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before

ASSEMBLY INSURANCE COMMITTEE

**Professional, Business, and Nonprofit
Organizations' Liability Insurance**

April 10, 1986
City Hall
Clifton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Ralph A. Loveys, Chairman
Assemblyman Gerald Zecker, Vice Chairman
Assemblyman Karl Weidel
Assemblyman John K. Rafferty
Assemblyman John V. Kelly

New Jersey State Library

ALSO PRESENT:

Laurine Purola
Office of Legislative Services
Aide, Assembly Insurance Committee

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625



ALPH A. LOVEYS
Chairman
ERALD ZECKER
Vice-Chairman
JOHN V. KELLY
JOHN K. RAFFERTY
ARL WEIDEL
MICHAEL F. ADUBATO
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New Jersey State Legislature
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March 24, 1986

NOTICE OF A PUBLIC HEARING

The Assembly Insurance Committee will hold a public hearing on business and professional liability insurance on Thursday, April 10, 1986, at 7:00 P.M. at Clifton City Hall, 900 Clifton Boulevard, Clifton, New Jersey 07013.

This is the first of two hearings on this subject. The second will be held April 14, 1986 in Hamilton Township.

Anyone wishing to testify at the Clifton hearing should contact Laurine Purola, Committee Aide, at 609-984-0446.

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ASSEMBLYMAN GERALD ZECKER (Vice Chairman): May I have your attention, please? Thank you.

I would first like to take this opportunity to thank the City of Clifton for making its City Hall facilities available to us, especially with the current problems of insurance and the fact that the City had to go self-insured. They are limiting their exposure, however, because we do have the State of New Jersey accepting their liability.

I am Assemblyman Zecker. I am also a City Councilman for the City of Clifton. Members of our City Council are meeting in the next room, with another problem relating to the chemical industry, on a neighborhood complaint. So, on behalf of all of us up here, we would like to thank the Mayor and the Council, who are meeting in the next room.

I would also like to take this opportunity, you know, as Vice Chairman of this Committee, to thank you in the audience for taking the time to join us this evening. It is truly unfortunate, but I believe out of my office we have mailed, to approximately 1800 businesses in our district, notices asking them to attend this evening. Along with that, we sent out questionnaires where they could write back if they were unable to attend. The notice was further sent to the surrounding districts. I think out of 2000 invitations to the various businesses, you can see the people who will take the time to come before this Committee to say their piece and to give us their input.

At this time, I would like to introduce the Assemblymen who sit on this Committee. To my left is Assemblyman John Kelly, who is from our adjoining district; next to him is Assemblyman Karl Weidel. Between Assemblyman Karl Weidel and Assemblyman Jack Rafferty, I don't know who had to travel the further distance, so I am not going to give any award out this evening. The Trenton area -- correct? (affirmative response) We have Laurine Purola from Legislative

New Jersey State Library

Services, Aide to our Committee; the Chairman of our Committee, Assemblyman Ralph Loveys; Kathy Poole from the Assembly Majority Office; and, again, myself as Vice Chairman, who has been assigned the opening remarks. I am Assemblyman Gerry Zecker from District 34.

Without any further comments, I would like to turn the hearing over to our capable Chairman, Ralph Loveys, who has the agenda and will make some opening remarks. Assemblyman Loveys?

ASSEMBLYMAN RALPH A. LOVEYS (Chairman): Thank you, Gerry. Before I allow the following remarks, I would like to introduce -- Gerry was going to do this -- Senator Bubba, who is from Clifton -- this area. Senator, where are you? (Senator acknowledges introduction)

ASSEMBLYMAN ZECKER: He always forgets to introduce me, Ralph. I'm sorry, Joe; I'm sorry.

ASSEMBLYMAN LOVEYS: Good evening, ladies and gentlemen. I am pleased to welcome you here this evening for the first of two public hearings to be held by the Assembly Insurance Committee on the subject of business and professional insurance.

The issue which is before us today is a problem not only in New Jersey, but in virtually every state of the union. The issue has received a tremendous amount of national attention in recent months, and there are now, I am told, over 1200 pieces of legislation pending in the 50 state Legislatures.

The liability insurance crisis is a top priority issue with the General Assembly of the State of New Jersey, and with this Committee. We not only want to deal with the present crisis, but we also want to take corrective action which will prevent similar problems from arising in the future.

The thing which is particularly disturbing to us in the Legislature with respect to this present crisis, is the long-term impact which high insurance rates and the lack of insurance availability have on the states and, ultimately, the

nation's economy. What it could mean, as most of you well know, is that businesses could close, resulting in unemployment and economic dislocation. It can also discourage the formation of new business enterprises, and we know this is already happening.

The crisis has also significantly affected the nonprofit corporations. Persons who served on the boards of these corporations have resigned because they were unwilling to accept the degree of personal risk which the lack of insurance implies. It has also resulted in the loss of volunteers who work in service and charitable organizations. To them the risk is just too great.

The State of New Jersey has mandated liability for wrongful or negligent acts through its laws. The State of New Jersey, then, must also ensure that insurance is readily available to protect the assets of those people upon whom the liability has been conferred.

As you are all well aware, the regulation of the insurance industry has traditionally been left to the states. I do not see the present crisis as being a failure of the State regulatory mechanism, but rather the result of a series of fundamental changes which have been going on in both the insurance industry and in the tort system.

There are those people who blame the crisis on the insurance industry; there are others who blame it on the legal system. Whatever the cause, it is a complex problem and there are no easy answers.

Our purpose in coming to Clifton this evening is to listen to what you have to say. We understand that the lack of insurance coverage and the rapidly increasing costs of insurance are of great concern to you. When we have heard your testimony, we intend to develop a legislative package which will help to solve this problem, not just in the short-term, but also over the long-term. We simply cannot afford to endure

recurring insurance crises in this State. We hope that we can arrive at a solution which is fair to everyone. We also hope that the legislative package, when we develop it, will have your full support. It is most important that you do support it, and allow each and every legislator in your districts, and throughout the State, to know that you support it and that you want to see action in Trenton.

I would ask, too, if anyone who will be testifying tonight has a copy of their testimony, please present it at this desk before you testify. If there are people here who have not already signed up, maybe you can do so at the time.

Once again, we welcome you to this hearing, and we thank you for taking the time to be with us this evening.

As it stands right at the moment, we have close to 20 people who will be testifying tonight. It would be nice, because of the distances that some of these people have come, if we could maybe conclude our hearing by at least 10 or 10:30. We will see what we can do in this area. I hate -- before we even get started -- to start setting time limits. We will try to afford each person who will be testifying, and the questions for that particular individual, say, a 10-minute period. By nine o'clock we should be able to see where we are going, and maybe we can allow a few more moments if we have the time.

So, we will not wait any longer; we will get into our hearing tonight. I would like to call the first person we have on our list -- and forgive me if I do not pronounce these names correctly-- From the Clifton Mental Health Association, Mr. Paul Kreisinger. Mr. Kreisinger? (no response) Apparently Mr. Kreisinger is not here right now, so we will move on to the second person, and come back to Mr. Kreisinger. Mr. Romeo Aybar, New Jersey Society of Architects. Mr. Aybar? (no response) That makes two who are not here yet, I guess. Well, I think the next person is here. From the New Jersey

Association of Realtors, Bruce Bertholon. Is Bruce here?
(affirmative response)

B R U C E B E R T H O L O N: Do you want a copy of my statement?

ASSEMBLYMAN LOVEYS: If you have a copy, sir, please.

MR. BERTHOLON: My name is Bruce Bertholon. In my official capacity, I am the Secretary of Bertholon-Rowland, Inc., which is an insurance agency. We serve as the administrators of the New Jersey Association of Real Estate Boards Insurance Programs. In addition to that, we also represent a number of bar associations in the administration of their insurance programs in other states. About 50% of our business is done in the administration of professional liability and errors of omissions contracts for these associations.

Right now, as you are all aware, New Jersey is faced with a very serious insurance crisis. This is evident to those seeking liability coverages -- in the professions, in business, and in public entities. Everybody is encountering trouble.

To fully understand the scope of this problem, I believe it is necessary first to understand the concept of capacity and reinsurance, and how this affects the industry. Liability is a special form of coverage that relies very heavily upon domestic and foreign reinsurance. Almost all forms of coverages are affected by what is known as "capacity."

What is capacity? Capacity is the ability of an insurance carrier to pay the anticipated claims it will incur on the risks it insures from the assets it has on hand.

What is reinsurance? Reinsurance is coverage that insurance companies buy from other companies and syndicates of companies to cover the risks incurred when they sell to the public.

When an insurance company has a good surplus to liability ratio -- adequate assets to pay possible claims -- it

has good capacity. This means it can sell additional coverage to get more premium dollars. These dollars are used to pay claims and expenses and to earn investment income. To keep a good capacity, companies buy insurance from other companies to cover a percentage of their possible claims. Liability is an area of coverage where it is very difficult to predict losses, so the primary carriers -- those are the carriers that sell unit coverage -- rely very heavily upon the reinsurance to protect themselves from the unpredictability of liability losses.

Every three years or so, the insurance industry goes through what is known as a "capacity crunch." This means it has sold so much coverage that it has poor capacity, and it needs more assets to cover possible claims. To improve its capacity, the industry does a number of things: It raises rates; it reduces coverage; and, it goes out and buys more reinsurance. After a while, the capacity will improve; rates will begin to get competitive again, and will go down. Rates go down and coverage improves with good capacity. Rates go up and coverage becomes more restrictive, with poor capacity.

When investment income is high, as it has been over the past five years because of high interest, reinsurance is usually readily available and it is competitive in rate. Foreign reinsurance -- a lot of reinsurance is purchased from the foreign market -- is also attracted by a high U.S. dollar value. When investment income is low, reinsurance becomes more expensive and more restrictive.

Now, here is what has happened over the last 18 months:

- 1) There has been an unusually large number of disasters; several large airline crashes; we are all familiar with Bhopal, India; more West Coast hurricanes than usual; and, several damaging earthquakes, such as the one in Mexico City. All of these losses have to be reserved for, and that greatly reduced the carriers capacity for all other areas of coverage.

2) There was a large misappropriation of funds in the London reinsurance market, which resulted in a number of smaller reinsurers going bankrupt.

3) The interest rate has been steadily declining, reducing investment income.

4) This is important: The European reinsurance market, led by the German market, has virtually left the U.S. marketplace. The reason for it doing so is that it feels the present U.S. tort system is too unpredictable, mainly because of large and unusual court settlements. They say they will not return to this market until there is major reform. They are concerned about the courts passing down full liability when there is only partial fault. They are also nervous about the U.S. manipulation of the dollar and, of course, low interest rates.

These situations have greatly reduced the capacity of primary carriers, and have severely limited the availability of reinsurance. Right now, there is only the U.S. reinsurance market, and occasionally, Lloyd's of London available. As a result, we have seen premiums skyrocketing; coverages are being limited and, in some cases, omitted altogether or unavailable.

As was mentioned earlier, this is not a problem being faced solely by New Jersey. It is nationwide, and can only be corrected by increasing capacity, not by limiting it. A recent ruling -- an emergency ruling -- passed back in September and, I guess, reemphasized in January -- referred to in some cases as the Emergency Ruling or Subsection 20 -- limiting the cancellation and nonrenewal of certain forms of coverage, has severely limited capacity in the State of New Jersey. The result of that rule has been to stop the writing of new risks by most carriers in New Jersey, thus forcing insureds to stay where they are and pay very high rates, or go without insurance altogether. The term is, "or go bare." Also, a number of companies are threatening to leave the State. Some are already

planning to do so, and have taken official steps in that direction. I point that out because I feel it is this type of regulation that places us all in jeopardy, and it should be looked at carefully.

The popular suggested solutions that are being made today are easier self-insurance and tort reform.

All forms of insurance, even self-insurance, will eventually face a capacity problem. There have to be assets to pay claims. When this is the case, they will also need to purchase reinsurance. The problem won't go away simply by providing an easy means of self-insurance. However, this will help to reduce some of the burden, because it will tend to expand capacity.

We do need some form of a more predictable tort law, one that a potential insurer can look at and anticipate its risk exposure. Frivolous suits should be discouraged, and losers to litigation should bear a fairer share of the costs of the winner; i.e., if you lose, you pay some of the costs. As I understand it, we are probably the only country in the free world that doesn't have such a system.

In addition, insurance carriers have to be given an opportunity to underwrite based upon the exposure of the risk, and not be forced to underwrite on political considerations. Predictability and long-term stability are the keys to good insurance underwriting, which, in turn, should mean good capacity. Good capacity means availability, and availability means competitive rating.

The insurance industry did underprice coverage for the last few years and suffered some serious losses. Because of this, now we are probably paying, or are going to be paying more than we would have if they had not done that. The public was not a complete loser in this situation, because during that period of time it did enjoy lower rates. I say that just simply to defend the industry for what it did, because it did

pass back some of the money it was earning in high interest in lower rates, for whatever reason.

It is my feeling that the Legislature needs to do what it can to make the insurance marketplace more friendly to the industry and to try to encourage companies to write in the State of New Jersey, not discourage them. I feel it can do this by making the Department of Insurance fast, efficient, and predictable, and by keeping up an ongoing dialogue with the industry.

Any laws or regulations passed should be careful not to make it a bureaucratic nightmare for a carrier to get forms and rates approved, nor should they seriously limit the underwriters' choices.

To sum up, the problem is capacity, which is at an all-time low, and the lack of an adequate reinsurance market. The solution is multifaceted:

- 1) There needs to be an easier means for the development of self-insurance, at least in the primary layers.

- 2) There needs to be tort reform to allow for the predictability of underwriting and for settlement. An entity or person that does everything correctly shouldn't be subjected to artificial liability.

- 3) Insurance regulation should be practical and efficient, not politically motivated. This will be difficult, but should be a goal sought after, through an ongoing dialogue between the Department of Insurance, the public, the carriers, and the agents and brokers.

Thank you very much for allowing me to give my testimony. I will be glad to answer any questions.

ASSEMBLYMAN LOVEYS: Thank you. Mr. Bertholon, one question. After your name on my witness list, I have New Jersey Association of Realtors. Is that correct?

MR. BERTHOLON: Yes, that is correct.

ASSEMBLYMAN LOVEYS: I am not criticizing in any way, but for a moment I thought you were with the industry.

MR. BERTHOLON: The real estate industry?

ASSEMBLYMAN LOVEYS: No, no, I thought you were with the insurance industry from your testimony, which I think was concise and informative.

MR. BERTHOLON: I think I stated that I am an insurance broker who administers the insurance programs for the New Jersey Association of Realtors.

ASSEMBLYMAN LOVEYS: Fine; thank you very much. I missed that. Let me ask you one question, if I may: You kind of emphasized one point, and it interests me. You indicated there was a German firm, or a series of German firms in the reinsurance market who have definitely left, and have said it is because of the tort system in the United States, and they will not be back.

MR. BERTHOLON: Well, not just the German market, sir.

ASSEMBLYMAN LOVEYS: You emphasized that one area. I was just wondering, could you point out to me-- I would like to ask them some questions through the companies which maybe were working with these German firms in the reinsurance area. Do you know of any particular insurance companies in this county that work closely with these people?

MR. BERTHOLON: I can't specifically state yes on that, because the way the reinsurance market operates on the European basis is to purchase percentages of insurance through various syndicates. It is not just the German-- I said "led by the German market." It is the entire European market, sir, that has virtually stated they will not write reinsurance in the United States. The source of information on that was Business Insurance and The Wall Street Journal. The articles I read on that were published back in September, if you wish to verify it. I am also sure you could find information on that from the Independent Insurance Agents of the United States, or the New Jersey--

ASSEMBLYMAN LOVEYS: I just wondered if you had firsthand information on that.

MR. BERTHOLON: Just from what has been passed on to me through other people I do business with in the reinsurance industry.

ASSEMBLYMAN LOVEYS: Fine. Anyone else have any questions? (no response) Thank you very much for your testimony.

I call at this time, from the New Jersey Restaurant Association, Mr. Frank Pombo. Frank?

F R A N K P O M B O: I have a statement, sir, but unfortunately I didn't bring any copies with me.

ASSEMBLYMAN LOVEYS: That's all right.

ASSEMBLYMAN WEIDEL: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes, Mr. Weidel?

ASSEMBLYMAN WEIDEL: Could Mr. Pombo send you his statement, since we don't have any?

ASSEMBLYMAN LOVEYS: Could you do that, Frank?

MR. POMBO: I sure could.

ASSEMBLYMAN LOVEYS: If you would, please.

MR. POMBO: The statement I am about to read, gentlemen-- I understand about where these two Assemblymen came from. I had to appear at 9:00 a.m. last Wednesday in Trenton, so I know what the trip is like.

My name is Frank Pombo, past President of the New Jersey Restaurant Association and current Insurance Committee Chairman. My father and I own the Bethwood Catering facilities, with a capacity of 2500 people, in Totowa, New Jersey. My segment of the industry -- catering -- is especially hard hit by today's liquor liability insurance crisis. I would like to let you know what our current exposure and costs are, so you can get an idea.

In 1984, Bethwood was paying liability of \$36,000. In 1985, that escalated to \$55,700. This year, we are paying

\$121,000, and as of April 1 -- I have been informed by my insurance carrier, which is not a New Jersey insurance carrier -- that if I were to reinsure right now, it would be \$255,000.

Now, what that means to my business, in my industry, is that-- In my own business, we have had to eliminate our a la carte operation and go strictly with banquet operations. When you reinsure with liquor liability, you are in your gross volume business, and the a la carte business was totally wiped out. We could not insure it; we could not charge enough for it. One of the statements made down in Trenton last week by one young lady who got up and made a statement, was, "Well, if you have to pay more insurance, just raise your prices."

In 1984, the average wedding was between \$35 and \$45 per person. At the current rate of insurance, and the current inflation rate, that policy is up to \$55 to \$65 per person. If insurance keeps climbing at its present rate for the restaurant industry, if any of you people have daughters, I would book now, because by 1987 and 1988, you will be paying \$90 to \$100 per person to throw your son or daughter a very elegant wedding. That is not just at Bethwood; that is the industry at large.

One of the questions that was asked down in Trenton was if the insurance companies were offering discounts for training. We have polled them; none of them will do so. In the State of New Jersey right now, there is only one insurance company that is writing liquor liability insurance for the industry, and that is Royal Globe. Effective April 1 -- just 10 days ago -- their insurance rates had jumped 62%. So, anyone who is writing right now-- As I said, if they were writing one for \$155,000, it would be up to \$255,000 right now. To a restaurant of my capabilities, that is about a 10% to 15% increase, and you have just wiped out profits completely.

So, yes, I can increase my prices to my clients, but someplace along the line we are going to price ourselves right

out of business. There are going to be no people in the State of New Jersey who will want to have weddings at places of our caliber, or at any restaurant in the State of New Jersey. You are also looking at 150,000 people who are employed in the State, being without employment.

My father and I -- to go back to my statement -- are really very angered at this situation, to think that for 21 years we have built one of the best institutions in the State of New Jersey, and right now we are being put into this situation. I don't want to abdicate all of my responsibilities as a restaurant operator. I train my staff in alcohol awareness, as trained by the New Jersey Restaurant Association and the National Restaurant Association. I, myself, have attended these sessions. I have learned how to deal tactfully with people who have imbibed too much in alcohol, to protect my customers and to protect myself from costly lawsuits.

I am also on the DWI Council for Passaic County, so I am aware of the situation facing New Jersey every year. Therefore, I consider myself a responsible operator. I want to do the right thing. I certainly do not want to put drunks on the road. I have two children myself, and I don't want to see either of them hurt or killed by a drunken driver.

I know what it is like to be a parent and go through the agony of losing a child to a drunken driver, so I don't want to punish that innocent third party. But, at the same time, I want to have a fair shake also. We in the restaurant industry are pushing Assembly Bills 2211 and 2209. These are fair bills. They merely prevent the drunken driver and the adult passengers of drunken drivers from suing commercial or social hosts. And, finally, these bills say that in a third-party lawsuit, if a jury of my peers finds me partly negligent, I may pay my fair share; my fair share to be determined by my negligence. If a jury finds me 10% negligent, I will pay 10% of the settlement, but I will not have to pay

the entire settlement simply because the drunk driver himself doesn't have any insurance. This is joint and several liability.

I think that is fair. I don't think that New Jersey social hosts would disagree with me, because as homeowners, they should only be liable for their fair share, as well.

Therefore, gentlemen, I am asking you to look into Assembly Bills 2211 and 2209, because they are fair liability bills. I thank you for letting me testify. I will be happy to answer any questions.

ASSEMBLYMAN LOVEYS: Thank you. Are there any questions? Mr. Weidel?

ASSEMBLYMAN WEIDEL: Mr. Pombo, on our sheet here, we have New Jersey Restaurant Association. You are a member of the New Jersey Restaurant Association and you are also in business. Are you representing the Restaurant Association now, or are you representing yourself?

MR. POMBO: A little bit of both, sir. I am on the Board of Directors of the New Jersey Restaurant Association.

ASSEMBLYMAN WEIDEL: I don't want to duplicate. Later down here on the sheet, we have Nancy Kelly from the New Jersey Restaurant Association. Is she--

MR. POMBO: She will not be here this evening. She is attending an Assembly committee meeting in a different district. They are both at the same time, unfortunately.

ASSEMBLYMAN WEIDEL: All right. I would like to ask you--

MR. POMBO: I mean a Senate Committee; I'm sorry.

ASSEMBLYMAN WEIDEL: --a question or two, Mr. Pombo. Has your firm had any claims in the last five years?

MR. POMBO: No, sir.

ASSEMBLYMAN WEIDEL: Can you tell this Committee how many claims were made against members of your Restaurant Association?

MR. POMBO: I haven't got that information, but I am sure I can get it through the Restaurant Association.

ASSEMBLYMAN WEIDEL: Would you try to get that?

MR. POMBO: Sure.

ASSEMBLYMAN WEIDEL: Would you try to get how many claims? You can't tell how many are settled because they just stop.

MR. POMBO: Right.

ASSEMBLYMAN WEIDEL: But, I would like this Committee to have some evidence as to how many claims were made against restaurants. Have you heard the saying, "going bare"?

MR. POMBO: Yes. In the restaurant industry, 30% of all restaurants are going bare. From statistics I have been able to receive from the package dealers and the Tavern Association, they are talking about approximately 90% of the people are going bare right now. A tavern that paid \$1500 last year in liquor liability is now being assessed \$23,000. In cases where you have bars that are doing under \$1 million worth of business a year, that is their profit. It's gone. So, rather than spend it on insurance, they are going bare and praying that they don't get--

ASSEMBLYMAN WEIDEL: Do you know the mechanism by which they are going bare?

MR. POMBO: They are just not paying for insurance.

ASSEMBLYMAN WEIDEL: No. Do they do other things? I am asking you as a restaurant owner. If you don't know, you don't have to answer.

MR. POMBO: No, I don't know.

ASSEMBLYMAN WEIDEL: You don't know the mechanism?

MR. POMBO: No, sir.

ASSEMBLYMAN WEIDEL: Thank you.

ASSEMBLYMAN LOVEYS: Are there any other questions?

Gerry?

New Jersey State Library

ASSEMBLYMAN ZECKER: Frank, just a comment. Of the 1500 requests for attendance we sent out, the highest response rate we had was from the restaurant industry. It was a 28% response. So, obviously, it is a serious problem in your industry. I think the frightening thing was that our response showed that 62% of the restaurants which have liquor licenses found it impossible -- financially impossible -- to support the insurance, just in our district alone. I guess your numbers are statewide through your statewide Association.

MR. POMBO: We represent 11,000 licensees in the State. Approximately 3000 of them are restaurants; the rest of them are package stores and taverns. Of the restaurants, we represent -- or have a membership -- of about 2000, which is about two-thirds of the restaurants in the State.

ASSEMBLYMAN ZECKER: The statistics we received -- which will be submitted to this Committee -- you know, pretty much support -- not quite as bad as what you have said, but just in this general area-- They show a 62% failure rate in being able to obtain insurance.

MR. POMBO: We polled 250 companies in the State. Only one came back into the insurance business. That was Royal Globe. No one else will write. If they do write, it is at such a ridiculously high rate that most restaurants are not doing it. I think I understand what Mr. Weidel meant right now. They are going into corporate shelters.

ASSEMBLYMAN WEIDEL: That is what I wanted you to say -- "You can have my tavern."

MR. POMBO: If they go into corporate shelters, you are back to, "Who is going to pick up the tab?" We are not saying we're angels and that we do not make mistakes. What we are saying is, the way the current laws stipulate right now, if a gentleman stays at his house and has seven drinks, comes out to my restaurant and has one drink, goes out and kills himself and someone else, and they sue me, his wife-- Or the driver,

if he wasn't killed— Let's say he was just maimed. If the laws in the State of New Jersey stipulate he was 90% responsible for this accident -- this is the drunken driver-- If they find him 90% responsible for the \$1 million claim that was paid -- and very honestly, most claims are \$2, \$3, and \$4 million; in fact, the highest claim right now that was ever settled in the State of New Jersey is 20-point-something million dollars -- if that restaurant is the only restaurant, or the only person in this entire claim who has insurance, he pays 100%, yet he was only found 10% responsible. But, because he was the only one in the "deep pocket" theory, he has to pay 100% of the claim, and that is unfair as far as we are concerned.

We don't mind paying our fair share. We think we are responsible people. But, we don't think it is fair that because this person went to-- Well, reverse it even further; do it a little bit differently. He comes to my restaurant first, has one drink, goes to six other places and has one drink in each place, and then has an accident. If the other six places have no insurance, I foot the entire bill. That is unfair.

ASSEMBLYMAN LOVEYS: I might add to what you're saying. This Committee, ladies and gentlemen, as I indicated earlier, had three public hearings on municipal liability, and this joint and several liability question came up every time we had a hearing. It is no secret that this Committee has already introduced legislation regarding joint and several liability at the municipal level. I would not be surprised, sir, to see that same type of legislation forming from this Committee once our hearings are over. So, I think there might be some hope in that area.

Thank you very much for your testimony.

MR. POMBO: Thank you.

ASSEMBLYMAN LOVEYS: I have noticed that Assemblyman Newt Miller, who represents this district, has arrived on the scene. Newt, would you stand up and say hello to us, please? Newt Miller, ladies and gentlemen. (Assemblyman Miller acknowledges introduction)

I know Mr. Salvatore Cannata, Director of Consumer Affairs for Passaic County, is on the run. He has another engagement; however, he did want to say a few words. Sal, if you are here, would you please come forward?

S A L V A T O R E C A N N A T A: I want to thank the Assemblymen for giving me this privilege. There is a birthday party for my son-in-law, and if I don't get there-- Well, you know what happens if I don't get there.

I am Sal Cannata, Passaic County Consumer Affairs Director. As you Senators and Assemblymen get complaints and telephone calls, I also get a tremendous amount of them. Right now, there are about 12 restaurants in Passaic County that have contacted our office, which have no insurance. A few months ago, in The Paterson News -- I believe it was -- a grocer-- The headline was, "Thirty Years of Sacrifice Lost in 16 Minutes," because he couldn't get insurance.

We had a meeting two or three weeks ago. We have a resolution in to the Assembly -- Assemblyman Zecker, I was here a week ago -- because people do not realize how important it is to help people to get insurance. Without insurance, everybody will be wiped out. People keep calling our office for help. That is why I am here tonight.

I, myself, am in a predicament. If I decide to have a charming wedding for my daughter, or my son, and someone happens to get hurt in my party, I will be sued -- in a third-party suit -- because one of my guests got hurt, and I gave the party. See, a lot of people don't know that. It hurts an individual, because no one likes to be sued for no reason at all. Besides paying a high price for a wedding, you

have the aggravation of winding up being used as the third party.

So, look into these areas. Help the businesspeople. I was a businessman myself years ago. We had one fire in 60 years of business. It was a little fan fire. My father -- may he rest in peace -- was denied insurance. One fire; the claim was \$90. That was maybe 20-some-odd years ago. A lot of people don't know how businesspeople -- whether they are big or small -- suffer, to wake up in the morning and know they do not have insurance, and to know at night that they can be out of business. So, help the businesspeople, restaurants or whatever. Next year it could be our homes; it could be our cars. This way, when people call my office, I will have something to tell them.

Thank you very much.

ASSEMBLYMAN LOVEYS: Thank you, Sal. Ladies and gentlemen, at this time we have three people from the insurance industry here. I was kind of hoping we could talk to them a little later in this hearing, but I think two gentlemen have to catch a plane, and the other one has a trip back to another state. So, we are going to call them, if we may. Gentlemen, do this however you wish. I understand you want to maybe make a statement and then try to answer some of the questions we may have for you. We have Mr. John Purple, Assistant Vice President and Actuary from Aetna Insurance Company; we have Mr. Robert Swetnam from Selected Risks Insurance Company, and Mr. Robert Ruis, General Counsel from Chubb.

Now, gentlemen, if you would introduce yourselves, each make a statement, and then hang around, I think we will have a few questions for you.

THOMAS STROHMENGER: Mr. Chairman, my name is Thomas Strohmer. I am counsel with Aetna Life and Casualty in Hartford, Connecticut. With me is Mr. John M. Purple, Assistant Vice President and Actuary. Mr. Purple has a brief statement he would like to deliver to the Committee.

J O H N M. P U R P L E: Thank you, Chairman Loveys. I appreciate this opportunity to discuss with you Aetna's view of the problems affecting the liability system and, hopefully, dispel some of the more popular misconceptions about our business.

Aetna is the sixth largest commercial lines insurer in the State of New Jersey, with annual premiums in excess of \$95 million. New Jersey policyholders represent approximately 4% of our countrywide commercial insurance business, making this State Aetna's eighth largest source of commercial business. In addition, we have over 200 employees and 140 agents.

Our commitment to New Jersey is evidenced not only by the volume of business we do here, but the level of concern we share with you regarding the current availability problems facing certain insurance risks in New Jersey. We have responded to the Insurance Department's call to participate in the current Market Assistance Program, to facilitate placement of municipal liability and other coverages and relieve the severe availability problem for certain classes of business.

We are also aware that there have been -- within the industry -- midterm cancellations, substantial price increases, nonrenewals without adequate notice, and withdrawal from certain classes of business. This has made the problem worse, although it should be recognized that these actions are reactions to, and not the cause of the problem confronting us. We did not bring about those major upheavals in the judicial process which have made certain classes of business virtually uninsurable. The truth is, the basic underlying causes lie in areas over which insurers have no specific or direct control. We can, and have undertaken loss control and engineering programs to mitigate losses, but these have not been, and cannot be sufficient to deal with underlying problems in the tort liability system.

Nonetheless, we can't, and should not sit silently by as the steward of a system which is out of control. We have an obligation to speak out and bring these issues to the attention of the public and the policymakers. It would be wrong for us to avoid this public debate. We are as much a part of, and a victim of this system as consumers, businesses, and you in government.

Let me now just talk briefly about the thinking that went into Aetna's decision to withdraw from the municipal liability market on a countrywide basis in late 1984. First of all, we were never a major insurer of municipalities. We insured only approximately 400 municipalities countrywide. In 1984, we only insured about 40 municipalities in New Jersey. Although our loss experience in that market could not be characterized as disastrous in early 1984, the information we had, made us increasingly aware of the magnitude and greater frequency of suits affecting this class of business. Increasingly, governmental entities were becoming the deep pocket which plaintiffs looked to in lawsuits. More importantly, however, court interpretations of policy language caused an expansion of the scope of municipal liability and other coverages to include exposures never intended nor charged for by insurers. As an actuary, I can tell you that the predictability of risk is absolutely essential to the writing of liability insurance. When, as in New Jersey, the intent of policy coverages we've sold is changed by your courts, that predictability is lost.

Pollution liability is the best example of the courts' liberal policy interpretation. Although written to cover sudden and accidental spills, our policies have been interpreted by the courts to cover only long-term pollution problems. The most notable example was the Jackson Township case, which took place right here in New Jersey.

The Federal Superfund law adds further to the personal injury liability situation by exposing municipalities to potential cleanup liability on a retroactive joint, several, and absolute basis for waste cleanup costs, regardless of their fault. Estimates of Superfund liability exposure range from \$20 billion to \$100 billion, with the possibility of as many as 10,000 dump sites needing cleanup. The significant part of this will end up at the doorstep of municipalities. In our view, the cleanup of hazardous waste sites in cases where dumping was permitted as a legal activity is a societal problem that should not be shouldered by municipalities or their insurers. But, that is not the law.

Faced with these facts, we made our decision to leave the municipal liability insurance market. I might add that we did not do this by midterm cancellations, but we carefully instructed our agents that we would stay on at risk for an additional policy period with a full pollution exclusion, if the agent could not place the risk with another insurer. In fact, we still provide coverage for several municipalities in the State of New Jersey.

As I have pointed out, Aetna has agreed to participate in the Market Assistance Program for municipalities. We believe this is a responsible course of action for a major insurer to take in order to alleviate availability problems plaguing municipalities and other public entities. However, the MAPs are not the long-term solution. The real focus must be on the restoration of a tort liability system which fosters predictability, reliability, and hence stability to insureds and insurers alike. Failure to effect meaningful change can only result in a continuation of the current crisis and its debilitating and costly impact on all of us.

We believe a number of the reforms under consideration by your Committee, as well as several other reforms -- such as a cap on noneconomic losses, limitations on joint and several

liability, abolition of the collateral source rule, and state-of-the-art defense -- can have a beneficial effect on the marketplace, both in terms of availability and cost of insurance. Given meaningful reform that permits underwriters to know there is some increased predictability in the system, I believe insurers will return to the marketplace. This is a very competitive business. We don't make money by not writing insurance. However, there is no way we can predict with certainty how much these reforms will mean in terms of reduced policyholder costs. We can say that as our costs are stabilized and ultimately reduced as a result of meaningful reform, the savings will be passed on to our customers. For sure, prices will not go up as much as they would have, but for these reforms.

Thank you.

ASSEMBLYMAN LOVEYS: I think what we will do, gentlemen, is continue with the testimony, and then we will come back to you, sir, and the others, with any questions we may have. Thank you.

ROBERT RUSIS: Good evening, Mr. Chairman, members of the Committee, and ladies and gentlemen. I am here to represent the Chubb Group of Insurance Companies. My name is Robert Rusis.

The Chubb Group of Insurance Companies has its home office in Warren, New Jersey. We have 11 insurers in the State licensed to write multi-line casualty and property insurance. Our direct commercial lines' premium is approximately \$120 million, or we have about 3.5 of the market share.

The Chubb Group is represented by about 150 independent insurance agents and brokers. The Group and the other affiliates of the Chubb Corporation employ approximately 3200 people in New Jersey, and about 8800 world-wide.

I would like to be responsive to the Committee's invitation to try not to be repetitive and, hopefully,

be constructive to the problems facing us in New Jersey and in the nation. With your permission, I would like to identify a few concepts.

The civil justice system is the law of torts. It was intended to require the negligent party to pay the insured party for damages sustained. What is insurance? Insurance is there to spread the losses of the few over many persons, for a payment premium. How is cost of insurance determined? Insurers identify risks, assume those risks from the insureds, and predict what will have to be paid to claimants in the future. This requires a high degree of certainty. We, as responsible insurance companies, must anticipate loss payments, our expenses, and must make sure that they are reliable indicators of the future. Part of that is the civil justice system, which must remain stable and predictable. And, interplaying with the civil justice system, are the attitudes and expectations of claimants, judges, and attorneys.

The Legislature, in our view, as its ultimate objective, should make a determination on how to compensate injured parties. Today's civil justice system is just too expensive, when only about one-third of the premium dollar is for payment of injured parties. I think the Legislature should make a public policy decision on how to compensate injured innocent parties, and it may not be best to leave that to the courts.

I would like to touch briefly on a few civil justice reforms which we suggest the Committee consider in-depth. You have heard them partially before, so I will be brief. They will, in our belief, return certainty. You heard about the concept of joint and several liability. We believe that if we return to several liability, this will eliminate the deep pockets, and financially responsible defendants will not have to pay for other individual or corporate negligence.

We believe there should be accounting for collateral sources. Costs of the system would be reduced by preventing duplicate payments. This should be done by the judge after the jury has awarded the damages. We believe that punitive damages are intended to punish, are to be a deterrent. Punitive damages should be subject to criminal standards of proof, and should be applied by the judge, and probably also capped at some reasonable amount.

We also believe that noneconomic damages -- I'm talking about pain and suffering, inconvenience and mental anguish -- should be capped. What the cap should be, or how it should be done-- Washington State just adopted a bill which indicates that the amount is to be determined by a formula: .4% average annual wage times life expectancy of the person incurring noneconomic damages, but not less than 15 years.

The above tort reforms represent a few proposals. However, there are others, such as alternative dispute resolutions and structured settlements, and we believe the Committee should review those as well.

I would like to make two additional points. The reforms should be applicable to the entire liability system, because elimination of joint liability for a class such as municipalities, will only shift the financial responsibility to another deep pocket.

I would like to just say that the insurance business is part of the free enterprise system. We distribute costs, assume measurable risk, and expect to make a profit. Liability insurance cannot continue to be one of the deep pockets. So, changes in the civil justice system are essential, together with reasonable rate regulation and our ability to make a determination on risks we believe we are competent to write.

Thank you for the opportunity and, to the extent I can, I will stand ready to answer any questions later.

ASSEMBLYMAN LOVEYS: Thank you, sir. Mr. Swetnam?

R O B E R T S W E T N A M: Good evening, Mr. Chairman, Committeemen. I am Bob Swetnam, Assistant Secretary of Selected Insurance Company of America.

As a domestic stock company with over 60% of our business in New Jersey, we are very concerned about the insurance situation. Sixty percent represents somewhere in the neighborhood of about \$190 million.

We appreciate the opportunity to discuss the issue of liability insurance with you tonight. Insurance is our only business. Without a market that provides a reasonable prospect for profitability and a fair return on shareholders' equity, we cannot sustain our only business pursuit. We are in business to provide this service.

I think, Chairman Loveys, in your opening remarks, you identified the two entities that are involved -- the insurance industry and the civil justice system. Mr. Ruis and Mr. Purple sort of went into some detail in both of those areas. I would just like to make some comments from the paper we submitted -- our written statement -- to you.

We think it is important and helpful to identify some principles and characteristics that are unique to the insurance industry which set it apart from other businesses, because the insurance industry does operate within a total environment -- a social and economic environment, really, that has had things happen to it that really affect the way insurance companies operate and can do business.

Insurance, as originally conceived, is an arrangement for pooling loss exposures in a way that make the outcome for the overall exposure pool predictable, even though losses that would be sustained by individual members in the pool are unpredictable. Another characteristic, really, that is unique to the insurance industry and not to other businesses, is that insurers can really only determine the cost of their product after they have priced it and after they have collected the

premium. You've heard about the long-tail lines of liability in which the final payout may not be known for years.

The other aspect, or the other element that is involved that was mentioned tonight by both Mr. Purple and Mr. Rusis is the civil justice system. We feel a balance must be achieved between allowing access to our courts and the costly, and sometime unfair, entitlement concepts that seem to be prevalent in society today. We must ask ourselves if we can really continue to compensate everybody for losses and be able to afford this system.

The Selected Insurance Company is, I guess, a small medium-sized company — a relatively small company — but we have been, and are a large insurer of municipalities. Selected Risks got this business and got the amount of municipalities because it was felt that that was good business. We went out to try to seek the business, to engineer it, and to underwrite it. For the social and economic situation that has developed, it was felt that some tough decisions had to be made in the interest of our stockholders, as well as our policyholders. Because of the unpredictability of the pollution exposure, we have been unable to continue to write municipalities. However, because of the positive action taken by the Commissioner Gluck in approving our pollution exclusion, we are now able to again consider writing some municipalities.

In other liability areas, we have continued to provide a market in the lines we have historically written. Premiums have risen due to increased costs, and attempts have been made to keep supply within the NIAC standard ratio of premium writings to surplus.

Attached to our written statement, we have put an exhibit. The exhibit is actual figures. We have taken 15 municipalities with January renewals, and have tried to indicate the actual premiums in liability in the Workers' Compensation area from 1979 to 1986.

We feel that in this environment -- not only in the State of New Jersey, but in the nation-- We feel there are, in addition to the civil justice system, or the tort system-- We heard that there are other things we feel will affect the availability and the affordability of insurance. One of those is the commercial deregulation law. If a premium can be charged based on the exposure, then markets will be available. Our New Jersey commercial rating law allows for cost base pricing; that is to say premiums charged for the exposure. Prices will never return to the 1979 through '84 level, but competition will see that the marketplace will correct the pricing.

Nonrenewal and cancellation regulation is another part of the problem and, we think, the solution in New Jersey. The Governor should be commended for taking strong action. It was probably better to make a decision than to do nothing in 1985. But, six months later, we feel the tight restrictions placed in the regulation are counter to resolving the availability problems.

Market Assistance Programs were mentioned tonight and, although not adding capacity nor removing route causes, a Market Assistance Program is a way of finding coverage for the insurable risk. I mentioned that we were a rather large writer in the municipal business. We write somewhere in the neighborhood of 20% of all the municipalities. Because of our market share, we felt that further participation in a MAP in that area -- the municipal area -- would jeopardize our capacity. We are ready to participate in other areas of a MAP, after the current nonrenewal regulation is eased.

It is very difficult, if not impossible, to be able to predict the monetary effect civil justice reforms or any of these reforms can have on rates. For each type of reform -- repeal of joint and several, strengthening government immunity, caps, returning to the negligent standard -- it would be

necessary to show the rise in claims costs associated with each of these developing legal theories, or conversely, how many cases that would not be brought as a result of any changes. Further, there is no certainty that the courts will interpret the changes as intended, or that new ways will not be found to provide benefits not charged for.

Thank you very much, again, for this opportunity to make these comments. With me tonight, on my left, is Mr. James Cooper, Vice President of SRI Corporation, and Director of Underwriting, and Mr. Louis Anastasio, who is our Chief Claims Counsel. We will be happy to answer any questions the Committee may have.

ASSEMBLYMAN LOVEYS: I will begin, if I may. Laurine (addressing Committee Aide), you tell me when you are ready, or when you think you are ready. Gentlemen, allow me -- by way of maybe a statement from me -- to try to pose a question and, at the same time, display disappointment, somewhat, in what I have heard tonight from you.

Every one of the Assemblymen sitting up here tonight happened to vote yes for the verbal threshold. Quite frankly, during those debates and the hearings and what have you, we took an awful lot of heat from those on the other side, who said, "You keep telling us what you are going to do. You are going to take away the right of people to sue, but what are the insurance companies going to do about the rates? Are the rates going to drop? Are the rates going to fall?"

Now, we happen to know that in the automobile area it is a little more difficult to talk about rates because of the territories we have in the State of New Jersey. For that reason, we did not talk about monetary figures in the verbal threshold. But, even during those testimonies, we had few, if any, from the industry come forward and say, "Get the verbal threshold. There are going to be savings. We will give you some numbers, numbers, numbers." We never received that.

I am really disappointed now. I understand where you are coming from, but when we talk about a possible capping, when we talk about the joint and several liability movement, collateral source movement, arbitration movement, structural payments, claims made policy-- When we talk about possibly doing these things, having major tort reform, and then I hear someone say, "However, there is no way we can predict with certainty how much these reforms will mean in terms of reduced policyholder costs--" That is not what I want to hear. (applause)

I was hoping -- and I am not holding you to a dollar amount -- but I was hoping you would come forward-- We know all the facts of the problems where you are. I was hoping you would come forward, be more definitive, and say, "Gentlemen, you give us tort reform. You act in this fashion, and we will be there. We will all be there. We will write policies for the people of the State of New Jersey." That is what I was hoping you would say. Instead, I don't know if we move in this direction, gentlemen, what you are going to do. That is really unfair.

I would hope that within the next two-week period you will have an ample opportunity to hear where I am coming from. I am not asking for numbers, but please communicate with us, and tell us if we move in this direction, "You're darned right we'll be there. We'll be there to write policies. There will be available insurance. There will be affordable insurance, for every area, for the people of the State of New Jersey." I hope you will do that within the next 10-day period, because it is going to be crucial to this body and the position we take on some of this legislation. (applause)

ASSEMBLYMAN WEIDEL: May I--

ASSEMBLYMAN LOVEYS: I want to say one more thing, Karl. I do not get this emotional normally, gentlemen, and I am not here attacking you, believe me. I appreciate the fact

that you would take the time to be here tonight. I'm sure you have to talk to others before you can make some of the statements I am asking you to make. But, I am asking you to go back and do that very thing.

Let me ask one other thing, Karl, and then I will move on to you. This question is for any one of you gentlemen: Has the industry suffered heavy losses due to the mere fact that you are writing policies in the State of New Jersey? Have you had heavy losses?

J A M E S C O O P E R: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes?

MR. COOPER: I'm glad you asked that question. I'm Jim Cooper from Selected Insurance. I have taken the liberty of bringing with me copies of our 1985 financial statements. In these statements, you will see in the area of general liability -- listed under Other Liability and SNP -- the fact that our corporation has suffered drastic losses for 1985. Although not contained in that statement, I can say that internal reports indicate that our New Jersey experience tracks with our corporation numbers. As Mr. Swetnam indicated previously, 60% of our business is in New Jersey, so as New Jersey goes, so goes our corporation results.

I also wish to make the statement that the numbers you see published there go to our stockholders. As our results go up and down-- That depends on the price of our stock. There is no incentive on the part of the management of our corporation to increase reserves over what we estimate the total cost to be, because to do so adversely impacts on operating results, which suppresses the price of our stock, which works to the detriment of our stockholders.

ASSEMBLYMAN LOVEYS: Let me ask you this, Jim, and maybe not just talking for Selected Risk, but-- How can you explain the property casualty stock-- Why are they doing so well in the stock market today? Could you try to explain that

to me? They are doing very well, I understand. If there are heavy losses incurred, why are they doing so well?

MR. COOPER: First off, Mr. Chairman, the stock market works on anticipation. Investors anticipate that the companies will turn the results around and start to make money, if not in 1986, then in 1987. You will recall there was a lot of opposition indicating that the companies would make a ton of money in 1985; 1985 turned out to be worse than 1984. I do not know what 1986 will bring. Our numbers will be published on May 1 -- or May 2, excuse me -- and at that point in time you will see what our corporation is doing in 1986. I cannot, obviously, comment on our first quarter until those numbers come out on May 2.

Again, it is looking to the future, not what has happened in the past.

ASSEMBLYMAN LOVEYS: Would anyone else like to try to respond to my question?

MR. PURPLE: Yes, Mr. Chairman. I would just like to add to his last comment in terms of the stock market's reaction. The insurance industry is, again, based on what they expect our experience to be in the future. It is anticipated earnings, not current earnings. I might point out that the particular line of business you are most concerned with here is liability insurance. The projections for that particular line of business are still not good, although the rest of the industry, other lines of business -- property lines, other coverages -- seem to be doing better more quickly. Liability insurance is still a problem in '86, and probably will still be a problem in '87.

ASSEMBLYMAN LOVEYS: Would you care to comment on my remarks, rather than the question about can you and will you be more definitive?

MR. PURPLE: Yes, I would like to take a moment to comment on that. Again, in my statement I was somewhat general

in terms of talking only directionally about the way we could anticipate prices moving, which would be downward. Again, the magnitude of that movement will only emerge as we see a reduction in claim costs. To try to do a prospective rating of that to determine ahead of time what those various tort reforms will provide in terms of savings to policyholders, we can't anticipate up-front, other than to say it will clearly be a downward movement in costs.

Granted, that is not the answer you are looking for. In terms of the availability problem, again, I can only estimate what will happen in the marketplace, but as you return predictability to the underwriters and to the people who have to price the insurance product-- As you do that, insurers will be more willing to enter back into the marketplace. As I said in my remarks, we don't make any money by not writing insurance.

ASSEMBLYMAN LOVEYS: Mr. Weidel?

MR. RUSIS: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes, Mr. Rusis.

MR. RUSIS: If I may just add a comment in regard to your question.

ASSEMBLYMAN LOVEYS: Yes, sir?

MR. RUSIS: I believe there is no easy answer. As much as I would like to say that if you give us several liability, the premium for insureds, or the rates, will be reduced by a certain percentage, we have to remember that we, as insurers, in order to remain solvent, have to predict the future. Part of predicting the future involves our judgment, which involves the civil justice system, the courts, and if the Legislature should pass a tort reform, that doesn't mean that the courts are going to uphold it.

In California, the cap on pain and suffering in medical malpractice cases took 10 years to move through the courts. I just use that as an example of what the uncertainty is. I would just ask you to think about that.

ASSEMBLYMAN ZECKER: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Mr. Zecker.

ASSEMBLYMAN ZECKER: Mr. Weidel. I'm sorry, Karl.

ASSEMBLYMAN LOVEYS: Yeah, Karl you wanted to--

ASSEMBLYMAN ZECKER: After Mr. Weidel.

ASSEMBLYMAN WEIDEL: I am going to address myself to Mr. Purple. Mr. Loveys indicated, somewhat, the frustration that we legislators are under all the time in trying to resolve the problems of public policy and to address it in a businesslike and equitable way. But, I want to tell you something: You are not dealing with babies. You are dealing with real fighters. This lobby against you is strong. You end up on page 5 -- and I've heard it so many times, and I understand it, and you are correct: "There is no way we can predict with certainty how much these reforms will mean in terms of reduced policyholder costs. We can say that our costs are stabilized and ultimately reduced as a result of meaningful reform, and the savings will be passed on to our customers. For sure, prices will not go up as much as they would have, but for these reforms."

When Mr. Loveys was talking about the verbal threshold-- We had one company, State Farm Insurance Company-- We know from them, but we didn't get anything from anybody else, ISO or anything-- We know from State Farm that if a fellow had a \$200 threshold and he went to the \$1600 threshold, he most likely would save \$40. If he went from the \$200 threshold to the verbal threshold -- this from their actuaries -- he would most likely save in the neighborhood of \$80. But it is very difficult for this Legislature to explain to the public that this is almost the immediate reaction, that the action, as it goes down the line, as the cases get cleared up, and as this gentleman said, as the courts define what a verbal threshold is, after they look at the Michigan suits and the New York suits and get some understanding and decide-- But

all the criticism— "I am going to make sure you get back \$300." And, we can't do it, because we can't anticipate who is going to win the Lottery tomorrow; we can't anticipate what the accidents are going to be. We can't anticipate a lot of things.

But we, as legislators, are in a battle, those of us who want to help. Mr. Loveys was right on in asking an underwriter— Despite record underwriting losses, industry netted \$2 billion in 1985. CIGNA was the one which had to put in reserve some tremendous amount that made their loss ratio extremely high, and the industry's, too, was high. Chubb and Son was one of the better ones.

So, we appreciate your coming here, but before this is over— Mr. Loveys says, "When we have to get up on that floor" -- and I am going to highlight it as quickly as I can-- One of the opponents said to the Vice President of State Farm, "How come you don't have a verbal threshold in Illinois?" and his answer was two words: "Politically impossible," in the make-up of the Illinois Legislature.

We have a Legislature here that wants to help. We are going to need help from the industry, the lawyers-- Now we have a new group of medical lobbyists who are going to be against all of this tort reform and so forth, and we are going to need help. We are going to need it documented. These are nice, but we are going to need it more specific if it is going to be sold to the public. The people out there have to understand what it is about. We can't find it until we have it from the people who know.

I want to thank you, if I have taken too much of your time.

ASSEMBLYMAN LOVEYS: Mr. Kelly or Mr. Rafferty, any questions?

ASSEMBLYMAN KELLY: I want to ask the gentleman a question -- the one who gave me this report here.

MR. COOPER: Yes, sir?

ASSEMBLYMAN KELLY: You show a loss of \$3,996,000 for the year.

MR. COOPER: That is correct. We showed a net operating loss.

ASSEMBLYMAN KELLY: But, over in your stockholders' equity, you have a net annualized gain on securities net of deferred income tax of \$14,129,000. Am I reading that correctly? (no response) And, your equity has gone up from one year to the next.

MR. COOPER: But that is based on unrealized capital gains.

ASSEMBLYMAN KELLY: I understand that. I just wanted to make sure that the public understood it.

MR. COOPER: That is correct.

ASSEMBLYMAN KELLY: Okay.

MR. COOPER: Remember, Assemblyman Kelly, that our ability to write business is based on a ratio of premiums written to surplus.

ASSEMBLYMAN KELLY: I understand.

MR. COOPER: Unless that surplus goes up, we do not have the ability to write additional business.

ASSEMBLYMAN KELLY: But that is why the value of the stock went up also -- your equity went up. Is that not true -- on the stock market?

MR. COOPER: That is correct. But, if the stock market were to go down, it is a paper profit.

ASSEMBLYMAN LOVEYS: Mr. Zecker, I think you had a question.

MR. PURPLE: If I could just make--

ASSEMBLYMAN LOVEYS: Yes, go ahead.

MR. PURPLE: --one comment, just to respond a little bit--

ASSEMBLYMAN ZECKER: See what happens when you have a name like Zecker. You are always the last to speak. Go ahead.

MR. PURPLE: I'm sorry. Again, I understand your frustration. I understand the battle you are up against in terms of the various opponents to tort reform. All I can say is, we have been very active as a company in various Market Assistance Plans throughout the country, coming to hearings like this, and talking to legislators through our local attorneys, as well as out of our Hartford office. We are trying to be responsible corporate citizens in that regard, in terms of participating in these kinds of forums and providing whatever support we can.

I apologize for not being able to provide you with numbers, but I think we are sincere in terms of trying to help you fight the battle, as it were.

ASSEMBLYMAN WEIDEL: Would you be willing to file-- If the tort reforms that this gentleman from Chubb and Son asked for, and you asked for, and you asked for-- If they were all in legislation, would you be willing to file new rates?

UNIDENTIFIED PERSON FROM AUDIENCE: They can't answer that.

ASSEMBLYMAN WEIDEL: Now, wait a minute. I'm asking the question.

MR. PURPLE: That is a very difficult question to answer yes or no -- would I file new rates -- because until I have some evidence of court interpretations, it is very difficult for me to make judgments as to what the new rates ought to be.

ASSEMBLYMAN WEIDEL: Mrs. Gluck said that if the Senate passes the verbal threshold, there will immediately be a new filing of rates. ISO is part of it. The independent companies said they would file new rates.

MR. PURPLE: We are a member of ISO, so if ISO did it, we would probably follow them.

ASSEMBLYMAN WEIDEL: That's on one segment.

MR. STROHMENGER: I think, if I may-- When you are dealing with private passenger auto insurance -- and, John, you are an actuary, so help me with this--

ASSEMBLYMAN LOVEYS: Yeah, which we didn't want to get into.

ASSEMBLYMAN WEIDEL: I don't want to either, but I want to ask these men, Ralph-- These men, when they leave, we have no industry representatives here, and I would just like, if I may-- These are the first gentlemen I have seen in such force, and I would like to ask them some questions now.

MR. STROHMENGER: When you are dealing with private passenger auto, you are dealing with a line of insurance where when an injury occurs, it is usually quick. It is reported, and it is more predictable in the sense that you know what you have incurred as far as losses are concerned.

ASSEMBLYMAN WEIDEL: I follow.

MR. STROHMENGER: When you are dealing with commercial liability lines, especially pollution, we don't know what we are dealing with. Things that happened 10, 15, 20 years ago could pop up today and cause tremendous liability. As Mr. Purple pointed out, the Federal Superfund liability is just staggering. When we wrote those policies on municipalities 10 or 15 years ago, we did not anticipate those types of claims and losses. So, you are dealing with different lines of insurance, different approaches. It is very hard to predict what the courts will do with respect to interpretation, or when and what type of claims you are going to get down the road.

ASSEMBLYMAN WEIDEL: I accept your information. It is impossible to figure out what the courts are going to decide -- you are correct there -- until we get some precedent.

Thank you.

ASSEMBLYMAN LOVEYS: Mr. Zecker?

ASSEMBLYMAN ZECKER: Gentlemen, I would like to say that part of the function of this Committee, at least on the

Assembly level -- believe it or not -- is to try to encourage the insurance industry to start writing insurance back in New Jersey. So, I do want to give you that assurance. You know, we are not here as adversaries. I can understand my colleagues' frustration, but I know Ralph's expertise is in the building business. He has good insurance background, but in some instances it would be like asking a builder to give a quote on a house when he doesn't know the price of lumber, the price of land, or the price of labor. I liken that to your industry, that if you knew what the prices of all of the different segments were, you would be able to write a proper contract.

I agree with the testimony which has been presented, that the unpredictability of the courts is the thing that is driving insurance companies crazy. We have had examples. One of them was a boat that was built approximately 15 years ago, or 20 years ago, that was insured by an insurance company, sold to seven different people, and modified by each one of those owners. A person was in the boat one day with his daughter. The daughter fell down; she was blinded because she hit an oar lock that wasn't on the original boat. The original insurance company was brought in for a \$1.9 million settlement. The original premium paid by that boat manufacturer to that company some 20 years ago was \$600. So I want you to know that we have had testimony in front of this Committee that the insurance carriers, because of the unpredictability of court settlements, have been placed in a position of peril. That will be addressed.

We are not here to blame anyone and, certainly, there is no Mr. Chubb or any Mr. Insurance Services or Mr. Selected Risks. You gentlemen work for those companies. I hope you don't leave here feeling that we here are antagonistic. I'm sort of, like, apologizing for Chairman Loveys. (laughter) You know, it is a good way to attack a group and get applause

out of an audience. I've done it myself as a politician, but, gentlemen--

ASSEMBLYMAN LOVEYS: Gerry, I did not do it for that reason. When you get through, I do have another statement to make to you gentlemen before you go.

ASSEMBLYMAN ZECKER: All right. But, gentlemen, I do want to say that part of our intention is to make the system work in New Jersey. You know, I am also a Councilman here in Clifton, and when our insurance rates went from \$175,000 to \$2.1 million, and our carrier hasn't paid a claim in the past five years, you know, that exceeded our self-insurance, I was a little bit concerned. When we went to the various insurance markets and discovered that general market conditions are what are making that insurance go up, you know, I got a little bit frustrated, too. But I realize that the general market conditions are, many times, in the area of the excess markets. Am I correct?

MR. COOPER: As a factor.

ASSEMBLYMAN ZECKER: Now, the excess markets -- for the most part -- are foreign markets. Am I correct with that? Lloyd's of London-- (no response) So, you gentlemen are here representing New Jersey insurance companies basically -- correct? -- companies that have written, do write, and will continue to write in New Jersey, regardless of what the foreign markets are.

I also realize one thing, that when you change one sentence, or one line, or one word in a paragraph of one insurance contract, that subjects it to interpretation by the courts again. What we are talking about here -- this Committee -- are major changes in insurance contracts -- not changing one sentence, but major changes.

Mr. Purple, you said on page four, bottom paragraph of your statement: "We believe a number of the reforms under consideration by your Committee, as well as several other

reforms, such as a cap on noneconomic losses" -- which we are thinking about -- "limitations on joint and several liability, abolition of the collateral source rule, and state-of-the-art defense" -- these are all things that this Committee is strongly considering -- "can have a beneficial effect on the marketplace both in terms of availability and cost of insurance. Given meaningful reform that permits underwriters to know there is some increased predictability in the system, I believe insurers will return to the marketplace." This is what we are hoping for.

You go on to say: "This is a very competitive business. We don't make money by not writing insurance." If this Committee, and if the State Senate, and if the Governor did pass laws this year, realistically, how long do you feel it would take for the impact of those laws -- say, they weren't challenged in the courts? Well, we know they will be challenged, but say-- If the court system is going to try a lot of these changes, which I am sure will come true, how long will it take for the insurance industry in New Jersey to react? What do you feel is a favorable picture, if the legislators on both levels, and the Governor, react with favorable legislation that has more predictability? How much time will it take for insurance companies to reflect that they are going to get back into the marketplace, and bring their rates down to a more realistic figure?

MR. COOPER: Vice Chairman Zecker, I would like to take a stab at that one first, please.

Tort reform is just one major problem in New Jersey. Right now, we have in place a very restrictive nonrenewal and cancellation law. I have heard a rumor that the Commissioner recently announced a drastic proposal in the Commercial Deregulation Act affecting rate relief. So, the changes in tort reform are just but one of the ingredients. You have to create an open environment to do business -- a competitive environment.

If the companies have the ability to price their product, if they have the ability to write the business they want, and if you have the tort reform you are suggesting -- I don't speak for the industry -- but I'll bet you that overnight you will have so many companies knocking at your door to do business in New Jersey that it will make your head spin.

But, I am suggesting you will need all three ingredients.

ASSEMBLYMAN LOVEYS: Gerry, may I follow up on that one thing about the Commissioner? I heard-- The Commissioner made a statement today -- I haven't read it -- about maybe the possibility of getting back into regulation again. What would this do to the commercial--

MR. COOPER: I have no idea, Chairman Loveys, but I heard the Commissioner on Public TV Friday night. She said that when her report went to the Legislature -- went to you folks -- the industry would not like it. I don't know what is in the report, other than what her comment was.

ASSEMBLYMAN LOVEYS: Well, I heard that the statement was made -- I don't know if this is true -- that there is a possibility that there might be an area where we would go under regulation again. What would this do to the commercial insurance--

ASSEMBLYMAN WEIDEL: She said, "\$10,000 or less" -- premiums of \$10,000, if we could use that as a basis.

ASSEMBLYMAN LOVEYS: With prior approvals. What will this do to the marketplace? Or, what will it do to the industry, if that takes place? What do you think?

MR. COOPER: You're asking me a question on something she is proposing. I don't know what the details are.

ASSEMBLYMAN LOVEYS: Okay. I don't either. I'm sorry.

MR. COOPER: All I am saying to you, Mr. Chairman, is, the more you inhibit a company to do business in a free enterprise system, the less willing a company is to commit

assets to a state. There are a lot of states in this country. Unfortunately, or fortunately maybe, our company has a lot of business in New Jersey, so as New Jersey goes, so goes our fortunes. But, companies which write on a national level-- If they see an ability outside of New Jersey to make a profit, that is where they are going to commit their resources to.

ASSEMBLYMAN WEIDEL: May I ask one more question, if Mr. Zecker is finished?

ASSEMBLYMAN LOVEYS: Sure, go ahead.

ASSEMBLYMAN WEIDEL: You know, we have a lot of people here. We have a lot of people who know what they are speaking about. Not one of you men has said, "for economic losses," and there are a lot-- You'll pay medical expenses. You'll pay for a guy's lost wages. You'll pay his salary for the rest of his life, if he can't work. What you're saying on this tort reform -- pain and suffering -- is that you don't want to pay for the guy who says to the jury, "I have a pain in my neck," or "My arm hurts," or "I wake up every half hour with a headache." You don't want to pay him a million dollars for that. Isn't that true? (no response) Who has the tort reform that said, "Pain and suffering -- cap it"?

MR. STROHMENGER: I do, sir.

UNIDENTIFIED PERSON AMONG WITNESSES: We're for that, too.

ASSEMBLYMAN WEIDEL: You said it, Mr. Strohmenger, but the public-- I get letters-- Honest, I got a letter from a lady who said, "If I am in an automobile accident and I break my back, I don't want to be denied recovery." I don't know who did it, but some group in this State had that lady write, because she told me she didn't write out of her own mind. She was asked to write the letter: "If I break my back, I don't want to be denied recovery." Is anybody suggesting that when you say, "Eliminate pain and suffering"? You would pay them for their medical. You would pay them for their economic loss. True?

ALL WITNESSES ANSWER IN UNISON: Yes.

ASSEMBLYMAN WEIDEL: I got one thing tonight. Thank you.

ASSEMBLYMAN LOVEYS: Mr. Zecker, I don't think you are finished by any means.

ASSEMBLYMAN ZECKER: No. Gentlemen, we have the proposals. All I want to know is, if predictability were legislated, what do you feel-- And, we have counsel here; we have attorneys. With the court challenges, what do you feel would be a reasonable time frame before the insurance industry would come back and start a reasonable market in Jersey? I just feel this Committee should know what a reasonable framework of time would be. Do you have any estimates? (no response) I know the courts could tie us up on legislation for three to five years, challenging a lot of the legislative remedies that might be proposed. Is that not correct?

MR. RUSIS: That is correct. I cited as an example the California experience. I don't know how fast the New Jersey courts would act. I think -- as pointed out by my colleague here, who is in the underwriting business; in other words, risk taking-- He feels that if there were the combination of those three elements-- I would also believe that Chubb would continue to expand its writings in New Jersey.

I just want to say for the record that we have not made any midterm cancellations during this crisis.

ASSEMBLYMAN ZECKER: I am going to rephrase my question. If the Legislature-- If government came up with legislative remedies, do you think the carriers would wait for those things to go to court and be tried, or do you think that would be enough to have confidence -- for them to come back into the market?

MR. STROHMENGER: I can't speak for other carriers, but I suspect that you are going to find companies making an assessment of how good that reform is, and then, based upon

their judgments of what the court system is in this State, they are going to move before we see this go three, six, eight years. I think that has been the experience when other changes have been made in other lines of insurance. But, again, companies will move slowly back into the marketplace once they perceive meaningful reform. But, by no means, do I think you are going to see them say, "Boy, we are going to wait five years," because, as John pointed out, this is a competitive business. If we see a state that has enacted meaningful reforms that change what we see happening, we are going to move in there, and I think other companies would probably do that.

ASSEMBLYMAN ZECKER: And, when other companies come in, that will start the competition that could drive the prices down. Correct?

MR. STROHMENGER: Right.

ASSEMBLYMAN ZECKER: I see everyone nodding his head in the affirmative, at least from the industry. If you see the Legislature -- the Senate, the Assembly -- and the Governor-- If you see laws passed that make for reasonable markets, then it won't take four to five years for the industry to react. There might be-- If laws could be put on the books this year, there could be a reaction to those laws this year. Correct?

MR. STROHMENGER: Yes.

ASSEMBLYMAN ZECKER: Maybe not as strong as we would like to see, but certainly it would stop what we have been seeing over the last two or three years coming to a head.

MR. STROHMENGER: Right. I think that is safe to say for most lines of insurance. You have to realize that certain coverages-- Pollution coverage is not going to be written by most companies, because companies feel that under any circumstances they are not going to be able to write pollution coverage. But, by and large, the coverages that have been having some difficulties will find it easier. It is easier to answer the availability question, I think, than it is to answer

the cost question, because the cost question becomes a factor of working itself into the system and, again, a certain amount of perception by the companies.

ASSEMBLYMAN ZECKER: Are your companies, as a group, willing to sit down if given general ideas concerning legislation? Are you willing to make proposals for specific legislation?

MR. STROHMENGER: Sure.

ASSEMBLYMAN ZECKER: You've given general ideas.

MR. STROHMENGER: Yes.

ASSEMBLYMAN ZECKER: Are you willing, you know, as a group, to possibly sit down and come up with some specific proposals for legislation, rather than deal in generalities?

MR. STROHMENGER: Yes. I think the answer to that is, we would sit down. I'm sure we can get you several, or half a dozen proposals that we believe would effectuate meaningful reform in this State.

ASSEMBLYMAN ZECKER: Is there anyplace in the United States-- Is there any state in our union where there is a good insurance market right now? Is there any model state to look at and say, "Look at the State of Nebraska"? You understand what I'm saying. Is there someplace we could model ourself after?

MR. RUSIS: I think the answer really lies-- You cannot just make a model that will provide the answers which we all seek. I think you have to look -- as we said before -- not only at the legislation, but you also have to look at the courts, and you have to say, "What are the courts--" "What have the courts done in the past? How have they interpreted insurance policies?" which essentially are the contracts upon which we try to predict what our future losses are going to be.

So, there really is no simple answer. I wish I could tell you, "Yes, go to a state and look at that system." But there is no such answer.

ASSEMBLYMAN ZECKER: The frightening thing is, I don't think we could do anything to stop judges from, you know, being in our courts. I know they many times come from attorneys, so we do understand.

MR. RUSIS: Let me just make a comment. I think this is the type of thought we all, as citizens, have to consider. The thought is, how do we compensate injured innocent parties? Is the fault system the right answer? I certainly, as an individual, do not know the answer to that. But, I mean, we are trying to find fault, and is that the answer?

ASSEMBLYMAN ZECKER: I think my concluding point is, this Committee would be very interested in any specific legislative proposals you could draft, you know, or at least the intent of it, rather than dealing in generalities, which, you know, we are going to be dealing with. So, I, for one, and I think any member of this Committee would like to have any such proposal for legislation that would better the relationship with the insurance industry, with business, you know, in the State of New Jersey. These are the kinds of laws we are going to want to look at.

MR. COOPER: Mr. Zecker?

ASSEMBLYMAN ZECKER: Yes.

MR. COOPER: We belong to a trade association -- AIA -- and we have two representatives with us. I know they would be most willing to work with you and your Committee.

ASSEMBLYMAN ZECKER: Yes, okay. We have had those proposals, so you feel that they are your spokesmen. I have spoken to members of your organization, and they have been very cooperative, by the way. So, do they speak for you? (affirmative response) Thank you.

ASSEMBLYMAN LOVEYS: Mr. Rafferty?

ASSEMBLYMAN RAFFERTY: Yes, just one question, Mr. Chairman. You know, over this series of meetings we have been having, we have had quite a few attorneys who have testified,

and attorneys representing the trial attorneys and the State Bar Association. They don't think too highly of you guys, to be truthful. I, of course, listened attentively to your presentation and read your comments, and really there is nothing in there that you say yourself, except the fact that if these reforms in the court take place, and other things take place, but nothing within your own industry.

I see no one on our list of witnesses representing any of those legal associations this evening, but one of the things they indicate is that in the early '80s--

ASSEMBLYMAN KELLY: There's one over there.

ASSEMBLYMAN LOVEYS: Yeah, we have one. He is going to be heard.

ASSEMBLYMAN WEIDEL: Look at him. See that, Red. You know what that means.

ASSEMBLYMAN RAFFERTY: Just this one broad question: In the early '80s, when the deregulation in your industry took place, interest rates were pretty good, and you guys pumped everything into that. You got a lot of action. Then the interest rates dropped; you were caught in that, and you blew millions. Now, you are taking this out on the people. This is one of the big things. You are making up now for all that big loss you guys suffered. That was one of the many things they brought up. And, we do have one here this evening to add a little different side to the story. But, could you comment on that a little bit? It is a broad question, I know, but--

MR. RUSIS: I will try to comment. I think we certainly can refute some of the arguments that we are trying to make up for past profits. I can only speak for my company -- Chubb. We are essentially a primary underwriter. We believe that if we know how to price and evaluate the risk, we don't use much reinsurance. Consequently, we believe that any investment income we have is really part of the uncertainty. We are not smart enough to anticipate our earnings in the stock

market, or anywhere else, and apply that to our rates. We just don't know how to do that.

The other comment is: I don't think it serves, really, any useful purpose for us to point fingers at the trial bar, or for them to point fingers at the insurance industry, and say, "You have done so and so." We should all reason together, so that we can provide insurance to the public of New Jersey at a reasonable cost and make it available. Insurance is part of that.

ASSEMBLYMAN RAFFERTY: That's all. Thank you, Mr. Ruis.

ASSEMBLYMAN LOVEYS: Gentlemen, I have two pages of questions, which we are not going to go through tonight because we do have other people waiting who we do want to hear from. But, let me say this to you, and I hope you will appreciate this coming from me: In my words earlier, in no way did I mean to attack you. I appreciate the fact that you came here tonight to testify.

I happen to be a person who believes you when you tell me that if we act, and the courts act properly, that you will act. But the people out there don't believe it, from what I gather; from what I see. All we hear, and all we read each and every day in our newspapers, and see on TV, are the horror stories of what is happening in the insurance field today. Then we hear people after people after people just criticizing the insurance industry. I would just suggest one thing, coming from a layman, if you will: Get back to your boards of directors and change that perception. Come out, not in a negative way, but in a positive way, and let the rest of the people in the State of New Jersey -- and I would suggest in the United States-- Let them know that you are going to be positive if we are positive, because the people out there are waiting to hear this, gentlemen. The perception is bad. Change it. I know you will be there to do what is necessary to

help the people, but let them know you are going to be there. I don't think they know that now.

I thank you for your attention. I hope you will be in touch with us within the next two weeks.

UNIDENTIFIED PERSON FROM AUDIENCE: At your hearing on Monday night-- CIGNA from Pennsylvania will be at your hearing, Crum and Forster, and other New Jersey domestics, and a representative of ISO.

ASSEMBLYMAN LOVEYS: Thank you. Thank you all.

We have someone else here who is on the run. He is representing Acting Commissioner Perselay of the Department of Human Services. We will call on Mr. Nicholas Scalera, Assistant Director, Division of Youth and Family Services.

N I C H O L A S S C A L E R A: Mr. Chairman, I serve as Assistant Director of the State Division of Youth and Family Services, which, as you know, is a component of the Department of Human Services, but I am here tonight to present testimony on behalf of our Acting Commissioner, Geoffrey S. Perselay.

With your permission, I would like to just read through the testimony, and then if there are any questions, I would be glad to answer them.

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address you on an issue of vital importance -- the need for affordable liability insurance coverage for providers of human services in our State.

I am here to speak on behalf of the human services providers of our State, both public and private. But this is not a human services problem alone. We know that the liability insurance crisis is affecting private businesses of all types, nonprofit agencies, and even municipal governments. And we know the problem is not only New Jersey's problem.

On March 19, this year, the House Judiciary Committee's Subcommittee on Monopolies conducted a public hearing on this issue in Washington, D.C. These hearings

focused attention on what is clearly becoming a nationwide problem in securing affordable child care liability insurance.

In two recent New Jersey State hearings, Commissioner Perselay spoke about the critical importance of resolving this issue. On December 16, 1985, Commissioner Perselay addressed the Assembly Corrections, Health, and Human Services Committee, and on January 31 of this year, he presented testimony to the Department of Insurance at a public hearing on the question of whether that Department should allow insurance companies to exclude child abuse coverage from commercial liability policies.

At each of these forums, the Commissioner emphasized that this issue is having a severe impact on thousands of social service providers in the State of New Jersey. These public or private not-for-profit agencies provide invaluable care to hundreds of thousands of New Jersey children and adults who depend on them for essential human services.

I am referring to child care centers, family day care homes, foster family homes, 24-hour residential child care facilities, publicly funded medical transportation providers and clinics, battered spouse shelters, and many others. These businesses are the life blood of the human services field. They are the front line through which we help New Jersey's needy families and children.

As early as last June, our Department began receiving complaints that many of the day care centers and private family day care homes throughout the State were experiencing severe insurance problems, including: Abrupt policy cancellations or nonrenewals, difficulty in obtaining alternative sources of coverage, reductions in the terms or conditions of policies, and excessively high premium rates.

Four distinct issues were voiced: 1) Access to coverage was drying up; 2) the terms or conditions of policies were being drastically reduced; 3) the cost of continued or replacement coverage was skyrocketing; and 4) insurance

carriers were requiring providers to meet programmatic standards exceeding those of our Department and of other State regulatory authorities.

But the actions of insurance companies were not restricted to small-scale providers. Several months ago, our Department's Division of Youth and Family Services, which had been purchasing blanket liability coverage for the 5000 foster family homes providing care to children unable to remain with their own families, received Notice of Cancellation from its group policy insurance carrier. As a result, our Department was forced to adopt an unprecedented program of self-insurance for our foster family homes.

At that point, we joined forces with the Department of Insurance and the human services community to assess the scope of the problem and to develop remedies. Specifically: 1) We convened a 33-member task group representing both Departments, child care advocates and providers, the Center for nonprofit corporations, and the State Child Care Advisory Council. This task group was designed to gather information on this growing crisis and to guide our efforts to solve it.

2) Last summer, our Department conducted a survey of a random sample of the nearly 2000 licensed child care centers in the State of New Jersey, spanning Head Start Centers, Social Services Block Grant-funded centers, and privately operated centers. This survey, expanded later to include 24-hour Residential Child Treatment Programs, was repeated in December of 1985. We also worked with the Family Day Care Organization of New Jersey to conduct a similar survey of family day care homes in their network. The surveys found that a growing number of programs were experiencing cancellations when their policies came up for renewal. Many child care providers also reported severe cutbacks in the terms of coverage and, most importantly, many reported dramatic increases in premiums.

Among the reasons often cited by the insurance industry for the above actions was a claim that human services providers constituted higher liability risks, and were filing increasing numbers of claims. As an example of such a risk, the industry pointed to an increased incidence of child abuse or neglect in child care centers and family day care homes.

Mr. Chairman, I wish to state, for the record, that such claims are not founded in fact. Indeed, our latest survey of child care centers revealed the following: 1) Ninety-seven percent of these child care centers reported no liability claims over the last five-year period; 2) of the few centers that had claims, not a single one was attributable to child abuse or neglect. All were due to accidents; 3) 2.5% reported only one claim, one-half of 1% reported filing two claims, and one half of 1% reported three or more claims; and finally, and more importantly, all of the claims settled involved monetary awards of \$310 or less.

Our latest survey also included 24-hour residential treatment facilities for children. These programs serve a very difficult population of emotionally disturbed adolescents with severe behavioral problems. Nevertheless, only six of 76, or 8% of all the programs surveyed, reported having filed a claim in the past five years. One program reported two claims, and the remainder reported only one apiece. Two claims alleged supervisory neglect. These claims are still pending resolution.

Regarding claims by the insurance industry about child abuse risks in child care settings, our Department's records do not support such conclusions. Of a total of 44,368 allegations -- and I want to repeat, these are allegations -- of abuse and neglect that were reported in Calendar Year 1984, only 200 involved child care centers, and only 18 of the 200 were ultimately substantiated.

Another 223 cases of abuse and neglect were reported at 24-hour residential treatment facilities. Of these, only 38 cases were substantiated.

Taken together, less than four-tenths of 1% of all substantiated cases of child abuse or neglect occurred in child care centers or 24-hour residential treatment facilities in our State. It is absolutely clear, from the data available to us, that human services providers are not a high risk industry. Yet, commercial liability insurance carriers continue to act as if they were.

Let me provide some examples: 1) The respondents to our latest child care center survey continued to report staggering increases in insurance premiums. They said the cost of coverage rose an average of 73.5% -- and ranged as high as 1240% over existing rates; 2) 7.6% of these centers reported that their insurance companies unilaterally reduced the limits or terms of their coverage, while another 1.5% were required to do so as a condition for securing renewal coverage; 3) Another 1.5% voluntarily chose to reduce their coverage in an attempt to make their rate increase more affordable.

I might also add that despite the fact that New Jersey has had in place an emergency order restricting midterm premium increases, reductions in coverage, or terminations of entire categories of coverage, we hear continuing complaints from our constituents that insurance carriers are, in many instances, attempting to violate the conditions of this order.

Mr. Chairman, this brings us to the core of the question before us: Do human services providers represent so great or so volatile a risk that they are either uninsurable or insurable only at exorbitant rates? I believe the answer is clearly, "no."

The data I have presented today on human services providers presents a different picture. First, it shows that the overall incidence of reported child abuse in these provider settings is low; second, it shows that the number of child abuse substantiations is even lower; third, it shows that claims resulting from child injury of any type are rare; and fourth, it shows that the monetary awards resulting from these claims have been nominal.

Thus, the rates charged -- or attempts to reduce coverage -- by insurance companies bear no relationship to child-related claims of any kind -- let alone claims due to abuse or neglect. High rates are not due to claims by human services providers. They are a result of financial losses caused by the poor investment practices of the insurance industry. Clearly, insuring human services providers does not pose a risk of financial vulnerability to the insurance industry. Rather, our data indicates that this market is a favorable risk to insure.

It should be clear from these points that the situation facing our State's human services providers is both severe and unfair. Given this, I am encouraged by actions that have been taken to date to resolve this issue: First, the Governor's Emergency Order of September 16, 1985, which prevented insurance companies from arbitrarily refusing to renew existing policies, has been made permanent; second, the Legislature is presently considering several bills to provide relief. One deals with the degree of liability insurance offered to board of trustee members for nonprofit agencies. Another increases the limits of coverage to municipal governments, and a third permits nonprofit corporations to form joint insurance pools.

In still another legislative action, I am aware of the movement to reinstate the authority, formerly vested in the Department of Insurance, to review and approve insurance rates prior to their implementation.

Mr. Chairman, if I may divert just for one minute to report that just this afternoon, the Insurance Commissioner of the State of New Jersey -- Commissioner Hazel Gluck -- called a press conference, in which she did, indeed, announce her official report of the Insurance Task Force to the Legislature, in which one part of the report does, indeed, call for -- and I will quote from the Commissioner's press release: "The

Department of Insurance should be given greater control over some commercial insurance rates through a return to a modified system of prior approval for risks that do not generate large premiums." I have not had an opportunity to review this report. It was presented at a press conference, as I said, late this afternoon. But I do know that it is now in the hands of the Legislature. I am sure it will be made available to you.

I respectfully defer to the esteemed members of this Committee, and to our Department of Insurance, to weigh and assess the technical merits of alternative solutions to this problem. Yet, on behalf of our human services constituents, I urge the Committee to consider three basic premises to guide its deliberations: First, insurance companies are entitled to a fair -- but not exorbitant -- return for the protection they offer; second, insurance carriers should be prohibited from imposing, as a condition for issuing, or renewing coverage, standards that exceed the licensing or other regulatory standards of New Jersey State agencies. To do so allows insurance companies to supersede the State's regulatory authority, and worse, it could drive the cost of vital child-serving programs beyond the reach of clients who need and depend on them the most; third, suggested solutions must include exploration of the full range of alternatives to traditional insurance coverage, such as self-insurance, voluntary insurance pools, or Market Assistance Programs; and fourth, effective relief may require legislation to restore authority to the Department of Insurance to give prior approval to insurance premium increases.

As I mentioned, Commissioner Gluck has called upon the Legislature for some modified prior rate approval in her report, which was issued today.

In short, I ask you to consider these principles in developing possible solutions to the insurance crisis -- solutions that are aimed at removing the causes of the problem, rather than the symptoms.

We must avoid the temptation to reduce or eliminate important coverage in the name of rate reductions, especially when the rate reductions have no rational basis at all. Governor Kean has said: "The touchstone of a mature and decent society is the protection it offers the vulnerable."

What we must determine as a result of this hearing -- and the hearings you will conduct in the future -- is how we must act to provide adequate and affordable insurance protection to vulnerable human services providers, and all those who care for our society's most precious resource -- our children.

I hope the information I have presented on behalf of Commissioner Perselay will be useful to you in making this determination. Thank you, on behalf of Commissioner Perselay, and on behalf of our entire Department, for giving me the opportunity to respond to such a critical issue. If there are any questions, I would be glad to answer them.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Scalera. I think Mr. Weidel has a question.

ASSEMBLYMAN WEIDEL: Mr. Scalera, could you tell me how many constituents the Department of Human Services has in the State of New Jersey? I think I should limit it to the public sector clients, or whatever words you used.

MR. SCALERA: Our best estimates, Assemblyman Weidel, are that one of every seven New Jerseyans is either served directly by the Department of Human Services, or is touched indirectly by programs that are funded or sponsored by the Department of Human Services. That would mean somewhere in the neighborhood of one million New Jerseyans of all ages. It would include everything from the developmentally disabled to veterans to the children and families served by our Division.

ASSEMBLYMAN WEIDEL: Do you know what premium the Department of Human Services pays for the coverage that is allegedly canceled or not renewed?

MR. SCALERA: There is no single answer to that question, because there are different arrangements by which the Department of Human Services provides coverage. It is not all provided directly through a State policy. The reference in my testimony was only to the foster parents who serve children of the Division of Youth and Family Services. There it became feasible for us to institute a self-insurance program, only because New Jersey is somewhat unique in that we literally have, through our network of 5000 or 6000 foster parents, a virtual monopoly on the foster care system, quite unlike the City of New York.

ASSEMBLYMAN WEIDEL: How much money did you put aside in your self-insurance system?

MR. SCALERA: Mr. Weidel, I don't have those figures for you today. I could find--

ASSEMBLYMAN WEIDEL: See, I am not trying to take sides here, but child abuse is a relatively new phenomenon here. There are a lot of unreported cases. There are court cases. So, you are really-- Wouldn't an insurance company be insuring something where they just had no idea what the losses might ultimately be?

MR. SCALERA: Well, we are taking the position that in most instances the insurance industry is guided by the experience and the data that is presented. In this case, we have presented statistics that represent the actual facts, not only of the reports of child abuse, but of the far lower number of substantiations.

ASSEMBLYMAN WEIDEL: Do you know what the limits of your policy were? Is it \$10 million, \$100 million, \$50 million?

MR. SCALERA: See, again, there is no one answer to this because the child abuse and neglect coverage is provided mainly through private corporations, usually very small human services providers. In the case of child day care centers, you are talking about centers that serve an average of 50 children

who, through their own auspices, are trying to purchase this insurance.

Of the 2000 licensed day care centers in New Jersey, something like only 200 of them are publicly funded or operated. The great majority -- well over 75% -- are private businesses, which are barely able to survive with what, in most cases, amounts to a very small profit margin. They enter into insurance contracts with private insurance companies, just as any other small business would. We have no legal authority to provide for their insurance costs. The only ones we have some control over are the 200 -- just to give you that example. So, again, the impression that the State of New Jersey, or the Department of Human Services has the power or the authority to insure all of its providers is not true. In fact, most of our providers are privately operated and, in some cases, not-for-profit; in other cases, for-profit, but, as I said, with small profit margins, who are in the private sector.

ASSEMBLYMAN WEIDEL: But, you are not speaking for them, because you don't know what their premiums are, do you?

MR. SCALERA: Well, what we did do -- and I referenced this in my testimony -- was conduct random sample telephone surveys. It was a stratified sample. It was selected at random, and is representative -- according to our Research Bureau which did this for us -- of the universe. We did this, Assemblyman Weidel, because we could not gather from the insurance industry statistics that they would make available to support their claims that this is a high-risk industry.

In the absence of the insurance industry presenting data to justify their rate increases, we felt at least some obligation to try to find out from our own clients what that situation really was.

ASSEMBLYMAN WEIDEL: I am not trying-- I am just trying-- They don't have to write this insurance. They are not a public utility. If child abuse cases are going through

the courts -- and you and I read about them; they're horrible -- and some award is made of some high amount of liability, I suppose all they're saying is, "We're writing a policy for \$1000, and we don't know what the courts are going to interpret in the verdict -- the liability of the private providers."

I am just trying to talk to you. We can't tell someone to write it.

MR. SCALERA: No. We are certainly -- as I said in the testimony -- not trying to say that insurance companies are not entitled to a fair return. We are saying that the return should be based on a rationale that reflects the truth of the picture. Our statistics are showing that less than one-tenth of 1% of all substantiations of child abuse occur in child care centers, for example. Even when you throw in the 24-hour residential facilities, the number is very, very minuscule. So, what we are fearful of, is that the one or two sensational cases that obviously do hit the headlines, are being utilized by the insurance industry to justify exorbitant rate increases which, on the merits, we feel, are not justifiable. They are not supported by the facts.

ASSEMBLYMAN WEIDEL: We can liken that to the pollution case, can't we? We can try to use some judgment here in trying to solve this problem. If a court interpreted a six-year pollution problem as a sudden accidental action, and gave a \$12 million judgment and lowered it to \$5 million, can't you feel why someone would say, "We don't want to write anything that has to do with pollution"?

Now I am saying to you -- and I am just saying it so we know when we try to solve this problem -- there are some sensational cases. There are a lot of cases that are not yet reported which are in a sticky-wicket place. So, maybe, from a business point of view, we better get off of child care centers.

You're saying that the facts of your telephone surveys don't necessarily prove that that is true, but all they need--

If over a million people -- one way or another -- are covered, the odds are pretty good that there is going to be a big judgment someplace, the way we're going, until we cap it, or limit it, or something. Do you see? (no response) That's all.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Scalera.

For those of you who are still here, we have 11, I think, more people who wish to testify. We are on schedule; we are doing well. So, if you could limit your testimony to 10 minutes, we would appreciate it.

At this time, may I call Mr. Fred Fusco, Morris County Independent Recreation Association. Is Mr. Fusco here? (Mr. Fusco not present) Mr. Schector, will you please come forward -- Mr. Schector from L.E.G.A.L.

I R W I N B. S C H E C T O R: Good evening, Chairman Loveys and members of the Committee. My name is Irwin Schector. Thank you for the opportunity to testify for L.E.G.A.L. -- Lawyers Encouraging Government and Law -- an organization of over 2000 attorneys and their clients.

We are in the midst of "another" insurance crisis, and most of the people who are here this evening are unable to afford or obtain liability insurance.

As usual, the solution is to restrict recovery and to limit tort liability -- tort "reform" proposals. We call to your attention that limiting liability is treating the symptom and will not cure the disease or solve the problem.

The problem is an insurance problem -- liability insurance is either unavailable, or available only at extremely high costs -- and we are trying to solve this problem by dismantling the tort system.

The idea of insurance has developed out of simple economics. It is a system created to indemnify the negligent person or entity. It prevents the insolvency of a wrongdoer by paying the liability of the wrongdoer to try to make the victim whole, and spreads the risks by limiting the costs that might

fall on any one individual. It was never intended to interfere with the tort system or the rights of innocently injured victims.

The tort system gives us all civil liberties, civil rights, and safety better than any system anywhere in the world. The tort system disclosed the Dalkon Shield debacle, the Pinto gas tank scandal, and the asbestos mass homicides, while other mechanisms of accountability crumbled and government regulatory agencies abdicated. Instead of throwing up roadblocks on the way to the courthouse, we should be broadening human rights to health and safety.

Limiting liability does not address the insurance problem for the industry, for the taxpayer, or for the insured. The facts are that people are being maimed, crippled, and incapacitated by negligent actions of others. Period. If we absolve and immunize the wrongdoers, the problem will still be with us. The only difference will be the ox that is being gored. It will still be the taxpayer who will ultimately pick up the tab for these victims in the form of increased taxes to pay for public assistance programs, welfare, aid to dependent children, food stamps, disability payments, and Social Security.

The problem of unaffordable and unavailable insurance is not addressed by dismantling the tort system. There are no guarantees that rates will go down or policies will be available if we limit liability. New Jersey Insurance Commissioner Hazel Gluck said, on April 1, 1986, in Toms River: "It's very difficult to cap judgments. I'm not sure that regulating attorneys' fees, doctors' fees, and limiting judgments to \$100,000 will bring rates down." An example that speaks to this point is Ontario, Canada.

Ontario has a cap on compensation for pain and suffering, restrictions on punitive damages, prohibitions on injured parties specifying the amount they are seeking, restrictions on attorneys' contingency fees, and few jury

trials, as well as penalties for frivolous suits. Yet, in spite of this "insurance company wish list," Ontario day care centers, transportation companies, municipalities, and school boards are having grave difficulties obtaining insurance coverage, as are their United States counterparts, even though Ontario has many of the liability law changes being sought by business groups in the United States. Thus, there is no insurance crisis, but rather "an insurance scandal," that is responsible for cancellations and high premiums. The insurance emperor has no clothes.

Liability insurance has a "long tail" -- the years of legal proceedings between a loss and ultimate payment of damages. That leaves the insurers with huge cash reserves free to invest in financial markets. When interest rates are high, insurers are motivated to increase their cash flow by selling coverage at what seems like bargain rates, confident that profits from investments will more than cover any claim losses. An example of this is the MGM Grand Hotel fire in Las Vegas, where insurance companies wrote coverage after the fire -- the policies were retroactive -- just to get that premium money into the stock market. Unfortunately, when interest rates are down, the companies find that reduced investment profits require them to raise premiums and drop riskier types of coverage.

In the late 1970s, when interest rates were soaring, the companies wrote as much as they could at low premiums. In the 1982 slump when interest rates plunged, they should have raised rates to cover future obligations. They did not, and they were not regulated to do so.

Yet, they are still the largest financial conglomerates in the world. This is the only industry in the United States that can create its own losses, just by bookkeeping. And it's also important to know that, in the last 10 years, the casualty insurance industry paid negative Federal income tax.

Headlines in industry journals shout profits: "Despite Record Underwriting Loss, Industry Netted \$2 Billion in 1985," "1985 Results Not All that Bad: Analysts," and "Week in Insurance Stocks Incredible!"

The Wall Street Journal of April 1, 1986: "Empire Builders: How Insurers and Pension Funds Are Becoming the Office Landlords of the Nation." Insurance company dividends are counted as losses. Reserves are counted as losses. Robert Hunter, quoted on WCBS Radio News: "This is not an industry that's coming apart at the seams, at least not according to Wall Street."

Wall Street understands the insurance industry cycle: While the price of insurance rises and falls, insurance stock prices just keep on rising. For example, since 1975, the property/casualty insurance stock index rose almost 500%, while the Dow Jones Industrial Average did not even double. And, during 1985, as insurers complained of their dire financial condition, the property/casualty index rose by 50%, almost twice the rise in the Dow.

WCBS News Radio 88, in a special insurance series, spoke to the New Jersey situation on March 3, 1986: "In New Jersey, a study of awards made by courts against public entities in 1979 -- and these are the latest figures available -- showed that the average judgment was \$5500. The biggest award was \$136,000. Then there are the millions of claims that never get to court at all. In fact, the insurance industry settles 90% of its claims before they ever get to court, and 90% of the court cases before they ever get to a jury. That means roughly 1% of all insurance claims wind up before the juries. And from the small percentage comes the insurance industry cry that multi-million dollar verdicts are killing them. And, top that off with this statistic: The insurance industry wins two-thirds of all the cases it takes to court." Does that sound like a legal system that isn't working?

Where do we go from here? What positive steps can be taken? Ralph Nader's "challenge" to the industry is simple. How much did you take in last year in premiums from your customers and in investment income? Put that in a column. Tell us how much you paid out to those verdicts and those settlements you're complaining about. Put that in a column. Then tell us where the other tens of billions of dollars have gone.

Until we know the real truth, how can we legislate and eradicate the right for a wrong to be redressed in a court of law?

There is no actuarial justification, no claims-loss experience, nothing that could justify mass cancellations of day care centers or other businesses, or 800% or a 1000% premium increases. This is all done -- this premium gouging -- as a political strategy to get the public to expect higher insurance prices, and to get the legislators and regulators to cut back on the rights of people who are injured and want to sue.

Disclosure legislation for the insurance industry is being introduced into the New Jersey General Assembly in May. We hope you will give these bills your attention, and if we can be of any service to you, please call upon us.

You will find attached to my statement the articles I referred to. In addition to those articles, I would like to enter another statement which came down very recently. It is entitled: "Prudential Enters New Insurance Field." I would like to just take some parts out of that article: "The Prudential Insurance Company, the nation's largest insurer, plans to enter the commercial insurance market by taking over a troubled Ohio property and casualty company," and so on down the line. The main thrust of the article is in the second column: "Prudential also announced at a news conference in New York yesterday its net income -- the equivalent of profits -- had risen to \$2.3 billion, from \$1.4 billion in 1984.

Prudential's life insurance divisions took in \$23.5 billion in premiums, investment income, and capital gains last year, up from \$18.2 billion in 1984.

"It was a great year for our traditional businesses and a great year for all our financial services businesses."

ASSEMBLYMAN LOVEYS: Does that conclude your statement, Mr. Schector?

MR. SCHECTOR: That will conclude my statement. I will be glad to answer any questions anyone may have.

ASSEMBLYMAN LOVEYS: Do you agree that as we sit here tonight we do have a problem of available insurance and affordable insurance for many, many people, businesses, etc., throughout the State and throughout the country?

MR. SCHECTOR: I agree that there is a problem; however, I think it is a manufactured problem.

ASSEMBLYMAN LOVEYS: What do you suggest we do, sit and do nothing because they will come back -- they will come back to the marketplace?

MR. SCHECTOR: I have been involved in the so-called insurance crisis since 1972. I have watched a number of companies threaten to leave the State of New Jersey and, in fact, I have watched a number of companies leave the State of New Jersey. I have also watched the same companies come back into the State of New Jersey, buy back in -- at ridiculously high prices -- other people's coverage. They have come back to the State of New Jersey.

I remember when Hartford walked out of the State of New Jersey, and now Hartford is back stronger than ever. I feel that these threats of leaving the State of New Jersey, and turning away all these premium dollars, is not a realistic threat on all bases, because the premium dollar earns more money for an insurance company by way of investment.

ASSEMBLYMAN LOVEYS: Mr. Schector, we understand that. Are you suggesting that we do nothing, wait, and they will be back in the marketplace? That is all I am asking you.

MR. SCHECTOR: I am not suggesting that we wait. I would suggest that we talk with the insurance companies realistically, and get off the blackmailing and the threats by all these companies that, "We're walking out. We're leaving. We're doing this, we're doing that." Why don't we sit down with the insurance companies -- the legislators sit down with the insurance companies -- and realistically evaluate what is going to take place. Why don't we wait until we get the insurance figures in the State of New Jersey. When you obtain the figures to show whether they are making profits or suffering losses, you will be in a much better position to legislate than you are now.

We have asked for this year after year. In fact, it was mandated when we passed the last threshold increase, that they provide this. Those figures still haven't been provided. Now, how can we legislate in the dark? When you have no figures, you don't know what a profit is and what a loss is. If you are telling me that paying your stockholders dividends is a loss, something is wrong. If you have an insurance company that advertises on television, "We are bigger than any city; we are bigger than any state; we are bigger than most countries," don't you think there is something wrong? Don't you think that a company like that, which won't tell you where they have their money, where they get their money, which has secret books, refused to offer to you--

ASSEMBLYMAN LOVEYS: Okay. To answer my question, you are suggesting we do nothing, because eventually they will come back. We should sit at a table and try to ask them to come back into the marketplace. In the meanwhile, those who can't get insurance should go without it. That is your recommendation to us.

MR. SCHECTOR: No, it is not my recommendation.

ASSEMBLYMAN LOVEYS: Well, you haven't given me a recommendation of what we should do.

MR. SCHECTOR: My recommendation is that you demand from these insurance companies, an opening of those books and records, and that you legislate these insurance companies into proper premiums.

ASSEMBLYMAN LOVEYS: Demand that they write insurance in the State of New Jersey. That is what you are saying.

MR. SCHECTOR: Demand--

ASSEMBLYMAN LOVEYS: That is what we should do?

MR. SCHECTOR: --predicated upon what you learn by the opening of those books and records. At that point, you can either demand that they write it, or make your reforms.

ASSEMBLYMAN LOVEYS: May I suggest to you, sir, that this is the United States of America. We are not going to demand that anyone do anything in the business world. We can't go out and tell a man that he has to be a person in such and such a town to sell suits, or "You have to write insurance." It is not going to happen, sir.

MR. SCHECTOR: You are demanding--

ASSEMBLYMAN LOVEYS: Come up with another solution. Give us some guidance to get them back into the marketplace.

MR. SCHECTOR: Mr. Loveys, you are demanding that unless a person suffers what you have defined in your verbal threshold as a serious injury, meaning--

MR. SCHECTOR: We are not talking about the verbal threshold.

MR. SCHECTOR: I just want to say something. You are demanding that that person give up his rights, and you're telling me that we are in the United States of America.

ASSEMBLYMAN WEIDEL: We gave up.

ASSEMBLYMAN LOVEYS: Sir-- Karl, wait a minute.

ASSEMBLYMAN WEIDEL: I didn't say anything. I just have to--

ASSEMBLYMAN LOVEYS: I didn't want to bring up the verbal threshold. Let me explain one thing to you. Ninety

percent — listen to this — 90%, no matter how high the claim is — you know, automobile insurance for pain and suffering— Ninety percent — 95%, excuse me — of those asking for awards for pain and suffering with the automobile insurance— The awards are given, granted. That happens to really be the case; no matter who is right or who is wrong or how high the claims.

You made a very profound statement earlier. You said, "Ninety percent of the claims are settled before they get to court." I'll tell you why a good number of these are settled before they get to court. Because it would cost the insurance companies, sir, far more to have an attorney there than to pay what the claim amount might be. So, statistically I can come back and give you the same type of statistics as you are putting forth here.

All I want from you, sir -- and we'll move on-- Give us some good suggestions how we can get the insurance companies of this country back into the marketplace so we can help the people out there who are hurting. That is all I would like to know.

MR. SCHECTOR: Mr. Loveys, my suggestion is that we enforce the disclosure legislation that was passed before, and find out what the actual situation is. We cannot legislate in the dark. I cannot make suggestions in the dark, because I don't know what the actual insurance company situation is, except for what they tell us, and they tell us a \$2.2 billion profit. They tell us that a loss is-- If you made a profit of \$5 billion last year and only made a profit of \$4.5 billion this year, you suffered a loss.

Now, we can't legislate in the dark. I am asking you to enforce all of the disclosure legislation, or ask to have it enforced, before you act. Also, act upon further disclosure legislation, which is going to be introduced in May.

ASSEMBLYMAN LOVEYS: Fine. Mr. Weidel, did you have a question?

ASSEMBLYMAN WEIDEL: Yeah. Mr. Schector, you handed out this news item about the-- Oh, you have it attached here.

MR. SCHECTOR: I attached a number of items.

ASSEMBLYMAN WEIDEL: Yeah. You have one here about insurance companies have so much money. All of these items refer to the Equitable Life Insurance Company and the Prudential Insurance Company. The Prudential Property and Casualty Insurance Company is their casualty company, and the Life Insurance Company is their big company. You do not show-- I think it is a little misstatement of facts to say that the Prudential or the Equitable Life Insurance Company made so many billions of dollars, when their property and casualty company lost money.

MR. SCHECTOR: I think one of the attachments here refers to property and casualty. (Mr. Schector looks through articles he is referring to.)

ASSEMBLYMAN WEIDEL: Well, whether it does or not, what is this disclosure legislation you are going to introduce this May?

MR. SCHECTOR: I am not going to introduce any legislation, sir.

ASSEMBLYMAN WEIDEL: Well, it comes on legal stationery. What is that disclosure, please?

MR. SCHECTOR: I understand that there are a number of Assemblypeople--

ASSEMBLYMAN WEIDEL: Yes?

MR. SCHECTOR: --who intend to ask for additional disclosure information from the--

ASSEMBLYMAN WEIDEL: We have a law that is going into effect this July, don't we -- a disclosure law?

MR. SCHECTOR: We have one law that is going into effect. I understand they will be asking for additional information. Exactly what the nature of that information is, is up to the Assemblypeople. I know this is in the talking

stage. They have advised us that they will introduce this legislation in May.

Now, I cannot speak for each individual Assemblyman, as I cannot speak for you, as to what you will introduce.

ASSEMBLYMAN WEIDEL: Yeah, that's right. Well, your philosophy, sir-- Should lawyers pay the full cost of lawyers' liability insurance? Should lawyers pay the full cost of that coverage?

MR. SCHECTOR: I don't understand your question, sir.

ASSEMBLYMAN WEIDEL: I asked a specific question: Should lawyers, as a group, pay the full cost of liability premiums, or should they use life insurance premiums to subsidize lawyers' malpractice insurance? Should doctors pay the full cost of insurance to insure doctors? Should automobile owners pay the full cost of insurance to insure automobiles? Should day care centers pay the full cost-- Do you see what I am getting at?

MR. SCHECTOR: I see what you are getting at in generalities. Your first question wasn't quite clear to me. What you're saying is, should one subsidize the other?

ASSEMBLYMAN WEIDEL: Yeah. Is it fair for a little--

MR. SCHECTOR: It depends on the industry, sir. In an overall industry which operates in an overall fashion, a profit is a profit. In an industry, or a business that operates as a single entity, of course the business has to pay for whatever it buys. I mean, if I want to drive a BMW and you want to drive a Chevy, I will pay for the BMW and you will pay for the Chevy.

ASSEMBLYMAN WEIDEL: I am not talking about--

MR. SCHECTOR: But, I am not going to subsidize your car nor you mine, if that is what you're asking me.

ASSEMBLYMAN WEIDEL: Then you don't want a car owner to subsidize lawyers' liability insurance?

MR. SCHECTOR: I say that we are not talking about the insurance industry in separate facets. The insurance industry operates in a joint venture facet, and the insurance industry, as a whole, operates as such. Therefore, if the money is put into investments from an insurance company, one insurance company makes the money on that. That is one profit. It goes to one area. If one suffers a loss-- One insurance company, if it loses in all of its areas, or loses in one main area and therefore brings down its loss, it suffers a loss in all areas. Therefore, we cannot talk-- When we are talking about a multifaceted item, we cannot talk in generalities of items; we must talk in specifics.

You cannot talk in specifics when you are talking about the insurance industry, because they operate in a generality. In other words, when you buy certain types of coverage, you have to take others. When I buy my homeowner's coverage, I want to protect my house against fire, or whatever it may be. I have to take 44 other things that I may have no desire to take.

Therefore, in order to get the one coverage, I have to buy many others, some of which are profitable to the company; some of which are not profitable to the company. But, I have to take them to get the one policy I want. At one time, before we gave options in the automobile field, you had to buy everything they wanted. If you didn't want to buy PIP, you still had to buy PIP.

ASSEMBLYMAN WEIDEL: May I ask you a question? What you implied there, is that a little old lady homeowner in Clifton would pay for lawyers' liability insurance.

MR. SCHECTOR: No, I did not, sir.

ASSEMBLYMAN WEIDEL: Well, then, if she is going to stand aside, then you are going right back, and the lawyers are going to pay for their losses, and the doctors will pay for their losses, and the homeowner will pay for hers.

MR. SCHECTOR: Mr. Weidel, you are asking me, "Did the chicken come before the egg, or did the egg come before the chicken?" because I told you that the insurance field -- the insurance business -- and you are in the insurance business; you should know this better than I--

ASSEMBLYMAN WEIDEL: I haven't been in it for a long time. I have been a legislator; that takes all of my time.

MR. SCHECTOR: Well, I'm sorry. I know you were at one time. I'm sorry, but the legislative book has you in insurance. But, you are familiar enough with it to know that the insurance industry operates its companies as a whole, and you cannot separate and segregate the short and long of the entities. When the profits are invested, they are co-invested. When the distribution is made, it is distributed to the one company. I mean, Prudential owns Prudential, and CIGNA owns CIGNA, and Selected Risks owns Selected Risks. When they take their money and invest it, whoever makes the profit on it, it is still Selected Risks or CIGNA or whoever invested it.

ASSEMBLYMAN WEIDEL: Thank you for your explanation.

ASSEMBLYMAN LOVEYS: Mr. Kelly?

ASSEMBLYMAN KELLY: Yes, I have a question. There was a representative for the restaurants here. He came up with something I was interested in. Why should an individual who is 10% liable -- who is liable for 10% of a claim -- pay 100% because the rest of the people have no insurance? Is that fair to that individual?

MR. SCHECTOR: Are you now referring to the joint and several liability situation?

ASSEMBLYMAN KELLY: Yes.

MR. SCHECTOR: We are living in a society where our primary purpose is to treat human beings in a just and fair way. If you have a person who is so severely injured-- I am not talking about Mr. Weidel's neckache or headache. I'm

talking about a quadriplegic, or where they have taken off two arms and two legs. Now, the several liability is enforced, and there is no more joint liability. Because there is no joint liability and there is only one-half the pay, and so on, his two arms and two legs-- Is somebody going to put him back together? The man and his family are suffering economic loss as a result of a wrongdoing and, believe me, Assemblyman, I am an attorney who goes to court. You have to look at the other side of the coin. It is one of the most difficult things in the world.

The plaintiff has the burden of proof. He must come forth with the burden of proof. He must show that the person who he is charging with injury was a tort-feasor, and performed more than 50% of the injury, and he didn't contribute to more than 50%. You have a terrible burden going forward in court. It is not that easy. It is not very easy at all, to prove that the man had one drink here and one drink there and, therefore, hold all seven. That is something that in actuality and practicality intelligent juries do not do. I haven't seen it in my time, and I have been practicing almost 34 years.

You have a jury system in this country and juries are intelligent. They do turn down people, and they do throw them out of court, and they do "no cause" them. I mean, there is no such thing as the one individual who was absolutely innocent getting stuck for the total. You can't prove it, and if you can't prove it, the jury doesn't buy it. The judge so charges you when you are on a jury that unless the plaintiff has sustained the burden of proof, you cannot find that tort-feasor guilty.

ASSEMBLYMAN KELLY: You're saying it never happens then?

MR. SCHECTOR: I am saying that if it were to happen, I am sure that an appeals court would set it aside -- if there were people down the line the way you describe to me.

ASSEMBLYMAN WEIDEL: How about if everybody settled before the case -- all seven lawyers, all eight lawyers?

MR. SCHECTOR: If all seven lawyers settled before the case-- Let me explain something, Mr. Weidel, no one gives away their money unless they have something that they fear. And, if they can sustain their end of a case, no one hands you money down the line at any time. I have been in this business a long, long time, and there are many cases that come into the office that we do not take -- I do not take -- because the liability isn't there. And, there is no such thing as, "Let's take a chance with it," because every time I send out a letter to a doctor, there is a \$500 fee, a \$200 fee, a \$300 fee. No way. You don't take the cases unless the person, in your opinion, is predominantly in the right.

ASSEMBLYMAN WEIDEL: No lawyers would take them?

MR. SCHECTOR: You know something, asking me, "No lawyers would take them?" then you're asking me, "Is there any insurance company that would sell municipal insurance?" I don't know what other lawyers would do. I don't know what the insurance companies which weren't represented here would do.

ASSEMBLYMAN WEIDEL: One guy who was like you said, "He would take a case for nothing." If I had a lady who couldn't afford a divorce, would you represent her?

MR. SCHECTOR: No.

ASSEMBLYMAN WEIDEL: No?

MR. SCHECTOR: I want to explain something to you. If there are people who are in need of legal assistance, the attorneys devote so many free hours to these services, and everyone is taken care of. We have a more than adequate system that no one goes without an attorney.

ASSEMBLYMAN WEIDEL: Thank you.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Schector, for your testimony. As you leave, I suggest to you that we are people of compassion. Thank you.

New Jersey State Library

At this time, I would like to call Kenneth Dolan, Home Care Council of New Jersey. (Mr. Dolan not present) Is Ginger Orsi here? (Ms. Orsi not present) She's not here either. How about Joe DiSalvo from Caldwell, a consulting engineers? (affirmative response)

J O S E P H D i S A L V O: Mr. Chairman, I have only one copy of my statement. If you want, I will give it to you when I am finished.

ASSEMBLYMAN LOVEYS: Okay, sir. Thank you.

MR. DiSALVO: Thank you for allowing me to come. My name is Joseph DiSalvo. I am a consulting engineer. I am not here to talk on behalf of my own company necessarily, but as a consulting engineer I am a member of the Consulting Engineers Council of New Jersey, and I have been asked by the Council to represent them tonight at this hearing.

So that you know I do have some credentials in the State, I have been practicing out of the City of Caldwell, New Jersey, since 1957. The Consulting Engineers Council is an association of consulting firms in the State of New Jersey. It was formed in 1958, and is dedicated to the advancement of ethical and technical standards in our profession. The membership of the Council represents a majority of the consulting engineering firms in the State, and includes about 18 of the largest firms in the country. Member firms provide expert services in virtually all fields of engineering which are of direct benefit to the citizens of the State. These services include: acoustical engineering, air pollution, groundwater pollution, landfills, roads and bridges, energy conservation, flood control, geotechnical engineering, environmental, land development, transportation, electrical, mechanical, petroleum, recreation, sewerage and waste disposal, structural engineering, telecommunications, water waste problems, and so on and so on and so on. All of those services are represented by the firms belonging to the Consulting Engineers Council of New Jersey.

These services are performed for industry, municipalities, and State and Federal agencies, and the continuation of these services is in jeopardy because of the crisis. The crisis we face is no different from that represented by others tonight and by other professions in the State and in other states. The problems are severe enough that it is beginning to affect the way in which we conduct our services. It is also raising a question among many of the members of our association as to whether or not we will be able to continue offering our services in the future.

We are being sued and we are paying to defend ourselves. Even those of us who do have insurance must pay the first \$50,000 or so of the defense costs. Judgments are made against us merely because we are on the scene, not necessarily because we are guilty. When we are asked to pay, we do get involved in the deep pocket theory.

Many of the insurance companies -- I'm talking about professional liability -- have left the scene. They tell us they have had enough, and they are going to leave it up to us to solve the problem. They will no longer give us coverage for work-related pollution, nor will they defend against pollution problems which are encountered during the course of doing other work. Even though it may not have been a pollution problem per se, if pollution is revealed during the course of doing some other kind of work, this is also excluded in recently written policies.

This means that the State's ECRA Program will be jeopardized, which will affect the industrial progress in the State. Mechanical engineers in the State are complaining that they are asked to hold others, including the State, harmless if they come across asbestos while they are upgrading air conditioning in some of the schools. The State's highway engineers are concerned because their coverage and insurance will not protect them from contaminants that they may uncover

as a result of a drilling investigation or during construction of a highway. And, of course, where there is coverage, we have the same problems of excessive or simply increased premiums as you have heard from others.

These concerns are real and, if you like, they can be documented. Discussions among the engineers are now leading to, how does one go there? This means putting our personal assets on the line, and most of us are not willing to do so.

The Consulting Engineers Council has been active in making our concerns known, and the effect of these concerns on our ability to serve the people of the State. We have met with, and talked with many on the State level, including the Insurance Commissioner, her assistants, the Governor's office, and many in the insurance industry. Primarily, we are talking, again, about professional liability insurance. So, we have a good understanding of what is needed -- or I should say what they say is needed -- so as to bring order back to the system.

I could list the things, but we have heard them before; they were said more eloquently than I could say them tonight. But, we want to say first that it is not our intent to look for protection against our own negligence. We realize that if we are negligent, we are going to have to pay. But that is where we would like to draw the line. So we, too, are looking for judgment against us -- or for us -- based upon whether or not we have made an error and there has been some professional negligence, not on product liability. The elimination of joint and several liability places a reasonable cap on awards, etc., etc., which you have already heard.

We consulting engineers of New Jersey want to continue what we are doing. This is what we do best; we like doing it. We like to feel we are a service, and we want to continue doing it. But we are concerned about how we are going to be able to continue this. We look to you to help us in this regard. We are very grateful for your time and your interest in what is a

very real problem to us, and we appreciate the opportunity to talk to you.

ASSEMBLYMAN LOVEYS: Thank you, Mr. DiSalvo. Any questions? (negative response) Thank you, sir.

May I call on Mr. Victor Luth, United Jewish Federation? Mr. Luth?

V I C T O R L U T H: Honorable Committee members, Mr. Chairman: We are a Federation of 11 agencies serving thousands of clients in the fields of education, health care, housing, family counseling, vocational guidance, and social and recreational activities. All of these occur in northern New Jersey. We are headquartered in East Orange.

No doubt, our insurance premium situation is not much different from many organizations that have testified previously, or that will testify later on. Our premiums increased, in one year, from \$126,000 to \$406,000. And, next year, we fully expect this to reach \$500,000.

Such a tremendous drain on our resources will have the unfortunate effect of diminishing our services to our clients. This comes at a time when governmental budgetary cuts in domestic programs make the delivery of our services more vital than in the past.

In the interest of saving time, we would like to summarize a few points for your consideration. First, with regard to directors' and officers' liability, the Assembly should pass A-932, a companion bill to S-346 which, I believe, has already passed the Senate. It is most important that non-employee directors who volunteer their time and effort to assist not-for-profit organizations be protected from lawsuits.

Secondly, general protection for nonprofit organizations: The State Legislature should consider proposals to limit the kinds of suits, and remedies for such suits, against not-for-profit organizations. The historic purpose of such organizations should place them apart from business organizations in matters of non-deliberate liability situations.

If I may digress for a moment, there are two examples of non-deliberate liability situations. An overnight freeze comes along, and at six a.m. somebody falls on the sidewalk of one of our agencies' buildings, and sues us. Now, definitely, it is a non-deliberate occurrence. If this happened, say, at 10 a.m., or two p.m., if it were still cold, I would rule it out of the non-deliberate because obviously we would have had a chance to remedy the situation.

The second example might be: One of our small vans, or station wagons, carrying some of our clients from one place to another, gets hit in the back by another vehicle. This is something that is absolutely non-deliberate on our part, and yet the client who is in the automobile -- or in our van, or our station wagon -- is able to sue us. I'm sure the suit may very well -- 90% of the time -- wind up where we are not at fault, and our insurance company will pay nothing. But, the possibilities of a suit still exist and, therefore, the premiums remain high.

Returning to my prepared statement-- Thirdly, with regard to experience rating, there is a feeling among my colleagues whose responsibilities include insurance at other nonprofit organizations, that the current premium increase for liability coverage is not justified by any experience history. We urge that the Assembly pass legislation to have the insurance carriers use experience rating in the assignment of premiums and that these records be disclosed to the covered organization.

Lastly, with regard to the State Insurance Commission, we urge that this Committee use its good offices to convey to the State Insurance Commission that its mandate extend to protection of not only the insurance industry, but also the insurance consumer. Our plea -- as you yourself stated, Mr. Chairman -- is for the Assembly to do something. There has been much discussion, and many thousands of lines printed in

the newspapers and magazines. Like you, I believe it is time for the Assembly to act.

I thank you.

ASSEMBLYMAN LOVEYS: Thank you, sir. Are there any questions? (no response)

At this time, may I call on Mr. John Tolve from Lyndhurst — Tolve Presentations, Inc.?

J O H N M. T O L V E: Assemblymen, I want to thank you for this opportunity. I am sure that after this evening, and your other hearings, when you get finished evaluating all of the testimony-- I am confident this board will come up with a solution that is fair and equal, whatever you want to involve.

I will now read my statement. My name is John M. Tolve, and I reside at 269 Orient Way, Lyndhurst, New Jersey. I am in what is called the traveling carnival industry. I own and operate Tolve Presentations, Inc., which is a third generation family business incorporated, based, and doing business in New Jersey. We present rides for fund raisers at carnivals and fairs for churches, Lions Clubs, Jaycees, volunteer fire companies, first aid squads, and other nonprofit organizations.

Last year, the traveling carnivals in New Jersey helped raise \$24 million for charities, of which \$13 million was for Catholic churches and schools, and \$11 million was for first aid squads, volunteer fire companies, Lions Clubs, Jaycees, and other such service clubs.

We create 6000 to 6500 jobs in the State. A good part of these jobs are held by high school and college students. This is all being eliminated because of the insurance crisis. In the past two years, our premiums have doubled each year. Now, we cannot get coverage at all. The reason for this is that a major carrier, Balboa Insurance, has stopped renewing all policies. We are being put out of business through no fault of our own.

The State of New Jersey mandates that we have proof of insurance in order to get our permits to operate our rides. They are mandating something that is not available. Therefore, I feel it is their obligation to make it available to us. If nothing is done to help resolve this situation, the majority of us in the carnival industry stand to lose everything we have worked for. It would mean financial ruin for the carnival industry and personally for myself.

I feel the State should have some kind of assigned risk program for those who are unable to secure liability insurance. Also, the State should once more regulate commercial liability insurance rates.

I feel the civil justice system encourages frivolous claims and that liability is based on the ability to pay rather than wrongdoing. I also believe lawyers encourage frivolous claims. What we need is civil justice reform, tort reform, and changes in insurance industry law, with more restrictions and better reporting methods of the insurance industry.

Judges and juries have to be more realistic in handing out awards and limits should be set. A good example, as a basis, would be the Workers' Compensation Insurance. We should get away from the deep pocket mentality that leads people to thinking that excessive awards do not affect the general public, because in the end that is who pays and suffers.

The State of Maryland just passed a \$300,000 cap on pain and suffering.

I would like to add, gentlemen, that the problem in my industry will mushroom in the next month or so, because the majority of the people covered-- Liability policies will be coming due between now and the middle of May. So, this problem will get worse in the next month. This includes not only the traveling carnivals, but the boardwalks and all amusement parks in New Jersey.

Thank you.

ASSEMBLYMAN LOVEYS: Mr. Tolve, thank you. I can attest to what you are saying. I, personally, have received at least 20 letters from those in the amusement industry who are experiencing exactly what you are talking about tonight.

I would like to ask you this, from your own experience: What has been your claims loss experience?

MR. TOLVE: My personal claims loss experience for the past few years has been very good. It has been 5% of my premiums.

The State of New Jersey — on a whole— I don't know if you are familiar with it, but the State does have a very fine inspection system. We come under the Department of Labor Workplace Standards. They inspect our equipment before they give us our permits. They inspect it periodically throughout the State. They have a chart that shows that over the past five years, in spite of the fact that the amusement rides have increased in the State of New Jersey, the accident rate has gone down. The serious accident rate has gone way down.

My personal experience is good, and the State, as a whole, is very good compared to other states.

ASSEMBLYMAN LOVEYS: Are there any other questions for Mr. Tolve?

ASSEMBLYMAN ZECKER: Mr. Chairman, just one question. You have a 5% loss ratio on claims paid out and you think you are going to have big problems with insurance?

MR. TOLVE: I don't have insurance. My insurance expired March 27--

ASSEMBLYMAN ZECKER: And you went bare?

MR. TOLVE: Well, we can't go bare, sir. We cannot operate without insurance. The State will not give us our permits.

ASSEMBLYMAN ZECKER: So, what did you do for insurance?

MR. TOLVE: We are out of business. We are virtually out of business right now.

ASSEMBLYMAN ZECKER: Thank you.

ASSEMBLYMAN LOVEYS: Thank you, sir. Is Mr. William Smith here from the New Jersey Licensed Beverage Association? (affirmative response) Good evening.

W I L L I A M S M I T H: Good evening. It is interesting to note that some members of the Committee have insurance experience. I am very pleased to see this, because I am sure that your expertise will be of great value. I, too, have a background in insurance. I was employed by one of the largest insurance companies in the business for 50 years, most of it in connection with underwriting. In recent years, I have been Insurance Chairman for the New Jersey Licensed Beverage Association.

In my 60 years, I have never seen the insurance industry in such an unfavorable condition as it is today. Since 1982 and deregulation, things have deteriorated rapidly. As of today, to my knowledge, we do not have any insurance company writing a package policy -- SOP -- or liquor law liability for the average licensee. Allied stopped writing last year, and Occidental stopped March 31, 1986. Some of the larger admitted companies -- Royal Globe, New Hampshire, and a few others -- will consider a licensee, provided the gross receipts on food are very high and alcohol beverages very low.

This only covers a small percentage of the licensees. As a matter of fact, I have a son-in-law who only serves food, no alcoholic beverages. One of the companies mentioned quoted a renewal premium for fire and liability that he could not handle. They would not write fire without liability. I also understand that one of the companies is increasing its liquor law liability rate from \$3.70 per hundred gross receipts to \$6.00. I am trying to confirm that.

I talked to three people in the Insurance Department today, and they confirmed that they do not handle any company writing SOP and liquor law liability, other than the admitted companies on a limited basis.

The New York Times had a good editorial yesterday criticizing the lawyers and the insurance companies. It also mentioned the public by saying, "Teach the latter that enormous liability judgments are not cost-free." We find ourselves in the position where the lawyers are criticizing the insurance companies, and the companies criticizing the lawyers, with the public caught in the middle with premiums they can't afford and, presently, no one to write the average licensee.

About 65% of our licensees are unable to carry liquor law liability, and some have no insurance at all. And, as of today, with no market, every day policies expire. We have 8000 "C" licensees, and as these expire daily, there will be that many more added to the uninsured list.

In today's Newark Ledger, it mentions that the State Insurance Department is expected to ask Governor Kean, and the Legislature, to allow the State, once more, to regulate commercial liability insurance rates for policies carrying premiums of less than \$10,000 per year. The insurance companies have demonstrated that they are not capable of handling rates on their own. When I say that this is the worst I have seen the insurance business in 60 years, that is a strong accusation. I am a small business paying in excess of \$10,000, as are many others. I certainly do not want the insurance companies to have the free hand that they have now to rate me or others.

We have premium increases from 1000% to 2000%. Unbelievable! Astronomical! When I say that 65% are unable to carry liquor law liability-- It's priced out. They can't afford it. But now we have nobody to write it. We need regulation by the Insurance Department of all commercial business on prior approval. We can't push this responsibility around. Someone in government has to assume it with a sincere effort to keep it under control, so that the public is treated fairly.

In addition to regulation, we need a change in joint and several liability correcting a grossly unfair condition that exists in third-party liability. Joint and several liability permits plaintiffs to recover 100% of damages, irrespective of the percentage of negligence the court determines is the server's responsibility. As an example, if a server is found to be 20% negligent, he can be forced to pay 100% of the damages. It is interesting to note that President Reagan's Task Force on the Liability Insurance Crisis included as one of its recommendations the curtailment of the use of joint and several liability.

Another problem is the fact that for some time, we have had non-admitted companies with inadequate assets writing business in the State. I try to tell our licensees not to buy from some of these companies, but agents are selling it. Let me give you an example of one case, and we do have others. This is a small business restaurant, started by the father, and operated by the son for some years. Insured by Ambassador a few years ago, he had a liquor law liability claim, the only one since being in business. He lost the case in court. Ambassador, out of business, permitted a dip into the State fund, but it was not enough. He had to mortgage the business for over \$100,000 to settle the claim. This is a sad situation we find we are in in the State of New Jersey, and certainly no fault of-- You are trying to find an answer.

But, it is a horrible thing to work all of your life, and then run into the situation of inadequate assets, bankruptcy, and having to mortgage your business to settle a claim.

Eight to 10 years ago, we paid \$85 per year for \$300,000 liquor law liability, with a gross of \$100,000. In that short period of time, it has gotten completely out of control. Some states have a cap that is working. I would like to see us do it without a cap, just good controls from a rating

standpoint, a change in tort and joint and several liability. If we can't do it this way, there is nothing wrong with the compensation program we have had for many years. Let the State set the rates for all commercial insurance, and the legislators decide the benefits.

I want to compliment you for the time and effort you are putting in on this serious problem, and urge you to give us relief before the end of the year. I know you can't do things overnight. This problem has come upon us suddenly, with nobody writing, and as you said before, you can't force anybody to write. We know that. What we can do about the problem at the moment, I don't know. Even if we were to create a fund, it would take time. As I said, every day others are running out of insurance. We can put fire and comp in the assigned risk, but the other lines — liability, liquor law liability — there is no market for.

ASSEMBLYMAN LOVEYS: Thank you, Bill. I would suggest to you-- I don't know how successful we will be. I don't know if we will be totally right, but we are going to try to give all of the people out there relief before the end of the year. That is what we are going to attempt to do. Thank you for your testimony.

MR. SMITH: Thank you.

ASSEMBLYMAN LOVEYS: Does anyone have any questions for Mr. Smith? (no response) Thank you, Bill.

May I callon Mr. Bernard Davidson, Garden State Pharmacy Owners? Mr. Davidson?

B E R N A R D D A V I D S O N: My name is Bernard Davidson. I own a pharmacy in Clifton. I just want to thank you, Assemblymen, for the opportunity to be here this evening.

I represent the Garden State Pharmacy Owners, an association of nearly 400 independent pharmacy owners. For several years, the GSPO has been working to establish a cooperative buying group which would help independent pharmacy

owners compete with the buying power of large chain drug stores. Through this organization, which is called Co-op Power, pharmacy owners can greatly enhance their buying power. This not-for-profit organization would designate a prime vendor who would supply inventory at a better price to co-op members. To compete with supermarket pharmacies that already have this advantage, independent pharmacy owners will at last be able to pass these savings along to the consumer.

Co-op Power was scheduled to be in operation by February 1 of this year. One of the obstacles in our way is the issue of directors' and officers' insurance. As of today, we have been unable to get this insurance for Co-op Power. Brokers and insurers have told us frankly that they hesitate to write a policy at this time because of Governor Kean's edict that any policy written now cannot be canceled in the future. In any case, even as we have discussed the possibility of getting directors' and officers' coverage in the future, brokers have told us that premiums have doubled and tripled in the last year, and that we should plan accordingly.

For the last three years, Liberty Mutual has had a contract with the GSPO for liability insurance with our members. Our three-year contract is nearly up and we are worried. Although we are not aware of an increase in the number of claims reported, we have good reason to believe our contract may not be renewed. In comparison shopping with other companies, we have already been told that no new policies are being written.

In the present issue of our association's newsletter, Liberty Mutual has issued a bulletin in response to what it calls the "present product tampering crisis." The insurance company also expresses concern about other areas, such as slips and falls, lower back pain, and fire prevention/life safety. I feel sure that these concerns may soon express themselves in the form of increased liability rates or no renewals.

At this point, our liability insurance contract renewal is hanging over our heads. The GSPO is concerned about cancellation and exorbitant increases. We hope the Governor and the Legislature will soon find a way to resolve this issue.

Thank you for the opportunity to bring this GSPO problem to your attention.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Davidson. Any questions for Mr. Davidson? (negative response) Thank you, sir.

MR. DAVIDSON: Thank you very much.

ASSEMBLYMAN LOVEYS: May I call at this time, Mr. Peter Bottino, Tri-County Limousine Association. I think there are two others with you.

P E T E R B O T T I N O: I was supposed to be here with people from South Jersey, but they left. They are out of Oaklyn. They are going to get to the Hamilton meeting, I believe, on the fourteenth.

ASSEMBLYMAN LOVEYS: On Monday, yes. Hamilton Township, yes.

ASSEMBLYMAN WEIDEL: Right outside of Trenton.

ASSEMBLYMAN LOVEYS: Yeah, it's a little town.

ASSEMBLYMAN WEIDEL: It's a little town, but it is coming along.

ASSEMBLYMAN LOVEYS: Peter, may I just ask you this question before you testify?

MR. BOTTINO: You sure may.

ASSEMBLYMAN LOVEYS: I notice you are from the Tri-County Limousine Association.

MR. BOTTINO: No, no, no. That was somebody else. I am from the North Jersey Luxury Limousine Association.

ASSEMBLYMAN LOVEYS: Okay. Are we going to talk about automobile insurance? That is not our intent here, but we will talk to you if you want us to.

MR. BOTTINO: Okay. Guess what -- and I don't mean this facetiously -- we do not come under automobile insurance. We have nothing to do with automobile insurance.

ASSEMBLYMAN LOVEYS: Okay. Let's hear your case then.

MR. BOTTINO: You are not the first person from Trenton who has said this to us.

ASSEMBLYMAN LOVEYS: Proceed.

MR. BOTTINO: Okay. I'm sorry; I did not come with anything prepared.

ASSEMBLYMAN LOVEYS: That's all right.

MR. BOTTINO: I'm not like an insurance executive, earning a couple hundred thousand a year, who's got a secretary. I want to thank you, Laurine, for taking the time to speak to me when I called you, and I did bust you a little bit. I'm sorry for that.

Those of us in the limousine business have had-- We were the first industry in the State of Jersey -- the first industry -- to get hit with the insurance increases. No other industry, including doctors, got hit before we did. We started to get hit back in November, 1984. Ninety percent of us were under a company called Midland Insurance. I don't know if you are familiar with what I am about to say, Assemblymen, but the State of New Jersey was the first-- We were the first industry, and the first State to get hit with the insurance. It followed because of Midland Insurance Company.

Midland Insurance Company insured 90% of the limousine companies. Now, I'm talking liability, collision, and comp.

ASSEMBLYMAN LOVEYS: That's Midland--

MR. BOTTINO: M-i-d-l-a-n-d. You never heard of them?

ASSEMBLYMAN WEIDEL: No, but that is not automobile insurance. He and I are asking -- liability and Workers' Comp?

MR. BOTTINO: No, no, no, no. I'm sorry. Liability--

ASSEMBLYMAN LOVEYS: Yes, sir.

MR. BOTTINO: --comprehensive--

ASSEMBLYMAN LOVEYS: Okay.

MR. BOTTINO: --and collision. When I say comp, I am not talking Workers' Comp; I'm talking comprehensive.

ASSEMBLYMAN WEIDEL: What kind of a policy was that under?

MR. BOTTINO: What do you mean?

ASSEMBLYMAN WEIDEL: Not an automobile policy?

MR. BOTTINO: No, it is a commercial policy.

ASSEMBLYMAN WEIDEL: Okay.

MR. BOTTINO: It's commercial. When Midland stopped writing-- As a matter of fact, the first person in the State to get hit with the excessive rate increase is here tonight. When they stopped writing, we had no place to go to get anything.

We had a meeting with a full executive vice president of this particular company -- the Midland Insurance Company. They are out of New York. My first question to them was, "How can you possibly give us an increase of 200%" -- that is what it was at the time -- "when you didn't go before the Insurance Commission in Trenton?" I was told, "We don't have to go before them because we are a risk company."

ASSEMBLYMAN WEIDEL: What kind?

MR. BOTTINO: Risk -- r-i-s-k. We in the limousine business tried to solve our own problem. We banded together; we had meetings; we sat down with insurance brokers. And, all of a sudden, everybody turned a deaf ear to us because, just like you, nobody knew that we pay commercial rates. I cannot buy a liability policy today. I have to go through CAIP, which is the same thing that every other driver in Jersey has to go through. When I go through CAIP--

ASSEMBLYMAN LOVEYS: When you say every other driver, sir, are you talking about the truck industry, and motorcycles?

MR. BOTTINO: No, I'm talking about John Q. Public. Ninety percent of your public drivers are through CAIP.

ASSEMBLYMAN LOVEYS: Are you talking about the JUA?

MR. BOTTINO: Yeah.

ASSEMBLYMAN LOVEYS: It's not CAIP, but anyway--

MR. BOTTINO: We go through CAIP. Isn't that the same thing?

ASSEMBLYMAN LOVEYS: No, it isn't. But it's all right. Continue, I just--

MR. BOTTINO: CAIP--

ASSEMBLYMAN LOVEYS: JUA presently is what the old Assigned Risk Program used to be.

MR. BOTTINO: Okay. This is what we go through. It is called CAIP -- C-A-I-P. What it stands for -- guess what? -- I don't know.

ASSEMBLYMAN LOVEYS: Okay. What is it?

MS. PUROLA (Committee Aide): Commercial Auto Insurance--

MR. BOTTINO: Okay. The funny part of it is, it is not even domiciled here; it is domiciled in Rhode Island. When we have to fill out the papers and everything to obtain insurance, which the State says we have to carry, we are then assigned to a company. When that company gets our application -- so to speak -- my personal business happens to be in Livingston, New Jersey -- I think it is Group 25 they put it into. We come under almost the same thing as a regular automobile, but yet the rates are different.

I have to pay a rate of Newark. Now, you are going to say, "How can this be?" The laws state you pay where your car is garaged.

ASSEMBLYMAN LOVEYS: Peter, I am going to tell you what I am going to do with you, with your kind permission, because you are getting into an entirely different field than what we are here for tonight. I will gladly meet with you-- I'll tell you why, and others will have to agree with me. You are talking about automobile insurance, and you are looking for

some kind of reform whereby your limousine service can get automobile insurance within the State of New Jersey. Apparently, you don't want to go through the assigned risk.

MR. BOTTINO: That's not true. They put us into the same category-- When we have a problem with--

ASSEMBLYMAN LOVEYS: Gentlemen, do you agree that he has automobile insurance problems, not a public liability or business liability problem? (no response) I will gladly meet with you at another time and go through the whole problem, and try to work this out on a separate basis because, quite frankly, what we are going to attempt to do from the testimony we hear tonight, is not going to have anything to do with what you are talking about.

MR. BOTTINO: That's not true, because they face us the same way.

ASSEMBLYMAN LOVEYS: Okay, proceed. I am only trying to help you, Peter.

MR. BOTTINO: That's okay. I can understand that you're tired. Believe me, sir, I will leave.

ASSEMBLYMAN LOVEYS: No, go ahead. Proceed, we will listen.

MR. BOTTINO: When they tell us the risk factor, and they say to us that the reason our commercial liability is so high is because of doctors and this and that, I think I do come under the same category.

ASSEMBLYMAN LOVEYS: Go ahead, sir. I apologize. Continue.

MR. BOTTINO: I'm sorry. I am a very up-front individual, only because I am a small businessman, and only because I represent, like, maybe 300 cars. With the two other associations I am involved with, you're talking close to 1000 automobiles. These are luxury limousines.

The problem is, these insurance companies do not take each individual industry as one. They put it all together.

They don't consider every one separately. That is your problem. We can't even get a computer printout from an insurance company -- do you know this? -- to verify to you that most of us -- maybe 98% of us -- are in pretty good shape as far as claims go. We did a random thing last night. We took 10 companies. We paid \$186,000 in premiums last year. Guess what? Thirty-nine hundred in claims; not one liability claim.

The association in South Jersey, last year -- this is documented -- \$475,000 in premium dollars; \$30,000 in claims. And they are telling us that we are the same as your pollution people -- as your, whatever. I have heard a zillion people here. We have a problem with liquor. You heard from the restaurant owners. I don't have a liquor license for my limousine company, and I refuse to give the State the \$25 to buy one, because I can't get the policy to cover the person in the car drinking my liquor.

So, don't say we're different. We're not different. The automobile-- We are actually put into one thing, and that is what everybody you heard from tonight-- I'm sorry if I took your time; I really am. But I really believe that we have a couple of answers and we have a couple of solutions. Unfortunately, nobody--

ASSEMBLYMAN LOVEYS: Peter, the last thing I want you to do is walk away upset.

MR. BOTTINO: Oh, I am very upset at this point.

ASSEMBLYMAN LOVEYS: I will be happy to meet with you -- next week, if you wish -- review your whole problem and, if what you say is correct, I will guarantee you we will do something in this area. If it isn't, we are going to find another channel and find out why you can't get the proper insurance. I am willing to help, if you want me to do that. I don't want you walking away upset. That is the last thing we want to do.

MR. BOTTINO: We tried to get into three of your other hearings. We were told we couldn't attend because they were strictly municipalities. That's new. I can bring you a phone bill from when I called Trenton in one month. I am going back over a year and a half ago. I spent \$1800 in one month of phone calls calling, not only Trenton, but throughout the United States, trying to get companies to insure us. It started here. It started with us. We are the cause of all your problems. Nobody wants to realize that. And yet, we have the safest people transportation thing going. We have no liability claims, and they can't back it up.

What they are telling us is that we are paying for every municipality and we are paying for every doctor. They are lumping it into one thing. You can't see this, Assemblyman; you really can't see this.

ASSEMBLYMAN LOVEYS: Peter, let me ask you a question.

MR. BOTTINO: Sure.

ASSEMBLYMAN LOVEYS: Have you ever heard of Progressive Casualty Company?

MR. BOTTINO: They refused to write us in the State of Jersey.

ASSEMBLYMAN LOVEYS: They refused to write. Charter Oak Insurance Company?

MR. BOTTINO: I never heard of it.

ASSEMBLYMAN LOVEYS: Never heard of them. Dairyland Insurance Company?

MR. BOTTINO: Never heard of them either.

ASSEMBLYMAN LOVEYS: Never heard of them. Okay. Do you want to meet with me? Do you want to sit and talk? We will try to help you out later on.

MR. BOTTINO: Wait a minute. Do you want to meet with this man? (speaking to unidentified person in audience)

UNIDENTIFIED PERSON FROM AUDIENCE: Yes.

MR. BOTTINO: You've got it. You tell me when.

ASSEMBLYMAN LOVEYS: Hang on until we finish. I will see you at the back of the room and we will make a date.

MR. BOTTINO: You've got it. I'm sorry if I came up heavy, but you've got to understand something: When I tell you we were the first, we were the first.

ASSEMBLYMAN LOVEYS: I believe you.

MR. BOTTINO: Once Midland pulled out, all of the others saw a good thing.

ASSEMBLYMAN LOVEYS: Okay. Thank you, Peter. Is Sal Farino here from Passaic -- Farino's Towing? (affirmative response)

S A L F A R I N O: Thank you for having me come up before you. My name is Mr. Farino. I operate a small towing outfit in the City of Passaic. I do have a problem with commercial liability also. I have been insured with a company for four years already. The premium has been the same for the past two years. Every time they send me a renewal, and I get the policy-- The policy never reads the same anyway; there are always changes in it, even though they say it is a renewal policy.

I am before you tonight because the last notice I just got -- which is due April 27-- They sent me a notice which increased my premium four times over what I paid. Now, these companies, as I take it, keep you for a while until they make money on you -- the premiums you pay to them -- then when it comes around four or five years later, they say, "Well, we'll dump this guy." That is just what is happening.

They know the premium they are asking from me is outrageous. I am a one-man operation. I go ahead-- We have applied to different companies also. All your big companies -- State Farm, Prudential, a lot of these big companies -- do not insure tow trucks. They will insure my cars. They want the gravy, but they don't want to take the risk. So, these guys have a free hand at what they are doing.

In other words, either you take it or you leave it. This is the answer you get, after you have been with the company for a while. I have two cars. They are insured with Travelers. Travelers does not insure tow trucks. Allstate does not insure tow trucks. State Farm does not insure tow trucks. Prudential does not insure tow trucks. What are they trying to do, run us out of business?

I am only a small operator. This is my version of what these insurance companies are doing -- using the people, taking the gravy. They will take my cars any time, but they won't take my truck, without my paying a real high premium, after being insured with them for quite a while. I never put any claims in. I have never had any accidents. I have been in business since 1976. This is actually what the small guy is up against right now.

Now, I cannot get any comprehensive, fire, or theft on the truck. I only have liability and property damage -- what the State requires. This is what they are nailing me on right now. This is bad. Now, if these big companies want the gravy, let them take some of the-- This company says, "Well, it's a big risk for a tow truck." It is no bigger risk than any car on the road.

I wish you people could do something about it. Liberty Mutual is the one which is giving me the problem. I thank you very much.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Farino. Any questions for Mr. Farino? (no response) Thank you very much, sir.

Is there anyone else here in the audience who would like to be heard? (affirmative response) Yes, sir? I have run out of names, I think. You, sir, will be the last person to testify tonight.

A L R E E D: I feel like I am at the insurance company. I am the last in line -- through my own fault.

My name is Al Reed. I am with the Keansburg Amusement Park. I am the Vice President; I am the co-owner. We are the second largest amusement entity in the State of New Jersey for licensed games, rides, and attractions. We have over 50 families operating businesses within our park. Each year we employ between 600 and 700 people. There are approximately 50 associated businesses on the borders of our enterprise, which exist solely because we are there.

We are the only major industry in our community, which is a depressed area with unemployment running at least double the national average. We are a large part of the real estate tax base, and a substantial portion of the New Jersey tourism industry. We are a going, active business.

Since our purchase of this business 13 years ago, we have renewed most of the physical plant and added many new rides and attractions. Consequently, our business has grown fourfold over its original size. Yet, this thriving business may shortly fail, not because of competition, not because of bad management, not because we do not have a good product at a fair price, but because we cannot obtain liability insurance.

Our rides are now closed, because according to State regulatory law, we cannot operate amusement rides without a minimum of \$100,000 in liability insurance. The law states that \$100,000 cash may serve in lieu of the \$100,000 liability insurance. However, a recent ruling several weeks ago by the State Department of Labor and Industry, states that the \$100,000 cash to replace the insurance will be necessary per ride, not per amusement park or amusement area. With the amount of rides operated at Keansburg Amusement Park, I would need approximately \$3,500,000 to replace the \$100,000 minimum insurance.

I have applied to every available insurance company in the United States, and I think most of those excess carriers abroad. At this point, we have no doors left to open. If I

can't compete in the free market, I deserve to fail. However, to me, it is unthinkable that my business might fail because of the economic problems of the insurance industry and the State insurance requirement regulations.

I need help, and I need it fast. Every day that our amusement park is without rides, it destroys future attendance. A park cannot exist without rides. Each day that goes by destroys months and years of hard-earned customer clientele. Should we be closed many more weeks, even if insurance is obtained at a later date, it would take years to rebuild the damage done. We need immediate relief in the form, perhaps, of relaxation of the State insurance requirements, or State-backed insurance, or some type of compromise to get us open in the very immediate future.

Tonight I learned a new term regarding insurance: naked. I am naked. I would be glad to take my suit off and go back to Keansburg and stay naked, if I had the opportunity to run my business. I will put my capital and my business on the line. If we have some serious claims, I am willing to lose my business, because if I don't open it, I am between the proverbial rock and the hard place. If I don't open it, my business will die. If I open it, it may die, but I have a fighting chance. I must open, or what I have worked so hard for for 25 years in Keansburg -- 13 years as owner -- will go down the drain. It will go down the drain in weeks.

I need a short-term solution. I don't know exactly what that is, but I need it, and I beg your help. For the longer term, I have some thoughts on it. I am a layman, but my thoughts are tempered with the insight of someone who is under a very severe crisis. I think Winston Churchill said, "Nothing sharpens your awareness as being shot at" -- or some such thing like that. I don't know if you remember that one, but I do. I feel that way, and I am very much aware of what is going on out there in the insurance industry. I have had a crash course.

I think that perhaps some types of caps on liability awards are necessary. I think some types of limitations on the percentage of the awards given to attorneys to perhaps dampen their zeal in obtaining clients. I think penalties for frivolous liability suits; for instance, perhaps the loser should pay for the expenses of both parties. I think a suggestion that has not come up tonight, but I think it is a good one-- I think perhaps we ought to go back and somehow remove or limit the attorneys from advertising for liability claims. I can't help but every morning hear Jacoby and Meyers on the radio asking me if I have been injured or hurt. They won't charge me anything, but they will probably get me some money. I feel this brings the obvious certain elements out of the woodwork.

I think perhaps large awards should not be paid out in a lump sum, but perhaps monthly, or yearly distribution, similar to the State Lottery. It would leave money in the hands of the insurance companies a little longer to perhaps soften their loss. And, I think awards should be limited, primarily, to the expenses and the losses due to handicap, but not pain and suffering and punitive damages, or at least the pain, suffering, and punitive damages should be somewhat capped and limited. I can't help but think that we came into this world at risk. Risk is a four-letter word, but it is not a dirty word. The people who made this country what it is today came-- They sailed and developed our country, and they were glad to take the risk and succeed. Risk is a part of growth, and in that process if we suffer pain and injury, it is unfortunate. But, somewhere along the line, limitations have to be put on.

Now, I heard another thing tonight. I forget the term that was brought up, but I recognize it as deep pockets. I won't belabor that point. I think that is an atrocious way to approach compensation for injured people. My best argument for

that is the answer that the attorney gave -- the gentleman over here before-- His answer was enough to help me convince you, if I can, that deep pockets is a bad thing.

Another thing I heard come up is that a third of the premiums paid out by insurance companies actually end up in the hands of the injured party. I think that is an indictment by itself that something is wrong with this system, when two-thirds go to somebody else.

And, a final suggestion: I laud the Chairman and the Committee for trying to wring from the insurance industry -- or representatives of the insurance industry -- some type of concession on rates. I think it is a good card to play, and I think it is your obligation to do so. I basically think the free market is an excellent arbiter of rates itself, and basically -- philosophically -- the less interference in business by government will induce the companies to come back and do business with us. What it really boils down to is, if you have \$100 or \$1000 and you want to get a return on it, you will go to the bank which gives you a quarter or a half a percent more return on your money.

If they can make a decent return on their money -- or what they consider decent -- if there are less restrictions, they will come. If there are more profits to be made, they will come. It is economic law; it is irrefutable. It just is what is. That does not mean they should have a free hand to do what they please, but basically the less you strangle them, the less you hold them down, the more they will come to do business, because they are in business for profit, and the bottom line is, can they make a profit here equal to some other place, or even better, and they will come in droves.

Basically, I am a believer in a free market system, and most of these proposed solutions I have mentioned are somewhat distasteful to me, in all honesty. However, the present system allows for such extreme abuses, that daily trade

in commerce and industry is being hampered. In addition, the large size and sheer quantity of awards comes, indirectly, from everybody's pocket. Truly, there is no free lunch. The equation is simple: Larger and frequent awards cause larger insurance premiums, which cause higher prices for every single consumer in the United States. Clearly, the present situation, and its direction, must be corrected or arrested. It will not get better; it will only get worse, and it certainly won't go away.

Speaking only for my industry, unless the present trends are curtailed with proper legislation, much of the land of jelly apples and Ferris wheels may fade from the American scene.

I would be happy to answer any questions you may have. Maybe I should say it after I answer any questions you have, but I do have something left I would like to say.

ASSEMBLYMAN LOVEYS: Mr. Reed, could you leave this copy of your statement with us?

MR. REED: Yes, I have 10 copies.

ASSEMBLYMAN LOVEYS: So that we can have your name and address and phone number. I don't know -- and I am speaking off the top of my head, if you will -- what we can do. But, I am going to ask Laurine Purola if she will call tomorrow -- on your behalf -- the Department of Labor, the Insurance Department, and what have you, to see if there is some short-term solution or maybe a lifting of the regulations. I don't know if that can happen, but I know the plight you are in. I understand the situation. We are going to try an attempt from that area.

MR. REED: I would like to tell you, in all fairness, that I met at the Department of Insurance on Tuesday of this week with David Grubb, Commissioner Gluck, representatives from the Governor's office, representatives from the Attorney General, and the Department of Labor. Any short-term solution is being sought, as of this moment unsuccessfully.

I wanted to fill you in on that, but I would ask you, Mr. Loveys, if you would please pursue the call and let them know that you are concerned and that you are aware, so that they do not--

ASSEMBLYMAN LOVEYS: We will do that tomorrow.

MR. REED: Okay.

ASSEMBLYMAN WEIDEL: Mr. Loveys, may I?

ASSEMBLYMAN LOVEYS: Surely. Go ahead.

ASSEMBLYMAN WEIDEL: Were you in business when the State passed the law requiring mandatory insurance, or were you working for somebody?

MR. REED: No, I was in business at that time.

ASSEMBLYMAN WEIDEL: What precipitated that?

MR. REED: I am led to understand that at that time there were many traveling rides coming into the State that the State wanted to regulate.

ASSEMBLYMAN WEIDEL: They were unsafe. There had been some deaths, some crippled children.

MR. REED: In New Jersey?

ASSEMBLYMAN WEIDEL: Yeah.

MR. REED: Okay. That is very possible, because the law was passed back in time when we first purchased the amusement park. And, at that time, we had one ride. The ride portion of the business was in the hands of the people who had booked into the park. They weren't ours. I had very little-- Frankly, there was very little money coming in from it, and it didn't mean a thing to me at that time.

ASSEMBLYMAN WEIDEL: Okay. If you remember, what was the name of the company that wrote this? It was a difficult line of insurance to write always, wasn't it? Was it a surplus line?

MR. REED: No. Two, three, four years ago, companies would call us up and ask--

ASSEMBLYMAN WEIDEL: What company did you have at the last?

MR. REED: We dealt with Balboa last year, through Allied Specialty in Florida.

ASSEMBLYMAN WEIDEL: Yeah, that is a surplus line.

MR. REED: Yes. Balboa is now out of it. They canceled everybody.

ASSEMBLYMAN WEIDEL: Yeah. Tell me this: Great Adventure-- They have had some difficulty, obviously.

MR. REED: Yes.

ASSEMBLYMAN WEIDEL: Where do they get their insurance, and is it \$100,000 a ride, or is it \$100,000 a park?

MR. REED: Well, you know more about insurance than I do, but the policies read, "\$100,000 per occurrence."

ASSEMBLYMAN WEIDEL: Yeah, but if you have five rides, or one ride --

MR. REED: It remains the same -- \$100,000 per occurrence.

ASSEMBLYMAN WEIDEL: It's still \$100,000. Since nobody is writing it in New Jersey-- Since Great Adventure is such a large corporation, they put up the \$100,000 with the State?

MR. REED: I don't know what they did. I would think they are insured, knowing the sheer size of the corporation.

ASSEMBLYMAN LOVEYS: I'm sure it is self-insurance.

ASSEMBLYMAN WEIDEL: Self-insurance. Well, then, are you representing yourself? Do you have an association? Are your people in Seaside and Belmar and Asbury Park? Are they all out of business?

MR. REED: I am the Director of an organization -- the New Jersey Amusement Association.

ASSEMBLYMAN WEIDEL: Yes, sir?

MR. REED: Right now, the majority of the fixed parks are insured.

ASSEMBLYMAN WEIDEL: Are insured?

MR. REED: Yes. There are several smaller ones which are not, and the majority of all water attractions are not insured. There are many policies, though. The average policy anniversary date is somewhere about May on the shore. Now, we are the northernmost resort area, if you will, and our business starts early. The best day of the year is Easter Sunday. We don't open daily, but we are open Friday night, Saturday, and Sunday.

ASSEMBLYMAN WEIDEL: Where do you get the certificate from -- the Department of Insurance, the Department of Labor, or what?

MR. REED: The Department of Labor.

ASSEMBLYMAN WEIDEL: The Department of Labor. All right, thank you.

ASSEMBLYMAN LOVEYS: Are there any other questions for Mr. Reed?

ASSEMBLYMAN ZECKER: No, Ralph, but I'm glad you handled that. We are not meeting until May 5, so what you suggested, through Laurine, anything we can do to help Mr. Reed-- You know, we don't want to see anyone go out of business under his circumstances. I don't know what we can do, but--

ASSEMBLYMAN LOVEYS: We'll follow-up.

MR. REED: I appreciate that. I think probably the best I could hope for, or expect, is that if you, the Committee -- or certain members of it -- would inquire and voice your concern to the Department of Insurance and the Department of Labor, and perhaps the Governor's office, it would really be a great change if we were to pass at this time and just go.

Obviously -- not obviously -- but I am a fighter, and I am not about to lie down. I think you can appreciate that it is like renting a supermarket without a produce section, without a meat section, and how long can you sell canned goods? You almost hope it rains so the customers don't come,

so that they won't be disappointed, because once they are disappointed, you have probably lost them. You can bring in 100 new customers a year perhaps, but you can lose 100 in a month, and they don't come back as easily.

I found it difficult to sit out there for three hours and listen to all of the conflicting views, but very frankly I can see it is a lot harder to sit up there and cut the wheat from the chaff.

Thank you for your time.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Reed.

ASSEMBLYMAN WEIDEL: Thank you, Mr. Reed.

ASSEMBLYMAN LOVEYS: That will conclude the hearing tonight.

(HEARING CONCLUDED)

APPENDIX



Home Care Council of New Jersey

The State Association of Homemaker-Home Health Aide Agencies
60 South Fullerton Ave., Montclair, New Jersey 07042 (201) 744-5524

THURSDAY APRIL 10, 1986

MY NAME IS KENNETH DOLAN AND I AM THE EXECUTIVE DIRECTOR OF THE HOME CARE COUNCIL OF NEW JERSEY, THE STATE ASSOCIATION OF NON-PROFIT HOME CARE PROVIDERS. I AM HERE TONIGHT TO SPEAK ON BEHALF OF THE COUNCIL'S MEMBER AGENCIES: THE TWENTY-TWO NON-PROFIT HOMEMAKER/HOME HEALTH AIDE AGENCIES ACROSS THE STATE.

BEFORE I BEGIN MY TESTIMONY, I WOULD LIKE TO THANK THE COMMITTEE FOR PROVIDING THIS OPPORTUNITY TO THOSE OF US WHO ARE MOST SERIOUSLY AFFECTED BY THE CURRENT LIABILITY CRISIS TO EXPRESS OUR CONCERNS.

THE HOME CARE COUNCIL'S MEMBER AGENCIES PROVIDE VALUABLE IN-HOME HEALTH SUPPORTIVE SERVICES TO THOUSANDS OF NEW JERSEY'S HOMEBOUND SICK, FRAIL ELDERLY AND DISABLED. IT IS A DOCUMENTED FACT THAT THE MOST NECESSARY TYPE OF HOME CARE SERVICES ARE NOT MEDICAL, BUT ARE THOSE SERVICES PROVIDED BY HOMEMAKER/HOME HEALTH AIDE AGENCIES LIKE OURS. UNFORTUNATELY, THE HIGH COST OF LIABILITY INSURANCE PREMIUMS HAS PLACED A HEAVY BURDEN ON THE ALREADY STRAINED SERVICE BUDGETS OF OUR AGENCIES.

AS I MENTIONED, ALL OF THE COUNCIL'S MEMBER AGENCIES ARE NON-PROFIT. AS WITH ALL NON-PROFIT ORGANIZATIONS, EACH OF OUR AGENCIES IS ULTIMATELY GOVERNED BY A VOLUNTARY BOARD OF DIRECTORS, DRAWN FROM AND RESPONSIBLE TO THE LOCAL COMMUNITY. THE DAY-TO-DAY OPERATIONS AND SUPERVISION OF THE PROFESSIONAL STAFF AND HOME HEALTH AIDES IS THE RESPONSIBILITY OF AN EXECUTIVE DIRECTOR.

Members: Atlantic County Homemaker — Home Health Aide Service • Visiting Homemaker-Home Health Aide Service of Bergen County • Visiting Homemaker and Health Services (Burlington County) • Jersey Cape Visiting Homemaker Service • Cumberland County Homemaker — Home Health Aide Service • CHR-ILL Service (Essex County) • Visiting Homemaker-Home Health Aide Service of Gloucester County • Visiting Homemaker Service of Hudson County • Visiting Homemaker Service of Hunterdon County • Princeton Community Homemaker — Home Health Aide Service • Visiting Homemaker-Home Health Aide Service of Middlesex County • Visiting Homemaker-Home Health Aide Service of Monmouth County • Visiting Homemaker Service of Morris County • Visiting Homemaker Service of Ocean County • Visiting Homemaker Service of Passaic County • Visiting Homemaker-Home Health Aide Service of Salem County • Visiting Homemaker Service of Somerset County • Visiting Homemaker Service of Sussex County • Visiting Homemaker Service of Central Union County • SAGE (Union County) • Visiting Homemaker Service of Warren County

10X

BECAUSE OF THIS ORGANIZATIONAL STRUCTURE, ALL OF THE COUNCIL'S AGENCIES ARE REQUIRED TO CARRY THREE KINDS OF LIABILITY COVERAGE: GENERAL, PROFESSIONAL AND OFFICERS & DIRECTORS LIABILITY INSURANCE COVERAGE. WE ARE ALL WELL AWARE OF THE SKYROCKETING PREMIUMS FOR LIABILITY COVERAGE, BUT I WOULD LIKE YOU TO CONSIDER FOR JUST A MOMENT THE TREMENDOUS FINANCIAL BURDEN THE NON-PROFIT, COMMUNITY SERVICE ORGANIZATIONS MUST FACE BECAUSE OF THIS TRIPLE THREAT.

OF THE VARIOUS LIABILITY COVERAGES THE COUNCIL'S MEMBERS MUST PURCHASE, THE GREATEST BURDEN TO OUR AGENCIES IS THE INCREASE IN THE OFFICERS AND DIRECTORS COVERAGE, MOST COMMONLY REFERRED TO AS BOARD COVERAGE. I THINK THE FOLLOWING EXAMPLE WILL BEST HIGHLIGHT THE ABSURDITY OF THIS PARTICULAR SITUATION.

THE COUNCIL'S MEMBER AGENCIES HAVE BEEN IN OPERATION FOR A COMBINED TOTAL OF OVER 600 YEARS. IN ALL OF THOSE YEARS, NOT ONE CLAIM OR LAWSUIT HAS EVER BEEN LEVIED AGAINST ONE OF THE VOLUNTARY BOARD OF DIRECTORS OF OUR HOMEMAKER AGENCIES. DESPITE THIS EXTENSIVE TRACK RECORD, A RECENT SURVEY OF OUR MEMBERS INDICATE AN AVERAGE INCREASE OF 250% THIS YEAR FOR BOARD LIABILITY INSURANCE PREMIUMS. WE FAIL TO SEE THE REASONS OR THE LOGIC FOR THESE VERY SUBSTANTIAL PREMIUM INCREASES, PARTICULARLY SINCE WE HAVE NO CLAIMS RECORD.

THE NON-PROFIT HOME CARE PROVIDERS IN NEW JERSEY ARE ALREADY

STRUGGLING WITH SEVERE FINANCIAL CONSTRAINTS DUE TO FEDERAL AND STATE CUTBACKS. THE ADDED BURDEN OF COMING UP WITH THOUSANDS OF DOLLARS TO PROVIDE PROTECTION FOR COMMUNITY LEADERS WHO VOLUNTARY GIVE THEIR TIME AND ENERGY TO OUR AGENCIES IS AKIN TO SQUEEZING BLOOD FROM THE PROVERBIAL STONE. AS SUCH, MANY OF OUR AGENCIES ARE SERIOUSLY CONSIDERING "GOING BARE" WHEN IT COMES TO BOARD COVERAGE.

WITH THIS IN MIND, THE HOME CARE COUNCIL OF NEW JERSEY STRONGLY ADVOCATES FOR TORT REFORM WHICH SPECIFICALLY EXEMPTS VOLUNTARY, NON-PROFIT BOARD OF DIRECTORS FROM DIRECT LIABILITY. AS EVIDENCED BY THE LACK OF A CLAIMS RECORD, THE POTENTIAL FOR INCLUDING A VOLUNTARY BOARD OF DIRECTORS IN A LAWSUIT IS HIGHLY UNLIKELY. EVEN MORE UNLIKELY IS PROVING NEGLIGENCE THROUGH SOME POLICY SUPPORTED BY A VOLUNTARY BOARD. IN THESE DAYS OF SEVERE ECONOMIC CONSTRAINTS FOR NON-PROFIT COMMUNITY SERVICE ORGANIZATIONS, THE HOME CARE COUNCIL OF NEW JERSEY IS CERTAIN THAT THE THOUSANDS OF DOLLARS IN BOARD LIABILITY PREMIUMS EXPENDED EACH YEAR BY THE NON-PROFIT HOMEMAKER/HOME HEALTH AIDE AGENCIES OF NEW JERSEY CAN CERTAINLY BE PUT TO BETTER USE PROVIDING DIRECT SERVICES TO THE COMMUNITY.

I THANK YOU FOR ALLOWING ME TO TESTIFY BEFORE YOU ON BEHALF OF THE HOME CARE COUNCIL OF NEW JERSEY. I HOPE YOU WILL GIVE SERIOUS CONSIDERATION TO OUR REQUEST.

COMMISSION ON ACCREDITATION FOR HOME CARE, INC.
c/o Home Care Council of New Jersey
60 S. Fullerton Avenue, Montclair, NJ 07042 201/744-5524

THURSDAY APRIL 10, 1986

MY NAME IS GINGER ORSI AND I AM A VOLUNTEER BOARD MEMBER OF THE COMMISSION ON ACCREDITATION FOR HOME CARE. THE COMMISSION WAS ESTABLISHED LAST NOVEMBER AS A MAJOR PRIVATE SECTOR INITIATIVE TO PROMOTE AND ENFORCE UNIFORM QUALITY ASSURANCE STANDARDS IN THE HOME CARE FIELD.

THE BOARD OF DIRECTORS OF THE COMMISSION REPRESENT A UNIQUE VOLUNTARY PARTNERSHIP OF PRIVATE SECTOR PROVIDERS, COMMUNITY AGENCIES, CONSUMERS AND STATE GOVERNMENT ADVISORS -- BROUGHT TOGETHER TO REVIEW AND EVALUATE HOMEMAKER-HOME HEALTH AIDE PROVIDERS PERFORMANCE AND SERVICE DELIVERY QUALITY.

THE COMMISSION IS IMPORTANT TO THE STATE OF NEW JERSEY FOR THREE REASONS. FIRST, IT IS BASED ON A VOLUNTARY ACCREDITATION MODEL, THUS SAVING TAX PAYERS MONEY BY AVOIDING THE NEED FOR BUREAUCRATIC RED TAPE AND GOVERNMENT REGULATIONS WHICH TEND TO INCREASE HEALTH CARE COSTS -- OFTEN BEYOND THE REACH OF THE AVERAGE CONSUMER.

SECOND, THE COMMISSION WILL BE EFFECTIVE IN INSURING QUALITY BECAUSE IT IS BASED ON OBJECTIVE STANDARDS ALREADY DEVELOPED AND TESTED BY A NATIONALLY RECOGNIZED STANDARDS SETTING ORGANIZATION.

THIRD, THE COMMISSION WILL BE EFFECTIVE IN PROMOTING INDUSTRY-WIDE COMPLIANCE WITH UNIFORM SERVICE STANDARDS BECAUSE,

ALTHOUGH IT IS VOLUNTARY, IT CARRIES INCENTIVE: NO AGENCY WILL BE ELIGIBLE TO PARTICIPATE IN NEW JERSEY'S NEW LONG-TERM CARE PROGRAMS WITHOUT ACCREDITATION APPROVAL FROM THE COMMISSION.

THE COMMISSION ON ACCREDITATION FOR HOME CARE HAS REQUESTED THAT I APPEAR BEFORE THIS COMMITTEE TONIGHT TO INFORM YOU THAT THE COMMISSION'S ENTIRE QUALITY ASSURANCE INITIATIVE IS IN JEOPARDY BECAUSE THERE IS A DISTINCT POSSIBILITY THAT WE WILL BE UNABLE TO SECURE LIABILITY INSURANCE TO COVER THE VOLUNTARY BOARD OF DIRECTORS. IN THE CURRENT VOLATILE INSURANCE MARKET, THE COMMISSION HAS BEEN UNABLE TO FIND AN UNDERWRITER WILLING TO WRITE A NEW LIABILITY POLICY FOR THE BOARD.

WITHOUT INSURANCE COVERAGE, THE VOLUNTEER BOARD MEMBERS WILL BE INDIVIDUALLY VULNERABLE TO LAW SUITS CHALLENGING ANY ACTIONS OF THE COMMISSION. IN OUR SUE CRAZY SOCIETY, THIS IS A VERY REAL POSSIBILITY.

WITHOUT APPROPRIATE BOARD INSURANCE IT IS UNREASONABLE TO EXPECT THE VOLUNTEER BOARD MEMBERS TO CONTINUE SERVING ON THE COMMISSION. AND WITHOUT A BOARD, THE COMMISSION WILL BE UNABLE TO CARRY OUT ITS VITAL QUALITY ASSURANCE RESPONSIBILITIES.

ACCORDING TO A RECENT REPORT OF A U.S. JUSTICE DEPARTMENT TASK FORCE, THE ONLY WAY THE CURRENT IMPASSE CONCERNING THE AVAILABILITY AND COST OF LIABILITY COVERAGE WILL BE BROKEN IS THROUGH MAJOR TORT REFORM AT THE STATE LEVEL. THE KEY ELEMENTS OF

THIS TORT REFORM ARE LIMITS ON AWARDS FOR PAIN AND SUFFERING AND ESTABLISHING RULES FOR PARTIAL LIABILITY FOR PARTIES ONLY PARTIALLY AT FAULT.

ON BEHALF OF THE COMMISSION I WOULD LIKE TO REQUEST THAT THIS COMMITTEE GIVE SERIOUS CONSIDERATION TO THE TORT REFORMS RECOMMENDED IN THE U.S. JUSTICE DEPARTMENT REPORT. ADDITIONALLY, WE WOULD LIKE TO RECOMMEND THAT YOU CONSIDER ENACTING TOUGHER STATE REGULATIONS FOR THE INSURANCE INDUSTRY WHICH WOULD INCLUDE "FLEX RATING" -- RESTRICTING CHANGES IN PREMIUM RATES TO A FIXED PERCENTAGE -- AND FOR PROHIBITIONS AGAINST DROPPING LINES OF COVERAGE.

I THANK YOU FOR ALLOWING ME TO TESTIFY BEFORE YOU ON BEHALF OF THE COMMISSION ON ACCREDITATION FOR HOME CARE. I HOPE YOU WILL GIVE SERIOUS CONSIDERATION TO OUR RECOMMENDATIONS.

NEW JERSEY LEGISLATION HEARING ON LIABILITY INSURANCE

APRIL 10, 1986

My name is Romeo Aybar, a registered Architect and a professional Planner in the State. I am a Fellow of the American Institute of Architects, a Past President and Past Regional Director of the New Jersey Society of Architects.

I am testifying as the chair of the New Jersey Society of Architects Liability Insurance Committee.

Our profession is suffering, along with other professions, business, and public bodies, due to the present and increasing cost of liability insurance.

We, along with other design professionals are responsible for over 100 billion dollars worth of construction documents that are turned out every year.

It is virtually impossible for the Architect to check and verify each calculation, design, drawing, or specification, yet the Architect must place his professional seal on these documents in the hope that they will stand the test of law or a contractor's competitive ability.

For this privilege, the Architect must pay exorbitant liability insurance premiums to protect himself in the event of a claim by anybody using the building.

In other professions, the major difference in liability exposure, is that the claim is directly related for services rendered by the professional to the claimant. Architects are being sued for failures in a building that occur for poor maintenance in which he has no control, and by the users of the building and grounds, who don't have contractual or direct relationship with the Architect.

The Architect designs a building which is being built with materials of which he has no direct quality control, is being built by contractors and labor forces of which the Architect has no direct responsibility for their workmanship, and after it is built it is maintained by Owner's forces which are not under the supervision of the Architect and finally is being used by people who the Architect does not even know. All these people are potential plaintiffs.

As per disclosure of the Continental Casualty Company, the largest carrier in U.S., the Architects in New Jersey have the highest factor rate for basic premiums of all the fifty states: 9.720 compared with 3.823 of Oklahoma.

The enormous amount of claims, exorbitant settlements and awards seems to be the reason that Insurance Companies claim as justifications of sky rocketing premiums.

The so called "Rip Off" by the Insurance Industry, seems to be credible, when the relationship between "Less Profit" and the huge increases in premiums is not at par, and that the increases started at the same time and by all Insurance Companies, for all types of liability coverage and for professionals, commercial and institutional liability coverage.

Two things may happen:

- A. The consumer will pay for the increases in premiums, creating an enormous inflation.
- B. Unable to pay the premiums, professional, commercial and institutional bodies will be out of business or will reduce services.

Either way, the only loser will be Joe Doe, living on Main Street, America.

1. The Insurance companies claim that they lost 5.5 billion in 1985, they really did not, they just made less than in previous years: 5.5 billion in 1983; 1.1 billion in 1984; and 1.7 billion in 1985. It may be a reduction of profit, but still a profit. The highest dividends in the market are being paid now to share holders of stocks of insurance companies.
2. Attorneys and the Judicial system claim that too many Americans look for opportunities to sue. Too many lawyers encourage them to do so. Too many judges and juries make it profitable for both of them. In many instances the attorney gets most of the money awarded. The Rand Institute study showed that in asbestos litigation, lawyers received \$62,000 of the average \$101,000 award or settlement.

3. Fault, which has been the historic prerequisite to recovery of damages, is no longer a requirement. The less "guilty defendant" in a settlement or in an award may be paying the largest share of the claim.

4. There are incentives to sue, with 600,000 to 700,000 lawyers, and with law schools "flushing out" thousands more each year, there is positive pressure toward litigation.

Our immediate concern is the moratorium that Insurance Companies have imposed in New Jersey, to exclude asbestos and toxic waste; and the decision not to overwrite new policies. This decision of no new insurance not only will exclude young Architects to establish his own office but denies the right and choice of an established firm to seek competitive cost of insurance at the time of renewal of an expiring policy, leaving the firm to pay from 100 to 800% increase in premiums or to "go bare" and not carry insurance which may jeopardize the life savings of the Architect and will limit the clientele that his office may seek to stay in business.

This crisis has forced the New Jersey Society of Architects to study self-insurance programs; but, unfortunately, this will take time and will not resolve the immediate crisis.

We feel that a long range solution may be judicial reform in: frivolous lawsuits legislation, tort reform, limitation of awards for pain and suffering, adoption of the English judicial system, or insurance regulatory boards.

