
Committee Meeting

of

JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

*“Testimony regarding the elimination of the no-fault system
or elimination of mandatory insurance in general”*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: January 15, 1998
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senate President Donald T. DiFrancesco, Co-Chairman
Assembly Speaker Jack Collins, Co-Chairman
Senator Gerald Cardinale
Senator Joseph M. Kyrillos
Senator John H. Adler
Assemblyman Paul DiGaetano
Assemblywoman Clare M. Farragher
Assemblyman Joseph V. Doria Jr.
Assemblyman Joseph Charles Jr.



ALSO PRESENT:

Thomas K. Musick
*Office of Legislative Services
Committee Aide*

Laurine Purola
Barbara S. Hutcheon
*Majority Staff
Committee Aides*

Tom Hastie
Tim Clark
*Democratic Staff
Committee Aides*

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SENATE PRESIDENT DONALD T. DiFRANCESCO

(Co-Chairman): I want to thank everybody for being here-- Thank the members.

Joe, I know, you're losing money by us being here, but--

ASSEMBLYMAN CHARLES: Oh, stop that. You're losing more.

PRESIDENT DiFRANCESCO: I don't make any.

I thank everybody for being here. I know it's a difficult week, particularly-- I don't know about the Assembly, but it was particularly difficult for the Senate because we did a lot of work on Monday. And we spent a lot of time waiting for the Assembly to act, and we got through that day.
(laughter)

ASSEMBLYWOMAN FARRAGHER: Well, we sent you quality stuff.

PRESIDENT DiFRANCESCO: And we got through Tuesday. And here we are Thursday ready to deal with auto insurance, and we're happy to be here and happy to start. We want to hear more about no-fault and what people would now like to say, as they have been advised.

Our first witness, if I could say it that way, would be Michael Berger.

And I believe you have two gentlemen who will come forward with you. Is that accurate?

MICHAEL S. BERGER, ESQ.: That's correct, Mr. President.

PRESIDENT DiFRANCESCO: Allan Schwartz and Rick Boer. Am I correct? Am I saying that properly?

MR. BERGER: Yes. To my right, Mr. President, is Ken Andres, who is the President-elect--

PRESIDENT DiFRANCESCO: Ken, okay.

MR. BERGER: --of ATLA New Jersey.

PRESIDENT DiFRANCESCO: Okay.

MR. BERGER: On my left is Allan Schwartz.

PRESIDENT DiFRANCESCO: Allan, okay.

MR. BERGER: I'd like to first say good morning to President DiFrancesco and Speaker Collins and distinguished members of this Committee. I'd also like to say a special hello to my State Senator, Senator John Adler.

My name is Michael Berger. I am currently the President of the Association of Trial Lawyers of America for the State of New Jersey. And we're here to present our views as to how to reduce insurance premiums and to improve our auto insurance system.

I'd like to first thank this Committee for permitting us to present our views. We have a lot of expertise. We've put a lot of time-- We've have hired experts to assist this Committee in arriving at what we believe is the best decision for change. And that is to repeal no-fault. It is our position that after 25 years no-fault is a failed experiment. It has proved to produce the highest insurance rates in the country year after year after year in New Jersey. And we believe now it's a mistake to continue no-fault. It's time to repeal no-fault.

Joining me today at the table, to my right, I introduced the President-elect of ATLA New Jersey, Ken Andres, who is an experienced trial lawyer in automobile insurance claims. And to my left is an actuary, Allan

Schwartz, who has prepared a report, which we are willing to share with the Committee at any time during work sessions to solve this difficult problem.

During this presentation, I am going to refer to some studies. And I'll tell you that ATLA New Jersey, during the past five years, has consulted with three independent actuarial companies. This presentation is based on data, and that's data obtained from the insurance industry. And the data has been interpreted for you by AIS Risk Consultants. That is Mr. Schwartz's firm, which is located in Freehold, New Jersey, and most of you know that Mr. Schwartz served as the Assistant Commissioner to the Department of Insurance during the Kean administration.

The other data that you'll be hearing has been developed by Mr. Rick Boer. Mr. Boer is here, as well, and most of you know that he served in the Department of Insurance from 1971 through 1990, and he for four years was the Supervising Rate Analyst for our State. Both before and after the adoption of the verbal threshold, he was the Chief of the State's Rating Bureau. So we have assembled a considerable group of professionals with expertise in the area of automobile insurance.

I'd like to start off by telling you what our recommendation is, so you know exactly what we believe. We know that New Jersey auto premiums will always rank the highest on a national scale, or toward the highest, because of our location in the northeast, as we well know, the density of our population being the highest of any state, and we know we have the highest density of cars. You've heard that through each of these Committee hearings.

We can, however, do something about the high premiums without destroying our access to the courts and just, legitimate civil compensation. Our

proposal is this: If we repeal no-fault, we're going to reduce the claims severity and eliminate our PIP costs above \$10,000. AIS, through Mr. Schwartz, actuarially has certified that we will save 10 percent to 20 percent of the average per car auto insurance premium in New Jersey. Now that's about \$100 to \$200 for each car. The average saving for vehicles will about \$150.

This distinguished Committee is at a crossroads. We all know that. You can continue and retain the expensive, complex system of no-fault, or you can now vote and recommend change. The insurance carriers have testified they want to continue no-fault. That's been their line since 1972. They've been telling you that no-fault and verbal threshold will save premiums, but we know that the experience has been just the opposite. The premiums have continued to rise as the barriers and restrictions to the court have been made evermore difficult.

I say, we're here today to discuss why no-fault, New Jersey style, is expensive and it's confusing and it's unfair. Now, I know many of you have had your constituents come into your offices or call because they're confused about no-fault insurance in New Jersey. And they're confused because-- Constituents who have been rear-ended in car accidents, whether it's in Cherry Hill or in Hamilton Township, wherever it may be -- they come in and after they've been treated by their doctors, their family doctors, their orthopedic surgeons, they have medical bills. And they bring their medical bills into our offices, or they call you about their medical bills. And what's the question they first ask? Why is it that my insurance company is paying for my medical bills when I didn't cause the accident? They're also confused when the insurance companies receive the medical bills, and they sit on the medical bills and don't

pay them promptly. They're confused when they have to file lawsuits against their own insurance companies in order to get the medical bills paid. They're confused because they know, if their premium is a day late, their insurance is canceled, while at the same time, the insurance companies can refuse to pay medical bills.

Many are confused when they have legitimate injuries. We're talking about legitimate injuries. They come into our offices. They call your offices. They've been injured. The injuries are demonstrated by CAT scans or MRIs -- objective medical evidence. And because our verbal threshold is one of the strictest in the country, they still can't recover. So they've paid the highest premium in the country. They've been injured, proven by objective medical evidence, and they can't recover. And adding financial insult to that injury, they are then responsible to pay the highest medical deductibles in the country. They have to pay the \$250 deductible and the \$1000 of the first \$5000 of medicals on top of the highest premium in the country.

I know the Legislature has been confused about the no-fault system, but I'll give you our perspective of how to define no-fault. Three factors: one, the highest premiums in the country; two, insurance companies of good drivers pay for the medical bills or injuries caused by bad drivers; and three, in New Jersey, severe limitations on the right to recover for legitimate injuries.

We know we have \$250,000 worth of medical expenses through PIP now and \$100 per week for 52 weeks under PIP for lost wages. We know we have a limitation on the individual's right to recover for their injury -- it's called the lawsuit threshold, the verbal threshold. And we know that it's called

no-fault, but in court and in trial, if you're injured in an automobile accident, we still must prove fault to recover.

Let me talk about why no-fault is a failed experiment. And I'm sure you know many of these answers, but the No. 1 issue is that no-fault is a failed experiment because it's expensive. By now everyone is familiar with the annual report prepared by the National Association of Insurance Commissioners, that report, which we all fear each year, which ranks New Jersey No. 1 for the average premium costs, and that's No. 1 for the last 10 years. If you read that report carefully, you'll find that the top five states with the most expensive premiums are New Jersey, Hawaii, District of Columbia, not a state, New York, and Massachusetts. They're on the top of the list. And it is no coincidence that these states are all no-fault states.

The studies that we have funded, and the studies that we will make available to this Committee, confirm that no-fault costs more. Since 1995, AIS has prepared three in-depth analyses of the cost of automobile insurance in the United States. The last one is dated May of 1997, and that was undertaken for the Roscoe Pound Foundation. And I would like to quote the first section because this conclusion is significant. "During the five-year period from 1992 to 1996" -- this is recent data -- "the level of personal injury costs has been highest for no-fault states, less for add-on states, and lowest for tort states where there is total access to the courts to pursue injuries." The report goes on to say that the rate of inflation in personal injury costs has been highest for no-fault states, less for add-on states, and lowest, again, for the tort states. Furthermore, personal injury costs are higher and have increased faster in verbal threshold states than in monetary states.

Briefly, the second section of the study takes the cost comparisons and factors into the equations various economic, social, demographic considerations the way they're supposed to, and the results are the same. The no-fault states costs were greater than the non-no-fault states. The highest cost of all -- the highest -- are in the verbal threshold states like New Jersey.

We know that. We know we have a 25-year experience in New Jersey, and we know year after year we pay more in premium costs. You may remember-- Some of you may remember before 1972, before the passage of no-fault, and it's interesting to note that at that time our rates were \$24 within the national average -- before no-fault. Now today with the highest rates and despite some very failed efforts to patch no-fault, our rates are \$350 above the national average.

There are really many reasons why no-fault costs more. I'd like to share what our opinion is. For those of you familiar with the system -- and many of you have spent many, many hours listening to testimony -- you know that the threshold costs more because it requires lengthy and costly litigation. We know that. The threshold costs more because New Jersey rejects any medical opinions or diagnoses in court unless they're supported by expensive, objective medical tests. The courts further require that the tests be given on a repeated basis to prove that there's a long-term effect, in order to prove the threshold, on a patient's life. And because these are the requirements of the law, patients must comply with the requirements.

You know, it's ironic that insurance companies call the attempt to secure objective medical proof as fraud. But that's not fraud, it's no-fault. That's what this State has -- no-fault.

With respect to the cost, as proof that New Jersey is the most expensive no-fault state, you should know that the average claim for medical bills in New Jersey is \$7500, which is almost equal to the average total payout per claim for injuries in non-no-fault states. So you taking the medical expenses alone are equal to the average for the total payout in non-no-fault states. When you add the medical payments to the bodily injury payments of the combined claim severity in New Jersey's \$26,000 per claim, and that's about \$17,000 higher than the total average per loss claim in states without no-fault, and it's no wonder that our rates are \$350 higher than the national average.

If you go back to 1988, I don't want to say we told you so, but in 1988, ATLA New Jersey advised the Legislature that if we passed a verbal threshold and if we made our deductibles the highest deductibles in the nation that the rates would still go up and that the verbal threshold would increase the cost. And that has come true, because instead of decreasing the premiums and decreasing the costs, both the costs, since the verbal threshold, and premiums have continued to skyrocket.

Now currently, if you look at the payout in New Jersey for bodily injury claims, the average is about \$18,000. Now, for those of you who mistakenly think that Michigan is the answer, in Michigan, the payout per claim is over \$22,000 per claim, again demonstrating that verbal thresholds and no-fault increase costs.

Now in non-threshold, non-no-fault states, the same claim is \$9000 less than here in New Jersey. In non-no-fault states, we demonstrate that the premiums are not only lower, but those citizens have unlimited rights

to the courts. Now, I don't know if any of you fell asleep during that actuarial testimony when Walter Bliss testified at the last hearing, but I heard one thing that was very impressive to me anyway.

PRESIDENT DiFRANCESCO: It was pretty interesting.
(laughter)

MR. BERGER: He testified that our rates in New Jersey for the bodily injury part of the premium are 66 percent higher. And this is recorded testimony. Sixty-six percent higher than the states where the citizens have unlimited access to the courts. That's a significant factor coming from the insurance industry.

Now, we know that in 1988 the insurance companies promised that if we made the thresholds tougher -- if only we made it harder to get compensation for injuries, the premiums were going to go down. And that's exactly what we heard last time from the insurance industry -- if only it's made tougher, we are sure that the premiums are going to go down. And we know that what's happened is that the premiums have gone up, and we have one of the most restrictive -- I know it's hard to understand, but we do have one of the most restrictive verbal thresholds in the United States.

Many of you may think, or many people have said some people think, that if we repeal no-fault, the costs are going to go up. And those claims ignore the data and the proof, that we will share with this Committee, across the country. Look, 38 states have figured it out. They have rejected no-fault. They have learned that they have the lowest premiums because they don't have no-fault. And the trend really is to repeal no-fault.

Lately, you will see that Georgia and Connecticut have recently repealed no-fault, and they have demonstrated cost savings. We've prepared a chart for your assistance, and that's attached to your written statement which is a little different than this oral presentation. And I would recommend that you take the opportunity to read it.

But if you look at this chart, what we learned actuarially is that for Georgia, which repealed no-fault, and Connecticut, which repealed no-fault, the average premium has gone down. And at the same time in no-fault states where there's been no repeal, the premiums have continued to go up.

Yes, Mr. President.

PRESIDENT DiFRANCESCO: Let me just ask this question--

MR. BERGER: Certainly.

PRESIDENT DiFRANCESCO: --and forgive me if it's a dumb question. In Connecticut, for example--

MR. BERGER: Yes.

PRESIDENT DiFRANCESCO: --they -- you said they have repealed no-fault--

MR. BERGER: They did.

PRESIDENT DiFRANCESCO: --and replaced it with the traditional loss system.

MR. BERGER: Yes.

PRESIDENT DiFRANCESCO: Does that mean that you can institute a suit for pain and suffering without limitation?

MR. BERGER: Without limitation.

PRESIDENT DiFRANCESCO: In Connecticut?

MR. BERGER: In Connecticut. That's absolutely true.

PRESIDENT DiFRANCESCO: Is that what you're advocating?

MR. BERGER: That's exactly what we're advocating, because it demonstrates-- It's confrontative. You think if there are no restrictions to sue that rates are going to go up. But if you look at the data from the 38 states without no-fault, if you look at the proof -- we're trying to prove a case from the facts -- it is clear that the premiums have gone down, and at the same time, the citizens of those states have unlimited access to the courts. That's what the data demonstrates.

PRESIDENT DiFRANCESCO: Most likely the numbers of suits instituted rise?

MR. BERGER: Not suits instituted, the number of claims rise.

PRESIDENT DiFRANCESCO: The number of claims rise.

MR. BERGER: The number of suits are reduced because you don't have the expensive, lengthy complex litigation that verbal thresholds demand like we do in New Jersey.

PRESIDENT DiFRANCESCO: In other words, if you have a \$50 -- no, that sounds ridiculous today--

ASSEMBLYMAN CHARLES: Medical bill.

PRESIDENT DiFRANCESCO: --medical bill as a result of a fender bender, you could start a suit as we could do years ago. Is that now the law in Connecticut?

MR. BERGER: Well, not exactly. You have to be injured, of course, that's the other assumption.

PRESIDENT DiFRANCESCO: Well, you're injured because it hurts--

MR. BERGER: Yes.

PRESIDENT DiFRANCESCO: --you know, in your neck. It hurts in your neck.

MR. BERGER: In Connecticut and the other 37 states--

PRESIDENT DiFRANCESCO: No. No. I'm trying to make it similar. I mean, is that accurate? Can you start a suit in Connecticut?

MR. BERGER: You can start a suit in Connecticut. Now, the value--

PRESIDENT DiFRANCESCO: But you're saying-- I mean, I understand what you're saying otherwise, but I'm just--

MR. BERGER: If you could find a lawyer to handle a claim where there's \$50 of damage, I would represent that that would be impossible.

PRESIDENT DiFRANCESCO: Oh, okay. I'm sorry.

MR. BERGER: Yes.

ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman):
Michael--

MR. BERGER: Yes.

SPEAKER COLLINS: Michael, before you start--

MR. BERGER: Yes, Mr. Speaker.

SPEAKER COLLINS: --and this is to members of the Committee, that what we hope will happen here today-- We have this testimony, then we have testimony from some who might have a differing view, and then we have other testimony.

The purpose of these hearings, of course, is to get the information and be able to, in our future discussions, bring it all together and see what we want to do. The challenge to the testifiers will be to keep where you want to go. The challenge to us is to ask our questions whenever we're ready, such as right now, but also keep in the back of our mind to allow them to go forward. And I just wanted to mention that in the sense that this is going to be a pretty detailed day, I would think. And in the past, you know, we've sort of sat here and waited and waited and waited. So it's that fine balance of-- My statement being to Committee members, feel free to interject whenever you want, when recognized, by one of the Co-Chairmen.

And I've already seen an indication that Senator Cardinale would like to say something.

MR. BERGER: Certainly.

SENATOR CARDINALE: Thank you, Mr. Chairman.

You mentioned Connecticut. The verbal threshold or the threshold in Connecticut was, I understand, \$500.

MR. BERGER: Connecticut has--

SENATOR CARDINALE: Four hundred dollars.

MR. BERGER: --a monetary threshold.

SENATOR CARDINALE: Right. So is nothing like New Jersey?

MR. BERGER: No. In fact, it demonstrates the point, because the states with monetary thresholds, as compared to verbal thresholds, have lower premiums.

SENATOR CARDINALE: I don't know about that.

MR. BERGER: It's--

SENATOR CARDINALE: And I don't really know about Connecticut. But what I do know about Connecticut is that in this recent quarter their rates are going up.

MR. BERGER: We have--

SENATOR CARDINALE: And what I do know is that to make a comparison between the threshold in Connecticut and the threshold in New Jersey, as flawed as I believe our threshold is, there is almost no barrier to suit in Connecticut before they abandoned no-fault. Because \$400 in today's medical parlance is about two visits to the doctor.

MR. BERGER: It again proves the point that when you eliminate any threshold, the rates do, in fact, go down. And if you look at Connecticut for the past several years -- and that's why Mr. Schwartz has, in fact, examined Connecticut. He's available to assist--

SENATOR CARDINALE: I think for the benefit of this Committee we do need to put in perspective what we're talking about when we say repeal no-fault. What you're saying is repeal coverage, because no-fault is not just a theory. No-fault is coverage for your medical expense so that if you don't have coverage -- and I believe this is what you're saying-- If you don't buy insurance to cover your medical expense, your premiums go down. And that's very logical and it's true. It also costs less for a cup of coffee if I buy one instead of two. It also costs less for home owners insurance if I don't buy it. It also costs less for life insurance if I have a \$100,000 than if I have a million. Isn't that correct?

MR. BERGER: Well, that's not exactly right, because you're not only buying coverage, you're also buying a restriction to sue when you're

legitimately injured in an accident. So what we have in New Jersey is, we do have expensive medical coverage, but at the same time, we have one of the most restrictive thresholds in the country which prevents and limits many legitimate injuries. And I'll talk about that in a few minutes, if given the opportunity.

SENATOR CARDINALE: No. But I want to talk about a few things that--

MR. BERGER: Certainly.

SENATOR CARDINALE: --you've said so far.

Now, you indicated that under no-fault, one of the reasons it's very expensive is because we have diagnostic tests which are required by the court to prove injury. Now, suppose we compare automobile injuries to trip and fall. They're both tort actions. But in a trip and fall, there's no third party around, no insurance company to pay those diagnostic tests. In your office, you get a client who has had a trip and fall, who pays for the MRI to prove the injury?

MR. BERGER: Well, I think more than 80 percent of the people in this State -- and certainly you would know, Senator Cardinale -- are covered by health insurance. And when they need medical care, they get it through their health insurance carriers. And that's what they do in all of the 38 other states--

SENATOR CARDINALE: So you use health insurance to document trip and fall injuries. Is that what you do in your office?

MR. BERGER: We're not talking about documenting injuries. We're talking about medical care. When somebody is injured, they go to the doctor for medical care. That's not a documentation of injuries.

SENATOR CARDINALE: No. No. You said it yourself a little while ago, and I think that these are being recorded, we can let you read the transcript--

MR. BERGER: Certainly.

SENATOR CARDINALE: --that in New Jersey one of the reasons this is so expensive is because the courts require periodic reexamination of the patients to prove the injuries.

MR. BERGER: Absolutely right.

SENATOR CARDINALE: Okay. Now that sounds to me like treatment to sue, not treatment to cure. Because there isn't an MRI ever invented that cured anyone of anything. It's a diagnostic tool.

MR. BERGER: Well, you wouldn't be advocating that a patient not get an MRI, or a doctor not order an MRI, to assure that there's not a herniated disk or some other injury to a structural member of the back. I don't think you're suggesting that.

SENATOR CARDINALE: I am advocating-- And I will tell you what I would advocate and why I ask this question.

MR. BERGER: Certainly.

SENATOR CARDINALE: Is because documenting injuries is a very different procedure than diagnosis for treatment. I could take an X ray of a patient, and I could find out an underlying condition. And I can then treat that condition and perhaps take another film to see that the condition has

been adequately treated. But usually, that's even considered bad practice in medicine -- to subject the patient to this additional procedure just to make sure that what you did-- But a lot of people are doing it today because they are trying to insulate themselves against lawsuits.

But what you're doing and what we've had, other testimony and other Committee hearings, and so forth, is you are using the no-fault system to finance the suits. Whereas, in a trip and fall, you have to find some other source of financing. And I believe that if you tried to do on health insurance what you are capable of doing under the no-fault auto insurance, the health insurer would refuse to pay it. Because he might pay for the first one, but he's not going to pay for repeated MRIs.

MR. BERGER: Let--

SENATOR CARDINALE: There is no medical protocol that I'm aware of that says you should continually take MRIs to find out that this patient -- or something about this patient's injury. I would think that that in a normal sense is considered malpractice.

MR. BERGER: This is exactly the problem. Exactly the problem with the New Jersey threshold in the no-fault system.

SENATOR CARDINALE: Only if you want to sue.

MR. BERGER: No. In our system -- if you bear with me for a minute -- we're required not only to prove an injury. Under our statute, you take an MRI and you find a herniated disk; there is an objective, provable injury. But that objective, provable injury is not sufficient to make a recovery in this State. Because in addition to that, there is another proof of requirement. And that is that the injury has a serious impact on the patient's

life, and therein lies the problem. You can have an objective, serious injury proved by an MRI, a CAT scan and still be precluded from making a recovery, which you require to do in this State. This very expensive, restrictive verbal threshold is then proven again and again and again in order to establish that injuries have a serious impact on the patient's life.

That's why we're advocating the repeal of the verbal threshold because it is not only expensive, it's unfair. It's unfair because, if someone is rear-ended and the proofs from legitimate medical treatment demonstrate an injury, like a herniated disk, our courts still say you may not recover damages for that legitimate injury where you are innocently injured when you are rear-ended at a stop sign.

SENATOR CARDINALE: I think you're being-- You're repeating yourself a little bit. And in the interest--

MR. BERGER: I may be.

SENATOR CARDINALE: --of letting this proceed--

You referred to MRIs and other diagnostic tests as objective medical evidence of injury.

MR. BERGER: Yes.

SENATOR CARDINALE: There have been any number of radiologists who've communicated with my Committee, which is sort of a precursor to what we're doing here, who've indicated that taking an MRI in people who've not been involved in an accident and you can document -- the same things you can document afterwards. If you're looking for it, you'll find it on the MRI. So that if you are paying the doctor, is there not a conflict of interest immediately created so that the doctor wants -- you know, because he's

going to get paid and he's going to get more referrals-- Is there not an immediate conflict of interest when you are handling, as a lawyer, the medical portion of this case? And we've had some testimony here that-- There are law offices in this State where they have a whole section devoted to dealing with not the legal aspects, but the medical aspects of what's going on with the patient.

I've even seen medical books in law offices. Is that not the case? I mean, isn't that what's happening? You're using this to finance your case?

MR. BERGER: I think that's an extremely unfair characterization. For this reason, the patients go to doctors for treatment, and your underlying assumption -- and I think what you're saying between the lines -- is that every doctor who treats an innocent victim in an auto accident is trying to commit fraud.

SENATOR CARDINALE: No, I'm not.

MR. BERGER: And every lawyer--

SENATOR CARDINALE: I don't accept--

MR. BERGER: --who handles a case--

SENATOR CARDINALE: No. You can't tag me with that.

MR. BERGER: Okay.

SENATOR CARDINALE: Every doctor--

MR. BERGER: I'm glad to hear that.

SENATOR CARDINALE: --who treats somebody is not trying to build up or pad the case. Some doctors build up and pad the cases, and those doctors tend to be in the stables of the trial bar.

MR. BERGER: You know, I think that's extremely unfair. And if I may, respectfully--

SENATOR CARDINALE: Tell me why.

MR. BERGER: --it's offensive. I sat through every single Committee hearing. I sat through your hearings. I sat through Assemblyman Garrett's hearings. I sat through each and every hearing. And what we learned is that fraud is committed by a small percentage -- a small percentage -- of patients--

SENATOR CARDINALE: That's true.

MR. BERGER: --a small percentage of bad-apple doctors, and bad-apple lawyers. I sat through testimony from the insurance industry where they said they have identified 40 rings of doctors who are committing fraud. Yet, the Department of Insurance and the insurance companies have identified these so-called fraud rings, and what have they done about it? Absolutely nothing. The impact of that is important because what happens is that legitimately injured people are characterized as frauds. It's an outrage.

When we go to court and we pick juries, we can't even find in the jury pool these days a fair and impartial jury to judge an automobile accident, because the insurance industry preaches fraud, fraud, fraud. So that people who are legitimately injured in Camden County, in Haddenfield, in Cherry Hill, and the areas where we live and practice go to court with legitimate injuries, and they are punished because they are victims of automobile accidents.

I would urge this Committee to investigate fraud and--

SENATOR CARDINALE: You're repeating yourself now, and I--

MR. BERGER: --to close those rings down. I would then--

SENATOR CARDINALE: Assemblyman Collins is going to cut me off pretty quickly if I let you go on.

SPEAKER COLLINS: Not quite yet.

MR. BERGER: I hope so.

SENATOR CARDINALE: I have one more question.

MR. BERGER: Is that a promise?

SENATOR CARDINALE: I have one more question that I'd really like you to comment on.

MR. BERGER: Certainly.

SENATOR CARDINALE: Now, you're comparing Georgia, Connecticut, and so forth, to New Jersey. Why aren't you comparing New Jersey to New Jersey, because we don't have simply a verbal threshold. We also have a complete option for tort in our zero threshold. Which one has the higher rate?

MR. BERGER: Well, I know, because I have opted for no threshold. And I'd like to see the insurance companies prove to me that that rate is justifiable.

SENATOR CARDINALE: They prove it to the Insurance Department.

MR. BERGER: Do they?

SENATOR CARDINALE: Yes. They're required to, by the way.

MR. BERGER: I can only--

PRESIDENT DiFRANCESCO: Look, Gerry, I would like him to continue with his testimony unless other members -- John, Joe--

Anybody want to say anything now, or do you want to wait a while?

SPEAKER COLLINS: Assemblywoman Farragher.

PRESIDENT DiFRANCESCO: I'm sorry.

Clare.

ASSEMBLYWOMAN FARRAGHER: Thank you, Mr. Chairman.

I'm confused. You have mentioned several times recovery. The way I understand our system, if I'm in an accident -- and I have been -- oh, well, a year ago today -- regardless of whose fault it was, I can immediately go to the doctor I choose, get my condition examined and taken care of, I can recover loss wages if I have any, which I didn't-- So I don't understand what the recovery was. I took my car-- The next day actually they came and took my car, they fixed it, and had it back to me in three days. And the insurance company handled all of the other things. The only thing I'm out is the \$250 deductible.

MR. BERGER: Well, you were very lucky, because that's not the experience of many.

ASSEMBLYWOMAN FARRAGHER: So, okay, let's go with another one.

MR. BERGER: Certainly.

ASSEMBLYWOMAN FARRAGHER: All these accidents I'm talking about were not the fault of the drivers involved. My daughter was hit at an intersection, very seriously injured, remains so to this day, did go through-- Obviously, had injuries severe enough that the verbal threshold was pierced. And, yet, she now, almost 10 years later, is really not a whole lot

better off. There are other things-- All these independent medical exams. And thank God, one of them recognized what was wrong with her three years later and sent her to someone to have her condition repaired. But all along the way, all of these things were paid for. In fact, it was under the old system, so there was a better-- It was dollar one medical payment under PIP. So I don't understand the recovery part of this.

MR. BERGER: Well, let me tell you--

ASSEMBLYWOMAN FARRAGHER: If we were--

MR. BERGER: Sorry.

ASSEMBLYWOMAN FARRAGHER: --all able to recover, I don't understand why you keep saying there are barriers to the recovery. When under the system, under particularly PIP, it's designed so that the person is recovering what they lost.

MR. BERGER: All right. If you're talking about-- When I talk about recovery, I'm talking about damages for bodily injury. In other words, getting back what you lost as a result of being injured.

But I would like to address the issue that you raise, and that is the issue of PIP. We have over 200,000 accidents in this state per year. There are 80,000 citizens of New Jersey injured per year. There are approximately from that about 40,000 lawsuits filed per year. What's happened now and the changes is that the insurance companies promise -- they guarantee-- We heard Walter Bliss last time say, "We guarantee medical bills will be paid." It's a guaranteed right to medical treatment.

The experience now, as we sit here, has changed since your daughter was unfortunately injured. We now have over 16,000 litigated cases

in this state per year for the payment of medical claims. So that one out of every three residents who has a lawsuit also has to sue their own insurance company to get medical bills paid. There's been a change on the part of the insurance companies because five years ago there were only a few claims filed against insurance companies for the payment of medical bills.

We pay our premiums for protection. We pay our premiums for protection in case we are injured, and we want to be made whole for our injuries. That's only fair. We pay our premiums for the right to have our medical bills paid. And the experience is, is that the medical bills are not paid promptly. Clients are sent to repeated, so-called independent medical exams where many of the doctors are hired by the insurance companies, and then the medical expenses are not paid and treatment is cut off. And that's the result of the insurance companies not doing what they're supposed to do. That's what we pay the premiums for.

As a result, now in 1996, 16,000 lawsuits have to be filed, contract claims, to get our medical bills paid. So what happened 10 years ago is not what's happening now in New Jersey.

ASSEMBLYWOMAN FARRAGHER: Okay. Why instead of filing litigation aren't-- I refer people to the Insurance Department. There is an Unfair Claims Settlement Practices law in this State, and that is where it should be resolved. To my intent, it-- Are you not then just talking about those cases where people feel that because they experience an automobile accident that somehow they've hit the lottery?

MR. BERGER: That's absolutely-- Well, let me put it this way. With respect to the Department of Insurance, respectfully, I say, they are

understaffed, undermanned, and it is not the place to have anything resolved, because they are not capable of resolving complaints and requiring medical bills to be paid. The law, as it is constructed, requires either a lawsuit be filed for the payment of medical bills to enforce a contract-- We're buying a contract. We're paying a premium.

ASSEMBLYWOMAN FARRAGHER: Yes. And the contract form is approved by the Department of Insurance?

MR. BERGER: Yes. And then, secondly, with respect to the issue of the lottery, when somebody is seriously injured -- injured objectively-- No one hits the lottery when they're injured. They can never be compensated by money. It is only the best that our system can do. Our system is designed to be as fair as it can be, and that's what we advocate, fairness, nothing more and nothing less.

ASSEMBLYWOMAN FARRAGHER: Let's just go on.

PRESIDENT DiFRANCESCO: I could-- Continue.

MR. BERGER: Let me just give you a couple more examples why no-fault here in New Jersey is expensive. I wanted to -- and maybe I may be repeating myself a little bit-- But what happens is we have to file two lawsuits now. We have to file a lawsuit against the driver, the bad driver, who caused the injury. A second lawsuit is filed against the insurance company to make sure the medical bills are paid. Expensive medical proof is required by presenting live doctors to testify in court. It's expensive because we now pay for two health care premiums.

I buy health insurance for my office staff, and each one of us also buys a second premium -- an auto-health insurance premium. So we're paying for two health insurance premiums.

New Jersey, and I think really stupidly, is not taking advantage, like other states, of Medicare. Other states for senior citizens-- When a senior citizen is injured in an automobile accident, Medicare pays the bills for the medical treatment. In New Jersey, Medicare gets off scot-free. In New Jersey, senior citizens are paying for an automobile insurance premium which they do not need to pay for.

So when you look at these reasons for driving up costs, you see why we have one of the most expensive systems in the country.

SENATOR CARDINALE: Mr. Chairman? Mr. Chairman, can I ask one question here?

PRESIDENT DiFRANCESCO: I'm sorry.

Gerry.

SENATOR CARDINALE: I think there's been a gross misstatement here what the law is. And I think it needs to be brought to the attention-- There is, I understand, a federal law which prevents Medicare from being primary in an auto accident. And that is a law which affects all the states so that we are not stupid in how we do not take advantage of Medicare.

But I'd also like to make another point. What you're talking about is a cost shift. And even if we could shift all of these costs onto Medicare, that only senior citizens would be allowed to get into accidents, and we would have no health costs. If there was some magic wand that we could wave to do that, there's still a cost, it still has to be paid, and it would be paid

in taxes, perhaps instead of in auto premiums, but it would still have to be paid.

MR. BERGER: Well, that's not been the experience of the 38 other states where they are non-no-fault states. In the 38 other states that we've referred to and we have documented in the actuarial studies, there has not been a significant shifting of costs. It's not been there. Not only that, I'd like to tell you that when Medicare does pay, Medicare gets paid back. And, in fact, trial lawyers in this State have collected hundreds of millions of dollars through litigation and repaid Medicare for medical bills that have been expended by Medicare. There's a whole collection unit through the Attorney General's Office. I've personally spoken with them.

I'd be more than happy to provide you, Senator Cardinale, with documentation of how many hundreds of millions of dollars trial lawyers have put back into the state as a result of good representation of clients who are legitimately injured.

So if you look at the actuarial studies, in Connecticut most recently, if you look at--

SENATOR CARDINALE: Did you print that money, or how did you come by that money? Did it come from somewhere?

PRESIDENT DiFRANCESCO: No. No. That's part of the litigation, but let's move on. That's part of the whole litigation thing.

SPEAKER COLLINS: Mr. Chairman, before we move on--

Mr. Berger, let me just ask something, maybe I've missed it and--

MR. BERGER: Certainly, Mr. Speaker.

SPEAKER COLLINS: --that might have been the answer.

When you said, your quote, "Medicare gets off scot-free in New Jersey," that got my attention. And I had it listed something to look into later with you, other testifiers.

Senator Cardinale has just said that there's a federal law that stops what, I guess, you said. And my question is -- and not to get back and forth -- I didn't hear a response to the statement of Senator Cardinale.

MR. BERGER: I will get present, written documentation that if there is no-fault coverage, then no-fault's primary. So that proves the point that in New Jersey because, we have no-fault insurance coverage, New Jersey drivers pay for automobile -- senior citizens pay for their medical bills through the automobile insurance system. In other states where there is no no-fault coverage, Medicare pays. I will present to you, Mr. Speaker--

SPEAKER COLLINS: Right. You'll have to prove--

MR. BERGER: --written documentation.

SPEAKER COLLINS: Okay. All right.

MR. BERGER: Be more than happy to.

ASSEMBLYMAN DiGAETANO: And that's not illegal in those states.

SPEAKER COLLINS: Go ahead on, sir.

MR. BERGER: Certainly. You know, in response to Assemblywoman Farragher's questions, I was really discussing that PIP isn't really what it's supposed to be in that we are forced to file lawsuits to get medical bills paid. And that clients are routinely cut off from necessary medical treatment.

SPEAKER COLLINS: Now, let me just--

MR. BERGER: Certainly.

SPEAKER COLLINS: --jump on that. I want to let you continue. We have more testimony and more testimony. But an interesting word you used, routinely. Now, that's a word that just means like almost all the time to me. Is that the word you want to stick with, routinely?

MR. BERGER: I would like to say callously and routinely.

SPEAKER COLLINS: Wow.

MR. BERGER: If you talk to your constituents-- And I think Jodi Nachman was here at the very first hearing, who is one of your constituents. She was the young woman with long hair who came to present testimony and lives in Gloucester County. She--

SPEAKER COLLINS: Right. And I appreciate the statement, that I infer from it, that like everyone in South Jersey is my constituent, but she is not. South Jersey has various districts just like North Jersey. But she was from the southern part of the State but not one of my constituents. She was not one of my constituents.

MR. BERGER: Okay.

SPEAKER COLLINS: In fact, I think she was one of Assemblyman Geist's constituents out there.

But go right ahead.

MR. BERGER: Then she is well represented, as well. But she was an example of what we experience. We can document these experiences, because we're the attorneys representing the clients to get their medical bills paid.

SPEAKER COLLINS: Well, I don't deny that that happened to her. But the word routinely is one that-- There's certain things that jump out at me and that's one. I'm willing to accept in response to the Assemblywoman that there are challenges that must be met to get some medical bills paid. And that's something that others in this industry will have to deal with, and we'll ask them about it. But to say routinely--

MR. BERGER: Well, let me--

SPEAKER COLLINS: --that's just a word that bothers me.

MR. BERGER: Let me explain that--

SPEAKER COLLINS: Please do.

MR. BERGER: --with the proof.

If you call the Administrative Office of the Courts and you ask the Administrative Office of the Courts how many lawsuits are now being filed in 1996-1997 to enforce contract rights for the payment of medical bills and look back five years ago, five years ago there were practically none. This year, I'll estimate there will be between 4000 and 5000 lawsuits having to be initiated to get medical bills paid for.

If you contact the American Arbitration Association, and you look back five years ago to see how many arbitrations claims were filed and compare those to the 13,000 arbitrations claims now being filed for the payment of medical bills, the only conclusion you can come to is that insurance companies are routinely cutting off medical treatment and refusing to pay medical bills. That's the proof.

PRESIDENT DiFRANCESCO: Is that-- Are those the medical bills that, you know, like physical therapy and chiropractic treatments? Are

those most of what you're talking about? Are those the kinds of bills that they don't want to pay anymore at the higher levels? Is that what it is, treatment of that kind?

MR. BERGER: Some are treatment, to be sure. But there are many examples of clients who require surgery who have to file lawsuits in order to make sure they get the surgery they need. And, in fact, referring back to the nonconstituent of Speaker Collins, Jodi Nachman, who came here the very first day these hearings were conducted, she related to this Committee that she and her husband both required surgery. The insurance companies cut off her right to medical benefits that she had paid for through her insurance premium. Lawsuits had to be filed in order to get the surgery that they needed. There are many examples of medical cutoffs even when clients need surgery.

It's an adversarial system. The health care system-- And if you compare Blue Cross/Blue Shield or any other health care system--

PRESIDENT DiFRANCESCO: Would you distinguish that from any other form of health insurance? Would that be the same case, you know, if they were using their health coverage through their employer or something like that? Would that be the same? Would they get the same treatment? Would they get the same treatment from the insurance carrier? Is that routine that way, also?

MR. BERGER: Can you imagine if the health insurance carriers like Blue Cross/Blue Shield started refusing to provide medical care and lawsuits had to be filed? You don't hear that from constituents.

PRESIDENT DiFRANCESCO: That doesn't happen?

MR. BERGER: We don't hear that from clients. It's very rare. It's a rare occurrence where the health care insurance industry becomes an adversary to their members. In this system, in our no-fault insurance system that we have in New Jersey, it is an adversarial system.

PRESIDENT DiFRANCESCO: Michael, you know that we gets lots of complaints about HMOs.

MR. BERGER: Yes.

PRESIDENT DiFRANCESCO: You know, I-- Without going into detail, we also get a lot of complaints about the health care part of it, mostly about the so-called HMOs, however we want to describe them because that's -- there are so many different forms today. You know, I don't-- I'm a little surprised that it would be any different.

MR. BERGER: Well, it is--

PRESIDENT DiFRANCESCO: You know, insurance companies are insurance companies.

MR. BERGER: It is a little different because insurance companies have a vested interest in making sure that their patients do not prove a verbal threshold case. Talk about a conflict of interest.

And Senator Cardinale has recognized this before, that there's a linkage between medical care and the verbal threshold which drives up costs. That creates--

PRESIDENT DiFRANCESCO: Walter Bliss said that.

MR. BERGER: That creates the adversarial system. There should not be an adversarial system when you need to have health care coverage. That's the problem with the PIP system, and that is, in order to prevent you

from making a recovery in a bodily injury claim, the cutoff is intended to do that.

SPEAKER COLLINS: Assemblywoman Farragher.

ASSEMBLYWOMAN FARRAGHER: Thank you, Mr. Chairman.
I have to share something with you.

MR. BERGER: Yes.

ASSEMBLYWOMAN FARRAGHER: I have been involved on the Insurance Committee since 1988 and with it just a very short time when I was doing something else. And because of that, I tend to get a lot of calls, not just from people in my District, but from outside the District. I was Chairman of the Committee. I've been around a while, and people think I have some influence over these things.

I have to tell you that I would probably, at a ratio of at least 10 to 1, have more complaints about failure to pay medical benefits by health insurance companies than I do by auto companies -- in my office. Okay.

Yes, I have heard some stories of very, very tragic situations, but thank God they're very few. And I would be interested to know if the other members of the Committee have a similar experience with complaints. But I have definitely more complaints about health insurance medical payments than auto insurance medical payments.

MR. BERGER: The reason why you don't have complaints about auto insurance medical payments is because those people have hired lawyers. They're solving their problems through the contract process and through the courts, thereby driving up the cost of auto insurance.

ASSEMBLYWOMAN FARRAGHER: Do you think that perhaps through the actions of the Legislature in attempting to have real fraud cases prosecuted that perhaps the impositions we've made on the companies, with regard to fraud, do you think that perhaps they're being more aggressive at checking out what may be a type of an injury that can be "faked" because of things the Legislature has done?

MR. BERGER: They have--

ASSEMBLYWOMAN FARRAGHER: Forcing them to be more aggressive?

MR. BERGER: They have an obligation to investigate fraud. The State has an obligation to prosecute fraud. If the State and the insurance industry knows about these fraud rings, the place to attack fraud is to attack the fraud rings they already know about. Instead what happens is that every single victim of an automobile accident is treated like a suspected criminal. People shouldn't have to sue their insurance carrier to get their medical bills paid for.

ASSEMBLYWOMAN FARRAGHER: No, I agree. I agree with that.

MR. BERGER: And if the insurance companies were living up to their responsibility, there would be, in fact, fewer lawsuits. In the nonthreshold states, in the no no-fault states, you have fewer lawsuits, more claims; the rates and premiums are always lower. That's the experience, and that's why Mr. Schwartz is here to help present that information.

ASSEMBLYWOMAN FARRAGHER: Do they allow insurance companies to negotiate settlement? Are there any limitations on negotiations of settlements in any of these other states?

MR. BERGER: In every other state that I'm aware of, the insurance companies control the negotiations of settlements. They either decide they want to resolve a claim or they decide they want to take it to court. It is the decision of the insurance company. Absolutely.

ASSEMBLYWOMAN FARRAGHER: Thank you.

SPEAKER COLLINS: Go ahead on, Mister--

Oh, I'm sorry.

Senator Adler.

SENATOR ADLER: You spoke moments ago about the routine and callous practice of the insurance companies. And the proposal we're hearing on behalf of the trial lawyers is that the solution would be to shift the medical treatment of accident victims to health insurance. Are there any other possible approaches -- and I suspect we talked about this more in a succeeding hearing-- But are there any other possible approaches to address this specific issue raised of the reported practice of the carriers of routinely denying treatment and enforcing arbitrations?

MR. BERGER: Well, as a matter of fact, there is.

Assemblyman DiGaetano has held hearings on a bad faith bill which would provide the consumer with an opportunity to force insurance companies to do what they're supposed to do. And if they don't do what they're supposed to do, then there would be an opportunity to file a lawsuit alleging the bad faith of the insurance companies.

I sit on the Civil Practice Committee of the Supreme Court of this state, and we investigated a rule change permitting lawyers and consumers to sue insurance companies who refuse even to appoint arbitrators in order to resolve insurance claims through their contracts. And it was the conclusion of our Committee and the many lofty judges on that Committee -- is that the common law of this state does not permit such suits. As a result, we have presented evidence and testimony before Assemblyman DiGaetano's Committee on the need for a bad faith bill in this state to assure that insurance companies do what they are supposed to do.

SENATOR ADLER: I suspect we will talk about this in greater length at another hearing -- the PIP hearing -- but if you're going to participate in that, or some representative of ATLA, I would really appreciate any sort of comparative analysis you could provide on other states that have bad faith components of their insurance law, so we can understand whether Assemblyman DiGaetano's hearings would be leading in the right direction.

MR. BERGER: They have in those other states -- and we will provide that evidence -- fewer problems with insurance companies wrongfully denying claims, to be sure.

SENATOR ADLER: I guess as a component to that, I'd like to know what impact that would have on the insurance costs, both the medical costs and the litigation costs.

MR. BERGER: Certainly.

SENATOR ADLER: Thanks.

MR. BERGER: Also, with respect to your concept, it's interesting to know that in New Jersey 85 percent of the people who are injured have

medical bills of less than \$10,000. We support the repeal of no-fault, and we support a \$10,000 med pay.

SPEAKER COLLINS: Before you go further--

MR. BERGER: Yes.

SPEAKER COLLINS: Assemblyman Doria.

ASSEMBLYMAN DORIA: In one of the questions, to follow up on Senator Adler's question, as related to the bad faith issues and the issues-- We talk about fraud and the various health providers who may be involved in various frauds. Isn't there also a problem that sometimes within the independent medical exams that are done by the insurance companies that some of those medical practitioners, in many instances, may be perpetrating fraud and that they may necessarily perjure themselves in saying that the problem may not be as serious as another medical practitioner says it is? The problem we have here is that the difficulty that exists as it relates to the legitimacy of the examination by either the primary physician who first examines the person who's injured, and then that's the individual that does the independent medical examination. That there are lawyers' doctors, but there are also insurance company doctors. And we have that problem, then, on both sides, of fraud existing.

MR. BERGER: Well, I think that it may be a overstatement, respectfully, in this respect. There are many legitimate disputes between doctors. There are many legitimate disputes as to what the standards of care are. And they are disputes which are firmly grounded in medical principles. And they are disputes which are firmly grounded in honesty and not fraud. But I do accept this principle, and that is, there is fraud perpetrated by

insurance companies. There are frivolous defenses. There are frivolous cases defended in a frivolous way by insurance companies, just as there are some frivolous cases brought by claimants.

If this Legislature attacks the fraud problem by attacking the known fraud rings -- that were discussed in many days of testimony -- you would see considerable savings, and also you would shut down the people who are really causing the problem. The innocent people would then not be treated like criminals.

ASSEMBLYMAN DORIA: So you say there's a balance here.

MR. BERGER: Yes.

ASSEMBLYMAN DORIA: And that's what's necessary.

Thank you.

SPEAKER COLLINS: Please continue.

MR. BERGER: Just with respect to this cost shifting, and I wanted to emphasize that states like Georgia and Connecticut have not seen escalating health care costs even though they have repealed no-fault. And it's important to note, when health insurance carriers are managing the health insurance treatments, they're efficient. And, in fact, they're much more efficient than the automobile carriers have been with respect to health care.

We want the Legislature to repeal no-fault with a \$10,000 med pay. And we believe that will minimize any health care costs. We would also advocate that there would be some type of catastrophic fund for the citizens who are seriously injured.

I contacted the Unsatisfied Claim and Judgement Fund. I spoke with the Assistant Director, Carol Milkstad (phonetic), and learned

surprisingly -- and it's interesting -- that there are fewer than 1000 residents injured each year whose medical bills exceed 75,000. So between \$75,000 and \$250,000 there are less than 1000 people injured per year. And the cost is anywhere from \$31 million to \$38 million per year -- a small sum in this state to care for people who are catastrophically injured.

SPEAKER COLLINS: Before you go on-- Again, you contacted what office?

MR. BERGER: Yes.

SPEAKER COLLINS: I know it's on the record. I'd just like to hear it, okay.

MR. BERGER: Certainly.

It's the Department of Insurance, and it's the Unsatisfied Claim and Judgment Fund. And that Fund is responsible for the payment of medical bills from \$75,000 to \$250,000, which is the current limitation on the right to receive medical care.

SPEAKER COLLINS: Now, I know we can get information from the Department, but let me just ask you, if you have it today, a thousand above 75,000?

MR. BERGER: That's correct.

SPEAKER COLLINS: Over what period of time is that?

MR. BERGER: She--

SPEAKER COLLINS: Was that last year? Was that over a 10-year period?

MR. BERGER: Actually, it was the information she provided to me. And I have a letter that I'm more than willing to share with this Committee.

SPEAKER COLLINS: We would like to see that.

MR. BERGER: Actually, I think it was for 1995 and 1996. She has the exact number of citizens injured to that \$75,000 level and the exact cost per year.

SPEAKER COLLINS: Okay, thank you.

MR. BERGER: It's important information.

SPEAKER COLLINS: It surely is.

Go right ahead.

MR. BERGER: I'd just like to conclude by thanking this Committee for the opportunity to appear and share our views and to share our data and our expertise. We have considerable resources and experience. We have the commitment of our members and our clients. We have and will make available to you the studies and work sessions.

We have Allan Schwartz here to answer any of your questions about the actuarial data.

We're willing to work with this Committee in any respect that this Committee asks us to do. We're willing to stand behind the testimony we give and the statements that we make. We respect the authority and the importance of this Committee and stand willing and able to assist this Committee.

And I want to thank you, Mr. Speaker, for the opportunity to be here.

SPEAKER COLLINS: Well, you don't have to thank me. We're glad to have you here. And you may be back a number of times. But just for the record and what we've been talking about here, we appreciate your offer of having an expert here with the actuarial tables. The only problem is, we don't have the actuarial tables.

MR. BERGER: I don't see any coffee here either.

We have those which we can make available to you. But Mr. Schwartz is here to answer questions, so that he can answer questions from the data that he's gathered.

SPEAKER COLLINS: Okay. Oh, answer questions, or is he going to make some comments? We don't have a question to ask, since we don't have the actuarial table.

Go right ahead, sir.

ASSEMBLYMAN CHARLES: Mr. Speaker, I have a question to ask.

SPEAKER COLLINS: Assemblyman Charles.

ASSEMBLYMAN CHARLES: I'm trying, Mike, to understand the difference of opinion between the trial bar, plaintiff bar, and the insurance industry on this issue of no-fault repeal. You know, when we're talking about no-fault repeal, it seems we're really talking about the tests for starting a lawsuit or bringing a lawsuit. It seems to me that we can't be talking or are we talking about the PIP aspect of it, too. And let me just try to clarify this.

Do insurance companies stand to make more money when there is a PIP feature of the policy, as we currently have it? Will they make less money if we have a \$10,000 med pay, one of the proposals that you've made?

I ask that because it would just seem to me -- just looking at it from the insurance companies' side -- if they don't have to deal with PIP and can make the same amount of money, why wouldn't they opt for that?

MR. BERGER: I can't answer that on behalf of the insurance companies. I can only represent that--

ASSEMBLYMAN CHARLES: Right.

MR. BERGER: --the insurance companies' profits have been generous the last several years with PIP and with a very stringent verbal threshold. Many insurance companies have even given very handsome rebates during the past year.

ASSEMBLYMAN CHARLES: And that's why, when we brought the actuaries up, I wanted them to address the question, too. Those profits-- Is that somehow generated by the premiums that's paid toward PIP, or does that come out of the barriers to lawsuits that are imposed by these thresholds?

A L L A N I. S C H W A R T Z: In terms of the profits of insurance companies for the way they calculated -- really is for all components of automobile insurance combined. So when you get studies done, let's say by the National Association of Insurance Commission, they don't say here's a profit on PIP and here's a profit on bodily injury liability. They give a total figure. But you can look at the losses for PIP compared to the losses for other coverages. And generally, actually, in New Jersey, the amount of dollars paid out by insurance companies for PIP coverage actually exceeds the amount of premium dollars they take in. So if you tried to isolate PIP, insurance companies aren't making money on that. Where they are making money is--

The regulatory process in New Jersey tends to hold down the rates that are allowed to be charged for PIP, but it allows excessive rates to be charged for some other coverages, like comprehensive and collision. So on balance, insurance companies are making a profit, but it's not-- They're not making a profit if you try to isolate the PIP line of coverage. And, as a matter of fact, that's where the savings would come from, from repealing no-fault and having a \$10,000 limit, instead of the current limit. Because PIP costs in New Jersey are actually very expensive. More than 25 percent of insurance company payouts for automobile insurance is for the PIP coverage alone.

ASSEMBLYMAN CHARLES: Mr. Speaker.

As I look at this whole picture just starting off and we've been gathering the testimony, I'm trying to understand what the issues are that we ultimately have to deal with. On the one hand, I recognize and, I guess, support the policy of having medical coverage and payment available in the case of people who are injured in automobile accidents. That has particular relevancy in some communities, more so in some than in others where they might not be insured by an employer or may be unemployed or whatever else. On the other hand, I agree that people's access to the court should not be restricted, that unreasonable barriers should not be placed in their way. And I'm just trying now to figure out and hear recommendations from everyone who testifies how those interests can be balanced in a way that results in fairness in terms of access to the court and also reduce premiums for the automobile insurance payors of the State of New Jersey.

So I'm looking for proposals, and I think you offered something, that you addressed that. But that's what I'm looking to hear about from the witnesses who testify.

ASSEMBLYWOMAN FARRAGHER: Jack.

SPEAKER COLLINS: Assemblywoman Farragher.

ASSEMBLYWOMAN FARRAGHER: You mentioned that some companies had paid dividends back to their policyholders. Why did that happen?

MR. SCHWARTZ: Generally, I would say because insurance companies felt-- Those certain insurance companies felt they made such a high profit in New Jersey that they were able to give back a certain amount in dividends. But it's difficult to give a precise reason for that because dividends in New Jersey, like in any other state, is not really subject to any regulatory review or filing. So it's really an individual company decision, but the logical conclusion is those companies believe they made such a high profit that they were going to give some of the money back.

ASSEMBLYWOMAN FARRAGHER: So then they weren't ordered to?

MR. SCHWARTZ: They could be directly ordered to. I guess the one benefit the companies get from giving back dividends is they get a credit for that when they calculate whether they've made excess profits in New Jersey. And I think probably there is an excess profit statute in New Jersey. Every year insurance companies have to file a report with the Department of Insurance.

ASSEMBLYWOMAN FARRAGHER: And what is that limit on profit?

MR. SCHWARTZ: I don't remember the exact number. I think it's somewhere between 5 percent and 10 percent of premium.

SENATOR CARDINALE: Would it be six?

MR. SCHWARTZ: As I said, I don't remember the exact number. I haven't looked at the statute specifically lately, but it's in that range.

ASSEMBLYWOMAN FARRAGHER: And how does that compare with other states?

MR. SCHWARTZ: Most other states don't have excess profits laws.

ASSEMBLYWOMAN FARRAGHER: Thank you.

SPEAKER COLLINS: See, it was a nice, short answer is all he had to do there.

Senator Adler.

SENATOR ADLER: I'd like to go back to Mr. Berger's comments before about how no lawyer would take sort of accident case that Assemblywoman described earlier with someone who just had a sore back, or maybe Speaker Collins described it.

SPEAKER COLLINS: It was a \$50 example of the Senate President.

SENATOR ADLER: Explain to me-- And understand my question is in the context of a fear I at least have and maybe other members of the Committee have of a proliferation of nickel-and-dime soft-tissue accident cases. Explain to me why that wouldn't be the case were we to go to

a no-fault. (*sic*) And maybe if you could also then attach onto that the experience in states that you're describing -- Georgia, Connecticut, other states that have repealed no-fault -- what their experience has been regarding the number of BI suits that have been filed following repeal.

MR. BERGER: Well, first of all, as many of you know, when lawyers are retained in personal injury matters to represent consumers, it is on a contingent basis, which means you spend time and you don't make a fee unless you are able to win a case. So that you are not being paid on an hourly basis, and if you don't make a recovery, you're working for free. For many clients who don't have the wherewithal, you're also paying for the expenses to file the lawsuits. So that most lawyers -- most lawyers -- 99 percent of the lawyers in this state would not take a case which didn't have merit because they would be wasting their time and wasting their money on a case which was not meritorious.

With respect to the issue, and I know Allan can answer this-- With respect to the issue of other states, other states which don't have a verbal threshold, the citizens of those states don't need always to hire lawyers. And before 1972, there were many claimants before our system got so complex and the proofs are so high-requiring medical proofs to make a claim. Before 1972, many people who were nominally injured could call their insurance carriers, and there were many claims resolved before a lawyer or a lawsuit was even considered. That was a benefit to the system.

As I understand Allan's studies in other states like Connecticut, the number of claims, not lawsuits, increased, but the overall costs decrease. That's what the data shows. In other words, the premiums are lower because

the overall costs are lower, even though people have unfettered access to the courts, unrestricted access. But Allan could explain that in greater detail.

MR. SCHWARTZ: Yes. I mean, in Connecticut, the number of claims that insurance companies characterize bodily injury claims, bodily injury liability has increased roughly about 20 percent since the repeal of no-fault. So there are more claims being compensated. But the average cost per claim has gone down in the range of 25 percent to 30 percent. So that on total the decrease in the amount paid out per claim more than offset the increase in the number of claims, and the total bodily injury losses paid out -- have gone down about 15 percent in Connecticut.

MR. BERGER: So if the issue is cost of premium, again, Connecticut demonstrates that premiums go down, and their citizens have unrestricted access to the courts, if that's the issue.

SPEAKER COLLINS: Is this a follow-up to that statement?

If not, Senator Cardinale was next.

ASSEMBLYMAN CHARLES: Just a follow-up on that point. I'll wait for the Senator though.

SENATOR CARDINALE: I was going to follow up on that point because that stimulated something additional to me. Was there any other variables in Connecticut besides the elimination of no-fault that you studied?

MR. SCHWARTZ: Really, it was the elimination of no-fault and the -- both in terms of the tort threshold and the first-party PIP benefits which was a major reform that took place.

SENATOR CARDINALE: Were the barriers to suit in Connecticut, prior to the repeal of no-fault, similar to the barriers to suit that we currently have in New Jersey?

MR. SCHWARTZ: They had--

SENATOR CARDINALE: Under the verbal threshold.

MR. SCHWARTZ: They had a different threshold. They had a \$500 monetary threshold.

SENATOR CARDINALE: Is the answer no? I mean, let's get this moving. We have a lot of witnesses.

MR. SCHWARTZ: Yes, they have \$500 monetary threshold.

SENATOR CARDINALE: Okay. I think it was four if my memory serves me correctly. Was it four or five?

MR. SCHWARTZ: I recall five, but it's an easy enough number to check, and we can get back to the Committee on exactly what it was.

SENATOR CARDINALE: Would you get back to the Committee, because I think if you did the study, you really should know what the threshold was.

It strikes me that you could have compared New Jersey to New Jersey because we have a dual system in New Jersey. We have a no-fault system and we have a fault system both operating in tandem. Isn't that correct?

MR. SCHWARTZ: You could choose a verbal threshold or no threshold, that's correct.

SENATOR CARDINALE: That's correct. Which costs more in New Jersey where all the other variables are the same?

MR. SCHWARTZ: The Insurance Department allow higher charges--

SENATOR CARDINALE: No, but which costs more?

MR. SCHWARTZ: Well, you're asking-- I'm trying to explain there's a difference between losses and premiums in terms of cost. And I would say that the Insurance Department allows higher premiums--

SENATOR CARDINALE: If I want to buy zero threshold, how much do I pay in New Jersey in relation to buying verbal threshold?

MR. SCHWARTZ: It's a higher premium for the zero threshold.

SENATOR CARDINALE: How much? Would you quantify it?

MR. SCHWARTZ: It varies by company. It's probably around twice as high.

SENATOR CARDINALE: Okay. Would you say roughly 40 percent is a reasonable number? Forty percent more? You said it's twice as much, that's 100 percent.

MR. SCHWARTZ: I'll use 40 percent if that's what you want me to use.

SENATOR CARDINALE: No. I want to know what you know about this, because you're the fellow who did the study. And if you don't know anything, that sort--

MR. SCHWARTZ: I told you what I know.

SENATOR CARDINALE: --of tells me something about the study that you did.

MR. SCHWARTZ: I told you what I know. And if you want to use a different number, I'm willing to use your number. But I told you what I think the number is.

SENATOR CARDINALE: Oh, you mean you're willing to use any number depending on who you speak to.

SPEAKER COLLINS: Senator. Senator.

SENATOR CARDINALE: Now if you-- Have you studied what it costs for 10,000 of med pay in comparison to the cost of 250,000 worth of PIP? What is the differential?

MR. SCHWARTZ: It's about 50 percent lower.

SENATOR CARDINALE: Fifty percent lower. That's not the number we have. If I told you that we have been informed consistently over the years that it's 85 percent -- it's about 15 percent lower -- would that be something that you would be willing to use?

MR. SCHWARTZ: I'll use any number you want. I don't think that's the right number. Maybe you're confusing--

SENATOR CARDINALE: You mean you'll use any number you client wants to-- Who's your client?

SPEAKER COLLINS: Senator.

ASSEMBLYMAN CHARLES: Mr. Speaker.

SPEAKER COLLINS: He's saying he would use any number you want, which didn't move me a whole lot either way.

MR. SCHWARTZ: You may be confusing the number of claims with the dollar of claims. That may be the confusion.

SENATOR CARDINALE: No. I'm not confusing that at all. I've been on this Committee -- not this Committee, this is a new Committee-- But I've been on this Insurance Committee for 16 years. And there have been certain things that have been consistent throughout that period of time. And from the time we've had the \$250,000, there have been people who have been saying, "Why buy \$250,000 worth of insurance, when we really only need 15?" Because almost all of the claims are settled within the 15. Now you come up with a different number today of 10.

But in the 15-- We have had a consistent number presented to us that 91 percent of the cost is in the first \$15,000 of coverage. Okay. Ninety-one percent of the cost in the first \$15,000 worth of coverage. Now, that may vary a little bit from year to year, but we're talking about roughly a very small saving by going down to that level. It certainly is not on the order of magnitude of 250 to 10. And would you agree with that -- from the studies you've done?

MR. SCHWARTZ: I'm not sure what you want me to agree to.

SENATOR CARDINALE: No, from the studies you've done.

SPEAKER COLLINS: Hold on one second, Senator.

You don't have to agree to anything that the Senator says or the Chairs or any of us here, just when he asks the question, if you have the answer. If not, just say, well, I don't have that answer. We do want to move on. We want to give you every chance to respond to the questions.

MR. SCHWARTZ: I've already explained that the data I've looked at shows there's about 50 percent savings.

SPEAKER COLLINS: Okay.

MR. SCHWARTZ: I mean, if there's some other data, I'd be happy to look at it.

SPEAKER COLLINS: Okay.

MR. BERGER: We would make Mr. Schwartz available to look at any data that you have, Senator Cardinale, and analyze it. We'd be more than happy to do that.

SENATOR CARDINALE: All the data that we have is a matter of public record. And if he's worked for the Insurance Department, he's got all the data that we have. I don't think that we have any secret studies anywhere, except that there is a study that was done by Miller, Rapp, Herbers and Terry that I would ask you to comment on.

Are you familiar with that study?

MR. SCHWARTZ: I've seen numerous studies that they've done. I don't know the title or the date of the study that you're referring to.

SENATOR CARDINALE: So you're not familiar with that particular study. No, I can't ask you to comment.

MR. BERGER: Do you have a copy of that, Senator Cardinale, that we would gladly make--

SENATOR CARDINALE: We'll get you a copy of the study itself. I have a summary here of what the study shows, which is that if you repealed no-fault in New Jersey, premiums on average would go up 15 percent.

I guess-- I just heard that he's testifying-- I didn't realize that he going to--

SPEAKER COLLINS: He'll be coming next.

SENATOR CARDINALE: Oh, okay.

SPEAKER COLLINS: If we move along.

SENATOR CARDINALE: Thank you very much.

SPEAKER COLLINS: Thank you, Senator.

Assemblyman Charles.

ASSEMBLYMAN CHARLES: Just one question, technical, I guess. I remember the days before no-fault insurance -- 1972 -- pure tort system. In those days, I think, we didn't have comparative negligence in these automobile cases. We had 1 percent negligent, you're out. The proposal to return to a pure tort system, what kind of negligence standard are we involved with here? Are we talking about comparative again?

MR. BERGER: Well, comparative is the only fair system. The 1 percent system would mean that you could get a 99 on a test and still get an *F*--

ASSEMBLYMAN CHARLES: Right.

MR. BERGER: --or not make a recovery. But comparative negligence has been proven to be inherently fair in this State, and that's why we have that as part of our statutory structure.

ASSEMBLYMAN CHARLES: Do you think that there's anything peculiar about New Jersey that would cause New Jersey to have a different experience than Connecticut and Georgia in terms of the reduction in total payouts once there was a repeal of no-fault?

MR. BERGER: The data is from 38 states. In addition, we know the recent history of Georgia and Connecticut. And if the data speaks better than anecdotal evidence, then we have to rely on the experience and the wisdom of the other 38 states. We've already for 25 years continued to

prolong what we already know -- verbal threshold and no-fault are a failure. So it's time that we scrap no-fault and wise up and do what the other 38 states are doing, and scrap this and go back to the tort states. Those are the states with the lowest premiums. If the issue is premiums, that's the way to get there.

SPEAKER COLLINS: If I may, a couple questions. I don't see anyone else at this time. Let me ask--

Well, first let me just say with regard to the question dealing with comparative negligence -- along that same line. If -- and your position is we should repeal no-fault-- If we were to repeal no-fault, should we put in a system where the loser pays?

MR. BERGER: What loser pays is presently in England, and there are many people who don't get access to the courts because they can't afford to file suits. And there's a movement in England realizing how unfair it is to the citizen. And what loser pays does, it pits a regular citizen who has two cars, a home, and two kids against large corporations who can -- or insurance companies -- sit back and take their chance as to whether or not they can win or lose. Loser pays is a very unfair system if the goal is fairness. It's fair to insurance companies and corporations. It's not fair to citizens. And if we look at the real basis of our judicial system, citizens can't come here and sit at this table and give testimony, honestly, because this important Committee doesn't have the time for every citizen to come before this Committee. Whereas, the court system is clearly designed to resolve disputes for the individual. It is the hallmark of the individual rights which this country was founded on. It's the only place where the citizen can have his day in court. So loser pays is truly

an idea which is one of the worst ideas and is one promoted mostly by insurance companies and corporations.

SPEAKER COLLINS: I take it your answer is no.

MR. BERGER: You bet.

SPEAKER COLLINS: Okay. Well, let me just clarify something. These statements are made and they were made by you. We just want to make sure-- This Committee, as do all committees, chaired, and a member of 16 years of the Insurance Committee and so many others-- Citizens do have the right to come and testify, have and will continue to do so. And, in fact, we started off with-- Though some have questioned the statement, but regular citizens come forward. And, of course, one of the things that I find most interesting when statements are made about citizens, we can go from Hudson County to Bergen County to Camden County to Salem County. This will shock some, but citizens talk to us all the time outside these hallowed halls of Trenton and have great impact and input on what happens.

Let me ask this. You mentioned a catastrophic fund, and either I drifted off or we drifted off-- Did you go any further on that? I mean, you said we should have that. Did you offer any suggestions how that should come about or what it should be?

MR. BERGER: Well, I really can't-- I'm not in a position to make that kind of offer. But I am in the position to offer the information which I thought was really quite fascinating. I would have assumed, as many of us would have assumed, that the number of residents here would be far more than a thousand per year of catastrophically injured above \$75,000. And it's important information because at a cost of less than \$40 million a year, there

may be several creative ways for this important Committee to solve that problem and take care of people who are in fact catastrophically injured.

SPEAKER COLLINS: Well, I don't know how creative this is, and I will ask others along the line. But would your number, 40 million-- If we were able to reduce-- This is something that we can bring up later. You said creative. Well, to me, if we have 3 million drivers in the state or 3 million insured people, I would venture to say that if we could have-- Did I see the number 5 million? That's even better for my math. I would venture to say that the citizens of this State, if they could see a reduction from 9 percent to 50 percent to 15 percent, up and down, I would think that those 5 million drivers would all be willing to pay \$10 for a catastrophic fund, which would give us 50 -- 10 million to play with. That's not creative, but \$10 times 5 million. But it has to be more difficult than that. We could never be able to do it so simply. I mean 5 million drivers. Everybody puts \$10 in a pool, and I'll even volunteer to collect it for free, and we could have \$50 million for catastrophic. I can't wait to see where I'm wrong on that silly idea.

Another question. I don't think -- and this will be my last -- that you answered Assemblyman Charles directly, when -- I think it was he that asked, is New Jersey any different? And then you went off to 38 states, and so on. I've always assumed and do believe that New Jersey is different for a myriad of reasons. The Governor listed some of them in her State of the State, including this one-- And I stand corrected that not only are we so different in so many ways with our immediate income, with this, with density, and so on, but also probably the best coverage in American based on -- we have no-fault, we have tort, we have it all. Aren't we different than every other state?

MR. BERGER: We're different in that we have the most expensive insurance and insurance coverage in the country. In that respect we are different, yes. In all other respects-- With respect to the data about claims and claims--

SPEAKER COLLINS: So there's no other differences. For example, North Dakota. A citizen in North Dakota and a citizen in New Jersey is the same?

MR. BERGER: I'm a little slow. I did grow up in Indiana. When I go back to visit my family in Indiana and drive on the highway, there are times when you don't see cars for every--

PRESIDENT DiFRANCESCO: It's like that in Salem County.

MR. BERGER: Kind of like Salem County as a matter of fact.

PRESIDENT DiFRANCESCO: Wait a minute, it's like that in Elmer. (laughter)

MR. BERGER: Every few minutes.

SPEAKER COLLINS: That's the point. And I think all of that goes in but is not-- Or let me ask this question. If a person under normal circumstances is in an accident in New Jersey, are they not -- under our current system, as expensive as it is -- are they not in a better position than citizens in any other state?

MR. BERGER: They're in a worse position, because they pay the highest insurance premium in the country and they have the worst access to the courts to recover for legitimate injuries. It's kind of the worst of both worlds. You pay more, yet you are severely restricted by our law. So, in fact, I would argue that we have in many respects the worst system because--

PRESIDENT DiFRANCESCO: I think that Jack is talking about the policy itself, the benefits covered under the policy--

MR. BERGER: With respect to the health insurance--

PRESIDENT DiFRANCESCO: --not the cost of the premium, nor the difficulty with the courts. I thought he was referring to the coverage.

MR. BERGER: I did miss your point.

SPEAKER COLLINS: Absolutely.

MR. BERGER: In that respect, if you're talking about the \$250,000 worth of medical coverage, it is in fact one of the best in the United States with one exception. If you can't get the coverage because the insurance companies refuse to pay the bills, then you're paying for the best coverage and you're not able to utilize the best coverage.

SENATOR CARDINALE: I'd like to first make an observation that loser pays-- You commented on loser pays and indicated that it's sort of an anomaly that exists in England. It exists in most of the world as a matter of fact, including the United States in our whole federal court system.

To refresh your memory, I think I read, about two or three years ago, that the Supreme Court admonished federal judges to apply loser pays more often. That particular case told them to go back and assess the legal fees against the loser for the purpose -- not of depriving people access to the courts, but for the purpose of limiting frivolous litigation. It's only applied in the federal courts here where the judge determines that this is a case that really shouldn't have been brought.

It is not an attempt so that there is various forms of loser pays. It is a need to absolutely apply it in every case. You can have some sort of sliding

scale to where, if the accident really didn't happen and the lawyer has a whole series of people who sue for accidents that didn't happen, you could apply loser pays in that kind of circumstance.

MR. BERGER: Forget loser pays, they ought to be in jail.

SENATOR CARDINALE: Well, I'd like to put that lawyer in jail, but we're not going to get even a penalty against him.

MR. BERGER: Do you know of any of your friends or your patients or your colleagues who would bet their house even on the most meritorious case? It wouldn't happen.

SENATOR CARDINALE: Yes.

MR. BERGER: You do?

SENATOR CARDINALE: Yes.

MR. BERGER: Okay.

SPEAKER COLLINS: We don't have to name those people.

(laughter)

SENATOR CARDINALE: I want to comment on a specific--

SPEAKER COLLINS: Okay, that's all right. I just didn't want us to go, who are they? And then we start down that line. (laughter)

Go ahead, Senator.

MR. BERGER: Thank you, Mr. Speaker.

SENATOR CARDINALE: I answered it briefly.

There is a proposition that I thought was very interesting because -- one of the few new ideas that came in some of the correspondence when we announced this meeting, and I would like to get your comment on it.

No one else, to my knowledge, has made this suggestion, but it's an ex-commissioner -- Deputy Commissioner of Insurance who is no longer doing that -- who made the suggestion that forget about PIP at up to \$10,000, but rather start PIP at some higher number like \$15,000 or \$20,000 so that what we would do is-- Say, if the damages or the injuries are really very minor, people can handle them on their own. Where they do have catastrophic problems that -- perhaps that's where we ought to be paying our attention, because it might strap a lot of people to have to pay a \$5000 medical bill, but at the same time that same individual faced with \$250,000 is in a lot worse shape. How would you view that kind of proposal without specifying exactly what that threshold would be? It could be 5, it could be 10, it could be 15.

MR. BERGER: Let me give credit where credit is due. It's an interesting concept as long as there is no verbal threshold. Conceptually it is something that I would be willing to sit down and meet with you, Senator Cardinale, to discuss. It's an interesting concept. The key is no verbal threshold. You will find no verbal threshold in conjunction with your suggestion -- may, in fact, be an interesting idea to explore.

PRESIDENT DiFRANCESCO: Gerry, anything? (negative response)

I think Senator Adler had a question.

SENATOR ADLER: Thanks.

First, I heard Senator Cardinale talk about frivolous claims. It's worth noting that it's frivolous claims and defenses, it's either side. I think we are hearing from Mr. Berger that there are frivolous defenses and frivolous denial of medical treatment for victims.

One thing I might ask Senate President and the Speaker, when he returns-- I think we were supposed to hear back from the Supreme Court after we passed tort reform about what they were going to do to tweak or strengthen the frivolous claims and defenses statute that exists in New Jersey, which we keep passing and they keep eviscerating and they keep ignoring. I thought we asked them to tell us how they were going to address the problem that Senator Cardinale raised and Mr. Berger raised so that we don't have folks getting away with that sort of nonsense that we keep trying to stop. I think the ball is in their court to come back to us. Maybe-- We have a new session here and we should give them a call, or next time we see the Justice we should ask--

PRESIDENT DiFRANCESCO: Okay.

SENATOR CARDINALE: It was the AG who made that request as part of the tort reform package.

SENATOR ADLER: Of the Chief.

SENATOR CARDINALE: To the Chief. I think it was pointed to the Committee, which decided not to do anything.

SENATOR ADLER: Because we were told hands off, that they would always--

SENATOR CARDINALE: I believe they did come to a resolution not to--

PRESIDENT DiFRANCESCO: Let us, by the next meeting, kind of talk about that.

SENATOR ADLER: It hasn't changed the practice in the courts, I know that.

I guess I want to ask Mr. Berger-- I heard you speaking earlier about how New Jersey has severely restricted access to the courts and how it's so difficult to get into courts, and we are a nonlitigious state now, in that regard. We heard from Walter Bliss in our previous hearing that New Jersey has a statistically higher rate of BI claims per 100 property damage claims and a statistically higher rate of BI claims and wage loss claims than our adjoining states, New York and Pennsylvania.

Do you have similar statistics? Do you have conflicting statistics? Do you have any sense of whether that is accurate or inaccurate?

MR. BERGER: It's just what statistics you want to compare. Actually, the issue that is being addressed is, is New Jersey a more litigious state? That's the issue, really. The issue is we are below the national average when you compare the number of claims per accident. We are below the national average. The idea of comparing claims per property damage claims is something that the industry really doesn't do unless they want to demonstrate a point in a nontraditional way.

So if you look at the statistics -- and I have those available, Senator Adler -- claims in New Jersey are filed less than the national average per 100 accidents.

SENATOR CARDINALE: Are you including medical claims in that?

MR. BERGER: I don't know if it's medical claims included in that or not. I'll find out.

SENATOR CARDINALE: In any no-fault state, your medical bills do not result in a lawsuit, in most instances. Maybe you talked about it and

I think that you're right that it's getting to be more litigation with respect to medical claims. But if you take all of those other states where they have to file a suit in order to get their medical bills payed, obviously they would have more than we would have because all of that part has been eliminated in New Jersey, and I think that is a benefit that we have eliminated that.

What about bodily injury claims and lawsuits for bodily injury?

I think that was what Mr. Bliss was talking about.

MR. BERGER: I'm not sure exactly where Mr. Bliss got his statistics, but I'm offering to this Committee to provide the data that I have seen which demonstrates that New Jersey citizens are below the national average in filing claims per 100 accidents, and I'll make those available. That's from the national Insurance Association.

SENATOR CARDINALE: When you do, please give us the breakdown of the kinds of claims that we are dealing with, because otherwise, it has no relevance to reality of what we have to deal with.

MR. BERGER: I will absolutely do that.

PRESIDENT DiFRANCESCO: Anyone further? (negative response)

MR. SCHWARTZ: If I could, I just want to briefly summarize what I did. I'm not going to go through technical details, but I wanted to explain that what I did in my study to evaluate the cost impact was I looked at actual experience. I looked at what was actually being payed out, the level of it, and what the rate of inflation of it is, and what the impact has been in states that changed from a no-fault system to a tort system. So it is based on actual experience.

I think when you evaluate the different opinions that you made here, you should reflect whether someone is giving you an opinion based on actual experience and what has actually happened or whether they are giving you an opinion based on some theoretical model where they are all assumptions and factors that go into it where you can come up with any result you want dependent upon the values you put in it.

So I think you have to understand the basis for people's opinion, and I think the other thing is you should try and look at the predictive accuracy of opinions they have offered in the past and see that the insurance industry in Connecticut and Georgia would have made the same comments they are making today here in New Jersey, that the repeal of no-fault is going to drive up cost, and it turned out not to be true. You could look at the other states where they wanted to repeal a tort system and institute no-fault -- in California. It is lucky for the citizens of California that the Legislature didn't do that, because tort system costs have dropped dramatically in recent years in California and a number of other tort states.

I just wanted to give an overview, and I will be happy to answer any questions that people may have.

SENATOR CARDINALE: Mr. Chairman, I just want to be clear on one point to the staff of the Committee. Have we received a written study from this gentleman?

MR. BERGER: Not yet, but we are willing to make that available to the Committee.

SENATOR CARDINALE: Okay. Will you-- Did you, in that study, include or attempt to adjust for the variables from state to state, such

as the differences in verbal thresholds and the differences in population? If you compared us to Utah, we are always going to be a lot higher. But have you attempted-- There is going to be a lot of other variables -- the variables of the number of attorneys per unit of population, because I think that's a factor, and it's always been said that in New Jersey -- I don't know whether it's true or not -- that we have more lawyers per person than anywhere else in the world and--

MR. BERGER: If you don't know it's true, then you shouldn't say it.

SENATOR CARDINALE: Well, it's been said before every one of our Committees -- it's testimony before our Committee. Have you tried to do that?

PRESIDENT DiFRANCESCO: That's only in the Legislature.

SENATOR CARDINALE: No, in the Legislature we are not as bad as other places.

PRESIDENT DiFRANCESCO: We can't respond to that.
(laughter)

MR. SCHWARTZ: I just want to make clear that, yes, I did take that into account and consider it.

PRESIDENT DiFRANCESCO: Okay.

SENATOR CARDINALE: I'd be very interested in reviewing it.

PRESIDENT DiFRANCESCO: Michael, anything further?

MR. BERGER: Mr. President, nothing further, and we thank you again for the opportunity.

PRESIDENT DiFRANCESCO: Thank you. Good seeing you again.

Do you have anything you're presenting to us, Michael? Are you giving us anything?

MR. BERGER: Yes, we have submission text.

PRESIDENT DiFRANCESCO: Okay.

Jerry Rapp and Dave Snyder.

Who is this character on my right?

ASSEMBLYMAN DiGAETANO: Ask him what his alma mater is.

PRESIDENT DiFRANCESCO: Some things never change.

No, you aren't, after all the years I've known you -- you never told me.

ELMER MATTHEWS, ESQ.: As we Irish say plus que chose meme que chose, the more things change, the more they are the same.

I'm here as an introducer, Mr. President.

PRESIDENT DiFRANCESCO: Okay.

MR. MATTHEWS: Mr. President, and Mr. Speaker, and fellow alumni, Senators and Assemblymen. My name, as some of you may know, is Elmer Matthews. I am the New Jersey Counsel for the American Insurance Association, a trade association representing some 300 companies, most of whom are licensed to do business in New Jersey. I am also speaking with permission on behalf of the Alliance of American Insurers that represents a considerable number close to those of AIA. We represent a cross section of the companies that write-in property casualty insurance in New Jersey.

The reason we are here this morning is because we have offered in the past to retain an independent actuary to price some of the things that have been presented to the New Jersey Legislature by independent actuary judgement. I hope we have fulfilled that mission to you this morning.

I have with me Jerry W. Rapp, a fellow of the Casualty Actuarial Society and a consulting actuary with the firm Miller, Rapp, Herbers and Terry, which Senator Cardinale referred to before. Mr. Rapp flew in last night from Bloomington, Illinois, because of the weather, and I appreciate his ability to testify before you this morning.

PRESIDENT DiFRANCESCO: What do you mean he flew in because of the weather?

MR. MATTHEWS: Well, the prediction out there-- He sat in the runway in Chicago last night for two hours.

PRESIDENT DiFRANCESCO: Is that right?

MR. MATTHEWS: Yes. I also have, to my far right, David F. Snyder, who is the Assistant General Counsel of the American Insurance Association out of Washington, D.C. The reason David is here is to answer any more -- shall I say? -- argumentative questions in the wake of some of these statements--

PRESIDENT DiFRANCESCO: Well, Gerry will find that out.

MR. MATTHEWS: --in the wake of some of the statements that were made in the first two hours.

As I listened to that testimony this morning, I was sitting here watching clouds go by.

PRESIDENT DiFRANCESCO: You're a lawyer, right, Elmer?

MR. MATTHEWS: Of little note and less repute. (laughter)

PRESIDENT DiFRANCESCO: Well, I know I shouldn't mention that, but you are also a former Speaker. Did you have committee rooms like this when you were a Speaker of the House?

MR. MATTHEWS: We were very austere.

PRESIDENT DiFRANCESCO: That's what I thought.

MR. MATTHEWS: We had \$5000 in PIP in those days.

PRESIDENT DiFRANCESCO: You didn't have committees though, did you?

MR. MATTHEWS: Pardon me.

PRESIDENT DiFRANCESCO: You didn't have committees, did you?

MR. MATTHEWS: We did have committees when we needed them.

PRESIDENT DiFRANCESCO: When you needed them. The good old days.

Well, I guess you know this was the Supreme Court chamber.

MR. MATTHEWS: I was sworn in here as a lawyer. Were you?

PRESIDENT DiFRANCESCO: We were at the War Memorial building. You're talking about the other--

MR. MATTHEWS: In those days, they didn't admit as many lawyers.

PRESIDENT DiFRANCESCO: This was the Judiciary Committee Room while the State House was being renovated, and being the

compromising, consensus-building person that I am, I gave this -- the choice of having this beautiful, gorgeous room to the General Assembly.

ASSEMBLYMAN DiGAETANO: Wisely so.

PRESIDENT DiFRANCESCO: And it's the best room in the building. I say that because Bob Littell is not here, and I just wanted you to know that, Elmer.

MR. MATTHEWS: It has some nostalgia for me because--

PRESIDENT DiFRANCESCO: Being a former dictator in the Assembly. (laughter) I know that you could appreciate that.

MR. MATTHEWS: This room has some nostalgia for me because actually my wife's grandfather was the chief justice that sat in that seat there when this building opened.

PRESIDENT DiFRANCESCO: Your wife's?

MR. MATTHEWS: Grandfather.

PRESIDENT DiFRANCESCO: Grandfather. He was chief justice.

MR. MATTHEWS: Chief justice of the Supreme Court. We keep the law the focus of the family.

PRESIDENT DiFRANCESCO: I guess so.

MR. MATTHEWS: Without further ado, I would like to transfer the remarks to Jerry Rapp because he has been asked to price, for this Committee, the impact of the abolition of no-fault. Jerry has something -- I believe he has given you a schedule and a copy of his proposed testimony.

PRESIDENT DiFRANCESCO: He has given us a copy of his testimony.

MR. MATTHEWS: So I will defer to Jerry, if I could.

PRESIDENT DiFRANCESCO: Jerry.

J E R R Y W . R A P P: Good afternoon.

PRESIDENT DiFRANCESCO: Thanks for being with us.

MR. RAPP: Thank you.

PRESIDENT DiFRANCESCO: I appreciate it.

MR. RAPP: I'm glad to be here.

My name is Jerry Rapp, I am a fellow of the Casualty Actuarial Society and a consulting actuary with the firm Miller, Rapp, Herbers and Terry. My practice is primarily concerned with the pricing of private passenger auto and commercial auto insurance throughout the country. I am also considered an expert in the pricing of various auto tort reforms throughout the country.

I have had vast experience in pricing different no-fault proposals and various other types of tort reforms in other jurisdictions. I recently served as President of the Midwest Actuarial Forum, which is a regional affiliate of our professional organization, the Casualty Actuarial Society. Our firm was retained by the American Insurance Association and the Alliance of American Insurers and the NAII to provide an expert and independent estimate of the impact of changing the current New Jersey choice no-fault law back to a full tort law.

Based on the analysis I have done, I estimate that the overall auto insurance rate levels in New Jersey would increase by 15 percent if the State's current limited tort option were to be abolished in favor of a full tort option. As it is now, New Jersey's limited tort option has a verbal threshold, which

restricts lawsuits for pain and suffering to damages -- to cases-- It restricts lawsuits for pain and suffering to cases of serious injuries only. In other words, if you have a nonserious injury, then you are barred from recovering for your pain and suffering.

The result is that in New Jersey bodily injury rates are at least 50 percent less than the rates for-- The limited tort are at least 50 percent less -- in some cases even as much as 30 percent less -- than for the drivers who opt for the full tort, which is a considerable difference.

In the way of background, your current no-fault law was implemented in January 1, 1989. Under current law, each motorist is required to select one of two tort options. One option is a full tort option. Under this option, a motorist is liable for all noneconomic loss that he caused as a result of an auto accident. The second option is a limited tort option, in which case the motorist will not be liable for noneconomic loss unless the victim suffers death or serious injury.

Motorists in New Jersey are also required to carry insurance which provides personal injury protection benefits without regard to fault. Included are medical expenses up to \$250,000. New Jersey motorists, as I mentioned earlier, who elect a limited tort option pay much lower rates for bodily injury liability than those who select the full tort option. The amount varies by company, but as I mentioned earlier, the rates are usually half and, in some cases, a third of what the rate is for the full tort option.

What can we expect to happen in New Jersey if no-fault is repealed and the system is changed back to a full tort system? Under this scenario, drivers with a limited tort option would now be liable for

noneconomic losses for both serious and nonserious injuries. Also, the \$250,000 of personal injury protection coverage would be changed back to a first-party medical payments coverage with a much reduced limit. As shown in Exhibit 1, that I have attached to my testimony, I assume that the current PIP coverage would be eliminated and replaced with a basic limit of \$20,000 of medical payments coverage. Under this scenario, I have estimated that the New Jersey rate levels would increase by 15 percent overall.

Approximately 90 percent of the insured drivers in New Jersey today have the limited tort option. If these drivers change to full tort, I have estimated that the bodily injury liability and uninsured motorist rate levels in New Jersey would increase by approximately 70 percent. Why would this be? Part of this increase is due to the fact that economic losses that are now being paid under the PIP coverage would be shifted to the bodily injury liability coverage.

In addition, the balance of the increase would be due to the payment of noneconomic losses on nonserious injuries. New Jersey data shows that under the full tort system, for every dollar of economic loss that is paid under tort, an additional \$2 of noneconomic loss are also paid. The net result is that bodily injury rate levels can be expected to increase by at least 70 percent.

We've heard previously this morning testimony regarding the experience of other states, and I would like to make some comments there with regard to that. Other states that have repealed no-fault did not have as an effective law as New Jersey. Two recent examples of such ineffective laws are the ones that were repealed in Georgia and in Connecticut.

The Georgia law was repealed on October 1, 1991, and the Connecticut law was repealed on January 1, 1994. The Georgia and Connecticut no-fault laws are significantly different from the no-fault law in New Jersey in that both of these states use fairly low dollar threshold limits to limit the right to recover for pain and suffering or so-called--

PRESIDENT DiFRANCESCO: Jerry, let me ask this question, though.

MR. RAPP: Sure.

PRESIDENT DiFRANCESCO: If you were to forget about what their limits were, ignoring what kind of no-fault law they have, would you suggest that they should adopt a no-fault law or would you not? Because you are making the point, I believe that other people have made, that Connecticut's threshold is much lower than ours, and therefore, the impact wasn't the same as it will be in New Jersey of eliminating no-fault.

MR. RAPP: That's correct.

PRESIDENT DiFRANCESCO: Is that the way we should be looking at this? I mean, is their system -- whatever they have in place today -- a better or a worse system than New Jersey, from your view? Because it is a less costly system, there is no question about that. Isn't that right?

MR. RAPP: Well, there is a lot of factors that drive cost.

PRESIDENT DiFRANCESCO: We're not the No. 1 State in the country.

MR. RAPP: Oh, I understand that you are, there is no question in my mind.

PRESIDENT DiFRANCESCO: Well, then they are less costly.

MR. RAPP: They are less costly. There is no doubt about that.

PRESIDENT DiFRANCESCO: Okay. I know that you can look at it a lot of different ways, but all I read about is we're No. 1 and Connecticut and Georgia aren't. So theirs is less costly.

Now, what is it about Connecticut's system that is not as good as ours that would justify us being at a higher level? I guess that's what I'm trying to drive at here.

MR. RAPP: I don't know that you could say necessarily that it is the system. We have heard a lot of testimony this morning that it's either no-fault or it's tort, and that somehow really is the reason why the rates are either higher or lower in one state or another. I would like to suggest to you that there are a lot of other factors such as vehicle density, population density, condition of the roads--

PRESIDENT DiFRANCESCO: Yes, I agree. I think the Speaker was mentioning that, and I think Michael even mentioned -- Michael Berger mentioned -- that there are those factors. I think he preceded his testimony with what the Governor said; that is, we are very densely populated, we have all these cars, we have a cost of living, etc. So that would make us a higher premium than most states, in any event, no matter what we do. Is that correct?

MR. RAPP: That's correct. If all those factors came together in the wrong way, it could contribute to a very high cost.

PRESIDENT DiFRANCESCO: I know that you are making the point that we have this very restrictive threshold -- I think you are.

MR. RAPP: No-- Yes, you do, you're right. You do have a very restrictive threshold.

PRESIDENT DiFRANCESCO: You're saying we have a restrictive threshold now if you choose it, and you said that 90 percent of the people choose it. Is it a restrictive threshold?

MR. RAPP: Yes.

PRESIDENT DiFRANCESCO: Because I think it is, but I think there was previous testimony that there were lots of -- I don't know -- kind of loopholes, I would say -- if I could use that word -- in the verbal threshold that we have.

I'm someone who has sat here and, when the threshold was \$200 -- I guess it was originally--

Did you sponsor that bill, Elmer?

MR. MATTHEWS: No, I was too young. (laughter)

PRESIDENT DiFRANCESCO: Too young.

When it was \$200, everybody suggested to me that was a target because it's \$200. I guess I agreed with that that it is a target that you have to get to \$200. You're going to-- Theoretically some people will want -- citizens will want to get to \$200, so I guess we changed it, and we changed it again. Now it's very expensive to have this nonverbal threshold. I think you pointed that out that it was very expensive and that's why 90 percent would like to have it.

So we have a restrictive threshold, yet it's frustrating for me because everybody says we still have the highest rate in the country, and so where are we going? And we still have a lot of litigation, everybody testifies.

DAVID F. SNYDER, ESQ.: Senator, if I might. There is an exhibit connected to our testimony that lays out how the New Jersey threshold is performing.

SPEAKER COLLINS: If you would just hit your button.
(referring to PA mike)

MR. SNYDER: Thank you.

There is an exhibit attached to our testimony that lays out how the New Jersey threshold is performing. What it indicates is that, yes, it is reducing bodily injury liability claims and consequently lawsuits. It's not doing as good a job as Michigan's threshold in that area. This is the last exhibit.

PRESIDENT DiFRANCESCO: Okay.

MR. SNYDER: But it is reducing litigation when compared to the countrywide average, and interestingly enough, when compared to Georgia and Connecticut, they are having a higher rate of litigation and bodily injury claims than New Jersey.

The other thing to keep in mind is that the real-world test in New Jersey is because there is, of course, a choice system there. These numbers that talk about New Jersey being the most expensive state in the country, of course, ignore the benefits that people are receiving -- that's the \$250,000. I also ignore--

SPEAKER COLLINS: Hold, hold, hold.

MR. SNYDER: Yes.

SPEAKER COLLINS: Would you just get a little closer to the microphone and say that again.

MR. SNYDER: Yes. These numbers that talk about New Jersey having the most expensive system in the country, of course, do not take into account the high level of benefits that New Jersey has verses other states with much lower premiums. In other words, lower benefits will give you, in most cases, lower premiums.

The best indication is that you really have the two systems functioning in New Jersey now and there is a dramatic difference in the premiums for people in the limited tort than those in the full tort.

PRESIDENT DiFRANCESCO: Well, if our litigation cost-- I guess this says 1977 bodily injury paid claim frequency-- Does that mean litigation costs?

MR. SNYDER: It's a good surrogate for litigation costs.

PRESIDENT DiFRANCESCO: If our costs are better now because we have this threshold, why are people suggesting to us that we need to limit litigation further, that we still have too much litigation, and it's too expensive? All I hear is the litigation is too expensive and we need to make changes. We need to have all kinds of changes within that system in order to continue to cut our costs.

According to this chart we are doing okay. I know New York is lower, but there is New York City and there is New York. I would submit that New York City would be higher. I would assume that New York City would be much higher. Would that be an accurate assumption?

MR. SNYDER: New York City -- the lost costs tend to be higher there.

PRESIDENT DiFRANCESCO: New York State is a lot different than, at least, northern New Jersey.

MR. SNYDER: What this suggests is that--

SPEAKER COLLINS: Before you go any further-- Go ahead, finish your point.

MR. SNYDER: What this suggests is that rather than cutting benefits by reducing \$250,000 in PIP benefits to \$10,000 or \$20,000, or whatever, there is another way. You can preserve that level of benefits. The way you could do that is to tighten the language somewhat on the threshold so that you remove some additional litigation from the system.

An example of what you can achieve with that is provided by the other states that have thresholds -- verbal thresholds -- that are worded in a bit more stringent fashion than New Jersey's.

SPEAKER COLLINS: Do you have a suggested language for us in that sense, or could you give us some?

MR. SNYDER: Yes.

SPEAKER COLLINS: Okay.

MR. SNYDER: A good place to look, I think, for that would be Michigan which has even higher benefits than New Jersey, but because of its threshold, which is somewhat tighter than New Jersey's, and the fact that everybody is in that no-fault system, their average costs are somewhat lower. But, again, I think the issue is what would particular reforms especially do within the context and the realities of New Jersey.

SPEAKER COLLINS: Let me, if I may, just hone in what you just said. I'm looking at the chart, and the Senate President mentioned New York.

In my own District back home, we are much more concerned, if I were to look at this chart, with what's going on in Pennsylvania, because in the southern part of the state, we are dominated by Philadelphia and Pennsylvania. They're of course, they are lower, but I would venture to say -- in fact, I know for a fact -- that it is more expensive to have automobile insurance in the City of Philadelphia than it is in New Jersey and across Pennsylvania because you have an average here. Is that not correct? That's what this is.

MR. SNYDER: Well, Philadelphia is very highly the most urbanized part of Pennsylvania, and I think you need to look at comparative regions to make sure.

SPEAKER COLLINS: And being quite familiar with Philadelphia and its environments, Philadelphia is probably much closer to New Jersey's demographics than the whole state of Pennsylvania is. Would you not agree with that?

MR. SNYDER: Well, probably. That's right.

SPEAKER COLLINS: Sure -- I mean it is.

MR. SNYDER: But I think I need to look at more to make sure that we have a clear comparison. But I think the point is that BI claim frequencies, because Pennsylvania's choice system works somewhat different and many more people are in the full tort system. Their frequencies tend to be higher than the frequencies in Michigan, for example.

SPEAKER COLLINS: Now, let me go to the Michigan statement. I said to you, "Do you have language?" You said, "Yes, we could put forth and I would point to Michigan." Now, myself, Colorado doesn't look too bad to me on the chart or even New York or Pennsylvania, but you want to go to the

extreme on the chart, which is Michigan. Then you said that Michigan has an even a better benefits package than New Jersey. Could you tell me why -- just on the package -- what makes Michigan's benefits package better than New Jersey?

MR. SNYDER: Michigan has unlimited--

SPEAKER COLLINS: Unlimited, correct, which we had, is that not correct?

PRESIDENT DiFRANCESCO: Unlimited what?

SPEAKER COLLINS: Unlimited PIP coverage, medical coverage, and so on.

Just right off the top of your head, is there any other benefit that Michigan has in its package that New Jersey doesn't have? Just right off the top of your head.

MR. SNYDER: They both have PIP coverage. New Jersey is the second highest in the country.

SPEAKER COLLINS: So Michigan is better than us because they are unlimited, and we are at a quarter of a million.

MR. SNYDER: Well, Michigan has a different combination of benefits and threshold in a state with different driving characteristics. So this is provided for your use, but I think we have to recognize, with these comparisons between the states, that the fundamental issue is what will a particular reform do within a context of the realities of New Jersey. Our testimony today is that repealing no-fault means that rates are going to go up 15 percent rather than down.

SPEAKER COLLINS: I understand that.

MR. SNYDER: We could suggest, as an alternative, and can price for you and provide you -- for that -- various options of what would a Michigan threshold do in New Jersey. What would benefits of a particular higher level or lower level result or cost in New Jersey. We will provide that as you asked for.

SPEAKER COLLINS: And I very much appreciate that. But here is where I was going, and if I may go there. You mention that Michigan has a better benefits package. I ask you why, and you say that they were unlimited. We were unlimited until just a couple of years ago. Now we are at \$250,000 where previous testifiers had said that it is-- There are 1000 people who are above \$75,000. We didn't even get a number of how many were above a quarter of a million.

So the difference between Michigan and New Jersey in the benefit package is this unlimited compared to our \$250,000, yet we are told continually -- and I heard what you said and I wish more people would hear what you say -- that Michigan is far different from us in so many other areas, the demographics, the driving, and so on.

My question is what I asked earlier. If the difference between the two is the benefit package and the difference is a quarter of a million as to unlimited and if we accept for fact that there is 1000 people in New Jersey who need \$75,000 -- I'll even go to that, not \$250,000 -- why couldn't we charge 5 million drivers \$10 a piece for \$50 million to pay for that unlimited advantage Michigan has and then have a savings reduction? Why is that not possible?

MR. SNYDER: Assemblyman, if I might.

SPEAKER COLLINS: Please.

MR. SNYDER: Pennsylvania, in fact, attempted a very similar thing. It is an interesting story with Pennsylvania. Again, I think what is most important is how a particular reform performs within the realities of New Jersey.

SPEAKER COLLINS: I'm willing to accept that.

MR. SNYDER: But since we are talking about other states, let's --

SPEAKER COLLINS: Absolutely.

MR. SNYDER: --talk about a close one. Pennsylvania, like New Jersey, originally had a very low monetary threshold and very high benefits. The trial lawyers and the insurers actually got together and repealed the no-fault law in 1984. You know what, the rates went up, they didn't go down. The costs went up; the rates went up. The problems in Pennsylvania were not dealt with.

Part of that reform was to create a Catastrophic Loss Trust Fund. Well, the initial assessment on motorists started off at \$8 and then climbed to \$10; then, the actuaries indicated it should be more than \$20 a year. You know what, the Legislature put it out of its misery, because even though there were a few number of cases, the average costs of those cases was multimillions of dollars.

So to determine whether a cap fund will work you need to know not only the numbers of claims, but the total amount paid out in those claims. It was surprising to the public policy makers in Pennsylvania. They thought they could do a cap fund, and what they found out was politically unacceptable.

SPEAKER COLLINS: We just had testimony, that was \$40 million in New Jersey. I'm willing to let it go to \$50 million. Where am I wrong? We have a number-- We have the statement of \$40 million, which we are going to get in a letter verifying it. I'm willing to go to \$50 million and charge every driver \$10, which I don't think a single person would complain about, as the protection of what we've heard of so many people concerned about -- that horrible catastrophe.

You said that it didn't work in Pennsylvania.

MR. SNYDER: I think there is some experience there that might be helpful because I sat through a similar discussion -- probably pretty close to 10 years ago or more -- and the same sorts of numbers, and politically it was a nonstarter. It got going and the Legislature just couldn't deal with the costs.

SPEAKER COLLINS: I would have to venture that the political aspect of it was only in response to the amounts of monies that were being spent or at least being told that were being spent by the medical industry and the insurance company. I mean, I don't know how it could be--

Politically, I would like to be the one to put the bill in to have \$10 to each driver to give them basically unlimited coverage beyond any reduction we have. Politically, I'm not a real good politician, but I would like to be on the front of that bill. (laughter)

I'm willing to accept that in Pennsylvania it didn't work, and we'll look into that. I don't want to go on with this.

MR. SNYDER: It would be useful in your consideration to trace the history of that.

SPEAKER COLLINS: Thank you, sir.

Mr. President, you wanted to ask something.

PRESIDENT DiFRANCESCO: I think Joe wanted to.

SENATOR KYRILLOS: Very quickly. Mr. Speaker, I wanted to ask you, your suggestion here, that's a benefits issue not a cost reduction issue -- the point you're trying to make on the \$10 per person.

SPEAKER COLLINS: Right, I'm willing to get that benefit above this quarter of a million when I hear that's what Michigan has, and I keep hearing that Michigan is the answer to all of this. For \$10 we'll be Michigan.

SENATOR KYRILLOS: In terms of having a more generous--

SPEAKER COLLINS: The benefits, right.

SENATOR KYRILLOS: --benefits.

SPEAKER COLLINS: On the other hand, Senator, as we start dropping down under-- I hear these great cuts in Michigan's rates.

SENATOR KYRILLOS: I just wanted to understand your basic point. I guess the basic point is that you don't think that the elimination of no-fault will result in a cost reduction for motorists, but an increase. You said 15 percent.

Furthermore, I guess you are advocating a Michigan style verbal threshold as a way to reduce litigation and reduce cost. Is that correct as well, or something close to that?

MR. SNYDER: You can calculate-- If that's offered in place of a current verbal or in addition to the current verbal, it's not a difficult thing to calculate the savings that could occur to people who would select that option.

SENATOR KYRILLOS: I would just further say that this kind of chart that you presented to us is, I think, unhelpful because it gives some

people the sense -- I think it gave maybe the Senate President the sense -- that we are doing a better job than many people would have thought with regard to weeding out lawsuits. We stand in the middle of this chart ahead of New York, Pennsylvania, the like, Connecticut, Georgia. The nation at large has many more lawsuits filed according to this chart.

All of those states before us on the chart that you have handed out are all tort fault states, is that correct? Or not no-fault states. So we are really looking at apples and oranges here. They don't have the same level of medical benefits, and they don't have the general benefits of no-fault, so they must -- by definition in order to recover their economic loss -- go to court, i.e., of course they would have many more suits.

MR. SNYDER: This was provided to demonstrate that the threshold option in New Jersey is performing a function of reducing litigation. Because of the wording in that threshold, it is not as effective as other threshold language which is available in other states. But it is reducing -- for those who pick the option, it is reducing litigation and cost and, in turn, the premiums, as testified by the actuary a few minutes ago.

In the case of one AIA company that I asked, the bodily injury liability premium is three-quarters less for the limited tort elector than for the full tort. In fact, the differences are there in terms of reduced costs, and they are being passed on in terms of reduced premiums.

SENATOR KYRILLOS: I hear what you're saying. I guess my point is that the difference between Connecticut and New Jersey, or Georgia and New Jersey, or the national average or New Jersey is even more dramatic than your chart would indicate because we have very different systems. By

nature of that we'd have fewer lawsuits, all things being equal. That's the trade-off with the no-fault system.

So my point and suggestion to you is, let's look at like systems when we compare them because the contrast is not as dramatic as it ought to be on this chart, I think, and will hinder our efforts to make some kind of a change, the kind of which you would advocate down the line, I think.

PRESIDENT DiFRANCESCO: Let me ask you this then. If-- Senator Kyrillos is raising the question as to how New Jersey compares with other no-fault states, I believe. Now, there are other no-fault states other than Colorado, Michigan and Pennsylvania and New York. Is that correct?

MR. SNYDER: Yes, there are.

PRESIDENT DiFRANCESCO: How many are there?

MR. SNYDER: There are about a dozen no-fault states: some have monetary thresholds, some have other types of verbal thresholds, some, like Pennsylvania, have a choice system.

PRESIDENT DiFRANCESCO: I know that the thrust of the testimony here today, I guess, is on the no-fault system. If we could focus back on the threshold a little bit.

If we wanted to reduce premiums, what would your recommendation be?

MR. RAPP: One way would be to tighten the verbal threshold so that fewer claims are considered--

PRESIDENT DiFRANCESCO: So that there is less litigation.

MR. RAPP: Right.

PRESIDENT DiFRANCESCO: Or few claims, I should say.

MR. RAPP: Or fewer claims for litigation, yes. That would be one option. There are a lot of other--

PRESIDENT DiFRANCESCO: How about-- That's with respect to the bodily injury pain and suffering portion of the premium. How about with respect to the other parts of the premium?

MR. SNYDER: We, again, looking at--

PRESIDENT DiFRANCESCO: Maybe I shouldn't ask you.

SENATOR ADLER: Can they use their mikes? (referring to PA mikes) I can't hear them.

PRESIDENT DiFRANCESCO: Is your button on?

SPEAKER COLLINS: It should be red.

PRESIDENT DiFRANCESCO: Is it red?

MR. SNYDER: Now it is, yes.

SENATOR ADLER: Thanks.

MR. SNYDER: Yes, there are some things that you can look at to reduce the cost in other coverages. In personal injury protection, some, perhaps, objective review of medical bills can be useful. That can be calculated -- the value of that -- with some precision. Pennsylvania -- in addition to its choice system that they put in place in 1990, that has apparently stabilized things significantly in that state. The other major reform that Pennsylvania put in place was a peer review in Medicare-based fee schedule. Colorado allows optional managed care. There are variations, perhaps, of one kind or another of these kinds of things that would be helpful in managing PIP costs while not reducing the PIP benefits. Of course, the other thing that came up

this morning-- And there are some other reforms which we would be pleased to provide at more length and can testify to later.

Obviously, one of the things that was talked about this morning was reducing the PIP benefits. That's obviously a public policy question of the highest order for you. I did want to make one comment, however. In listening to the testimony earlier, even though one would walk away thinking that even though the statute provides for \$250,000 in benefits, in fact, nobody is really getting those benefits -- or few people.

In fact, insurers paid out more than -- nearly \$523 million a year in PIP benefits. That's a lot of benefits that some people would give you the impression aren't getting paid. So the reality is that PIP is paying a significant amount of benefits to New Jersey citizens, and if they're not being paid through PIP, they'll likely either have to be paid through bodily injury liability, in which case there would be additional transaction costs added on to get them, or some or all of those costs would be shifted to health insurance, and, in turn, to employers in New Jersey.

So it's important to have all the information. You heard some complaints about PIP, the way it operates. You heard-- One might have the impression that, in fact, the PIP coverage, even though that it's on the statute, is a null. The reality is it's very real, real to the tune of about \$523 million in terms of payments to injured victims.

I would also add the comment about 16,000 claims, or whatever, for economic costs -- I'd like to know how many of those really result in judgment against the insurance companies. I mean, you can file lawsuits and claims all the time, but is there really a significant problem with payment of

PIP claims? I don't think that's been demonstrated by anything we've seen today, but going to the larger issue, the reality is that PIP is paying significant benefits to New Jerseyans.

PRESIDENT DiFRANCESCO: I'm sure that's the case now. Based upon what you said before with respect to eliminating no-fault, meaning we eliminate the threshold, probably our rates -- I assume you meant the overall rate -- would go up 15 percent, not just the--

MR. RAPP: That's the overall rate.

PRESIDENT DiFRANCESCO: --bodily injury portion of it? How about if we adopted the Michigan threshold? Would our overall rate -- in your opinion, I mean, I know you can only -- would they go down?

MR. RAPP: I believe they would, yes.

PRESIDENT DiFRANCESCO: By 10 percent or 15 percent?

MR. RAPP: No, not that much. I have done some preliminary costing of that, and the estimate that I've come up with is about 4 percent.

PRESIDENT DiFRANCESCO: Well, what's the average premium. What would be the average premium?

SENATOR CARDINALE: A thousand dollars.

PRESIDENT DiFRANCESCO: A thousand dollars.

SENATOR KYRILLOS: The average premium, meaning what?

PRESIDENT DiFRANCESCO: Well, I'm wondering if, you know-- What are we taking a percentage of? I mean, is it 15 percent of what? If the average premium is \$1000, that answers the question.

MR. RAPP: For our full package, that's probably correct.

SENATOR KYRILLOS: Mr. Chairman.

You know, we see all these advertisements in our weekly newspapers and television commercials and the like from the industry. And I have a bill in that is somewhat sympathetic with some of the ideas that you are putting forth here, but, you know, you need to give us some advice on how we can reduce rates in this State by 20 percent or so -- something like that -- 15 percent, 25 percent.

Now, you've made one suggestion here, and you're telling us that in order to go to this Michigan threshold, which a lot of people will tell us it's not good and not healthy for the consumer and the society, that it's only going to result in a 4 percent decrease. Is that what you're really saying, Elmer?

MR. MATTHEWS: I think we're prepared--

SENATOR KYRILLOS: And if that's the case, what else are we going to do?

MR. MATTHEWS: Senator, our presentation this morning was framed in the context of the abolition of no-fault, to go to the tort system. We would be prepared to give you a lot of testimony how we could take costs out of this system, but unfortunately, that was our mission this morning and that's all that we presented. We'd be very happy to do that.

PRESIDENT DiFRANCESCO: Okay. We understand that. I guess we will get to that. I understand where Joe is driving at, too, and you obviously do, too.

The other thing, following up on that, though, is it because Michigan is not New Jersey? I mean, is it because it's just tougher in New Jersey to--

MR. MATTHEWS: You have all the New Jersey demographics working against you in the beginning.

PRESIDENT DiFRANCESCO: Is that why--

MR. MATTHEWS: It's very difficult to put one in the same tube with the other. There are problems that drive New Jersey rates, and, you know--

PRESIDENT DiFRANCESCO: I mean, our rates are not going to be Michigan's rates if we adopt Michigan's plan, are they?

MR. MATTHEWS: But they would be lower because of the fact that it would drive costs down. But only the Michigan threshold is not the sine qua non. There are other things that have to be done, and those are the things that we have offered in the past and we'd be willing to raise with you again and price them.

PRESIDENT DiFRANCESCO: To have those kind of savings -- or to have Michigan's rates, we'd have to go beyond changing, just going to adopting their threshold-- Because they actually have unlimited PIP, too. We've limited that in past years because we were trying to save money, again.

So we'd have to go further than that is what you're saying, and understandably so.

MR. MATTHEWS: I think that Gerry indicated to you that he has done preliminary work on the pricing of the Michigan threshold.

PRESIDENT DiFRANCESCO: Right.

MR. MATTHEWS: We'd be glad to make that available to you.

PRESIDENT DiFRANCESCO: Yes, anything.

MR. MATTHEWS: All of these things, we've hired the independent actuary to structure these things.

PRESIDENT DiFRANCESCO: Senator Adler, do you want to make a comment?

SENATOR ADLER: Yes, I want to follow up on what Mr. Matthews said a moment ago. I think the framework of our agenda has been to talk about one big piece of the puzzle each session.

PRESIDENT DiFRANCESCO: Right.

SENATOR ADLER: We talk about no-fault today. I don't want, at the end of this, for folks like Mr. Matthews or Mr. Berger or anybody who has testified -- Mr. Bliss -- to feel that we didn't entertain all the suggestions. Maybe we could ask them to send in all their suggestions rather than, after the fact, complaining that we didn't listen to all their ideas for cost savings.

PRESIDENT DiFRANCESCO: We didn't ask the right questions or anything like that.

SENATOR ADLER: Right. I don't think it's necessarily our job to ask specific questions to-- If you would give us a list and give us an estimate with actuarial backup of what this step would do to save us -- to save our consumers money in New Jersey for each of the proposals, you would make-- I'm going to ask Mr. Berger to do the same thing, Mr. Bliss, and everybody else who has knowledge of the system and ways to save our drivers in New Jersey money.

MR. MATTHEWS: That we would be willing to do.

SENATOR ADLER: And understand, we're talking about no-fault, because conceptually it's a lot easier to talk about one big piece of it, and

then next week talk about PIP and medical as one big piece of it, but I don't want, at the end of this, for you to think we didn't listen to what your ideas are.

MR. MATTHEWS: Usually I'm able to advance those.

SENATOR ADLER: Put it down in writing.

MR. MATTHEWS: Usually I'm able to advance those, Senator, what our ideas are.

SENATOR ADLER: You're not a shy fellow, no.

PRESIDENT DiFRANCESCO: We know that you're very verbose.

MR. MATTHEWS: The reason I broke in is, we came here this morning just to talk about this.

SENATOR ADLER: And we understand that, but numbers would help. Percentages and estimates and actuarial backup would help a whole lot, so that when we start to cogitate and deliberate, we've got everything that you want to tell us before we put a bill--

MR. MATTHEWS: These Committee meetings are framed on specific subject matter, and it's difficult to overreach.

SENATOR ADLER: But don't be constrained and not give us information. Give us written information. I think we all want to learn and do the right thing here.

MR. SNYDER: We will provide a list of reforms, and they can be individually costed, and we can provide a package that will certainly reach the 10 percent to 15 percent overall rate reduction range without reducing the personal injury protection benefits that a lot of injured victims need.

PRESIDENT DiFRANCESCO: Okay.

Senator Cardinale.

SENATOR CARDINALE: Thank you very much, Mr. President.

In the same vein, I realize that this was your charge for today, but have you done any work with respect to first-party coverage for bodily injury? Have you studied that at all?

MR. RAPP: I'm not sure I know what you're referring to. First-party?

SENATOR CARDINALE: Taking first-party recoveries and instead of having them be a third party -- I'm sorry -- bodily injury coverage, instead of being third party, making it into first-party coverage -- Governor's Option No. 2.

MR. RAPP: Do you mean making the pain and suffering a first-party coverage?

SENATOR CARDINALE: Yes.

MR. RAPP: I have done some limited work on that. I haven't done -- I haven't seen any real-- I'm not aware of any state that has actually implemented anything on that.

SENATOR CARDINALE: No, I don't believe there is one that has it. We would be--

MR. RAPP: I know it's been kicked around in different jurisdictions, and there has been, I think, very limited amount of attention given to that type of proposal. It's something that--

In other words, I think what you're leading up to is perhaps having a set schedule of pain and suffering amounts depending upon the nature of the

injury. It's kind of a set fee or set benefit level, depending on the injury. Those types of-- There is data available that the pricing of that could be done if there was, certainly, interest in trying to do that rather than leaving it wide open to-- Everybody would then know up front what you would expect in the way of payout. Right now, as I mentioned earlier in my testimony, based on the New Jersey data now, there are \$2 of noneconomic loss paid for every dollar of economic loss in the system. And that certainly varies depending on the type of injury involved.

That would be something that I think you would have to sit down and ask yourself, "Okay, how would you quantify," or, "how would you decide what would be an appropriate pain and suffering amount?"

I haven't seen any formal proposals on that in any of the work I've done.

SENATOR CARDINALE: There is a proposal, and I'd be interested in using that as a framework, that involves determining that schedule by virtue of a closed-claim study on what's actually occurring in New Jersey today and writing the schedule that way instead of some artificial fashion and, then, making a-- There are two proposals. One is to make that an optional coverage, and the other is to make that the full coverage for everyone in the State.

I think there are some advantages in both directions, but when you come back to us, I would appreciate your including that among the other things you might have with you.

MR. RAPP: Do you have-- I haven't seen the proposal.

SENATOR CARDINALE: We can -- Dale can give you copies of both proposals.

MR. RAPP: If it is something you can provide to me, I'd certainly be interested in looking at them.

SENATOR CARDINALE: Dale can give you copies of both of them.

MR. MATTHEWS: I think we'd also have to know whether you are going to pay this from first dollar -- or there is going to be a limitation on it.

SENATOR CARDINALE: Those are variations that could be discussed.

MR. MATTHEWS: It's difficult to price something in a vacuum when you don't know exactly what you are going to do. Because if you price it from first dollar, it would be a lot more expensive than if you put a floor on it or something like that. So that's why it's difficult to price.

SPEAKER COLLINS: That's something that we surely don't mind you suggesting, based on your expertise, and so on.

Let me just say to all, surely we do want as much information as you can give.

And to members of the Committee, as we were reaching out to the various entities and responding to requests that we get, that no one is precluded from coming back before us on other issues. And at the end of the day, we will announce the remaining dates that we will be meeting and what the topics will be, and that may even be expanded, but today the particulars were no-fault.

Mandatory is something I'm going to bring up before you gentlemen move back off the table, if I may.

But just so all would understand that the efforts of the panelists today was in a particular area.

We're just asking, with your expertise, to give us some guidance today that we'll delve into further at other times, and we very much appreciate it.

MR. MATTHEWS: We'd love to see, also, the submission that shows the reduction as the result of the abolition of no-fault. I understand that's going to be submitted to the Committee. I'd like to have that made available to us, so we could comment to you on it.

SPEAKER COLLINS: Well, we'll-- By the time we're finished with this, we will have utilized all the information, give everyone an opportunity to deal with all of this. The purpose of this group -- and not to go on with that special committee kind of thing that has gotten more play than maybe it deserves, but it is a unique committee -- and our goal is to be able to take from experts, as well as the general public, their feelings and tie all this together, and we are going to do something. There is no question.

So everyone will get an opportunity to make comments.

MR. MATTHEWS: I will say, in my experience, I've never seen a committee where the presiding officers of both Houses have served as co-chairman on an issue like this. It's like the story of the 800--

PRESIDENT DiFRANCESCO: I tried to tell him that, Elmer.

SPEAKER COLLINS: We've been told that many times.

MR. MATTHEWS: --800-pound gorilla: Where does he sit?
Wherever he wants. (laughter)

SPEAKER COLLINS: Do you notice, though, that we kind of keep exchanging, so both of us aren't here at the same time, just in case.

Assemblyman Charles.

ASSEMBLYMAN CHARLES: Yes. I think you testified that if we went to -- if we eliminated the no-fault system that we would see an increase in premiums. What would cause that? Let me make some statements before you answer that.

It seems that if you eliminated the thresholds, you might end up reducing the costs of medical payments. You might also end up with claims paid being paid at a lesser amount. So with those things in mind, identify for me where the costs would increase if we went to a no-fault system.

MR. RAPP: The costs would be increased because there are first-priority dollars being paid today for medical, wage loss, what have you, that are for--

ASSEMBLYMAN CHARLES: Can I-- I'm sorry for interrupting you there, but we're talking about the total insurance premium that we now pay--

MR. RAPP: Right.

ASSEMBLYMAN CHARLES: --which includes PIP, comprehensive, all of that. So when I talk about a premium, I'm talking about the premium that the consumer pays consisting of all the elements of that insurance policy. So when we say rate increase, I'm thinking rate increase,

meaning what I pay to an insurance company, not for the different components of it.

MR. RAPP: In simple terms, you're going to pay the economic losses one way or the other. He's injured, he has a medical loss or wage loss, loss of services, whatever, pay it on a first-priority basis, pay it on a third-party basis. That dollar amount is going to get paid one way or the other. The difference and the reason -- the main driver for the increase is today you have a limited tort threshold, and under the limited tort, the person who collects those economic loss dollars is not entitled to recover pain and suffering losses on those dollars.

Now, if you change the system and remove that threshold and say, in addition to paying the same dollars I was going to get one way or the other, I'm also going to tack on another \$2 for every dollar of economic loss you pay, you're going to get a higher rate.

ASSEMBLYMAN CHARLES: Well, we heard testimony that said that currently, because of the thresholds, that we're finding that the medical payment aspect of a claim -- the PIP claim, the medical bills -- is as high as, in some cases, or greater than the amount of money paid on that claim. So if you-- And, in his testimony-- Or some contention that these medical bills are bills that are incurred to meet the thresholds, meaning that if there were no thresholds, then, rather than having, for example, a \$5000 bill, you might only have a \$1000 bill. You might not have all of these diagnostics -- the MIRs, the thermograms, the other kinds of tests that are involved. So you would be saving on that aspect of a claim, and the result would be no real increase in the

actual amount of claim -- money that's paid on the noneconomic portion. I mean, that's been the testimony so far.

So when you say that there are going to be more claims, I don't think you addressed the testimony of some people that you are going to see decreases in the amount of "PIP" that's being paid by an insurance company without the corresponding increase in the amount of money that's being paid on the claim.

Address that gap for me, would you please.

MR. RAPP: There has not also been, in that testimony, anything said about paying the claim on a first-party basis versus paying the claim on a third-party basis, where it is in a definite litigation mode.

ASSEMBLYMAN CHARLES: Well, let me just tell you what my thinking is, as I've been listening to the testimony. It just seems to me that if you went to a no threshold situation, eliminated no-fault, then where the increases might clearly come is where you are talking about the number of claims that are submitted because there is no threshold to pierce. So, instead of getting *X* number of claims submitted to the insurance company because of no thresholds, as you indicated in one of your graphs, we see -- that you pointed to--

MR. RAPP: Yes.

ASSEMBLYMAN CHARLES: This is a graph of bodily injury paid claim frequency, meaning the frequency of the claims that are actually paid. That's what this means, right?

MR. RAPP: Right.

ASSEMBLYMAN CHARLES: Now, obviously, you would expect a lower number of claims paid -- a lower frequency -- if you're talking about barriers to making a claim.

MR. RAPP: That is correct.

ASSEMBLYMAN CHARLES: Correct. So now we're talking about eliminating barriers to claims. Everybody can make a claim. So you are going to have more claims coming in, but the testimony is that when those claims come in, they are being resolved for a much, much smaller amount of money. And there has been testimony, I think, by some people here either today or before, that that may even -- in terms of the total amounts of moneys paid out in claims, that would be less under a no threshold situation than under a situation when you have thresholds, where you get MIRs and everything else which results in larger claims.

MR. SNYDER: Let's assume that that was valid for the time being. I'd like to look behind that, but let's assume the basic factual assumption that you're asking us questions based upon, for the time being.

There are two reactions to that. The one approach is, "Well, let's go back and let's allow more litigation. Let's eliminate--" As I think you laid out the two different approaches, the one approach would be, "Well, let's eliminate what restrictions there are to the ability to sue. Let's just open the system totally to that sort of thing." Well, the incentives will be there to go in and get the extra treatment, because the recognition is that for every dollar that you can get in increased medical costs, that will translate into \$2 more in terms of the litigation recovery.

ASSEMBLYMAN CHARLES: May I interrupt you there? Just on that point. I don't mean to interrupt you.

I don't think-- I disagree with you on that, because as a matter of experience -- I think the Senator was talking about looking at claims now and develop that first-party payment schedule -- you'll probably find that in terms of settling a case, the amount of medical expenses that it required to get, let's say, a \$5000 settlement years ago is much, much greater now than it was then, because of these thresholds that you have.

As an example, once upon a time, I know from practice, that with a \$10,000 bill, you know, you could expect a settlement on noneconomic losses of something greater than that. That's not the case now, under the law that we have. You can have medical bills that exceed the amount of the recovery that you actually get on the noneconomic side. That's a matter of practice, a matter of reality.

So when you are saying that you are going to treat up, a greater treatment to increase the value of the claim, that is not necessarily what is going to happen, because the insurance companies have control over that in terms of how much they are going to settle cases.

MR. SNYDER: Well, again, based upon the best reactions we can give, we think that it will have the negative effect.

The other response to that is to tighten the threshold. So you make it basically ineffective to try and go out and spend the additional dollars to get additional diagnostic tests, to get over the threshold, to stay off work, to justify staying off work that first 90 of 180 days, which is one of the major weaknesses of the current threshold.

So the other approach might be to tighten the threshold so as to make that expenditure not be productive in terms of the ability to get the case over the threshold more. And that, we suggest, would be a better response than to allow even more litigation with the built-in incentives to inflate the medical bills in order to obtain the greater recovery.

ASSEMBLYMAN CHARLES: That enhanced threshold -- we're talking about the Michigan verbal -- something greater--

MR. SNYDER: It could be that.

ASSEMBLYMAN CHARLES: You're speaking of something greater than that, if you're talking about real rate decrease, because I heard testimony from this table just a little while ago that you only show a 4 percent decrease on the BI if we go to this--

MR. RAPP: No, no. It's 4 percent, overall.

ASSEMBLYMAN CHARLES: Overall. Overall on the -- if we go to a Michigan. So that's 4 percent. We're looking at 10 percent or more, so that doesn't meet our goal.

MR. SNYDER: In combination with other modest reforms that maintain the benefit level, we can easily get to the 10 percent level.

MR. RAPP: I don't think you can do it with just one reform. I think it's going to take a combination of different things.

ASSEMBLYMAN CHARLES: But that 4 percent, that assumes there is going to be some-- There is not going to be any reduction in medical bills paid as a result of changing the threshold. Is that right?

MR. SNYDER: Right. That would leave the PIP with the \$250,000 limit--

ASSEMBLYMAN CHARLES: Okay.

MR. SNYDER: --and maintain that payment of \$523 million through the PIP mechanism.

ASSEMBLYMAN CHARLES: All right.

SPEAKER COLLINS: Let me just ask, not to go full-fledged into it -- but a quick reaction, and we may well be dealing with this at a later hearing. What's your reaction to getting rid of, in New Jersey -- that's all we're worried about -- mandatory coverage, just make it voluntary. Whoever wants to be insured, be insured. Any feelings on that?

MR. SNYDER: Let me respond. Is the mike on? Okay.
(referring to PA mike)

Let me respond that in one sense, to go with a totally free market approach like that would be very attractive to insurers, because we recognize that a series of conceptual dominoes begin to fall the minute that automobile insurance is mandated. And that tends to be the justification for price regulation, which exists for automobile insurance and for practically no other product that we buy in society at this point, as far as food, anything. So that falls.

On the other hand, I think the public has decided that driving a motor vehicle carries with it -- and through their elected representatives have decided in most states -- that, yes, we are going to mandate some kind of insurance, because when cars come together, people are often seriously injured. We need to pay for that somehow, and it's best to try to have those costs, to the extent possible, isolated within the driving system rather than spilled over into employer costs and other things that could affect competitiveness.

Now then, the question is, if you are going to mandate insurance, what gives the public the best benefit and what combination of benefits and the ability to sue gives a combination of the level of prices and the benefits that people want to have? States have made various determinations.

In New Jersey the tradition has been, we want very generous benefits for injured accident victims, and so consequently, we consistently had some of the highest in the country, and still to this day have the second highest, and it is, in fact, performing in terms of paying, again, more than \$500 million a year, out, that way.

New Jersey opted to have the choice, which was sort of unique at the time, allowing, in essence, two systems to compete, to see how the market would determine-- And in reality, the market has reduced the cost to reflect the true cost of each system, has reduced the cost in the limited tort system to the point where the affected coverages -- those costs are three-quarters -- a half in some cases, in other cases three-quarters lower than the cost of the full tort system.

So in New Jersey there have been a series of public policy arguments. Number one, we are going to mandate coverage because we want the costs to be covered by other drivers. Number two, we want a system that provides very generous benefits for injured accident victims. Number three, we want to give consumers a choice, give them options to reduce their costs, and number four, one of those options is the ability of people on their own to decide, entirely voluntarily, that they would like to pay a lower premium, which, in fact, they are paying, and reduce their exposure and their ability to file litigation.

But a final public policy argument was, we're not going to eliminate it totally. Even for those who choose the restricted option, we're still going to permit it in some cases, because we recognize seriously injured people probably ought to be able to recover for pain and suffering.

So when you put all those public policy arguments together, unless you change any of the underlying policies, what we can do is offer to you ways to modify the current system to reduce costs, but at the same time, preserve the fundamental public policies that the State has set for itself, namely, generous benefits, choices for consumers in the kind of coverage that they have, and the ability to achieve real savings -- and the savings are occurring for people who decide, totally on their own and voluntarily, that they want to restrict their ability to sue and be sued.

SPEAKER COLLINS: I appreciate the historical perspective of where we are, and I think you are quite accurate. Why this Committee has been formed, and with no denigration at all to prior committees, is that with all those public policy statements that you said that New Jersey has decided upon, there is one thing that I think there is almost unanimity in with regard to New Jersey as we live here today, that we want to make some kind of change in the automobile insurance laws of this State.

Now, we can have people argue what they should be, but the public policy position, I think, as we finish this process is going to be: this is where we are in 1998, and that's why the elimination of mandatory has been suggested in the past year, if not before that, and that's where we really are.

I'll go along with everything you said, but obviously -- obviously -- the citizens of this State, and I'm not just talking about what we have just been

told happened in the last election-- I've been here 12 years, and I know what it's like to walk through my District for 12 years and have people ask me, "When are you going to do something about auto insurance?"

So the public policy is what it is, but obviously, people want some change. The question is, how do we change it? And I very much understand what you just said and accept that.

Assemblyman.

ASSEMBLYMAN CHARLES: I would like the witness to, again, address, in a different way, the Speaker's question to you in terms of what would be your view of the elimination of mandatory insurance in the State of New Jersey. Just from your vantage point, doing actuarial work and understanding the insurance industry, what do you think would happen to those different interests that you talked about if mandatory insurance were eliminated? Would we-- Do you think that costs, somehow or other, in other parts of the system -- whether it's charity care or whatever -- get adversely affected? Are there any other kinds of bad things that are going to happen, you know, monetary or other kind of level, if mandatory insurance were eliminated?

MR. SNYDER: Yes, frankly, they would. There would be, undoubtedly, an increase in charity care on the part of health care providers. There would, undoubtedly, be a massive shifting of costs to New Jersey employers through the health insurance benefit plans that are maintained.

The costs, certainly for those who don't carry the coverage, would go down to zero, so they get a big cost reduction. The other people, the responsible people, might feel that they've ended up with a system where

they're still paying a fair amount and they're getting even less than they are today. And I guess that's our greatest concern, that we work together to make reforms that will bring down costs but still give people good value for that, and that's fundamentally why we put these numbers in front of you. It's our belief that to repeal no-fault, at this point, which you may want to do, will not result in significant savings, will have exactly the opposite effect, and at the same time, people will actually have a system that is less beneficial for injured victims.

SPEAKER COLLINS: Let me just ask you one final question, and then we'll go to another testifier.

Do you have any statistics up here -- and I know you can get them for me officially, but just until we meet again, this could be on my mind. There are roughly, let's say, 50 people in this room. Let's just double it and say there are 100 people here -- New Jersey citizens. How many of those 100 citizens in New Jersey would you venture to say, across the whole state, not just this 100, have never been in an automobile accident? My question really being, how many New Jerseyans are in automobile accidents? I know it's difficult to not consider repeat. But I'm just talking-- There are 100 people in this room. How many of them have never been in an auto accident, would you think, just roughly, with any experience? I won't hold you to it.

MR. MATTHEWS: You know, that's a demographic that's almost impossible to predict, because you would have to attribute some sort of definitive desire to be in an accident to start to set a statistical goal like that. Most accidents are just what they're described to be, accidents.

SPEAKER COLLINS: Accidents, right.

MR. MATTHEWS: A split second lack of attention.

SPEAKER COLLINS: Well, had to utilize the system -- get their cars fixed, get their bodies fixed, get to sue -- how many?

Well, I've even thought of a better way. You don't have to answer.

Just in general, how many people in this room have utilized the insurance system over their lifetime? If they would just put their hands up. (members of audience comply)

Boy, this is a bad room here, I'll tell you. (laughter) Please identify yourselves with special stickers. Well, if that's it, okay.

The reason for that is, one of my little premises, as we're going through this, going back to the historical perspective-- I won't deny -- no one else does -- and I think we're even better than Michigan because of "our rights to sue," and so on -- this is the best there is in America, but the problem is people aren't excited that it's the best there is, because they want to pay less. And my premise has been, it seems those that never utilize the system feel, "Hey, I'm paying all this money. I never get anything back." Obviously, that's not this room, because we've all been part of it.

Well, that's something that I plan to pursue in the upcoming weeks.

Yes, sir.

MR. SNYDER: And let me just say that we feel the response-- I mean, obviously, we feel the same kinds of things that you do. Your constituents are our customers, our policyholders. We understand they want to pay less. We have, in the past, and we will continue to bring to you reforms which will reduce costs and will give you our best estimates as to what those

cost savings will be, but we understand that, and we're willing to come forward, have and will come forward, during the course of your deliberations with reforms which will provide significant savings and at the same time not have the trade-off of dramatically reducing the benefits.

SPEAKER COLLINS: Thank you very much. It's been my experience personally, but also watching as the Speaker and as the Majority Leader, you've always been responsive to our committees, and so on, and we thank you. We look forward to hearing from you again.

Senator Adler.

SENATOR ADLER: Over the last two minutes I've been looking at information -- statistical information -- that we received in our previous hearings from Walter Bliss. And some of his statistical information differs from the Exhibit No. 1 on Mr. Rapp's testimony.

His numbers were -- loses for BI, for PIP, and for property damage differ markedly, and I'm not in a position to figure out who is right and who is wrong. I think it would be fruitful, Elmer, for you and your group to look at Walter's numbers, figure out who is right and who is wrong -- and if Walter were here, I would ask him to do the same thing. I heard Senator Kyrillos earlier say, "We're comparing apples to oranges." He said that in our last hearing. We're trying to understand a complex system.

MR. RAPP: We very well may have different sources of data. I've estimated my numbers using the New Jersey fast-track data.

SENATOR ADLER: Walter's stuff is from '95.

MR. MATTHEWS: We've been using current fast-track data.

MR. RAPP: It's maybe data from a different time period, too, as well.

SENATOR ADLER: Maybe you could analyze '95 data and just have us compare, in terms of moneys out in the system, apples to apples, so we know where moneys are going. We're trying to find out where to cut costs to make the system work for consumers rather than everybody else -- consumers first. We know who is getting money, so we know where money might be cut back.

MR. MATTHEWS: The complaint has always been that we're not using current information so that's why we used current fast-track data, just bring it right up to date.

SENATOR ADLER: Well, maybe make Walter do the fast-track data or you do the '95 data, but--

MR. MATTHEWS: We'll both do it.

SENATOR ADLER: I don't want to be--

MR. MATTHEWS: I have a lot of respect for Walter.

SENATOR ADLER: I don't want this to end up where we're not talking the same vocabulary, and therefore, we don't have a basis for making a reasonably intelligent decision.

MR. MATTHEWS: And you're entitled to that.

SPEAKER COLLINS: Thank you. We appreciate it.

MR. RAPP: Thank you.

MR. SNYDER: Thank you.

MR. MATTHEWS: Thank you.

PRESIDENT DiFRANCESCO: Thanks, gentlemen.

Jack, I was telling them how I gave you this room as a compromise. You know, you twisted my arm -- not you, necessarily, but Don Sico. It's his fault.

Steve, are you going to come forward now? You've been waiting patiently. Steve Carrellas. Your testimony is in our envelope -- State Chapter, Coordinator, International Motorists Association, from Berkeley Heights, which just happens to be in my District -- my constituent.

Are you happy now, by the way? Are you happy? You're not happy yet, right?

STEPHEN G. CARRELLAS, P.E.: Oh, you mean-- I was going to say, this is like the second longest issue I've been working on since I've been Chapter Coordinator.

PRESIDENT DiFRANCESCO: Tell the Speaker what the first was.

MR. CARRELLAS: I think he knows.

PRESIDENT DiFRANCESCO: He does know.

MR. CARRELLAS: The speed limit issue.

PRESIDENT DiFRANCESCO: You mean you called him, too, besides me?

MR. CARRELLAS: I saw him when he came up to our District to a fund-raiser.

PRESIDENT DiFRANCESCO: Did he change heart?

MR. CARRELLAS: Back in September.

PRESIDENT DiFRANCESCO: The 65-mile-an-hour speed limit, and it's actually going to go through Berkeley Heights. We made sure. We are going to put one of those 65-miles-an-hour signs in right near your house.

MR. CARRELLAS: I appreciate that.

SPEAKER COLLINS: What I like about that, Steve, is now I can come up even more quickly. (laughter)

MR. CARRELLAS: Thank you for that recognition, and thank you for the invitation to talk about this. Like I said, this is-- While waiting all that time to do something about the speed limit, auto insurance has been an impact issue to our members and to motorists at large, so it seems quite the right thing to be getting into.

I have a lot of perspectives, but I intend to be brief here today. Just one comment about what I'm seeing, talking about sitting there. I do like the questions that are being asked. This subject is complex, but it needs to be thought through, and I think you can come up with some good answers.

PRESIDENT DiFRANCESCO: Steve, I think they feel they can't hear you.

MR. CARRELLAS: Am I coming over the loud speakers system?

PRESIDENT DiFRANCESCO: I can hear you, but--

SPEAKER COLLINS: Now you are.

MR. CARRELLAS: I always get confused. It's the red light on.
(referring to PA mike)

PRESIDENT DiFRANCESCO: We try to keep it confusing. The red light has to be on.

MR. CARRELLAS: Oh, it is on now, but it always seems, like, stop talking, versus green for--

PRESIDENT DiFRANCESCO: No, Speaker Collins will tell you when to stop.

SPEAKER COLLINS: And let me suggest that you go forward now. (laughter)

MR. CARRELLAS: I will.

I'm going to talk about the issue of today, the elimination of no-fault and the mandatory insurance issue in the context of auto insurance structural reforms. The other thing I want to pick up on, when I close, is the fairness issue -- a takeoff on the use of fairness as it has been discussed today.

Now, when I testified at that joint meeting in the Senate Commerce Committee and the Assembly Insurance Committee last May, I made the following three-sentence statement, which is pretty to the point: "I've come to the clear conclusion that the only possible reform that can work is to repeal both no-fault and mandatory liability insurance." And my reasoning was, "By removing the PIP mandate and leaving it up to motorists to determine how much liability insurance is needed to protect their assets or to insure their financial responsibility, the system will provide the most choice and the lowest cost. And if the motorists need or want today's mandated coverages or other benefits, they become free to purchase them."

Now, since that time, our organization has given this issue further reflection and has determined that the key to auto insurance reform is to make auto insurance nonmandatory but either to pick a no-fault system or a tort system, but not both, as the case is right here in New Jersey.

And just so there is much clarity around that in terms of the options, it could be difficult to have all aspects of auto insurance be no-fault, but certainly the way we're trying to deal with it, making, for example, medical, which is the bigger part of the discussion, all no-fault and the property damage tort like it is today, would be an example.

Now, earlier our primary reason for calling for the repeal of the no-fault system was that such systems, by definition, it seemed, were mandatory so that the only way to have nonmandatory insurance was to repeal no-fault. Now, I will admit, we were locked into that historical way of thinking, it seems, until we realized that the nature of the no-fault system is to provide benefits to the person buying the insurance. Now, in other words, if you want to receive benefits to pay for any harm to your person or property in a totally no-fault system, then you buy such coverage. And if you have other means for that protection or they can be made available, you don't need that kind of coverage.

Now, I think it boils down to this. From a philosophical view, we must decide if we want to trade off the accountability that goes with personal responsibility, which I associate with the tort system, with a no-fault system that perhaps returns more benefits quicker. And, then, the ultimate question, I guess, what system at what price is it worth it to us?

I think, maybe, that sums up what Speaker Collins was saying moments before.

In the end, my belief is that no-fault will be repealed. The national trend is in that direction. If you're following, from my viewpoint, the politics around this, I think it will just be difficult to put a true no-fault system in

place. And frankly, we all know that a hybrid system -- no-fault and tort -- is expensive. I think we all know that. And to reference one of the plans that is on the table, the Governor's Consumers Choice Plan, as it's called, we think that's confusing, and at some point, I'd like someone to explain to me what happens when someone who has a policy where they can't be sued is hit by someone who has a policy where they can sue. And I ask the question, is that fair to all parties buying coverage? Not today, but if we ever do something like that, I'd like a good answer to that question.

In sum, on the basics of no-fault, mandatory insurance, the bottom line to us is that the key to auto insurance reform is to make auto insurance nonmandatory and let the market create the products that can meet the vast variety of needs, of benefits and costs, that people are looking for, you know, given everything else they have to deal with in New Jersey.

Now, there is a tie-in, of course, to doing such a thing with auto insurance fraud. You know, like I told the Committee back in May, today's insurance system begs fraud with its generous payouts. I mean, that's a disbenefit of having generous payouts. Our belief is a reformed nonmandatory system would greatly reduce the incentive to the average person to cheat, because it's in the average person's hands, not just the bad apples that we referred to before.

Part of that incentive would be the sense of fairness the average person would see from a nonmandatory system, with substantially lower rates and a better value. And maybe we need that emphasis on the better value. And from the insurance point of view, we think they would do everything that

makes economic sense to protect their bottom line, because the competition for insurance would dictate appropriate actions in that kind of market.

Let me just end talking about the fairness and the benefit of fairness. We heard it in the context of the parties speaking earlier, but I think it gets more basic than that, and I hope you will consider the following as you do your total deliberations.

Even if we get 10 percent reductions, 15 percent reductions, we are going to have a high cost of insurance for a lot of the factors that got reiterated today, but there is another aspect. We have, those of us who buy insurance, we have assets to protect, and in this state they can be expensive assets, and it's going to cost to get that kind of coverage, even if it's above the minimums that are required. So no matter what you do, I think people, if you're not going to have them saying every year, "What are you going to do about auto insurance," you really have to have a sense of fairness in the system. In my written testimony, I go into more detail with some examples, but I'll just briefly touch upon them.

The issue of more cars than drivers: Actually, in the last few months I have stepped into that, and I have to wonder why I have to pay what seems like a premium on that third car that looks like there are three drivers for the three cars. You've all probably heard complaints about the teenaged driver in the house or the one person in the family who has a bad record, and it impacts everyone in that family. That doesn't make sense.

There is the eligibility point system that still exists, even though we got rid of surcharges, and in effect, it's a de facto surcharge, because by virtue of someone who hasn't been in an accident in 20 years getting into their

first one and maybe six months later getting a 4-point ticket that can put them on, on the next renewal, for the residual market. In the essence, it's like one accident and one ticket in three years, which sounds like what we were dealing with surcharges before. So we don't, necessarily, think that is fair.

And then the last point, and maybe the most important, because it can affect some of the others, is controlling insurance costs. I asked the question, how, as a consumer, can I control auto insurance costs? Well, we talked this morning, and I'm sure at other meetings about "Well, if you need less benefit or you want to take the risk, you pay less there." You can also not drive and not have to incur an auto insurance cost.

But in my home, you know, by turning down the thermostat or by not keeping the air conditioning on as long, I can, by usage. So I guess, when I look at how I use my coverage, I'll buy, like, comprehensive insurance, so if my car is parked somewhere, including in front of my house, if a tree falls on it, it's stolen, vandalized, that's covered. I mean, I can't do too much about that. There are some things, but in the aggregate, it's not too many things other than locking my car.

But in order to be exposed to risk, I have to drive my car. And you figure, if I drive my car less, I'm going to be exposed to less risk. If I'm going to drive my car more, I'm going to be exposed to more risk. We've been proposing, since 1992, to use miles driven as a basis of exposure, basically taking base rates, multiplying it by the miles driven, and you get a number.

And the example is carpooling. Somebody who normally does 12,000 a year, you cut it in half to 6000 miles. If you do it based on that system I'm talking about, you really would see a change in the amount of

dollars versus what you see for that same change in behavior by the consumer today. It really doesn't take into account that real exposure to risk by being out there every day. And, of course, there is the train car. We live close to train tracks, and someone just uses that, and they are paying the same as they are paying for their other cars just to take it down to, maybe, two miles to the train station on a daily basis.

And finally, on fairness, with this example to illustrate: You know, the high-mileage driver, in this case, if you went to such a system, they realize they are going to pay more, but at least it makes sense. They can say, "I'm going to pay more," but I believe they can see there is a sense of fairness involved, and it does give them the opportunity to control their costs, because how do they figure out how to drive less.

So you heard what I said about the topic of the day. I think nonmandatory insurance, in some form, is the way to go. But in addition to what you heard before me about fairness, I think, ultimately, no matter what you do structurally, you're still going to have to figure out how to bring fairness into this, because I think if you can do that, you're going to eliminate the frequency, the loudness, and the overall amount of complaints about what have you done with the auto insurance system, because it's always going to be higher than these other states like North Dakota and the like.

So that's--

PRESIDENT DiFRANCESCO: And that's because-- Why is it always going to be higher?

MR. CARRELLAS: That litany of items. I mean, you have a lot of cars, and you can have more accidents per parking lot than any other state.

PRESIDENT DiFRANCESCO: Right.

MR. CARRELLAS: And the high cost of living.

PRESIDENT DiFRANCESCO: Okay.

Anybody have any--

Gerry, do you have a question, or--

SENATOR CARDINALE: Just one question, because you said something a little different than my experience.

Any number of times I polled the constituents in my own Legislative District on the issue of mandatory insurance. And they come down very substantially on the side of maintaining mandatory insurance. Is your conclusion based on a poll of your membership, or is it just something that has come out of the leadership discussion, or something along that line?

MR. CARRELLAS: Me coming to you today to say that is a consensus, as we can best develop it, from our membership, but it's not just the result of they say I have to come here and advocate it. I mean, we're really trying to solve the problem in the long term.

When something is mandatory, it creates something in the market that doesn't let the folks who can think and find a product that solves a problem for a lot of people to really come out, because there are constraints on that happening, and ultimately-- I mean, I would love to have a focus group with those constituents and just talk about it just to learn, not to advocate any particular position, because if they need insurance, they're going to buy it anyway. And we think most people are going to buy insurance in this State.

SENATOR CARDINALE: You see, my own particular bias is what I think is the same as the position that you enunciate, but it does not seem to

be politically what my constituents want, and that's why I asked the question. It's not because I'm trying to defend one or the other.

MR. CARRELLAS: I understand.

SENATOR CARDINALE: I agree with you that there are some problems when you make it mandatory, but it seems to be what people want. And the most frequent thing they say to me is, "I want to be sure that the other fellow on the road has some kind of responsibility." And that seems to be the driving force. It's not that they are worrying about themselves. They're worrying about whoever else is going to be on the road and that that person has some sort of minimal qualification. It's almost like having a license.

MR. CARRELLAS: And on that part, if I'm interpreting correctly, I agree with you. I mentioned the words personal responsibility and accountability, and I know we've had many a discussion with Senator Scott on the issue of our existing personal responsibility law and its implications. Someone may not have a high enough amount of insurance to cover a claim against someone they do harm to. They may not have any in those cases, but they still have a personal responsibility. I mean, their wages can be garnished for life if they don't meet the requirements of the personal responsibility law.

SENATOR CARDINALE: How many drivers are in your group?

MR. CARRELLAS: We have-- Our membership is 3000-plus and continuing to grow.

PRESIDENT DiFRANCESCO: Okay.

ASSEMBLYWOMAN FARRAGHER: Just one question.

SPEAKER COLLINS: Assemblywoman.

ASSEMBLYWOMAN FARRAGHER: I just had a thought. Aside from the fact that we're a premium-taxed state, if we repealed mandatory insurance, then we would also, I would assume, repeal all of the regulatory things that go along with it such as, take all comers. So now you have a situation where you may find drivers not able to find coverages because of the area that they are in or whatever. How would we get around that so that anyone who wanted insurance would have access?

MR. CARRELLAS: Let me cover that in a couple of ways. You may have seen my reaction. It's like, in talking about the fairness suggestions, that would be predicated -- and I forgot to put it in that context -- depending on the decision that the Legislature makes, what kind of regulatory support is going to be had. And when I talk about free market, it doesn't necessarily mean nothing. So that depends, and I guess it's part of the deliberations.

Now, the take all comers, I can see how that developed, because if it's mandatory, you have to do it. If it's not, would there be-- I don't know the answer, I tend to think on the conservative side. I don't think there would be the problem of finding something for someone who wants it in a freer market. It would be easier to figure out how to do it with a different context, not zero, but a different regulatory context.

ASSEMBLYWOMAN FARRAGHER: Well, it's my belief, and, in fact, I do know of a case of a company where it is true, that it is the regulatory situation in New Jersey, including the take all comers, that keeps companies out of New Jersey, and what we want to do, in addition to lowering costs for the drivers in this State, is to also have more companies come into this state, particularly the ones that we see advertising on television, where you

see, like, “not in New Jersey or Massachusetts.” I mean, you know, that kind of gets everybody’s goat. And I believe, speaking for all of us, when we say -- that’s really what we would like to do.

Recently it was sent to my attention, an editorial from the *Chicago Tribune*, and it had to do with a proposal in Illinois, and it went on then to defend the Illinois system, which is pretty much free market. And I was stunned, because there are 360 companies writing auto in Illinois, and there are only 75 writing in New Jersey. So I would like to move more toward that 360 number, personally, so that there would be more options available to the public. And I think that the whole key to lowering costs is increased competition. I really do.

MR. CARRELLAS: And you know, you can have-- I know we’ve talked about competition, even in today’s regulatory framework, but I think we need more to see the kind of stuff that is going to solve the issues of what everyone wants, in terms of availability of certain benefits at the right cost.

ASSEMBLYWOMAN FARRAGHER: Sometimes, when I go past someone from the Department of Insurance, I’ll just mumble, “File in years, file in years,” and that usually sends them into apoplexy. But I think even a change like that would be helpful, rather than having prior approval on rates.

But I think all these things are going to probably be developed a little more in the coming hearings.

Thank you.

SPEAKER COLLINS: Thank you, Assemblywoman.

Steve, thank you very much for coming forward.

This concludes today's hearing. We have scheduled four more hearings, which we believe will enable us to wrap up the public hearings, though that's not etched in stone.

I would like to announce when they will be. The next one will be next Thursday at 10:00 a.m., the 22nd of January, where we will be talking about PIP and related issues. Monday the 26th of January, we will talk about thresholds, litigation, etc. Wednesday, February 3rd -- 4th, I've been stuck on that all along -- the 4th, Wednesday the 4th, where we will talk about rating and risk classification, and then Monday, February 9th, fraud, uninsured drivers, miscellaneous topics. So January 22, January 26, February 4, and February 9.

Thank you all very much for coming. We look forward to seeing you at future hearings.

(MEETING CONCLUDED)