New Jersey. Legislature. Special Committee to Investigate and Study Medical Malpractice Insurance.

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P U B L I C H E A R I N G

before the

New Jersey. Legislature.

SPECIAL COMMITTEE TO INVESTIGATE AND STUDY
MEDICAL MALPRACTICE INSURANCE.

Held:
April 21, 1976
Assembly Chamber
State House
Trenton, New Jersey

WITNESSES:

James J. Sheeran
Commissioner
Department of Insurance

Philipp K. Stern
Chief Actuary
Department of Insurance

MEMBERS OF COMMITTEE PRESENT:

Senator Martin L. Greenberg (Chairman)

Senator Joseph L. McGahn

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SENATOR MARTIN L. GREENBERG (Chairman): I welcome you all to the continuation of the Medical Malpractice Committee hearings. Today we have scheduled for testimony the representatives of the Department of Insurance of the State. The Committee has invited Commissioner Sheeran to be present with supportive staff for as much of an in-depth exploration and exchange of ideas as we can manage in the time available. For those who are present who might have an interest in this area, let me state at the outset that while no additional testimony is scheduled for today, this Committee intends to continue with the hearings and there will be further announcements of additional hearings so that additional input can be obtained; but because of the significance of the information which we hope the department has available, we thought that we should set aside a day for it alone. That is what today is all about.

We welcome you, Commissioner, and thank you for appearing.

Seated with me is Senator McGahn, who is a member of the Committee. There may be other members coming at a later time this afternoon. We have heard from some who had prior commitments; other indicated they will be present. In any event, we would like to proceed with the testimony of the Commissioner and the department. I would like to state at the outset, Commissioner, for your information that there are a couple of areas which the Committee is interested in exploring with you and hearing your views. Perhaps by way of preliminary matter, I can outline those areas very briefly.

Initially, I think the Committee would be interested in the limited experience you have had with the operation of the Reinsurance Facility, which has recently become a part of your structure, after passing both Houses and having been signed by the Governor. We would like to know how it is working, what your experience is with it and how it might bear on the problem in general. If you would limit your discussion in that area because of our time limitations, we would appreciate it.

The second area - and,frankly, one which disturbs some of us on the Committee - has to do with the question of the recent increases over the last several years in the premiums, in the rates permitted, which increases have been approved by your department after requests for increases by the various carriers. Our concern in that area is as follows: We would like to know whether or not your department is satisfied, based on the information which has been presented to you and information which you have obtained yourself, that the increases which have been approved are actuarially justified. In asking that question, we understand that you would not have granted the increases unless you thought that they were proper. But in determining that they were proper, our question really is: Are you satisfied that you have enough, that the material information which you obtained is sufficient so that you are comfortable with the increase; or is it really a guessing game, in which there are very few players so that because of the paucity of carriers available, you really were put into a situation where you had no choice? That is a significant area to us because we view as a threshold question the question of whether or not the very high rates which are presently being charged and paid are justified. It is only if the answer to that question is, yes, can the Committee get into the next and third area which we would like to discuss with you; and, that is, what modifications, if any, in the tort area, in the area of peer review among the physicians and purveyors of medical services -- what modifications, if any, might affect the rates?

We have heard testimony at length with regard to the last area; but we do not have any real hard information, and certainly not your opinion or the opinion of your department, in connection with the second area, which is of upmost concern to

this Committee because if in fact, as you have indicated in prior statements to the press and in other forums where you have appeared, we are faced with a lack of competition in an area where coverage is absolutely vital and essential and you have no choice but to take what is being offered to you, negotiating the best possible rates you can, but still wind up with a rate which you consider too high, then it seems to me that the thrust of our inquiry ought to shift from modifications of 200 years of law into a more appropriate area; and, that is, what do we do about the fact that the rates which are presently being paid are not justified by the actuarial information which is available?

If you would start by addressing the first area, we can commence; and I hope you will permit us to interject because we would like to do that from time to time. Then, since I understand you do not have a formal presentation, we can kind of have an exchange of ideas and thoughts as you go along.

Is there some opening statement that you would like to make, Senator?

SENATOR MC GAHN: No.

J A M E S J. S H E E R A N: Thank you,Mr. Chairman and Senator McGahn. I do not have a prepared text because I don't think that we will get to the root of it if we simply deal with prepared matter.

To get to your initial question, there are two general problems, as I see it, in the medical malpractice area - probably three. One is the availability of insurance. The second is the cost of that insurance. And, I think the third is whether or not there is any discrimination in the availability of the insurance as between insureds of like characteristics and risks.

Now, with the help of the Senate and Assembly we had the passage of the Medical Malpractice Reinsurance Facility. That Facility has never been in operation for us at a time when we dealt with rates, so that its effect upon our ability to deal with the rate application has not in the true sense been tested. But, in the area of availability, we have found it to be a very potent weapon. In my judgment, as a result of that legislation, medical malpractice insurance is available to all health care providers in the State of New Jersey as defined by that statute. Our recent experience is the void in hospital coverage. Because of the emergency enactment of the Reinsurance Facility - that is, putting it into operation - we have been able to provide coverage without lapse for every hospital in New Jersey. That was our first emergency. I think we will find others and I think it will prove to be equally as effective.

As it bears upon the question of rates, I have said before, and I reaffirm my position, that I believe throughout the country the medical malpractice insurance problem has been the subject of not a planned monopoly necessarily, but a monopolistic system; that is, where you do not have competition among a number of carriers seeking out the medical malpractice business in any particular area. I think examples of that would be the Argonaut coverage of our hospitals before they pulled out, leaving us with our first real emergency. I think that is when your Commission went into operation; that was when I, as Commissioner, became extremely concerned with the problem. That was followed by numerous other skirmishes or problems or emergencies.

I don't believe that the monopoly, itself, will now stand as a barrier against a prudent consideration of a rate. If you remember in the matter of the Argonaut, when it pulled out, we were left again with the position of approving a rate schedule or having the only company supplying a large part of the market pull out of our State. We didn't go along with that. As a matter of fact, as a result of the introduction of the Medical Malpractice Bill in the first instance, the Federal Insurance Company moved

in to give coverage to the hospitals that were voided by the Argonaut. Since then, we have been able to zero in on the problem. But I do believe since we can assure coverage that we will no longer have the threat of a company pulling out. A perfect example, in my judgment, of the kind of threat we have because of a void occurred with the umbrella coverage, which would be coverage from a million to three million beyond the basic limits of our policy which only covers -- Is it $1.5 million?

MR. STERN: $1.3 million.

COMMISSIONER SHEERAN: It is $1.3 million for the overage in our basic coverage covering up to $1 million. When that issue came up, we were previously covered by two insurance carriers who provided umbrella coverage. They advised us that they were pulling out of the market. When they advised us that they were pulling out of the market, we had one other carrier apply for a rate application or make a filing with us. That company asked for over double the rates that the prior carrier was getting. When the date for the expiration of the policies that were in existence by the two prior carriers was coming up, which would be, say, on a Monday - and I was meeting on a Friday to make a final determination on the issue of that rate filing - I had the Society of Anesthesiologists and the Medical Society in my office urging me to give the rates requested by the new carrier, so that they would not be left with a void. As a matter of fact, there was a threat that there would be a strike by the anesthesiologists if I did not approve those rates.

The fact was that I did not approve the rates because I thought that they were excessive under our statute. As a result of that, we had a modification in those rates between Friday and Monday that reduced the cost to physicians by about, I believe, $300,000.

SENATOR GREENBERG: You effectuated a reduction in what the demand was?

COMMISSIONER SHEERAN: In what the demand was.

SENATOR GREENBERG: And you are to be congratuled for that. My question though is ---

COMMISSIONER SHEERAN: The interesting part of that, Senator, was that that reduction in my judgment was not enough ---

SENATOR GREENBERG: That is my question.

COMMISSIONER SHEERAN: (Continuing) --- because the only experience that we had in the State of New Jersey for that coverage was a $2 payout since the date that it started, so that really the increase was based upon projections upon which we could not validly ---

SENATOR GREENBERG: Let's stay with that one for a second. You are the Commissioner of Insurance for this State and you have told us that in your view the last increase that was granted with regard to the umbrella coverage, in particular, was in excess of that which, if you had the freedom of choice and others to choose from and perhaps had competition at work, you would have granted had you had the benefits flowing from competition. But you granted it?

COMMISSIONER SHEERAN: Yes.

SENATOR GREENBERG: And people are paying it and ultimately the consumer, in this case the patient, the citizen, is paying it. That is one of the assumptions on which this Commission is functioning. We are assuming, at least in part, that actuarially some of the increases are not justified. We recognize the fact that nevertheless you have had a need to grant them after you have modified, in this particular case, the demand from 100 percent increase to something less than that. I think you cut it in half or something close to that.

How then can this Commission intelligently discuss modifications in the area of a tort law or relationship between doctors and patients or supervision and control over doctors or any of the myriad of areas which have been discussed before this Commission and which have resulted in changes in law in Illinois and in California and in other states, unless and until we know from you that the rate structure is presently justified by the facts; that is, it is actuarially sound? It is in that area where we would like your opinion to a greater extent than we have had up until this time. You have your actuary here, I understand - your Chief Actuary. If you could discuss that area with us a little bit more, it would be very, very helpful.

COMMISSIONER SHEERAN: If I can just give you my opinion as to what you have just discussed and then let the Actuary speak to you as well, I would appreciate that.

First of all, I agree with what you have just said about making changes in the tort law before you are certain that the increase in medical malpractice costs is a justified increase - that is, in the total sum that we have seen it, which has been rather astronomical - and that you should not change the tort rights of individuals. I agree with that totally.

What we are doing, not only here in New Jersey but through the National Association of Insurance Commissioners, is making a nationwide study of our claims results. Through those studies, we are identifying as best we can what the so-called long tail is, which to me, Senator, I have often said reminds me of the people who sit in the grandstand of a baseball game and talk about a spit ball. Nobody knows what in the hell it is, but they keep talking about a spit ball. And I don't think anyone really knows what this so-called long tail is and what kinds of dollars to put on this so-called long tail and what in fact it should be reserved for. So I do believe that the kinds of study that we are making where we are identifying the percentage of claims that are settled within x years, how long it takes to settle all pending claims on a nationwide basis, what the average reporting time is for an infant claim and for an adult claim -- I might just say parenthetically, for an infant claim, it has been found after a study of 4300 cases so far that the great majority of infant claims are reported within two years. As a matter of fact, 84 percent of infant claims are reported within the present two-year statute, although we know it is much greater. As far as adult claims are concerned, I think it works out to 86 percent. So that the questions about changes in the statute because of unknown claims - the problem of the proverbial pad or the spongue left in the abdominal cavity or what have you -- That problem is no longer as big as it appeared to me when we first heard about it. But as this study develops and as we get a much more large base upon which to make those judgments, we will find, I think, a better handle on which to make the kinds of considerations you are talking about - tort law changes, etc., and the statute of limitations particularly.

We are also in this study identifying the particular specialties and the incidences of medical malpractice concerning each particular speciality. We are determining where the accidents are occurring, whether they are happening in an operating room, in a private physician's office as the result of a diagnosis, or whatever it may be. We are determining that by specialty, etc. Through that, I think we will get a much better handle.

Now, the actuary who will now talk to you, I think will tell you his ability to work with what we have now. I think he will support what you said, that whatever we do allow, we allow with the best information available at the time. This is Mr. Philipp Stern, about whom I always try to make particular note that he is one of the

finest actuaries that I have had the pleasure to meet and do business with.

SENATOR GREENBERG: The Commission agrees.

P H I L I P P K. S T E R N: Mr. Chairman and Senator McGahn, I believe you want me to speak to the question of whether we are satisfied that the present rates are justified actuarially and whether we have all the information we need to be satisfied with the results.

My answer is, yes; to the extent that the rate-making principles can be applied under present conditions, we have all the information we need. If we needed more, we could ask for it and we would get it.

The problem in making rates in general, and particuarly rates for malpractice insurance, is simply this: Rate-making is based on the assumption that past experience is the best indicator of future needs for losses and expenses. As long as we can expect the future will be very similar to the past, this principle can be applied and past experience can be converted into future rates. There are strong indications that there has been a big change in the malpractice field, that there are more claims and that rates, in general, are higher than they used to be. We don't know how much of a change has actually occurred. We still take past experience, modified by some judgment, and that is the basis for our rates.

SENATOR GREENBERG: Let me interrupt you for a second. The past experience alone does not justify the substantial increases in rates? That is a question.

MR. STERN: That is correct. Past experience has to be modified. There are basically two modifiers. One is to adjust the latest experience on the basis of observed developments of past experience. And the second is to reflect in the rates what the expected prospective loss levels and expense levels are. We are living in a period of inflation. Obviously, we have to recognize the fact that 1970 and '71 losses or, I should say, incidents will cost more to settle in the years to come than they cost in the past. These are inflation-trend factors which are used generally in rate-making, particularly in liability insurance today.

I don't think we have done too badly in the past in predicting the future in other lines of insurance. I have a lot of confidence that our estimates have been in the right ball park. Of course, if we are making rates today on the basis of inflationary conditions that prevailed in 1975, for example, and we read yesterday's New York Times which tells us on the front page the rate of inflation for 1976 so far has been 3.7 percent, that could make our future estimates very wrong, for the same article said that is too good to be true.

These are the points which have to be taken into account in rate-making. Rate-making is not an exact science. It is a mixture of arithmetic and art.

SENATOR GREENBERG: When will we know whether or not the rate increase granted in the umbrella situation which the Commissioner alluded to in his remarks was correct; that is, whether it was accurately based upon the information available? Will we ever know?

MR. STERN: I am glad, Senator, you asked that question, "Will we ever know?" This is a very highly specialized area of rate-making. It is a very narrow base. It deals with large losses, losses over one million - three million, over the basic limit. The occurrence of one loss can mean the difference between a profit or a loss over many years of premiums. This is not an area that can be measured accurately on the basis of one state's experience. The support which was used in the filing was countrywide data and even that is highly unreliable. There were loads of assumptions and distributions involved in the calculations and, if you give the same set of figures to ten

different actuaries, they are going to come up with different answers. The fact is - I just found out today again - that company, Crumm and Foster, as well as other companies, do not serve today umbrella coverage to any new customer. They had a telegram from the hospital saying that they are unable to obtain umbrella coverage. I called the hospital and I spoke to the administrator. He cannot get umbrella coverage any place. I don't know whether this is again a conspiracy not to sell it or whether the companies in some business judgment decided they have enough liability and they don't want to take more of it. But we have to assume that in the free enterprise system the companies are motivated by the profit interest.

SENATOR GREENBERG: We have historical and empirical evidence that in spite of that motivation, if industry or companies wish to involve themselves in an unlawful agreement - and I am not suggesting that one exists here - but if they choose to do so, they can arbitrarily affect that which would have resulted from a free play of competition. Now we don't have competition in this area and you were faced in the umbrella situation with a demand or a request for a 100 percent plus increase in rates. As the result of the Commissioner's position where in spite of the demand and request and plea by those who would be covered by such insurance that he grant that, he refused to do so because he didn't feel it was justified, ultimately over a weekend of negotiation, he settled - and I use that word appropriately, I think - settled at a figure representing about 50 percent of what the request was. I view that - and I think the Commissioner does too - as a settlement based upon economic power, based upon what was available and based upon a whole myriad of factors which really have nothing to do with actuarial soundness. My question is: What would have happened if he had held out for another week, which he couldn't do? Would it have been even lower? The Commissioner is unhappy, he said, with the amount that he did approve. He thought the number should be lower, but he had no choice at that point; having already saved 50 percent, it was in the best interest of all parties for him to grant it. Our question is: Where does that leave us when we look to you as the body with all of the expertise in terms of determining what is actuarially sound and you are confronted with a situation where you have a whole lot of guessing to do, probably more so than in most areas, compounded by a lack of competition? Can we rely upon the actuarial soundness of the rates presently in existence?

MR. STERN: The answer is simply, no. There is no way of determining actuarially sound rates for this very limited coverage where you are buying coverage of millions of dollars for a few hundred or a couple of thousand dollars. I don't think there is an actuarially sound basis. There is a basis for a company to take a spread of business and hope that it will come out even. But, with our limited experience in New Jersey, we couldn't possibly say, based on New Jersey experience any rate is justified. There is a highly specialized area which does not lend itself to any exact calculation. But I think your greater area of concern is the rates the physicians and surgeons pay for their regular coverage, the basic coverage.

SENATOR GREENBERG: Yes.

MR. STERN: Here we are dealing with an entirely different area. We are dealing with some substantial volume of experience and experience which has been collected over a number of years in accordance with the directive of the Commissioner of Insurance - statistical agents. We have data which show what the development of losses has been in the past and these are the data which are used. Our difficulty here is the degree of reliance we can have that past experience will repeat itself in the future.

SENATOR GREENBERG: Excuse me. If you stop right there and you limit it to past

experience, the present rates would not be justified. Do you agree with that statement?

MR. STERN: Yes.

SENATOR GREENBERG: What additional factors justify the increased rates?

MR. STERN: Well, the statute requires that in making of rates consideration is given to past and prospective loss and expense experience. You never use past experience without looking at prospective experience. Sometimes you may decide that the prospective loss levels will be lower than the past. Usually for the last thirty years or so it has been up because of inflation.

SENATOR GREENBERG: I think we can forget that possibility in terms of our present considerations.

MR. STERN: What I am trying to say is that almost any rate, if it were entirely based on past experience, would be lower than it actually is. That applies to any kind of insurance we are dealing with - fire insurance or automobile insurance, anything you can think of. You always have to adjust it.

SENATOR GREENBERG: So I guess we are really talking about the degree of increase and the degree of adjustment. Why is it disproportionately higher than other rates in the insurance industry and, more importantly, why has it gone so astronomically high in the area of medical malpractice insurance, based merely on future expectations? What factors justify that in your mind?

MR. STERN: Medical malpractice insurance is different in two respects from, let's say, automobile insurance. The development of losses is higher than it is on other lines of liability insurance. That is that long tail they are talking about. The tail is not as long as some people may want you to believe, but it is substantial in the first few years. It simply makes you feel very uncomfortable if you take losses, say, and multiply them by a factor of two or three because you know that within a period of two or three years, the losses will be double or triple what they are in the first year. But these are adjustments, in my opinion, which are justified by available experience.

SENATOR GOLDBERG: I think the figures indicate that claims will be made, if they are going to be made, within a period of three or four years, to the extent of in excess of 90 percent of those claims which are ultimately made; that is, 90 percent of the claims which are going to be made are made within three or four years of the issuance of the policy. If that is correct and we have experience for three or four years - we have more than that in terms of the information available to you - that should not be a guesstimate. That should be hard figures which you have available. Before I ask my next question, is that correct?

MR. STERN: Yes, but I have to explain to you how the experience is used. In order to determine the overall required premium level, normally you take either the latest year or the latest two years of actual experience; and you have to adjust those two years to a level of maturity, based on the development of preceding years. So now, if you look at the years 1970 and 1971 and 1974, because the other years are too immature, you are looking at data which are past. We know that conditions have changed. We have to adjust these years by the observed developments of prior years and that is where the guess work comes in because we don't know whether the developments of those prior years still hold true for the future. Then you have the problem of adjusting those years, which are already three or four years old, for the known effect of inflation and loss costs.

Really the difference between rate-making in malpractice insurance and, let's say, automobile,private-passenger liability rate-making, is a matter of degree, not a

matter of kind of problem. The problem is bigger in malpractice, but it is the same problem.

When we talk about the high rates for medical malpractice, I think we ought to keep a perspective of liability rates in general. A surgeon who may have an annual income of $500,000, for him to pay $18,000 for insurance is probably easier than for a resident of Newark who in order to drive to work has to have a car and whose premium may be $600 or $800 a year, but who only earns about $7,000. I think we really should look at these things in the perspective of the total picture of liability insurance.

SENATOR GREENBERG: But a surgeon who is just beginning his practice pays the same amount of premium.

MR. STERN: That is true.

SENATOR GREENBERG: And he is not making a half million dollars.

MR. STERN: Right.

SENATOR GREENBERG: Incidentally, I gather from the doctors that I hear from that they are not very comfortable with the increases in premiums and that it isn't all that simple for them to pay. Witness the strikes in California, the threatened strike in New York, and the one threatened in this State. So apparently it is hurting. I grant you they can pass it on to the ultimate consumer, the patient. Their problem though is obviously one in which they have difficulty either in justifying the rate themselves, based upon on their own knowledge of what they are doing and what their exposure is, plus their inability to pay what they consider to be exorbitant rates. I am not prepared, frankly, to accept the fact that the rates are reasonable, based on the income levels of the physicians. We have a physician on our Commission and I believe that that is his view as well. I don't know.

SENATOR MC GAHN: Senator, let me correct one statement. I think it is assumed, and incorrectly so, that the increased cost of practicing medicine with higher malpractic rates will be ultimately passed on to the consumer. This is not entirely correct because Medicaid and Medicare will not reimburse a physician for increased costs of doing business nor will Blue Shield in the State of New Jersey if a physician has a contract with them. I would say today that the average physician in the State is dependent upon a third party carrier for at least 50 to 80 percent of his practice. Any physician who has 20 percent of private practice where he can charge what the traffic bears is unusual. Therefore, it would have to be the individual who does not have third party coverage that would be bearing the brunt of this. In essence, actually, the physician is absorbing most of this cost increase. I might also say I think there are very few surgeons in this State who are making $500,000.

However, Mr. Stern, we were talking about comparing medical malpractice insurance with other types of liability insurance. A very important question is: Is a larger part of the insurance dollar spent on both proving and defending malpractice cases than is spent in other areas of casualty insurance? How much is it? What is the percent that the claimant or the plaintiff is actually getting out of the premium dollar as against no-fault automobile insurance, fire insurance or various things like that?

MR. STERN: When it comes to the dollars the plaintiff retains after he gets his settlement, I have no information on that. That is outside of the insurance statistics area. We make rates to reflect the losses and expenses of the insurance carrier. It is probably true that the demands of the plaintiff are influenced by the fact that part of the money has to go to his attorney. There is no question about that. But I have no direct information on the extent of those payments.

Our statistics do show the so-called allocated loss adjustment expenses; that is, the expenses a company incurs in defending claims in suit. From my observation after looking at individual transaction reports, I have definitely the impression that the allocated loss adjustment expense represents a bigger portion of the loss dollar on medical malpractice than on lines such as automobile liability insurance. We don't have any overall statistics because we get the data on a combined basis. We could ask for it on a separate basis, but it would not affect our rate-making procedure or the answers because in rate-making we have to provide for both losses and expenses.

SENATOR MC GAHN: I think, as you said, in setting a rate, the trending is actually an art rather than a science.

MR. STERN: Yes, sir.

SENATOR MC GAHN: Certainly, reserves must be aside for incidents that may have occurred, the claims for which have not been reported at this particular time because the average claim may take anywhere from five to seven years to process. What we are talking about is settlement in dollars five or seven years in the future. By the same token, of course, reserves set aside can be invested by that insurance company. Is the return on their investment taken into consideration in the rate-setting mechanism?

MR. STERN: Definitely, yes. New Jersey has a very special situation. We have a decision by the Commissioner in 1972, which was confirmed by the Supreme Court in the so-called IRB Rate Case, which specifically provides that investment income on policyholder-supplied funds, which are loss reserves and premium reserves, has to be recognized in rate-making. For example, in Chubb filing, we calculated the funds available for investment, applied to that the average return of Federal Insurance Company's investment portfolio, and that amount was deducted from the revenue the company is entitled to.

COMMISSIONER SHEERAN: If you don't mind, Senator, I would like to respond to the question that you asked concerning the percentage of the insurance dollar that is going to the patient or the injured party as compared to that in an automobile case. First of all, I think New Jersey through your legislation has one of the most progressive systems concerning contingency fees. Those contingency fees are based upon a percentage which is established by court rule as to what a plaintiff's lawyer will get in a contingency matter. That does not vary and is not different in an automobile case or a medical malpractice case.

As far as the costs for defending a medical malpractice case, my experience from watching others who have been involved in that practice indicates that there are higher costs involved in defense, as well as in the plaintiff's end, from the standpoint of experts, because it is a more sophisticated case, from the standpoint of the time involved in preparation for the case, etc. But we had a study made, as I mentioned before, of 4,300 odd cases on a nationwide basis. We found that the average cost or indemnity for an injured party is $6,672 and the average expense per defendant - that is for defending that case, for providing a defense - is $1,432. Things sometimes get distorted when we look at the sensational million-dollar cases, etc. I think that does distort our figures.

I would like to also at this time point out that the rates for physicians in New Jersey run right now from a figure of $838 annual premium for a psychiatrist to $18,878 for a neurosurgeon, which would amount to an average rate, if you were to average that cost equally among physicians of all different specialties, of $1,612 a year. When you look at it from that perspective, it is not as foreboding as it is when you look at the very high-risk specialties.

I also think it is important to note, for example, that in our State while a neurosurgeon pays $18,878, in the State of Illinois — and I was just with the Commissioner at a meeting in which he said that their neurosurgeons are paying over $30,000. I believe that these differences, even as among states, indicate that there is a lack to some degree of a science to this whole process. I think if you looked at our next door neighbor, you would find differences between the average charge for all the same specialties. In Connecticut, it would be different. In New York, it would be different. I don't believe that there is that great disparity and difference between states. You spoke about California. I think one of the reasons that California was involved in the strike situation was that they have there what they call an open rating system and, under the open rating system, they simply file the rates and then charge them. And, if you have what is a basic monopoly as we have here - there is no other competition and no one sitting in the wings to write the business - you would have the same situation here. We don't have it. I think our rate differences are substantial.

SENATOR GREENBERG: And that accounts somewhat for the difference in rates, which are also, I assume, based upon the fact that we do not have an ad damnum clause in a complaint filed by an attorney.

COMMISSIONER SHEERAN: That is correct. That is another kind of reform that has already been taken by our court system.

SENATOR GREENBERG: In spite of that, are you satisfied as the Commissioner of this department, that the rates which, as Mr. Stern says, are not based on prior experience exclusively, because if they were, they would be much lower than they are -- are you satisfied that the rates accurately reflect the best available actuarial data or are you really guessing?

COMMISSIONER SHEERAN: I am not guessing. I am relying upon the expertise that is provided to me as an Insurance Commissioner. I can't substitute that. But I must say that as a business person sitting in the chair in which I have been privileged to sit, my business judgment makes me question whether or not we have reached the bottom of this problem. I don't think it has bottomed out. As a result of that, I have taken an active interest in this nationwide study that is being made. I think the information being developed there will give us a greater view of what is really happening, where the accidents are occurring, etc. I have strong belief that if we can identify the areas of accident or injury, where the alleged malpractices or actual malpractices are occurring through identification of the origin of a claim, for example, working with the medical profession and the hospital professional people, and get preventive measures, we would do far more good than we would by tampering with the rights of individuals who are the victims of these systems.

SENATOR GREENBERG: How long will it take you to compile that information?

COMMISSIONER SHEERAN: I think before the end of the year we will have - that is, by this year end - a far greater data base than the initial report, which is available for your review.

SENATOR GREENBERG: All right. Except that the information you are going to obtain by the end of the year will not, in reality or in any degree of specificity - it cannot, it is impossible - deal with the expectations of the increased recoveries over the next several years. All you can do there is look back to see what happened and make a guess, or an intelligent estimate. And so, my next question is, if you have been wrong, if Mr. Stern has been wrong, based on all of the information available but nevertheless wrong, the money which is being paid in the form of these what I like to call "astronomical premiums" will have been paid to the carriers, will become part of a reserve which will never be utilized for the purpose for which it was granted, and my ultimate question is, when do we determine that that is a fact, if it is a fact, if ever?

COMMISSIONER SHEERAN: Senator, I believe that you zeroed in, very properly, on the exact question that ought to be examined - whether or not the reserves, that is the money that is set aside to pay claims, are being inaccurately determined. I will answer your question specifically. I say that under our present system we will not find that out unless we follow it claim-by-claim and determine as those claims develop whether the actual reserve amount does track with the actual amount that has been paid. It is a laborious job and it will be done and is being done by this study, for example.

We have a reporting form that we are suggesting be used in every state and by every medical malpractice carrier, that identifies a lot of information as to the amount that was reserved, what was finally paid, what was the specialty, where the accident occurred, etc. That is going to be helpful.

But let me just give you two incidences that I think -- I will not speak as to its reliability concerning the base information because it is not developed by our Department. I told you before, the New Jersey Hospital Association is covered by the Argonaut Insurance Company. The Hospital Association made its own study and I am going to read one portion of their conclusions. "Argonaut has consistently over-estimated their claims reserves. Our studies indicate that three hundred and seventy seven claims were reserved and then subsequently settled during the period of August 31, 1971 to June 21, 1974. The total reserves were 2.68 times, or 268% greater than the settlement amount. In other words, Argonaut estimated their reserves 2.68 times greater than necessary."

SENATOR GREENBERG: Somebody approved that estimate in granting the rates then in effect.

COMMISSIONER SHEERAN: Now, as you see, you are not talking about the long tail. They are looking back at the actual experience, from what I can gather from this study - what they had put down in reserve and set aside by way of money and what they had actually paid out in those three hundred and seventy seven cases.

Then my good friend, who is the Commissioner of Insurance in North Carolina, in December of 1974, gave a report as of January 1975 in which he said, "Evidence was clear that reserves for pending claims were grossly overstated. Hard, historical evidence proves that this company had actually paid out in dollars, for claims and loss adjustment expenses, less than 20% of the premium dollars collected over the past 17 years. The 82% increase is therefore excessive." He goes on - "Malpractice insurance is just as essential to the people of North Carolina as automobile liability insurance. Since there is no reinsurance law for malpractice requiring the companies

to write this insurance, I am forced to enter a temporary order allowing the 82% increase." That is the dilemma that faces people with regulatory responsibilities.

Again, I know that Commissioner Ingram was not only faced with that issue but since then he has been faced with other increases and has an identifiable carrier who does the gross amount of business in that State. Again, he has an automobile reinsurance facility and can deal with the automobile market, but I don't believe he, yet, has a reinsurance facility similar to the one you have given to us as a tool to work with.

SENATOR MC GAHN: I think that, if I understood you correctly, what you are actually saying is, the chief problem here is keeping down the incidence of adverse incidents so that there will not be an increase in claims made per year.

At the present time, the rate of increased claims per year is in the neighborhood of maybe 8% or 10%, depending upon what state we are talking about. As long as it continues to this degree and these claims are valid claims - and I think, today, most of the claims are much more valid than they were before because you have competent, expert attorneys handling these claims that probably would reject them otherwide - this is, again, one of the difficulties in attempting to, basically, project what is necessary as far as reserves are concerned in the future.

One other thing I think you said that is very interesting as far as I am concerned - and I think this is something that I would like to ask you about - concerns the present classification at this time between supposedly high-risk physicians and the amount of malpractice premiums they have to pay. Do you think in this State, with the experience we have in these various classifications or categories, that these dollar amounts are justified?

I believe you said that if these were evened out between everybody in the State, the individual would be paying, probably, an average of about $1,600 or $1,700 for his malpractice premium.

COMMISSIONER SHEERAN: Doctor, I think that what we have really found here is that in the medical profession itself there is a tremendous amount of disagreement as to the sharing of that responsibility because the general practitioner, who generally refers to the high-risk specialist, says there is a great disparity between the amount of money a general practitioner makes compared to what a neurosurgeon makes on an annual basis, and, therefore, he rejects the thought, within the framework of the medical profession, towards a sharing of that rate.

But, what I said is accurate. The average rate would be about $1,600 if you were to spread it across the board. Now, that is not acceptable. But if you think about the small base, for example, that a neurosurgeon sits in - we have approximately 40 in the State, give or take a few - they are paying eighteen thousand some odd dollars. Well, it takes one serious incident to really throw that number askew, you see. Even one serious injury from that group of practitioners - a very serious injury - could make that rate look totally inadequate.

Now, we did, through our own mechanisms, in this last rate consideration, give some aid to those high-risk professions because in an insurance dollar, there is always the amount that is set aside for payment of the expenses, for putting the business on the books, paying commissions, etc., and there is also an amount set aside for the payment of claims.

In medical malpractice, Phil, what is the breakdown between the two?

MR. STERN: Approximately 84% goes for losses and 16% goes for expenses.

COMMISSIONER SHEERAN: So, it is 85% to 16%. Now, if you, for example, were to take the neurosurgeon and take the 16% of the $18,000 that the person has

to pay for generally the same service that a psychiatrist gets when he has a bill of $800, you find at least a ten-fold distortion in the amount that that neurosurgeon is paying for the service of putting the business on the books, or for commission.

So, we developed an expense constant, so that we brought that disparity together and that is a theory used, probably, for one of the first times in the country. It is something that we intend to try to develop even in our automobile business because of the great differences between individual policies. The seventeen-year-old person pays maybe six or seven, or more, times more than the middle-aged person for the same coverage. So, there is a lot of validity to that and we have taken that approach.

But, I would say, yes, you could take the burden off the high-risk professional by doing that but you would have a terrible battle within the profession.

SENATOR MC GAHN: Well, I recognize that and I, as a matter of fact, support that concept. What I actually was asking was, whether the rates that are charged in New Jersey, per high-risk specialty, are based upon the experience in New Jersey or whether they, in fact, are based upon some of the experiences in other states as far as high-risk specialists are concerned.

COMMISSIONER SHEERAN: I will ask my actuary to answer that.

MR. STERN: We went inbetween. We used New Jersey partly and partly countrywide.

SENATOR GREENBERG: Commissioner, the next time you get a request for a rate increase - you have in your arsenal now a reinsurance facility - and you are unhappy with the negotiations and you reach a point where you were at with the umbrella situation - that is, at a point where they are as low as they are going to go but they are still too high for you - what will you do?

COMMISSIONER SHEERAN: I will be in a position to hold out until such time as we get the data that we require in order to make an intelligent evaluation. That is not going to take away the problem, again, of looking into the future as far as the reserves are concerned - that is, the so-called "long tail" - unless, in the meantime, we are better able to identify what the so-called "long tail" means.

SENATOR GREENBERG: If you are not in a better position to identify it and you still have the long tail definition problem, so that you are really guessing in an area where you prefer not to guess, but you are still guessing, what will the existence of the facility do for you? It will make available insurance, but what will it do for you in terms of your rate setting?

COMMISSIONER SHEERAN: All right. If the applying insurance company gives a proposed rate that I believe is not justified, they are not now in the position, as they were before, to say, "If you don't give us the rate increase that we have demanded, we will walk out of the State", such as happened in North Carolina with Commissioner Ingram. We will be able to hold out and insist on the best development of data possible at that particular time. And we will do that.

I don't intend to simply go ahead and give a rate if we have the ability to hold out until we get the necessary data, or the best available data at that time.

SENATOR GREENBERG: Well, then, are you saying that the question of availability no longer is a problem as a result of the reinsurance facility? Availability will be there; you are saying that?

COMMISSIONER SHEERAN: I am saying that and, of course, I am not saying there is no problem. But we have eliminated the danger of no availability and that is the first step, in my judgment, of putting a control on medical malpractice costs.

SENATOR GREENBERG: All right. Now, I am not going to assume that you do

not put together the necessary information to make you comfortable with the reserve request, or long tail situation, how will you make a determination then on what the rate should be?

COMMISSIONER SHEERAN: Again, I will have to rely - as I will - upon my actuarial expertise. But what I am saying to you is that my actuary will be in a better position to demand and develop a stronger base of information, if he deems that necessary. I have to let him speak to that. I do rely on that expertise.

SENATOR MC GAHN: Commissioner, assuming that you do have the information, but assuming the cost becomes prohibitive regardless of the data that you may or may not be able to make that determination upon in a free enterprise system and under the statutes as far as rate-making is concerned, do you have any alternative to that situation if the cost gets to the point where it is prohibitive?

COMMISSIONER SHEERAN: Yes, I have, Senator, and the alternative, briefly, is a state system providing medical malpractice insurance. That matter has already been discussed with the Governor's counsel and with members of the Governor's staff and other members of the Cabinet. I think that we should deal with the free enterprise system if that system does provide us, in a reasonable way, in a competitive fashion, the kind of coverage that we need. However, if it fails to do that, I believe it becomes the obligation of the state to privide coverage, such as this, that will protect those who are injured through licensed professionals.

SENATOR GREENBERG: Would you give us an idea of -- Give us just a little more detail on that; put a little meat on that skeleton for us.

COMMISSIONER SHEERAN: All right. What I have done, so far, in my meetings with Governor's counsel and his representative, is ask for some funding so that I could make an in-depth study. But the basic thought is to protect the provider, the physician, hospital, whoever it may be, against the loss of reserves if the guessing game is incorrect.

One of the thoughts that I have projected is to take, perhaps, the first three years of the existence of a state facility, using the same rate base as established in the commercial market, and once we have built up reserves - which you have to know we can do in that period because claims develop slowly - we would build up a substantial sum of money and then after that period, we would then deal on a claims-paid basis. It is merely a suggestion. I am not setting an actuarial system up.

But, we would look at the past year's results. Let's say, right now, look at 1975, at the exact amount of dollars that were paid out for expenses, for claims, and for claims adjustment expense, put a small factor on there for inflationary trend - whatever that may be - and then divide that among the physician base or the health care provider base that you are discussing in any particular coverage.

Now, I am convinced that we would then develop a much lower rate and each year you would look at your last year's experience and collect enough in your second year's premium to have covered your loss, plus another factor, anticipating there will be some increase because of inflation, or whatever.

By doing that, I believe that, one, we will never lose money because there has been too much placed in the reserve. All of us must know that if the reserve is overstated it eventually will turn into a profit position with the private insurance carrier.

So, I think we can eleiminate that and we can protect our physicians and other health care providers through that system.

SENATOR GREENBERG: Would you make it mandatory that providers of health service participate in this program?

COMMISSIONER SHEERAN: My personal opinion, without an in-depth study, just an idea - which is really all this amounts to - is that that would probably be a necessary ingredient because in our State we have "x" amount of physicians that are generally working to provide the services to the pupulation of this State. That means if a new physician is starting, for example, he will have no claims; he will be paying the claims of those who may have died in the previous year. But, we will cover the entire system that way. We will have no guessing games concerning reserves. We will build up a reserve and if we find that the money collected in any particular year is inadequate, we will just simply make it up the following year without playing the guessing game.

SENATOR GREENBERG: Who would administer such a program?

COMMISSIONER SHEERAN: Well, again, without an in-depth study, it would be my suggestion that the private sector administer it. You merely cost the loss portion of the problem upon this facility, which is really in the nature of a cooperative. But, for example, Federal is very, very capable; they are a very fine insurance company presently servicing the industry.

When the Hospital Exchange started their new company, they used Federal to service their claims, develop their policy information, and put the business on the books, etc. I think you could do the same thing here. That would be the most desirable course to take, setting forth a reasonable profit for that service.

SENATOR GREENBERG: Has this concept - that is, a state-run, if you will, insurance facility for medical malpractice - been implemented or set in motion in any other jurisdiction in this country?

COMMISSIONER SHEERAN: I know of none where it has been set in motion, or contemplated.

SENATOR GREENBERG: Have you had any discussions concerning this matter with anyone in the industry?

COMMISSIONER SHEERAN: None, except with representatives of the Medical Society, who were present during a discussion concerning that matter.

SENATOR MC GAHN: Commissioner, I think the concept has not been put forth in this country as far as states are concerned. However, it has been implemented in New York State by physicians themselves as of last July, I believe, with the Medical Insurance Mutual Liability Insurance Company - or something like that - where 15,000 members joined up at $1,750 a year. I think that is basically the same concept they were utilizing, hoping to come up with, the first year, about $70 million and figuring that in retention losses that the insurance company would normally have, they could cut it down to about 6%, from about 11% to 30%, saving $5 million that could be put into a reserve fund and investments upon that, which would build up their reserve funds in the future.

COMMISSIONER SHEERAN: Yes, Doctor, I think there is some similarity there. You made a statement before about the zeroing in on the areas of fault in medical malpractice matters, and I agree, but I must say that in discussing this state-run facility with Governor's counsel and other members of his Cabinet, it is my opinion that there was a tripartite kind of problem that we should deal with. We should look for abuses, yes, in the legal profession where we may find them concerning this particular problem. We should look in the medical profession for those who may be the incompetents of the profession, who are involved in more than just an occasional or an accidental injury. I think we should look at the regulator, at our Department, and see what we can do to improve the system. I think all working together, yes, there is a much better answer than the present one.

SENATOR GREENBERG: Commissioner, let's make another assumption. Let's

assume that you are wrong and that I am wrong and that, in fact, even a state facility would result, ultimately, in very, very high premiums, somewhere around where they are now, and in ever increasing numbers in years to come. Because as Mr. Stern says, that is the wave of the future and that is what he senses, that there will be larger and larger recoveries and people are becoming more and more claims conscious and there is, in fact, an increase in malpractice claims filed and perhaps an increase in malpractice incidents. Let's assume all of those things. Based upon the information which has been supplied to you to justify the rates which are presently in existence, do you have any opinions for us? Can you give us any of your thoughts with regard to areas in which any modification in the existing tort law would result in a reduction - and I would direct you specifically to the question of assuming it is constitutional - of limitations on recovery, statute of limitations, the tail area which we have discussed, or any other concepts of tort law which may have been brought to your attention, as a primary or significant cause for the high rates?

COMMISSIONER SHEERAN: Other states have made the kind of changes you are discussing and I know of no significant rate decrease, or even a stabilizing of the rate problem as a result of those kinds of changes.

In New York, even the medical profession's owned company that was referred to by Senator McGahn gave a 5% rate consideration for substantial changes in the tort liability system, which did take away substantial rights of individuals. I believe that that 5% consideration is really hard to identify because you have so much speculation in the rate itself. It is just hidden in the problem and it is not significant enough to make those kinds of changes. I can't think of any, in my judgment, that would justify change without looking at a specific recommendation.

I know of no specific recommendation that has made sense. For example, the question of statute of limitations - I think we lose sight of the fact that, in fact, we do have a two year statute of limitations and the only time that we change or modify that is when there is an actual factfinding that the injury complained of could not have been known by the plaintiff within the statute of limitations.

So, that is reasonable, it seems to me. If the court makes an error in making a factfinding, we do have areas of appeal, etc. Even in the matter of an excess of award, - as you know, Senators, both of you - there has not been a malpractice claim in excess of $300 thousand in the State of New Jersey.

SENATOR GREENBERG: You mean no judgment?

COMMISSIONER SHEERAN: No judgment, correct. Now, if we put a limit of $50 thousand, for example, on malpractice recoveries - or $100 thousand - then it seems reasonable to me to put that kind of limit on all tort liability. Because there is no question that the automobile driver, the person who pays his automobile insurance, suffers tremendously from the load of the cost of insurance. We could make a substantial decrease in automobile insurance by making the same kinds of adjustments.

SENATOR GREENBERG: If there is a relationship between the premium and the award?

COMMISSIONER SHEERAN: Yes.

SENATOR GREENBERG: I don't know whether or not a cap on $100 thousand, or one-quarter of a million dollars will result in a reduced premium, do you?

COMMISSIONER SHEERAN: Again, I said we haven't had more than a $300 thousand recovery. We have had automobile recoveries much higher than that in this State, as you know.

I question, very strongly, that those kinds of changes will mean anything except the denial of a right to an individual. I cannot imagaine one professional,

whether it be doctor, lawyer, accountant, businessman - whatever profession it is - and who is paraplegic at age 30 with a family of six, that ought to be capped off at some figure like that. The cost of just maintaining that person is going to be more than $100 thousand.

The cases that are referred to are generally supportable. In our court system if there is an excessive award there is a system for contesting that award, as you know. And that is where it ought to be contested, where the facts in every particular case speak for themselves as to the adequacy or inadequacy of an award.

SENATOR GREENBERG: Commissioner, what next critical period and what next critical matter do you anticipate coming before you which will affect this situation - that is, dealing with the medical malpractice question - that you think we should be alerted to now?

COMMISSIONER SHEERAN: Well, I think we ought to have a timeframe for developing whatever information is necessary and making whatever studies the commission may deem appropriate, or the Governor's office may deem to be appropriate, before the next rate application for physicians' medical malpractice liability insurance.

SENATOR GREENBERG: When will that be?

COMMISSIONER SHEERAN: When will that be, Phil?

MR. STERN: We can expect it sometime in August.

COMMISSIONER SHEERAN: It will be filed sometime in August and it will be acted upon sometime in November, I guess. Is that when it goes into effect?

MR. STERN: October.

COMMISSIONER SHEERAN: October. So, the time is not too long, but even getting into a state facility, I believe you could move quickly and be prepared for that sort of an emergency anyhow if the rate structure proves to be totally out of order. We could be geared up to move in that direction if necessary.

SENATOR MC GAHN: I think, again, I would like to comment upon the question that the Chairman asked concerning the basic changes that should be made in the tort liability system as far as New Jersey is concerned.

Addressing the res ipse factor, I think, really, in essence, the discovery rule, very, very honestly, is really not necessary. It is not basically applicable.

As far as the statute of limitations is concerned, unfortunately, at the time we enacted the age of majority at age 18, that section that dealt with infants - insofar as the statute of limitations and medical injury was concerned - we permitted to remain at age 21. So, right now, an infant can bring suit 23 years, minus 1 day. Since I think all testimony that has been elicited so far and that we have been familiar with shows that certainly most suits are filed on the part of infants within five years, I think that a reasonable change there might be 10 years, or 8 years, or 7 years, or something like that in that particular circumstance only. I think that is one area there --

I don't think, personally - and I agree with the Chairman - that this is related to, should I say, the cost of insurance, as far as that is concerned. I think it has been stated that the contingency fee arrangement has been set by the rule of the court in New Jersey, so this is no longer a problem.

The ad damnum clause we do not have in the State of New Jersey. There has not been, in the State of New Jersey, an extension of the informed consent doctrine as there was in California. There has not been an extension of the res ipse that has occurred in other states.

There is one thing, however, and that is the Somberg case, which involved negligence without injury, if you will, which, of course, is not as yet decided but

which has been remanded back to the trial court for a decision.

I think this then brings us into something that this commission must look into and that is, if a patient has been injured, regardless of whether it is from negligence, malpractice, or what not, the key question is, should that patient be compensated to some degree? I think this is a critical issue. This is something that probably cannot be decided through the tort system if there is not negligence.

I think we, as a commission, should think in terms of some type of medical injury compensation program for certain types of therapeutic misadventures or certain adverse circumstances or incidents that occur in which blame or negligence cannot be placed, assuming, of course, the patient does not have a third-party carrier - insurance carrier.

I think you made reference also to the individual who is paralyzed, who is a quadriplegic, who has children, and I think under these circumstances - and I think the courts can do this at the present time, certainly an indication of this from this commission might be appropriate - there should not be a lump sum payment, but it should be apportioned out over a period of time and should actually remain under the jurisdiction of the court. I think these are some of the thoughts we might basically entertain.

SENATOR GREENBERG: Commissioner, I think I can speak for the rest of the commission, as well as myself, when I say that we are not overly desirous of moving into an area of State involvement in an area which has been historically serviced by the free enterprise system.

I have great difficulty with developing in my own mind the justification for the State of New Jersey, or any state, or governmental entity, becoming the provider of services which have historically been so provided by private industry.

However, where the people are not able to do it for themselves, which is the historical justification for government, and where private industry has either attempted and failed or has not attempted, then I think it becomes incumbent upon government to give serious consideration to providing those services and filling that void.

If, in fact, this commission concludes that there is an artificially high rate for the coverage which has been made available, in spite of the availability solution - which we have temporarily provided you with - and that high rate results in an accumulation of reserves which will never, ever, be returned to the people who pay them and who are, I think, ultimately, in most cases, the patients, and all we have is a resultant pressure for further increases - additional increases - then I think we ought to give serious consideration to your alternative suggestion of the State getting involved in the providing of medical malpractice insurance. But I would like to, in addition, state - and I am sure you will agree with me - that, number one, we must continue to make insurance available for all the doctors, hospitals, etc., in the State and, number two, the rate must be at a level which you are not only satisfied with as based upon the best information available - which is what I think you are doing now and no one can fault you for it because that is all that is available to you - but also must be reasonable, based upon information which you, yourself, can accumulate, which has not been provided for you, and which demonstrates your concern that if we are wrong, the people who are paying it will ultimately be the beneficiary of a reduction. I can't see that happening under the present structure. I can see it happening under a state run facility.

I thank you for being here today and Mr. Stern as well. We do appreciate your attendance and valuable information and opinions, which you have given to us. These hearings cannot be concluded today, as I indicated at the outset, and they won't

be concluded in the very near future. We are going to continue to have hearings and take additional testimony.

I am concerned that the testimony will be repetitious of that which we have already had and which has been presented to you and every other commission in the United States, which has the same problem that this one does. There seems to be insufficient information to make sound judgments on.

I think the one thing we have to avoid is the panicky rushing-into modifications merely because we are being pressured to do so, without there being any good and sufficient underlying reasons. But, by the same token, I don't think we can walk away from the problems.

So, we would like to continue a dialogue with you and our staff will continue to be in touch with your staff from time to time as we do pursue this matter. I am assuming now that the date you have given us is the next critical date, which is the filing in August and the operational effect of any increase sometime in October or November. While this is not an imminent problem, it nevertheless is right around the corner and we would like to stay in touch with you on it and whatever additional information or suggestions you have on it, we would welcome them.

COMMISSIONER SHEERAN: I might say that I might have been somewhat in error. The umbrella coverage will be before us by July 1st. Phil says he doesn't believe they will make another filing but that means that could be something we are facing.

SENATOR GREENBERG: That is the umbrella coverage?

COMMISSIONER SHEERAN: Yes.

SENATOR GREENBERG: And what about the physicians and surgeons basic coverage?

COMMISSIONER SHEERAN: That is, as we said before, sometime in August for action in October.

SENATOR MC GAHN: November 1st.

COMMISSIONER SHEERAN: October, I think.

MR. STERN: Actually it is October for November 1st.

COMMISSIONER SHEERAN: We need a 30 day lead time.

SENATOR GREENBERG: I want to hasten to add, in case you misunderstand me, that this doesn't mean there aren't areas of concern to us. The doctor - Senator McGahn - has pointed out areas of concern in the tort law, not so much with regard to the reduction of premiums but perhaps with regard to basic equities.

Similarly we are concerned with the peer review among the doctors - what type of supervision they have over themselves. These are also areas which we are exploring. But my remarks were geared to the premium question - one which you are, I think, vitally concerned.

COMMISSIONER SHEERAN: Yes. Senator, on the question of the infant statute, for example, I agree totally that the statute ought to be taken back to 18 where the individual is in a position to sue. As you know, the theory behind the infant statute is, we don't permit the infant go in by himself and sue. You could have a very neglectful parent, or set of parents, and leave the child without any possibility of recovery because the parents neglect the problem.

SENATOR GREENBERG: Right. Those types of concerns we have, but they are tangential to our main one.

Thank you again for coming. We will notice through the press of a resumption of these hearings. For this moment, at least, we will adjourn the hearing. Thank you very much.

COMMISSIONER SHEERAN: Thank you.

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