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PUBLIC HEARING

before

ASSEMBLY BANKING AND INSURANCE COMMITTEE

on

AR-3085

New Jersey State Library

Held:
December 14, 1983
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Michael F. Adubato, Chairman
Assemblyman Eugene H. Thompson, Vice Chairman
Assemblyman Louis F. Kosco
Assemblyman John V. Kelly

ALSO PRESENT:

Dr. Spiros J. Caramalis, Senior Research Specialist
Office of Legislative Services
Aide, Assembly Banking and Insurance Committee

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INTRODUCTION

We who believe that free enterprise and equity are not in conflict must continue to work together --- if free enterprise is to survive.

Mike Adubato

Historical Background

In 1980, the Commissioner of Insurance, James Sheeran, implemented by regulation a \$42 subsidy for alleged claims losses in the Assigned Risk Plan to be paid by every insured private passenger automobile registrant with full coverage on a flat or per car basis. It was called the "constant." In June of 1983, the Commissioner of Insurance, Joseph F. Murphy, increased the constant another \$33, making the total subsidy for losses occurring only in the Assigned Risk Plan \$75 per car. ¹

Several months earlier, on February 10, 1983, Assembly Bill No. 1696 had been signed into law as chapter 65 of the Pamphlet Laws of 1983. This act eliminated the Assigned Risk Plan in New Jersey effective January 1, 1984, and replaced it with the joint underwriting association (JUA). Therefore, the subsidy (that is, the constant) of \$70 per car that had been given to auto insurance companies in

¹Of this \$75.00, \$70.00 was the amount of the net pass-through of the policy constant. Therefore, \$70.00 will be used henceforth as the figure for the amount of the constant.

New Jersey for losses occurring only in the Assigned Risk Plan rightfully belonged to the JUA as of January 1, 1984, and not to the auto insurance companies in their voluntary market book of business.²

The December 14, 1983, public hearing held by the Assembly Banking and Insurance Committee pursuant to Assembly Resolution No. 3085 (1983) documented the efforts taken to implement or prepare for the implementation of P.L. 1983, c. 65. The Committee was concerned with actions taken by the Commissioner of Insurance and the JUA which were contrary to the intent, if not the letter, of that law.

Of particular concern was the action by the Commissioner of Insurance, Joseph F. Murphy, on November 17, 1983, in approving the retention by auto insurers of the policy constant in their voluntary market book of business. Furthermore, this premium increase was given to the companies under a compliance filing (on behalf of Insurance Services Office or ISO) without any public notice. The

²For your information, in 1982, there were approximately 3.5 million insured private passenger cars in New Jersey. Of these:

- 1) 2.1 million were in the voluntary market,
- 2) 1.4 million were in the Assigned Risk Plan, of which:
 - a. 85% were insured by persons living in suburban and rural New Jersey,
 - b. 15% were insured by persons living in the urban areas of New Jersey.

At present, there are approximately 4 million insured passenger cars in New Jersey. Of these:

- 1) 2.3 million are in the voluntary market,
- 2) 1.7 million are in the Joint Underwriting Association (JUA).

Commissioner's action set the stage for the November 23, 1983 filing, on behalf of the JUA, calling for a premium increase of \$90.00 per car with a full package of coverage.

Chronology of Events

(1) At a meeting held on December 1, 1983, at the Prudential Insurance Company offices in Newark, in the presence of representatives of the Governor and the chief actuaries of PruPac and Allstate, the Chairman of the Assembly Banking and Insurance Committee publicly accused the auto insurance companies and the Commissioner of Insurance of wrongfully taking the \$70 per car subsidy from the assigned risk plan and giving those monies as an unconscionable profit to the automobile insurance companies. As the policy constant had been designed as a subsidy to companies for their assigned risk plan losses, the chairman asked the company representatives what right their companies had to retain the assigned risk subsidy because under the JUA the companies would no longer have any assigned risk exposure in their rate structures beginning on January 1, 1984.³ The chairman emphatically pointed out that the subsidy monies belonged not to the companies but to the JUA, which was soon to assume exclusive responsibility for the old assigned risk private passenger automobile market. The response of the company representatives was that there was nothing wrong or illegal with their keeping the subsidy.

³Commissioner Murphy (on page 61 of the hearing transcript) agreed that the subsidy existed in order to cover losses in the residual market, not the voluntary market.

(2) Following the meeting of December 1st, the chairman contacted the Assembly Minority Leader, Dean Gallo, and requested his assistance in asking the insurance commissioner to order the \$70 subsidy returned to the JUA, where it rightfully belonged, and to prevent the \$90 surcharge rate increase requested by the JUA. Assemblyman Gallo notified the chairman on December 8th that the commissioner was not receptive to this request.

(3) On December 8th, in a bipartisan fashion, Assembly Speaker Alan Karcher and the minority leader, Assemblyman Dean Gallo, sponsored Assembly Resolution No. 3085.

(4) On the same day, Assembly Bill No. 4069, sponsored by the chairman and co-sponsored by Assemblymen Kosco, Karcher and Gallo, was introduced and, under an emergency resolution, passed by a vote of 63-1. (See copy of vote in appendices.)

(5) On December 14, 1983, a public hearing was held in the New Jersey Assembly chamber. Of particular importance was the testimony of William S. Gibson, Chairman of the JUA and Vice-President of the Continental Insurance Company. Mr. Gibson repeatedly acknowledged that the policy constant, which was the \$70 per car subsidy in the assigned risk, did not belong to the insurance companies in the voluntary market since they would no longer have any exposure. (See page 22 through 25 of the hearing transcript.) But in spite of this acknowledgment, Mr. Gibson (on page 31) stated that there was no law which prevented the companies from taking this money.

(6) On December 15, 1983, the Senate passed A-4069 by a vote of 31-0.

(7) On December 15, 1983, the State Attorney General, Irwin Kimmelman, called the chairman to convey that he agreed with the chairman's contention that Commissioner Murphy's approval on November 17th of the ISO filing was wrong, and that he was on his way to convey this conclusion to the Governor. He added that the State's Public Advocate, Joseph H. Rodriguez, concurred with this view.

(8) On January 5, 1984, the Governor conditionally vetoed A-4069. On January 9th, the Governor's veto recommendations were adopted by the Assembly by a vote of 58-0. The Senate did not have time to act on the Governor's recommendations before the end of the legislative session.

(9) On January 5, 1984, the chairman received a legal opinion from the Division of Legal Services of the Office of Legislative Services (a copy of which is included in the appendices) which, in pertinent part, stated:

absent any demonstration on the part of rate filers that continued collection and retention of a policy constant was necessary to cover substantiated losses, the Commissioner of Insurance may have violated his statutory authority when he approved rate filings for automobile insurers for rates in effect on or after January 1, 1984. (emphasis added)

(10) On January 10, 1984, A-4069 (with the Governor's recommendations) was reintroduced as Assembly Bill No. 802.

(11) On January 10, 1984, Governor Thomas H. Kean stated in his Annual Message to the New Jersey State Legislature:

I strongly opposed the imposition of a \$90 surcharge on all auto insurance policies to cover the costs of the Joint Underwriting Association. New Jersey motorists are already paying a policy constant of \$70 per policy to cover the added costs of insuring the assigned risk pool. The funds generated by the policy constant should be applied to cover the costs of the J.U.A. in order to reduce the need for across-the-board surcharges.

(12) On January 23, 1984, A-802 passed the Assembly under an emergency resolution, 71-3. (See vote in appendices.) On the same day, A-802 passed the Senate under an emergency resolution, 36-0.

(13) On January 26, 1984, A-802 was signed into law by Governor Thomas H. Kean as P.L. 1984, c. 1

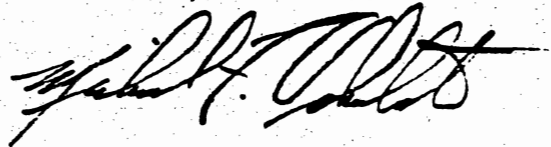
Purposes of P.L. 1984, c. 1

By the enactment of P.L. 1984, c. 1, the Legislature and the Governor accomplished two major purposes:

(1) \$165 million was returned to where it rightfully belonged, to the JUA;

(2) A \$90 per car increase in auto insurance premium was stopped. This would have amounted to a \$349 million increase per year in auto insurance for New Jersey motorists.

Respectfully submitted to the
Governor, the Legislature, and
the People of New Jersey,



Michael F. Adubato, Chairman
Assembly Banking and Insurance
Committee

MFA:sl

NOTE: The chairman recognizes the assistance of Spiros J. Caramalis, Senior Research Specialist, William B. Waits, Research Assistant, and Thomas K. Musick, Deputy Legislative Counsel, all of the Office of Legislative Services, and Peter Guzzo of the Assembly Majority Staff in the completion of this project.

ASSEMBLYMAN MICHAEL F. ADUBATO (Chairman): Good morning, ladies and gentlemen. We will open this public hearing with a salute to the flag. Would you all rise, please, and join me? (Everyone rises and says the Pledge of Allegiance.) Thank you.

This public hearing will be conducted in accordance with the Resolution which was unanimously passed in the New Jersey Assembly recently. Before we read the Resolution, I would ask you, ladies and gentlemen, although there are really not that many here this morning, to cooperate while the testimony is being given, and keep your conversations to a minimum, or please have the courtesy to step outside into the corridor. That goes for giving press interviews, or television interviews of any nature. Please conduct them outside in the corridor so we do not have to ask you to leave.

We hope this will be a brief meeting. First of all, I am going to ask Dr. Caramalis, one of our staff, to read what brings us here today, in its entirety, please.

DR. CARAMALIS: The Resolution reads as follows:

AN ASSEMBLY RESOLUTION directing the Assembly Banking and Insurance Committee to determine and evaluate efforts taken to date to implement the "New Jersey Automobile Insurance Reform Act of 1982" and the "New Jersey Automobile Full Insurance Availability Act," and to inform the public of the provisions of these laws.

WHEREAS, The "New Jersey Automobile Insurance Reform Act of 1982" and the "New Jersey Automobile Full Insurance Availability Act," which were signed into law as P.L. 1983, c.65 on February 10, 1983, involve substantial changes in the automobile insurance system in New Jersey; and,

WHEREAS, Considerable preparatory work is required in order to implement the provisions of the two enactments by January 1, 1984; and,

WHEREAS, A considerable amount of misinformation has recently appeared in the public media on the legislative objectives and the impact of these two automobile reform acts; and,

WHEREAS, Persons responsible for implementing the provisions of these two acts have greatly contributed to the climate of misunderstanding and public confusion by unsubstantiated and unfounded

assertions, reported in or through the public media, including statements by:

(1) Mr. William S. Gibson, Chairman of the Board of Directors of the New Jersey Automobile Full Insurance Underwriting Association, that the residual market equalization charge is: (a) required before the Association has had a chance to develop its own experience, and (b) a result of the territorial and class capping provisions of the "New Jersey Automobile Insurance Reform Act of 1982;" and,

(2) Mr. Nelson D. Ealey, General Manager of the New Jersey Automobile Full Insurance Underwriting Association, to the effect that the residual market equalization charge for the first year of Association operations should more appropriately be \$200.00, rather than the \$90.00 charge proposed in the Association's rate filing of November 23, 1983 with the Department of Insurance; and

WHEREAS, In spite of substantial rate increases afforded to automobile insurers in the past twenty-four months, including a sizeable increase in the automobile policy constant, and the considerable cost savings inherent in the package of automobile insurance cost containment measures approved by the Legislature in 1983, the New Jersey Automobile Full Insurance Underwriting Association has nevertheless filed for an additional increase of \$90.00 in the vehicle charge, while holding out the prospect that an additional \$110.00 per vehicle charge is, in fact, needed to make the Association solvent in 1984; and

WHEREAS, The Association's rate filing of November 23, 1983 also raises numerous questions as to the derivation of, and statistical basis for, many of the figures contained in the filing used to justify the request for a \$90.00 residual market equalization charge; and

WHEREAS, The New Jersey Automobile Full Insurance Underwriting Association has failed to respond in a timely manner to requests for information from the Assembly Banking and Insurance Committee; and

WHEREAS, By reason of the statements and actions of persons responsible for carrying out legislative intent in reforming the automobile insurance system in New Jersey, as reported in the public

media, there is every indication that the concerned parties will not be able to implement the aforementioned enactments on January 1, 1984; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey:

1. The Banking and Insurance Committee of the General Assembly is directed to conduct an immediate hearing to determine what measures have been taken for the implementation of the "New Jersey Automobile Insurance Reform Act of 1982" and the "New Jersey Automobile Full Insurance Availability Act;" to determine if the parties concerned properly understand the legislative objectives of the two acts; and, to clear away the many misunderstandings concerning legislative intent and the impact of these two enactments in order to assure the timely and proper implementation thereof.

2. For the purposes of carrying out the terms of this Resolution, the Committee shall have all of the powers conferred pursuant to Chapter 13 of Title 52 of the Revised Statutes.

3. The Committee shall be entitled to call to its assistance and avail itself of the services of employees of the State of New Jersey, of any political subdivision of the State, or an agency thereof, as may be required and as may be available for that purpose, and to employ stenographic and clerical assistants and incur traveling and other miscellaneous expenses as may be deemed necessary, in order to perform the duties provided herein, and within the limits of funds appropriated or otherwise made available for that purpose.

4. The Committee shall report its findings and recommendations to the General Assembly upon the completion of its inquiry, including any legislative bills which it may deem to recommend for adoption by the Legislature.

5. A duly authenticated copy of this Resolution, signed by the Speaker of the General Assembly and attested to by the Clerk, shall be forwarded to the Governor of the State of New Jersey, the Speaker of the General Assembly, the Commissioner of Insurance, the Public Advocate, the President of the Senate and the Chairman and other members of the Board of Directors and the General Manager of the New

Jersey Automobile Full Insurance Underwriting Association.

ASSEMBLYMAN ADUBATO: Thank you, Dr. Caramalis. I would like to recognize that we have Assemblyman Louis Kosco, the ranking minority member of the Committee, here today, as well as Assemblyman John Kelly, Spiros Caramalis and Mr. Peter Guzzo, formerly from the Office of Legislative Services, and now on the Democratic staff. For the record, the Resolution that was read was a resolution sponsored by the Speaker of the Assembly, Mr. Alan J. Karcher, and cosponsored by the Minority Leader, Mr. Dean A. Gallo, and is what brings us here this morning.

I would like to begin by asking Mr. Gibson to please join us, if he is here this morning, and Mr. Ealey, if humanly possible. Can we make room for two people there? (affirmative response) I would like him close by.

First of all, I would like to read a transcript from WOR-TV, Channel 9, and if anyone wishes to hear the tape we have it here, and can play it if it is so desired. But, I will read the transcript.

"Fifteen auto insurance companies were recently legislated into what is called the Joint Underwriting Association. The main idea was to give better service to motorists who had been assigned risks, meaning they had been forced upon insurance companies who did not want to accept them because statistics showed they were likely to have accidents or just because the companies claim they can't make money in New Jersey. Today, the underwriters asked the Legislature, the Governor and the Insurance Commissioner to add \$90.00 to annual insurance costs for most vehicles.

'It's not an unreasonable decision, but part of it involves the fact that some people, like myself -- I live in Morris County and I have three cars -- some of us are going to pay a little more so that some can achieve substantial savings.'

"As an example of the equalization Gibson is talking about, a nineteen-year-old male, single, living in Newark, now pays \$3,280 for full coverage. Under the equalization plan, he would pay \$1,757.

"The Underwriting Association was created and the bill sponsored by Assemblyman Michael Adubato. He's from Newark, and he feels that he is being betrayed.

'What the insurance industry is asking for is absurd; it's ludicrous, and it will not happen. It will not happen because the facts will speak for themselves. We're going to have an investigation that will be thorough, and we are going to expose the treachery for what it is.'

"But tonight Garden State motorists have a ray of hope. The Governor is against the surcharge, and Underwriters Association Chairman Gibson says that it is unlikely to pass, at least in its present \$90.00 form. This is from Robert Miller, News 9, New Jersey."

There was another interview on Channel 5, as well as press clippings and quotes credited to Mr. Nelson Ealey, as well as to Mr. Gibson and others. I do not wish to belabor media quotes, or even television commentary. I will be the first to admit that because of limited time and space, total statements are never read into the record. I am not going to try to interpret what was meant or what the full statement was, except to say that \$90.00, whether it is an excerpt or the full statement, is still \$90.00. I would like to, first of all, thank you, Mr. Gibson and Mr. Ealey, for being here today. The people who have shown up today, for the record, are here by invitation. The Committee did not exercise its subpoena power. We did not see any need to do that, because the cooperation from the people in this room in the past has never warranted that, and we did not expect it to warrant it today, quite frankly. I just want to put that on the record. Everyone is here cooperating voluntarily. This is not an investigation, in spite of my comment to the media. However, I would refer back to the Resolution and say, this is a meeting for information. If an investigation is required after today, there will be an investigation, but, let's not put the cart before the horse.

Mr. Gibson, is there anything you would like to say before we ask you any questions about anything?

WILLIAM S. GIBSON: Only that Mr. Miller is over there and maybe you ought to put him on the stand. I brought my barbecue sauce with me. My colleagues in my office presented it to me yesterday on the assumption that I might need it. Other than that, I assume you will ask questions that will bring out the information in the order you would like it; otherwise, I am prepared to tell you, at whatever time

you want, the steps we have taken as a Board of Directors to implement Assembly Bill 1696.

ASSEMBLYMAN ADUBATO: I have a chronological order in front of me, statutorily, that comes from A-1696, with sequences and time frames. If we have to, we'll go through that step by step. I would prefer to expedite it for everybody, and ask you why you put in for a rate filing of \$90.00. I have read the filing, as you know.

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: And, I want to know on what basis do you feel you need the money?

MR. GIBSON: Well, the statute, as we have read it, and all of our--

ASSEMBLYMAN ADUBATO: Let me interrupt you, sir. When you say "the statute," are you talking to Chapter 65, Assembly Bill 1696?

MR. GIBSON: Assembly Bill 1696, yes.

ASSEMBLYMAN ADUBATO: Are you saying you have read it?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: All right. May I be so -- because, you know, I want to learn. About how many times did you read the bill, once, twice, ten times?

MR. GIBSON: Probably a dozen times.

ASSEMBLYMAN ADUBATO: A dozen times. Was it broken down in sections for interpretation by your staff? Did you deal with just the JUA as a mechanism, or did you deal with the entire legislation? That is what I want to know.

MR. GIBSON: Well, as an Association Board of Directors, we dealt with those aspects of this law that apply to the Association, and to our responsibilities as a Board of Directors.

ASSEMBLYMAN ADUBATO: That is a key point, sir. The point I am trying to clarify from your testimony is simple. Did you concern yourselves with the entire bill, or did you limit that concern to what you were going to be held accountable for?

MR. GIBSON: Well, we approached it, obviously, from the standpoint of what we were responsible to accomplish in a relatively short time for such a major undertaking. We have tried, I think, to get information out the best we could to all of the insurance companies and producers in the State, as to what was expected of us.

ASSEMBLYMAN ADUBATO: Excuse me, Mr. Gibson, let me rephrase the question. I'll try to help; I'll try to make it as simple as I can. You said you read the bill many times?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: I'll ask again, did you read and interpret, to the best of your ability, the entire bill and all the sections in the bill, or only those sections that you, as the Chairman of the Board of the JUA, were going to be held accountable for?

MR. GIBSON: What I am trying to say is, obviously we have read the entire bill. In interpreting that, we had to decide what we had to do. Now, if you are getting to the point of what did we have to do with the development of the provisions of the bill which apply to the market as a whole, we did not get involved in that in our role as the Board of Directors of the Association.

ASSEMBLYMAN ADUBATO: All right. So, for clarity's sake, you read the entire bill -- correct me if I am not stating it properly -- you read the entire bill, you tried to interpret the entire bill, as well as what you were being held accountable for, and you -- what was the last thing? I'm sorry, I lost something.

MR. GIBSON: Your question was whether we responded to every section of the bill, or whether only some sections. I am trying to answer it in the context that I--

ASSEMBLYMAN ADUBATO: (interrupting) Let's confine it to Section 6(c) -- I think it's Section 6(c), I'm not sure. I mean, I am one of the people who wrote this bill, but I could be wrong. You know, we worked on this for many, many years. But, I think it's Section 6(c). Do you have a copy of the bill, sir?

MR. GIBSON: I don't think I brought a copy with me.

ASSEMBLYMAN ADUBATO: Okay. We will be glad to give you a copy, sir. Section 6(c) starts on Page 8, the last paragraph on the page, and continues over to Page 9.

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Are you familiar with that section, sir?

MR. GIBSON: Yes, I am.

ASSEMBLYMAN ADUBATO: How do you interpret that section to apply to the needs of the JUA?

MR. GIBSON: Well, this section applies to the entire market, not just to the JUA.

ASSEMBLYMAN ADUBATO: I will rephrase it -- to the needs of the JUA. I think that section applies to the needs of the JUA, does it not, in terms of revenue?

MR. GIBSON: Yes, revenue, but the revenue collected under the statute has two kinds of surcharges involved, surcharges to be collected separately from insurance premiums by DMV or by the Association--

ASSEMBLYMAN ADUBATO: Right.

MR. GIBSON: It would be a separate billing, and would have nothing to do with your insurance premium. Then, it also refers to some kind of surcharges that may be part of the rate system.

ASSEMBLYMAN ADUBATO: Now, let's move along to Section 6(d), which is right under Section 6(c).

MR. GIBSON: The ones that are a part of the-- Well, 6(d) is the motor vehicle conviction charges.

ASSEMBLYMAN ADUBATO: I understand Section 6(c). Let's move along to Section 6(d), if you would be so kind.

MR. GIBSON: All right.

ASSEMBLYMAN ADUBATO: Number one, how do you interpret Section 6(d) to be implemented and by whom, and number two, what is it supposed to do?

MR. GIBSON: Section 6(d) provides for collecting charges from people who have qualified by virtue of collecting enough moving violation points in amounts set out in the statute, or some other amount, if it is determined by the Commissioner of Insurance and the Director of the Division of Motor Vehicles.

ASSEMBLYMAN ADUBATO: That's 6(e); that's Section 6(e).

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Okay.

MR. GIBSON: Those amounts are to be collected and turned over to the Association.

ASSEMBLYMAN ADUBATO: In other words, those amounts are collected by the DMV, without any expense to the insurance industry?

MR. GIBSON: That's right, but they keep 20%, and then give the other 80%--

ASSEMBLYMAN ADUBATO: I'll try not to interrupt you, if you don't interrupt me.

MR. GIBSON: That's a deal.

ASSEMBLYMAN ADUBATO: Okay, that's wonderful. I'll say it again, with no expense to the insurance industry for collecting those monies. Is that a fair statement?

MR. GIBSON: That is a fair statement.

ASSEMBLYMAN ADUBATO: So, 80% of all revenue from those surcharges is sent to the JUA. We would like to have your help, Mr. Gibson, in understanding what surcharges you interpret statutorily in this bill are to be implemented.

MR. GIBSON: The surcharges authorized by the bill, or established by the Commissioner of Insurance and the Director of the Division of Motor Vehicles.

ASSEMBLYMAN ADUBATO: There -- I'm sorry, I didn't mean to interrupt you again.

MR. GIBSON: You did interrupt me.

ASSEMBLYMAN ADUBATO: I apologize, Mr. Gibson.

MR. GIBSON: That is all I can interpret. Now, in the course of our people, our Actuarial Committee, attempting to determine what the estimated revenue is going to be--

ASSEMBLYMAN ADUBATO: I am going to interrupt you now. You're wandering -- I'm sorry.

MR. GIBSON: Oh, I'm wandering, I'm sorry.

ASSEMBLYMAN ADUBATO: That's okay.

MR. GIBSON: The answer is, they are supposed to collect whatever they are supposed to collect.

ASSEMBLYMAN ADUBATO: All right, let's try to help each other, because that is why we're here. So, you're saying, they are supposed to collect whatever they are supposed to collect -- for what? For what purpose are they supposed to collect for whatever they are supposed to collect for? To do what?

MR. GIBSON: To provide additional revenue to meet the costs of the Association.

ASSEMBLYMAN ADUBATO: To meet the costs of the Association -- as it applies to what? That is specific in this legislation.

MR. GIBSON: As it applies to the results of the Association.

ASSEMBLYMAN ADUBATO: As it applies to the equalization charge? As it applies to the loss of revenue of a 30% shortfall in collision in the assigned risk? As it applies to the surcharges that exist now in the assigned risk? Is that what you mean?

MR. GIBSON: Assemblyman Adubato--

ASSEMBLYMAN ADUBATO: For clarity, is that what you mean?

MR. GIBSON: May I answer?

ASSEMBLYMAN ADUBATO: Sure.

MR. GIBSON: Thank you. The statute says, "The dollar amount of all motor vehicle conviction surcharges shall be at least equivalent to the differential between the rates charged to insureds as promulgated by the rating bureau which files rates for the greatest number of insurers in the voluntary private passenger automobile insurance market in this State and the Supplement I rates in use as of December 31, 1982 by the Automobile Insurance Plan established pursuant to P.L. 1970, c.215 (C.17:29D-1), and the amount collectable under the motor vehicle conviction surcharge system in use by the Automobile Insurance Plan established pursuant to P.L. 1970, c.215 (C.17:29D-1 et seq.) prior to the implementation of this act."

ASSEMBLYMAN ADUBATO: Prior -- does that mean in your opinion, sir, that these surcharges, in simple language, because I don't think some of the laymen, and there are one or two laymen in this room, and some legislators who took the time to come down here today -- they do not have the five years it took me to learn the jargon of the industry, so let's try to keep it in simple terms. Are we saying by your statement, reading from this legislation, that the revenue raised from this section was to equal the amount you spoke about that was already in the system prior to this act? Is that what that said?

MR. GIBSON: It says it shall be at least equal.

ASSEMBLYMAN ADUBATO: Thank you, Mr. Gibson. That is very important, thank you. Mr. Gibson, in the filing, on the front page of the filing, there is a statement-- By the way, for the record, is it a fair statement to say the filing was done by the assigned risk people, that you used them as the rating bureau?

MR. GIBSON: Well, the Automobile Insurance Plan Services Office, which does the assigned risks, was our agent.

ASSEMBLYMAN ADUBATO: Yes, AIPSO -- okay, that was your agent.

MR. GIBSON: They were our agent for the filing.

ASSEMBLYMAN ADUBATO: Right, okay. Now, when I read this, I find it a little confusing. Maybe you can help me. This is the cover letter, okay? It is addressed to The Honorable Joseph F. Murphy, as it should be, and asks for these rate increases. What it says is, "On behalf of the Board of Directors of the New Jersey Automobile Full Insurance Underwriting Association." We'll stop right there. "On behalf of the Board of Directors of the New Jersey Automobile Full Insurance Underwriting Association." This filing, which was submitted by R. F. Sutfin, had copies going to Jasper Jackson, Mr. William Gibson, Mr. Nelson Ealey, and other members of the Board -- that is who got this filing?

MR. GIBSON: That is correct.

ASSEMBLYMAN ADUBATO: For the record I want it noted that I requested to receive this filing, and I never did, neither from you nor from Mr. Murphy's office, but that's okay. You were not legally obligated. But, for the record, we did not receive it from you.

MR. GIBSON: May I say for the record that there certainly was no intention to keep it from you.

ASSEMBLYMAN ADUBATO: Oh, I'm sure there wasn't. I know that. For the record, I stand corrected by my staff. You did not comply; Commissioner Murphy did. In fact, he asked staff to go over to his office and pick it up. So, I stand corrected.

When we talk about the fact that this filing is being made to accommodate the provisions of Paragraph b of Section 20 of the New Jersey Automobile Full Insurance Availability Act-- I will get into that, but first, can we assume that this was a document that was approved by all the sitting members of the JUA Board?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Did these people approve of this in writing? Did they sign a statement saying, "We approve asking for \$90.00?"

MR. GIBSON: No.

ASSEMBLYMAN ADUBATO: All right. Would you explain to us how the process works?

MR. GIBSON: The process is perhaps a generous description of how one arrives at a decision to make such a filing. We had an Actuarial Committee appointed early on, in all of the things we were doing to implement this Act. The Actuarial Committee had senior actuaries from a number of insurance companies on it, as well as assistants from both AIPSO and ISO. All year, they have been looking at experience from prior years of the Auto Insurance Plan and, of course, watching to see what the rate level would be at the time that we might need to file a residual market equalization charge. That Committee, on several occasions, gave interim reports to our Board, and there were discussions about what level of residual equalization charge might be necessary. Things changed, both in the Legislature and in the experience during the course of the year, so they were constantly involved in reviewing and upgrading the material they were dealing with, and the numbers. Finally, on November 8, at our last Board meeting, the Committee came in with a final recommendation as to what they thought the actuarial projections were for the shortfall that the Association would be likely to have in 1984, on the assumption that the population of risks in the Association were approximately equal to the population of risks that had been written in the Auto Insurance Plan.

The Board had a lengthy discussion of this. The number involved was substantial, and bothersome to us. We resolved, at that time, to make a filing based on the actuaries' recommendation, but that we would put an assumption on of something less than a 100% population. We want to be optimistic that the voluntary market can become much more viable if the companies feel they have an opportunity to make a profit. At our meeting, it was determined unanimously that some of us would meet with Commissioner Murphy first, describe to him where we were and that we would have to make such a filing, and then after such a meeting we would proceed. That is what we did.

On the day before the filing, I spoke by telephone with those members who had not been present when we met with Commissioner Murphy a couple of days earlier. Everyone was fully aware that on Wednesday morning, November 23, there would be a filing publicly made for a residual marketing equalization charge of \$90.00. Well, it's not \$90.00 broken into three pieces, but it adds up to \$90.00 for someone who buys everything.

ASSEMBLYMAN ADUBATO: Okay. So, after a year of study by this Actuarial Committee, this was filed?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: The Actuarial Committee, in dealing with Section 20, specifically that section, talks about the revenue sources, isn't that so?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: In looking at the revenue sources, on Line 7, Page 19, Number 3, it says, "That percentage of surcharges collected by the Division of Motor Vehicles and deposited with the Association pursuant to Section b of Section 6 of the New Jersey Automobile Insurance Reform Act of 1982," and it goes on, "and that collected and retained by the Association to Subsection c of Section 6," and it goes on -- when the actuaries studied this section, do you have any record to show any revenue that they estimated as being collected by surcharges, and what those surcharges were?

MR. GIBSON: Yes, sir. In the filing, it specifically refers to an amount of money that the actuaries anticipate to be collected.

ASSEMBLYMAN ADUBATO: Do you know what page that is on?

MR. GIBSON: In the filing? Well, the filing is not very large; I have a copy of it here in my file. I think it says \$39 million.

ASSEMBLYMAN ADUBATO: Thirty-nine million dollars?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Do you know how much is collected in surcharges today in the residual market?

MR. GIBSON: Probably \$180 million, give or take a few million.

ASSEMBLYMAN ADUBATO: Doesn't the law say that that is supposed to be made up?

MR. GIBSON: The law says it is supposed to be made up.

ASSEMBLYMAN ADUBATO: Well, where is it made up?

MR. GIBSON: Obviously, it isn't made up yet.

ASSEMBLYMAN ADUBATO: What do you mean "yet?" Doesn't the law say that the Commissioner of Insurance has a statutory obligation to make that up before January 1, 1984?

MR. GIBSON: I don't see where it is necessarily interpreted that he has to somehow have the miraculous insight to come up with that.

ASSEMBLYMAN ADUBATO: Sir, forgive me; I am not asking for commentary.

MR. GIBSON: Mr. Chairman, when you interrupt me it's because I'm making commentary. When I interrupt you it's because you're asking a question.

ASSEMBLYMAN ADUBATO: Please, Mr. Gibson, you're out of order, sir.

MR. GIBSON: But, we had a deal.

ASSEMBLYMAN ADUBATO: No, we don't have a deal.

MR. GIBSON: Oh, the deal's off?

ASSEMBLYMAN ADUBATO: You are not sitting in Continental; you're sitting in the State House of New Jersey.

MR. GIBSON: Yes, of which I am a citizen.

ASSEMBLYMAN ADUBATO: And, you will conduct yourself accordingly.

MR. GIBSON: Agreed.

ASSEMBLYMAN ADUBATO: As this Chair directs. You're out of order.

MR. GIBSON: I stand condemned.

ASSEMBLYMAN ADUBATO: Mr. Gibson, I will ask you again, sir, not about your commentary, or your color. Is it not a statutory requirement under Section 20, and 6b, c and d, that the Commissioner of Insurance -- as you said in your previous testimony -- make up for those existing charges prior to the implementation of A-1696 on January 1, 1984? That is my question. You already gave me the answer; I just want to reconfirm that.

MR. GIBSON: Your question, Mr. Chairman, includes more than one question. I think it is the intent of Section 6 that sufficient surcharges be developed to make up for the loss of the surcharges that had formerly been charged in the Auto Insurance Plan. To me, it is not honestly and sincerely -- to me it is not clear whether it was believed that that could actually be done by January 1, 1984. That is the only part of your question that I find difficult to respond to, simply because I am not at all sure.

ASSEMBLYMAN ADUBATO: Mr. Gibson, I did not ask what you believed. I don't know when I asked that. Now, if you can point out to me when I asked, "Would you believe," I will be happy to listen to you.

MR. GIBSON: You asked a question that specifically included, "Was it to be done by January 1, 1984?" I can't answer that question, except in accordance with what I understand.

ASSEMBLYMAN ADUBATO: Well, let me give you a legal opinion. Do you want to hear a legal opinion?

MR. GIBSON: Oh, I'd love to hear a legal opinion.

ASSEMBLYMAN ADUBATO: Would you like that?

MR. GIBSON: Sure.

ASSEMBLYMAN ADUBATO: I'll tell you what we are going to do. We are going to submit this opinion from the Chief Counsel, Mr. Porrone, into the record. I will not bore everyone by reading it, but this will be an official document to confirm what I just said, and beyond. The thing we are trying to bring out here for information's sake, is that your rate filing -- it is obvious -- did not deal with the statutory requirements, but only dealt with the fact that, as you said, you did not believe it could be done because it wasn't done. It was never even attempted, isn't that so?

MR. GIBSON: Perhaps.

ASSEMBLYMAN ADUBATO: Perhaps?

MR. GIBSON: Mr. Adubato--

ASSEMBLYMAN ADUBATO: I'll accept perhaps, but I just want your opinion. For the record, when you filed for that \$90.00, and just so I heard you properly, because there are other people here who are going to testify -- you said that every member knew that you were going to file and ask for \$90.00 a car. Is that a fair statement?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: They agreed, and they knew the amount was \$90.00 per car, every member of the JUA?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: On Page 1, it says, "These statistics are based on 100% of the population remaining after a year of operation." You say that the judgment, and it says it here, of the

Association could be as much as one-third less. "On that assumption, the calculation would be approximately as follows," isn't that what that says in this filing?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Then help me, because under Page 3 -- there is no number on this page, so I'll say the third page in this report, okay -- it says, "The assumption is made that the FIUA volume will be approximately the same as the current AIP." That seems to be a contradiction; help us to understand. Your consultant from AIPSO says that he is projecting these figures based on 100% retention, and you, in the next sentence, say that you don't expect that, you expect a one-third depopulation. And yet, your official document breaks down these coverages as \$66.00 for liability, \$12.00 for comprehensive, and \$12.00 for collision, and your actuaries say it is based on 100% retention. Do you have a copy of this? Maybe you can help us.

MR. GIBSON: I don't need a copy of it to explain it.

ASSEMBLYMAN ADUBATO: Well, fine, I will be happy to listen.

MR. GIBSON: As the cover letter says, the actuarial projections that are included therein, and all the information that follows, are based on a 100% assumption, and they come out with a number of something like \$146.00. Our cover letter says, that while the actuaries had no choice but to use 100%, since they have their own way of doing things, we wanted to put a more optimistic assumption on the population of the Association. So, the Board of Directors, not the actuaries, decided to make an assumption of a reduced population in order to file for \$90.00, rather than \$146.00. But, the actuarial information is all based on 100%.

ASSEMBLYMAN ADUBATO: Where does it show \$146.00?

MR. GIBSON: Somewhere in there, three numbers come up which will add up to around \$146.00.

ASSEMBLYMAN ADUBATO: Somewhere?

MR. GIBSON: Mr. Adubato--

ASSEMBLYMAN ADUBATO: This is an official document, a duplicate. It has been stamped that it was received on November 23.

MR. GIBSON: It has been referred to an Administrative Law Judge for hearing.

ASSEMBLYMAN ADUBATO: I know that. I am not interested in the Administrative Law Judge; I am interested in you. This is an official document, which has been stamped and accepted by the Commissioner of this State. In this official document, on Page 2, it says that you need this breakdown of an increase that comes to \$90.00. And, on the next page, it says that this information is based on 100% retention of that population. Now, you're saying that this is all wrong, that it should be \$146.00, because you disagree with your actuaries. You made an assumption that it is not going to be 100% populated, and that's fine. I know enough not to argue with insurance companies' assumptions.

MR. GIBSON: Well, Mr. Adubato, the actuaries refuse to make assumptions of that type. The actuaries will only work -- they try to work on fixed numbers. That is why only the Board could make an assumption about a difference involving volume.

ASSEMBLYMAN ADUBATO: Thank you, sir. For the record, are you saying then that the \$146.00 that your actuary, whom you pay -- I'm sure he doesn't do it for nothing -- your actuary, your expert, said you needed \$146.00 a car for that full coverage. Is that a fair statement?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Does that come to over \$500 million -- \$511 million?

MR. GIBSON: Probably.

ASSEMBLYMAN ADUBATO: And you, who paid the actuary as the expert, decided -- by an assumption, which you are entitled to make -- that you were not going to ask for the \$146.00, because you were going to lose a third of the market and it was going to go over into the voluntary side. So, you were going to ask for \$90.00. Is that a fair statement?

MR. GIBSON: Well, yes, but only after we asked the actuaries what would be the effect of a reduction in the size of the market. They gave us the number. We did not just pick a number out of a hat.

ASSEMBLYMAN ADUBATO: Well, I am not going to delay this hearing, except to say at this point, that for something as fully staffed with experts to the people of New Jersey, to be handed to the

Commissioner of this State, there is documentation in here that is contradicted by the very people who paid for their service, and yet doesn't show -- now, maybe it's here, but I haven't found it. Maybe somewhere in this filing, you can show me where you say it says \$146.00 a car. I'm not saying it's not there; I'm saying I can't find it. I'll let that speak for itself, and move along.

Mr. Gibson, let me ask you very briefly about what your understanding is of the policy constant that exists in New Jersey, and I'm sure you know what it is. But, for the people who may be in this room, one or two who are laymen who do not know, bear with me. Up until June of 1983, this year, if a person -- and correct me if I am not explaining it properly, I would appreciate it -- up until June 1 of 1983, every person who had an automobile, was obeying the law, and bought insurance, if he had a full package, was subsidizing the losses of the residual market to the tune of \$33.00 a car. On June 1 -- I apologize, I stand corrected -- to the tune of \$42.00 a car. On June 1, 1983, the Commissioner approved another increase in that constant to subsidize the losses in the residual market, another \$33.00. So, today, in New Jersey, we have something called a constant. I did not develop that name; that is the name in the jargon that is used by the industry. It is a subsidy for the losses incurred only in the residual market, and that comes to \$75.00 a car. Would you accept that definition, or do you have a different one?

MR. GIBSON: Well, as you say, jargon is always a problem, especially in our business. For the most part, the facts as you have stated them are correct, except for the word "only." There is nothing in the rating law in New Jersey that provides for anything called "a policy constant." This was invented by an insurance commissioner, I guess.

ASSEMBLYMAN ADUBATO: I'm sorry, I didn't hear that. Was invented by an insurance commissioner?

MR. GIBSON: The concept of a policy constant certainly was. The first time it was put in the rate computation was at a time when the insurance industry was asking for a rate increase. The then insurance commissioner said he would not give a rate increase, but he would allow a policy constant.

ASSEMBLYMAN ADUBATO: You know, I appreciate your editorializing, but I don't need it. I'll say it again. If you have any written statement that you would like to leave with this Committee, we would be more than happy to have it. Up until June 1, 1983, the people of New Jersey were paying a \$42.00 charge to subsidize the losses in the residual market. After June 1, 1983, that charge was increased to \$75.00 a car, to subsidize the losses in the residual market. Do you accept that as a fact, or not?

MR. GIBSON: I accept that as a fact, yes.

ASSEMBLYMAN ADUBATO: You accept it as a fact, for the record. Thank you.

MR. GIBSON: Okay.

ASSEMBLYMAN THOMPSON: Assemblyman Adubato, there is something I don't understand. What is the--

ASSEMBLYMAN ADUBATO: Excuse me, Assemblyman Thompson. You'll have your chance.

ASSEMBLYMAN THOMPSON: Well, you're using jargon -- I'm a lawyer, and I don't understand what you're saying. You are using the terms policy constant and residual market. I would like some definitions. If I am going to sit here intelligently, I want to know what you are talking about.

ASSEMBLYMAN ADUBATO: Assemblyman Thompson, I apologize. I'm sorry you don't know what these terms are, but it took me five years to learn them, so don't feel badly. The residual market, Mr. Thompson, is the assigned risk. I know how frustrating it is, Assemblyman. The constant is a name; it doesn't mean anything. It's a subsidy that the companies take under the guise of a constant, to hide from the public, regardless of who implemented it, that they are subsidizing the bad drivers in the assigned risk. It's that simple. Is there any other question you would like to ask?

ASSEMBLYMAN THOMPSON: No, thank you.

ASSEMBLYMAN ADUBATO: Mr. Gibson, on January 1, 1984, what will happen in New Jersey in your transitional plan with the JUA, as it applies to eliminating the assigned risk and converting to the JUA? What will happen?

MR. GIBSON: Well, after January 1, 1984, there is no assigned risk plan, at least for those eligible for the Association.

ASSEMBLYMAN ADUBATO: Excuse me and, again, bear with us. This is for public consumption. There is no more assigned risk plan, at least for those eligible. Would you please explain what that means? I think I know what you mean, but I would like you to explain it.

MR. GIBSON: There are some commercial vehicles and that type of risk for which there will still be an assigned risk plan, but for most--

ASSEMBLYMAN ADUBATO: No, I didn't mean that. I am not talking about commercial vehicles. I am only talking about the private passenger market; that is all I am talking about.

MR. GIBSON: All right, and that is what I am talking about. I just wanted to make it clear.

ASSEMBLYMAN ADUBATO: Are you saying there will be no more assigned risk?

MR. GIBSON: That's right.

ASSEMBLYMAN ADUBATO: Will people still be insured by the assigned risk after January 1, 1984?

MR. GIBSON: Until their policies expire.

ASSEMBLYMAN ADUBATO: Until their policies expire. Does that mean that if a person had a policy date of December 1, 1983 and had a clean record, no points, was an adult in Morristown, where more than one-third of those people with a good record are in the assigned risk -- in Morristown, in Morris County -- does that mean that those people in Morris County that have an anniversary date of December 1 who are paying 30% more for collision, will continue to pay 30% more for collision in Morris County until their policies become due the following December of 1984? Is that a fair statement?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Thank you. Could you please help us, and correct me if I'm wrong? Today, remembering all the expertise on the JUA and the expert actuaries who analyzed, as you said, A-1696 for over a year, and studied it for over a year -- in that year did anyone talk about the constant?

MR. GIBSON: Not on the Board of Directors of the Association.

ASSEMBLYMAN ADUBATO: Okay. I'm talking about the Board of Directors, of course.

MR. GIBSON: Because the constant--

ASSEMBLYMAN ADUBATO: (interrupting) Thank you. I'm just asking the question, did anyone talk about it, that's all. I am not saying there is anything wrong, just did anyone talk about it. Was it ever discussed with members of the insurance industry?

MR. GIBSON: Not with regard to the Association.

ASSEMBLYMAN ADUBATO: I am not talking about with regard to anything. Was it ever discussed in any way?

MR. GIBSON: I'm sure it was discussed by lots of people in the insurance industry.

ASSEMBLYMAN ADUBATO: In that way, help us. For what purpose was it discussed?

MR. GIBSON: You see, you are talking about something I am not directly involved with. I have nothing to do with the rate-making mechanism of ISO or Continental.

ASSEMBLYMAN ADUBATO: Mr. Gibson, you're absolutely right, and I don't mean-- Again, let me clarify this for the record. I know you don't have anything to do with the rate making, and I know that you have an obligation to deal with what you have to keep something whole. I know that; I understand that -- totally understand that. I think every member of this Committee, believe me, understands that. That is not your obligation; you have to deal with what you have.

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: The purpose of this hearing is simple, and that is, to try to determine why, for whatever reason, you did not have what you needed, which was provided by law, statutory law, by common decency and by fairness. I am not attacking anybody; I am only trying to find out why you had to come into this for \$90.00, when the law said -- and it is interpreted by more than just our counsel, I want you to know that -- that you were not supposed to ask for a penny in a RMEC the first year.

MR. GIBSON: No, sir, you're wrong, Mr. Chairman.

ASSEMBLYMAN ADUBATO: I'm wrong?

MR. GIBSON: Yes you are, sir. It grieves me to have to tell you this, but you're wrong.

ASSEMBLYMAN ADUBATO: Well, I'll give you an opportunity later to show me where I'm wrong. I've been wrong before; I have made mistakes, and I would be very happy to listen to you. I also want you to know that if I'm wrong, the Chief Counsel of the State is wrong, the Public Advocate is wrong, the Attorney General is wrong, the Governor is wrong, the Assembly Speaker is wrong, the Senate President is wrong, we're all wrong, and you're right. I would accept that, absolutely. I'll give you a chance a little later to explain how we are all wrong and you're right.

MR. GIBSON: Thank you.

ASSEMBLYMAN ADUBATO: You're welcome. Let's talk about the constant. I'll say it again for clarity. Do you accept the fact that the constant is a subsidy for losses in the residual market? Do you agree with that statement? I'll ask you again for clarity.

MR. GIBSON: At the time it was instituted, that was what it was intended for.

ASSEMBLYMAN ADUBATO: At the time it was instituted? What has changed?

MR. GIBSON: Probably the amount that would be necessary has changed.

ASSEMBLYMAN ADUBATO: In other words, they need more money?

MR. GIBSON: Very likely.

ASSEMBLYMAN ADUBATO: They just got more money. We just paid them another \$110 million on June 1, don't you remember? Are you saying now, before us today -- and you're not an actuary and you told me you are not involved with rate making -- but, now you're telling me that they probably more than likely need more money. I am getting confused. Now, if you are an authority on that too, I'll listen.

MR. GIBSON: Then let me try to briefly explain what I mean. First of all, even at the time that these so-called "policy constants" were approved, they were for amounts which would appear on the record to have been optimistic in their assumptions, optimistic on the low side. Now, again, I am not an actuary.

ASSEMBLYMAN ADUBATO: Wait a minute, that is your assumption. Isn't that what you said, that that is an assumption?

MR. GIBSON: I think if you read the record of the Administrative Law Judge hearing last year--

ASSEMBLYMAN ADUBATO: I know what it was.

MR. GIBSON: -- on the losses of the Auto Insurance Plan, you will find--

ASSEMBLYMAN ADUBATO: I know what it was, I know what he recommended, and I know what the Commissioner agreed to.

MR. GIBSON: Yes, sir, it was less than the Administrative Law Judge recommended. Now, your question is a legitimate one. I feel as frustrated as you do about the way these things work out.

ASSEMBLYMAN ADUBATO: I am not frustrated, forgive me. You may be, but I'm not.

MR. GIBSON: Well, you seem to be frustrated.

ASSEMBLYMAN ADUBATO: No, I am totally not frustrated. I am so happy today, you have no idea.

MR. GIBSON: I withdraw my suggestion that you may be frustrated.

ASSEMBLYMAN ADUBATO: Thank you.

MR. GIBSON: Personally, I am somewhat frustrated, as a citizen--

ASSEMBLYMAN ADUBATO: I can understand your frustration, totally understand it.

MR. GIBSON: --as a citizen of New Jersey, as a member of the insurance industry, and as someone groping to try to help, and I sincerely mean this that I am trying to help develop a mechanism in New Jersey that will be better for everyone involved. It is frustrating to always be working with moving targets.

Now, how is it that if on the one hand certain dollars seemed to be adequate in June, or a year and a half ago, how do we come up with these huge projections today? You do not have to be an actuary to understand that what the actuaries are doing is, they are looking at next year's anticipated numbers, which is not necessarily the same as looking at 1982's exact numbers. They have projected losses and they have projected anticipated costs for 1984, to the best of their ability, which may be limited, and they have said, "This is what we think the shortfall will be for the Association, based on what we have," and then they figured out a RMEC.

Then we get into things like policy constants and all. We do not have anything to do with the policy constant. You asked if that is a subsidy for the auto plan, and I told you it was intended to be at the time it was approved. Then you asked, "What has changed?" and I said it is probably not enough.

ASSEMBLYMAN ADUBATO: Oh, but it is still a subsidy, that is all I meant.

MR. GIBSON: Well, that is what it was intended for, certainly.

ASSEMBLYMAN ADUBATO: Thank you. That is all I meant. I am not talking about the dollar amount.

MR. GIBSON: Okay.

ASSEMBLYMAN ADUBATO: It's still a subsidy for the residual market?

MR. GIBSON: Sure, okay.

ASSEMBLYMAN ADUBATO: All right. So, therefore, when a company that functions today in New Jersey has a bottom law of profit and loss, that is determined by both the residual portion of that book of business and the voluntary portion of that book of business. Do you accept that as a fair statement?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Come January 1, 1984, in an act that we passed jointly, unanimously, with every elected official in this State voting "Yea," and with the Governor of New Jersey expounding all the virtues that this legislation provided as it applies to equity, the bill that was studied for a year -- does everyone in the JUA understand, do you understand, that as of January 1, 1984, there is no more assigned risk, that it is a transition that will be wiped out in the next twelve months, that they don't have the exposure anymore, and that the voluntary business is the only thing that will remain in a company's profit and loss projection?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: They all understand that?

MR. GIBSON: Well, you have 200 companies doing business in New Jersey, but I assume that most of them do. My company understands that.

ASSEMBLYMAN ADUBATO: Do you think that you should receive \$165 million, roughly, in the voluntary portion of the business in New Jersey, without having to pay any claims for that money?

MR. GIBSON: In a vacuum, if you are receiving \$165 million for which you have no obligations, you probably shouldn't receive it.

ASSEMBLYMAN ADUBATO: You probably shouldn't receive it? I agree with you, because that is not the American way. With all this study, with all this expertise, with some people, I understand, making six figures in income, which is a level of success in our society to show the expertise, no one questioned the fact that come January 1, 1984, the insurance industry of New Jersey will be receiving \$165 million, without any accountability of a value exchange for any claims in that money, and no one -- no one -- discussed that? No one ever said, and I am going by your testimony -- no one in that whole year ever thought that maybe this was wrong?

MR. GIBSON: Assemblyman Adubato, I said that in our capacity as a Board, we did not discuss the policy constant. Obviously, the insurance people have discussed it. Obviously--

ASSEMBLYMAN ADUBATO: Wait a minute, excuse me, sir. You know, I realize you wear more than one hat and, for the record, you keep referring to the fact that the insurance people discussed this. Now, I know you are the Chairman of the Board of the JUA. In another capacity, aren't you a Senior Vice President, or a Vice President of Continental Insurance Company?

MR. GIBSON: Yes, I am.

ASSEMBLYMAN ADUBATO: So, you are part of the people you are talking about, aren't you -- the insurance companies?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Oh, I was confused, because you keep referring to those people in the insurance companies. Just for the record--

MR. GIBSON: (interrupting) I understand, but I think I have tried to make it clear that I don't want to have my comments as a member of the Board of Directors interpreted as being on behalf of Continental. I would be glad to speak on behalf of Continental, if you want to know what Continental's approach is. I am not trying to hide

anything: I am just trying to say we are here responding to the problem we have faced, all the problems we have faced, and we have had a lot of them.

ASSEMBLYMAN ADUBATO: Thank you, sir. Dealing with the constant, and I thank Mr. Nelson Ealey for his patience in sitting there-- Just for the record, a couple of weeks ago, I believe you received a request from our office asking for a biographical sketch, background on Mr. Ealey, because we wanted to know something about him. I understand you were on vacation, or you were on a business trip, or whatever, and were unable to comply with that request. I would appreciate it if sometime in the near future we could know something about Mr. Ealey and his background. Not for any reason, but we would like to know so we can be more familiar with Mr. Ealey.

MR. GIBSON: Sure. I assure you that I was not making an effort to hide. The letter I got, by the way, asked for his history, my history, and a lot of other things. I certainly would have responded to it as soon as I got back from my business trip, except that I got back and found out we had already been memorialized by the Legislature and were coming here. So, we are here prepared to answer any questions you may have.

ASSEMBLYMAN ADUBATO: Good, let's start those questions. What is your background?

MR. GIBSON: My background as a child was not too unusual.

ASSEMBLYMAN ADUBATO: I'm talking about your business background, and any wise remarks you want to make will not be accepted.

MR. GIBSON: My business background includes experience as a claims adjuster for two different insurance companies, a number of years in Chicago with the American Insurance Association--

ASSEMBLYMAN ADUBATO: Let me help to expedite this. I feel that I can make assumptions now. You are, as we stated before, a Vice President of Continental Insurance Company.

MR. GIBSON: That is correct.

ASSEMBLYMAN ADUBATO: Was Mr. Ealey ever employed by the Continental Insurance Company?

MR. GIBSON: Yes, he was at one time.

ASSEMBLYMAN ADUBATO: When? How many years ago?

MR. GIBSON: From November 1, 1978 until August 8, 1980. He was employed in Glen Falls, New York.

ASSEMBLYMAN ADUBATO: As an employee of Continental?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Thank you. That is just a coincidence, I know, for the record. Mr. Ealey, I will not talk about the television interview, but it has been alluded to in an interview, by a newspaperman, that you said the JUA really needed \$200.00 to be whole the first year. Did you make that statement, sir?

NELSON D. EALEY: No, sir, I did not.

ASSEMBLYMAN ADUBATO: Would you tell us the statement you made? I am only going by what I read in the newspaper. Is it accurate or not?

MR. EALEY: I did not make any statement like that, so I do not know specifically what discussion that may have transpired in.

ASSEMBLYMAN ADUBATO: I'll accept that. In another article, you are quoted as saying, and it's really -- I won't call this a quote, although they say you said this. Nelson Ealey, Manager of the JUA -- and manager, for all of us to understand, because we have not had the opportunity to talk to you, or meet you, or to really understand -- the manager is the guy who is the day-to-day functioning person handling the JUA. You are responsible for the day-to-day operation. Is that a fair statement?

MR. EALEY: That is a fair statement.

ASSEMBLYMAN ADUBATO: Okay. It says: Nelson Ealey, Manager of the JUA, said he did not know why his organization asked consumers to pay twice for the same insurance service. Do you ever recall making that statement to the Associated Press?

MR. EALEY: No, I don't remember that one.

ASSEMBLYMAN ADUBATO: Okay, I'll accept that too. Mr. Ealey, I know you are new to New Jersey, I think you are new to New Jersey. How long have you been in New Jersey, may I ask?

MR. EALEY: Since September 19.

ASSEMBLYMAN ADUBATO: Of this year?

MR. EALEY: Yes.

ASSEMBLYMAN ADUBATO: Okay. I'm sorry you came into this hot bed. I really have nothing much to ask you, except that these comments in the media, I must tell you, were written by two of the most competent reporters in New Jersey -- by two reporters who have a track record, for whatever it is worth, of reporting, most of the time -- I won't say all of the time -- most of the time, extremely accurate stories. They are two well respected reporters. That is why I ask you this. They are entitled to their perceptions, and they may be different than mine or yours. But, quite frankly, having been the target of these two gentlemen, I know they do their homework, and that's why I am not going to question that you deny ever making these statements. But, I want you to know that these people have been around for a long time. That's all.

In really talking about the operation of the JUA, I do not want to get into the time frames, I really don't. I don't think that would serve any purpose. We will get into it later, in the next session of this Assembly. Right now, I am interested in the constant, which is very important, the surcharges, the equalization charge, and the fact that the JUA, by its own filing, is contradictory to any reasonable person who wants to read it, and that's sad. That's all I'm saying.

I appreciate your coming, Mr. Gibson.

MR. GIBSON: Mr. Chairman, may I have a moment?

ASSEMBLYMAN ADUBATO: Sure, I will be happy to listen to anything you have to say, Mr. Gibson.

MR. GIBSON: Well, the Resolution is couched in terms that there is a concern as to whether the Association is going to meet its obligations to be in business by January 1, 1984. That part of the Resolution gave me more trouble than the other parts, because I want to tell you, a lot of people have put in a lot of hours working on getting this ready to go. I can assure you that the Association will be in business on January 1, 1984 and, in fact, the last thing that Mr. Ealey was able to tell me this morning was that we have already deposited \$11,000 of premium money from applicants to the Association. This has already been transferred into our central account from a couple of the service carriers who have already managed to get up and running and

receive applications for policies effective on and after January 1. I trust you recall that there is a portion of the Resolution that specifically questions--

ASSEMBLYMAN ADUBATO: I wasn't going to get into that; I was going to save you from that, but I will now get into it.

MR. GIBSON: Okay.

ASSEMBLYMAN ADUBATO: Do the insurance agents of New Jersey have a rate structure today, to charge a premium with the JUA?

MR. GIBSON: There is one available; we are in the process. We know some of them do, because some of them have taken applications and have collected premiums.

ASSEMBLYMAN ADUBATO: I have not seen one. I have received many, many, many complaints from agents all over this State, and I have yet to meet one who has received the information.

MR. GIBSON: Mr. Adubato, the rate level--

ASSEMBLYMAN ADUBATO: (interrupting) And, there are quite a few agent groups here.

MR. GIBSON: The rate level that we, as an Association, are required to use is that filed and approved by ISO.

ASSEMBLYMAN ADUBATO: Yes, and are you talking--

MR. GIBSON: That was accomplished on November 17?

ASSEMBLYMAN ADUBATO: On the sixteenth. It was in the newspaper on the seventeenth, I believe.

MR. GIBSON: Which means that we, obviously, did not have a legal rate level that we could even begin to provide until after that date.

ASSEMBLYMAN ADUBATO: Well then, are we saying that statutorily -- as I interpret the statute we wrote, the rates in the JUA must be the same as the rates in the voluntary market for the largest filer, which happens to be ISO?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: I don't believe it says ISO anywhere in the bill.

MR. GIBSON: Well, I understand, but we know what we are talking about, right? We're not--

ASSEMBLYMAN ADUBATO: I don't know if we do, I want to make sure. What I am asking you is, when ISO -- meaning that you must be closely identified with ISO -- filed, those rates included the \$75.00 subsidy that goes to the residual market, isn't that a fact, for two million profiles in this State?

MR. GIBSON: Apparently.

ASSEMBLYMAN ADUBATO: Oh, apparently. Do you know something I don't know? Apparently means you are not sure. Let me help you.

MR. GIBSON: I am not sure.

ASSEMBLYMAN ADUBATO: Well, do you know anything else than that?

MR. GIBSON: I am told by ISO that they have justified the rate level they filed, without any reference to policy constant. Now, that is an ISO rate filing. Please don't ask me to defend an ISO rate filing.

ASSEMBLYMAN ADUBATO: Are you making a statement for ISO? I didn't ask you to defend it. You just made the statement.

MR. GIBSON: No, no, I said I am told that they have filed a rate filing that they feel--

ASSEMBLYMAN ADUBATO: Who told you that, sir?

MR. GIBSON: I asked someone at ISO.

ASSEMBLYMAN ADUBATO: Who? Was it John Kohler, the Chief Actuary?

MR. GIBSON: No, no. It was probably Chuck Schader, their General Counsel.

ASSEMBLYMAN ADUBATO: Their General Counsel, you asked Chuck Schader?

MR. GIBSON: Yes, this was in conversation.

ASSEMBLYMAN ADUBATO: What did Chuck Schader say to you?

MR. GIBSON: He said they believe that their rate level has been justified, without reference to Auto Insurance Plan experience. Now, please don't ask me to justify somebody else's filing. What I can tell you is this. We are statutorily required to use whatever that rate level is. If that rate level were lower by \$75.00 per car, the residual market equalization charge we would have had to file would have been higher by some amount, not that much, but by some amount.

ASSEMBLYMAN ADUBATO: You're losing me. What are you saying? What would have been higher?

MR. GIBSON: The residual market equalization charge.

ASSEMBLYMAN ADUBATO: If what?

MR. GIBSON: If the ISO rate level were lower. In other words, if they had filed--

ASSEMBLYMAN ADUBATO: We are not talking about rates; we are not talking about structure. You know, let me help you. I know you're an expert, but let me help you. We are not talking about the rate. We are talking about the fact that that is part of the premium structure, and that premium is collected by the insurance companies.

MR. GIBSON: Yes, sir. It's also--

ASSEMBLYMAN ADUBATO: Would you please allow me to finish a statement? I'm trying to help you. We're not talking about rate; we're talking about premium. We're saying that in spite of the fact that you said it is a subsidy for the residual market, in spite of that common understanding -- it's obvious, it's common, it's no secret -- the voluntary market is still collecting that premium. I am not saying they should not collect it. I'm saying it belongs in the JUA. Don't you understand that yet?

MR. GIBSON: Oh, I understand what you're saying, but that is not what the law says.

ASSEMBLYMAN ADUBATO: I know what the law says; we drafted the law. What we asked you was for one year. You see, I am a believer. I'm a believer that people should do things, not because the law mandates it. I have heard all my life how government interference, the bureaucracy, stymies business and stymies competition. My God, we're talking about common decency, not the law. If you want to talk about the law, you're right. That's why we're here. That is why this Legislature passed the law that says you can't keep it. It is in the Senate, and it is going to be voted on tomorrow. But, not because we want to. It's because you said, "It's not in the law."

MR. GIBSON: That's right.

ASSEMBLYMAN ADUBATO: Thank you. Now, Mr. Gibson, before you leave, on your plan of operation I have two questions to ask, that's all. One, when you set up your plan of operation -- it was approved when?

MR. GIBSON: In July of this year.

ASSEMBLYMAN ADUBATO: July 1?

MR. GIBSON: What was the approval date?

ASSEMBLYMAN ADUBATO: Wasn't it submitted July 1?

MR. GIBSON: It was submitted about July 1, yes.

ASSEMBLYMAN ADUBATO: It was approved with the amendments that include 3981 and how they apply -- Assembly Bill 3981?

MR. GIBSON: Yes, we have amended it a few times.

ASSEMBLYMAN ADUBATO: Dealing with the senior citizens?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Okay. In that plan of operation you submitted, and the Board unanimously voted and approved, an expense factor of 11.5%?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Included in that expense factor are the surcharges that are given to you, without, as you agree, any expenses to the JUA in collecting those surcharges, except to get a check from Motor Vehicles. Whether it be \$40 million or \$180 million, it doesn't make any difference, you did not collect it. And yet, I'm confused about how the JUA can charge 11.5% for receiving a check as an expense. Could you please help us understand that?

MR. GIBSON: Yes. What you are referring to is the means of compensating the service carriers for their expenses in administering Association business. In other words, the statute specifically assumes that we would contract with a limited number of insurance companies to provide for the issuing of the policies, the endorsements, the claims and all of that. So, we have contracted with insurance companies to be service carriers.

ASSEMBLYMAN ADUBATO: Forgive me. Does the statute tell you to take 11.5% of something that is not considered a premium anymore?

MR. GIBSON: Mr. Adubato, you--

ASSEMBLYMAN ADUBATO: I'm asking a question.

MR. GIBSON: You haven't let me finish how they arrived at this number.

ASSEMBLYMAN ADUBATO: I know how you arrived at the number. I want to know how -- I know how the expenses are calculated. I know why they are calculated. What I am asking you is, how did you take a

penalty that used to have a commission on it, that used to have an expense charge on it, that we have said, because the company said -- and you weren't here -- maybe you were here then. I think you told me that you've been around a long time, so I apologize. Maybe you were here then. Originally this was supposed to be collected by the companies, but the companies said -- let me help you -- that it would be too expensive for them to collect these surcharges. If I thought that they were such a great idea, instead of charging people in the assigned risk sometimes 150% more for SDIP six points, or 65% more for six motor vehicle points -- let me finish -- they said that they didn't want to collect the money, and I said, "Fine." We said that the State would collect the money, they would be responsible, and it would be on every driver's license. It would not be a premium calculation, and all those monies would go to the JUA to help it reach that no-profit, no-loss situation.

There is nowhere in Assembly Bill 1696 that allows you to rape that money. Now, you show me--

MR. GIBSON: Mr. Adubato, I'm trying to explain what we did and why we did it, but you apparently already feel that it is something like rape. It is not. May I explain?

In trying to arrive at a means of compensating service carriers for the activities that they will have to engage in in servicing this business, the group that we had looking at it said, "Well, probably the fairest thing to do is to look at what the normal anticipated expense portion of the insurance business is when these companies are doing this in the voluntary market, aside from commissions and taxes." These kinds of numbers are generally available. They are filed and all that.

ASSEMBLYMAN ADUBATO: I know what they are. What are they in Continental?

MR. GIBSON: Probably about 11.-something percent. I don't know offhand, but it is probably around that figure.

ASSEMBLYMAN ADUBATO: Do you know what they are in State Farm.

MR. GIBSON: I don't know. What are they in State Farm?

ASSEMBLYMAN ADUBATO: I'm asking you. You're the expert. You told me that you know. I want to find out. I don't know anything.

MR. GIBSON: What I am telling you is that on an industry average, these numbers are available. I'm not counting commission. Commission is separate.

ASSEMBLYMAN ADUBATO: Oh, I know that.

MR. GIBSON: Okay.

ASSEMBLYMAN ADUBATO: I realize that.

MR. GIBSON: So, these numbers are available, and we said that instead of picking a permanent figure and saying that we're going to pay "x" percent, we said, "Well, let's pay the companies on the basis of what the normal expense would be in the voluntary market."

ASSEMBLYMAN ADUBATO: Forget the voluntary market. What are the expenses approved in AIPSO?

MR. GIBSON: In AIPSO? I don't know, what are they -- 10% or 11%?

ASSEMBLYMAN ADUBATO: You don't know, do you?

MR. GIBSON: I don't know. I am not in the rating business.

ASSEMBLYMAN ADUBATO: But, you are talking about rates.

MR. GIBSON: No, I'm telling you--

ASSEMBLYMAN ADUBATO: I didn't ask you about rates. You're talking about rates.

MR. GIBSON: I'm talking about our plan of operation and how we arrived at that. You haven't let me finish.

ASSEMBLYMAN ADUBATO: I'm not going to let you finish unless you answer the question.

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: The question will be put to you again. We are not talking about the legitimate expenses incurred. That is not what we're talking about. We're talking about one thing and only one thing, and I wish you would stick to that subject, sir.

MR. GIBSON: I'm trying to answer that question, Mr. Chairman. You're talking about the fact that our formula says that they will be paid this 11%, not only on the commission they collect, but on the dollars that come in from other sources.

ASSEMBLYMAN ADUBATO: No, sir. Let me rephrase the question. I am only talking about the surcharges that Motor Vehicle turns over to you.

MR. GIBSON: Yes, which are dollars from other sources.

ASSEMBLYMAN ADUBATO: What have you done in any performance of work or expenses to collect those?

MR. GIBSON: None.

ASSEMBLYMAN ADUBATO: Pardon?

MR. GIBSON: Nothing.

ASSEMBLYMAN ADUBATO: Nothing, but yet you have attached an 11.5% expense factor. That is my only question.

Next question. Thank you, sir. Next question -- you've answered the question.

MR. GIBSON: There is a reason for that.

ASSEMBLYMAN ADUBATO: You've answered the question.

MR. GIBSON: No, I didn't. You asked why.

ASSEMBLYMAN ADUBATO: Mr. Gibson--

MR. GIBSON: You asked why and you haven't let me answer.

ASSEMBLYMAN ADUBATO: Mr. Gibson, we will be happy to take anything from you in writing, and we will submit it. We don't have time. You answered my question.

MR. GIBSON: No, you answered the question, sir.

ASSEMBLYMAN ADUBATO: Well, the tape will show that you answered the question -- that you've done nothing for that money.

Next question: Commissions -- what is the commission in your plan of operation?

MR. GIBSON: Our plan of operation calls for paying 13% on business written in the first year, and 11% thereafter.

ASSEMBLYMAN ADUBATO: Thirteen percent commission during the first year, and eleven percent thereafter. Is there any residual market anyplace in this country that pays 13%?

MR. GIBSON: Not that I know of.

ASSEMBLYMAN ADUBATO: Not that you know of. Is there any residual market in this country that pays 11%?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: How many?

MR. GIBSON: The Florida JUA pays 11%.

ASSEMBLYMAN ADUBATO: The Florida JUA pays 11%. In order to drive legally in Florida, as opposed to driving legally in New Jersey, in the JUA, since they are giving 11% -- everything being equal -- what

premium is required to drive legally in the highest rated territory, in the highest rated class, in Florida in the JUA today?

MR. GIBSON: Well, as you and I both know, Florida does not have compulsory insurance, except for personal insurance protection.

ASSEMBLYMAN ADUBATO: I'm asking a simple question. How much premium is required to drive legally in Florida?

MR. GIBSON: Thirty-eight dollars, I think. Isn't it?

ASSEMBLYMAN ADUBATO: No, it is \$48.80.

MR. GIBSON: Okay, \$48.00.

ASSEMBLYMAN ADUBATO: How much premium would an eighteen-year-old, single male, living in the highest rated territory in the State of New Jersey, have to pay to drive legally in New Jersey?

MR. GIBSON: I believe you gave that number earlier. It was about \$1900.

ASSEMBLYMAN ADUBATO: No, the number in here was -- it is a wrong number, by the way. The \$3200 that you told Mr. Miller is a wrong number too, by the way. It is higher. But, you know, you're only about \$500 off. What the hell is \$500 to you? It doesn't mean anything. I can understand that.

The point is that the 11.5% that the agent gets in Florida is something that is based on \$48.00 or more. But, the law says that he can drive legally by paying less than fifty bucks. In New Jersey, that young man has to spend almost \$2000, so that 11% is--

MR. GIBSON: Excuse me.

ASSEMBLYMAN ADUBATO: Let me finish. Gee whiz, this is our hearing, not yours. Let me finish.

MR. GIBSON: But--

ASSEMBLYMAN ADUBATO: You're here at our request, not yours.

MR. GIBSON: But, the \$1700 is wrong under that comparison.

ASSEMBLYMAN ADUBATO: Will you please let me finish, sir? We're talking about today's rates -- today's world. We're not talking about what we, in the Legislature, did that will begin January 1, 1984. Now, am I talking about the wrong comparison?

MR. GIBSON: I thought you were comparing our Association to the Florida Association.

ASSEMBLYMAN ADUBATO: I'm talking about today's rates.

MR. GIBSON: Okay.

ASSEMBLYMAN ADUBATO: So, like some other people in your company, we're going to try to help you compare apples to apples and oranges to oranges.

So, the commission that you approved is 13% in the residual market during the first year and 11% thereafter.

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: What does one percentage mean in premium. Do you know?

MR. GIBSON: Probably \$30 million.

ASSEMBLYMAN ADUBATO: It is \$10 million. The three points are \$30 million. You probably were schooled wrong. The total thing is \$30 million.

MR. GIBSON: You're right, okay.

ASSEMBLYMAN ADUBATO: It is only \$10 million. So, what is happening here in New Jersey is that the Board of Directors of the JUA decided to accept 11.5% expenses on the money they don't have any expenses for, and you said that they didn't do anything for it -- "nothing" was the word you used. And, the agents got an increase from 10% that they get today in the residual market to 13%. The companies and the agents were the people who voted for this.

I have no further questions for you. You can say anything you want and I'll listen.

MR. GIBSON: Mr. Adubato, you never did let me explain that cockamamie formula approach that we used in order to set the service carrier fees, which does not pay the service carriers for something that they don't collect. It was intended to give them adequate compensation for handling those policies, and the feeling was that since the rate to be charged by the Association is, by law, less than the Association needs, then applying the percentage only to the premium would not be fair compensation. So, the approach was to use a formula that took in revenue from other sources. I don't want to quarrel with you about that; you can do anything you want with it.

As far as the agent's commission is concerned, the statute specifically says that the agent shall get no less than what they were getting before, which put a floor of 10% on it. It said that some kind

of consideration should be given to the unusual expenses of the first year. That is what led us to what we did.

Eleven percent, by the way, under the formula that we are using, and which we pay only on earned premium, and not on where they get to keep the whole commission if only part of it is paid, probably works out to no more than the 10% they were getting in AIP. This was all part of the justification for this approach, and I certainly see no reason why these numbers shouldn't be questioned and explored and reviewed to see if they are too high or too low or too anything. I don't mind questioning about these things.

ASSEMBLYMAN ADUBATO: You don't mind? Fine, I'm glad you don't mind, because we don't mind asking either.

I'm going to ask you, because I have to, is your actuary here today?

MR. GIBSON: I don't think so.

ASSEMBLYMAN ADUBATO: A consultant from AIPSO?

MR. GIBSON: No, the AIPSO actuary didn't do the bulk of the work on this. This was done by an actuarial committee that consisted of people from Pru-Pac, State Farm, Allstate--

ASSEMBLYMAN ADUBATO: All right, who can we attribute -- in Appendix 1, page 9 -- when you talk about the Governor's and the Legislature's bill that we call the Freedom of Choice and Cost Containment Act, where you come up in this filing with an estimate that says, these reforms -- now, you're mentioning in here, and I want to spell that out -- the mandatory offer of the optional purchase of PIP, the mandatory offer of the option to exclude all personal injury protection coverage, other than the coverage for medical expenses, -- that people have been forced to buy without getting paid for it -- the mandatory coverage and offer of the option to reimburse the insured for personal injury protection claims of the bodily injury coverage settlement of a judgment. That is called an "offset" -- a 20% offset.

That is something I created with the help of many other people -- "we" created; strike the word "I" -- "we" created. The right for private passenger auto insurers to segregate against commercial Worker's Compensation or health insurance for personal injury protection claims -- they are your deductibles. Right? Mandatory

offer of the option to select a \$1500 threshold to apply to bodily injury claims and uninsured motorists' claims.

These are the reforms that you submit in your filing and say, "These reforms are estimated to result in a savings of \$10.00 in the liability portion of the RMEC." What does that mean?

MR. GIBSON: What that means is, is that in computing the residual market equalization charge, they looked at these and said, "Well, what is the bottom line effect of this going to be?" They thought it would save about \$10.00 per car on the residual market equalization charge. That is in addition to any savings that the policyholder got in his premium.

In other words, we're assuming that this is actual additional savings to the residual market -- to all of the market -- at the rate of \$10.00 per car.

ASSEMBLYMAN ADUBATO: I refuse to even debate this, except that there is a question. When this filing was made, does this mean that Assembly Bill 3981, which is the Freedom of Choice Bill that the bill Governor signed into law on October 4 of this year, that the impact of that legislation was considered in your actuary's request for \$146, which you changed to \$90?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Can you show me anywhere in here -- in this file -- so we can communicate -- I need your help-- Would you accept as being fair the statement that one, there are roughly five million licensed drivers in New Jersey?

MR. GIBSON: Sure.

ASSEMBLYMAN ADUBATO: Is that a fair estimate, Mr. Snedeker? Director, I just want to make sure.

(Director Snedeker of Division of Motor Vehicles acknowledges affirmatively)

Would you accept the fact that there are approximately, according to I believe it was the 1981 figures, 3.5 million insured private passenger vehicles, as of that date, in New Jersey, and that 1.4 million were in the Assigned Risk, and 2.1 million were in the voluntary market? Would you accept those facts?

MR. GIBSON: I'll accept those.

ASSEMBLYMAN ADUBATO: Would you accept the fact that there were approximately 600,000 people driving without insurance, according to all the public reports, which no one has ever challenged from the industry?

MR. GIBSON: I've heard those numbers. Yes, sir.

ASSEMBLYMAN ADUBATO: Okay. From 1973, when no-fault was implemented in our State, until this year -- let's talk about this year and last year -- excuse me, are you aware that those 600,000 people who were breaking the law were fully covered under PIP if they were in an accident with another vehicle?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Without paying a premium?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: When did you find this out?

MR. GIBSON: A long time ago.

ASSEMBLYMAN ADUBATO: Did you ever bring it to the attention of anyone in this State, an elected office-holder, the Commissioner of Insurance, or the Governor?

MR. GIBSON: My recollection of discussions, speeches, and talks before committees is that this has been mentioned a number of times during the debates over whether the No-Fault Law should be reformed.

ASSEMBLYMAN ADUBATO: Did you attend (inaudible) No-Fault Study Commission?

MR. GIBSON: No, I didn't.

ASSEMBLYMAN ADUBATO: We cannot find anyplace, anywhere, that any member of the industry ever mentioned this to anybody. I've been here ten years and I have been on the Banking and Insurance Committee for ten years. I have documentation of every hearing that was ever held while I was here, going back to 1968, and in no hearing at anytime ever did any member of any insurance company or filing group, since no-fault, mention the fact that these people were being subsidized by the people who were paying premiums. That is all I can tell you.

Do you know how Assembly Bill 3981 addresses this fact?

MR. GIBSON: It is my understanding that Assembly Bill 3981 provides that anyone who violates the law by not buying insurance will not be eligible to collect.

ASSEMBLYMAN ADUBATO: Will not be eligible. Did you read the bill or is it just your understanding?

MR. GIBSON: I have not read that entire bill.

ASSEMBLYMAN ADUBATO: Okay, that is fair. So, you'll accept our word.

MR. GIBSON: Yes, I believe it.

ASSEMBLYMAN ADUBATO: (continuing) -- that on January 1, 600,000 people who are now covered for unlimited medical expenses -- total -- \$10 million, \$20 million, whatever -- without paying a premium -- will no longer be covered in New Jersey.

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: All right. Do you accept the fact that the average premium in this State is about \$135?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: I'm not too good at math, but when you multiply 135 by 600,000, I think you come out with \$81 million. If those people were buying insurance and paying a premium, that is what they would have to contribute to that -- \$81 million in premium.

MR. GIBSON: But--

ASSEMBLYMAN ADUBATO: Let me finish, please. When you talk about the threshold, are you aware that Assembly Bill 3981 also says that these people cannot sue if an insured person strikes them, and that person is at fault, unless they have accumulated over \$1500 worth of doctor's bills by law?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Are you aware of the statistics from the industry -- and I won't name the companies -- that show, and it has been said repeatedly, that if you went from a \$200 threshold to a \$0 threshold, you would have an 18% increase in B.I., or \$42.00, and that if you went from a \$200 threshold to a \$1500 threshold, the average savings would be another \$50.00? So, if you go from \$0 to \$1500, is it reasonable to say that that is worth \$92.00?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Now, when you multiply the 600,000 people by that \$92.00 premium, and those people now can't sue, you come up with another \$55 million. So, if you add the \$55 million to the \$81

million -- and I'm not going to include the fact that Assembly Bill 3981 also eliminates motorcycles which have always been covered without paying a premium -- isn't that a fact?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: Isn't it also a fact that commercial carriers, when they hit a pedestrian, never paid a premium for that protection, and now they do under A-3981?

MR. GIBSON: Yes, sir.

ASSEMBLYMAN ADUBATO: If you just take the premium calculation -- and I am not saying or suggesting to you that that necessarily translates very much of a cost containment or savings, because it is premium -- I'm told by the industry experts that for every premium dollar, you pay sixty cents in claims. Thirty cents are for expenses and commissions and 10% -- I don't know what it is. I don't see any label for it.

The point is that none of these calculations in that cost containment are represented in this filing. Is that a fair statement?

MR. GIBSON: No, sir, it is not a fair statement.

ASSEMBLYMAN ADUBATO: Then help me.

MR. GIBSON: I will.

ASSEMBLYMAN ADUBATO: Show me where it is. What page is it on?

MR. GIBSON: Sir, the cost savings you are talking about -- our actuaries have to assume they will be made a part of rate filings for July 1. I certainly hope they are. The rates will reflect these savings to a degree.

The \$70 million or so that are paid in PIP benefits, or that may be reflected in the PIP benefits to people who are uninsured, are coming out of the Unsatisfied Claim and Judgment Fund. That can't translate into savings for the New Jersey Automobile Full Insurance Underwriting Association. Sure, the people in looking at this -- and I never want to have to defend actuaries' computations -- but, I'm trying to explain how they explain how they get where they are. Then you can argue about the numbers later.

But, they were in no position to say, "Well, none of this is going to be reflected in the rates." We assume it will be reflected in

the rates. So, we're talking about, in addition to any rate savings that might come about, another \$10.00 per car for the whole State in savings for residual market equalization charges that can be allowed. That is all that talks about.

ASSEMBLYMAN ADUBATO: I am not going to comment on what you've said, except to ask you one very last question. You said you've been in New Jersey for quite awhile.

On April 4, 1983, recalling that a JUA bill was signed into law on February 10, when were you appointed to the JUA?

MR. GIBSON: I was appointed sometime, I guess, between February 10 and April 4. Wasn't April 4 our first meeting date of our Board?

ASSEMBLYMAN ADUBATO: Roughly.

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Yes, you're probably right. Coincidentally, it was the same day as this press release -- April 4.

MR. GIBSON: Is that the Governor's press release?

ASSEMBLYMAN ADUBATO: No, it is from Mr. Joseph Murphy.

MR. GIBSON: All I could see from here was the top.

ASSEMBLYMAN ADUBATO: That is all right. Give him a copy. We have plenty of copies for everybody. Give him a copy of the press release.

I will not go over the whole press release, but I want to know how you feel and what your thoughts were, being that you were officially at this time either already part of or certainly aware of what the JUA was going to do. I mean, the bill was passed, right? So, as the Vice President of Continental, whether you were in the JUA or not, I'm sure you were concerned about what was happening in New Jersey.

MR. GIBSON: Very concerned.

ASSEMBLYMAN ADUBATO: Fair statement. This press release says, and we're talking about the constant, and we're talking about the fact, as you pointed out, that instead of at the administrative law judge's request from \$44.00 to \$58.00, that Commissioner Murphy decided that the maximum for full coverage would be \$33.00, which is his right as the Commissioner. Quite frankly, in the ten years I've been here, I

have never seen a rate finding yet that was not inflated -- just for the record. I will tell you, if you want to know after the meeting, exactly what the premiums would be for ISO, as well as some of the independent filings, if the Commissioners of New Jersey ever granted every rate increase they wanted.

Commissioner Murphy, in talking about this on April 4, if you read down to the third paragraph, says, "He added that the new charge would be effective June 1 and suggested that prompt legislative action on cost control could lead to a reduction or elimination of that charge."

Now, this was prior to Assembly Bill 3981 being signed into law -- the cost containment, Freedom of Choice Bill, of this State. When that became law on October 4, it included the Fraud Bill, which in this statement says, "It is estimated to siphon off as much as 15% of the insurance dollars of suspected fraud." That does not necessarily mean that because that is what is siphoned off, it is going to save, in my opinion, 15%. But, it is a statement saying that this is how much they feel is siphoned off. I'm not trying to say that one equals the other, but in addition to that bill, this package was supposed to save roughly \$50 per car.

The Governor's statement and mine and others is that the package we passed will save, on the average, \$150 per car. Actually, that is low. We are not talking about the cost containment and the cleaning up of the subsidies that the companies never bothered to raise for whatever reason. It was just as easy to pass along those costs. That is why they did it, in my opinion. They never had to be creative or innovative or effective in cost containment. That is my opinion.

Do you agree with this press release -- that that should be eliminated -- that we have, if the Governor is right and if this Legislature is right -- that this \$33.00 should now be eliminated altogether, or should it be retained? I want your opinion.

MR. GIBSON: I have a hard time coming up with an opinion. It may be that it should be eliminated. That is the most I can say, because I really don't know for sure.

ASSEMBLYMAN ADUBATO: That is very fair, but if it isn't eliminated, and it hasn't been eliminated, and it is part of the other

\$42.00, do you think that in spite of the fact that we don't have a law that mandates that the insurance company take that \$75.00 they are going to be getting starting January 1, with no exposure -- do you think the companies should voluntarily turn that over to the JUA where the accountability is and the claims are? Or, do you still feel that they should keep it?

MR. GIBSON: Mr. Adubato, I feel the companies should charge rates for what they are covering, and that they should charge a rate that is reasonably adequate for what they are insuring.

My people tell me that the present rate level is perhaps about adequate for our voluntary market.

ASSEMBLYMAN ADUBATO: Mr. Gibson, you are the first person-- Senator?

(Senator Cardinale enters room with the Japanese delegation, and Assemblyman Adubato acknowledges.)

ASSEMBLYMAN ADUBATO: It is a great honor. Japan is my favorite nation next to America. Welcome.

J I M B E N T O N: Mr. Chairman, these are representatives of the petroleum industry of Japan, and they are here to study the New Jersey gasoline marketplace. They are particularly interested in self-service gasoline marketing, which we are considering here in the Legislature today. This gentleman is the head of the delegation.

ASSEMBLYMAN ADUBATO: What is the gentleman's name? I don't want to put you on the spot.

S A K I S A K I: Saki Saki.

ASSEMBLYMAN ADUBATO: It is a pleasure to welcome you to New Jersey, and the warmth that we feel in our hearts for your nation, Japan, is something that is genuine. We hope to learn from you, too, in that exchange.

Let me just say that I had the pleasure of spending more than a year in Japan, and it was a moment in my life that I will always treasure. Thank you.

MR. BENTON: Thank you, Mr. Chairman.

(ASSEMBLYMAN ADUBATO CONTINUES WITH HEARING)

ASSEMBLYMAN ADUBATO: Let me just say that the real fairness is what we're talking about, not the law. It is our hope, Mr. Gibson, that some day in New Jersey, we will be able to really allow the marketplace to meet its own level and to have competition be the thing that decides whether or not a company can be successful -- not the law. But, we can only judge, as human beings, when we're going to be ready for that by the actions of the industry, when we don't have any laws to prevent them from doing things.

When we hide behind the law and say, "The law doesn't mandate that we do this, or the law doesn't mandate that we make restitution to the senior citizens of this State who for four years paid a full PIP premium, from 1973 to 1977, without the insurance industry ever being exposed to that claim until Medicare was exhausted," -- but yet, those seniors paid that money for four years, and when we asked the industry if that was right, they said, "No, it was an honest mistake." And, we accept that. We ask you to make an honest correction. When are you going to do it? When are you going to reinstitute credibility? When are you going to pay those senior citizens for the money you took without ever giving them a benefit? Do we have to have a suit -- a class action lawsuit for you to do it? I've been asking you to do it for three years publicly. Please do it.

Thanks for coming, Mr. Gibson. Are there any questions? Maybe there are some other people here, in all due respect to Mr. Gibson. When I say please do it, I'm not blaming Mr. Gibson, and I'm not accusing Continental. I am saying that this is an obligation -- if what I've said is right, if what I've said is accurate -- it is an obligation of all of us to make that kind of restitution and to deal with fairness so that people like you and I who believe in competition can take the risk and open up the marketplace. But, you have got to help us.

Don't tell me that the reason why you don't do something is because the law doesn't mandate that you do it. If that is the response, then you're telling every elected official that the only way we're going to have equity, the only way we're going to have fair play, is to pass law after law after law. That is the last thing I want to do.

Mr. Thompson, do you have something to say.

ASSEMBLYMAN THOMPSON: Yes, sir. I would like to ask Mr. Gibson one question. This insurance package isn't giving a lot of notice at this time, because naturally, January 1 is not far away. In reference to the threshold issue, which wasn't mentioned this morning in detail -- but you have the \$1500 threshold -- and also, as I understand the law, you have a right to sue under the common law -- I think you pay \$50 additional to the agents. I wanted to know whether or not anything is mandatory and says that this agent has to inform people that in addition to the \$1500 threshold, they can be covered also in a cause for action if they pay an additional amount of money under the common law.

I think this is important, because I am an attorney and I can understand that a person can have an accident in which his expenses don't go over \$1200, and he will not have a cause for action, unless you get some fraud perpetrated between the attorney, the client, and the doctor. Will it be mandatory and will there be some notice in the State of New Jersey because as Mr. Adubato mentioned earlier, an anniversary date may be December of 1984. Therefore, the publicity dealing with this whole insurance issue may play down. If this person is not put on notice when he wants to renew his insurance, it is quite possible that the agent will only tell him about the \$1500 threshold. He could then go out and have an accident, and he wouldn't have a cause for action because the expenses under the \$1500 do not add up.

So, any mandatory notice to this agent is compelled to let this person know his option--

MR. GIBSON: My understanding is that the person will have to specifically sign a form indicating that he knows his options and he has chosen the \$1500. If that is not there, then he has the \$200 threshold automatically.

ASSEMBLYMAN ADUBATO: That is automatic.

MR. GIBSON: Am I correct?

ASSEMBLYMAN ADUBATO: Yes, sir, you are absolutely correct. The protections are there, the companies have to send notices, persons have to sign them, and if they don't sign them, the statute is clear. They say that these persons have a \$200 threshold.

Thank you. Does that satisfy you?

ASSEMBLYMAN THOMPSON: That is fine, thank you.

ASSEMBLYMAN ADUBATO: Assemblyman Kosco?

ASSEMBLYMAN KOSCO: You touched briefly before on most of my notes. The only thing that confuses me is that you said that the rating for the increases were based on past performance under the Assigned Risk Program. Do I understand that correctly? When they set up the numbers--

MR. GIBSON: The residual market equalization charge filing, yes.

ASSEMBLYMAN KOSCO: Right. Then you later said, when Mr. Adubato brought up the point that I wanted to raise -- the fact that there were a number of people who today are covered by insurance, but under the new system those people who do not pay a premium of any type and who are driving around illegally, today they are covered by insurance if they should be involved in an accident with someone who is covered by insurance. Those people are no longer going to have an expense under the JUA bill.

There is going to be a considerable amount of money saved -- probably millions of dollars that will not be paid out to these people who are uninsured motorists. Was that taken into consideration, and how did they arrive at the numbers so that they could eliminate that part?

MR. GIBSON: Well, it is my understanding that first of all, that all takes place on July 1 -- the middle of the year -- the threshold options.

ASSEMBLYMAN KOSCO: No, I'm not talking about the threshold options.

MR. GIBSON: I know they looked at the law.

ASSEMBLYMAN KOSCO: I'm talking about the individual who today is covered under insurance.

MR. GIBSON: They assumed a savings to the Association from the changes in the law of approximately \$35 million.

ASSEMBLYMAN KOSCO: That is not what I am talking about. I'm talking about the individual today who is driving -- those 600,000 people whom we keep talking about -- who pay no insurance premium, but yet, through whatever sources, is driving an automobile. He has a car

on the road, however he manages to get his registration and license renewed. If that person gets involved in an accident with a person who is covered by insurance under any assigned risk program, he has the right to sue.

MR. GIBSON: Yes.

ASSEMBLYMAN KOSCO: Under the new legislation, he does not have that right to sue.

MR. GIBSON: Well, yes, he does have the right to sue, but he will have to have \$1500 in medical bills. That is effective July 1.

ASSEMBLYMAN KOSCO: Has that been taken into consideration when you come up with your cost factors?

MR. GIBSON: I believe it was, yes.

ASSEMBLYMAN KOSCO: If you use last year's numbers to come up with this year's numbers, that is all wrong.

MR. GIBSON: Remember, I think we're assuming that there is going to have to be a rate filing for July 1. We're not assuming that the rate level is going to stay the same all year long, but in fact, that there will be rate level changes on July 1 that will reflect these savings. In other words, if you save it in the rate, then you wouldn't save it in the residual market equalization charge.

The \$10.00 that they have estimated as savings to the residual market equalization charge is over and above any savings that may come through rate reductions. Whether that is the right number or not, believe me, I don't know. It may very well be that it should be higher or lower.

ASSEMBLYMAN ADUBATO: The disadvantage that the Committee is at, as you pointed out, is that you are not the actuary. We appreciate your trying to respond to actuarial questions to the best of your ability. I mean that sincerely. It is unfortunate that the people whose names appear on this report are not here.

MR. GIBSON: That is why, we assumed we were going to a hearing. Mr. Murphy doesn't believe the numbers either. That is why he sent them to the law judge. That is where the actuaries would be expected to come in and demonstrate what they have done, and there would be other actuarial testimony from the Public Advocate and anywhere else to raise these issues. I, for one, would welcome a full

technical discussion as to whether the numbers are properly put together.

ASSEMBLYMAN ADUBATO: I'm sure we will act before that. The system, again -- not to belabor it -- but, I have yet to meet an agent in any company who has received the official rate structure with the provisions in it that deal with the different profiles and the different factors. I haven't seen it. I know I saw (inaudible); I have their filing. I also have the result of that filing and what their new rates will be according to their estimates in those profiles. I got them directly for myself in yesterday's mail.

The problem is that based on your testimony, it is twofold. I'm not saying that you are a problem; I'm saying that the problem is that it is obvious to this chair, and I think to the members of this Committee, that number one, the statute has not -- I'm not talking about what is right or wrong -- you know, that is very important -- but, let's talk about the law first. The statute is clear to every legal mind in this State. I'm not going to argue with these people. They are the experts, not me. In their opinion of the statute, all of that equalization, including that 30%, including the surcharges that are in the system now in the Assigned Risk, and any additional surcharges that are necessary to make that equalization work for one full year, has never been calculated by you because it has never been there. The only surcharges you are talking about are the ones we mandated by law. Isn't that a fair statement?

MR. GIBSON: I guess that is a fair statement, yes.

ASSEMBLYMAN ADUBATO: But, you're not dealing with the section of A-1696 that says that the Commissioner of Insurance has the power and the obligation to make sure that is done.

MR. GIBSON: Well, I don't want to get into an argument about that. All I know is, we have a residual market equalization charge.

ASSEMBLYMAN ADUBATO: No, I'm not arguing. What I'm saying is, with all your experts, with all of your expertise, with all of your experience, there are two things that your actuaries and all of the experts did not consider -- just two things: one, the law, because you didn't have an obligation to do it; and two, the fact that up until this moment, you are legally still entitled to retain \$165 million in

your voluntary book, come January 1, with no exposure. Those are the two points. That is a flat-out statement.

The only thing I've heard from you is, "The law said we could do it." And, you're right; you're absolutely right. I'm not arguing with you. You're right, the law does not provide for that money to be transferred. You're right. I'm agreeing with you.

MR. GIBSON: Mr. Adubato, the law also says that we could -- the Continental Insurance Company -- if we wanted to, come in in about sixty days and raise our rates without prior approval. Isn't that in the law, A-1696?

ASSEMBLYMAN ADUBATO: Well that is in the law up until January 1.

MR. GIBSON: But, it is the same law--

ASSEMBLYMAN ADUBATO: That is true, that is still the law.

MR. GIBSON: It is the same law that we are looking at right now. I swear to you, and I suppose there is no reason that you want to trust me, but I swear to you that Continental, in looking at the rate level that has currently been approved for 1984, which includes these dollars in it -- the policy constant dollars that you have been talking about -- in looking at that, Continental has already decided that we do not intend to make any rate increase under that provision.

ASSEMBLYMAN ADUBATO: Well, that is fine.

MR. GIBSON: But, it seems to me, and I don't know what other companies are doing because we don't get together and talk about pricing -- that would be a violation of a lot of laws. But, it seems to me that the fact that companies are not talking about utilizing that file and use provision is a reflection of the fact that they want to see how they are doing. They believe that maybe they have enough dollars in that rate level so that they don't need a rate increase at this time.

Please give us credit for the fact that if we seem to be extra legal on some sides, it is because we don't use every inch of the law every time.

ASSEMBLYMAN ADUBATO: Well, let me help you with some accurate information. The bill taking that power away from you is going to be voted on tomorrow in the Senate.

MR. GIBSON: I understand that.

ASSEMBLYMAN ADUBATO: That is for the record. A bill also in the Senate, even though it is not listed on the board, will be voted on tomorrow, that mandates you turn over the \$75.00 per car. We don't have to wait for anybody to do what is right. The fact is that you, in the industry, have a mechanism in New Jersey that allows you to function, come January 1, in the voluntary market without your profits being included in any losses that occur in that residual market.

MR. GIBSON: That is correct.

ASSEMBLYMAN ADUBATO: And, I'm telling you now that based on your actions as an industry, that will determine how long this State allows that to continue.

I appreciate you coming here, Mr. Gibson.

MR. GIBSON: Thank you, Mr. Chairman.

ASSEMBLYMAN ADUBATO: I appreciate your patience also, Mr. Ealey. I wish you nothing but success in your new venture. Hopefully, we will even be able to communicate, and when we ask for information from you next time, we might get it -- hopefully. Thank you for coming, and enjoy your barbecue sauce.

Commissioner Murphy, I apologize, number one, for taking this long, but I will leave it up to you, sir. Would you like to take a half-hour break, or would you like to testify now? Either way is okay with us.

COMMISSIONER MURPHY: I guess I'll testify now.

ASSEMBLYMAN ADUBATO: Okay, sir. Thank you.

Commissioner Murphy, I apologize. Can we take a break? I would like to take a five to ten minute break, okay, Commissioner? We'll recess and then reconvene at one o'clock -- fifteen minutes.

(FIFTEEN-MINUTE RECESS)

ASSEMBLYMAN ADUBATO: Excuse me, ladies and gentlemen. It is one o'clock and we are ready to reconvene. I would appreciate it very much if you would hold any press conferences outside.

Before Mr. Gibson leaves, I would like to ask him a question for the record -- just one question, please. That is all right, Mr. Gibson, you don't have to disturb the Commissioner. I only have one question, so sit right there, please.

Mr. Gibson, in your testimony this morning, I believe it is a fair statement to say that you have said that every member of the JUA Board voted on the \$90.00 RMEC.

MR. GIBSON: No, sir, the \$90.00 was not computed until after our Board meeting, but they agreed -- and, this is what I said -- at our Board meeting, it was agreed that we would make a filing based on the actuary's recommendation, which of course was more than \$90.00. But, we would apply a judgment assumption of about a one-third reduction, and we would make the filing on that basis.

Now, that exact dollar wasn't actually known until, I believe, the day before we made the filing, because they had to go back and apply their mathematics to it. Then I got a hold of everybody and told them what it was.

ASSEMBLYMAN ADUBATO: Did they vote on the \$90.00?

MR. GIBSON: I considered that they voted on it, yes, sir.

ASSEMBLYMAN ADUBATO: Would you be surprised to learn that the members feel they did not vote on the \$90.00?

MR. GIBSON: Yes, I would, sir.

ASSEMBLYMAN ADUBATO: They were told that that was what it was going to be -- \$90.00.

MR. GIBSON: Mr. Adubato, we have a Board meeting on Friday of this week at which time I assume that if the Board members, if any, feel that we acted improperly, they will certainly let me know it.

I believe I spoke to everybody, and nobody had any problem with what we were doing, other than -- and we all had this anticipation -- the anticipation that it was going to be met with considerable outcry. I think we were right.

ASSEMBLYMAN ADUBATO: The outcry is justified when, I think, you have a process where you have an actuary who says that you should have a \$146.00 increase. You came back and said \$90.00, and newspaper accounts report that the manager says it should be \$200.00. There is a legitimate reason for confusion and an outcry. That is totally expected.

On top of that, the people who are sitting there at the JUA Board -- the ones I have spoken to -- say to me that they never voted on the \$90.00. They will be heard from. They said they were called

and told that it was going to be \$90.00. They never voted on that \$90.00.

That is the thing that has been presented to me. I'm not denying anything. I'm only telling you what has been presented to me. I just want it on the record, and if there is any copy of any votes -- and I've asked for this before -- I would appreciate them being forwarded to our offices here in Trenton, to Mr. Caramalis, indicating if it was a voice vote, a written vote -- just how the vote took place and what the vote was on. There seems to be some confusion on people's parts. That is all.

All right, thank you, sir.

Mr. Commissioner, thank you for your patience. Commissioner, I know this sounds -- well, let me go to kindergarten, and let me ask very basic, basic, basic questions.

I believe you were appointed the Insurance Commissioner in New Jersey around February of 1982. Is that a fair statement?

COMMISSIONER JOSEPH Y. R. MURPHY: That is right.

ASSEMBLYMAN ADUBATO: At that time, you were aware of legislation that had been introduced in New Jersey, and you gradually became more aware of it. I realize that you weren't part of the scene before that, but at some point in time before the bill actually became law--

COMMISSIONER MURPHY: Do you mean--

ASSEMBLYMAN ADUBATO: A-1696. We had an opportunity and you had an opportunity to see that bill.

COMMISSIONER MURPHY: That is right.

ASSEMBLYMAN ADUBATO: I realize the bill was very complex, and I mean that. I am not patronizing you. I realize also that it was legislation that set a precedent in many ways and attempted, to the best of its ability, to do many things. Certainly, by the sponsors, it was not considered to be cost containment.

The Governor, at his press conference before the bill was introduced, said that it was the most meaningful cost containment in the history of New Jersey -- equity, cost containment -- and the most meaningful reform in the automobile insurance system dealing with those blatant inequities.

There are two things, Commissioner, that I really want to ask. The first thing I want to ask is, under Section 6 where we talk about the merit rating plan, we, as the drafters of this legislation, have always interpreted that the surcharges that we put in and that were mandated were never intended, nor ever limited to mean that these were the only surcharges that would be allowed. These surcharges were put in there to help the regulators build on the base of surcharges, including, but not limited to, retaining the surcharges that now exist in the Assigned Risk. As we broaden those surcharges from just those people in the Assigned Risk to include it on a person's license at a much lower amount for six points, we felt that you, as the Commissioner, should have the total flexibility and the power -- because you have the responsibility -- of meeting the obligation of the statute -- not the legislators, although there is oversight in there. But, that is not the issue.

The issue is that it was our intent and the Governor's intent that any shortfall in that equalization charge -- the first year -- whether honestly misinterpreted or not -- and I know it was honestly anything, so let me emphasize that -- I'm not suggesting anything but honesty. But, the fact that the surcharges that the previous speaker spoke about, to the best of my knowledge, include only those surcharges that we have mandated so far by law. I wonder if that is the same perception that you have?

COMMISSIONER MURPHY: Let me answer your question by playing down a caveat which I know you will appreciate, but I should do it for the record. As you know, I have sent this RMEC filing to an administrative law judge. Actually, I am advised, and I think accurately, that when a rate filing such as RMEC arrives, and the Public Advocate, as he has, demands a contested hearing, he is entitled to one. The only people who can sit at such a hearing are myself -- the only one in the Department -- or an administrative law judge.

I thought it better for the kind of record we need in this matter -- and I'll speak more to that later -- that it be done by an administrative law judge, so I sent it there. On the other hand, I still stand in a quasi-judicial role in that the report of the administrative law judge will come back to me for approval, rejection, or amendment.

In answering your questions, I wish to say that I am answering them generally and not in respect to this specific filing. I think you understand that.

Yes, I agree with you that the intent of this legislation, especially the sections you cite, are to make up, by virtue of these surcharges, the kind of income which was lost immediately by changing over from the AIP to the JUA. I have not moved on increasing the surcharges, and I'll tell you why.

Number one, while this is not controlling, I do have some guide in the legislation itself of what the Legislature thought about these things for openers.

Secondly, I would like a little more of a record to be made before we move here, because this is an important, volatile, significant thing to start increasing these surcharges.

I have heard all kinds of estimates about how much can be collected. I would like to have some record. My good friend, Cliff Snedeker, told me today that it won't be until a week or two that the first billings will go out. I would like to see how it works.

As you probably also recognize, in part of my reference to the administrative law judge, I asked him to inquire into, among other specifically listed items, this question of surcharges. I would like some record made. When it is, I will fulfill the legislative intent, Mr. Chairman.

ASSEMBLYMAN ADUBATO: I accept that, Mr. Commissioner. On the constant, the only thing I can say is from day one, it was always my impression that whatever monies were in there from the first \$42.00 -- and maybe I assume too much -- because like you, philosophically, there are a lot of things I believe we should risk doing -- like letting the market be competitive, and allowing competition and not regulation, even though that is your job, be the rule. Rather, use it as a safeguard. There are some people who may take advantage and they may not treat people as fairly as they should be treated because there is no law to protect them.

I like to think as you do -- I know you do -- that in our American system, we have got to keep risking and reaching for real free enterprise with equity. If anything is the challenge for all of us who

believe in that, it is to continue to keep trying in spite of some of the people who may misunderstand that desire.

In this constant, as they labeled it before you got here -- for the record -- the \$42.00 that was increased, I always thought, come January 1, that that money would no longer be available, quite openingly and quite honestly, to the voluntary market. They weren't exposed to any risk.

If you look at the claims by industry about losing money, I realize that sometimes, for whatever reason, they had to inflate in order to get something near to what they really needed. That was unfortunate. Maybe if I were in their position, I would have done the same thing. It is unfortunate. But, you know, Commissioner, when you came here, I let it be known publicly. I want you to know it. I don't know if I ever told you -- maybe I did and maybe I didn't -- I don't remember -- that when you came here, I thought it would send a signal to the industry that we were going to do our jobs, but we were not going to treat you like you are an enemy. We were going to meet our responsibilities to the people of New Jersey, but we were going to be sensitive to your needs. I thought that was great. I thought it was the right thing to do.

I don't know what happened, and I don't know how it happened. All I know is that today I listened to testimony from the Chairman of the Board of the JUA who said to me, "You're right. But, the law allows them to keep it." I don't want to overkill that, because that is going to come out in that tape. If that means that the only way we're going to get equity is to keep passing laws so that people are treated fairly, we'll do it. I'm not opposed to doing that, but I would rather see these things done voluntarily. Maybe I'm a dreamer, and maybe I really believe literally that America is supposed to be fair play, whether it be corporate America or the young children who are in that balcony playing with each other. I'm sad; I'm not angry anymore. I'm sad. I'm sad because all of the experts on the JUA -- and Commissioner, I know you don't have a vote there, but you do sit as the ex officio, and you certainly understand the system -- I would like to ask you, when ISO filed and they had their rates approved with the new changes in A-1696 -- not to get off the subject, but do you

know what they project? They project all of the senior citizens as taking the \$2500 deductible -- not to get off of the subject.

In that filing, which we know that we, the Governor, and both parties unanimously voted for and supported, we said that those rates would be comparable to the rates in the JUA -- the voluntary market rates and so forth and so on. There is no more exposure with the way I read what is happening. Come January 1, those people are just voluntary, and they keep coming out. If they are there, they still have the \$75.00. They can't be both places at the same time.

Let me ask you: Do you think that money should be retained in the voluntary market, or should it be put over into the JUA?

COMMISSIONER MURPHY: Let me tell you what I did and why I did it -- again, with the same caveat I made before about this matter going to a hearing before an administrative law judge. But, I think what I can recite is what actually happened. It is pure fact.

ISO had to make its filing -- we called it colloquially a compliance filing -- a compliance filing on the flattening and capping provisions of A-1696. In doing that, they dealt with premium. What is premium? Premium is the amount they are showing on the policies they are writing, that they are reporting for premium tax, that they use as a basis for expense allocations, to report in their annual statements. That is premium. That includes these so-called policy constants. So, that premium -- the total premium -- it was allocated -- was redistributed.

Copies of correspondence between ISO and our Department, which led up to that decision, were sent to the Public Advocate. The Public Advocate and I had an exchange of correspondence, which I can make available to you if you want, but let me try to summarize it for ease. The Public Advocate took the point that the voluntary rate level after January 1, 1984 should be based on the voluntary experience and not on assigned risk experience. In a sense, that is another way of saying that the other money should be available.

I agreed with the Public Advocate. I pointed out, however, that the time constraints of A-1696 were such that we couldn't go through an elaborate series of hearings at this time and still be ready to have appropriate rates available on January 1. He agreed, and he

recognized the time constraints. He said that he expected me to have a hearing very promptly during 1984 in respect to the voluntary rate level as to whether it was excessive or not. I agreed. As a matter of fact, that is one of the items which I have scheduled for the administrative law judge's hearing. So, that will be looked upon.

Again, you mentioned law before, and I think you recognize that I don't have the authority, or it doesn't appear that I have the authority -- let me put it that way, subject to correction by the administrative law judge -- to order any payment from the voluntary market over into the JUA. As I said, we melted it into the premium, and we allocated the premium based upon A-1696. This matter, along with the other matters I have adverted to, are going before the administrative law judge on an expedited basis.

The Public Advocate has taken a position on the matter, and he will undoubtedly appear at that hearing and urge his point of view in respect to voluntary experience.

Mr. Chairman, to remove the money from the voluntary market and turn it over to some other fund, it does not appear that I have that authority.

ASSEMBLYMAN ADUBATO: From the standpoint of authority, I don't know either. But, from the standpoint of your expertise, Commissioner, the thing that bothers me is as one of the architects of this legislation, it was our desire to create a climate in New Jersey where each individual company would be judged on its own efficiency -- where each individual company would have an accountability within its system of profit and loss on the business it decided to write.

COMMISSIONER MURPHY: Fine. I hope that can still be done.

ASSEMBLYMAN ADUBATO: Well, Commissioner, I hope so, because the intent was, when we eliminated the residual market business, it is important for everyone's understanding, especially the public, to realize that in 1975 in New Jersey -- at the end of 1975 -- there were 226,000 people in the Assigned Risk.

COMMISSIONER MURPHY: Today? A million and one-half?

ASSEMBLYMAN ADUBATO: We look at a million and one-half -- I'm going to go back a year and a half or so and use the numbers I've been using -- 1.4 million, let's say, even though we all know it is probably a little more than that. Let's say 1.4 million.

The interesting thing to me is, as a person who believes in free enterprise, who believes there is no conflict with that philosophy, and the strong desire for equity-- The disturbing thing to me is that when we take off that yoke from each company and say, "Let's shift that off your back, and let's not penalize you for writing voluntary market business. You pick and choose. It is your right as a company to survive. And, if you don't think that person is a good risk, you should not be forced to write him." I believe in that.

So, we created this Joint Underwriting Association, and we said to the companies, "You will now be accountable, not for the experience of the residual or assigned risk or JUA market -- you will only be accountable for your business that you want in profit and in loss. Any losses that occur in the Joint Underwriting Association, which we understand to be no-profit, no-loss -- philosophically that is the goal -- but any losses that occur in the JUA must be made up, not by taking away any profit you are making in your book of business, but by spreading that loss over the marketing end -- increasing the premium called the RMEC, if that is necessary."

The way we interpret it, and legal opinion agrees, that it should begin, by law, after the first year. There seems to be some differences of opinion on that, including Mr. Gibson. That is neither here nor there though. The issue is that when the companies are no longer exposed to the experience of that residual market, and they say, "Well, we're going to readjust our rates," let's think about that for a moment. If we allow them to retain the \$75.00 that they have no exposure for, it is easy to see how they can lower their rates. But, if we take that \$75.00, and if we agree that it belongs where the exposure is -- a rose is a rose is a rose is a rose -- constant, RMEC -- you call it, you name it. If that \$75.00 is shifted over, as it should be, then the companies in a pure exposure situation have a right to say, "Hey, we're making 'x' amount of dollars in our business, and we're efficient, because this is what we're exposed to. For a competitive situation, we can produce a product better, more efficiently, with more cost containment than some companies who will not be mentioned that shouldn't be in the business." That is great.

Then don't fail. Then those good, competent companies, as most of them are, I believe, will not be forced to carry them on their backs, and the people along with them. If we allow them to keep that \$75.00, even though they don't have the exposure, and they lower their rates, what happens is, now we've got to increase what at the end of the first year? -- a RMEC to make up that difference.

Instead of giving them money, in our opinion that they are not entitled to, because they don't have that exposure anymore on January 1 -- to me it has nothing to do with the law. It has to do with fair play. I'm not suggesting that you do or do not have the power to do it. I don't know either. I admit that to you. But, being naive, I always assumed, and anybody who ever wanted to hear it -- I always projected those monies being turned over. People used to say to me, "Well, don't calculate it because we don't know what it is going to be. It could be higher or lower." I'm talking about previous administrations. This bill was around seven or eight years. "Don't worry about it. It will be taken care of."

The only things that were projected in any material that was handed out showed the rerating of the market, showed the exact dollars involved and how it would be accomplished, and left the Commissioner, whoever he was before you, with the power to add surcharges and to adjust, whatever. But, at no time did this chair ever expect the insurance industry to keep the \$42.00, because that is what it was in 1980.

Do you remember, when you granted the \$33.00, and you said if we have cost containment, maybe it is not necessary? That is a judgment call; I'm not going to hold you one way or the other to it. The facts are, though, that in a way, it is more accountable now. It is there, and it is in the system. It is there as a result of a filing that has to do with losses in the residual market, not the voluntary market.

COMMISSIONER MURPHY: That is true.

ASSEMBLYMAN ADUBATO: It is that simple. It does not belong there. When people in the industry say, "Hey, there is no law which prevents me from doing it," -- so in other words, if we didn't have a law against murder, you could go out and commit murder. Well, certainly we need that law. We know that.

I'm not interested as much in the laws as I am in credibility with the people out there -- the 7.5 million people who are going to say, "Are they crazy? They're telling me that they want \$165 million, and they don't have to pay any claims from it." We don't have to be actuaries; we don't have to be insurance company executives. We can ask the guy who works in the gas station or the baker. He doesn't have to be a professional person. He can be anybody.

I just hope that other people in the industry realize that this is not an attack. This is something that is called an opportunity that they lost to show their credibility, to prove their credibility. Hopefully we could have, as you and I have discussed, a free marketplace. Let those in the industry watch their own brothers. I know they are competitors, and I understand that, but if there is something wrong in the system, they have an obligation to change it too, and not tell me for years, "What are you talking to us for? Go see the Commissioner. He's got the power to do it." That has been the cop-out for ten years. If something is wrong, blame the Commissioner, no matter who he is. I'm tired of it.

Commissioner, I know what you've said about the administrative law judges, but I'm going to ask you as clearly and directly as I can. How do you feel about that \$75.00?

COMMISSIONER MURPHY: Well, again, answering the question as generally as I can, without being specific, I am an administrative officer, as you know, and my duties are statutory. That is obvious, but I have to state that. I have called a hearing at which time the current rate level of ISO and the other companies -- ISO is 80% of our market when you consider their residual market -- will be tested under the standards of the rating law. If those rates are found to be excessive, they will be disapproved. That is all I can do. Do I make myself clear?

ASSEMBLYMAN ADUBATO: Maybe I misheard -- no. When we talked about ISO, how much of the market are they?

COMMISSIONER MURPHY: Eighty percent when you consider that Allstate is part of ISO, and you consider the residual market. Do you see what I mean?

ASSEMBLYMAN ADUBATO: Oh, all right. We're including Allstate in that figure. Okay.

COMMISSIONER MURPHY: They are a member of ISO.

ASSEMBLYMAN ADUBATO: Hopefully after January 1, Allstate will see the wisdom of going on its own.

COMMISSIONER MURPHY: It may. All right. I have called a hearing, and we'll pass on the rate as meeting the standards of the rating law. That is all I can do, Mr. Chairman.

ASSEMBLYMAN ADUBATO: Mr. Commissioner, I'll accept your answer as an answer, and I respect what you are saying. But, I feel that your actuaries who work for you did not do a proper job in their calculations. I feel that they had a responsibility. I don't know what your impression is of how this came to light, but I was at a meeting with the insurance companies when I exposed this. I asked them to do the right thing so we wouldn't have to pass any laws. We failed to get them to do that, for whatever reason. That is why we introduced the law.

I want you to know something. I did not call any reporters; I did not tell any reporters. I tried to deal with it in a communication, not in the media, because I am embarrassed, not as the Chairman of the Banking and Insurance Committee, but I am embarrassed as a citizen of New Jersey, I am embarrassed as a member of the Legislature, I am embarrassed as a person who was helpful and instrumental in aiding the Governor of this State who, in all good faith, put forth documentation and information that was produced with the help of the industry, and I am embarrassed that after this bill was signed into law and was analyzed all these months, from February 10, 1983 until November, there wasn't one peep except the propaganda of some of the people in AIA and some of the other people, trying to relate this to the capping as being the problem. That doesn't sell anymore, because the Governor doesn't believe them anymore, and neither does anyone in this Legislature believe them anymore. But, they continue to talk about capping as being the problem.

Commissioner, I wish, just like you said and I let it go, that you did have a statutory responsibility with the surcharges. I accept whatever reason why you haven't done it, but it hasn't been done, and that speaks -- I am not going to go on. But, when we talk about the constant, I appreciate the sensitivity of your position, but

I do not agree with it because, while you have a responsibility to keep the companies whole, which is part of your charge, and to make sure they can survive, your primary responsibility, in my opinion, is to the seven and a half million people in this State, whether they work for a company or not. In that regard, I admit to you that I am disappointed. I respect what you're saying, but I am disappointed that your response could not be a lot more clear-cut, saying, "Mike, for whatever reason, it didn't happen. It should happen, and we are going to make it happen." It would have been a lot better for me to absorb.

When people talk about the fact that we don't have a right to rate make -- of course, we don't want to rate make. I don't even want you to rate make. I want the marketplace to rate make. That is what we want, but when we are forced to not do what we want, we have no choice. We have to do it. When they talk about the Legislature not rate making, wasn't it the Legislature that allowed the averaging? My God, isn't that rate making? I didn't hear any companies complain when I created that. That wasn't a trade-off, Commissioner. I think you have heard me say that often. That was never a quid pro quo. That was something I wanted to risk, because I felt the times called for it, and hopefully the companies would feel a flexibility to take risks. Unfortunately, they misunderstood that, and now we compound it, and the companies sit there, through the eyes of a decent guy, and respond to this Chair and the members of this Legislature by saying, "There is no law to prevent us from doing it." That is sad.

Assemblyman Kosco, do you have any questions or comments?

ASSEMBLYMAN KOSCO: Yes, probably just one that could be a quick answer, or could take a considerable amount of time. Just to get back to the specific Resolution that created this hearing, in the Resolution there is a very simple charge. It charges this Committee right here with determining and evaluating the efforts made to date to implement the New Jersey Automobile Insurance Reform Act of 1983 and the New Jersey Automobile Full Insurance Availability Act, which were enacted on February 10, and to inform the public as to the provisions of these laws. In compliance with the charge that this Committee has been charged with, my question to you is, what has been done by the Administration and by your office to implement this?

COMMISSIONER MURPHY: Mr. Chairman, I prepared a brief statement at the outset, and I attempted to address myself to that.

ASSEMBLYMAN ADUBATO: Yes, sir, go right ahead. Thank you for your patience.

COMMISSIONER MURPHY: Would you like me to do that, or do you want me to merely submit it?

ASSEMBLYMAN ADUBATO: Whatever you prefer to do. Do you want to paraphrase it?

COMMISSIONER MURPHY: Well, very briefly.

ASSEMBLYMAN ADUBATO: It's up to you, Commissioner.

COMMISSIONER MURPHY: I acknowledged to the Chairman that in his memorandum to me he requested the presence and participation of myself and my staff at the hearing today. We are here, and are generally prepared to inform your Committee of actions taken to date by our Department to implement, or prepare for the implementation of the legislation you refer to.

Generally, our activities fell into two categories, one, administrative action, and two, notice to the public of significant developments. With respect to administrative action, since the legislation was signed into law on February 10, 1983, the Department has proceeded to implement its provisions. One, by taking initial steps to organize the Association, and documentation of this is invited by the Chairman in prior correspondence, and is outlined in the minutes of the Association. Two, we restructured the rating system for auto insurance, which will go into effect January 1. We spoke about that. Three, we received from AIPSO, on behalf of the Association, the RMEC filing, which was discussed earlier this morning. A copy of this has been provided to your Committee. Four, by a copy of a letter from me to Mr. Gibson, Chairman of the Association, with attachments, we referred the RMEC to the Administrative Law Judge and listed aspects to be inquired into. Five, we issued Circular Letter No. 65, dated August 10, 1983, with respect to physical damage deductibles. We issued another Circular Letter, No. 67, regarding the flattening of the premium tax. That was required under the law. This is a broad outline of the activities we have done to date.

Now, under the second caption of, "Notice to the Public of Significant Developments," number one, following the public ceremony surrounding the signing of the legislation, there was press coverage, and the Governor's Office issued a press release. Two, on March 31, 1983, our Department issued a press release recounting the organizational meeting of the Association Board. Three, on November 17, the Department issued a press release in connection with the restructured rating system, and, four, on December 5, our Department issued a press release dealing with the referral by me of the RMEC application to the Administrative Law Judge. These are available for your inspection if you want them.

ASSEMBLYMAN ADUBATO: Commissioner, on that -- I'm sorry, Assemblyman Kosco. Go ahead.

ASSEMBLYMAN KOSCO: Do we have copies of your statement, Commissioner?

COMMISSIONER MURPHY: I will provide them; I have them here.

ASSEMBLYMAN ADUBATO: Commissioner, just to extend that, when we spoke about going to the law judge and asking for additional information and so forth, in that filing that they received from the AIPSO actuary, is there anywhere in that filing where you can produce the figure of \$146.00?

COMMISSIONER MURPHY: May I ask Mr. Cooper, who is here in the room with me? He is our chief property and casualty actuary.

ASSEMBLYMAN ADUBATO: Sure. Mr. Cooper, would you please come up here?

WARREN P. COOPER: I don't have the filing with me.

COMMISSIONER MURPHY: Well, I have one here.

ASSEMBLYMAN ADUBATO: Mr. Cooper, this was received on November 23.

COMMISSIONER MURPHY: We have a copy here.

ASSEMBLYMAN ADUBATO: Today is December 14. Between November 23 and December 14 -- have you read this, Mr. Cooper?

MR. COOPER: Yes, I have.

ASSEMBLYMAN ADUBATO: To the best of your knowledge -- I won't hold you to it -- but, to the best of your knowledge--

MR. COOPER: I believe the figure is in here.

ASSEMBLYMAN ADUBATO: For \$146.00?

MR. COOPER: I haven't read it since it first came in, so--

COMMISSIONER MURPHY: You gentlemen have a copy of it up there to look at.

ASSEMBLYMAN ADUBATO: Yes, sir, we have several.

COMMISSIONER MURPHY: Would you hand Warren one, please?

ASSEMBLYMAN ADUBATO: Yes, sir. Mr. Cooper, I have the answer.

COMMISSIONER MURPHY: You found it?

ASSEMBLYMAN ADUBATO: No, because it doesn't appear.

COMMISSIONER MURPHY: It doesn't appear?

ASSEMBLYMAN ADUBATO: There is no one number that calls for that.

MR. COOPER: No, it doesn't come in one number.

ASSEMBLYMAN ADUBATO: No, it doesn't specify. It does not clear up the fact that the filing is kind of confusing where they are talking about 100% of the market being retained. Then, they are talking about one-third of the market being lost. Then it says, "However, this was still based on 100% of the market being retained." I don't know how you could understand that. I mean, I'm not that bright, I realize that, but in adding up the two figures of the liability and physical damage, you get about \$145.00 or something, I believe.

MR. COOPER: The \$146.00 does not stand out as a figure; it can be calculated. (Mr. Gibson comes up to offer his assistance.)

ASSEMBLYMAN ADUBATO: I just said that, and then I told you how you got it. Thank you, Mr. Gibson, we appreciate your help. Commissioner, the Resolution which was introduced by the Speaker and the Minority Leader, as pointed out by Assemblyman Kosco, requires that we ask certain questions. I will try to expedite those questions. When we talk, number one, about A-1696, the senior citizen reduction was supposed to take effect sixty days after February 10. Did that happen?

COMMISSIONER MURPHY: Yes. I think you will find in your files, correspondence outlining how that went into effect. We responded. I do not have a copy of that.

ASSEMBLYMAN ADUBATO: I have that.

COMMISSIONER MURPHY: You have one.

ASSEMBLYMAN ADUBATO: How about the capping expense and tax levying you talk about? They are supposed to be operative January 1, 1984, aren't they?

COMMISSIONER MURPHY: They will be operative January 1.

ASSEMBLYMAN ADUBATO: So, that is reflected in the filings I have and the rates I have from ISO?

COMMISSIONER MURPHY: That's right.

ASSEMBLYMAN ADUBATO: The surcharge plans, collectable beginning January 1, 1984 -- what are they?

COMMISSIONER MURPHY: Well, there are two surcharge plans. One we talked about a moment ago in connection with the conviction surcharges, and I addressed myself to those at the opening of my testimony. The second one is--

ASSEMBLYMAN ADUBATO: Not to leave that, but just again to make it clear, I know you did answer. The conviction surcharges, to the best of our knowledge, are only the ones that are mandated by law?

COMMISSIONER MURPHY: The ones recited in the law now and, as you know, we have pending either legislation or regulations to broaden the surcharge base.

ASSEMBLYMAN ADUBATO: I am not aware of a regulation; I admit that to you. I am not saying there isn't any; I'm only telling you I am not aware of any regulations that would expand, as the law mandates you do, before January 1. Now, as necessary when we talk about the numbers, and that is part of our problem, when we talk about the numbers, the thing that has to be put on the table is that there are no other surcharges functioning or operating as of January 1. These surcharges, by law, began January 1, 1983. It is retroactive; in spite of the fact that the bill was signed into law on February 10, the law is clear. Everyone agrees that beginning January 1, 1983, if you got points on January 1, 1983, they were collectable immediately. Because of the process, not being able to do it, the Attorney General's Office saying that they could wait, I didn't argue with it. I am not trying to cause problems. We said, "Fine, as long as you start collecting them January 1, 1984," but in the interim, nobody in the industry, in all the meetings I had, ever said to me, "What are the surcharges the Commissioner is having," or "How else are we going to make up the

shortfall?" I never heard from them; they were never concerned about it. Maybe it is because they thought they were going to keep \$165 million they were not entitled to. Maybe that is one of the reasons. I don't know. But, they knew the law, every lobbyist who represents every company knew the law enough to distort it, every single one of them.

My question is, Commissioner -- I accept that you said it was new, it was complex, we were not sure about the revenue and so forth and so on -- but, the fact remains that the law says, in spite of their filing, and I have an opinion, there cannot be a RMEC the first year by law. A RMEC can only exist after it has been functioning for a year and you have experience to draw from. People are entitled to differences of opinion, I understand that. I am only going by the legal opinions.

So, the \$90.00, in spite of the fact of the Administrative Law Judge, I would submit is illegal, based on the law. People can shake their heads all they want.

ASSEMBLYMAN KOSCO: May I ask a question?

ASSEMBLYMAN ADUBATO: Yes, sir.

ASSEMBLYMAN KOSCO: One of the provisions was that within ninety days the Board must file a plan of operation with the Commissioner to include the phasing out of the AIP. That is under Section 18. Part of that charge of within ninety days, directed the Board that they had to file for one issue, methods and standards for the establishment of adequate actuarial sound reserves for unpaid losses, and include provisions in the plan that they had to explain to you, in a report, how they were going to collect the money, how they were going to invest the money, etc.

Now, is there a copy of that report available?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN KOSCO: Anywhere in that report, when they were discussing finances and monies they may be collecting, did anyone ever mention the fact that this money is going into the other fund, which should possibly be going into here -- was that ever mentioned as a consideration?

COMMISSIONER MURPHY: Are you referring now to the so-called "policy constants?"

ASSEMBLYMAN KOSCO: Yes.

COMMISSIONER MURPHY: I do not recall reference to the policy constants in the plan of operation.

ASSEMBLYMAN KOSCO: Because that is a considerable amount of money, and it would seem to me that if I were sitting on a board and we were planning where we were going to get finances from and what we were going to do with them, I would probably research everywhere I could, in every way I could, to find out where we were going to accumulate the dollars to operate. That would probably be one of the first things I would look at, you know, where is the money going now, and where is it going to go after the first of the year?

COMMISSIONER MURPHY: I recall no reference in the plan of operation.

ASSEMBLYMAN KOSCO: Especially when you have to deal with assuming that large sum of money pretty quickly, and when you have to file a report as to how you are going to invest it. One of the considerations when you are investing money is the amount you are going to invest.

COMMISSIONER MURPHY: Certainly.

ASSEMBLYMAN KOSCO: Is there a copy of that plan available to us?

COMMISSIONER MURPHY: We can make one available to you; I don't have one with me.

ASSEMBLYMAN KOSCO: It's under Section 18.

COMMISSIONER MURPHY: Yes, we furnished a copy to the Speaker, and I think we furnished a copy to the Chairman.

ASSEMBLYMAN ADUBATO: Is that the one, July 1?

COMMISSIONER MURPHY: I think so.

ASSEMBLYMAN ADUBATO: With the amendments? Are we talking about the plan of operation, July 1?

MR. COOPER: Yes, I sent you a letter.

ASSEMBLYMAN ADUBATO: Yes, sir, I got that.

COMMISSIONER MURPHY: Is that in there?

MR. COOPER: It was in October -- my letter was dated October 18.

ASSEMBLYMAN ADUBATO: Yes, I got it in October, but the plan of operation went into effect in July?

MR. COOPER: Yes. You got the plan and you got all the minutes.

ASSEMBLYMAN ADUBATO: That was because we made numerous requests, and for some reason we missed each other -- whatever happened, I finally got it in October, you're right. Commissioner, what was the effective date for the 5% reduction in the seniors? Was it--

COMMISSIONER MURPHY: Did you just take the correspondence back which recites that? I don't have that, but whatever, we met the statutory deadline.

ASSEMBLYMAN ADUBATO: It was sixty days after February 10.

COMMISSIONER MURPHY: We met the statutory deadline.

ASSEMBLYMAN ADUBATO: In other words, the interpretation was -- my interpretation was it was January 1. But, I didn't fight you on it. You said, you know, and I just let it go. I just want to know when it was done.

COMMISSIONER MURPHY: We met our understanding of the statutory deadline.

ASSEMBLYMAN ADUBATO: Fine, I have no problem with that. Have all the companies filed?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: How is the reduction given? I mean, is it given in a credit, a rebate, a prospective reduction -- how is it given?

COMMISSIONER MURPHY: I don't know precisely; I assume it is given as a credit on renewal. Warren, do you happen to know?

MR. COOPER: Yes. In general what ISO did, was reduce the percentage that was in the rates. There was a 5% reduction from the base rate for senior citizens. They increased that to 15%. Other companies did it in different ways, if they were the filers.

ASSEMBLYMAN ADUBATO: So, there was no uniform way?

MR. COOPER: There was no uniform way. Of course, that could not be, particularly with a company like Colonial Penn, which is very specialized.

ASSEMBLYMAN ADUBATO: Weren't they exempt from that?

MR. COOPER: They were exempt; you're absolutely right.

ASSEMBLYMAN ADUBATO: I believe we exempted them because over 50% of their business is seniors, and it would be an undue hardship.

MR. COOPER: Because of their high proportion, you're absolutely right.

ASSEMBLYMAN ADUBATO: In fact, they asked me to do that five years ago.

MR. COOPER: Some actually did just take a straight percentage reduction; others handled it as ISO did.

ASSEMBLYMAN ADUBATO: Okay. So, the surcharge plans, we agree, should be operative on January 1, 1984 -- the effective date of those conviction surcharge plans? In that filing I did not see any plan for the accident surcharges. Are they going to be the same?

COMMISSIONER MURPHY: Well, not exactly the same. Let me state that we checked that this morning in anticipation of the question. As you know, the language is permissive in the law, and what ISO has, and which, of course, is carried over, is an accident plan which eliminates the Motor Vehicle surcharges that they had before, because they are handled differently. They have an accident surcharge plan based on accidents involving PD in excess of \$300.00, or BI to a pedestrian.

ASSEMBLYMAN ADUBATO: Yes, that is the law now; they have to pay out over \$300.00. We changed that law. That was part of the JUA law. So, there is none, in effect?

MR. COOPER: Except that which is required by the law.

ASSEMBLYMAN ADUBATO: Yes, but I'm saying there is no accident surcharge plan that I know of. What is it? What is the dollar amount? How much are they surcharging?

MR. COOPER: I do not have those figures. I would have to have the manual with me to find out exactly.

ASSEMBLYMAN ADUBATO: So, the JUA then could not have any dollar amount to attribute for any accident surcharges?

COMMISSIONER MURPHY: Well, they'll have some. They collect it and keep it themselves, the JUA, for their own insureds. We'll get it here. (Commissioner is joined by another member of his staff.)

RICK BOER: It's \$44.00 per coverage.

ASSEMBLYMAN ADUBATO: What is that, Rick?

MR. BOER: It's \$44.00 per coverage, and it does not apply on the personal injury protection. So, it's \$44.00 on BI, \$44.00 on PD, \$44.00 on comprehensive, and \$44.00 on collision. That is the ISO plan.

ASSEMBLYMAN ADUBATO: And, what does that add up to, Rick?

MR. BOER: Let's see. It sounds as though if you got all four coverages, it would be \$176.00.

ASSEMBLYMAN ADUBATO: A hundred and seventy-six dollars?

MR. BOER: YES.

ASSEMBLYMAN ADUBATO: That is a flat rate; it is not based on territory base rate anymore?

MR. BOER: Not on territory; not on class.

ASSEMBLYMAN ADUBATO: Well, it was never on class, to my knowledge. It was always on territory.

MR. BOER: That is correct.

ASSEMBLYMAN ADUBATO: So now, anybody in ISO, Rick, is going to pay an additional \$176.00 a year if they incur an accident where they are at fault, where the company pays out over \$300.00 to them. They are going to pay that \$176.00 for how long, a year, two years, three years?

MR. BOER: Three years.

ASSEMBLYMAN ADUBATO: Three years. Do you know if that was calculated in any projections with the JUA?

MR. COOPER: No, that was based solely on ISO's own experience.

ASSEMBLYMAN ADUBATO: That is my point. What I'm saying, is that those accident surcharge accumulations of monies, whatever they would be, based on the 1.4 million people who are in the assigned risk who would, in the transitional period, go over to the JUA -- if they have an accident, based on the assumptions that companies always make, they could expect so many people to have an accident, and expect to collect a certain amount of money. Was that ever calculated in the JUA file?

MR. COOPER: Whether it was calculated in the JUA file, I am not certain. In the ISO filing, however, their experience for liabilities is on the basis of the combined experience of the residual and the voluntary market.

ASSEMBLYMAN ADUBATO: The whole point there -- if it is based on both markets, and they are not going to have both markets come January 1, then it would be over into the JUA.

MR. COOPER: Yes, sir, you're absolutely right, but I think Commissioner Murphy explained the basis on which we approved the compliance filings, and that this matter will be looked at through the Administrative Courts as to what the proper basis for these filings should be.

ASSEMBLYMAN ADUBATO: All right, so then you're saying that a schedule for surcharges has been promulgated?

MR. COOPER: Yes.

ASSEMBLYMAN ADUBATO: For vehicle accidents and motor vehicle violations?

MR. COOPER: For accidents, not for violations.

ASSEMBLYMAN ADUBATO: So, there have not been any violation surcharges promulgated outside of the ones mandated by law?

MR. COOPER: No. There is just--

ASSEMBLYMAN ADUBATO: Okay. I know, we have been over that.

MR. COOPER: There is just one thing though, Mr. Chairman, to clarify the matter. We realize that certain of these charges are going out and will not be picked up in the motor vehicle charges because they do not generate points. There is a draft regulation--

COMMISSIONER MURPHY: I referred to that before.

MR. COOPER: Yes, you referred to it before, but it is a draft regulation from the Director of Motor Vehicles and the Commissioner of Insurance to pick that money back up.

ASSEMBLYMAN ADUBATO: The money that was lost?

MR. COOPER: Yes, it's money that falls out of the system.

ASSEMBLYMAN ADUBATO: Are you including DWI, the drunk drivers and so forth, in that?

COMMISSIONER MURPHY: Well, they are already included in the law. These are ones who do not develop points for certain offenses.

ASSEMBLYMAN ADUBATO: So, are we saying-- You know, I am having difficulty, because people said they calculated something like \$36 million.

COMMISSIONER MURPHY: I do not know the basis for that. I think someone said \$39 million.

ASSEMBLYMAN ADUBATO: Well, \$39 million. Last year in New Jersey, 25,000 people were convicted of drunk driving. Those people, if they are convicted after January 1 of next year--

COMMISSIONER MURPHY: A thousand bucks.

ASSEMBLYMAN ADUBATO: If that is an equal amount, just from drunk driving alone you're talking \$25 million.

ASSEMBLYMAN THOMPSON: How did you get that figure?

ASSEMBLYMAN ADUBATO: Pardon?

ASSEMBLYMAN THOMPSON: You said 25,000 persons were convicted of drunken driving.

ASSEMBLYMAN ADUBATO: Yes, sir.

ASSEMBLYMAN THOMPSON: How do you arrive at \$25 million, I don't quite get it?

ASSEMBLYMAN ADUBATO: Because they have to pay, Gene, a thousand dollars to Motor Vehicles in order to drive, in addition to all the other penalties and other fines. They only have to pay it for one year. I had it for three years, but I was overruled by the Attorney General -- and I respect his ruling -- when he said that the way we drafted the bill, it was their opinion that it should only be for one year, that thousand dollars, instead of the three. Nevertheless, it is still \$25 million. In the future, we expect to change that law to increase the drunk driving penalties, to make them even a little harsher than that. Maybe we'll take the car too.

The issue is that \$25 million alone comes just from drunk driving, so you have quite a base there to build on. And, if you expand the surcharges, just as a suggestion -- I know I shouldn't be doing this -- the people who are in the assigned risk who are being surcharged today, and those surcharges do not apply to the people in the voluntary market -- as a suggestion, I don't know why we just don't apply that to everybody's license too, and increase the competition there, or the market thing you're choosing from, to five million, instead of 1.4 million. Every licensed driver in the State should be subject to those kinds of surcharges, which is what we did when we brought in the motor vehicle charges to expand it beyond.

COMMISSIONER MURPHY: That's right.

ASSEMBLYMAN ADUBATO: That is only a suggestion.

COMMISSIONER MURPHY: I think it is a valid one.

ASSEMBLYMAN ADUBATO: I am not going to ask these other questions; I think they are superfluous. I am not going to talk about when the Chairman was appointed, and so forth and so on. However, I would like to ask you, Commissioner, again, the same thing I asked Mr. Gibson, and that is, in the plan of operation-- There are several questions I have about several things, but I will wait until the bugs are worked out. As you know, in the Legislature we have a Joint Committee set up for oversight. We have the Senate Labor and Industry Committee and our Committee jointly responsible to take the reports from you and the people there, to see what we can do to improve the operation, and to take out the kinks that we all know are going to be there.

But, before that, I want you to know that I am very disturbed about two things, because I do not understand the logic behind them. I thought one was pretty clear, Mr. Gibson, although I had trouble communicating it to you. I do not understand how, if I'm right, the expense factors in the residual market were knocked down some time ago, in this State, by Administrative Law Judges. If I remember correctly, it was kept at 6-1/2%. I might be wrong; that's my memory. I don't know if any of you guys can help me. I don't know how it happened, maybe I am misinterpreting it, I don't know. (Assemblyman Adubato consults with a member of his staff.) Okay, rather than confuse more people, let me just leave it, and say that the expenses which are incurred by the JUA, that are, you know, legitimate expenses -- and I believe in the economic motives of people participating, it's a private sector, it's not State run or State controlled, even though it was State created -- those monies, whatever they are, whether it's \$39 million, \$100 million, whatever they are, that they are not collecting -- how do we give them an 11.5% expense?

I have heard the rationale. I do not accept that rationale, and I would ask you to change that by regulation, or believe me, consider it, because I'm telling you that at the first session after we come back here, we are going to make it law, if that is what we have to do. We'll make it law. People tell us there is no law, so we'll make laws.

COMMISSIONER MURPHY: Incidentally, that item, along with the commission item which you referred to, are also specific items I have addressed to the Administrative Law Judge to comment upon because, obviously, it runs to the make-up of the JUA premium.

ASSEMBLYMAN ADUBATO: The other thing is -- well, you're ahead of me. I was going to ask you that. I'll accept that, but, you know, I would rather we did not have to make laws to do these things.

COMMISSIONER MURPHY: I would too.

ASSEMBLYMAN ADUBATO: You know, when people beat around the bush in an explanation, it doesn't do them any good here. It really doesn't; it's sad. You don't have to explain to us, to this body, that there are expenses in running anything. But, I've heard from people in the private sector, and I believe them, that there should be no free lunch, and they shouldn't get a free lunch either. In the words of some of the most conservative fiscal people in this country -- the two who come to mind who I will not publicly name, but everyone knows who they are -- they talk about the fact that some people in the private sector want competition, as long as it is not competition against them. And, some people are against subsidies, except if they are getting the subsidy, and then it is okay.

There is no consistency in the make-up of this plan, and there is no consistency in allowing the companies to retain \$165 million that they have no exposure for. That is why we have called this public hearing, basically for those reasons. Is that a fair statement, Assemblyman Kosco?

ASSEMBLYMAN KOSCO: Well, the reason for the hearing was to determine exactly what the charge is, to find out what is being done. I'm sure that comes under the realm of what we are trying to accomplish.

ASSEMBLYMAN ADUBATO: Mr. Commissioner, if there is anything you would like to add, fine. If not, I am going to ask Cliff Snedeker to step forward. I have a couple of questions for him. Thank you for coming, Commissioner.

ASSEMBLYMAN THOMPSON: Mr. Chairman?

ASSEMBLYMAN ADUBATO: Oh, I'm sorry; go ahead, Assemblyman Thompson.

ASSEMBLYMAN THOMPSON: Thank you. I would just like to say this. With reference to the issue dealing with the surcharge of \$165 million, which was supposed to have been for paying out claims dealing with assigned risk, and which will disappear in January, I am not that disturbed because I think this is why we have legislative oversight and why we have hearings. A hundred and sixty-five million dollars is an awful lot of money to put in the hands of people in the private sector on a voluntary basis that they will return it because something has happened in the law. I think this is why we have legislative hearings, and the type of government we have with checks and balances, so we can remedy these types of things.

I am glad I have had an opportunity to attend this hearing, because I am learning something with reference to this insurance question. I actually did not know that this existed. But, I am not disturbed about it, because this is why we have the Legislature. Thank you.

COMMISSIONER MURPHY: Thank you, sir.

ASSEMBLYMAN ADUBATO: Director Snedeker, if you have a prepared statement, we would like to have you present it. Having had the privilege of knowing you as a legislator, and serving with you during my first term, I know who you are, I know what you are, and I am glad you're in the cabinet.

Cliff, as the Director of the Division of Motor Vehicles, were you ever asked to specifically vote on approving a \$90.00 RMEC? Were you ever given a piece of paper, or have you ever signed a document, or have you ever been asked if you would accept a \$90.00 RMEC, or -- let me try to help based on what I have heard. Were you asked, or were you told that there was going to be a \$90.00 RMEC? Now, I may be misinterpreting, I don't know. Maybe you can help us.

CLIFFORD W. SNEDEKER: All right. I did not attend the meeting. I am a voting member; the Commissioner is not. I am a voting member, but I did not attend the meeting at which this was discussed. I haven't attended any of their meetings; however, we do have a representative there. I did not physically vote, nor was I asked to vote for or against that. I was told there would be a RMEC of \$90.00.

ASSEMBLYMAN ADUBATO: Was it always your understanding, as one of the original sponsors of Assembly Bill 1696, in the dark days when it got sixteen votes, that the surcharges were supposed to make up the equalization?

MR. SNEDEKER: It was certainly my intent as long as I was a sponsor of it, yes, and it is still my intent. I think that is what the bill does, and should do.

ASSEMBLYMAN ADUBATO: I will not get into how we negotiated that through the years. Director Snedeker, how can we be helpful to you today in meeting your obligations with this legislation?

MR. SNEDEKER: I certainly think the Legislature has been very helpful to us by allowing us to take funding out of UJCF monies to implement our computerization, because that is going to be a big factor when we start in January, and we are prepared in January to start collecting the necessary surcharges. I gave Spiros, your Committee Aide, an explanation of all the actions the Division of Motor Vehicles has taken. You will see in there -- and don't get scared with the bill -- on about the third page is an insurance bill. It is much larger than this, much more readable. We have reduced it down, so that we could show both the back and the front of it. So, a copy of the bill is in the material I have given Spiros.

We will be prepared to collect this. Frankly, we do not need additional help. The only help you can be is if you don't change it too many more times between now and when we have to put it into effect. We are prepared, if you go with the six points rather than the three points, to make that change. We have given everyone the figures as to what it will mean in six points, and what it will mean in three points.

ASSEMBLYMAN ADUBATO: Director, I'm sure you are aware that in the legislation that is over in the other house, we clearly reconfirmed the fact that the Commissioner still has the statutory power to implement any surcharges he wants, to make up for that shortfall. And, even though the Legislature may take out the three, four and five points, if that happens, it only leaves the drunk driving of a thousand dollars, and the six points, which is a maximum \$100.00. The Commissioner, if he deems it necessary, can reinstitute anything he wants. Are you aware of that?

MR. SNEDEKER: Yes. In fact, I have taken our staff and we have reviewed the points that the assigned risk gave in the past which are not motor vehicle points. For instance, driving with someone else's license is a heavy fine, but you do not get any points on your motor vehicle record. You lose your license and you are fined. Under the assigned risk if that occurs, and you are in the assigned risk, you pay a very heavy charge. We have recommended and put in a list what those charges are we will be losing, but we do not want to do it by points. We want to do it by a flat fee charge, because points on someone's record for that -- it is not a violation of a motor vehicle conviction law.

ASSEMBLYMAN ADUBATO: Do you feel you have-- Well, see, the way I interpret it, quite frankly, you do not have the power to do that.

MR. SNEDEKER: No, we just made the recommendation; we just gave them the idea.

ASSEMBLYMAN ADUBATO: Only the Commissioner has the power to do that.

MR. SNEDEKER: That's right. He can make the surcharges; all we can do--

ASSEMBLYMAN ADUBATO: You have the obligation to implement, and he has the obligation to discuss it with you by statute, but only he, by regulation, can actually implement it -- by reg.

MR. SNEDEKER: Correct; that is the way we interpret it, Assemblyman.

ASSEMBLYMAN ADUBATO: Okay. I'm sorry, Cliff, go ahead.

MR. SNEDEKER: If you have any other questions of us, we will be happy to answer them. We are prepared, as I said, to implement this January 1, and I'm sure you all understand how it works. We will be sending to each legislative office our description of the points, and a record of all the points. I think you may have gotten something from us in the mail. There is one point, three points, and on up to fifteen and thirty-five points. If we can be of any help to you in your legislative offices, please let us know.

We are also going to prepare a brochure of the points, and we will supply this to each legislator. I am sure your constituents are going to call you, and you can send this out to them.

ASSEMBLYMAN ADUBATO: For the record, before there are any questions, I want to make it as clear as I can, that your Department, and everyone in that Department has always cooperated with the Legislature. In fact, it is nice to get information without having to ask for it, which you have always done. I just wish we could help other people see that it is to the interest of all of us to share information, so we can be helpful.

I want to commend you on taking on a great challenge, because I remember the industry saying, "It can't happen." They were right that the Department needed money, it needed the computers, and it still needs more help. But, I am confident that under your leadership and under your guidance, that will happen. The bugs that are in it will be taken out, and we'll just keep going along. I perceive this not as a one-year deal. I perceive the transition of the system, getting it to a healthy situation, will take three to five years. We have to expect this after a decade of inattention by many people, especially those people in the industry, who never brought to anyone's attention, for whatever reason, all those shortcomings, which we had to discover ourselves by probing. Whatever logic they use -- to me they say, "Well, if we do it and someone else doesn't do it, then we won't have competition anymore." I found out they don't share information with each other, so why should they share it with us?

So, we have to help them to understand that we are not competing with them. We want to help them to be able to compete with each other. I know that is your philosophy, and I also know -- again, I'm redundant, but I am going to say it. I was extremely happy when you were appointed as the Motor Vehicle Director, because I knew you would have a good relationship with everyone in elected offices, as well as in appointed offices.

MR. SNEDEKER: Let me say, we are probably going to find more bugs as we go along, but with the cooperation we have had in the past with the Legislature and with the Administration, we will get those bugs straightened out, and will be able to work very smoothly.

ASSEMBLYMAN ADUBATO: Am I putting you on the spot if I ask you how you feel about the \$75.00?

MR. SNEDEKER: No. Well, I don't make rates.

ASSEMBLYMAN ADUBATO: I won't ask the question.

MR. SNEDEKER: That is another department.

ASSEMBLYMAN ADUBATO: Cliff, thank you very much for coming. Assemblymen, do you have any questions?

ASSEMBLYMAN KOSCO: I would just like to point out as an individual who deals with your Department every single day of my working week, that by looking at this report you gave us, you have done one heck of a job with the Department, and you have done a heck of a job with this report. It seems that if there is any department in the State that is ready to go, Motor Vehicle is.

MR. SNEDEKER: Thank you very much.

ASSEMBLYMAN ADUBATO: Thank you, Cliff. Ladies and gentlemen, that is the official resolution of those people who were asked to come here. I want you to know that other people were sent telegrams, but I spoke to them on the phone and excused them. I had a message from the Public Advocate's office. We have a prepared statement here from Mr. Rodriguez which we are submitting into the record. I told Mr. Rodriguez that it would not be necessary for him to be here today. I have his opinion in writing; I know what it is, and it will be in the public record. Let me say to sum it up that he agrees with the Chair, and with the Governor and the Legislature, that that \$75.00 should not be there. He also agrees with the fact that the surcharges are supposed to be there, and that there should be no RMEC the first year. I think that sums it up.

Now, there are people here, and I don't know everyone here, but if there is anyone here, any editor, or any newspaper reporter -- I think they all left -- but, without being silly about it, if anyone has any information, we will not put you on the hot seat with barbecue sauce. If anyone has anything they would like to offer, either from the information end of the industry, or a representative of the industry, or if anyone wants to present a point of view, we will be happy to listen. Quite frankly, I won't even challenge it, I just want to hear if you have anything. Yes, sir. Would you please come up here and identify yourself?

T H O M A S G E R O S O L I N A: My name is Tom Gerosolina; I am President of Economy Brokerage. We are a brokerage house firm specializing in selling auto insurance.

I just want to express my absolute frustration with not knowing the rates I have to start quoting my people in January; not knowing this, and not knowing that, and feeling like an absolute fool every time I talk to one of my clients, not knowing what is going on. Now, is this thing all going to be resolved by January? Are we going to have rates down? Will I be able to talk to our clients and tell them, Column A, Column B, Column C, D, E, F, G, or what? I am just expressing my absolute frustration.

ASSEMBLYMAN ADUBATO: I understand your frustration. It's genuine, and it's real. But, if I may try to help you, I say to you that the Governor of this State, all the elected officials in this State, in both houses and on both sides of the aisle, will do whatever we can to make sure that those people who have a statutory and constitutional responsibility to do their job, do it. I know that does not give you an answer that says, "Yes, you will have it by January 1." I can only go by the testimony that was presented here. I hope you were in the room. We were told that there are some agents who are already writing business. I have not met any.

MR. GEROSOLINA: The agents who are already writing business are not quoting the proper rates, what they know are the proper rates. The agents who are writing business are telling their clients that this is an estimate of what is coming down, not actually what is coming down.

ASSEMBLYMAN ADUBATO: An estimate of what is coming down?

MR. GEROSOLINA: Yes, sir.

ASSEMBLYMAN ADUBATO: Is that legal? I don't think that is legal.

MR. GEROSOLINA: No one can honestly tell his clients how much money they will be paying for their insurance in January. So, how can we write?

ASSEMBLYMAN ADUBATO: As you know, and this is not a cop-out, some people feel we are interfering now -- I don't -- and some people feel we are putting them on the hot seat now. Some people feel that we are toasting them now. This hearing is for information; it is to answer the questions you've raised, and others have raised.

There is some legitimate confusion also; not all those options are available immediately, they are staged in, and they have different time frames. That does not have anything to do with what you charge a person today though, you're absolutely right. But, when you allude to the forms and all that, you have to remember that by law the total system has to be cleansed by July 1, 1984, as far as all the options being available, as far as the thing being totally implemented. But, as far as the rates go, when a person's premium becomes due January 1, 1984, you're asking, "What do I charge him?" -- you know, "What do I say to him?" I can only tell you what was said here in front of you. You'll get it, but I don't know when. This is December 14. I don't know when you will get it; I was just told you would get it. I would ask that when you do get it, you call me, call my staff, and let me know when you got it. I would appreciate it tremendously. Ask your colleagues to take the time to let us know. You know how to reach us. You can call staff, you can call Assemblyman Kosco, or myself, or Assemblyman Thompson. Let us know, because we want to know. Sometimes, even with laws, people do not follow through.

I can't answer you. The only thing I can tell you is that the Governor is going to attend a Town Meeting tonight. I know that part of his subject matter is going to be auto insurance, and I can tell you that 120 elected officials in this State, Assemblymen and Senators, and the Chief Executive Officer of this State, are extremely concerned about the actions of some of the so-called "appointed officials," and their lack of action, and about the attitude of some of the people in the private sector. What follows will be a direct reaction to that. I hope I have made my meaning clear to you, I really do, but we cannot guarantee you a form. That is the only thing I can tell you.

MR. GEROSOLINA: Wonderful.

ASSEMBLYMAN ADUBATO: Assemblyman Kosco, do you want to comment on the frustration that this gentleman has?

ASSEMBLYMAN KOSCO: I wish I could, but like most people, we only know what the law says and what is supposed to happen. When our offices receive phone calls asking questions such as, "When are we going to receive the paperwork" -- I received a call yesterday from an

agent who said, "I still haven't received the paperwork," and I said, "Come on down here." I saw him here in the Chamber. Hopefully, he got some of the answers we're trying to elicit. But, as Chairman Adubato said, we are going to be watching this very closely, as we have been, trying to monitor the legislative process. Our job is to pass the legislation. We do not implement it; we do not enforce the laws. We make the laws, and that is as far as we can go, except to do some prodding such as we are doing right now.

MR. GEROSOLINA: There is one thing that has been happening that is going to come back at you guys, to be quite honest with you. A lot of people out there are expecting low rates come January, and they are not going to get them. People honestly and truly feel, according to my clients, with what happened through this summer and all this year about auto insurance reform -- they are expecting low rates, and you know something, they're not going to get them.

ASSEMBLYMAN ADUBATO: Well, I am not going to sit here and debate that with you. We'll see what happens. We cannot stop inflation, if that is what you're saying. We cannot stop the price of butter going up, if that is what you're saying. Okay? There are other things that we should still do, and I admit that. But, when you look at the world you're living in today in auto insurance, and the world that begins on January 1, it's a hell of an improvement for everybody, and that includes people having a reduction in rates. It includes cost containment; it includes equity; it includes the fact that 85% of the people in the assigned risk, who live in the suburbs, will no longer be paying 30% more for collision than their next-door neighbor; and, it includes that those people who get six motor vehicle points, that 1.4 million, will no longer be paying 65% of their base rate, or 150% for six SVIP points. It includes all that.

Now, the public may not know it, but I think you know it. So, when you talk about the inequities, and you talk about fairness, you're right. We were not good enough to correct all the ills of a system that has existed for fifty years in this nation, and New Jersey is the only state in the country, by law, that says you pay the same tax to drive a car -- by law; that levels all the expense factors, by law; that says a surcharge must be the same for the same offense,

regardless of your territory, by law. No, we have not done everything. We have just done more than anyone else has ever done, and we have more to go.

Thank you for coming.

MR. GEROSOLINA: Thank you.

ASSEMBLYMAN ADUBATO: This hearing is adjourned.

(HEARING CONCLUDED)

APPENDICES

APPENDIX I

Assembly vote on Assembly No. 4069 (December 8, 1983)

Assembly No. 4069 was given third reading by emergency resolution.

On motion of Mr. Adubato that the bill pass the vote was as follows:

In the affirmative were—

Adubato, Baer, Bennett, Bishop, Bocchini, Bryant, Charles, Cooper, Costa, Cowan, Deverin, Doria, Doyle, Felice, Flynn, Franks, D. Gallo, Garvin, Gill, Girgenti, Gorman, Haines, Hardwick, Haytaian, Hendrickson, Herman, Hollenbeck, Jackman, Janiszewski, Kalik, Karcher (Speaker), Kelly, Kern, Kosco, LaCorte, Long, Markert, Marsella, Mazur, Meyer, Miller, Muhler, Muziani, Ogden, Pankok, Paterniti, Patero, Pelly, Perun, Riley, Rocco, Rod, Rooney, Schuber, Schwartz, Shusted, Thompson, Villane, Visotcky, Watson, Wolf, Zangari, Zimmer—63.

In the negative was—Weidel—1.

Source: Minutes of the General Assembly, 1983, pp. 764-765.

APPENDIX II

Assembly vote on Assembly No. 802 (January 23, 1984)

Assembly No. 802 as amended was given third reading by emergency resolution.

Mr. M. Adubato moved the bill which passed by the following vote:

72 Yeas 0 Nays*

In the affirmative were—

M. Adubato, S. Adubato, Albohn, Bennett, Bocchini, Bryant, Charles, Chinnici, Cooper, Cuprowski, Deverin, Doria, Doyle, Felice, Flynn, Ford, Fortunato, Foy, Franks, Frelinghuysen, Gallo, Garvin, Gill, Girgenti, Gorman, Haines, Haytaian, Hendrickson, Herman, Kalik, Karcher (Speaker), Kern, Kline, Kosco, LaRocca, Littell, Long, Loveys, Markert, Marsella, Mazur, McEnroe, Meyer, Muhler, Muziani, Naples, Ogden, Otlowski, Palaia, Pan-kok, Paterniti, Patero, Pellecchia, Pelly, Perun, Ranieri, Riley, Rocco, Rod, Rooney, Schuber, Schwartz, Shusted, Thompson, Vainieri, Villane, Visotcky, Walker, Watson, Zangari, Zimmer—71.

In the negative were—

Kavanaugh, Weidel, Zecker—3.

Source: Minutes of the General Assembly, 1984, pp. 91-92.

*This vote total is an error. The correct vote total is 71-3, as indicated by the figures at the end of the roll call.

APPENDIX III

Legislative Counsel's Opinion regarding the Commissioner's Approval of the Inclusion of the Policy Constant in the ISO Rate Filing

LEGISLATIVE SERVICES COMMISSION

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ROBERT E. LITTELL
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ANTHONY M. VILLANE, JR.
KARL WEIDEL



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Assistant Reviser of Statutes

(609) 292-5430
MAURICE E. GOLD

January 5, 1984

Honorable Michael F. Adubato, Chairman
Assembly Banking & Insurance Committee
CN-042, State House Annex
Trenton, New Jersey 08625

1984 L.C.O. 1

Dear Mr. Chairman:

You have asked for our opinion as to the authority of the Commissioner of Insurance to approve a revised rate filing, for the purposes of complying with the "New Jersey Automobile Insurance Reform Act of 1982," which includes a "policy constant" or "flat charge." You are advised, for the reasons set forth below, that the commissioner may have violated his statutory authority when he approved the policy constant as part of the rate filing.

The act, N.J.S.A. 17:29A-33 et al, was approved on February 10, 1983, and had, as its overall purpose, the provision of automobile insurance that would be "affordable, available, and more equitable to the motorists of this State." N.J.S.A. 17:29A-34j. As part of that plan, the New Jersey Automobile Full Insurance Underwriting Association was created, consisting of all insurers licensed to transact automobile insurance in the State, to provide automobile insurance to qualified applicants. See N.J.S.A. 17:30E-4 and N.J.S.A. 17:30E-6. The act was intended to replace, as of January 1, 1984, the automobile insurance plan established pursuant to N.J.S.A. 17:29D-1, the "assigned risk plan," with the association as the vehicle for providing automobile coverage "for those individuals who are unable to be written in the voluntary market." Senate Labor, Industry and Professions Committee Statement to Assembly Bill No. 1696 of 1982.

The policy constant or flat charge was implemented in November 1980 by the commissioner "as an interim rate increase of approximately 11.8% in the form of a uniform charge applicable to all policies in both the voluntary and residual markets." In the Matter of Automobile Insurance Plans Service Office et al. (O.A.L. Docket No. Ins. 4903-82, December 16, 1982). This flat charge "was designed as a uniform fee which would permit losses in the assigned risk market to be spread across the entire insurance market." Id., App. A, p.4. See, also, statement to Assembly Bill No. 4069 of 1983. According to evidence presented in the above captioned matter, the "policy constant in its present form is explicitly incorporated in the [Automobile Insurance] Plan's rules (Exhibits P-1A, Rule 28)."

Id, at p.43.¹ On April 4, 1983, the commissioner, in reviewing and approving the decision in that matter, approved an increase in the policy constant of \$33.00. When added to the existing constant of \$42.00, the total charge permitted after April 4, 1983 was \$75.00.

In November, 1983, the Insurance Services Office, the rating organization for the largest number of private passenger automobile insurers, delivered to the commissioner a revised rate filing for the purposes of complying with the "New Jersey Automobile Insurance Reform Act of 1982." That filing (which contained the rates and rules for the New Jersey Automobile Full Insurance Underwriting Association), and filings for State Farm Mutual Automobile Insurance Company and Prudential Property and Casualty Company, were conditionally approved by the commissioner for use in this State on and after January 1, 1984, subject to review by the Public Advocate. In all those filings the policy constant implemented in November 1980 and increased in April 1983 was redistributed by class and territory. In the Matter of Private Passenger Automobile Filings submitted in Compliance with the New Jersey Automobile Insurance Reform Act of 1982, N.J.S.A. 17:29A-36 et seq. (December 16, 1983). In other words, that portion of rates previously collected by insurers as the policy constant for the purposes of covering losses arising from policies under the assigned risk plan, instead of being eliminated, was reconstituted by the insurers and built into their new rates, despite the fact that after January 1, 1984, insurers will no longer be issuing policies under that plan.

In his ruling on December 16, 1983, because the disposition of these monies had been made the subject of a hearing in the Office of Administrative Law, and because a bill pending before the Legislature also contained provisions for their distribution, the Commissioner of Insurance withdrew his conditional approvals of the rate filings "insofar as such approvals permitted the use, on or after January 1, 1984, of rates and rating systems which redistribute policy constant income by class and territory." The commissioner additionally ordered a refiling by all filers on an expedited basis to conform with the act, maintaining the policy constant in its present form and amount, and that applicants be notified that premiums quoted to be effective on or after January 1, 1984 are estimated only, "subject to adjustments required by law and to be approved by the Commissioner of Insurance."

Our research revealed no specific statutory or regulatory authority for the imposition of the policy constant. The assigned risk plan was mandated by legislation enacted in 1970 and contains no particular reference to rates or rate-making:

The Commissioner of Insurance may adopt, issue and promulgate rules and regulations establishing a plan for the providing and apportionment of insurance coverage

¹Due to time constraints in the writing of this opinion, we were unable to obtain and review the rules of the automobile insurance plan, although a review of the November, 1983 rate filing of the Insurance Services Office revealed that its rules set forth distinctly the policy constant.

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for applicants therefor who are in good faith entitled to, but are unable to procure the same, through ordinary methods. Every insurer admitted to transact and transacting any line, or lines, of insurance in the State of New Jersey shall participate in such plan and provide insurance coverage to the extent required in such rules and regulations.

Prior to the adoption or amendment of such rules and regulations, the commissioner shall consult with such members of the insurance industry as he deems appropriate. Such consultation shall be in addition to any otherwise required public hearing or notice with regard to the adoption or amendment of rules and regulations. [N.J.S.A. 17:29D-1]²

The authority of the commissioner to regulate the rate making policies of insurers, however, is clear. N.J.S.A. 17:29A-1 et seq. regulates the making and applying of insurance rates and provides for the commissioner's approval if the rating systems "provide for, result, or produce rates that are not unreasonably high, and are not inadequate for the safeness and soundness of the insurer, and are not unfairly discriminatory between risks in this State..." N.J.S.A. 17:29A-7.

The insurance industry is "strongly affected with a public interest and therefore properly subject to comprehensive regulation" to protect the public welfare. Sheeran v. Nationwide Mutual Insurance Company, Inc., 80 N.J. 548, 559 (1979). The statutory scheme of N.J.S.A. 17:29A-1 et seq. manifests a legislative intent to protect the public from the danger of improper rates and should therefore be given the fullest effect which the statutory language permits. In re Allstate Ins. Co., 179 N.J. Super 581, 591 (App. Div. 1981). An administrative practice which is followed for many years is generally given substantial weight in determining legislative intent, and, while not binding on the courts, merits their deference when the administrative interpretation is reasonable. Id., at 590-591.

The commissioner's authority to permit the imposition of the policy constant, while not specifically authorized, must be assumed to be within his implied authority to regulate the rates of insurers generally. Delegation of authority to an administrative agency is to be liberally construed when the agency is concerned with the public health and welfare. N.J. Ass'n. of Health Care Facilities v. Finley, 83 N.J. 67, 79 (1980), appeal dismissed, 449 U.S. 944. In a case involving emergency rate increases granted by the then Commissioner of Banking and Insurance to the Hospital Service Plan the Supreme Court stated, "In the absence of our express prohibition, the broad language of the authority

²For a history of residual market insurance, see Judge Sukovich's discussion in In the Matter of: Automobile Insurance Plans Service Office et al., supra, at 40-42.

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conferred on the Commissioner ought to be deemed by implication to carry power for interim relief." N.J. State AFL-CIO v. Bryant, 55 N.J. 171,176 (1969). Thus, what began as interim relief in 1980, was continued by the commissioner without legislative interference for three years, and was increased in April 1983 based upon a decision by the Office of Administrative Law, can hardly be said to be a charge, the approval of which violated the commissioner's authority.

Whether approval of this charge, as redistributed by class and territory by the insurers for rates effective on and after January 1, 1984, violates the commissioner's express and implied authority, however, requires further examination.

The criteria for the making of rates and rate systems are set forth in N.J.S.A. 17:29A-4, and include the adopting of basic classifications, the establishment of reasonable standards pertaining to hazard or peril and the consideration of such matters as past and prospective loss experience and a reasonable profit to the insurer. N.J.S.A. 17:29A-4. If the Commissioner finds that the rating system filed by or on behalf of the insurer provides rates that are unreasonably high or excessive, or are inadequate or that discriminate among like risks, an order is issued to the insurer or rating organization directing appropriate alterations in the system so as to produce acceptable rates. N.J.S.A. 17:29A-7...The factors entering into the making of a rating system include, among other things, consideration of past and prospective loss experience and a reasonable profit. In re Allstate Ins. Co., supra, at 588-589 (emphasis added)

Apparently, the subject rate filings were approved without any demonstration on the part of the rating organizations that the policy constant was a necessary factor in reducing their projected losses for calendar year 1984 so that they might realize a "reasonable profit."³ The redistribution of the policy constant by the insurers, and the commissioner's approval, indicate a recognition that the flat charge was no longer justifiable as a separate expense. Nevertheless, the filers were permitted to "foldover" that charge into other classifications.

Whether this charge, then, was a recoverable expense of the insurers under N.J.S.A. 17:29A-1 et seq. after the elimination of the assigned risk plan is certainly suspect and the commissioner's order issued on December 16, 1983 serves to confirm that suspicion, as well as acknowledge the impropriety of his

³In the case of the filing for the Insurance Service Office, the former policy constant, distributed by class, was simply deleted from ISO's rules and those amounts were added to the "Expense Fees" by classification.

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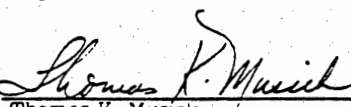
prior approval thereof. Without a determination that continued inclusion of a policy constant or some similar "expense fee" was imperative to grant insurers a fair return on their policies after the elimination of the statutorily mandated system which created the loss for which they sought recompense, it could be argued that collection and retention of the policy constant as redistributed amounted to the taking of an excessive profit by the filers. Until that issue is resolved, there is at least a question as to whether the commissioner violated his statutory authority by approving rates which allowed the taking of excessive profits.

You are advised therefore, for the reasons set forth herein that, absent any demonstration on the part of rate filers that continued collection and retention of a policy constant was necessary to cover substantiated losses, the Commissioner of Insurance may have violated his statutory authority when he approved rate filings for automobile insurers for rates in effect on or after January 1, 1984.

Respectfully submitted,

DIVISION OF LEGAL SERVICES

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