEMBLYMAN DEVERIN: There is one other thing. The biggest amount of money Blue Cross pays, from their experience in rating, is to the industries and so forth and so on. For instance in one plant there may be thousands of subscribers. Now, if you wound up with Blue Cross being a primary payor of no-fault insurance, PIP, what would happen to experience rated groups? Would their increases be based on what the groups would be?

COMMISSIONER SHEERAN: Absolutely not. I would make it an absolutely separate body of data, separate coverage, clearly identifying that coverage with its experience, and letting its experience carry it.

ASSEMBLYMAN DEVERIN: So the experienced rating group would not be involved at all?

COMMISSIONER SHEERAN: Absolutely not.

ASSEMBLYMAN DEVERIN: Thank you.

SENATOR MENZA: Mr. Duncan, one quick last question.

MR. DUNCAN: As supposedly a member on the Commission that represents the public with no industry tax, I am not a trial lawyer, I have always felt alone on these Commissions. The last Commission had eight members and five lawyers. This one has eight members and six lawyers. I love them all. They are really---

SENATOR MENZA: What do you do for a living, Mr. Duncan?

MR. DUNCAN: I don't practice law.

MR. CONNELL: There are only four lawyers. I was counting them, Mr. Duncan. There were five laymen and four lawyers. When the report was submitted to the Governor, we were down to eight. We lost one lawyer.

SENATOR MENZA: Everyone knows that the bar is the backbone of the society.

MR. DUNCAN: Commissioner, we have addressed ourselves to your--- I am not here to make speeches; I am not running for office. I am here to find a way to fix the system, and I feel good about what you say, because what you said is that the system isn't bad. Everybody has been saying that we have a bad system. We have a few problems. Lawyers logically and rightly look upon the threshold with distrust, and I believe you also talked about the right of the public. So I will address myself to that.

But there is another part to it. You have to have somebody to deliver the system, and if the companies are not happy, and they can't make money, then something is wrong, otherwise we would not be sitting here. The trouble today is capacity. We can't get companies to write the business.

COMMISSIONER SHEERAN: This will not change that problem. You have to know that.

MR. DUNCAN: Well, that is the second part of this hearing. We will get to rating, so we are not supposed to talk about that here. But let's deal with the system. You say it is really not so bad with the \$200. I was one man who did not like the \$200 tort threshold. I thought it was wrong, but, nevertheless, we met and we agreed. And I find it interesting that you are talking about now a sliding tort threshold that is geared to some sort of measurement of the economic conditions, and that doesn't sound too bad, and I will assure you that I will study that as hard as I can.

But there is another part of this that the companies have mentioned, and it has to do with the federal no-fault. In fact, your Senate 1380 addressed itself to that. That was a \$75,000 cap; I believe the national no-fault law quote for a cap is \$100,000. With that thought in mind, and I guess the logic would be that you could buy additional coverage above the \$100,000, I am a little confused in why that wasn't signed, if you could help me along that line.

COMMISSIONER SHEERAN: You mean by the Governor? I think the Governor would have to address himself to that. That is on his desk now.

MR. DUNCAN: Does he plan to sign it?

COMMISSIONER SHEERAN: I am sorry, I am on his cabinet, but I am not in his mind.

MR. DUNCAN: How do you feel about that cap?

COMMISSIONER SHEERAN: Well, our Department has supported it. I happen to believe that what Mr. Green had complained about in the areas with no companies and the effect upon them, that it was a valid consideration. You have to know that the opposition that has developed to that bill which we originally put in at \$25,000 developed in the industry itself. It was a conflict in the industry, not with our Department or anyone else. The big companies wanted to have no cap; they wanted to go on with the unlimited medical, and the companies that were small and were being threatened by it were---

MR. DUNCAN: By threatened you mean that their reinsurance costs to provide the other coverage would put them out of the market, if the big companies had the resources to meet that.

COMMISSIONER SHEERAN: That is what Mr. Green and other members of smaller companies - not that his is a small company - compared to the big multi-state conglomerate companies wanted, because their position was that they have several lifetime medicals that the impact would be severe on them and on their reinsurance costs. I believe that Mr. Green and the others were telling the truth about that. And I believe that position.

SENATOR MENZA: That was a great succinct, quick question, Mr. Duncan.

MR. DUNCAN: Thank you very much.

SENATOR MENZA: Commissioner, thank you so much for coming to Elizabeth. You were very informative, and we appreciate very much your coming down.

COMMISSIONER SHEERAN: I am ready to help work with you and come up with the proper solution. I think it is necessary.

SENATOR MENZA: Mr. Hardenbergh. Do you have a prepared statement?

R I C H A R D H A R D E N B E R G H: Yes, I believe it has been distributed. Thank you, Senator Menza, members of the Commission. My name is Richard C. Hardenbergh. I am a resident of Haddonfield, New Jersey. I am here today representing 5,000 member Independent Insurance Agents of New Jersey. This is a federation of 18 local boards representing professional insurance agents who are small business people located throughout New Jersey.

Our Association has stated previously on many occasions that it favors the No-Fault program as the best system. We still endorse it, but we suggest that improvements to the system are necessary to protect the millions of New Jersey motorists. The Independent Insurance Agents of New Jersey is not a fiscal or actuarial organization. We are very aware that the greatest percentage of our members do have a high loss ratio, that is, premiums collected and claims paid out on their automobile business. A great deal of their losses are attributable to the very low threshold, unlimited medical, and discrepancies between legislative intent and court interpretation of our No-Fault Law.

We, as Independent Insurance Agents, represent the interest of the insurance buying public. Speaking for the consumer, we believe that all insurance should be made available to the public much in the same way that a motorist buys a new automobile. He can purchase a basic vehicle and then has a choice of buying additional features and accessories at his own option. The present automobile insurance policies mandated by the Legislature are now beyond the means of the average motorist. It provides for for premiums he no longer can afford to pay in today's economy.

Our Association strongly recommends that the motoring public be given options to purchase coverage which he is able to afford. One such option, for example, is additional PIP - Personal Injury Protection - coverage as presently in the law.

Concerning the present \$200 tort threshold, this should be changed to a "verbal threshold" - one requiring that a person being injured to such an extent they are unable to perform normal duties before they can file suit for pain and suffering. I want to make this point very clear, no way are we suggesting that people who do deserve compensation should not receive such compensation. I was particularly glad to hear the Commissioner indicate that he feels that the present \$200 threshold is inadequate, and changes should be made in it.

The definition of verbal threshold is that one cannot sue unless there is death, serious impairment of body function or permanent disfigurement. To support this type of threshold, we suggest - and I am sure your Committee will do so - getting statistical information which I believe the Department does have, despite what the Commissioner has said. Also, concerning the limitations of medical coverage, another step toward making insurance affordable to the consumer would be to provide a basic policy of \$100,000 in medical benefits and allow the motorist the option of purchasing additional medical coverage if desired. You may recall, before No-Fault Insurance, the insured had the option to buy medical coverage on his policy. He didn't have to have any, or he could buy up to \$5,000 worth at a rate equivalent to it.

We also propose the creation of a "Medical Review Board." This would be used if the insurance company felt there was an over-utilization of medical treatment, for example, double billing, padded bills, and bills for services never rendered. As long as there seems to be some doubt concerning fraud among our industry, we suggest an "Anti-Fraud Division" should be established to check on insurers, doctors, hospitals, employers, lawyers and the claimant. We most strongly recommend that New Jersey's No-Fault Law be carefully re-defined so as to avoid any misinterpretations by the courts as to the intent to extend benefits beyond those originally intended.

In summary, we are in favor of a No-Fault Law based upon that in current use in the State of Michigan which experience has shown to be the most workable to date and the fairest plan for the consumer. Here, I might add, that we are extremely pleased, Senator Menza, to announce that you intend to go to Michigan to study their plan. That concludes my printed statement, but I would like to make some comments.

SENATOR MENZA: Mr. Hardenbergh, do you speak, initially, on behalf of the Independent Insurance Agents in New Jersey, and is that their position, the one you just recited?

MR. HARDENBERGH: Yes. What I say now is also in speaking for them. What my personal opinion is, I won't discuss, but I do know this, and do feel very strongly, that our Association, if you do have further hearings or studies on the Blue Cross situation, would like to be heard. We have some very interesting input. We are opposed to such a method, and some reasons have been discussed here this morning, and I don't think we want to get into that discussion right now. I could give some myself here and now, but I would like the opportunity to appear again if you do get into a lengthy discussion on that.

SENATOR MENZA: Thank you. Gentlemen?

ASSEMBLYMAN DEVERIN: Mr. Hardenbergh, why do you think Michigan's law is so good? How much do you really know about Michigan? Why do you say we should adopt it carte blanche?

MR. HARDENBERGH: No, I am not suggesting we should adopt it.

ASSEMBLYMAN DEVERIN: Well, that's what you said here today.

MR. HARDENBERGH: Well, I realize what I said here today, but I also indicated, and I was going to suggest that you go to Michigan or have Michigan come here, and Senator Menza beat me to that. He indicates that he is going.

I am not suggesting that this is the panacea for No-Fault, but from all trade journals I have read, from all indications, it does seem to be a workable program. I do have the law here. I have read it. But only statistics, again, will prove whether it is that good, and we would like for you to determine - the Commission itself - what we are saying.

ASSEMBLYMAN DEVERIN: But some of the records don't show it to be that great. There are some people who think it is just as bad as New Jersey. I am not sure that your statement saying that your statement that we should adopt the Michigan plan is something we want to hear unless you have some reason for doing it.

MR. HARDENBERGH: Mr. Deverin, you are right. We favor the one in current use in Michigan. The reason we favor it, I think, is because in Michigan's bill there are some of the suggestions that we have made here this morning, the verbal threshold as an example. However, I wouldn't be so bold to say that we should accept it until you have made your complete study.

ASSEMBLYMAN DEVERIN: Particularly, because it is really not my knowledge. I am not an insurance man, and I am not a lawyer. I don't understand why if the verbal threshold is the panacea, and the reason some people say this is because the doctors do, and the Commissioner explained this very well. When we had our last hearing, we talked about a hundred thousand dollar threshold that included hospitalization, X-rays, and so forth and so on. The insurance companies are very much against that. Now, they say the \$200 threshold is too easy to beat and too easy to get around. Do you think a verbal threshold would do away with that, getting around it, as it were, or the hanky-panky that they use with it? Do you think a verbal threshold would avoid that?

MR. HARDENBERGH: Well, I think it would be a great improvement on the present system. True, you have these situations where the sixty days are up, or there is also the possibility that this man should be here another three days and really should be here another three days, but you have to have a starting point and a stopping point somewhere.

ASSEMBLYMAN DEVERIN: The thing that bothers me with the verbal threshold is, everybody talks about a person having to be sick for ninety days or sixty days, or whatever. Now, in the insurance policy, all these expenses are covered, his wages are covered, his salary is covered, depending on what plan he has. What is going to keep a guy from staying out for ninety days or sixty days, because the insurance policy is verbal. What makes that verbal threshold so much better than a dollar threshold?

MR. HARDENBERGH: Well, you are on a little different tangent on the verbal threshold and the way that we look upon it. You are speaking of people who want to continue on Worker's Compensation where you have lingerers. There will have to be some controls. There is no question about that, but the reason

we favor a verbal threshold over the present threshold is that we do want to cut down on some of the tort liability suits that are occurring, and they can occur very readily now as I think Jules Borrus' testimony last week indicated, that the medical mbills now are running at an average of \$249, which indicates that someone can immediately sue after \$200.

MR. GREEN: Senator, I wonder if I can add something about the Michigan set up. The Michigan threshold - what they are concerned about they didn't properly define the limits within which the verbal threshold came in, so it is now left for the jury to define. Certain other states have definitely defined what encompasses a verbal threshold. Now, if and when we go into our discussions, and we consider a verbal threshold we can define that and other terms so that the court won't distort our whole No-Fault Law. And if you look into the No-Fault Law and compare it with decisions that have come through, Commissioner Sheeran, for example, mentioned today that the \$200 was supposed to be actual medical bills. Last week one of our Superior Court Judges came out with a great decision. A back brace worth \$150, he considered part of the \$200 medical. So that actually we will have to define each and every term so that the court won't be able to distort it, and say motor cycles are covered when the Commissioner said it didn't cover them.

ASSEMBLYMAN DEVERIN: You know, what I am trying to find out are, what are the advantages to a verbal threshold? What is the difference between a verbal threshold and a dollar threshold. Is that going to solve the whole problem in the State of New Jersey. The people sfrom the insurance companies say that under no circumstances will the verbal threshold lower the cost to the consumer.

MR. GREEN: I wouldn't go that far, but I do know that your sacroiliac sprains and other nusance cases which were supposed to be eliminated by No-Fault are more prevalant than ever and the majority of suits are the nusance cases. Nobody is saying that for the real injury cases. There is toom much building up of the other junk cases which were supposed to be cut out.

ASSEMBLYMAN DEVERIN: Well, would the verbal threshold cut out the subjective back injury?

SENATOR PARKER: Just like in Worker's Compensation.

ASSEMBLYMAN DEVERIN: That is what I mean.

MR. GREEN: There can be a percentage arrangement there.

SENATOR MENZA: Let's cut out the cross-dialogue and address ourselves to the witness. Mr. Connell, do you want to cross-examine again?

MR. CONNELL: Mr. Hardenbergh, do you agree with Commissioner Sheeran that no-fault is really a trade off, and people are giving up something in return for getting their bills paid?

MR. HARDENBERGH: No, I can't say that, no.

MR. CONNELL: You don't agree with athat?

MR. HARDENBERGH: No, I can't say it is a trade off.

MR. CONNELL: You are the first one I have heard from representing the insurance industry that didn't agree with that.

MR. HARDENBERGH: Well, I don't know how we are defining the word "trade off."

MR. CONNELL: l All right. Do you agree that when you buy No-Fault Insurance you are gbuying coverage to pay your medical expenses in return for which you have to give up some of tyour litigation rights? Do you agree with that?

MR. HARDENBERGH: Yes.

MR. CONNELL: Because you recommended here on page three that you were in favor of a No-Fault Law based upon admission.

MR. HARDENBERGH: Yes, sir.

MR. CONNELL: Do you have any actuarial data that would substantiate any savings in premium if we so chose?

MR. HARDENBERGH: No, I do not. Mr. Deverin made a remark about something which he thought I said. I didn't say this, but you indicated that I felt that New Jersey's No-Fault Law was - I don't think you used the word "lousy" but you inferred that I might have meant that. No way. Mr. Duncan will be glad to hear me say this too. We think that we do have a good No-Fault Law in New Jersey, and the Commission did a very good job when they developed it. But, like everything else, time goes on, and it is time that some changes should be made in it.

ASSEMBLYMAN DEVERIN: I said other people had said that.

SENATOR MENZA: Thank you, Mr. Hardenbergh. Our next witness is Norman De Neef, Selected Risks Insurance Company. Ladies and gentlemen, we are going to break at twelve-thirty. The witness after Mr. De Neef is Assemblyman Dean Gallo.

N O R M A N D E N E E F: Mr. Chairman, my name is Norman De Neef. I am Manager of the Automobile Underwriting for the Selected Risks Insurance Company. I will ask that my prepared testimony be made part of the record, and I will not bother to read it, since it deals largely with matters that have already been presented before you. (Prepared Statement appears in Appendix beginning on page lx .)

I would, however, like to make just a couple of comments, and then if you have any questions, I will be glad to tackle them. I was sorry to hear this morning - or perhaps appalled is the word - the Commissioner say that the industry is changing the fundamental concept of No-Fault. That concept, as you well know, and as has been emphasized a couple more times this morning, deals in a form of trade-off. It was the industry in fact that proposed No-Fault originally and fought for it in a pure concept, realizing, of course, that that is not fully attainable. We have come in New Jersey, and in almost every other State, to the discussion of the substantive nature of this so-called trade-off.

We do not believe - as you don't - that New Jersey in any fashion has the worst No-Fault Law. It perhaps is one of the better in that it provides what true No-Fault is intended to provide, full compensation for the victim of automobile accidents handled through the automobile system. We do feel, however, that the time has come, as with any new system - and No-Fault was completely new half a dozen years ago - there are going to be some bugs in it. And New Jersey's No-Fault Law has some. You don't believe that the original Commission ever intended that it be cast in stone or necessarily will the recommendations of this Commission.

We do favor the strengthening of the threshold. We would prefer a verbal threshold, but as has been done with you to a limited extent this morning, the question of wording in the verbal threshold must be very carefully handled, if we are not to create more litigation than we remove. Nevertheless, we do favor a verbal threshold. We would favor, also, if possible - and I don't know how this is going to be accomplished - some form of cost control. It has been stated that Blue Cross can deliver low hospital benefits, 25% less than we can pay to the hospital. I am not suggesting that we attempt to follow their

cost levels, but I do think there has to be some means of setting the generally accepted costs of benefits by health care providers, whether it be doctors or hospitals. I am not so concerned about the obviously limited number of cases of so-called fraud. I have no figures to prove that is happening, but unquestionably there are charges rendered by health care providers which exceed in auto accidents what they would be in other types of cases. I refer you for example to the study recently completed in New York State where they made comparisons of laws under Workmen's Compensation and comparable bills under auto accidents, and they ran three to four to one under auto accidents, vis-a-vis, Workmen's Compensation claims.

The cost control is something that we have to face, and this may be perhaps more important than any other aspect. You are aware, of course, the question was asked this morning, why hasn't the governor signed S-1380. We, along with the Motor Club were two of the very strongest proponents of that bill, and the Legislative Committees must have been adequately persuaded as to its desirability because it was passed unanimously in both houses, but yet it has not been signed. As a small company in New Jersey, I would just like to tell you how that would work for us.

There was a misstatement in the Star Ledger yesterday that S-1380 on the Governor's desk put a \$75,000 cap on medical benefits. That is not true. It does not cap the benefit at all to the consumer. It only caps the amount that the company would pay on an individual loss. We are in the process of renegotiating our reinsurance treaty since No-Fault came in, and we have been with one carrier. We are working right now to renegotiate our costs, and on the No-Fault, the PIP premium, we are now paying 2.8%, and they want to go to 10% or a 350% increase on our reinsurance cost on our PIP premium. That would mean to us, if S-1380 remains unsigned, having these additional costs, plus our having to pay losses between \$75,000 and \$100,000 which is our current reinsurance retention. It would cost us an additional probably \$750,000 a year. To us that is quite a bit.

There is one other factor I would like you to consider. I have not yet mentioned increases or decreases in litigation in New Jersey after No-Fault came in. We have not seen in our company a drastic reduction, if any, in litigation. I don't think we can altogether compare that with pre-No-Fault either, because of the fact that since No-Fault we have also had to deal with comparative negligence in New Jersey as opposed to the old contributory negligence rule. So that cases that heretofore might not have gone into litigation at all - because obviously there was a contribution of negligence - now get in because it is a matter of testing whether one party or the other is 51% or 49% at fault. That would have an increased effect on litigation in this State.

I think that one of the things we do have to consider or we would ask sincerely that you consider is the mere fact of affordability. We hear this word a lot. I think most of us in the industry will admit that the cost of auto insurance is becoming for many of our citizens almost prohibitive. Anything that can be done to retain affordability to the average consumer is certainly a major question. But I don't think anyone is going to be able to come up with any figures any place along the line that are going to be any different than the Commissioner said. We are going to have to do some guesswork as to what the effect of a change in threshold will be. It is bound to have some moderating effect on costs. It will in no sense reduce them. It will merely preclude their rising as fast as they might otherwise rise, but most insurance costs, no matter what we do, are probably

going to continue over the years to rise. I would ask, also, that in your further discussions with the Commissioner - he mentioned the possible use of a Cost of Living Index on an increase in a dollar threshold, before too long the Insurance Services Office, and perhaps other rating organizations will be proposing in all states that the rates for auto coverage also rise periodically in line with the Cost of Living Index, and then further factors would be imposed on that at varying periods also - if you feel it advisable to do so, find out whether or not he might favor a regular annual increase in basic insurance costs, based on the Cost of Living Index. Because after all, whatever we provide is affected directly by that.

We too - as Mr. Hardenbergh had indicated - if the matter of Blue's taking over the delivery of the benefits under No-Fault receives further discussion, as I am sure it will, would like to have an opportunity to comment there. This is brand new. This only came out in the paper yesterday morning. We would like to have a chance to think about it too and have an opportunity to come back and chat with you about it.

MR. DUNCAN: Mr. De Neef, I need a little help. You represent a small company. Someone told me a long time ago that the backbone of the American system was competition. I am a little confused and I need a little help. If I represent a big company that has a lot of resources, I really don't have to buy what you call reinsurance. I have the money, right?

MR. DE NEEF: That is correct.

MR. DUNCAN: So you as a little guy, and Dave over here, have not had a problem in the past, because you would pass off large losses by buying reinsurance.

MR. DE NEEF: In our case, everything above \$100,000.

MR. DUNCAN: You see, I want to rationalize the word "cap." Does it take away some public money benefit? If I understand a cap, then, your problem with unlimited medical - being one of the fellows who was intrigued with the unlimited medical logic of this in this thought - is, as I understand it, the costs are going up in the reinsurance field and that would make your rate filings non-competitive, perhaps, with some of the bigger companies, although they are not suggesting there is a problem here; two, you would favor the \$75,000 cap, and by that you did suggest that doesn't limit a person. It would allow a person to have a basic monetary limit, but they could buy additional coverage. Is that the way I understand it?

MR. DE NEEF: We favor unlimited medical the same as is in the law currently. But as far as ---

MR. DUNCAN: I got a feeling that was a play on words.

MR. DE NEEF: No, no, it is not definitely. The consumer loses nothing under S-1380. He would be paid his full benefits. If his claim were \$200,000 and it was against Selected Risk, we would pay \$75,000. The pool would pay the other \$125,000. The customer would lose nothing. The cap is only the individual company's responsibility. The pool of all the companies would share in the excess over the \$75,000.

MR. DUNCAN: Okay, I see what you are saying. Then the pool would relieve you of the added cost to your rating. In the reinsurance logic, it would take away your cost of reinsurance.

MR. DE NEEF: Under the PIP coverage, yes, that is correct.

MR. DUNCAN: Originally the Commission thought there was a question of whether it is a bodily injury claim and whether it is a PIP claim. Now, you smile, because I sometimes get lost. We originally recommended that in a two car accident where somebody was at fault, that by inter-company arbitration you take a PIP claim - or better yet, if I was run into by someone else, and I was sent to the hospital, I would collect my economic loss; I would collect my wage loss. And we suggested that if someone else was at fault when I was run into, by inter-company arbitration we would then shift that loss to the other companies. Then, of course, it would become a bodily injury loss. It would not be a PIP loss.

I know we are going to get into rating, and I know this is going to get involved with it. What about this arbitration that we originally suggested? How do you feel about it?

MR. DE NEEF: The opposition generally has been that in the long haul, as far as dollars back and forth, that probably it works out as a trade-off and there would be no particular advantage in the fact that the cost of the arbitration procedure would be something that would not be meaningful. We have not generally been strong for transfer of payments. Some companies feel exactly the opposite. The industry is divided on that point. We had just not felt there was any particular advantage in it.

MR. DUNCAN: If you didn't go along with the Senate version on the logic that a person is covered up to a cap of \$75,000 or \$100,000, how do you feel about the option of buying coverage up to \$1 million on his own? Because, after all, the rate making process will have to carry the sum total of the other losses no matter how we look at it.

MR. DE NEEF: We are probably in the minority. I don't know that we are but I am just getting the feeling that we may very well be in the minority in savoring the continuation of unlimited medical benefits. It has only been, and I am not intending to make a sermon when I say this, in the past thirty to thirty-five years that the automobile has become the pervasive influence in American life that it is today. We just haven't got the system yet to handle it, but nevertheless it is there. We have created it. Society has created a need for it. We have created the arena in which it operates, and we are grasping now for a means to handle the compensation of accident victims. You know, I can remember when it was fun to ride on a Sunday afternoon, but that time is long gone. The car is a different thing today.

We felt from the beginning that the automobile insurance mechanism should take care of people today that are hurt in auto accidents without regard to fault, and in toto, the people who buy auto insurance for their cars ought to be getting the full recompense for whatever injuries they suffer in the operation of that vehicle. So we have not been, up to this point at least, in favor of limiting in any extent that right of recovery in the economic loss benefit.

SENATOR MENZA: That is too altruistic a position for the insurance companies to take.

MR. DE NEEF: Maybe it is. Somebody is going to pay it, however.

SENATOR MENZA: Let me pose this question to you. Is the cost of the pool less or greater than the cost of reinsurance? And does that affect your position with regard to the unlimited medical? Why would an insurance company be so altruistic, particularly a small insurance company?

MR. DE NEEF: As far as the pool is concerned?

SENATOR MENZA: Yes.

MR. DE NEEF: I think what happens is - we have a couple of small companies, and there are others besides Mr. Green's and ours - we are totally committed in New Jersey. We can't run away from the State of New Jersey. We have a large volume of auto business here, roughly 3.8% or 3.9% of the registered private passenger vehicles. And over the long haul it might work out to cost about the same. But what you are concerned with is the one year that you could be really killed by the luck of a draw. I have been unable, personally, to get a real solid answer from the major carriers as to why they are unwilling to concede this concept since they also - and particularly not carrying reinsurance - could individually be hurt in one single year if they happen to have twenty quadraplegics. It seems to me that it is as advantageous to them - and perhaps even more advantageous - since they carry their own reinsurance as it would be to us. But we, being smaller, just can't take the chance.

MR. GREEN: Senator, I wonder if I can add something to that. Everything in New Jersey is based on the pool. When Gateway and the other companies went broke, the big companies were not willing to pay the whole thing, so we pooled it. Our assigned risk assignments are in a pool. Our New Jersey Insurance Underwriting is in a pool. Everything is pooled. As Mr. De Neef said, suddenly for some unknown reason they object to a pool for that, but everything else is pooled. For example, the support of the financial responsibility division, everything we ever had in New Jersey was pooled, percentage-wise, according to writings.

SENATOR MENZA: We have Allstate here today. We will address that question to them.

MR. DE NEEF: Could I just make one other comment on the unlimited medical feature above a cap? In other words, set \$50,000 as the basic coverage and let an individual buy above that. This has also been a recommendation, and it has some attractiveness in perhaps pricing. It might be helpful in just finding out what No-Fault costs up to a certain figure. S-1380 would also have this result in our opinion. But my concern is that you do not continue the unlimited feature - the fellow who doesn't buy it may be very well the fellow who needed it. In fact, in many instances, perhaps if it is a risk that has had an unfavorable accident record, where it reflects directly on his premium, and he chooses not to buy above \$50,000 because of the cost to him, if he is the fellow who has had the bad record, he is the one who is the most apt to be hurt, and, perhaps, to have the unlimited claim tomorrow. Society is going to take care of it, and we think it should be taken care of through the auto mechanism and not some other one.

MR. DUNCAN: What percentage of your total accidents are one car accidents?

MR. DE NEEF: I can find that out for you. I can't tell you right offhand.

MR. DUNCAN: You could make an educated guess.

MR. DE NEEF: I wouldn't even want to make a guess. I assume it would be in excess of 25%. It may be in excess of 50%, but I couldn't say.

MR. DUNCAN: How many of those one car accidents, whatever the percentage may be, involve drinking and driving, to the extent that a drunk driver could be involved?

MR. DE NEEF: I review for my company only the major losses. I am not in the claim department. I am in underwriting, but I am interested in what losses

we have had to report to the reinsured. Of those losses that I have looked at over the past ten years, unquestionably, 50% have involved drinking and driving.

MR. DUNCAN: I find it interesting, but you are now bringing in the problems of the industry, and it was this Commission's initial intent not to cover drunken drivers.

MR. DE NEEF: I realize that. Mr. Green has fought for that very hard for a long while.

MR. DUNCAN: Indeed, it never came about, but I don't find you addressing yourself to that. Do you have any thoughts on that? Should they be kept out of the system? Is that a reform you would suggest?

MR. DE NEEF: If it were possible to do so in some substantive way, so that you made sure you got all of them out or all of those that had over .15 or if it were possible to make a clear deliniation of merely a matter of impairment or merely of having a drink or being drunk, I suppose I think it would be extremely difficult to handle. I think the question would address itself more to the question of is there a means of getting the drinker off the road as opposed to not paying him for his injuries. And we have not been successful in that anywhere in the country yet, either.

SENATOR MENZA: Gentlemen, before we ask any more questions of Mr. De Neef, we have a gentleman, Robert Pike from Allstate Insurance Company who has come especially from Chicago and must catch a plane, I understand, by one-thirty. We can ask Mr. De Neef, if you so desire, to stay with us for awhile, if you have any further questions. Can you do that, Mr. De Neef?

MR. DE NEEF: It will be my pleasure.

SENATOR MENZA: Fine. Thank you. Mr. Pike. To insure my credibility, Mr. Pike, you have come in from Chicago and you must take a plane at one-thirty, isn't that correct?

ROBERT PIKE: That is not correct, Senator. I came in from Washington this morning, and, yes, I am leaving on a one-thirty plane.

SENATOR MENZA: In your testimony we would appreciate your directing yourself to the reinsurance aspect.

MR. PIKE: My name is Bob Pike, and I am Assistant Vice-President of the Allstate Insurance Company. In that capacity I have responsibility for state no-fault legislation and regulation for our company. I have served as Vice-Chairman of the Florida Insurance Task Force on Insurance. I was a panelist at Drumthwacket. With that background, I will not attempt to repeat all the recommendations that I suspect others in the industry made last week, and I am sure will be made this week. I would underscore them simply to say that I do not agree with those who would suggest that we need more time, more data, more experience in New Jersey before we are able to truly tailor the No-Fault Law responsibly to our policyholders, to your constituents, and ultimately to our stockholders, also, I suspect.

I gather the data is available, and the experience that we have garnered thus far would suggest that there are many things you can do, many things this Commission can recommend, and I think they are apparent to most of us. It is simply a matter of working out the bugs, I suspect, in the system. Certainly you have the worse and weakest threshold among the states that do have thresholds. The \$200 was woefully inadequate when it was passed, and it has certainly been eroded by inflation in the years that have gone by, and effectively it is not a barrier to exclude

those cases that I suspect the Legislature wanted to be reduced from the system. The Federal Government, as someone indicated earlier, has always recognized that possibly an unlimited medical benefit is a cost that simply should not be borne by, at least, policyholders. They have had the most lucrative benefit level as New Jersey, and they have recognized in both the Senate and the Congressional bills thus far introduced that \$100,000 benefit level certainly would seem more acceptable. We know that such a benefit level would compensate 99.95% of all accident victims for their total economic loss; yet we know the cost to provide for the additional .05% is essentially 20% of the premium. These are not my numbers. I believe the Commissioner of Insurance would probably subscribe to them. We know that there are things you can do to close loopholes.

I noticed in some of the testimony given here that you were submitted for the record nine amendments. These amendments go all the way from the very broad ones in correcting the threshold, of taking care of unlimited medical benefits, to also filling in the loopholes created either by the Judiciary or by oversight when the legislation was initially passed.

You had asked that I comment briefly on S-1380. The suggestion that this is a bill that might encourage competition, I suspect, among smaller companies, if I understand Mr. Green correctly, I strenuously disagree with that. I think, if anything, S1380 would stifle competition even more than it has already been stifled in New Jersey. I think the one thing you have done with 1380 --- I commend the Governor for not yet signing it. It is a bad bill. It is a bad bill because you have a crisis insurance environment. And I know all too often we in the industry, and those on the other side, use the word crisis too often. But anyone who looks at availability, who looks at the facts, who looks at what has been happening in New Jersey has to conclude that we have a problem in this State. We have 20% of the business. We have a stake in this State, unlike any other company.

We are a large company. We do have reinsurance. We do reinsure. Unlike Dave's company, we leveled or layered at \$250,000. But the fact of the matter is you have again created another tool, another spreading of the risk. You have attempted again to make one price for one coverage. What stops the inadequate company? What stops the Gateways from coming into this State when they know that they only have essentially on the hook the first \$75,000 medical? What causes them to properly monitor that catastrophically injured accident victim? What would stop the company with .6% of the market, who knows that they have a brainstem damaged individual - quadraplegic, possibly projected expenses of \$1 million or \$2 million - who knows he is going to pay the first \$75,000 and probably has it reinsured over \$10,000. We know from experience with the catastrophically injured that immediate medical attention was the best way to both reduce the ultimate cost to that victim as well as to enhance his chances for rehabilitation. When one has .6% of the market, one is not too concerned about the market he is supposed to serve. My suggestion is that the monitoring of that medical care, the rehabilitation of that accident victim, would be inadequate.

You have, I fear, with S-1380--- I guess 1380 is symptomatic more of the problem, because the problem is unlimited medical. You are not going to do anything to reduce the costs. Now, the individual who testified before me indicated the costs will be the same. I suspect it is going to be even higher. It is going to be higher because you are going to bring in the

UCJF to monitor-and to possibly rehabilitate or monitor-the rehabilitation. I wonder how professionally-and this is in no way to denigrate the staff - they are handling the catastrophically injured accident victim. I doubt that they are. I suspect we could do it far better. I suspect that those of us who have had the experience, as Dave has had in the large states where we have unlimited medical, now have resources at our command. I think competition demands that you make companies accountable so they can handle this type of risk if you continue to have unlimited medical.

SENATOR MENZA: Mr. Pike, may I interrupt for a moment. Reinsurance is placed with Allstate, and over \$250,000 you place with someone else---

MR. PIKE: I think our layer is \$250,000. I am not sure.

SENATOR MENZA: I presume Allstate makes money on reinsurance.

MR. PIKE: I hope we do. We have in the last couple years. I wish this would be the case in automobile insurance in New Jersey.

SENATOR MENZA: With whom does Allstate place their reinsurance?

MR. PIKE: I am sure it is placed in a reinsurance pool and then part of it is picked up by many companies. I can provide you with certain information.

SENATOR MENZA: Apparently the small insurance companies indicate that large companies don't want limited medical, because they thereby will be losing money as a result of the reinsurance premiums which they will not get; is that correct?

MR. PIKE: That shocked me, as did the comment of the Insurance Commissioner when he said large companies want unlimited medical. Nothing could be further from the truth. I don't know one company - and we are a member of the NAI, essentially independent companies, and I am familiar with the policy of the AIA, and I don't purport to speak for them or the mutual companies - of any substance, of any size that feels any longer that an unlimited medical benefit is an acceptable coverage and one that can be properly, ultimately, controlled or monitored in terms of cost.

ASSEMBLYMAN DEVERIN: Excuse me, Mr. Pike, you said "anyllonger." But when the original plan was put in, the insurance companies, if I remember right, did favor unlimited medical.

MR. PIKE: Some insurance companies did. Ours certainly did not. In fact we were very modest. I suspect possibly too modest. We believed in the \$5,000 benefit package. I believe most or some of the Eastern stock companies - and actuarially it did make sense when we looked at it, but as often has happened with actuaries, it is educated guesswork - didn't realize the tremendous churning in changing from one system to another system. Whenever we talk about thresholds, we go to the lawyer's heart. I am a former plaintiff's lawyer and I have some feeling for this. Whenever we go and talk about unlimited medical people think, My God, they are going to deny the paraplegic and the brainstem victim, and these are hard political choices, granted. I have prepared - and I did so, by the way, for Herb Kline and waited, as I suspect many of us did for the report - a document which is dated from January. I don't know if I have enough copies for all members. It is about a 50-page document. What I have tried to do, in draft form, is merely put down - not in model bill form, in possibly moderate proposal form - concepts that are drafted legally on one side, and on the right side a laymen's description of what we are talking about. And what we are talking about in no-fault or any reparation system is loss containment, loss control. Maybe Commissioner Sheeran would disagree. We have internalized the cost of our operations as much as we can.

We don't have anymore money there. We have cut it to the bone, so we have to be responsive. We just can't rely on, say, a change in threshold, which I believe would change the benefit level. We have to suggest the cost containment proposals.

SENATOR MENZA: May I interrupt you again? I have a very simplistic approach to things, unfortunately. As a result, apparently Allstate thinks that our No-Fault System is bad.

MR. PIKE: Not all bad.

SENATOR MENZA: Is Allstate losing money as a result of No-Fault in the State of New Jersey?

MR. PIKE: Yes.

SENATOR MENZA: Can you give us figures for that? How much money has been lost as a result of No-Fault?

MR. PIKE: I think the ball park figure, in probably the last three years, has to be close to \$70 million.

ASSEMBLYMAN DEVERIN: Is this property damage or No-Fault?

MR. PIKE: No, this is on automobile insurance. This would include property damage and---

SENATOR MENZA: You see, that is what we are concerned about. We want Allstate, please, to give us figures and be specific with us. I wish you would furnish the figures.

MR. PIKE: There is no problem.

SENATOR MENZA: How much money are you people losing as a result of No-Fault, forget property damage, and forget inflation?

MR. PIKE: We would have to look at the pure premium, to those affected coverages. That is no problem. That is all laid out, and I will supply it to you.

SENATOR MENZA: Give me a ball park figure now. Insurance companies are not in business to lose money, and I presume that last year---

MR. PIKE: I suspect that is also the case in New Jersey.

SENATOR MENZA: Allstate has been losing money in the State of New Jersey?

MR. PIKE: Yes.

ASSEMBLYMAN DEVERIN: Why do you advertise for new clients?

MR. PIKE: Number one, I am not so sure that we have embarked on an extensive advertising campaign in New Jersey. I suspect also because we are very closely tied into our parent, we have made a commitment to this market, and we hope upon hope, as we have for the last four years, that something will turn around, that possibly the regulatory environment might ease somewhat, and we also have a lot of resources and a lot of employees. If we make a commitment to the market, we stay in it.

SENATOR MENZA: Mr. Pike, please forgive me, but I do have some difficulty with your statement that Allstate is losing money in New Jersey. Would you document this, and will you furnish it to the members of the Commission and tell us specifically where the losses are, and specifically what aspect of the loss relates to No-Fault Insurance in the State of New Jersey? Can you tell us why the direct relationship between the losses that you have and the certain provisions in the No-Fault law?

You see, other insurance companies--- Mr. Green, is your insurance company losing money?

MR. GREEN: We lost \$15 million over the last three years, mostly due to No-Fault medical coverage. Our reinsurance costs for medical are greater

than our liability costs. Before No-Fault we had no reinsurance on medical.

SENATOR MENZA: See, I am a little bit mixed up now. We hear constantly that the largest problems the insurance companies have are their portfolios and inflation. By the way, when we say loss, sometimes we mean we didn't make as much money as last year. We are talking about pure losses. Would you furnish us with that information?

MR. GREEN: Incidentally, I might add, we have doubled the amount of suits, despite these records, and most of the suits are produced by our No-Fault Law because we are financing minor injury cases into suit. They are waiting for a period of two years, and then an avalanche of suits. That has been the experience since 1975.

MR. DUNCAN: Can you break away your BI from your PIP?

MR. PIKE: Yes.

MR. DUNCAN: All right, would you say your BI, bodily injury, is losing money right now?

MR. PIKE: Well, right now they are all losing money. We have had a rate filing for at least seven months, but I suspect that is not unusual for Allstate.

MR. DUNCAN: Do you separate your BI figures from your PIP?

MR. PIKE: Oh, yes.

MR. DUNCAN: Very quickly, what is the difference between your BI loss and your PIP?

MR. PIKE: I don't know what our current filing calls for. I couldn't tell you. I can give it to you exactly by letter, because not only is it on file with the Insurance Department, all this information, but we have additional information we can provide in response to your question.

I think we are in --- The figures I have are pre-No-Fault. I will have to submit them to you. It is no mystery.

MR. DUNCAN: Just clear up one thing for me. When we talk of an underwriting loss, and when the Chairman talks about the company making money, in fact, they are two different things. In other words, did Allstate in the nation make money last year?

MR. PIKE: Yes, it did.

MR. DUNCAN: Okay, now let's separate this. They have an underwriting loss. What portion of the profits for Allstate, which is a national organization, can be attributed to New Jersey?

MR. PIKE: None.

MR. DUNCAN: Is there a breakaway in your statement or your portfolio?

MR. PIKE: Not specifically, but we can do it by taking an average. We take our total, let's say, income. And I don't want to get too specific here, and we can then plug in - because the next question has to be, well, what about investment income - what we made on that money by virtue of investment income, and then take the percentage of the business we have in New Jersey, compare it to the country for Allstate, and after all that mathematics is done, even after you plug in investment income, and you then look at your Jersey subject as a whole, we still lost money, and lost a great deal of it. So I can say, no, we did not make money either from an underwriting standpoint or from investment income on the premiums we received and that we invested or that we held in reserve.

MR. DUNCAN: Can we get that documented?

MR. PIKE: Yes. It is not going to be broken down into New Jersey--- although I think--- No, New Jersey filings require a breakdown - New Jersey is one of the unique states - of investment income.

SENATOR MENZA: Mr. Pike, did you lose in all No-Fault states?

MR. PIKE: No.

SENATOR MENZA: Which states did you make money in?

MR. PIKE: Oh, boy.

SENATOR MENZA: I thought you would immediately say Michigan.

MR. PIKE: No, I am not enamored with Michigan.

SENATOR MENZA: Did you make money in Michigan?

MR. PIKE: Yes, we did. Now, I have the one caveat - and I might be wrong - but I think we did make a profit in Michigan. But I am not enamored with its law.

ASSEMBLYMAN DEVERIN: When you said you lost money in New Jersey, you didn't lose money specifically because of No-Fault in New Jersey. It is because of the insurance picture, period.

MR. PIKE: No, we lose money because we have historically had an inadequate rate in New Jersey.

ASSEMBLYMAN DEVERIN: It is not the matter of a threshold or anything else, but a matter of---

MR. PIKE: Those are compounding problems.

ASSEMBLYMAN DEVERIN: That is part of it. But you can't sell your insurance for less money. That is what the problem is.

SENATOR MENZA: Well---

MR. PIKE: You could carry that one step further and give the ship away, give the policyholder everything; as long as we can have an adequate rate we can make money.

ASSEMBLYMAN DEVERIN: Isn't the reason you are losing money the fact that you replace a fender now for ten times more than it was worth five years ago or ten years ago? I mean the basic reason you are losing money is not No-Fault Insurance in itself, it is the overall picture of insurance, not only in New Jersey but, throughout the whole country.

MR. PIKE: I read something last week, and I violently disagreed with the individual, that inflation was the only problem.

SENATOR MENZA: We said it was the major problem. Is it the major problem?

MR. PIKE: No, it is a component.

SENATOR MENZA: Mr. Pike, is it the major problem?

MR. PIKE: No, I think there are major problems.

SENATOR MENZA: What is the major problem for insurance companies losing money now under the No-Fault System?

MR. PIKE: Under the No-Fault System---

SENATOR MENZA: Is it No-Fault?

MR. PIKE: Yes.

SENATOR MENZA: Let me understand this now.

MR. PIKE: It is inflation; it is rate inadequacy.

ASSEMBLYMAN DEVERIN: It is a combination.

MR. PIKE: Yes, it is not one reason.

SENATOR MENZA: You are a lawyer, no doubt. I want you to be more specific. I will try once more. Is the reason that you are losing money in the State of New Jersey solely as a result of our No-Fault Law?

MR. PIKE: No.

SENATOR MENZA: How much of an impact has the No-Fault Law had on your losses? Is it 5%, 10%?

MR. PIKE: I am a lawyer; I am not an actuary. I would prefer to have one of our actuaries answer that.

SENATOR MENZA: Can you furnish us with that information?

MR. PIKE: I think it would have to be adjusted. There would have to be some subjective judgement on that question.

ASSEMBLYMAN DEVERIN: Let me use a hypothetical question. If we limited the medical to, say, \$5,000 or \$100,000 and we went to a verbal threshold or a higher dollar threshold, would you be able to reduce premiums in the State of New Jersey?

MR. PIKE: Yes, if we get an adequate rate. The '76 figure on our loss was ---

ASSEMBLYMAN DEVERIN: I didn't ask you that. That is a very good answer. If the rates stay the same, and we made those changes in No-Fault, how much would it help the consumer in the State of New Jersey?

MR. PIKE: I would truly have to take a look at our rate filings. I could give you figures of --- We have costed the different thresholds. I hope it is generally recognized - at least within our industry - that our costing model, the Allstate costing model, has generally been conservative. We have not projected the greatest savings of others, and we are not suggesting that they have bad models, but ours have been very, very close on the mark, and we have gone through this. I mean, I am not going to come here and not have had this done already. We costed from what we have to an otherwise adequate rate. I would have to take a look at our filing to find out how much. I can get into figures right now based upon an adequate rate and tell you what the different thresholds would do. That is based upon one company.

MR. CONNELL: Can you give us that in writing?

MR. PIKE: Yes, I can give it to you right now. I will supply you with all of this later. By the way, if there are any other questions, while I am looking for this ---

MR. HAGAR: Can I ask you a question. Are you now making a market for automobile insurance in New Jersey?

MR. PIKE: Yes, we are.

MR. HAGAR: Are there any states in the country where you are not writing automobile insurance?

MR. PIKE: No, sir, we provide a market in every state.

MR. HAGAR: If the average person walks into one of your offices, he may do so? Is that correct? That is if he qualifies, obviously.

MR. PIKE: Yes.

MR. HAGAR: How about pulling out of core cities like Trenton, and things of that nature, have you done that recently?

MR. PIKE: I don't know if we are in Trenton or if we pulled out. You know, Allstate tends to be, more than others, an urban writer. We do serve---

MR. GREEN: I passed your store in Trenton the other day, and it is all boarded up.

MR. DUNCAN: Mr. Pike, would you clear up one other thing for me? I gather you weren't for the Senate version, the cap. Are you for a cap where, in effect, someone buys the additional coverage? I didn't understand that clearly. Or don't you care about that?

MR. PIKE: You know, we would all like the whole pie. I would say I don't like anything that would go beyond \$100,000 but if that is all that can be accomplished---Certainly, it is far greater than what we have now, and I think this is very important. I don't subscribe to it, but I see the merit in it, because it provides, to the consumer at least, the freedom of choice. Does he want to pay that extra \$20 to buy up \$2 million worth of coverage? At least you have given him a break and you have also, I suspect, given the insurance companies one too. Because I doubt whether many people would buy it.

MR. DUNCAN: Well, will you reason with me? I remember when I could buy collision insurance with no deductible and it had a price. You could buy it with \$25 deductible or \$50 and \$100 and now we have \$200. So what you are saying - because the Commissioner suggested that the public hasn't been sold on the philosophy of No-Fault - in effect, if you use the psychology of deductibles, is that Allstate would buy a \$100,000 cap that does not like a pool facility over and above that?

MR. PIKE: Without question, yes.

MR. DUNCAN: All right.

MR. PIKE: If you put \$100,000 cap on your benefit package, we would prefer that over unlimited in a pool.

MR. GREEN: I might say to Mr. Pike, first, I want to be of help to you. Our President at the meeting with the Governor at Morven last year told the Governor that Allstate in 1975 lost \$51 million in that one year which happened to be a disastrous year in the industry. Mr. Pike, practically everything is pooled in New Jersey from 1952 on - our Unsatisfied Claim and Judgement Fund, our support of the Motor Vehicle Department, our Motor Vehicle Liability Fund, our present Guaranteed Fund, the NJIUA. Practically everything is in the pool; is it not? Name me one that isn't.

MR. PIKE: I don't disagree with you. But does that mean it is right? You just simply exacerbate the situation more, and I suggest that is what you want to do. Dave, when your best interest is served - and those are your policyholders, I believe--I think you agree that if you had a \$100,000 cap period, that would be adequate. It would completely compensate 99.95% of all accident victims. Is that not a better solution than to just mess up and already messed up concept?

MR. GREEN: You are not messing up anything because the initial carrier carries the thing right through to conclusion. You are changing nothing at all. I know of no company that is going to be a wasteful set up. We have industry committees and everything, and Allstate is on them all, and they are doing a pretty good job of paying out \$20 million for the Gateway fiasco, and the Summit and the others. Top industry executives are on all of those, and they are on the Unsatisfied Claim and Judgement Fund.

SENATOR MENZA: Mr. Pike, it is quarter to one. I know you must catch your plane. You have testified, you tell me, in various States for No-Fault

Commissions. And you have just come from Washington, so I presume you also testified there before the Committee. You must have prepared statements that set forth the position of Allstate. We would like to have those. In addition, we would like to have your figures relative to New Jersey.

MR. PIKE: I might apologize for this. I just got back from vacation and I was not notified of this hearing. And because we are a large carrier I did want to testify. I had asked Mr. Saxe to get in touch with the Chairman to explain that I will submit prepared testimony when I get back to the office. I just did not have time. It is not generally our desire to handle a hearing like this. We prefer to have a prepared statement. I apologize.

MR. GREEN: Mr. Pike, you handled the No-Fault situation in Florida on the verbal threshold and so forth. Can you give us some information on that?

MR. PIKE: Yes, I can. I spent a lot of my life down there for two years. I was very active in it, and I suspect that the greatest thing that came out of Florida was not necessarily the change in the threshold - which was rather weak. If you look at that threshold it is weak. It is the victim of compromise between ---

ASSEMBLYMAN DEVERIN: Is it verbal?

MR. PIKE: It is verbal in disability. Words were confused earlier today. They talked about a verbal threshold and someone was talking about the 60-90 days. That generally is called the disability threshold. It has the same imperfections I believe, of a dollar. And someone brought it out on the Commission. It is a target. What the heck, why not lay in bed an extra 10 or 20 days? We don't agree with that. When I say verbal threshold, I don't say it meaning a disability threshold. I mean a verbal threshold which is a descriptive description of the type of injuries that must have occurred before someone can sue for pain and suffering.

I mentioned earlier, and I will try to be very brief with this, Mr. Green, the threshold in Florida is still weak. It is working now. It is working certainly better than the \$1,000 ever did. We are not seeing - and we have only been under this law for about eleven months - the bills. But what have we gotten? We have gotten a lot of public notoriety on the issue of claims fraud, and probably there is no place worse in terms of claims fraud than exists in south Florida.

You had, I think, a more responsive judiciary and I think pressure was coming out of the judiciary. If you continue to have any one of these things, the whole system is going to collapse. I think the most important thing that happened in Florida was for the first time, in my recollection - and I have seen more of it recently - the trial bar and the Florida Bar perceived the problem for what it was, a crisis, as we believe there exists in New Jersey, and did sit down and closed a lot of the loopholes. They handled the problem from a loss preventative standpoint. They have the anti-fraud divisions, the doctor having to describe under oath his treatment, and the Division of Fraud, which is funded by the industry, but not controlled by the industry. We have no control over it whatsoever. You have loopholes like they do. A person doesn't have to pierce the threshold in New Jersey to go under his uninsured motorist coverage. The plaintiffs' lawyers realized that didn't make a whole lot of sense, that it is an extra cost burden. So they closed that loophole. They had equitable distribution. They have added instructions to their jury verdicts, so the judge can tell the jury, "This guy is getting paid once." They have the disclosure of all collateral sources.

By the way, these are things that the plaintiff's lawyer may not have been willing to do. We didn't give up some things willingly, but it was a

consensus of opinion that something needed to be done, and it was done. There were further corrections to that law in 1977. Unfortunately they screwed it up by throwing in something for south Florida, a good driver's discount, which doesn't make any sense. But I think you have a far more responsive bar now. I think they are more concerned than ever before about what is happening in Washington. We, by the way, Mr. Chairman, are the largest company that is still in favor of state No-Fault Laws. We don't - as I suspect so often happens - give physical support to the federal bill. We have testified at the federal level, and I will submit that testimony to you. We have used Florida as an example, and we have even used New Jersey as an example to show that states are responsive. When people say, "Let's take a look at Michigan"-Michigan's law is not going to work in New Jersey. It is not working in Michigan right now.

It takes a great deal of time to tailor a reparations program for an individual state. How easy would it be for this Committee without any cost to simply provide insurance with a mechanism whereby when we truly believe that a doctor has been abusive in an amount charge or in the care rendered we can suspend payments for about forty-five days and submit it to some impartial forum set up by the state, set up by the Insurance Commissioner, and have them quickly review it. You ask us not to pay these fraudulent claims. You ask us to stop it. The lawyers on this Committee know the minute we do, we get a suit for outrage. Give us forty-five days of insulation so we can have these things tested.

We have looked at PSRO's. The PSRO's under the Social Security are not as established as we would like them to be. These are things you can do and not cause a great deal of concern among particular pressure groups but yet have some advantages.

MR. CONNELL: Mr. Pike, I am still interested in those cost studies.

MR. PIKE: Yes, I have them. This is based upon a caveat that you have to have an otherwise adequate rate, because that is how our costing model is set up.

MR. CONNELL: Is this a nationwide model, or does it just pertain to New Jersey?

MR. PIKE: This is a costing of New Jersey No-Fault, what would happen. This would be broken down both on BI Liability - that portion of the premium - and on PIP, because there is also some savings if you go from non-limited medical benefit and break it downwards. Again, I underscore that this has to assume an otherwise adequate rate. Of course, when it is \$200 soft tissue injury, you would have no savings under the present system. Under a \$500 threshold, we would suggest that you would probably save 5%.

MR. CONNELL: Five percent of the total bill or five percent of the BI rate?

MR. PIKE: I am now talking about BI liability premiums.

MR. CONNELL: The pure premium?

MR. PIKE: Yes.

MR. CONNELL: If the pure premium is \$45, you are talking about 5% of \$45.

MR. PIKE: Yes.

SENATOR MENZA: The consumer will save 5%.

MR. PIKE: On that portion of the premium, assuming an otherwise adequate rate. I won't say it again, but I want to be technically correct. Because, the

numbers are always so distorted, and that is why the insurance companies hesitate to give them out. You can't blame the press, and you can't blame the politician. They add the numbers, but they don't add the twenty-five caveats.

MR. CONNELL: We have an obligation to try to do that for the consumer. If we are going to change to the \$500 threshold, hopefully, an adequate rate will result in a 5% reduction on a \$45 pure premium.

MR. PIKE: Assuming your pure premium is correct. I don't know what the pure premium for that is.

MR. CONNELL: Just assume that is correct for the record. So that would be a savings of what per year?

MR. PIKE: \$2.50.

MR. CONNELL: So then it will cost the consumer between \$200 and \$500 for \$2.50. That is all I am asking, sir.

MR. PIKE: I know what you are asking. And let me ask you if--- So often--and I assume you must be a lawyer and I assume even a trial lawyer-- the questions have been asked before. I have heard the numbers used before, and I think we are playing games with small numbers. If we go from an unlimited medical benefit, we will save 10%. Then you will say, well, with PIP premiums are \$40 and now you save \$4. For all these great things we save \$6.50.

MR. CONNELL: I don't say that at all. That is what we are trying to find out, what are we going to save by these changes. You just gave me a figure I was going to ask about, the \$100,000 with the right to buy \$1 million, which is presently provided for under one of the federal bills. Do you think it will save 10% in New Jersey? Have you done studies on that?

MR. PIKE: If the federal bill was to be enacted here in New Jersey?

MR. CONNELL: Yes, the present bills in Congress, with \$100,000 minimum with a right to buy a million.

MR. PIKE: I don't know what it would cost. As you know, we have provided all the federal costing.

MR. CONNELL: You have not costed in New Jersey.

MR. PIKE: Oh, yes, we have costed all fifty states.

MR. CONNELL: Do you figure it would save New Jersey residents about 10%?

MR. PIKE: I would have to take a look at it. I have no idea.

MR. CONNELL: You have only given us \$500 now. Have you gone any further?

MR. PIKE: We have taken it up to a strong verbal.

MR. CONNELL: What do you mean by a strong verbal?

MR. PIKE: Rather than read it to you, I will pass it out to you. It is a part of the thirty pages I am going to leave you here. It has not only the threshold, but other cost reducing concepts that you may wish to consider. If you went to the strong verbal, we suspect that the cost saving on the BI side might be up close to 15%.

MR. CONNELL: Fifteen percent on \$45, assuming that to be right.

MR. PIKE: I should add another caveat.

MR. DUNCAN: Mr. Pike, did you mean 15% on the BI or 15% on the PIP?

MR. PIKE: No, 15% on the BI Liability portion. We looked at a \$2,000 threshold. And, by the way, we don't like dollar thresholds, but we did it because we are used to the routine. And they are valid questions. For \$2,000 we project around a 12% increase.

ASSEMBLYMAN DEVERIN: Is the \$2,000 for just medical treatment, or does it include hospitalization?

MR. PIKE: No, we use it for all medical costs.

ASSEMBLYMAN DEVERIN: Hospitalization.

MR. PIKE: Which is a little different than New Jersey's law, where you exclude the soft tissue. Then we took a look at the medical benefits, and said, what savings could be produced if we went from unlimited to \$100,000 and down to \$75. If you go from unlimited, which you now have, to \$100,000 you would fully compensate 99.95% of all accident victims, and your percentage saving would be somewhere between 10% and 15% of that portion of the premium. If you went to a \$50,000 benefit package, you would compensate roughly 99.85% of all accident victims totally. You would save somewhere between 14% and 18% on that portion of the premium. If you were to go to a \$25,000 benefit package, you would fully compensate 99.55% of all accident victims totally, and your saving would be roughly 15% to 22%.

I would add this one note of caution. We kid ourselves if we ever think that No-Fault is an effective cost saving. It is not. Unfortunately, it has been sold to the public as an effective cost savings. In reality no-fault is a far better way to compensate - a fairer way, and a quicker way - accident victims. We hope that the changes we would recommend - and many of the loss containment proposals are in this package that I would like to leave with you gentlemen - would have the hope of stabilizing insurance costs. I don't think you can hold on to promises to the public any longer. I think the insurance companies are to blame in this partially, because here we are going to save great deals of money on this, but the situation is too critical. Now, all we do is hope and pray for the stabilization of insurance costs.

MR. CONNELL: Mr. Pike, part of our duty here is to study the property damage situation. Do you have any recommendations that you can give us about control of the rising PD costs? Do you go along with what they did in New York?

MR. PIKE: Absolutely not.

MR. CONNELL: Why?

MR. PIKE: Well, everybody has to have their worst. Well, New York has their worst, and the worst part of their law is in the whole handling of property damage. Regulation 64 is abominable. It just proved that the body shop lobby has far more influence and pressure than certainly the insurance business has, but that shouldn't come as a surprise to anybody. They have gotten through a bill a year which has emasculated essentially our ability to properly - not deceptively, properly - control the cost of automobiles and their repair. What they did this year - as I say, I just got back from vacation, although this is one of my states, and I should know more that I do. I did work with the Department on their legislation - they told me they thought Senator Cameron's bill was dead. When on vacation, he said, "Don't worry." And when I returned, it passed.

Commissioner Sheeran did something--- We had met with Commissioner Sheeran about a year ago, and the legislature passed a law or gave the Commissioner the right to regulate in this area. And New York prohibits us from even recommending a shop that we know will do good work at competitive prices that will guarantee that car for the lifetime he owns it. If there is ever a problem, Allstate will come in and pay for it. If we don't agree with him, he can take it to arbitration. We

pay the cost of arbitration regardless of who wins or loses. There is a tremendous consumer benefit. New York passed a law that says they have a right to go to a garage that is going to do all these things for you, and then they send some to arbitration. Well, the history of arbitration is, you split the difference. If the body shop disagrees with the insurance companies, send it to arbitration. New York is horrible.

They have done one other thing. They split jurisdiction. Part of it goes to the Insurance Department - where it should properly reside - and part of it to the Bureau of Motor Vehicles. So now it is the old problem of dual regulation. We are a regulated industry, God knows that, but now we are faced with dual regulation with two competing bureaucracies. We have great fear of what will happen in New York. New York has other problems that are unbelievable, such as deciding fair value. The best investment in New York is to go out and buy a car and have it stolen. If you want it stolen, just leave it on the street. Because just the way they decide on the fair value of the car is a problem. In Massachusetts they have the same problem, but they have corrected theirs.

MR. HAGAR: You indicated dollar value there - I believe we got it from the other side, from Mr. Connell - as to the \$44 per premium and so forth. I just want to make one thing clear. You are talking about essentially basic limit premiums, are you not?

MR. PIKE: Yes.

MR. HAGAR: So that if somebody buys a higher limit value, the impact is greater monetarily than it would have been if somebody just bought basic limits?

MR. PIKE: When you are talking about the BI, yes.

MR. HAGAR: In relation to dollars - I am just afraid it will get distorted as a \$2 or \$3 savings---

MR. CONNELL: I was talking about the required 15/30. I didn't mean to mislead you. I wanted to ask Mr. Pike one last question.

MR. PIKE: Do you agree it would be a disservice to simply use those two numbers as an excuse for doing nothing? (Laughter)

MR. CONNELL: I would like to ask you, on the \$500 threshold, did you include in that the hospital costs?

MR. PIKE: Yes, I did. Soft tissue costs, too.

MR. CONNELL: X-rays and the like.

MR. PIKE: Yes.

ASSEMBLYMAN DEVERIN: You mean the \$500 threshold with all the hospital costs and the emergency room costs and the canes and crutches and so forth is better than the \$200 without all that stuff?

MR. PIKE: All I can say is according to my actuaries it is. I have such a fear of dollar thresholds. I am not the expert in actuarial sciences, but any dollar threshold concerns us greatly. And you touched on another reason before, inflation.

SENATOR MENZA: Why do they send a non-expert, what you profess to be, around to all the various states testifying about no-fault? You profess to be a non-expert, and yet you have gone to all the states to testify on no-fault and you don't have a prepared statement.

MR. PIKE: I generally do have a prepared statement, and I will make it available to you.

SENATOR MENZA: Mr. Pike, would you leave a card with our staff, because they will be contacting you in Chicago. We will expect information from you.

MR. PIKE: I thank you for letting me testify earlier than I was supposed to.

SENATOR MENZA: Thank you so much for coming.

MR. PIKE: I would like to leave some proposals with you.

SENATOR MENZA: We are now going to take a break, and we will be back at one-forty-five promptly. My apologies to those who were supposed to testify this morning.

(Whereupon a luncheon recess was taken.)

AFTERNOON SESSION

SENATOR MENZA: The members of the Commission may not realize we have eleven witnesses left.

We will now hear Assemblyman Gallo. How many bills do you have?

ASSEMBLYMAN GALLO: I have five bills. I am not going to comment on all them. I will leave them with you because time is short.

SENATOR MENZA: Assemblyman Deverin and Mr. Green will be with us shortly. I am reminding the members of the Commission again that we have at least 10 and possibly 11 more witnesses.

Assemblyman Dean Gallo has a package of five bills he has introduced in the Assembly. What is the status of the bills? Are they in committee?

ASSEMBLYMAN GALLO: In committee.

SENATOR MENZA: They are in Assemblyman Bornheimer's committee?

ASSEMBLYMAN GALLO: Correct.

SENATOR MENZA: Go ahead, Assemblyman.

A S S E M B L Y M A N D E A N A. G A L L O: My name is Dean A. Gallo, Assemblyman, 24th Legislative District. Accompanying me here today is John Kroeger, Staff Assistant.

Mr. Chairman and members of the Commission: I would like to take this opportunity to thank you for allowing me to testify. At the same time, I listened with a great deal of interest this morning to Commissioner Sheeran's remarks relative to some of the problems in the area of no-fault. The Commissioner and I have disagreed on numerous occasions as to how the no-fault problem should be resolved or addressed. Today was no different from any other day; I was left with a great deal of disagreement with the Commissioner's statements. Also, as is has been in the past, I think the Commissioner is shooting from the hip when he suggests that Blue Shield and Blue Cross can do the job cheaper relative to the no-fault problems and using figures that are unrealistic, with little or no background to give credence to the new position he has taken. I believe it is just another attempt to mislead the public into thinking insurance rates can be lowered or will go down as a result of bringing in Blue Cross and Blue Shield.

Gentlemen, I would like to predicate my remarks on automobile insurance reform and tell you that New Jersey is on the verge of a complete breakdown of its insurance system because its elected representatives either do not truly understand the problem as it exists in the 1970's or choose to support antiquated legislation dealing with insurance law that, in a less sophisticated society, might stand. I am not only referring to auto insurance, but also products liability, malpractice and workmen's compensation. The sooner we face these problems and recognize them for what they are, a social cancer that is growing, the quicker the patient will recover. Recovery, to me, is bringing back to this State the job we have lost when industry located elsewhere, in part, due to the anti-business image New Jersey has helped to build. This to some degree can be traced back to our workmen's compensation and products liability laws. Now New Jersey has taken on still another dimension in the negative, that of boasting the worst automobile no-fault law in the United States, as indicated by some Congressmen in Washington.

This Committee faces a monumental task and responsibility in guiding our Legislature through whatever changes are to be made in the law. But, even greater,

it shall have to answer to the insuring public and enjoy or suffer the ripple effects that will take place in this State in the life style of everyone who operates an automobile.

Mr. Chairman and members of the Committee, we perceive that the problems of New Jersey's insurance crisis to be three. They are:

1. The present statutes which have proven to be poor at best when we consider what no-fault was actually supposed to accomplish.

2. Over-zealous regulation, which in New Jersey carries political undertones.

3. Inflation.

I have introduced a comprehensive package of automobile No-Fault Reform Bills, A 3124 through A 3128. These were submitted on February 17, 1977. We believe, as a package, with certain revisions, if implemented, this legislation will effectively deal with the three problems outlined. Each bill proposed serves to cure a void in the present law. However, standing alone in piecemeal fashion, one bill serves as merely a bandaid where major surgery is needed to cure the ills of New Jersey's ill-fated No-Fault Law. At the same time, I would ask you, Senator, to reconsider the Commission's stand on dealing with just one segment of the insurance problem at a time, in this case, just No-Fault. We believe that it is impossible to accomplish true insurance reform in the normal market without considering the residual market, that is, the assigned risk, since they are interdependent upon each other. On Monday, July 25, 1977, my office forwarded to Senator Warren Magnuson, author of the Federal No-Fault Law, copies of our reform legislation along with certain deletions in the package. We believe that we have strengthened our legislation, and at the same time pointed out certain shortcomings of the proposed federal bill.

I would like to make copies of our reform legislation available to the Commission, which I have done, along with back-up information giving the reasoning behind this legislation. In addition, I would like to make known that I am recalling Bill A 3127 which deals with a casualty insurance company's ability to invest an unlimited amount of its assets in the stock market. Where life and health companies are restricted, casualty insurers are not. This bill was to have brought casualty insurers under the same federal code. However, this legislation would have been meaningless to companies based outside of New Jersey, but doing business here. As such, we believe that the federal government should be the vehicle to implement the needed remedy for correction in this area. This, in part, is the content of our July 25th letter to Congressman Magnuson.

Mr. Chairman and members of the Commission, the content of the material delivered to you today will take some time to study. I stand ready to be of service to you at a future time should you have any questions.

In closing, I would like to thank this Commission for the non-partisan stance it is taking to help the people of New Jersey in their dilemma on automobile insurance. But, again, I would ask that your attention be given to the other areas ripe for reform in the insurance field that call for your Commission's awareness, so that New Jersey does not become known as the State of Confusion.

As I indicated before, I know that there are a number of people that will be addressing this Commission. Therefore, I did not in my statement go into all of the aspects of the different bills that are now in committee. But I do think, as I

said before, that it would be a mistake to address one particular phase of the automobile insurance problems without taking on a total review of the industry itself, because many of the bills that I have, as indicated in my statement, if they were to be acted upon individually, would not fly and would not, in fact, cure some of the ills that we perceive to be in the no-fault area. But a total approach to this problem is one that I strongly recommend and I would hope that the Commission would review the background information that we have and also the bills that are now in committee. Nothing is written in stone. These bills were put together after about six months of intensive work by my staff and certainly I am sure that there are some areas where revisions of these bills could make them even better for the citizens of this State.

(Bills introduced by Assemblyman Gallo can be found beginning on page 6x.)

SENATOR MENZA: For the information of the members of the Commission, Assemblyman Gallo has proposed a package of five bills which are presently in the committee chaired by Assemblyman James Bornheimer, which is the Banking and Insurance Committee.

One of his bills deals with elimination of the present "prior approval" system of rate-making and substitutes an open rating system.

Another bill raises the uninsured motorist coverage from its present level to twenty-five and fifty.

Another one of his bills provides for the establishment of a Joint Underwriting Association, in which all insurers writing automobile insurance in New Jersey would be members.

Another bill creates within the Department of Insurance a Division of Fraudulent Claims and certain aspects of the bill relate to the threshold, including the verbal threshold and the like.

For the benefit of the Assemblyman, the Commission is charged by Senate Concurrent Resolution No. 68, to deal not only with no-fault insurance, but all aspects of insurance, including the residual market and rate-making. The Commission's feeling - I think I am speaking on behalf of all the members of the Commission - is that at the present time we would not like to see any bills move in either House until such time as we have had some input on these bills. I understand that two of Assemblyman Bornheimer's bills are on second reading in the Assembly.

ASSEMBLYMAN DI FRANCESCO: I believe they are still in committee.

SENATOR MENZA: Are they still in committee?

ASSEMBLYMAN GALLO: It is my understanding from information I received today that the Committee has not released any bills, either Assemblyman Bornheimer's or mine.

ASSEMBLYMAN DI FRANCESCO: Only one of your bills was listed.

SENATOR MENZA: I take it from your comment that you are a member of the Banking and Insurance Committee?

ASSEMBLYMAN DI FRANCESCO: Yes. We had a meeting on Tuesday.

SENATOR MENZA: I take it from your comments that you would accept the fact that we should hold your bills until such time as the Commission has had an opportunity to review them and make suggestions, understanding obviously the political nature of ---

ASSEMBLYMAN GALLO: I can understand that and it is not that I don't feel further study might be beneficial. These bills went in in February of 1977 and one of my concerns is that the situation has not gotten any better. This is not the first

study that has taken place in regard to no-fault and the insurance industry as a whole.

I think the situation now - when I say that, I am referring to, I believe, Mr. Klein was commissioned to do a report. I am not referring to a study commission, per se. And I think that the time has come that these bills should be aired as rapidly as possible. I have at numerous times requested the Chairman of that Committee, Assemblyman Bornheimer, to have these bills for public hearing so that we could get the input of those in the field and those that have a concern in this area and have these bills come out as better bills. As I indicated, I do not sit here thinking that I have the answer to all of the insurance problems that are represented. But I think what the bills do indicate is that there is certainly an awareness, and a great deal of time and study has gone into some of those problems. I think time is of the essence for your Commission and also for an implementation of the bills that will solve some of the problems that the State now has.

ASSEMBLYMAN DEVERIN: Assemblyman, so I won't have to ask you the question on the floor, you said you don't think no-fault is doing what it was intended to do. What do you think no-fault was supposed to do for the consumer in New Jersey?

ASSEMBLYMAN GALLO: I think when you sat on that Commission - I know others did too and I am not criticizing those that sat on that Commission, nor am I criticizing the no-fault, because at that time, if I recall both insurance companies and the Commission or the Committee agreed that there had to be something done and there was more agreement with the no-fault philosophy that came out of your committee than there was disagreement.

What happens is that I think the public also catches up with many of the pitfalls that start to show as our people are more sophisticated and find the loop holes that exist in no-fault. I think that they, themselves, really by having the expertise and some knowledge of the legal and professional end have found the loop holes that made this unworkable in many areas. And I am not talking about the overall concept of no-fault. I think, with minor changes, we can come up with ---

ASSEMBLYMAN DEVERIN: Apparently the intent of no-fault was to deliver faster payment to people who were injured and that is being done now. The intent of no-fault was to cut down the court cases and that is being done now. No-fault, in itself, is working. You don't believe it is the worst in the Nation - I am sure you don't - because some Congressman says so.

ASSEMBLYMAN GALLO: No. This was a statement attributed to a congressional committee. It was not my statement.

ASSEMBLYMAN DEVERIN: Do you think if these bills were written into law, the consumer would be better protected in New Jersey and that the cost of insurance to the consumer would be better in New Jersey?

ASSEMBLYMAN GALLO: I really do - yes, I do. Number one, I think there is an inequity in the rating system as it stands now. Number two, I think there is an inequity to the citizens that are in urban areas that are paying a tremendous rate for basic limits of liability which are mandated by the State of New Jersey. I question the constitutionality of it.

ASSEMBLYMAN DEVERIN: How would these bills overcome the fact that a guy in Newark pays more than the guy living where Alex does in Hillside?

ASSEMBLYMAN GALLO: Assemblyman, they address it specifically in standard liability rates by class and not territory. That is one area. The level rate

charged on surcharges is another area that would, in fact, have an impact on that. I heard you question a number of the people today relative to how would you stop the fraud. Well, there is in this bill provision for a Fraud Bureau which would have the expertise of the legal profession, the medical profession and the insurance profession, whereby these claims would be reviewed. There would be, 30 days before trial, evidence that would have to be submitted to justify that there is an actual claim that should be before the courts. It goes into a great deal of depth.

Again, I don't say that these bills may be the cure-all for everything.

ASSEMBLYMAN DEVERIN: I am not questioning the bills. The point I am trying to make is that when I ask the question, everybody says there is fraud, there is hanky-panky by the lawyers and doctors; but nobody says what lawyers and doctors. If that is happening, there are enough law enforcement agencies in New Jersey to handle that. If that is a primary factor in the cost of insurance, no one has been able to prove that to us. That is why I ask that question all the time. Do you think because you change the threshold and put a bureau in Trenton - and we have the Attorney General's Office - that you are going to cut out fraud if there is fraud?

ASSEMBLYMAN GALLO: I would love to say that we have the cure-all to wipe out fraud. You know the problems we are having in Medicaid and Medicare, not only in this State, but throughout the Nation. This is a means for direct contact with the particular product that is being sold; and, falling under the Insurance Commissioner, it would have a great deal more validity, I think, and would be able to explore the possibilities of fraud quicker than the Attorney General would. Once there has been a suggestion of fraud in the minds of those on that committee or commission, it would then be turned over to the AG's Office. So we are not setting up a duplication for prosecuting; but we are setting up a Division of Fraud in an area where these people will have the most expertise. And I think that is helpful.

MR. GREEN: I'd like to mention this, Mr. Deverin: In Florida, they set up a Fraud Bureau now requiring doctors, as Bob Pike testified today, to file their bills under oath and they have cut out a tremendous amount of fraud. But to get back to your setup ---

ASSEMBLYMAN GALLO: If I can just interrupt you, this bill does that also because parts of these bills were taken from the Florida law, at least the parts we thought were good.

MR. GREEN: We were discussing territorial changes. Would you in Morristown like to pay the same rate as they do in Newark?

ASSEMBLYMAN GALLO: We went over that and, as Assemblyman from that district, I knew full well what my bill would do would effectively raise slightly the rates in Morris County, which I believe are the second lowest in the State of New Jersey. If I want to be totally parochial, I would take that bill and throw it in the garbage can. But when you take a look at the insurance inequities that I feel exist throughout this State, including our urban areas, I don't think I can look at it on a parochial basis. I realize that there are going to be adjustments in some of the rates in some of the counties that are receiving the lowest rate, or next lowest rate, or maybe the third lowest rate.

MR. GREEN: Because of their accident frequency?

ASSEMBLYMAN GALLO: Correct.

SENATOR MENZA: Thank you, Assemblyman.

ASSEMBLYMAN GALLO: Thank you.

SENATOR MENZA: The next witness will be John Collins, New Jersey Federation of Senior Citizens. Mr. Collins, do you speak on behalf of the Federation?

J O H N C O L L I N S: Yes.

My name is John Collins. I reside in Prospect Park, New Jersey. I serve as Chairman of the Health Task Force of the New Jersey Federation of Senior Citizens. I, first, would like to thank you, Senator and members of this Commission, for permission to appear here today. I am here to comment on aspects of the State's no-fault auto insurance law that pertain to health coverage and to senior citizens.

In investigating the problem of automobile insurance for senior citizens, we have found that the premiums for drivers 65 years of age are about the same as those for drivers under 65. With regards to no-fault insurance, most insurance companies charge seniors the same as non-seniors. A few companies grant seniors small discounts.

However, there is good evidence that seniors get much less in return than those under sixty-five for what they pay. The most striking example is personal injury payments coverage under the no-fault law. It is PIP that, according to the New Jersey Department of Insurance, accounts for 28 percent of the average bill.

When a senior is hurt in an auto accident, Medicare, which costs the seniors \$7.70 per month, pays most of the bills. For younger drivers, the auto insurance companies pay all hospital and medical bills. In addition, the no-fault insurance system pays up to \$100 per week if the injured driver cannot work because of accident-incurred injuries. Senior citizens pay for this coverage, but for a retired person this is useless.

This is an example we have written up: A working person under 65 years of age involved in an auto accident suffering cuts, abrasions, and concussion, confined to a hospital for eight days and unable to work for four weeks, would receive the following compensation:

Hospital cost (8 days at \$150 per day), \$1200; medical costs (doctors, tests, etc.), \$300; four weeks temporary disability, \$400, for a total of \$1900.

For a senior citizen, 65 years of age, in the same accident, no-fault would pay - hospital cost (first day of coverage), \$124, the balance being paid by Medicaid; medical cost (80 percent paid by Medicare), no-fault paying \$60. There is no temporary disability, so no-fault would pay for a senior citizen 65 years of age or over \$184.

A summary of claims loss ratios for the Insurance Services Office, representing 230 insurance companies for the year 1975 showed the companies paid out 68 cents for auto insurance for every dollar in premiums collected from the over 65 age group. For adults younger than 65, the companies spent 75 cents for every dollar.

The no-fault portion of claims shows even a sharper difference. A summary of PIP for 1974 and '75 from the Insurance Services Office showed that out of every dollar, the companies spent 33 cents on claims by senior citizens as opposed to 78 cents for adults under 65 and 69 cents for those under 21.

We believe that in light of this, seniors should be given a substantial reduction on personal injury payment rates.

Further, the Federation would like to go on record in support of the present "Prior Approval System" for handling rate cases. Although some have argued that if rate increases are more quickly enacted, more insurance firms will write insurance in the State, thus creating more competition, we don't believe this will

be the case. Experience in other states, in fact, shows the opposite. States, such as California, which have the "file and use" system, have shown dramatic rate increases. To eliminate "prior approval" would mean that the consumer's voice would be muted in the area of insurance rate increases altogether.

MR. GREEN: Mr. Collins, California has an open rating law. There are fewer people, percentagewise, on the assigned risk list than any other state and the rate is going up with the inflationary trend, etc.

I agree something ought to be done with regard to giving a benefit to senior citizens who aren't employed because they are retired. In so far as the other phase is concerned, Medicare pays only a certain amount. But the no-fault coverage comes in on rehabilitation on all injuries over and above a certain amount.

MR. COLLINS: Medicare pays for ---

MR. GREEN: They don't pay for everything. They pay a limited coverage.

MR. COLLINS: They pay everything for the first two months, except for the first \$124.

MR. GREEN: That's right. But no-fault takes care of everything from that point on. Now the problem with senior citizens' cars is that in the great majority of accidents the cars aren't being driven by the senior citizens, but by a younger person, and usually under the age of 25.

SENATOR MENZA: That is very interesting. I would like the staff to probably work up some figures on the experience that we have had in the State with senior citizens after the two months expire - and then, of course, the concept of no-fault following the individual rather than the automobile.

In any event, I find your testimony quite refreshing. We have been trying to encourage persons to come forward other than insurance people and lawyers. We just can't seem to get consumer groups to appear before us. I would like to have the public, the real people, come forward.

MR. DUNCAN: Mr. Chairman, there is a very distinguished gentleman in our audience today who was a member of our last Commission, Dave Teese, whom I would like to recognize. And I would direct a question in direct line with this because I think Mr. Collins is absolutely right in the fact that he is paying a rate when Medicare is paying it. On the surface, that would seem to cause a problem. However, I have a problem and I would ask this of Dave Teese who is a very well-known claims man: I have heard while senior citizens don't have a lot of accidents relative to the numbers, that they have very severe accidents. I wonder if there is any logic in that, Dave.

MR. DAVID TEESE: I don't think so.

MR. DUNCAN: No logic.

MR. TEESE: I would like to volunteer that the structure, as you may well remember, of the original law had the senior citizens in mind.

MR. HAGAR: Wouldn't the senior citizens, as an example, feel more comfortable if the no-fault law were primary rather than excess over your benefits that you are now getting from Medicare? As an example, Medicare is not an inexhaustible benefit. It is very possible that you could use up your benefits in an automobile accident and have none left. It is just another approach. It may not have a rate-lessening effect, but it would provide a better benefit and save your Medicare benefits. Have you given any thought to that?

MR. COLLINS: Yes, we have talked about that. But that is something that

we don't believe can be taken care of by this Commission. This would have to be done nationally under your Medicare.

MR. HAGAR: No. When the law was originally passed, we specifically exempted three coverages, of which one was any social security benefits. That exemption could be eliminated and you would be right back on the first dollar basis.

MR. COLLINS: I see how it could be done. But that is the situation for Medicaid people. Their no-fault is their primary insurance.

Yes, we have talked about that because this is a problem for senior citizens. We find many of them don't even make claims because they are so afraid their insurance is going to be cancelled out; and their rates go up so high if they report losses, that they just don't report them for no-fault collection at all.

MR. GREEN: No-fault losses aren't considered as accidents.

SENATOR MENZA: Thank you so much, Mr. Collins. We appreciate your coming here today.

I notice that there are some members of the Advisory Committee here. You can do either one of two things. You can hang around and hear testimony if you desire, although most of you, I am sure, have heard this testimony before, or Mr. Sam Hagar, who is the Vice-Chairman of this Commission and who will be your liaison with the Commission, would like very much to see you now in the Freeholders' Meeting Room.

MR. HAGAR: It won't take us long and I would like to get this going.

SENATOR MENZA: The next witness is Mr. John Methfessel, an attorney from Rahway, New Jersey.

J O H N D. M E T H F E S S E L: My name is John Methfessel. I am with the law firm of Methfessel and Werbel in Rahway, New Jersey.

SENATOR MENZA: This is a golden opportunity for me, Mr. Methfessel, but I don't know exactly what to do about it. Mr. Methfessel is a very old friend of mine and a very competent lawyer - sometimes.

MR. METHFESSEL: I suggest we do nothing about it at this moment.

In so far as the testimony of Mr. Collins was concerned and in so far as rate structures for senior citizens, if the group is interested, I would suggest you might want to contact Colonial-Penn Insurance Company, which, as I understand it, writes a large book of business for senior citizens. They are in Philadelphia and they might be able to provide you with some kind of statistics on senior citizens.

The other thing that Mr. Collins has attained that I would like to attain is being a senior citizen, in and of itself.

I am a trial attorney who deals mainly with insurance companies. I have done defense work for the last fourteen years exclusively. As I sit here and as I listen to this testimony, I have a feeling in my stomach that perhaps somebody in Washington is sitting there looking down at us and saying, "Look what all those little people in New Jersey are doing. They are holding these conferences." And, ultimately, when this commission makes its decisions and Mr. Menza might be talking to Mr. Rinaldo in Washington and say, "Matt, we finally decided what we are going to do in New Jersey," Matt is going to say, "Well, we decided what you are going to do in New Jersey about five months ago." I hope that is not the case.

I also have heard very much testimony about increasing the threshold, about verbal thresholds, and about the right to sue and doing away with the right to sue or extremely limiting the right of a claimant to sue. If that right were

analogous to the right to vote, I am sure we would not be sitting here today. But the right to sue has no real target as we sit here because it can be a comfortable right because no one has it at this particular moment; and, until they have it, they don't realize what they have lost. So when we tell the general public that we are going to limit their right to sue, they say, "Well, I don't care whether you limit my right to sue. I don't have a right to sue right now." It is only when it becomes a right that it becomes rather cherished to them. And, if it were not cherished, we would not have the litigation that we do have in New Jersey.

In the past when no-fault was first conceived, it was thought that it would be a great idea to pay everybody's medical bills and at the same time lower the premium by 15 percent. We were going to put the insurance companies into the health and accident business and, at the same time, lower insurance premium rates. Well, it is like telling General Motors from now on they have to put an air conditioner in every car they produce, but they are going to charge \$500 less for doing it. It can't be done and it wasn't done because the 15 percent obviously would be eaten up in the next year or so.

In any event, all we ended up doing was selling a health and accident policy to the public.

An unusual thing happened this morning when I heard Mr. Sheeran's testimony. I don't think I have agreed with much of what Mr. Sheeran has said over the last four years. But his suggestion that Blue Cross-Blue Shield take over PIP payments in my opinion has real merit and should certainly be investigated.

Liability insurance companies were in business and made a profit before PIP and perhaps it is time that they did get out of the health and accident business. Most of the complaints about no-fault are arising from just that, the PIP payments. So perhaps it is time to investigate another source of handling these PIP payments and get them out of the health and accident business and back in the liability business where they belong.

When we first instituted no-fault, we heard much about calendar congestion in our courts. We have not heard that great theme echoed from newspapers lately. The fact is the calendar congestion has been reduced. Calendar congestion exists in about three or four counties in New Jersey. Perhaps in three of those four counties, they have a very high criminal list, which certainly holds up the civil litigation. Also, down in Trenton, there was a reluctance to appoint judges to handle cases. We were operating a 1975 county with a 1920 budget. That apparently has been broken down and more and more judges are being appointed to the bench to handle these cases.

There are several problems that presently exist with no-fault that we see in our practice. No doubt, one of the biggest problems was that the insurance companies and the Legislature thought that they could give a blank check to the AMA. And as Deborah Kerr said to the young man in "Tea and Sympathy," when you think of this, be kind. Well, we found out that the AMA was not kind and the AMA did not take it easy on us and that blank check came back with rather high numbers on it. The doctors loved it.

My suggestion is that a fee schedule - and I am sure you have heard this before - should be worked out for doctors the same way fee schedules are worked out for workmen's compensation and the same way that they are worked out for Blue Cross. Why that did not pass initially is beyond me. But certainly we have found out that the AMA is not the kind organization it had been painted to be when an insurance

company is involved.

I am continually amazed at man's ingenuity. One of the things we often get are medical bills coming in with X-rays, an X-ray bill totalling \$235 for an entire set of X-rays. For \$235 worth of X-rays, you could have them blown up to 8 by 10 glossies and put them over your mantelpiece - and they are not in color. But, again, we gave a doctor a check and said, "Here, fill in a number for us."

I thought one of the more ingenious theories of a doctor was in a particular situation I heard about where a young man was in college and had been in an accident. The doctor felt that it would be good therapy for him to return to college. And, therefore, the claim was made to the insurance company that his tuition should be paid by the insurance company because it would be therapeutic for him to go through college. Ingenuity knows no bounds when it comes to claims.

One of the problems that I have discussed with claims people at insurance companies regards again the extent of treatment, what is reasonable treatment and how to handle the treatment. The company sends out PIP payment forms to the claimant. They don't get the PIP payment. They don't get the PIP payment forms back until the completion of treatment. At that point, there is nothing that they can do. Sure, they can refuse to pay it and get into litigation and they are faced with a penalty under the statute. Some suggestions have been made that an arbitrator or an Arbitration Commission be appointed to determine what treatment was reasonable - what treatment was necessary.

The Chiropractic Association of New Jersey has a commission that deals with insurance companies, which I have dealt with on several occasions, where medical bills and medical treatment and medical reports have been submitted to the Association. They have reviewed them. And where they have found it necessary, and in one particular case that I know of, they called the chiropractor in, asked him to explain each of his treatments, and then requested authorization to have an independent chiropractor examine the individual. This was done and the independent chiropractor's report came back and said that nothing was closely related to this accident or aggravated by this accident, but that it was a pre-existing condition. Now I was rather surprised that the Chiropractic Association had this kind of an organization and did this kind of work - and they did quite a job with it.

So it seems to me that some type of arbitrator should be appointed and, where treatment is going to be long and lingering, that we require that a doctor send in a PIP form after the first five or ten treatments, with a proposal as to how much further treatment he feels is necessary, and submit it to either an independent panel at that point or an independent examining physician at that point. But somebody is going to have to have the final say in this matter to limit over-treatment.

Another problem that has expanded insurance costs is the liberalization of insurance coverage by court decisions. Now an example was given this morning with regard to PIP payments for motorcycle accidents. As I understand it, the legislative intent was not to cover motorcycles for PIP payments. Today, if that individual has a car in the household, he is covered by PIP payments.

So the Legislature passes the statute. The court interprets it another way and expands that statute beyond. Now each of these things adds up to higher costs.

I have also heard of the difficulty with property damage. Certainly, this is an area that needs a great deal of investigation. When I heard Mr. Pike this morning mention how the auto repair industry had such a great lobby in New York, it amazes me that they can have a greater lobby than the insurance industry which pays all

their bills, except for the fact that I was reminded that the auto industry is behind that. And I have heard figures that if you purchase a car piece by piece, it would cost four times what you buy that car for out of a showroom. Now this has got to be knocking insurance rates skyhigh. And, if we are dealing in a very limited area here, as far as increase of rates is concerned, let's get into the area where the highest increase is and where the greatest inflation is, in the property damage area.

One other area that was not touched on here today during the testimony and an area that I have found that is producing high payments from insurance companies in cases is the area of excess verdicts and bad-faith situations. When I first started practicing law, there was no such thing as an excess verdict or a bad-faith situation. Today, with the threat of bad faith, we find the companies are paying extremely high settlements and these are all in high injury areas where there is very, very questionable liability, simply because the company cannot afford to take the chance on a trial and a bad-faith situation. Of course, when they are hit with a bad-faith verdict, that area was not covered by any premium or there was no premium paid for that. Essentially, we are into legalized blackmail when a heavy injury case comes in. We end up paying the policy simply because you can't face the bad-faith situation. This has, in my opinion, created extraordinarily high payments for insurance companies that are certainly being reflected in the premiums.

In my opinion what we need is a program of educating the public in regards to claims. We are talking here of higher thresholds or verbal thresholds. And one of the reasons given, I guess, is to stop rip-off artists. And rip-off artists are a very small minority of claimants. So while we are doing this to stop the small minority of claimants, we are, in effect, penalizing the huge majority of claimants that are entitled to payment and that are entitled to have their cases litigated and heard. It seems to me that we have to let people know that insurance companies are a conduit for their money and that, being such a conduit, the money that is being paid out is their money and it is going to be reflected in their premiums. But, essentially, I don't feel that by wiping out the right of an honest claimant to sue, we are going to solve any problems in so far as these rates are concerned.

Thank you.

SENATOR MENZA: Mr. Methfessel, you made reference to the overutilization of medical treatment and you suggested a fee schedule. How, if at all, would that be reflected in the threshold if you changed the threshold to somehow deal with that problem?

MR. METHFESSEL: Again we come back to the primary question: What is the reason for the threshold? Is it because there is too much litigation in court? Is it because it is reducing the premium? We heard testimony from Mr. Pike as to what degree that premium is being reduced and I have heard other statements to the effect that if all law suits were wiped out, premiums would not go down. So when we talk about thresholds, sure there was the foot in the door five years ago and now that the \$200 threshold is in and the public has swallowed it, we are going to get the big wedge in and open it up all the way. It reminds me of the days I worked at Newark Airport and the Port Authority promised the people of Elizabeth the jets would never land there. And two years later, Caravelle jets started to land there. Then they said, "Well, there will just be Caravelles. There will never be anything else - just short hops." The next ones were to Chicago. Then they said, "They will never go across country from here." And today it is Newark International Airport.

ASSEMBLYMAN DEVERIN: And we are worried about the Concord.

MR. METHFESSEL: That's right.

SENATOR MENZA: You made an interesting observation, Mr. Methfessel, about a person dealing with no-fault. I wonder about the impact of the no-fault law on the calendar. For example, you allude to Essex County, which has, I imagine, over twelve judges on the criminal list alone. Some judges are Chancery. Some judges are Matrimonial. Some judges are Juvenile and Domestic Relations. And they have very few judges to handle the other aspects of tort, contracts, etc. I have always felt that the greatest impact on the calendar is not so much the negligence case or the automobile case, but the criminal case which must, by necessity, utilize a tremendous number of judges.

MR. METHFESSEL: Well, we have Mercer County where they stopped trying civil cases for a long period of time and assigned everybody to criminal. They did the same thing in Passaic County. But we can't write a no-fault criminal act.

SENATOR MENZA: Well, we might.

MR. METHFESSEL: I am afraid anything can happen after reading about "20 years and out" yesterday.

MR. GREEN: Senator Menza, I would like to answer you on something. The difference between your medical and the threshold - your unlimited medical, when that was originally considered, was for the idea of taking care of any and all medical, a certain amount of income loss, and a certain amount of other benefits. Now the threshold only relates to commencing a suit where the injury is so severe that it would take care of the situation where there would be the right to sue. So actually there is a differential between the two. So you can discuss threshold only for the purpose of suit-commencing for medical pay, for any and all claims. For example, we have two cases where we are rebuilding homes for paraplegics. Now that never was considered originally. But we are paying \$40 thousand in one case and \$20 some thousand in another. We don't go so far as to pay tuition. But we have arranged for a paraplegic to go to Rutgers and we are building a special room in the Paraplegic Dorm for him at Rutgers. So you are getting way far afield from what we originally considered. It never came under health care. It never came under anything else. But it is something where there is injury and a person ought to be recompensed for it.

Now, to get back to your cost of repairs. We are now paying \$14 an hour to a mechanic. Five years ago, that was around \$8.

SENATOR MENZA: That is more than a lawyer makes.

MR. GREEN: Some lawyers may decide to quit and go into a body shop.

SENATOR MENZA: Mr. Methfessel addressed himself to a very philosophical point, you might say, or concept of no-fault, itself. So some extent, he is setting forth a major premise, namely, it is so expensive to sue and where do we stop when we are affecting someone's right, that being the right to sue under court law which has been in existence for a thousand years? Is there a right to sue? Under what circumstances are we to affect or divide this right to sue? Is it \$200, or is it \$500, or \$1,000? Who is to say?

You see, quite frankly, gentlemen, I don't find the right to sue so terribly offensive. And I am inclined to think from what I have heard so far on this Commission, it doesn't have any real, honest-to-God impact on the premiums.

MR. GREEN: My best answer to you is that to the good plaintiff negligence lawyer, threshold doesn't mean a thing. It was only to bar the nuisance claims. Let me give you an example of what happened. The impact of suits in no-fault wasn't

felt until the third quarter of 1975. That was after it had been in effect for almost two years. Suddenly every company in New Jersey got an influx of suits, some of them up to the last day before the statute ran, some of them having a judge make a notation on a complaint "filed with me this day," etc. We are getting the same setup. Now those aren't your real injury. Those are the cases that no-fault was supposed to exclude. Those are the cases that are robbing the others of their just rights. They are nuisance cases. They should have been barred and they should have been paid just their medical, their income loss, etc. And that is clogging the setup.

Every company in New Jersey, despite what DOT has said --- Bob Pike said they have got almost twice as many suits. Selected Risk got almost twice as many suits. We have got almost twice as many suits. Our department knows about it and still they come back and say there are fewer suits. There are not fewer suits. There are more suits, but they are more nuisance suits.

SENATOR MENZA: We can get involved in a very prolonged colloquy on this subject. I would like to put things in proper perspective as we go along. What is a nuisance suit? A fellow who has gone to a doctor, say, five times and his medical bill is \$38, does he have a right to sue because he has had pain and suffering for three week, six months or whatever it may be? Or, do we deny him and thereby say to him, "Your medical bill is too small, thereby your injury is too small, thereby your pain is too small, and thereby you can't start suit"? I don't know. That is something I am bringing up. And that is why I have difficulty with the verbal threshold.

MR. GREEN: Those nuisance suits are producing high medical pay. Middlesex County is one of the real trouble spots in New Jersey. They have medical groups there. You go to them with a back injury and, before a report comes in, there are 30 days of successive therapy at \$25 a day.

SENATOR MENZA: I thought that fellow was in Argentina.

MR. GREEN: Well, I will tell you this: You can go to any insurance company in New Jersey and they will show you their forms and they will show you their files where you get these bills of \$25 a day for physical therapy. I can't get a visit with my doctor. He will give me a certain date. But if I went to a doctor with an injury, you have an annuity there for him. Furthermore, you can't settle cases because the doctor says, "wait a minute, you can't sign a release because you are still under my care." That is one of the trouble spots of medical pay.

MR. DUNCAN: Are we in executive session?

SENATOR MENZA: You are absolutely right.

ASSEMBLYMAN DEVERIN: May I ask one question?

SENATOR MENZA: Yes.

ASSEMBLYMAN DEVERIN: Counsel alluded, and several people have, to a schedule of medical fees, as workmen's compensation has, for no-fault. What schedule of medical fees are you talking about?

MR. METHFESSEL: I am really not familiar with workmen's compensation. I understand there is a schedule of fees under workmen's compensation. I know Blue Cross has a schedule of fees. I have seen bills come in where an osteopath manipulates somebody on 40 occasions at \$20 a treatment. Another osteopath sends in a bill for \$10 a treatment. Well, it seems to me there has to be a standardization of that, in addition to a review by an arbitrator of questions of overtreatment and excessive

and what is reasonable and what is not reasonable.

ASSEMBLYMAN DEVERIN: Well, there are no schedule of fees under workmen's compensation, only for testimony and so forth. Do you think under the no-fault law, under the regular accident insurance, we could do it and really make it work? Do you think we could set a schedule of fees and say someone giving a heat treatment only gets \$10 or \$15?

MR. METHFESSEL: I don't see why not.

ASSEMBLYMAN DEVERIN: How could we administer that? I am being very serious about this.

MR. METHFESSEL: Set a schedule, so much for this treatment, so much for that treatment, and that is what the company is going to pay.

ASSEMBLYMAN DEVERIN: How do you force a group of doctors or a doctor to be part of that. Blue Cross can't do it. You say there are Blue Cross fees, but every doctor isn't a Blue Cross participating doctor.

MR. METHFESSEL: Right. If a doctor wants to get paid and this is his source of payment, then he is pretty well going to regulate himself to that.

MR. DUNCAN: Do you mind if I call you John?

MR. METHFESSEL: Not at all.

MR. DUNCAN: You are an attorney, John?

MR. METHFESSEL: Yes.

MR. DUNCAN: You make your living as an attorney.

MR. METHFESSEL: Yes, I do.

MR. DUNCAN: A good living?

MR. METHFESSEL: It beats teaching dancing, which is what I used to do when I was in college. Some people say I still do it.

MR. DUNCAN: John, I have a book. It is put out by DOT. It says on Table 3-20 that the percentage of auto complaints to all complaints in 1970 was 10.7 percent in County District Courts. In 1976, it was down to 4.0 percent. In Superior and County Courts, it has gone from 1970 - that is percentage of auto cases to all cases - from 55.8 to 43.3. While I agree with you it hasn't brought the rate down, would you admit, sir, that it has accomplished one of the things that definitely the original Commission set out to do, and that is, that the public has indeed saved money by reducing auto litigation in the courts? Would you admit that that is a logical assumption at this point?

MR. METHFESSEL: Well, I will admit that it reduced litigation; whether it saved money thereby is something else.

MR. DUNCAN: But when you say, saved money, who pays for the County Courts and who pays for the District Courts?

MR. METHFESSEL: Well, the courts are there. They are going to be there regardless of the threshold, whether it is a verbal threshold or not. The judges are going to be there. The judges are sitting with tenure. The courthouses are going to be there.

MR. DUNCAN: I understood back then when we were doing this exercise five years ago that it cost \$4,000 to try a case in a District Court and it cost \$7,000 in a Superior Court or County Court.

SENATOR MENZA: No, it can't be.

MR. DUNCAN: I rescind that, but it was something we were told back in those days. There has to be a saving somewhere to someone when you reduce the percentage of auto claims. You are saying they are there and the cost is there anyway.

Is that what you are saying?

MR. METHFESSEL: The courts are there. They are going to be there whether they are serving somebody who owes \$200 to Household Finance or whether they are serving the auto public.

MR. DUNCAN: What did you mean when you said "foot in the door"? I didn't understand what you meant.

MR. METHFESSEL: As you said, I am a member of a profession and it took me a long time to get here. When I mention the foot in the door, I am talking about, yes, foot in the door as to wiping out automobile litigation. That is what I am talking about. The \$200 is a foot in the door.

MR. DUNCAN: It did wipe out some auto litigation.

MR. METHFESSEL: Sure.

MR. DUNCAN: If you had your "druthers," would you do away with the \$200 threshold?

MR. METHFESSEL: Certainly.

MR. DUNCAN: You would have no threshold.

MR. METHFESSEL: Right.

MR. DUNCAN: Would that reduce or increase litigation?

MR. METHFESSEL: Probably increase it to some extent. To what extent, I have no idea and neither does anybody else.

MR. DUNCAN: I only bring these points to your attention that it is generally conceded by everybody who has been here that no-fault is not a bad thing. The only thing you have really brought out is that you don't agree with the threshold. Do I get the feeling that you would be in line with some sort of an acceptable verbal threshold rather than a dollar limitation?

MR. METHFESSEL: Just to use that terminology is something I couldn't say "yea" or "nay" to at this point - something more than just a word. But you mentioned additional litigation. You know the Legislature, the courts and the New Jersey Bar Association should really get together at some point since we now have more lawyers in New Jersey than ever before with private industry unable to accept them, because there just aren't enough jobs to go around. So you may have a lawyer driving you home in a cab this afternoon. I understand we have more lawyer cab drivers than ever before. But it is a problem. They can't be absorbed into the industry.

SENATOR MENZA: They are all smart though. They have good SAT's.

Thank you, Mr. Methfessel.

Mr. Irwin Schector, Passaic County Bar Association.

IRWIN S C H E C T O R: Mr. Chairman, I have been following the No-Fault legislation since the initial No-Fault bill was enacted. I have been at Drumthwacket; I have been at Assemblyman Bornheimer's hearings, each of them, and I come here today. I have been in Washington previously, and I have followed this entire matter to this point.

On Tuesday, I appeared at Assemblyman Bornheimer's hearings when they attempted to move bill 3125 and bill 3164. Assemblyman Orechio was in favor of moving it. Assemblyman Bornheimer was in favor of moving it, and Assemblyman Di Francesco and Assemblyman Aduato held it temporarily. Now, I studied those two bills and I studied them very thoroughly, and I feel that those two bills are an over-reaction to a situation. Those two bills are an attempt to affect 22% of the policy by removing the right of nine out of ten people to sue for personal injury. Now, I think we are going far, far afield when we do this.

When we were at Drumthwacket, Philip Stern was very kind and supplied us with certain figures. He supplied us with the figures for that paid out per car in 1976 in the State of New Jersey for personal injuries, bodily injury claims. It was \$36.11 per car. The number of cars making claims out of one hundred cars was 1.111. He supplied us with the bodily injury figures. Those figures showed approximately \$39 had been paid out for each car. Eight cars out of one hundred had made claims. Now, I would rely on Mr. Stern's figures because when I spoke at Mr. Bornheimer's first meeting, there were many, many insurance companies there, and these insurance companies employ actuaries. And I said to them, if these figures were incorrect to bring back other figures. No other figures were ever brought back. I asked Mr. Bornheimer at the last meeting on Tuesday whether or not he had received any other figures, and he said, "No." So, apparently, the figures that were supplied by Mr. Stern, and the Department of Insurance, were accurate figures.

For \$36.11 per car, these bills seek to remove the rights of nine out of ten injured persons to sue for injuries. They seek to place what they call a verbal threshold. Well, a verbal threshold to me doesn't make much sense, and I will tell you why. Soft tissue injury - what is soft tissue injury? I was in an auto accident in 1962, and I hurt my back. I am wearing a brace today, and three months out of every year I lay down flat on my back. It was a minor injury then. It was a soft tissue injury. It incapacitated me for about three weeks then. I got up, and I didn't lift as many things, and I didn't do as many things. I limited my activities. But the first time I did something it came back. Right now when we go on a trip my wife carries the suitcases, because of that soft tissue injury. I have lived with it now for fifteen years.

So if you want to go into a threshold where you say death, dismemberment, loss of an important body function, you are going to be in court litigating half the time to find out whether or not you have a right to sue. Mr. Gallo pointed out in his bill there is a clause that says thirty days prior you have to come in with medical evidence. That means getting your doctor in court twice. We can't get them into court once.

We have heard discussions here about everybody getting big bills and big settlements. I am practicing law for twenty five years, and I will say this: I get these beautiful medical bills, \$235 for X-rays and \$165 for treatment and the patient is miraculously cured, and we don't go into court. Since this No-Fault Act has come into being, I would say 25% of these suits that I had before

are gone. And taking the figures that were supplied by Mr. Stern, you will see that the district court cases have dropped down from about 10% auto negligence to about 4%. Remember something, in that 4% there is property damage, something that is not touched upon in the present existing act.

Now, we have a situation where they are seeking to employ this verbal threshold. The bill in Washington seeks to employ this verbal threshold, but when you ask the insurance companies, Mr. Reed of the American Insurance Association says if this verbal threshold is enacted there will be no reduction in premiums. Mr. Jameson, at the hearing the other day of Assemblyman Bornheimer, when asked if there would be any reduction in premiums, turned around and said, "Certainly not." Now, they are asking the public to give up a right, a right to sue. The question is, and I think Senator Menza beat me to it, where do you draw the line on that right? You can limit some things, yes. If you were to limit your so-called nuisance suits, fine. The public will stand for losing a \$500 claim or whatever it might be, but a man isn't going to stand for having a broken leg and being incapacitated, waiting in bed for two months, or whatever it is, and then finding out he has a ninety day disability period. That is not going to be. The public wants something back for it.

If reduced premiums are not it, then there is no sense considering it. I don't think New Jersey's No-Fault bill is perfect the way it is. And I don't think it is very bad. I have watched this bill in action. I have dealt with people. People still come into my office very disappointed. They say, "I was in the hospital with this injury. What do you mean I can't sue. I have \$600 worth of hospital bills." I will say, "No, that doesn't count. Hospital bills don't count; diagnostic procedures don't count; X-rays do not count. A man with a light bulb treating you, that's what counts. They are very surprised to find this out. The public isn't educated as to what No-Fault is. The public doesn't even know the difference between what is proposed now and what rights they presently have.

Now, you have to take into consideration the different effects of different things. Now, Mr. Green says his company has more lawsuits. Selected Risks has more lawsuits. Where I as an attorney who deals with these companies know certain companies are willing to settle cases at reasonable rates, and they don't have as many lawsuits. Certain companies are unreasonable at times. When they are unreasonable they have more lawsuits, because you have a duty and an obligation to your client to get him a fair and just settlement, and just because it is more difficult for you to go into court on something, you can't sell your client's rights away; you have to go in at times. It costs you more money to go to court. It is your time in that court room. It is easy to take a settlement, but you have to be fair to your client, too. If the offers are not good, you can't take the settlement. So these companies that complain about having a lot of lawsuits, on a No-Fault basis, that isn't so, because if you take the figures from the DOT Report and the figures that were supplied by Mr. Stern that were used in the DOT Report, you will find on a No-Fault basis New Jersey does have less lawsuits since this bill was enacted. And this bill is doing the job it was supposed to do. And there is nothing wrong with it.

Now, the \$200 threshold is not a \$200 threshold. In some particular instances it would be a very large threshold. Now, I feel that there are certain things that may be done that can help the situation. One, I think that collateral

sources ought to be used in the PIP payments. In other words, I would say you have 85% of the people in the State of New Jersey covered by Blue Cross or accident or health plans at work or some place, and the elimination of these payments, and making them pay extra for PIP gives them double coverage with one payment. Now, I think if you used collateral sources, if you regulated repair shops in some way, it would be helpful. I have a new car, and somebody accidentally bumped into the door of my car. The bill for the repair of that door on that car, besides tying the car up for two weeks, was \$600. I bought my kid a car for \$600, and he is paying an insurance rate of over \$600 to drive that car.

SENATOR MENZA: You don't own a Rolls Royce, do you?

MR. SCHECTOR: No, I don't. Now, I feel that possibly the suggestion that was made by Commissioner Sheeran as to the Blue Cross should be looked into. But something else should be looked into too. I think that there is a duplication of services with regard to this PIP business. In other words, every company has so many men set up to work on payment of PIP and payment of this. Well, if they would turn it over to one other company, whether it be Blue Cross/Blue Shield or whether it be Prudential, as Medicare does, it could be processed much more efficiently and save the company a lot of money in administration. A 40% administration cost of an insurance company to me sounds totally outrageous. If one company does it for 4% and the other one 40%, there is too much of a difference there, and I think that is simply because of the duplication of services. Too many people are handling too few claims at so many different insurance companies.

Now, these are the basic things. I have also sent a letter into Assemblyman Bornheimer after his first hearing, and I suggested at that time that PIP be purchased in increments with a minimum coverage of \$1000 and placed on a policy fee scale so that coverage may be purchased to cover medical PIP payments up to \$75,000 and then Bill S-1380 could then take care of the balance over that. The logic of increment purchasing is that presently many of the citizens of New Jersey are paying for the same medical coverage two and three times; therefore, you can purchase what you need.

I think raising thresholds, this type of verbal threshold, staying in bed for so many days and being disabled so much, will only encourage the lingering, because there are certain people who can stay home, and other people who are just as seriously injured who can't and who won't, and these people shouldn't be deprived of their right to sue because they are honest and go back to work. Now, having a minimum time out of work arrangement is absolutely foolish. I would say minimum time for medical treatment, possibly two months of medical treatment. It doesn't have to be on an everyday basis. Maybe something like that could be required. I am just throwing this out by way of suggestion. A doctor can tell you to come back every two weeks or whatever it is until he sees how your injury is progressing. But to make you stay home, say, 120 days or 90 days, whatever it might be, that is only encouraging you to stay home malingering. I think that is wrong. I think that is just to build up your medical bills and your costs.

After hearing from Mr. Pike, really, what the grand reductions would be with this verbal threshold that was proposed, and a very stringent verbal threshold, as he put it, that would bring down the minimum 15/30 policy approximately \$6 or about 2¢ a day. I think for 2¢ a day I would rather have myself protected. I would rather have my children protected and my family protected, and let them have their

right to sue. Believe me, 2¢ a day is not going to make that much difference, if that is the kind of reduction we get from that type of verbal threshold that he proposes. I was at Drumthwacket when he proposed this verbal threshold with 120-day limitation and death, dismemberment or total loss of a body function. I say, if that is what we are going to get out of it, a savings of 2¢ a day, forget it.

SENATOR MENZA: Mr. Schector, other than the PIP payment to which you suggest certain changes, what other recommendation do you have to change the No-Fault Law?

MR. SCHECTOR: I think the No-Fault Law should go much further than our present No-Fault Law goes. It was described the other day as the tip of an iceberg that we are attempting to work with. I think the biggest problem here is property. I think that insurance companies ought to be allowed to have their own automobile repair garages as well. Two, we ought to license automobile repair personnel, and have some investigation and find out how we can best give parts to the public at a reasonable cost, instead of at the costs that were mentioned, four times the price of a new car.

SENATOR MENZA: Other than that, sir, you are satisfied with No-Fault as it exists now in New Jersey?

MR. SCHECTOR: I am satisfied with the law, yes.

SENATOR MENZA: You think we should address ourselves to the PIP aspect and to property damage.

MR. SCHECTOR: That is basically my position.

SENATOR MENZA: And that should have an affect on the rates and the consumer and the whole world should benefit thereby.

MR. SCHECTOR: I don't think anything is going to have an effect on the rates. I was told that no matter what they did, it wouldn't have an affect on the rates. I think the only effect on the rates would be turning down the property damage aspect, which is the big pay-out, coming down on the medical to some degree.

SENATOR MENZA: The insurance companies would respond to you knowing there should not be any decrease in rates but there will be a stability.

MR. SCHECTOR: Yes, but they promised me stability before, and now they tell me there is a spiraling inflation, and they can't promise me stability, because when I asked that question, they said, "Stability for how long, or what is stability?" That is where we are.

MR. DUNCAN: Mr. Schector, Mr. Methfessel suggests that there are some unemployed attorneys, and since you are sick three weeks a year, there are less. Do you agree we have had some savings in the No-Fault System relative to the court system you suggest?

MR. SCHECTOR: Most definitely, the district courts right now are looking for work.

MR. DUNCAN: The 4% that you allude to in 1976, actually was 293,917 cases of which 11,715 were auto negligence. Those are auto negligence complaints, yes.

MR. SCHECTOR: How many were property damage?

MR. DUNCAN: That is precisely what I am asking you. You said that some of those were property damage. Do you have figures which show how many of those 11,000 were property damage complaints?

MR. SCHECTOR: I do not have the figures. I can tell you from personal observation, being in those court rooms, that at least 50% of those claims that

are in the district court today are property damage claims.

MR. DUNCAN: Can you document that?

MR. SCHECTOR: No, I cannot.

MR. DUNCAN: It would be very helpful.

MR. SCHECTOR: I can ask the Administrative Director of the Courts to - and I believe you are in a better position to do that than I am - send you a copy of those statistics.

MR. DUNCAN: I wish you would, because we have to address ourselves to that problem.

MR. SCHECTOR: I will have to ask Senator Menza to do that, because he can get that much easier than I can.

SENATOR MENZA: Senator Menza is going to be driving a taxicab if he stays in the legislature any longer. (Laughter)

MR. SCHECTOR: I will be right next to you if I attend any more no-fault hearings.

SENATOR MENZA: Anyone else? Thank you, Mr. Schector. New Jersey Independent Appraiser's Association. This is Peter Feehan of the Bergen County Bar Association.

PETER FEEHAN: Good afternoon, I have been listening to all the comments today. I also have been before Assemblyman Bornheimer's Committee on numerous occasions listening to the comments there, and what can be done about the automobile situation here with regard to insurance in the State of New Jersey.

As alluded to yesterday, and as Mr. Schector also mentioned earlier, this is just the tip of an iceberg. However, we must deal with the problem, and try to find out what we can do for the public. I am not here just as a trial attorney - I try cases mainly for insurance companies - but as also a member of the public. When we look at the Bornheimer bill and the bill introduced by Assemblyman Gallo, I would like to refer to a statement that was made earlier. The question was asked by Assemblyman Adubato of Mr. Jameson, the representative, the lobbyist, on behalf of the State Farm Insurance Company, if we passed either one of those bills, would there be any reduction in premium, and his answer was, no. So what are we doing with those bills?

I submit that a whole new structure has to be set up, basically, regarding property damage and PIP. I don't know how you are going to work out the property damage. I was down four months ago at a private meeting with Mr. Walter Bliss, Governor Byrne's counsel. When we sat down with him it was Mr. Schector, Mr. John J. Breslin, III. We sat down with Mr. Bliss for three hours and talked to him about the insurance problems in the State of New Jersey, and particularly about what is going to be done about property damage. We were advised at that time that some sort of regulatory board was going to be established. I have not seen it.

SENATOR MENZA: Excuse me. I find this very interesting. Walter Bliss is one of the Governor's Counsel and you had a meeting with whom?

MR. FEEHAN: I was there.

SENATOR MENZA: It must have been very secret and confidential.

MR. FEEHAN: I was down there with Mr. Schector, Mr. Bliss and also John J. Breslin, III.

ASSEMBLYMAN DEVERIN: For what reason?

MR. FEEHAN: To talk to him about what could be done with insurance.

ASSEMBLYMAN DEVERIN: On your own volition.

MR. FEEHAN: On our own volition. It was a private meeting set up on our own volition. We were told that a property damage regulatory board was to be established. I am all in favor of it, because I think the people of New Jersey are being ripped off on the property damage claims. I would strongly propose passage of Assembly Bill 3156 which licenses all repairmen.

Something has to be done. If you would license them, I believe a rate schedule of some sort could be set up. Now, if you go into Mr. Green's insurance company or any other insurance company, and you get a knowledgeable, property damage investigator, he knows what it costs to repair a car. He knows what it costs probably within two dollars. I think a schedule should be set up. We should not be paying property damage repairmen \$15, \$20, or \$25 an hour. There should be some limit put on it. That would reduce rates.

Let's talk about the medical bills. It seems to me---

MR. DUNCAN: May I interrupt for a moment. I am a little bothered. When you say a schedule, do you mean with a maximum?

MR. FEEHAN: Yes.

MR. DUNCAN: How about a minimum?

MR. FEEHAN: I will go both ways.

MR. DUNCAN: May I ask when this meeting with the Governor's attorney was, the date?

MR. FEEHAN: I can tell you it was in April. I know that.

MR. DUNCAN: Were minutes taken at the meeting?

MR. FEEHAN: No.

MR. DUNCAN: Was it an official meeting?

MR. FEEHAN: Unofficial.

MR. DUNCAN: Thank you.

MR. FEEHAN: Getting back to the medical bills, it seems to be the position of Assemblyman Deverin that you can't set down rate schedules to doctors. Well, they set them down for lawyers. Lawyers on any accident cases are governed by the schedule set down by our Supreme Court.

ASSEMBLYMAN DEVERIN: I didn't say you couldn't. All I asked was how you would do it. I know how you do it for lawyers, you get a certain percentage on an entire case. But how do you do it for doctors?

MR. FEEHAN: If you can get three or four members from each county medical association, you can work something out. I don't think there is any problem whatsoever. Of course, there are going to be certain circumstances that don't fall within the rates, obviously. But we are talking about diathermy, manipulation, X-rays, et cetera, the basics that will probably hit 60% to 70% of all automobile cases. I think you can regulate them. I think they have to be regulated. If they are regulated, I think premiums can come down.

Now, I would like to address myself to two other areas, basically; one being the proposal this morning by our Insurance Commissioner to throw everything over to Blue Cross. I think that would be a mistake. I don't think that Blue Cross could officially handle it at the so-called 5% or 6% administrative cost. What I would propose is to maintain PIP as we have it today, but make other insurance primary, up to the limits of those policies, and then PIP can come into the picture. If there are people on welfare or something else, who don't have Blue Cross or

other types of insurance similar to Blue Cross, then the PIP can come in from dollar one. The reason I say this is because of what was said this morning. Let's say I work at the Ford Motor Company Plant in Mahwah on the assembly line. Well, my union provides me with Blue Cross/Blue Shield or some similar plan. They provide me with major med., so there are two separate policies that are being paid for, maybe not by the worker but indirectly by everyone who buys a Ford Motor Company car. They all contribute to that. It is built into the price. There are two premiums being paid. Now, I have to take my automobile policy now and have a rider put on it which says I have Blue Cross coverage for automobile accidents. It is not under the rate schedule for doctors, but as I understand it, from dollar one all the way up I am paying three premiums. I think this is ridiculous. If we could say if you have other insurance, go to the other insurance first, then when that policy runs out come to PIP, the insurance company would benefit by it, and I think the public would benefit by reduced premiums by at least holding the line on it.

ASSEMBLYMAN DEVERIN: How about that other company you are talking about? For instance, if I had Blue Cross and PIP and I wind up in a very severe automobile accident, do you want Blue Cross to pay first?

MR. FEEHAN: Up to their limits, I would. Let me explain why.

ASSEMBLYMAN DEVERIN: Well, then you would go to the insurance company?

MR. FEEHAN: Right.

ASSEMBLYMAN DEVERIN: What is going to happen to the Blue Cross rates in New Jersey?

MR. FEEHAN: Let me explain why. I am the Ford Company worker. If I pay insurance premiums on my car, it comes right out of my back pocket. But my Blue Cross-Blue Shield --- I am talking about 60% of the people now who work for somebody who pays their Blue Cross-Blue Shield for them or---

ASSEMBLYMAN DEVERIN: About 83%, full coverage.

MR. FEEHAN: This increased premium that Blue Cross is going to charge the Ford Motor Company is spread all around. It doesn't come out of one person's pocket.

ASSEMBLYMAN DEVERIN: Let me explain something to you, sir. That is a very bad statement. If you haven't experienced rating, or anybody else, and you get Blue Cross for nothing from your company under a negotiated contract, that is a fringe benefit.

MR. FEEHAN: I know it is.

ASSEMBLYMAN DEVERIN: And you earn every penny of that fringe benefit. The productivity of that company, General Motors or some place else, must be a certain level or you don't get it, so what you are saying doesn't make any sense when you say that you are going to spread that out. Why should the guy in General Motors who doesn't drive a car pay for me if I get into a severe accident? Why should he pay more? Why should the company have to pay a higher premium for him and not me?

MR. FEEHAN: Most people do have cars today in the State of New Jersey.

ASSEMBLYMAN DEVERIN: Yes, but some people don't.

MR. FEEHAN: You are always going to find a situation like that. There is a similar situation with the elderly gentleman who says he doesn't get a break. I agree with him. You are always going to find exceptions.

ASSEMBLYMAN DEVERIN: Yes, I don't mind a collateral source, but if you

do what you say you are going to do - and I am not trying to argue with you - the Blue Cross rates are going to go so sky high you won't be able to live with them.

MR. FEEHAN: They are going sky high any way. Let's look at 1971. They paid out all their medical bills for anybody involved in a car accident - you have Blue Cross. From 1972 on they were not involved, and look what happened to the rates.

MR. DUNCAN: Mr. Feehan, if I am paying for Blue Cross as an average citizen because I am self-employed, then, in effect, I would be in the position of subsidizing the worker - and I will have to be careful with Tom - while he got it free, earned it.

MR. FEEHAN: Right.

MR. DUNCAN: That is a fringe benefit, as a matter of fact, but the point simply is, haven't you shifted a cost from one mechanism to another?

MR. FEEHAN: Yes, but it is spread out more. This is only a proposal.

MR. DUNCAN: You are working on the assumption then that if you spread the cost over the largest amount of people, when you went to bargain, when the rates went up, you might bargain yourself right out.

MR. FEEHAN: Right. The final thing I would like to bring up here is the cap that must be put on any PIP as it is. There is no question that I have yet to see any policy written by any insurance company anyplace that gives you unlimited coverage. If you have a life insurance policy of \$10,000 and you die your wife gets \$10,000. The same thing with the disability policy. PIP as it is written right now - and I know the bill is sitting on the Governor's desk - is not effective. I would like to see it cap the policy limits with people allowed to buy any increments they would wish up to, say, \$100,000 or \$200,000, whatever you want. Give the people a choice, but don't make them take out a policy where it gives them unlimited coverage, because the insurance companies just can't make money on it, and they have to stay in business, whether I as a lawyer like it or not, and you saw what happens. GEICO pulled out, and others have been threatening. Something has to be done.

SENATOR MENZA: Thank you very much, sir. Mr. Ronald Spevack, Attorney.

R O N A L D S P E V A C K: I represent myself. I belong to many of the associations, but I do not come speaking on their behalf. I have an office in Perth Amboy and Elizabeth, and primarily we sue on behalf of persons injured in all sorts of traumas, including motor vehicle accidents.

I present you with the philosophy that it is time to default no-fault. As a concept it is not working. It is not only impractical, but in theory if you carry it to the ultimate end, it is not democratic and it is contrary to the principles of the common law of our jurisdiction, the English common law which dates back hundreds of years. I say this, that we should conceive that in its ultimate, No-Fault means the restriction, the limitation of rights to sue for personal injuries. Because remember, in 1972 they came here and asked for a \$200 threshold plus exceptions to it, and now we are back today five years later asking for a higher threshold. I am sure if they are successful in this attempt, we will be back in a few more years, and eventually we will be told that you cannot sue at all for any personal injury.

So before we take the next step in this process, it is time to re-examine the first step again. I think you will find the No-Fault concept is not realistic or practical because it is an attempt at a marriage of two concepts, two policies

which are contrary to each other and foreign to each other. It is a liability policy and a health policy. Up to recent years they have been sold separately, they have been conceived separately, and they have been serviced by different companies almost exclusively separately, and now we are told by this law we should make a marriage and put them together. Well, the marriage doesn't work. There are several reasons why it doesn't work.

Firstly, under the old system, if medical bills were unreasonable, charges outrageous, the doctor knew the case would not conclude and he would have to go to court before peers, taxpayers, who are then impaneled as jurors, and justify that bill. And the doctor knew that his day of reckoning would come and he would be subject to an in-depth and skilled cross-examination by someone representing the defendant, and he would be sitting there having to sweat out justifying his bill. That was a deterrent upon a doctor. Of course, the lawyers representing persons who were injured would be in a position, if this doctor persisted in this nature, to advise his clients of such, and I think those clients would not seek that doctor's treatment if he insisted in making unreasonable bills and unreasonable charges.

In a sense, since the patient himself was paying, out of any judgement or settlement, that doctor's bill, within that patient and that lawyer there was some governing effect upon the doctor. But now it is separate. The doctor charges, and the patient doesn't pay, and the lawyer is not directly involved, so that the holding device upon a doctor is gone. And he is on his own merry way charging whatever he wants. He doesn't have to go before jurors, peers, and justify the nature and character of the charges for his treatments.

It has been suggested that we have a disability period in the future - 90 days, 180 days. And I suggest to you what will happen if a disability period is put in that one has to be disabled a period of time. It is unfair to the different characters of work - certainly a blue collar worker who requires more physical effort will be disabled longer due to the nature of his work than a white collar worker who can return and maybe perform some work even though he is suffering quite a lot from an injury. It is very unfair to insert a period of disability, because it falls unfairly upon different types of occupations, and the persons who do not require physical effort will have a much shorter disability period than persons who have a job requiring greater physical effort. Although the injury can be precisely the same, the pain and the suffering and the permanent character of the injury can't be precisely the same. Therefore, the ninety day period is an unfair criteria. In addition, it presents a very great opportunity for the carriers, and I am sure they are aware of this. They will have the person examined prior to the ninety day period by a doctor of their choosing, and there are physicians who make a high percentage of their income - a high percentage of their income - in examining on behalf of carriers, and you could get a report back from that doctor saying this man is fit for work and not disabled for the ninety day period.

You will have two litigations. You will have litigation now to determine whether he is qualified to sue, and if successful, have another litigation. And you are spurring on litigation by fractionalizing causes of accidents. Instead of having one litigation for one event you will have two or more. In a sense, no-fault does that also in its present system. There are many suits that my office and other

offices are involved in where a patient is receiving bills from a physician who says these bills are reasonable and their treatment is necessarily related to the trauma involved, and the insurance company has a doctor examine this person, and their opinion is the opposite. Then you have suits concerning the payment of PIP benefits. Again, you have one trauma, one event, but No-Fault is fractionalizing litigation. I think in theory and in concept, one litigation for one trauma, one event, can encompass all issues and not be fractionalized which would incur additional legal costs, additional time in court for both the patient, the doctor, and insurance company representatives.

I wish the Commissioner was here. I would suggest to him that where he has calculated costs and profits of insurance companies, he should exclude from their costs the thousands and thousands of dollars spent by certain insurance company representatives to propagandize No-Fault and to mold public opinion so as to revise the present law. I don't think that is a proper charge for insurance companies, when they come before the Board for rate increases, to include all these costs which they voluntarily spent to change or affect litigation to benefit themselves as legitimate costs for motor vehicle insurance. I think the Commission should exclude those costs as part of the legitimized cost presented by insurance companies.

SENATOR MENZA: Mr. Spevack, how do you know they are spending thousands and thousands of dollars?

MR. SPEVACK: I see it in the paper almost every week, ads concerning litigation. One other problem concerning my profession is certain irresponsible newspapers - I don't think they are present any longer this morning - writing many articles about no-fault, and interspersed among the articles was the word "fraud" freely used. The word was thrown around with other words such as "improper conduct" implied explicitly among attorneys, and sometimes the medical profession. I am an avid reader of the Law Journal which has all such matters in it, and No-Fault has been in since January of '73, four years and seven months, and I have never seen one attorney sanctioned by the court, indicted by the court, or convicted of any crime concerning litigation of motor vehicle No-Fault acts. There has not been one in four years and seven months, and yet if you read any article about No-Fault in this particular paper located in Newark, you will see the word "fraud" in there three or four times in every article. I think that has been a slanderous attempt to degrade the legal profession without any sound proof. As yet, there is not one case that I know of that has been brought against an attorney either ethically or criminally concerning No-Fault or concerning PIP benefits, et cetera.

There is one other point I would like to make, please. There is a concern, and a legitimate concern, that litigation costs taxpayers money because the courts are exceedingly expensive to run. They have guards, personnel, clerks, stenographers. Every court room is staffed more than adequately. Some jurisdictions have had the following legislation passed. Injuries of a certain level are permitted to sue, but they first must go to arbitration. The arbitrator's work will bring about a considered judgement which can only be appealed by a party who is willing to incur additional legal cost of the other party if the appeal is unsuccessful. He still has the right to a jury verdict, but if he appeals the judgement of the arbitrator and loses, he must pay legal fees which can be substantial, which is a great deterrent. This is done in the same manner now as with someone who sues his own carrier for coverage under the Uninsured Motorist Protection Coverage, whereby he goes before

an arbitrator who is a lawyer who volunteers for a panel, and these lawyers are lawyers who sue for plaintiffs and represent carriers in defense, and they in a sense act as a judge. I think cases up to a certain level can be handled in that manner, and may prove to be a saving to the taxpayer. It was successful in Pennsylvania when it was tried. I think that maybe a legitimate concern for this body. Thank you.

SENATOR MENZA: Gentlemen, Mr. Spevack has submitted to the Commission a four-page statement in which he summarizes by saying that No-Fault is no good for our society and should be repealed. (Statement appears on page 34x in the Appendix.)

MR. SPEVACK: I think most of the benefits in summation are illusionary because most of the benefits which No-Fault presents or says they present are really existing prior to No-Fault, with one exception, out-patient hospital treatment. The public has always had those benefits anyway.

SENATOR MENZA: Thank you so much.

ASSEMBLYMAN DEVERIN: You know, that arbitration process intrigues me. In the original No-Fault Law we had that. In fact, that bill is still in Trenton under my name. I could never get it out of Committee. But that is something we ought to consider, Mr. Chairman. If the case is under \$5,000 we should recommend arbitration. I would make a very important contribution to the number of court cases. Thank you, Ronald.

MR. SPEVACK: One more comment. Somebody said, "What is a nuisance case?" I said a nuisance case is when the other man hurts his back, but a legitimate case is when you hurt your back. You can't really draw a line. I think taking away a person's civil rights is contrary to the principles of our government.

SENATOR MENZA: Thank you. Chairman of the Board of Freeholders, John Mollozzi. It is a great pleasure to have you here.

J O H N M O L L O Z Z I: I want to read part of my statement. It is not that long, and I want to elaborate on just a few points. When we talk about insurance, including that provided under New Jersey's No-Fault program of automobile coverage, we must always keep in mind that we are not talking simply in terms of dollars and cents. We are talking about human beings and human problems.

It is my opinion that the most glaring shortcoming of our No-Fault System is its lack of mechanism for arbitration between policyholders and reticent insurers in cases of disputed claims. It must be regarded as a failure, because every year literally thousands of New Jerseyans with legitimate insurance claims suffer humiliation, financial hardship, arbitrarily damaged credit ratings, and sometimes even vicious harassment by collection agencies because they cannot pay medical and other bills because they cannot collect from their insurance companies.

Now, what I mean by this is, No-Fault says that - as I understand it - an insurance company is responsible for paying the medical bills of its policyholders when an accident occurs. On many occasions several freeholders in this county, and myself as an attorney, have had repeated pleas from policyholders that insurance companies have refused to pay medical bills for a protracted period of time. Their out is, we need a physical examination from our doctor to see whether the claim is legitimate or not. That is fine, and I think the insurance companies have that right.

However, when an insurance company says, "I want an examination," and the attorney or the individual says, "Fine, set one up," the insurance company picks a doctor who is predominantly defense minded, and his office is jam-packed, and it takes

three months to have an examination. In the meantime, that poor policyholder is now being treated by a doctor who demands payment. And many times the individual cannot pay because of his financial situation, because of the size of a family, whatever the reason. As a result, the doctor begins to send letters for payment, and after a month or two of treatment - and because the carrier has not gone to this doctor they put it in the hands of a collection agency. And they put it with a collection agency because they can't collect because the man has not the financial wherewithal, and it goes into a legal suit. Now, the insured has a company that he has contracted with to pay medical bills and he is being sued by a doctor because the company refuses to make those payments, because they have not had an examination by their own doctor. I think that is a weak point of the system. A lot of credit ratings have been damaged, a lot of people's characters and standings within the community have been damaged because of this. This is not a singular problem. It happens every day of the week, every single day of the week, and I am not the only attorney who has had experience with this. I have clients who have handled cases on their own but have come when they are being sued by doctors or hospitals because of non-payment of bills.

Now, I think something should be done in this respect. I think a company has a right to have an examination, but I also think there should be a time limit. I think if a company wants to examine an individual, he should have thirty days to set up an examination, even if that company has to go out and hire its own doctor on a full-time basis to do it. I would think the company has a responsibility to pay medical bills that are presented to them until that doctor renders a formal opinion to the company, and until that policyholder gets a copy of the doctor's report saying we think that your treatment is finished; we think that you are whole now and no further treatment is necessary. At that point he may have a legal right to go after the company for additional bills if he is still hurting, because that is the doctor's opinion. But until that time, I don't think the company has a right to arbitrarily say they are not going to pay medical bills. And they have been doing this. I think this is a real shortcoming in the No-Fault legislation.

I also think that when you come to an impasse between a client's or policyholder's doctor and an insurance company doctor there should be a panel where both reports can be submitted, where a determination is made. I don't think the carrier has a right to arbitrarily cut off medical payments, especially when you are paying a fee under a contract for those benefits. This has happened repeatedly. Lo and behold, the poor guy who can't pay the bill now has to spend legal money for court to file a suit to defend himself with the collection agency. I really can't conceive that that was the intent of the State Legislature when it passed this bill.

MR. DUNCAN: Pardon me, sir. I have to interrupt here. I have been bothered terribly by this question of waiting for payment. Under 39:6A-5, payment of the personal injury protection coverage benefits, personal injury protection coverage, then would show the overdue if not paid within thirty days after the insurer is furnished with notice of the fact that the covered loss and the amount are the same.

MR. MOLLOZZI: Mr. Duncan, it says that, but in fact it doesn't work that way.

MR. GREEN: I might also add, since you are a lawyer, there is a

Superior Court decision that was handed down within the last two months, wherein a judge held that an insurance company refuses to pay at its own peril and is subject to a penalty of 10% plus counsel fee. I suggest you read that decision.

MR. MOLLOZZI: I have, sir, but it is interesting, the only mechanism to enforce that is a poor person who can't afford to pay the doctor having to go and hire a lawyer and spend monies to enforce that right because the Supreme Court says you have that right. You know, there is no mechanism in the Insurance Commissioner's office---

MR. GREEN: Yes, there is. There is a complaint department within the Insurance Department.

MR. MOLLOZZI: Yes, but theoretically he has no power in actuality to enforce it. He can bring the carrier in and recommend it, but he doesn't have the authority.

MR. GREEN: Well, the Insurance Department does a pretty good job in its consumer division. I think they have more staff there than they have in the whole department.

MR. MOLLOZZI: I have on a number of occasions written to Commissioner Sheeran's office without really a fruitful result because he says, "We have the authority to have the complaint processed and notify the carrier that they should pay it, but I do not have the authority to make them pay it."

SENATOR MENZA: In any event, that is a very interesting proposition. We should look into that to see if the Freeholder is correct, that they don't have the authority to enforce it.

MR. GREEN: Yes, he does. If we get a letter from the Insurance Department that says we should pay it, we don't waste too much time in paying it unless we have a rather strong case.

MR. MOLLOZZI: Well, don't you think, Mr. Green, that there should be an arbitration panel, or a panel, to whom you could submit medical data from both sides to have an impartial panel make a decision.

MR. GREEN: I agree with you. That would be fair and equitable.

MR. MOLLOZZI: I don't, for a single moment, accept every plea of poverty uttered by auto insurance companies. When I hear some of the arguments, I am reminded of the anecdote about the question, "How much is two and two?" being put to a mathematician, a statistician and an accountant. "Precisely four," said the mathematician. "Somewhere between three point five and four point five," said the statistician. "How much do you want it to be?" asked the accountant. It is my suspicion the accountant worked for the insurance company.

Be that as it may, on that point, there have been several resolutions passed by our board which would indicate that insurance rates that are reflected by the companies based on their experience. On a number of occasions insurance companies have submitted data which goes beyond the scope of their experience in the automobile industry. Some companies have submitted facts and data based on their portfolio, as to what the loss and profits of the company are. I think if the carrier is going to invest in other enterprises, that that really should not be taken into consideration when a rate increase is given to that carrier, because his profits have slipped.

Another inequity that I see is the criteria used when you apply for automobile insurance - and I had the experience recently when I was insured by GEICO, and they terminated most of their policyholders when they went under the reorganization.

I made an application to several carriers, and the first question that was asked was, "Have you had an accident in the past three years." And that seems to be some kind of criteria from the companies. And if you say no, you are in pretty good shape and if you say yes, you are in big trouble. I asked one of the underwriters what was the purpose, and he said, "Well, we gauge a person's driving experience based on the number of miles on an average for a year an individual drives, to see what kind of a driver he is." I said, "What kind of an average do you take." He said, "Ten thousand miles per year per driver is a pretty damn good average, because that is what most people use on their federal income tax."

And I said to myself, what happens when you have two drivers in the household and they put on seventy-five hundred miles a year - that is fifteen thousand - and in two years they put on thirty thousand. An individual driver puts on ten thousand a year, and it takes him three years. What happens at the end of the third year when one of the household has an accident? He is now past the thirty thousand mile mark. He can't get insurance, but the driver who drives with one car per household has ten thousand miles, after three years he gets into an accident, he is okay. So, really, the companies are discriminating in their credit rating system between individual drivers in households and multi-drivers in households. And I think that is discriminatory in itself. My wife uses her car as much as I do. I venture to say that if you gentlemen are married, or ladies are married, that your spouse uses it an equal amount, so that credit rating that they are using is really being used on a fault basis. And if you have an accident and you are in the assigned risk, they say the premium is about the same. That may be true for the first year, but all of a sudden you get locked in the second year because you are under the assigned risk plan. I think that is an inequity of the system.

I strongly believe that it would be in the best interest of both the insureds and the insurer, if the policyholders had an option to contract for certain sums of medical payment coverage which would be physical injury protection as large as they want it, instead of the unlimited exposure medical bills. This way the insurance companies could realize the problem, and drivers who wanted to obtain coverage in whatever amounts they desire now can. That is contrary, to some degree, with the basic No-Fault concept. I think the biggest gripe of insurance companies is that they would be put out of business because of an inordinate amount of medical bills they would have to pay. It would seem to me that a compromise could be reached in this regard. If a person wanted unlimited medical coverage, he should have the right to get that under the No-Fault provision. If an individual wanted less than that, it should be able to be a contractual right between him and the insurance company whether the medical payments will be \$5,000 or \$10,000 or \$20,000. I think this would limit the exposure that the company has and at the same time they can't cry "Uncle Tom" if they go with the unlimited amount, because it is a contract and the person who is getting that policy is willing to pay for that additional coverage, instead of a carte blanche type of approach.

MR. GREEN: Mr. Freeholder, in Florida they permit a deductible up to \$5,000, and of course that reduces the rate considerably. Would you be in favor of something like that, a medical pay deductible?

MR. MOLLOZZI: Well, I would have to say this, if you felt that Commissioner Sheeran's new proposal - which I vehemently disagree with - with respect to Blue Cross and Blue Shield --- No, I would not be in favor of that.

MR. GREEN: Well, for example, let's go back to deductibles in automobile collision. They eliminated the fifty deductible because the insurance department would have had to give a rate increase, so in order to solve something, they increased the deductible. And that is the reason you are getting deductibles. The higher the deductible, the less the rate.

MR. MOLLOZZI: Well, I think when it comes to the medical payment, before No-Fault came in, the person contracted for what he wanted. At that time insurance companies really weren't screaming "Uncle" because they were making a profit. Their biggest argument at that time was there were too many claims made against the carrier, and so they decided that a threshold would be the kind of program that they would push through the State Legislature because they have a strong lobby. Now, it has killed them, and they want out of it.

MR. GREEN: Well, for example, prior to No-Fault insurance companies were authorized to write as high as \$5,000 on medical pay. That was fair to the insured and that was fair to everybody because your bills were fair. Your bills were changed now because with No-Fault there is no limit and nobody to account to.

MR. MOLLOZZI: Well, that is a mistake the insurance companies made when they forced No-Fault.

MR. GREEN: We didn't force No-Fault.

MR. MOLLOZZI: Well, I don't know. There was a strong lobby down there for it. I think most of the companies have suffered an economic loss and gone bankrupt because they cannot keep up with the medical payments. I don't know whether that is a good answer for the doctors per se or not. It sure as hell is not one for the lawyers. I think if you put some kind of a limitation on medical payments that may solve the problem in part. I think it would satisfy the normal insured, and I think it would satisfy the insurance company if they knew there was some kind of a limitation.

The other point I wanted to make other than the statement, there has been some talk concerning the threshold. You know, the Supreme Court says that you can do it. The Federal Government is now considering it, but, you know, we are eroding the right to have redress in the judicial system. And that right goes all the way back to 1776. I don't really think that is the answer. What I think is going to happen if the threshold is raised, the doctor is now going to charge \$35 a visit instead of \$10 or \$15, and no matter what the threshold is, it is going to be met somewhere along the line by someone. The end result is the insurance company is going to pay three times what they normally would pay, and still wind up with a court procedure. I don't think that is the answer.

MR. GREEN: You say any dollar threshold will produce that.

MR. MOLLOZZI: Yes, I do. I honestly believe that. I don't think that is because there is a direct desire to do it. I think that people have expenses, doctors' offices in particular. You know, an attorney is making less now in a negligence case than he did before since the new rules have been promulgated on fees. So it is really no self-serving interest in that regard. There was a time when you could charge a third and then forty percent with the trial, but now whether there is a trial or not the fees have been scaled down. So either way, I don't think the legal profession is being hurt. I am talking more on the side of the insurance company to try to bail them out, to try to provide a policy at a reasonable price for the average car user. I think if you limit those

medical payments on a contractual basis, I think that problem is part of the battle that has to be won. I think some kind of panel to arbitrate on disputed medical payments is another part that has to be overcome. Because there are a lot of people suffering under this. It is incredible the number of collection agencies that a hospital can hire.

MR. GREEN: Isn't that funny, I have experienced very little of that.

MR. MOLLOZZI: I have experienced this, and other attorneys have, and I have had people call me up and say, "We have passed a resolution. It made the local paper. Why don't you do something about this?" I constantly get letters about this. It only takes one suit to wreck a credit rating, and you can't get an account at Bloomingdale's or an American Express, or what have you. I think there has to be some kind of an arbitration mechanism or panel to dispute those items that a company doesn't want to pay, the time limitation in which it can pay, and some teeth in the legislation so that can be enforced. You know, a complaint department in the Commissioner's Office is a very nice thing, and I think it is good "PR" but unless that Commissioner has the authority to make a decision or have a panel make a decision, having it on the books really doesn't mean anything.

Now, as I look at it, as a practitioner in the field, that is a big problem, and I know because people have written letters about that. I think that is important. I think that is something the panel has to have. The companies do it when it is to their benefit when they have an arbitration panel with an insurance company as to whether they are going to pay a collision claim or subrogation, or what have you. But when it comes to the insurance companies versus the policyholders in the outside world, that mechanism is void, totally void.

I think I will rely on the rest of my statement as it is presented. I think the members can read it. (Prepared statement appears on page in the Appendix.)

SENATOR MENZA: Thank you, Mr. Mollozzi.

MR. MOLLOZZI: I want to thank the Commission for meeting in our county. I think this is the first time that we have had a legislative hearing in a long time in Union County. It is nice to know we are still part of the State.

SENATOR MENZA: A very important part of the State. Mr. Conant.

J. ROGER CONANT: Thank you for permitting me to come here. I am breaking a promise to myself, which was never again to appear in public on the question of no-fault because I am a trial attorney and I really am tired of reading the next day about myself and what I am called. But I feel, after sitting here today, that maybe some of the observations of somebody very, very close to this thing might be of some help.

My entire firm does nothing but litigation. And, next March, I will have been doing it 25 years. I am a Fellow of the American College of Trial Lawyers and I think I know something about personal injury litigation. I do mostly plaintiffs' work, but I am the Union Country trial counsel for the New Jersey Manufacturers. So I work both sides of the street and have either equal prejudice or no prejudice.

To start with, I admire immensely the work that was done by your predecessor Commission in arriving at this threshold. I was much more active then in the no-fault question and I didn't agree with the threshold and didn't think it was necessary. I felt that what you were doing could have accomplished the same result without the threshold. But I appreciate the thinking that went into your reaching this particular threshold that you reached and why you did it. I also realize and respect that given the equipment that you had, the alternatives that you had, it was probably as good a way as any for cutting out that realm of cases that everybody who was legitimate felt should get cut out.

What worries me now and what I want to pass on to you is this: If you now tinker with this threshold some more, I am afraid that the wrong people are going to get hurt. Our experience was always, before no-fault, we had many clients, the non-litigious and decent people, who just wanted their medical bills. When adjusters paid them these bills, they rarely got to lawyers. When you passed the no-fault with this PIP provision which conceptually is a beautiful thing, if we can afford it, many of those same people now got their medical bills paid reasonably quickly. They were satisfied and didn't seek lawsuits. Some of them who were very badly hurt -- and, if you graft those who were hurt, those - let me call them those nice, non-litigious people - they would have to be proportionately worse hurt to want to sue, vis-a-vis the litigious person who will sue no matter what and who will meet the threshold that you pass no matter what threshold you pass, the very kind of person that Mr. Green was talking about before that runs up these fantastic medical bills for every-day treatment for 30 days and things like that. I don't think that they are the people who should be benefited by this system. I don't think those people, encouraged by their lawyers and aided and abetted by their doctors, should be permitted to make the price of insurance prohibitive to everybody else and unprofitable for the companies. Nobody needs that.

But no matter what threshold you pass - if you say they have to be three months in bed, they will be three months in bed. I took a deposition yesterday in a case I am defending for New Jersey Manufacturers. Our confidential investigation has the plaintiff quoted as saying - and he has about seventeen prior claims - "I finally have the pot of gold at the end of the rainbow." Let me tell you gentlemen, he does not know how far he is from the pot of gold at the end of the rainbow, but he will learn before we are through with him. That is the kind of person who will meet any threshold.

Now, incidentally, a year after no-fault was passed and I was more aware of

what was going on, I saw the first study that included the study on Delaware which had no threshold and Florida which had a higher one than ours. And they all ran cases down about 17 to 20 percent. This was true of Florida, Delaware, the whole thing, irrespective of the amount of threshold. Now I don't know what the last three years has shown, but that is what it was then.

I make these suggestions to you, gentlemen. There are things that can be done to help the insurance companies and help the honest plaintiffs. I don't think tinkering with the threshold is one of them. Let me address myself to two.

First, the business of the medical bills -- Now we are going round and round with some of the carriers on PIP payments. We are threatening we want the 10 percent and we are going to do this and we are going to do that. We haven't brought any suits for outrage yet because we honestly feel that our disagreements are bona fide. Perhaps somebody is overworked. You know, it is legitimate.

I also think there are a tremendous number of medical bills that these insurance companies have damn good reason to resist and get their hackles up over. I think that some sort of provision such as Mr. Pike suggested, a 45-day protection, or some sort of protection to the carrier so that they can refuse to pay a medical bill that they question and that there be a proceeding, not arbitration, but a proceeding in one of our District Courts, maybe where the damned doctor who is consistently overcharging will have to come down to that court and testify as to the reasonableness of his bill. The carriers might put out a suggested list of treatments. In answer to your question, how do you get them to do it, you put out a suggested schedule of payments that every doctor knows, if that is what he charges, he is not going to have to end up down at the District Court arguing over it. If he has a special case where he had to do special things, let him come on down. But what will finally make those doctors stop doing it is not your schedule, but it is when they have to leave the office where they are making \$200 an hour or whatever they make to come down to the District Court on their time. When they have done that two or three times, you are going to find that your schedule is going to look a whole lot more attractive to them.

The other thing that you can do, I think, is this - and we have done it. I'll tell you I love working for New Jersey Manufacturers because they have got what my old Italian grandmother would call big "cogliones." We don't pay claims because we are scared. We take these phoney claims nose to nose and we try them. And we have a reputation in the trade for being bastards, I suppose.

MR. GREEN: Legitimate bastards.

MR. CONANT: I tell you when the day comes when the insurance companies stand up --- When I started practicing and the word was out, "Man, if you get a case against Coca-Cola, you'd better be ready to try it all the way," there weren't many cases against Coca-Cola. If the word gets out, and it doesn't get out overnight - you don't push a button and correct this, but you give it a couple of years -- but if the word gets out and you have a phoney claim or you have a built-up claim, you are going to try every one. Do you know what these doctors get that come down here and testify for 30 or 40 minutes? Five hundred dollars a pop is nothing now. And you figure out what that does to a \$1500- or \$2000 case.

If the companies tough up on trying cases - and remember I said that most of my work is plaintiffs' work and I still say this -- when the companies tough up on trying these illegitimate cases and when the mechanism is set up on the PIP thing so

that companies can legitimately challenge over-built medical expenses, you are going to go a long way towards the stability that you are talking about in this field. Don't worry about the courts being overcrowded, Mr. Duncan.

Two weeks ago, the Marshall who handles the assignment list down in Monmouth County and I were talking about the deployment of judges. He was breaking it down. Of the 220, or whatever it is, Superior Court Judges that we have now, he was apportioning those on criminal, matrimonial, chancery and things like that. By his calculations, which I think probably were pretty accurate, there are maybe 50 of those Superior Court Judges who are trying the kind of things in which automobile claims are litigated. In this very county where I have tried cases for more than 24 years, 15 years ago we had 4 judges hearing civil Superior Court cases. For a period of time ending only in the last year or so, we went down to 1 or 2. We went for a five- or six-year period where we had not more than 2 judges - and many times only 1 - hearing civil cases. Our list backlogged. But now in the last year we have five or six judges again hearing civil cases - five or six judges in the Superior Court for a populous county like Union - and our list is beginning to melt away like the snows in spring. It doesn't take a lot of judges. This thing backlogged like the concept, "an idea whose time has come," which made us all sick so many years ago. It is something that is easy to throw out, but it is not just necessarily so.

What is happening with Governor Byrne having now picked up the appointment of judges is that our Judiciary now is stabilizing. I don't know how Newark will ever solve their problem. They have like 30 judges on criminal over there. But our court system can serve to accomplish the ends you want them to serve. It is not just a matter of getting rid of our courts and doing away with cases. Those courts can provide the good, the useful and the efficient method of helping to stabilize this thing.

If your Commission goes on to follow up what your predecessor Commission did, something really better is going to happen for the people of this State, not the lawyers, not the doctors, not the insurance companies directly, but indirectly for us too. But, directly, it is going to happen good for the people of this State. I know that that is what you want to do. Thank you.

SENATOR MENZA: Thank you, Mr. Conant. He killed me once with a summation just like that about 15 years ago.

Any questions?

MR. GREEN: Mr. Conant, you referred to a schedule. An accident-health policy has a schedule for everything. Major medical and hospitalization have schedules for everything. Is it your recommendation that the no-fault setup carry schedules similar to the others on medical care - so much per day for hospitalization, etc.?

MR. CONANT: Your company is Motor Club?

MR. GREEN: Yes.

MR. CONANT: It is my recommendation that we do what your company did with me when I told them finally that I couldn't afford to do their work. They gave me a schedule of the suggested legal fees that their lawyers charge them. I said, "I don't work for your suggested legal fees." I suggest something like that. I am not that sophisticated to know about health and accident. But I think there should be a fair schedule of the rates that are honestly being charged by decent people. I

don't mean starvation rates. But these are rip-off rates we are seeing on some of these things. All you have to do is say that is the recommended schedule and we won't hassle you over it.

SENATOR MENZA: Thank you, Mr. Conant. We appreciate your waiting all day to testify.

The last witness is Mr. William Palermo.

Members of the Commission, our next meeting will be on August 11th, in the Governor's Suite in Newark. If we have difficulties obtaining that room, we will notify you.

MR. GREEN: That is August 11th?

SENATOR MENZA: Yes, an executive meeting - an executive, work meeting all day.

Mr. Palermo.

W I L L I A M P A L E R M O: I am an insurance agent in Linden. I have been in the insurance business for over 28 years.

I think this no-fault should have been changed to no-insurance because most of the insurance companies today will not write automobile insurance voluntarily.

There was a remark made before about the assigned risk rates going up. I find it very unfair that a person who hasn't had any accident can't get insurance through a regular company and has to be put in the assigned risk. His rates are probably a little lower than the standard company or just slightly higher. It seems strange to me that the insurance companies are being forced to take the insurance through the assigned risk when they could take it voluntarily and probably get a higher premium.

I have also found that if the person in the assigned risk has not had any accidents or violation ---

SENATOR MENZA: Could I interrupt you a moment. The assigned risk is one of our charges in the resolution and we have put that topic down for our next meeting. If you could, sir, confine yourself to no-fault insurance, it would be appreciated.

MR. PALERMO: Going back to no-fault, the public, I find, does not like to have their insurance company pay for their injuries when it is not their fault. I think that the limitation on subrogating against the carrier or the insurance company of the insured who caused the accident should be changed to give the insurance companies the right to subrogate against the insured who caused the accident.

Also I am in agreement that the unlimited medical expenses should be eliminated and there should be some kind of limit put on it. I understand that the bill is there, but it still hasn't been approved. I think again that the public should have the choice of buying certain limits under the medical.

I think one of the problems that caused us to get into some trouble with the no-fault has been claims that no one ever thought of coming under no-fault, such as the claim where a person is out working underneath his car and the car falls on him. In the past, that was not an automobile claim unless he had medical coverage. Now, if that happens, that is unlimited payments to that individual. Also we had a case where a person was in his car, he stepped on the brake to avoid another car, and he claimed he hit his chest. There was question as to whether this was a prior injury or whether it was connected actually with the accident. I think in this field there have been possibly abuses under the no-fault which were

not present when we didn't have no-fault.

I certainly would be opposed to the PIP being transferred to Blue Cross and Blue Shield. I don't think we should take a problem and transfer it from one industry to another.

Also I would be opposed to no-fault applying to property damage. I think we would just be creating another monster.

Thank you.

MR. GREEN: Did you know that the original bill or present law provided that arbitration between the companies for no-fault benefits was self-terminated within two years, at the end of two years or prior to the end of two years, because the companies found there was so much hardship and inter-company arbitration that they felt it was cheaper to end it? So that is the reason there is no arbitration on that. It was more costly because of the fact that so much time was spent in trying to work out an arrangement among the companies.

MR. PALERMO: And this would apply whether it was in New Jersey or outside of New Jersey?

MR. GREEN: Only as to PIP benefits - nothing else.

MR. PALERMO: I am talking about accidents that occur outside of the State.

MR. GREEN: Outside of the State, there is another law. The common law of that state comes in.

SENATOR MENZA: Just one question - I have been meaning to ask this of the insurance agents who have appeared before us in the past. Do your clients or customers know what no-fault is; and, if they do, are they satisfied with it? I am under the impression as an attorney that no one understands no-fault.

MR. PALERMO: I would say, as far as paying the claims, they seem to be satisfied with it. Their dissatisfaction, as I said in the beginning, is when they find out that their own insurance company is going to have to pay it and the other company isn't paying it. I think this happens a lot of times with people who never had a claim or never had any trouble with an insurance company. We have been told that this has been done to speed up the litigation and to speed up claims. I didn't find that that was the problem in our business as an agent. We are not in the claim part of it, though we handle the claims. But our experience was that our companies paid them promptly. This, of course, seems to be in disagreement. But I don't agree that the companies were that delaying in legitimate claims.

MR. DUNCAN: Has the problem arisen since the day when you carried that good, old, black bag and sold BI, PD, med pay, comp, collision? It was very simple to explain. Then suddenly med pay took on a new name, PIP, and a few things got added. Isn't it a fact that the responsibility of the customer's knowledge of insurance lies in the hands of the agent and his knowledgeability - how well he explains it to his insureds?

MR. PALERMO: I would say, yes.

MR. DUNCAN: You have no trouble saying to an insured, "Look, you used to have 25 deductible, now it is 50, and suddenly it went to 200 with a buy-back to 100." Why can't you simply say to your insured, "Look, we have accomplished something very good for you. Instead of going to court about your medical loss and your economic loss, come to us"? And it seems to me many insurance agents saw the good part. You know, one of your problems with your insured was that he would come

to you and he would have had an accident. Let's say it was property damage. And you were in the bind that if he claimed under his collision and he got a point, he would lose his safe driver's privilege, right?

MR. PALERMO: Yes.

MR. DUNCAN: So now you are in a bind as an agent. If you advise him to collect under the collision, he is going to lose his safe driver award and be mad at you. On the other hand, if you told him to collect from the other company, he says, "What were you going to do for me?" And you couldn't do anything for him because we have all these unemployed lawyers running around you see. So the net result is -- and you can't tell him that because you are not a lawyer - you can't do that ---

SENATOR MENZA: They are employed as taxicab drivers.

MR. DUNCAN: I can't find taxi drivers.

I will go back to the fact that you are a good agent and you are merely saying, "Mr. Jones, the point to no-fault is to let the system pay you immediately." Before you worried about what you could do for him. Now you know what you can do for him. Could it be, just a little bit, you really don't want him to bring all those bills to you because your problem is you don't have the market, so you don't have the commissions to hire the people to handle the paper, which is what your real problem is? If you don't get a market, it is because the companies aren't making a buck, they tell us; and, if they don't the right rate - and we are not into that - they can't make a buck.

The duty of an agent, I have always understood - and I have always remembered this: There is no man with endurance like the man who sells insurance.

MR. PALERMO: And I am here today until 4:30.

MR. DUNCAN: I think it is your job to explain and it is the agent's job to let the public know what this is. That's your job and you should do it.

SENATOR MENZA: That concludes this hearing. We found this hearing - and I know I speak for all of the members of the Commission - to be very fruitful and very enlightening. We thank all of you for bearing with us. It has been a good day. Our next meeting will be an executive session on August 11th.

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The Selected Risks Insurance Company appreciates the opportunity to present a short statement before your Commission dealing with those items which the Commission is specifically instructed to consider with respect to the New Jersey No-Fault Law.

Before making those comments, however, we would respectively suggest that most of these matters have already received more than adequate hearing and that the time has come for action rather than prolonged deliberation. The personal lines automobile insurance climate in New Jersey has continued to deteriorate year after year to its present crisis proportions and, as a major domestic insurer, we view it as imperative that the legislature now fulfills its responsibilities in promptly making the changes which your Commission finds necessary. And now, with respect to those items falling within your charge, we comment as follows:

1. The Extension of No-Fault Coverage to Automobile Property Damage Insurance -

We strongly discourage the extension of No-Fault to Property Damage Coverage. Not only because this has not worked satisfactorily in any state in which it has been tried previously, but primarily because we believe that the problems of PIP should be satisfactorily resolved before opening up an area likely to create further problems.

2. Revision of the Monetary Threshold -

The major problem of current No-Fault laws in most every state has been the limited extent to which Tort recovery has been eliminated and this has been particularly true

in New Jersey with unlimited benefits and virtually no limit on the right to sue for pain and suffering. The entire theory of No-Fault is to make a greater portion of the premium dollar available to cover the expenses of accident victims promptly without regard to negligence. To this extent, No-Fault has worked satisfactorily since its inception. However, it is an obvious fact that if we are to reimburse for loss, without limit and without regard to negligence, all those who are injured in motor vehicle accidents, the additional dollars must come from either increases in premiums or a reduction in the non-economic loss area. We do not believe that the public is any longer willing, nor can they afford the increases in premium which will continue to be necessary unless a material reduction can be made in those cases under which suits may be brought for non-economic losses. We realize this is a difficult decision for your Committee and the Legislature but, very frankly, it is time that they recognize the need to do what is best for the insuring public generally by revision of the suit threshold to a more realistic basis and allowing tort recovery only in the event of death or serious injury as verbally defined.

3. Distribution of Large Losses through Pooling -

The Legislature has already recognized the fairness of this proposal through its unanimous passage of S1380 and we

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continue to strongly support that position. This does not detract at all from the benefits due an injured party but will prevent a single insurer from the catastrophic effects of a series of major losses.

4. Extension of No-Fault to Other Than Private Passenger Automobiles -

We do not favor any extension of the current law, at least until its deficiencies have been corrected. The courts, however, have already, by interpretation, extended the coverage beyond that contemplated by the Legislature in the current law. We strongly urge that changes be effected in the present law so as to preclude recovery by other than occupants of private passenger automobiles or pedestrians struck by private passenger automobiles. At such time as our law has become satisfactory and workable, we can then consider whether its extension to other automobiles is desirable.

5. Open Rating -

The present availability crisis in New Jersey has been created largely by an archaic regulatory system which has historically been politically motivated. While we do not suggest that open rating will be the solution to every problem, we do believe that such a system coupled with necessary changes in our No-Fault Statute will create a climate in which the New Jersey consumer can expect to find coverage available and at a fair price. As in all

other products, the price of insurance can best be governed by competition, and we would recommend that the Commission consider recommending a trial period for open rating with respect only to Personal Lines Coverages such as Automobile and Homeowners and for a period of three to five years and then re-evaluate its effectiveness.

6. Alternatives to the AIP -

While we recognize that there are substantial shortcomings in the operations of the current AIP, it is not our position that an alternative plan would, in and of itself, offer preferable procedures. It is our recommendation that the present plan be revised to correct its shortcomings, and we would be most happy to work with any group assigned that task. At the same time, we would be glad to outline, in detail, what changes we would recommend, but to do so here would take too much of the Commission's time.

7. General Shortcomings of the No-Fault Law

Our comments on general shortcomings of the No-Fault Law are contained above, although we would additionally refer you to our testimony on February 16, 1977 before the Assembly Commerce Banking and Insurance Committee, a copy of which is attached. The only additional feature we would add, at this time, would be some means of controlling the charges by health care providers. It has been broadly alleged, both in New Jersey

and in New York, that the charges by doctors and hospitals are consistently higher in providing care for auto accident victims than for the normal providing of such services. One solution to this practice would be a schedule of fees to which all health care providers would be required to adhere based upon the "normal" charge for such services in that locality or facility.

This concludes our short testimony and we would be pleased to answer any questions which the Commission may have regarding it.

NED:cr
7/18/77



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

DEAN A. GALLO
ASSEMBLYMAN, DISTRICT 24 (MORRIS-UNION-PASSAIC)
1180 ROUTE 46
PARSIPPANY, N.J. 07054
OFFICE 201-887-2600
RES. 201-539-9205

ASSEMBLY BILL 3124

This Bill has three parts.

Part one eliminates the present "Prior Approval" of Automobile Insurance Rates by the Commissioner of Insurance, and, substitutes an "Open Rating" "File and Use" system for all automobile insurance carriers writing business in New Jersey. Implementation of the bill will promote open competition in the marketplace and at the same time introduce a unique check and balance that allows the Commissioner of Insurance to challenge rates that are excessive or inadequate. The latter is spelled out in this bill to promote consumer protection.

Part two requires each insurance company writing automobile insurance to offer, for the basic limits of liability* including Personal Injury Protection, required by law, a standard liability rate by its given classes of drivers, i.e. age, marital status, sex, use of car, etc., but without discrimination as to geographical location of where the owner resides or car is garaged. Heretofore all automobile rates have been charged based upon where an individual's car is garaged. However, when the State makes mandatory certain liability coverage in order to operate a car in this State, we question whether it is in fact constitutional for insurance companies to discriminate by geographical location the cost for motorists to meet

* \$25,000 for maiming or death of one person, \$50,000 for two or more persons injured in or killed in an auto accident and \$10,000 property damage (this was formerly 15/30/5)

the test of the law in order to gain financial responsibility. For this reason, by the different classes of drivers, we propose a standard rate system. (Rates for all other coverages and increased limits of liability shall continue to be charged on a territorial basis as is now done.)

Part three calls for each automobile insurance company to promulgate a one level sur-charge rate chart in order that increased premiums be charged to those incurring accidents and motor vehicle violations. The sur-charge rate table and percentage of increase shall make no distinction on the geographical location of where the owner resides or car is garaged.

THE FOLLOWING INFORMATION IS PROVIDED AS BACK-UP MATERIAL ON THE ABOVE BILL.

WHY GALLO STANDARD RATE SYSTEM FOR LIABILITY WITH OPEN RATING AND SINGLE SUR-CHARGE RATE TABLE

At this time, automobile insurance companies writing business in New Jersey charge premiums based on a number of underwriting guidelines. They are: Territory where applicant resides, age, sex and marital status, driving experience including accidents and motor vehicle violations, use of car whether pleasure or business, and make, year of vehicle.

To the above, appropriate discounts are given for drivers training, good students and multi-car households.

The Department of Insurance then requires the company to pre-file its rates for approval by the Commissioner. Complexity and delay are the results of prior approval system. The state alone is hampered in its review of rate hike applications due to a shortage of state actuaries and dependence on statistics provided by the insurance companies. The present system of basing automobile

liability rates according to geographic area is discriminatory since it imposes higher premiums on residents of city areas, where suburban commuters and interstate passers-by create increased risks without paying for them and by the state making mandatory the purchase of minimum liability limits. Auto insurance is a commodity that is becoming more and more scarce in New Jersey with some companies, including one of the major ones, having pulled out. Most others are not taking on new customers at all. As a result, over 41,000 motorists were placed on the Assigned Risk in November, 1976 alone. The rigid rate regulation along with inflation and the generous benefits accorded under the No-Fault Law without the mechanism to control abuses has created artificially inadequate rates constricting the open market to where it stands now. We believe after review of the conditions in Illinois and California, who have open rating as compared to New Jersey with its prior approval law, that over the long term, after an initial period of adjustment, the public will be best served by a system which permits individual insurance companies to price their product in a competitive marketplace allowing its level liability rate to seek its true level and pricing its physical damage rate (comprehensive and collision) where it proves competitive.

Reliance on the open market will give the insurance industry the opportunity to respond quickly to changing economic conditions and thus be able to serve the market. In proposing this bill, we view automobile insurance as a loss-shifting device. It collects premiums from policyholders and distributes benefits, less the cost of the system, to those who have suffered losses. The dominant factor, then, in total insurance costs is losses less investment income and these are not determined by insurers - but for them - by (1) the frequency of claims and (2) the average cost of settling each claim, and (3) the ground rules under the law which govern

their investments. This bill corrects the prior practice of sur-charges which heretofore levied an increase in premium based upon the rates charged in a given territory. Though the reason for the sur-charge was the same, an accident, ticket or a number of same, the increase in cost could vary by 300 percent depending on where the person lived. One SINGLE SUR-CHARGE RATE CHART will come about under this law.

Finally, we believe that the measures included in this bill will help resolve the problem of the estimated 250,000 to 600,000 uninsured drivers on the roads.



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

DEAN A. GALLO
ASSEMBLYMAN, DISTRICT 24 (MORRIS-UNION-PASSAIC)

1180 ROUTE 46
PARSIPPANY, N.J. 07054

OFFICE 201-887-2600
RES 201-539-9205

ASSEMBLY BILL 3125

This bill has eight parts, and is the most complex of the package of bills.

Part one increases the minimum limits of Uninsured Motorist Coverage from \$15,000/\$30,000 and \$5,000, to \$25,000/\$50,000 and \$10,000.

Part two increases the minimum limits of public liability required by law in order to drive an automobile in New Jersey, from \$15,000/\$30,000 and \$5,000, to \$25,000/\$50,000 and \$10,000.

Part three eliminates the present unlimited medical payment provision in the law in favor of a \$50,000 limitation on such payments. At the election of the insured, additional coverage in \$25,000 increments up to \$1,000,000 shall be available for purchase.

Part four eliminates the present \$200 threshold and replaces same with a "Descriptive Tort Threshold" which defines serious injury for which an individual may bring suit.

The Descriptive Tort Threshold reads as follows:

"Serious Injury" means a personal injury which results in: a. death, dismemberment, significant permanent disfigurement, permanent loss of the use of an important body organ, member, function or system, OR b. a serious nonpermanent injury which has a material degree of bearing on the injured person's ability to resume his normal activity and life style during all or substantially all of the 90-day period after the occurrence of the injury, and the effects

of which are medically or scientifically demonstrable at the end of such period.

Part five calls for the Commissioner of Insurance as a guide to insurers and the public, to publish a treatment and fee schedule for medical services for the most common form of injuries arising out of motor vehicle accidents. The Commissioner shall be assisted by an advisory panel of medical, legal and insurance experts appointed by him. The costs incurred in preparation of the schedule shall be paid by insurers in accordance with the percentage of business written in New Jersey.

Part 6 excludes Personal Injury Protection under the No-Fault Law to accidents involving motorcycles and mopeds.

Part seven of this bill deals with the "Discovery of Facts and Information" surrounding an automobile claim, payments and suit.

- A) Requires a plaintiff, 30 days prior to pretrial conference, to present evidence of "serious injury". If unable to present same, court will dismiss action without prejudice.
- B) Disallows a plaintiff from recovery of special damages otherwise paid or payable under Personal Injury Protection.
- C) Allows for insurer to gain medical information on a patient's care from doctors and hospitals. UNDER PENALTY OF PERJURY those submitting such information pertaining to treatment and cost shall submit this information.
- D) Disputes will be remedied by petition to court.
- E) An injured person upon request, may obtain all information on file gathered by insurance company.
- F) A person may not unreasonably withhold notice of claim to an insurer.

- G) Insurance Company has right to order physical exams for those collecting Personal Injury Protection benefits. Refusal causes immediate termination of all benefits.

Part eight outlaws duplication of payments of both public and private plans of insurance. Violation of the law constitutes a disorderly person and also liable for repayment of all undue enrichment.

THE FOLLOWING INFORMATION IS PROVIDED AS BACK-UP MATERIAL ON THE ABOVE BILL

WHY INCREASE OF BASIC PUBLIC LIABILITY AND UNINSURED MOTORIST COVERAGE, MEDICAL PAYMENT CAP, DESCRIPTIVE TORT THRESHOLD, MEDICAL AND FEE SCHEDULE, DISCOVERY INFORMATION

The minimum limits of liability required by law as well as the Uninsured Motorist Fund shall be increased to \$25,000/\$50,000/\$10,000 to off-set the fires of inflation experienced in the last five years. The present limit stands at \$15,000/\$30,000/\$5,000.

The unlimited medical payment provision of the law shall be amended placing a \$50,000 limit on medical and rehabilitation payments for any one person. Additional coverage is optional. A reasonable limitation on the amount of mandatory medical and rehabilitation coverage has been included in the law. A cap of \$50,000 seems to be adequate since the unlimited provision now in the law has lead to severe reinsurance problems for some smaller companies. The unlimited medical payment provision is much too generous for the average consumer to support in his auto insurance premium.

A well-concieved No-Fault law should strive to reach an equitable balance. The first-party No-Fault benefits should cover a very

substantial portion of economic losses arising out of automobile accidents. If consumers are to be afforded these additional benefits without substantially increasing their premium, an equitable trade-off must be devised. That trade-off has been to eliminate so-called pain and suffering awards for non-serious injuries. A number of studies, including the comprehensive study by the U. S. Department of Transportation, have demonstrated that the smaller cases were receiving a disproportionate amount of payment for so-called pain and suffering and, therefore, this area of abuse was ripe for reform. When New Jersey enacted its No-Fault law, substantial first-party benefits were provided including unlimited medical payments and coverage for loss of wages. This law precluded an accident victim from recovering under the tort liability system only in soft tissue injury cases and where medical expenses for such injuries, exclusive of hospital, x-ray and other diagnostic medical expenses, are less than \$200.00. The trade-off has proven inadequate for had it not been, in theory, it would have eliminated about 45% of the total awards for pain and suffering (85% of the claims). There is a practical and equitable solution to this problem. The solution is a so-called Descriptive Threshold that describes the type of serious injury that is eligible for pain and suffering awards without the use of an amount of medical expense which encourage persons to use unnecessary medical procedures so as to cross the dollar threshold. The Descriptive Tort Threshold borrows from the Florida law as well as the federal bills considered by Congress. Under this approach, those who sustain permanent significant injury, as well as those who sustain serious disabling injuries which may not result in any permanent injury can recover pain and suffering awards.

Additional provisions are needed to effectively deal with inflated medical costs that have occurred under the New Jersey No-Fault Law.

Even with a Descriptive Threshold there will still be substantial incentives for some medical providers to misuse the extensive medical benefits available under No-Fault. These benefits are quite broad and not subject to some of the constraints that other medical insurance programs have - for example, co-insurance features. Over the years it has been proved difficult if not impossible for an insurance company or patient to successfully challenge either the reasonableness of the amount charged for medical services or the medical necessity for certain procedures. A schedule of fees as is now used for workmen's compensation could prove helpful. This bill will create a panel of experts to define the type of medical services that are indicated for the most common type of automobile injuries and the reasonable fee to be charged for such services.

Any law that promotes malingering is self defeating to both the system that creates such a law as well as those who enrich themselves at the expense of it. So too are the effects felt by those who knowingly bilk the system. By outlawing duplication of benefits, including a new section dealing with "discovery of facts and information", and requiring No-Fault Medical Payments to act as primary coverage with all other plans to act as secondary or excess, we accomplish the following:

- A. The mandatory system (auto insurance) pays primary benefits swiftly on presentation of evidence of loss - a prime purpose of no-fault auto insurance. A voluntary health care payment system then would need not to investigate beyond the fact that a loss resulted from an auto accident, permitting such systems to supplement auto insurance with a minimum of administrative expense.
- B. The motoring public should pay its own way, so that society can determine as accurately as possible the true costs of motoring. The costs can then be distributed equitably among automobile

owners. This can be done only if auto insurance is primary. If other sources are intergrated, non-motorists would be paying part of the costs of auto accidents.

- C. Because health care payment plans are designated non-profit corporations, they do not pay state and federal taxes that auto insurance companies do on their premium writings. Thus where health care payments are used as primary or in part used with No-Fault, state and federal governments will lose dollars in revenue. This is not desirable from the standpoint of public policy.

This law is designed to put some teeth in the legislation correcting New Jersey's No-Fault Law. By making conviction of undue enrichment a disorderly person with prescribed minimum sentencing and repayment of the undue enrichment to the payer, we believe those who would bilk the system will think deeply before doing so.



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

DEAN A. GALLO
ASSEMBLYMAN, DISTRICT 24 (MORRIS UNION-PASSAIC)

1180 ROUTE 46
PARSIPPANY, N.J. 07054

OFFICE 201 887 2600
RES 201 539 9205

ASSEMBLY BILL 3126

This bill has two parts.

1. The legislation creates within the Department of Insurance a Division of Fraudulent Claims with authority to investigate all alleged fraudulent claims. It shall report violations of the "New Jersey Automobile Reparation Reform Act" to the Attorney General. The cost of administration is set at \$750,000 to operate the Division, and shall be apportioned to all auto insurers according to its written premiums in the State.
2. Any person or organization including Insurance Agents, Brokers, Adjusters, Physicians of all types, Attorneys, Insurance Companies, Hospitals or their Administrators, who conspire, urge or willfully assist anyone to violate the provisions of the New Jersey Automobile Reparation Act, and, is convicted, shall be guilty of a misdemeanor and shall be liable in civil action for recovery of any sums illegally received by them.

THE FOLLOWING INFORMATION IS PROVIDED AS BACK-UP MATERIAL ON THE ABOVE BILL

Besides the other cost control devices in this package of bills, the need has clearly surfaced for a mechanism to review and investigate alleged fraudulent claims. Recent experience with both Medicare and Medicaid have shown that even without the incentive of a low medical tort threshold, a vehicle or some sort is needed to insure that some medical practitioners do not take advantage of insurance programs which pay for medical treatment. Heretofore it

has been impossible to successfully challenge either the reasonableness of the amount charged for medical services or the medical necessity for certain procedures. By creation of the Division of Fraudulent Claims and the publishing of the "Treatment and Fee Schedule" contained in the package of reform legislation, we hope to provide a vehicle whereby the generous benefits provided by the No-Fault Law will not be abused by those who would do so without such a mechanism to stop them.

We believe implementation of this comprehensive No-Fault reform package, of which this bill is a cornerstone, will curb its abuses.



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1180 ROUTE 46
PARSIPPANY, N.J. 07054

OFFICE 201 887 2600
RES 201 539 9205

ASSEMBLY BILL 3127

This bill makes uniform the law respecting investments made by casualty insurers and adopts the language applicable to life, health and accident insurers.

This legislation would restrict the ability of property casualty insurers to invest in equity securities in the stock market. No insurer would be allowed to purchase more than 8% of voting stock in any one corporation, nor invest more than 5% of its assets in preferred stock. Insurers would have two years in order to comply with the legislation and the Commissioner of Insurance, upon application, may authorize continued ownership of such investments for up to three additional years.

This legislation is designed to restrict insurers from investing premium dollars in risky securities, only later to be indemnified through rate increases for any losses which they suffer.

THE FOLLOWING INFORMATION IS PROVIDED AS BACK-UP MATERIAL ON THE ABOVE BILL

WHY AN INVESTMENT RESTRICTION LAW

There is evidence which indicates that the auto insurance problem is merely one manifestation of a deeper problem involving all types of insurance and many insurance companies. The deeper problem appears to be mismanagement of stock investments followed by the current attempt to quickly recover from the resulting stock losses via higher premiums.

As in the law of negligence in tort, causation is the key issue here. Inflation and resultant underwriting losses are ancillary, aggravating causes of the present rate inadequacy. But investment losses and the current rebuilding attempt appear to be the proximate cause for most insurance companies rate increase requests. Since many auto insurers also write insurance for other lines, the same problems presently surfacing in the automobile insurance field have already emerged in the malpractice area, and are beginning to be seen in other fields such as products liability and municipal insurance. The same type of problem, lack of immediate capital is hitting not some, but nearly all insurance companies since (1) the practice of seeking profits on rising stocks using more than 75% of income from premiums was nearly universal going back some months. At present non-life and health companies have broad investment discretion. The only limitation upon stock investments is that they be in "any...corporation" domiciled in the United States or its possessions and that the securities so owned be physically held within the state for safe-keeping. By way of comparison, investments by life and health insurance companies are strictly limited. (In general stock investment limited to 5% of total assets) The reason then for enacting this legislation is to insure that, in times of rapid stock growth, the insurance industry would no longer be allowed to be tempted by quick, but risky, stock profits, nor will the insurance purchasing public be asked to indemnify insurance companies for their losses in the stock market.



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ASSEMBLYMAN, DISTRICT 24 (MORRIS-UNION-PASSAIC)

1180 ROUTE 46
PARSIPPANY, N.J. 07054

OFFICE 201 887 2600
RES 201 539 9205

ASSEMBLY BILL 3128

This bill would provide for the establishment of a Joint Underwriting Association to be known as the New Jersey Guaranteed Automobile Insurance Act. This plan would replace the present assigned risk plan.

Since it is impossible to accomplish true automobile insurance reform in the normal market without considering the residual market (Assigned Risk) since they are interdependent, we propose creation of a joint underwriting association. This act will guarantee every applicant for auto insurance the opportunity to purchase coverage from an agent or broker of his choice. The producer will place the applicant with one of the companies he represents or write the coverage through the JUA. The rates charged by the JUA will be separate from the voluntary rates, but will be subject to prior approval by the Commissioner of Insurance. The JUA rates may not be excessive or unfairly discriminatory and only if the rates of the JUA prove inadequate, will the cost of this inadequacy be passed back to the policyholder group that is insured in the voluntary market as a subsidy. This subsidy will be a conscious decision on the part of the Commissioner of Insurance as is presently the practice under the Assigned Risk Plan.

Level rates for the minimum limits of liability and PIP shall be charged for the different classes of drivers and shall make no distinction by geographical location of the applicant. (Rates for all other coverages and increased limits of liability shall continue to be charged on a territorial basis as is now done.)

A single sur-charge rate table shall be developed which shall be used to increase the premiums paid for both liability, PIP and physical damage (Comprehensive and Collision). The sur-charge table shall be used where an extra hazard exists for accidents or motor vehicle violations without regard for geographical location where the application resides.

THE FOLLOWING INFORMATION IS PROVIDED AS BACK-UP MATERIAL ON THE ABOVE BILL

WHY A JOINT UNDERWRITING ASSOCIATION

In the past seven years, companies writing automobile insurance in New Jersey have paid out \$121 million more in losses than they have collected in premiums - an average of \$64 per car - for drivers insured in the Assigned Risk Automobile Insurance Plan. In 1974 (latest figures available) the deficit was more than \$100 per car. The State's insurance commissioner has determined that rates in the AIP must be subsidized. In other words, the \$100 deficit per car for 1974 is to be made up by drivers who buy coverage in the normal market. Thus, the Commissioner in effect has said that insurance companies will be permitted to "tax" the normal market for this needed subsidy. The fact that those drivers who truly belong in the AIP are not paying their own way is not much comfort to the vast majority of New Jersey's drivers in the normal market who are expected to make up the difference. This subsidy would grow if New Jersey replaces the AIP with a reinsurance facility as has been mentioned. The subsidy could be lowered by bringing AIP rate levels into line with its losses as is being done in Illinois and California. However, if a Reinsurance Facility were to replace the present AIP even a greater subsidy of high-risk drivers would be required on the part of the careful driver. This is because under a reinsurance facility, customers placed in the facility pay the same rates as those in the normal market. These facility rates would be lower than the present AIP rates, but the losses would not

be lower. By changing systems losses would not simply go down. Therefore, rates in the normal market would have to go up to cover the additional subsidy. One of the most unfortunate results of a facility is its tendency to stifle competition between companies. Under a facility, all companies are required to insure anyone licensed to drive at their regular rates. Ultimately, the poorer risks gravitate to the more efficient lower rate companies. Although these companies reinsure many of the applicants, eventually the companies must raise their rates to accommodate the increased financial burden of assessment from the reinsurance facility.

Consequently, low rate companies are forced to higher and higher rate levels. Unless they can take action to negate this natural consequence, rates gradually raise for all policyholders until they finally approach those of companies with higher rates. And as rates approach uniformity, competition diminishes substantially. The most direct impact on the insuring public of a reinsurance facility is the mandatory total subsidy of high risk drivers by the policyholders in the voluntary market. In other types of residual market mechanisms as New Jersey's AIP, a partial subsidy by the voluntary market has been imposed from time to time, but the reinsurance facility requires a continuing total subsidy which allows for no flexibility or regulatory control over the amount. This amounts to nothing less than a hidden tax. By contrast, under New Jersey's AIP, the amount of subsidy involves a conscious determination by the insurance commissioner on a periodic basis. Experience has shown that reinsurance facilities in Canada, North Carolina, South Carolina, Massachusetts and New Hampshire are and of themselves the major contributing factor in disrupting the marketplace. As is true in other aspects of society, it's difficult if not impossible to effectively legislate against consequences of

destructive economic forces once they are set into motion. The alternative which accomplishes virtually all the objectives of a reinsurance facility, and has none of the side effects in that of a Joint Underwriting Association which was successfully pioneered in Florida. Briefly, here is how it would work. The JUA would, in effect, guarantee every applicant for auto insurance the opportunity to purchase coverage from a reliable carrier. The JUA would be comprised of all auto insurers licensed in New Jersey pursuant to a plan approved by the Commissioner of Insurance. Applicants would purchase coverage from a broker of their choice who would either accept the applicant in one of the companies with which he deals or write the coverage through the JUA. The JUA would have the authority, the power, and - because it would be dealing with only a small number of persons who will be responsible for servicing this business - the ability to assure a high level of performance at a minimum of administrative cost.

The premium rates of the JUA will continue to be separate from the voluntary rates, but will be subject to the prior approval of the Commissioner of Insurance. These rates may not be excessive, inadequate or unfairly discriminatory. Only if the rates of the JUA prove inadequate will the cost of this inadequacy be passed back to the policyholders who are NOT insured through the JUA in the form of increased rates - a subsidy. As noted previously, this will be a conscious decision by the Insurance Commissioner which can be reviewed periodically. Under this approach, provisions can be incorporated which will encourage agents, brokers and companies to write automobile insurance without using the facilities of the association, thus keeping the use of the association down to an absolute minimum.

ASSEMBLY, No. 3124

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 17, 1977

By Assemblymen D. GALLO, SCANLON, DOYLE, NEWMAN, KEAN,
BASSANO, RAND, LITTELL, BARRY, HURLEY, MAGUIRE,
FORAN, DORSEY, KAVANAUGH, EWING and SPIZZIRI

Referred to Committee on Banking and Insurance

AN ACT concerning automobile insurance rate structures and rates
and repealing sundry acts.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Each insurer authorized to write policies of automobile
2 insurance in this State shall file with the Commissioner of Insur-
3 ance its proposed rate structure for each type of insurance
4 coverage offered, including: a. bodily injury, personal injury pro-
5 tection and property damage and b. physical damage. The rates
6 filed for insurance under a. above shall be based upon and reflecting
7 the insurer's experience for such coverage and shall be formulated
8 for the required basic minimum coverage without discrimination
9 as to the geographical area in which the insured resides. The rates
10 filed for insurance under both a. and b. may include a surcharge
11 based upon and reflecting the insured's record, including but not
12 limited to, his motor vehicle accidents and violations; the rate
13 structure and surcharges for such extra hazards and risks shall be
14 reasonable, adequate and uniform throughout the State.

1 2. In support of its rate structure filed pursuant to section 1,
2 each insurer shall file a full and complete description of its risk
3 and surcharge classifications, experience rating and other informa-
4 tion in such form and detail as the commissioner shall prescribe.

1 3. a. A rate structure shall become operative and shall be used
2 by the insurer on and after its filing with the commissioner. If,
3 within 60 days following the filing, the commissioner advises the
4 insurer that he finds the structure or any rate included therein will
5 provide or result in a rate or rates that are discriminatory,
6 unreasonably high or excessive or are not adequate for the safeness
of the insurer, he shall direct that the rate or rates

8 be altered to produce rates that are reasonable and adequate and
 9 shall direct that unless an amendment or adjustment to the filing
 10 is filed with and approved by the commissioner prior thereto a
 11 public hearing on the matter will be held thereon at a time and
 12 place on a date fixed therein not less than 20 or more than 45 days
 13 after the date of the notice.

14 b. The commissioner shall make his final determination, affirming
 15 or modifying the rates as filed, within 20 days of the conduct of a
 16 hearing held pursuant to paragraph a. which determination shall
 17 be subject to review on appeal to the Superior Court.

1 4. Each insurer shall annually on or before June 30 file with the
 2 commissioner, in form and detail to be prescribed by him, a report
 3 of its operations for the prior calendar year. The detail to be
 4 prescribed for the annual report shall be such as will enable the
 5 commissioner to determine the soundness and solvency of the
 6 insurer and to evaluate the overall financial adequacy and justifica-
 7 tion for its rate structure.

1 5. Sections 1 through 26 and section 28 of P. L. 1944, c. 27
 2 (C. 17:29A-1 et seq.), P. L. 1962, c. 214 (C. 17:29A-7.1) and
 3 P. L. 1950, c. 309 (C. 17:29A-29 - 17:29A-32) are repealed.

1 6. This act shall take effect 90 days after enactment.

STATEMENT

This is the first of a package of 5 bills relating to automobile insurance; the other bills in the package are Assembly Bills Nos. 3125 through 3128.

This legislation eliminates the present prior approval system of ratemaking, and substitutes an open rating system. Companies would be required to file their rates with the Commissioner of Insurance before they put them into use. If the commissioner determines that the rates are inadequate, excessive, or discriminatory he may notify the insurer within 60 days that a hearing is to be held thereon. The commissioner's final determination would be subject to review in the Superior Court.

Rates for the required basic minimum liability insurance would be required to be based on statewide experience and formulated without discrimination as to the geographical area where the insured resides. Surcharges levied for motor vehicle violations and accidents would also be required to be charged on a non-discriminatory basis. Insurers would be required to file their risk classifications with the commissioner.

ASSEMBLY, No. 3128

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 17, 1977

By Assemblymen D. GALLO, SCANLON, BASSANO, DOYLE, KEAN,
LITTELL, RAND, BARRY, HURLEY, MAGUIRE, STEWART,
KAVANAUGH, EWING, FORAN, DORSEY and SPIZZIRI

Referred to Committee on Banking and Insurance

AN ACT to make certain types of motor vehicle insurance available to the public; to create an Insurance Underwriting Association and to prescribe its powers and duties; to prescribe and regulate automobile insurance; and to prescribe the powers and duties of the Commissioner of Insurance and supplementing Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known as and may be cited as the New Jersey
2 Guaranteed Automobile Insurance Act.

1 2. The purpose of this act is to assure to the insurance consumer
2 guaranteed access to automobile insurance, to require every agent
3 and broker to offer insurance to every qualified applicant, to en-
4 courage the use of normal market facilities and to provide for
5 the formation of an industry joint underwriting association com-
6 prised of all licensed automobile insurers which shall provide
7 automobile insurance for persons who cannot otherwise obtain
8 such insurance.

1 3. As used in this act:

2 a. "Association" means the Automobile Joint Underwriting
3 Association established pursuant to section 5.

4 b. "Automobile insurance" means insurance against injury or
5 damage, or liability therefor arising out of the ownership, opera-
6 tion, maintenance, or use of motor vehicles as defined in R. S.
7 39:1-1 which are required to be registered pursuant to R. S.
8 39:3-1 through R. S. 39:3-42 and designed for use on the public
9 highways, including insurance against loss of or damage to such

11 c. "Board" means the board of directors of the association.
12 d. "Commissioner" means the Commissioner of Insurance of
13 New Jersey.
14 e. "Plan of operation" means the plan of operation approved
15 pursuant to this act.
16 f. "Qualified applicant" means a person who makes application
17 for automobile insurance through the association and is (1) a
18 resident of this State who owns a motor vehicle registered to this
19 State or has a valid driver's license or is required to file proof of
20 financial responsibility under the Motor Vehicle Safety Responsi-
21 bility law in order to register his motor vehicle or obtain a driver's
22 license or to carry automobile insurance coverage pursuant to the
23 New Jersey Automobile Reparation Reform Act (C. 39:6A-1 et
24 seq.), or (b) a nonresident of this State who owns a motor vehicle
25 registered or principally garaged in this State; provided, however,
26 that no one shall be a qualified applicant if he has any unpaid
27 premium which he has failed to pay and which is due from him
28 for prior automobile insurance or if any person who usually drives
29 the motor vehicle to be insured does not hold or is not eligible to
30 obtain a driver's license or has a driver's license under suspension.
31 g. "Servicing carrier" means an insurer who is a member of
32 this association designated as a servicing carrier by the board
33 pursuant to the provisions of this act and the plan of operation.
34 Any member volunteering to be a servicing carrier who maintains
35 an office or offices in this State and meets the minimum require-
36 ments for a servicing carrier adopted by the association may be
37 designated a servicing carrier. Other members of the association
38 who maintain an office or offices in this State and who meet the
39 minimum requirements for a servicing carrier adopted by the
40 association may be designated servicing carriers, if necessary.
41 A servicing carrier may resign in accordance with rules established
42 in the plan of operation.

1 4. a. On and after the effective date of the plan of operation, any
2 qualified applicant shall be entitled to apply for coverage through
3 the Automobile Joint Underwriting Association as provided in this
4 act. Every licensed resident agent or broker shall offer to place
5 insurance, pursuant to the plan of operation adopted by the associa-
6 tion, for any qualified applicant who is unable to procure such
7 insurance through the markets available to him.

8 b. Upon receipt of the premium of a qualified applicant or upon
9 receipt of such portion thereof as is prescribed in the plan of
10 operation, the association shall issue or cause to be issued a policy
11 of automobile insurance which shall include such requested cover-

12 ages, amounts of insurance and policy periods as are available
13 under the plan of operation and as may be requested.

14 c. If the commissioner finds, after a hearing, with respect to any
15 specified geographical area in the State, that a large number of
16 persons are failing to gain the benefits of the association because
17 they do not have the services of an agent or broker, the association
18 shall provide service to assist the public in applying to the associa-
19 tion for insurance.

20 d. In implementing the provisions of this act, the association
21 may not require any insurer to adopt marketing programs or
22 methods inconsistent with its customary programs or methods.

1 5. a. A joint underwriting association is hereby created. Every
2 insurer licensed to transact automobile insurance within this State
3 shall become a member of an Automobile Joint Underwriting
4 Association and shall remain a member as a condition of its
5 authority to continue to write automobile insurance in this State.

6 b. The association guarantees that a source of automobile in-
7 surance will be immediately made available to any qualified ap-
8 plicant through any agent or broker writing automobile insurance,
9 while preserving to the public the benefits of competition among
10 financially sound automobile insurers by encouraging maximum
11 use of the normal private insurance system.

1 6. Pursuant to the provisions of this act and the plan of operation
2 the association shall:

3 a. Issue automobile insurance policies to any qualified applicant
4 or arrange for the issuance of automobile insurance policies to
5 any qualified applicant through servicing carriers. Any such
6 servicing carrier shall issue policies in the name of the servicing
7 carrier, on behalf of the association, to the extent the plan of
8 operation provides.

9 b. Establish procedures for the sharing among the members of
10 profit or loss on association business and other costs, charges,
11 expenses, liabilities, income, property and other assets of the
12 association. The assessment of members for their appropriate
13 shares shall be based on the members' exposure units for private
14 passenger automobile business and on premium volume for all other
15 automobile business.

16 Allowances may be provided for existing debits and credits
17 under the New Jersey Automobile Insurance Plan replaced or
18 terminated as a result of this legislation.

19 c. If servicing carriers are utilized, establish reasonable and
20 nondiscriminatory minimum standards for qualification and per-
21 formance as a servicing carrier.

22 d. Establish procedures to encourage the voluntary writing of
23 eligible applicants without the utilization of the association. These
24 procedures shall include provisions for appropriate incentives to
25 encourage companies to voluntarily write those applicants who
26 are qualified for insurance through the association.

27 As a minimum these provisions shall apply to persons insured
28 through the association who for a reasonable period of time have
29 not been convicted of certain traffic violations or involved in certain
30 automobile accidents.

31 The association may also adopt provisions to encourage com-
32 panies to voluntarily write other categories of applicants who are
33 qualified for insurance through the association. Such provisions
34 may apply to:

35 (1) Applicants who are male operators or owners of motor
36 vehicles which are under 25 years of age or operators over age
37 65; and

38 (2) Applicants who have been uninsured for a period of 60 days
39 prior to the date of application.

40 e. Establish the rates of commission of service fees to be paid
41 to agents or brokers on policies issued through the association
42 which in no event shall exceed an amount equal to 10% of the
43 written premium less any return premium on policies issued
44 through the association. Commissions or service fees may be paid
45 to any resident licensed insurance agent or broker.

46 f. Be authorized to cede reinsurance on policies issued by the
47 association or issued by servicing carriers on behalf of the
48 association.

49 g. Be authorized to join, advise, assist, associate, cooperate, and
50 contract with its members, the New Jersey Special Joint Under-
51 writing Association and with such other organizations, associations,
52 insurers, governmental agencies and persons as may be necessary
53 to accomplish the purpose of the association.

1 7. a. Within 30 days after the effective date of this act, the
2 commissioner shall call the first, or organizational meeting of the
3 association which shall adopt an appropriate name and seat a board.

4 The board shall consist of one individual who is a resident
5 licensed agent or broker to be appointed by the commissioner
6 and eight association members as follows: Two insurers which
7 are members of and selected by the American Insurance Associa-
8 tion; Two insurers which are members of and selected by the
9 American Mutual Insurance Alliance; Two insurers which are
10 members of and selected by the National Association of Independent

11 insurers; two insurers which are not affiliated with the foregoing
12 organizations and which are elected by such nonaffiliated insurers
13 voting in person or by proxy.

14 The terms of office of the initial and subsequent members of the
15 board shall be as provided in the plan of operation.

16 b. Within 60 days after the organizational meeting, the board
17 shall file with the commissioner for his approval, a proposed plan
18 of operation, consistent with the provisions of this act, which shall
19 provide for the prompt and efficient provision of automobile in-
20 surance to qualified applicants unable to procure such insurance
21 through ordinary methods. The plan of operation shall provide
22 for, among other matters, preliminary assessments of members
23 for the initial expenses of the association to commence operations,
24 establishment of necessary facilities, the operation of the associa-
25 tion, assessments of members to defray losses and expenses which
26 shall include losses on association business, compensation to
27 licensed agents or brokers, classification requirements, procedures
28 for issuing policies, minimum requirements for selection and per-
29 formance of servicing carriers if servicing carriers are utilized,
30 procedures for matching agents and brokers with servicing carriers
31 with whom they may write eligible risks if servicing carriers are
32 utilized, provisions establishing procedures for encouraging the
33 voluntary writing of eligible risks as provided in section 6. d. of
34 this act, and for the coverages, amounts of insurance, and premium
35 payment plans to be offered by the association.

36 c. The plan of operation, unless sooner approved in writing, shall
37 be deemed to meet the requirements of this act if it is not dis-
38 approved by the commissioner within 30 days from the date of
39 filing. If the commissioner shall disapprove all or any part of the
40 proposed plan of operation, he shall do so in writing, specifying
41 in what respect the plan of operation fails to meet the requirements
42 of this act. Unless the board takes other appropriate legal action
43 to contest the disapproval, it shall within 30 days thereafter file
44 for his review an appropriately revised plan of operation.

45 d. Any revision of the proposed plan of operation or any sub-
46 sequent amendments to an approved plan of operation shall be
47 subject to the provisions in subsection c. relating to the initial plan
48 of operation.

49 e. If no plan of operation is submitted to the commissioner within
50 60 days after the organizational meeting, the commissioner shall,
51 after consulting with the representatives of the industry, prepare
52 and promulgate a plan of operation in accordance with the re-
53 quirements of this act which shall continue in force until super-

54 seded by a plan of operation effective in accordance with subsec-
55 tions a., b. and c.

1 8. a. The classifications, rules, rates, rating plans and policy
2 forms proposed for use for automobile insurance issued by or
3 through the association may be made by the association or by any
4 licensed rating organization and shall be filed with the commis-
5 sioner. Such filings may incorporate by reference any other ma-
6 terial on file with the commissioner.

7 b. The classifications, rules, rates, rating plans and policy forms
8 for use with automobile insurance issued by or through the associa-
9 tion shall be subject to prior approval by the commissioner. The
10 association and every member shall be required to use the classifi-
11 cations, rules, rates, rating plans and policy forms so approved
12 for automobile insurance issued by or through the association.
13 Initially, rates shall be based on the experience of the present
14 New Jersey Automobile Insurance Plan and thereafter on the
15 association's loss and expense experience and trend factors, to-
16 gether with such other information as the commissioner requires.

17 c. If the board assesses member companies to offset an operating
18 loss of the association which shall include the losses on association
19 business, each member may recoup the amount of such assessment
20 in its premium rates on automobile insurance policies not issued
21 on behalf of the association.

1 9. The board shall have all power to direct the operation of the
2 association, except as may be specifically delegated to others or
3 reserved to the members in the plan of operation, including the
4 following:

5 a. To sue and be sued in the name of the association. A judg-
6 ment against the association does not create any direct liability
7 against the servicing carrier or the individual participating mem-
8 bers of the association.

9 b. To delegate ministerial duties, to hire a manager and to con-
10 tract for goods and services from others.

11 c. To assess members for their liability to the association as
12 established pursuant to section 6. b.

13 d. To impose limitations on cancellation or nonrenewal of as-
14 sociation business.

1 10. a. Any applicant for an association policy, any person in-
2 sured under such a policy and any member of the association may
3 request a hearing and ruling by the board on any alleged violation
4 of the plan of operation or any alleged improper act or ruling of
5 the association directly affecting it as to coverage or premium or

7 member of the association may request a hearing and ruling on
8 the application to him of the plan of operation. Any such member
9 may request the board to act upon or to rule upon any proposed
10 change in or addition to the plan of operation. The final action
11 of the board in respect of any such proposed changes or additions
12 shall be deemed a formal ruling for purposes of applying subsections
13 b. and c. of this section. The request for hearing must be
14 made within 30 days after the date of the alleged violation or improper
15 act or ruling. The hearing shall be held within 30 days
16 after the receipt of the request. The hearing may be held by a
17 panel appointed by the chairman of the board consisting of not
18 less than three members thereof, and the ruling of a majority of
19 the panel shall be deemed to be the formal ruling of the board,
20 unless the full board on its own motion shall modify or rescind
21 the action of the panel.

22 b. Any formal ruling by the board may be appealed to the commissioner
23 by filing notice of appeal with the association and commissioner
24 within 30 days after issuance of the ruling.

25 c. The commissioner, after a hearing if requested in the notice
26 of appeal, shall issue an order approving the action or decision,
27 disapproving the action or decision, or directing the board to reconsider
28 the ruling.

29 d. In any hearing held pursuant to this section by the board or
30 the commissioner, the board or commissioner as the case may be,
31 shall issue a ruling or order within 30 days after the close of the
32 hearing.

33 e. All rulings or orders of the commissioner under this section
34 shall be subject to judicial review.

1 11. a. There shall be no liability on the part of and no cause
2 or action of any nature shall arise against any member insurer,
3 the association or its agents or employees, the board, any director,
4 corporation, association, or organization to whom any duties or
5 obligations imposed under this act have been lawfully delegated,
6 or the commissioner or his representatives for any action taken
7 by them in the performance of their powers and duties under this
8 act.

9 b. All persons who are granted immunity pursuant to this section
10 shall be indemnified by the association against all expenses
11 incurred in the defense of any action, suit or proceeding brought
12 against such person on account of any action taken by him in the
13 performance of his powers and duties under this act, unless such
14 person shall be finally adjudged to have committed a breach of
negligence, bad faith, dishonesty, willful mis-

16 fea~~sance~~ or reckless disregard of the responsibilities of his office.
17 In the event of settlement before final adjudication, such indemnity
18 shall be provided only if the association is advised by independent
19 counsel that such person did not, in counsel's opinion commit such
20 a breach of duty.

1 12. All laws and parts of laws of this State inconsistent with
2 this act are hereby deemed superseded to the extent of such in-
3 consistency.

1 13. This act shall take effect immediately.

STATEMENT

This is the fifth of a package of five bills relating to automobile insurance; the other bills in the package are Assembly Bills Nos. 3124 through 3127.

This bill would provide for a joint underwriting association in which all insurers writing automobile insurance in New Jersey would be members. It is designed to guarantee every applicant the opportunity to purchase coverage pursuant to a plan and at rates approved by the Commissioner of Insurance. The bill is adapted from a Florida law and conforms to the text of a draft submitted to the Assembly Banking and Insurance Committee by the Associate Counsel of State Farm Insurance Companies at its public hearing held June 15, 1956.

The plan to be adopted pursuant to the act would replace the present Assigned Risk Plan.

STATEMENT BY RONALD W. SPEVACK
A Member of the Firm of Spevack, Kogos
and Coe, P.A. with offices at 502 Amboy
Avenue, Perth Amboy, New Jersey, and
813-815 Elizabeth Avenue, Elizabeth, New
Jersey.

* * * * *

Again as in 1972, the big propaganda drums of the insurance industry are beating. This time they are claiming that the no fault bill must be revised. Prior to any action being taken, it is submitted that a thorough review of the motor vehicle tort law should be undertaken. This legislation, as proposed, must be analyzed for what it is. Stripped of its propaganda, it is plain and simple special legislation for the economic benefit of the insurance companies. The bill does not indicate, promise, stipulate, or insure any benefits to the general public such as lower premiums. In fact, the history of no fault legislation in the 16 of the 50 states which have so adopted it repeatedly show that although no fault legislation was passed, premiums have not decreased only benefits to the public have decreased.

The insurance industry demands that the present law be "reformed" by taking benefits away from the public. Those persons whose rights are to be reduced or eliminated is that not yet defined class of persons that will be injured in the future motor vehicle accidents. Since nobody can ascertain who will be among the injured in the future, there is no large public interest group opposing the insurance companies. The task to defend the rights of the injured person falls upon the small number of trial lawyers who represent persons so injured before the Courts of the State of New Jersey. Certainly as the insurance industry has a definite economic interest in this

bill, so do the trial lawyers.

The theory of no fault when initially outlined in rose colors was that the injured person could recover for economic losses without recourse to the Courts and without delay. Upon close examination these prompt benefits are, in fact, illusionary and only a small number of persons receive any benefit from the no fault law.

Under the pre-no fault system as now exists in 34 of our 50 states, any person who suffered physical injury or economic losses due to a motor vehicle accident could sue in civil court and recover these losses. It is alleged by the proponents of no fault that these persons benefit by receiving immediate economic assistance. However, this is a hollow benefit under our present no fault system. A standard policy pays all wage losses not recovered by state disability up to \$100. Currently, state disability pays \$98 per week. Therefore, the no fault insurance only pays \$2 per week. Next year when the state disability figure increases as per its formula, the no fault insurance carriers will pay nothing. In effect this wage loss benefit under the no fault insurance is illusionary. The vast majority of monies are paid by state disability not the no fault insurance company. One minor benefit is achieved by the no fault companies, that most medical bills will be paid more rapidly than prior to the enactment of this law. This does not really assist the injured party but runs to the benefit of the medical health providers who receive their monies earlier. The general public is unaffected when the health providers are paid in 4 or 6 months as opposed to 1 to 2 years.

The medical benefits of the no fault law has, in fact, spurred additional legislation between the insured injured person and his insurance company. The insurance company, after exams by specific doctors of their choosing, has increasingly refused to pay medical bills stating that these bills are unnecessary and not reasonable. The injured person is confronted with his treating doctor demanding payment stating his treatment was reasonable and necessary. The result has been many suits filed on behalf of the injured person demanding payment of medical bills.

Under the pre-no fault system persons who were at fault in an accident could recover nothing in civil court. However, these persons still had benefit to the state disability. The vast majority of the public, in excess of 80%, are now covered by Blue Cross/Blue Shield or other medical benefits. Under the pre-no fault system these medical bills have been paid by these insurance companies. Each policy, of course, differs, and it is ^{hard} ~~held~~ to generalize but most hospital bills, treating physicians expenses incurred in the hospital, and x-rays were covered.

The only benefit received by persons at fault in an accident by the no fault bill is a payment of out-patient treatment expenses.

One class of individuals receive no benefit whatsoever from the no fault legislation; that is, an increasing number of senior citizens and retired persons. Pre-no fault and presently all their medical expenses are paid for by federal health insurance programs. Our senior citizens, in fact,

lose their right to sue and receive no consideration in return.

There was one class of individuals who received benefits from the no fault law as compared to the old system. It is those unfortunate individuals, although small in number, who suffer the catastrophe of a severely disabled injury. Under the old tort law with insurance minimums being permitted the \$15,000 per person frequently was not enough coverage to adequately compensate the severely injured person. This should be corrected by raising the minimum to a realistic figure in today's money system, such as to \$100,000 per person.

In light of the minuscule benefits which are the realities of the no fault law injured persons who are not at fault in causing the accident are asked to give up their right to sue for permanent injuries, pain and suffering, and other sequel to their injuries. This law in theory takes benefits away from persons who are not at fault and give a small amount of benefits to persons who are at fault in accidents. To leave these injured persons with no recourse is unjust, unfair, and I submit undemocratic contrary to our principles and traditions of our common law system of justice. No fault is an outright "rip off" and propagandized fraud to the vast majority of our public. The pre-no fault system encouraged individual responsibility and safe driving and penalized those individuals who caused harm to others or to themselves because of their carelessness. This tort system worked for 300 years, and it should not now be drastically changed based on the flimsy evidence presented by those who intend to benefit from any "reforms", the insurance industry.

A PREPARED STATEMENT BY FREEHOLDER DIRECTOR JOHN D. MOLLOZZI

When we talk about insurance, including that provided under New Jersey's no-fault program of automobile coverage, we must always keep in mind that we are not talking simply in terms of dollars and cents - we are talking about human beings and human problems.

It is my opinion that the most glaring shortcoming of our no-fault system is its lack of a mechanism for arbitration between policy holders and reticent insurers in cases of disputed claims.

It must be regarded as a failure since every year literally thousands of New Jerseyans with legitimate insurance claims suffer humiliation, financial hardship, arbitrarily damaged credit ratings and sometimes even vicious harrassment by collection agencies because they cannot pay medical and other bills because they cannot collect from their insurance companies.

Frequently a company's failure to schedule a physical examination within a reasonable amount of time after an accident will further delay legitimate payment of claims. This too must end.

(2)

I don't, for a single moment, accept every plea of poverty uttered by auto insurance companies.

When I hear some of their arguments, I am reminded of the anecdote about the question, "How much is two and two?" being put to a mathematician, a statistician and an accountant.

"Precisely 4.0," said the mathematician. "Somewhere between 3.5 and 4.5," said the statistician. "How much do you want it to be?" the accountant asked.

It's my suspicion the accountant worked for an insurance company.

Be that as it may, I strongly believe that it would be in the best interests of both insurers and the insured if policyholders had the option to contract for certain sums of medical payment coverage (physical injury protection) as large as they wanted, instead of unlimited exposure of medical bills. In this way, insurance firms could realize greater income and drivers who wanted to obtain coverage in whatever amount they desired.

All this would greatly facilitate the goals of Personal Injury Protection (PIP) as it is ideally conceived.

(3)

However real the fiscal plight of auto insurers in New Jersey may or may not be, the fact remains that it is increasingly difficult for motorists to obtain even minimal coverage.

Being fully aware of both the problem of obtaining coverage, and in some cases, in collecting on legitimate claims, I should like to make the following suggestions.

First, that a legislative mechanism for the arbitration of disputed claims be created in order to guarantee the rapid settlement of such cases. A matter of a few hundred or even few thousand dollars may be of little consequence to an insurance company with countless millions in assets, but to the average New Jersey working man or woman, the inability to pay mounting medical bills can mean emotional heartache and financial disaster.

We must provide a fair and dependable forum where our citizens can earnestly hope of obtaining the rapid settlement of their disputed Personal Injury Protection claims.

I think the very existence of such a legal mechanism will dissuade overly tight-fisted insurers from arbitrarily withholding legitimate payment of claims.

(4)

And for the record, let me make one final observation: Private automobile transportation in New Jersey is no luxury. Because of the pathetic state of our public transit systems, it is an almost absolute necessity. Adequate insurance is vital to rational operation of private vehicles, and the state has a legal and moral obligation to make certain that it can be obtained at reasonable cost and that insurers provide fully the services for which they were chartered in the public interest.