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# *Public Hearing*

before

## PUBLIC OFFICERS SALARY REVIEW COMMISSION

*"Reviewing the salaries of specific public officers and submitting a report to the Governor and Legislature with proposed recommendations, if any, concerning changes in these salaries"*

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**LOCATION:** Rutgers School of Law  
Newark, New Jersey

**DATE:** November 19, 2007  
10:00 a.m.

### **MEMBERS OF COMMISSION PRESENT:**

Senator William L. Gormley, Chair  
James H. Coleman Jr.  
Michael Critchley  
M. Allan Vogelson

### **ALSO PRESENT:**

Melissa Lieberman  
*Secretary*  
Clifford T. Roncs  
*Counsel*



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

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**APPENDIX**

John Pollock  
60 Martin Terrace  
Woodbridge, New Jersey 07095

November 17, 2007

New Jersey Public Officers Salary Review Commission  
Walker's Law School  
David Cohen Court Complex  
Baker Trial Courtroom  
123 Washington Street  
Newark, NJ

Attn: Honorable Senator William Gormley, Chairman

Re: To testify as a taxpayer if ALL New Jersey judges merit pay raises and/or automatic pay raises because they are the best and brightest

Dear Chairman Gormley and esteemed members,

Thank you for allowing me the opportunity to express my opinion, based upon personal knowledge, if the commission should make a recommendation that all judges should receive pay raises to keep the State's Superior Court judges on par with federal District Court judges which appears to be the historical goal of New Jersey.

The judges complain and are unhappy because their salaries have not kept pace with inflation. It is also a fact that the salaries of most taxpayers have not kept pace with inflation either. The demand for more money by the judges comes at a time when the debt of New Jersey has surpassed 38 billion making the finances of New Jersey in an undesirable condition as the most unstable state in the country. And the debt does not include the projected costs for employee and retiree benefits adding tens of billions more to the state debt. It is also a fact that most private pensions and Social Security pensions are not keeping pace with inflation either.

On a personal basis, as a result of my unfortunate experience with my personal injury case, I do not believe that all judges in New Jersey should receive the same pay raise. I think, feel, speak, and write now as a victimized plaintiff as a result of that case, and a forsaken veteran, betrayed citizen, and cheated taxpayer.

Superior Court judges Bryan D. Garruto and Lorraine Pullen, who serve in Middlesex County are not worth their salaries, and do not merit any pay raise. On the other hand, Superior Court judge Mark B. Epstein and Workers' Compensation judge Virginia Dietrich are not paid enough, and do merit a substantial pay raise.

There is not one member on the commission that can make a bonafide and valid (defined as cogent, compelling, convincing, sound, and telling) recommendation to me that all judges in New

Jersey are worthy of the same salary and merit the same pay raises. The judges in New Jersey are looking to the taxpayers to provide the remedy (increase the state debt) to cure the financial issues that the judges have.

Wheelbarrows full of money and fringe benefits for the judges is not going to make them any better in the performance of their duties and standard of service to the people. Most likely than not, many of them will become more arrogant, function worse, and have a more demanding attitude. They will want the trunks of their cars full of money and fringe benefits next time from the taxpayers and still their quality of service will not improve or become any better. Simply because they do not possess the brightest and best minds which they purport to have.

I also would like to see the State of New Jersey help provide the remedy to cure my financial issue caused by two of the Superior Court judges serving in Middlesex County. Mr. Chairman, can you or any other member on the commission explain to me if Superior Court judges Bryan D. Garruto and Lorraine Pullen are representative of the brightest and best judicial minds that New Jersey has to offer; therefore, they are completely erudite and proficient about personal injury law, and workers' compensation law (especially NJSA 34;15-40) created by the legislative body in Trenton, then how do you account for the fact that neither of them knew well in advance that the following would be outcome by percentage breakdown of the gross settlement in my personal injury case in accordance with existing statutory and case laws and also court rules:

<u>Whom paid out to:</u>	<u>Percentage</u>
1. Satisfy lien of workers' compensation carrier	38.29%
2. Fees for expert reports/testimony	27.64
3. Legal fee for personal injury lawyer	18.61
4. Misc. legal/medical fees, penalties, etc.	5.21
5. Victimized Plaintiff	10.25

Note: Without being a judge, if I saw the settlement statement of a case similar to mine, I could estimate the settlement and know if it was reasonably fair and just or it was parsimonious. As a judge I would send the jury back to deliberate further and come back with a verdict for damages that would be more sensible than what judges Garruto and Pullen approved.

Some Case History:

Toward the end of his summation to the jury, Judge Garruto interrupted my trial counsel from speaking. The transcript reveals that during the secret sidebar discussion he barred my trial lawyer from making the time unit argument to the jury.

During his closing instructions to the jury (the charge)

Judge Garruto told the jury that damages were pain, suffering, loss and future loss of quality of life, disability, and impairment. He also said the actuarial tables estimated that I had a remaining life expectancy of 19.29 years which could be plus or minus.

After the presiding trial judge completed his closing instructions to the remaining 7 jurors, (one juror was dismissed for misconduct), they only asked him one question. It was a very intelligent and reasonable question to ask. They asked if he could give them some guidance or a standard to help them convert damages into a monetary award.

This is what the best and brightest judicial mind told them. There is no yardstick or standard to measure damages. You all know what pain and suffering is. You are to use your common sense and high degree of human judgment arrive at a damage verdict that is fair and reasonable.


Time Unit Argument:

The time unit argument is not really a argument. It is a suggested method to help jurors convert damages into monetary comensation. Pain, suffering, loss and future loss in quality of life, disability, and impairment are the essential elements of the time unit argument. Time is converted from years to days. In my case it would have been suggested to the jury that I have to live with permanent pain, suffering, loss in quality and future quality of life, disability, and impairment for the remaining 7045 days of my remaining life expectancy for each day. It suggests to the jury to deliberate and determine a value in cents or dollars for each day that I will cope with my permanent injury. Since the jury was handed a blank slate by Judge Garruto to determine the conversion of damages into dollars, the jury awarded me a net settlement of \$.58¢/day for the damages, even though they found the defendants to be 80 percent negligent for the damages.

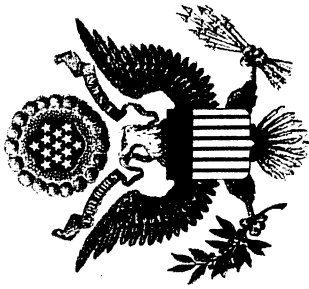
Now you know why I refused to sign the settlement statement. You also know why I would never recommend judges like Garruto and Pullen are entitled to receive pay raises. Since they are not happy with their salary, it stands to reason they would not be happy to receive a settlement for a personal injury caused to them if I were a judge. They would be just as unhappy as I am. If either one of them were injured at work, and embarked on a journey to pursue the personal injury law system for a fair and just settlement, and instead received a relentless and tormenting nightmare (day and night) because I wore the black robe, they would not like the feeling and injustice caused to them either.

Attached are 35 pages of information to support my opinion.

Sincerely yours

  
John D Pollock

w/35 attach.



# CERTIFICATE OF RECOGNITION

JOHN D. POLLOCK

*In recognition of your service during the period of the Cold War (2 September 1945 - 26 December 1991) in promoting peace and stability for this Nation, the people of this Nation are forever grateful.*

*William S. Cohen*  
SECRETARY OF DEFENSE

SUPERIOR COURT OF NEW JERSEY  
MIDDLESEX COUNTY  
LAW DIVISION - CIVIL PART  
DOCKET NO. MID-L-2289-00  
A.D.# \_\_\_\_\_

----- :  
JOHN D. POLLOCK,

: **TRANSCRIPT OF PROCEEDINGS**

Plaintiff,

vs.

FEDERAL STORAGE WAREHOUSE :  
DiGIROLAMO CONSTRUCTION,

: SUMMATIONS  
THE COURT - CHARGE

Defendant.  
----- :

Place: Middlesex County Courthouse  
1 Kennedy Square  
New Brunswick, N.J. 08903

Date: October 29, 2003

**B E F O R E:**

HONORABLE BRYAN D. GARRUTO, J.S.C., AND JURY

**TRANSCRIPT ORDERED BY:**

JOHN D. POLLOCK  
60 MARTIN TERRACE  
WOODBIDGE, NEW JERSEY 07095

**A P P E A R A N C E S:**

DANIEL EPSTEIN, ESQ., (c/o Eichen, Levinson)  
Attorney for the Plaintiff.

MARIO COLITTI, ESQ., (Sherman & Biscomi)  
Attorney for the Co-defendant, Federal Warehouse

TIMOTHY HOLMAN, ESQ., (Smith & G., LLC)  
Attorney for the Defendant, DiGirolamo Const.

ALESSANDRA O'REILLY, ESQ., (Reilly, J&M)  
Attorney for the Third Party Defendant, F. Pucci

Transcriber DONNA WEBER  
G & L TRANSCRIPTION OF N.J.  
40 Evans Place  
Pompton Plains, N.J. 07444  
Sound Recorded  
Recording Operator, Medina, L

*Pr*

1 up with an appropriate amount of damages. If you find  
2 that a different amount of damages is appropriate with  
3 your own methodology that's what you're charged to do.  
4 It's called a time unit argument. And the time unit  
5 argument is based upon an actuarial table of how long  
6 a person Mr. Pollock's age is expected to live. The  
7 judge is going to indicate to you that the actuarial  
8 table, and it's stipulated to with counsel, is that Mr.  
9 Pollock's expected life expectancy is 19.29 years.  
10 It's a little morbid when we start to think about  
11 exactly how many years but, obviously he could live --  
12 he can live a lot longer, he can live a lot younger.  
13 Who knows? It's -- God forbid. But the most important  
14 thing is that we try to get a handle on how they figure  
15 out this award of damages.

16 The argument is as follows; figure out, I'm  
17 going to round off 19.29 to 19, I'm going to round  
18 down, not round it up, 19 years, 19 years times 365  
19 days, okay?

20 THE COURT: Mr. Epstein, would you come over  
21 please?

22 MR. EPSTEIN: Yes, Your Honor.

23 (THE FOLLOWING TAKES PLACE AT SIDEBAR)

24 THE COURT: Did you tell these lawyers that  
25 you were going to make a time unit argument?

1 MR. EPSTEIN: I told everybody, that's why we  
2 had a life expectancy.

3 MR. HOLMAN: Not on the record.

4 THE COURT: You haven't told me -- you cannot  
5 make the time unit argument.

6 MR. EPSTEIN: Mr. Colitti is indicating that  
7 I did tell him and I did warn him.

8 THE COURT: On the record?

9 MR. EPSTEIN: But not on the record. And  
10 he's indicated that I did tell him.

11 MR. COLITTI: I will represent Mr. Epstein in  
12 chambers was considering doing the time unit argument.  
13 He told me. I don't know if he told anybody else.

14 THE COURT: If you didn't tell Mr. Holman you  
15 cannot make that argument.

16 (THE FOLLOWING TAKES PLACE IN OPEN COURT)

17 MR. EPSTEIN: I'm not going to describe to  
18 you the time unit argument. I ask you to use your best  
19 judgment, keep in mind as important as today is,  
20 tomorrow and what the future holds for Mr. Pollock is  
21 just as important, and I ask that you consider all of  
22 the evidence and consider the injuries that Mr. Pollock  
23 suffers, and make your award relevant, not only for  
24 today but for later when Mr. Pollock has the same  
25 injuries and still has the award that was given to him

1 they were reasonable and nec -- reasonably necessary  
2 for the examination, care and treatment of the  
3 plaintiff. If you determine that any of these bills  
4 were not fair and reasonable to any extent or that any  
5 of these services were not reasonably necessary to any  
6 extent you need not award the full amount claimed. In  
7 this case the plaintiff is seeking \$23,880 for medical  
8 expenses. Since you may not award more than that for  
9 the plaintiff. In other words you can award less but  
10 you cannot award then the amount which is requested.  
11 Okay.

12 Now, there has been mention made of the life  
13 expectancy of the plaintiff. This number of 19.29  
14 years is a number which comes from a table in the back  
15 of the rule book. If you -- and this is how you use  
16 it, if you make an award for future pain, suffering,  
17 disability, impairment and loss of enjoyment of life you  
18 may consider the plaintiff's life expectancy. The  
19 plaintiff's life expectancy today is 19.29 years. This  
20 is an estimate of his probable length of life based  
21 upon statistical data. Since it is a general estimate  
22 you should use it with caution in an individual case  
23 as he may live longer or a shorter period than the  
24 estimated figure. You should exercise your sound  
25 judgment in applying the life expectancy figure without

1 treating it as a necessary and fixed rule.

2 Your oath as jurors requires you to decide  
3 this case fairly and impartially without sympathy,  
4 passion, bias or prejudice. You are to decide this case  
5 based solely on the evidence that you find believable,  
6 and in accordance with the rules of law that I have  
7 given you. You are not here as advocates for either  
8 party. You are judges of the facts. Your sole interest  
9 is to determine the truth from the evidence presented  
10 in the case. It is your duty as jurors to consult with  
11 one another and to deliberate with a view toward  
12 reaching an agreement if you can do so without  
13 compromising your individual judgment. But each of you  
14 must decide this case for yourself. There will not be  
15 any alternates. All 7 of you will be asked -- will  
16 compose the jury which will decide this case.

17 Since this is a civil case any verdict of 7  
18 -- of 6 to 1 or 7 to 0 is a legal verdict, therefore,  
19 it is not necessary that all 7 jurors agree on each  
20 question. An agreement of any 6 jurors is sufficient.  
21 All 7 jurors must deliberate fully and fairly on each  
22 and every question and all 7 jurors must determine and  
23 vote on each question. It is not necessary that the  
24 same 6 jurors agree upon the answer to all of the  
25 questions. When at least 6 jurors have agreed to any

Received  
9/11/04  
JLP

**FILED**

**DEC 02 2003**

RYAN D. GARRUTO, J.S.C.


EICHEN LEVINSON, LLP  
40 Ethel Road  
Edison, New Jersey 08817  
(732) 777-0100  
Attorneys for Plaintiff(s) John Pollack

JOHN POLLACK,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff(s),	:	MIDDLESEX COUNTY
v.	:	
	:	DOCKET NO.: L-2289-00
FUGI FILM, FEDERAL STORAGE	:	
WAREHOUSE, DIGIROLAMO	:	CIVIL ACTION
CONSTRUCTION COMPANY, INC.,	:	
ET ALS.,	:	<b>ORDER FOR JUDGMENT</b>
	:	
Defendant(s).	:	

**THIS MATTER** having come before the Middlesex County Superior Court for a trial on October 20, 2003 and having been tried to a jury which rendered a verdict on October 29, 2003 in favor of Plaintiff(s), John Pollack, against Defendant(s), Fugi Film, Federal Storage Warehouse, and DiGirolamo Construction Company, Inc., finding the defendant(s) 100% liable for damages, in the amount of \$32,000.00 and for reasons stated on the record on October 29, 2003, it is hereby;

**ORDERED** that Judgment be and is hereby rendered against defendant(s) Fugi Film, Federal Storage Warehouse, and DiGirolamo Construction Company, Inc., in the amount of \$32,000.00 plus prejudgment interest in the amount of \$8,072.67, for a total judgment in favor of the Plaintiff(s) John Pollack in the amount of \$40,072.67; and it is further;

**ORDERED** that a copy of the within Order shall be served upon all parties within seven (7) days of the date hereof.

  
\_\_\_\_\_  
J.S.C.

"If this is a money judgment or order, it will not be automatically recorded as a statewide lien. To do so, forward it directly to the Clerk of the Superior Court in Trenton along with a \$25.00 fee."



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## **TRUSTWORTHINESS: A TRIAL STRATEGY MANUAL FOR THE PLAINTIFF'S INJURY CASE IN NEW JERSEY**



**James Hely, Esq.;**  
**Jac B. Weiseman, Esq.**

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<u>Wrongful Death</u>		<u>~Order Form~</u>
Complete Alphabetical Listing		

### **Titles of chapters**

1. What does a jury want?
2. Arguing in the zone of truth
3. The trial lawyer's persona: humble assertiveness
4. Summation: the limits
5. Summation: three crucial techniques and thirteen must themes-the bricks and mortar
6. Opening statement: seizing the crucial moment within the strict confines of New Jersey law
7. Bringing forth the story: direct examination
8. Trustworthiness and cross examination
9. What do we want from jury selection and what can we get?
10. The trial brief and all of its essential parts
11. The demonstrative evidence secret
12. Does your client belong in the courtroom?
13. Using experts by videotape (how to relieve your biggest trial stress and even enhance your presentation)
14. A clean sweep of the pre-existing condition issue
15. On whether to introduce special damages (almost never)
16. On keeping your counsel table free and clean
17. The new lightning bolt: the learned treatise rule
18. How to handle five common defense tactics
19. The elixir of defeat

20. Brief thoughts on the emotional roller coaster ride of trial

21. Thoughts on learning advocacy

Appendix A: Sample summation

Appendix B: Sample opening statement

Appendix C: Sample brief

Appendix D: Selected helpful works for trial lawyers

# EICHEN LEVINSON

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

40 Ethel Road, Edison, NJ 08817  
Tel. (732) 777-0100  
Fax (732) 248-8273

Received  
12/29/04 JLP

December 23, 2004

John Pollock  
60 Martin Terrace  
Woodbridge, NJ 07095

**RE: Pollock v. Fugi Film**  
**Docket No.: MID-L-2289-00**

Dear Mr. Pollock:

Enclosed please find my firm's trust account check numbered 4114 in the amount of \$13,565.46, for the above captioned matter, pursuant to the Settlement Statement enforced by the Order of October 22, 2004. It has been a pleasure to represent you in this matter.

Should you have any questions, please do not hesitate to contact my office at your earliest convenience. Thank you for your kind attention and anticipated cooperation in this matter.

Very truly yours,

  
BARRY R. EICHEN

BRE:amm:ds

Certified Mail R.R.R. No.: 7004 0550 0000 1825 6326

William D. Levinson ‡ § Δ  
Certified by the Supreme Court  
as a Civil Trial Attorney

Barry R. Eichen j  
Certified by the Supreme Court  
as a Civil Trial Attorney

William O. Crutchlow  
Certified by the Supreme Court  
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Edward McElroy

Nicole M. Scarmato ‡

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John H. Sanders II Ω

Jacqueline Poirier, R.N.  
Medical Research

Richard Vogel  
Mass Tort Manager

Of Counsel:

Stuart M. Hochron, M.D.

Alfred A. Levinson

Alan L. Yatvin §



SETTLEMENT STATEMENT

RE: John Pollack v. Fugi Film. et als.  
Date of Accident: 10/05/98

GROSS SETTLEMENT		\$32,000.00
PRE-JUDGMENT INTEREST	\$8,072.67	
LESS COST		
Palisades Behavioral	\$300.00	
Jorge Quintana	2,500.00	
Jet Messenger	49.05	
Jet Messenger	106.35	
RW Rufolo	3,079.15	
Jet Messenger	78.60	
Charles Jones Search	10.00	
Dr. Stuart Hirsch	3,500.00	
COST SUBTOTAL:	\$9,623.15	-\$9,623.15
LESS ATTORNEY FEES	\$7,458.95	-\$7,458.95
<b>SUBTOTAL:</b>		<b>\$14,917.90</b>
LESS LIENS:		-\$9,437.34
Balances to be paid directly to providers:		
Jorge Quintana	150.00	
Neuroscience Institute	108.00	
The Family Medical Center	179.34	
Workers' Compensation Lien	9,000.00	(Reduced from \$14,920.73)
<b>SUBTOTAL:</b>	<b>\$9,437.34</b>	<b>\$5,480.56</b>
SUB-NET TO CLIENT:	\$5,480.56	
PRE-JUDGMENT INTEREST	+\$8,072.67	
<b>TOTAL NET TO CLIENT:</b>	<b>\$13,553.23</b>	<b>\$13,553.23</b>

Any and all outstanding medical bills and/or liens are solely your responsibility.

The closing and settlement of this matter is made with my consent and approval. I have read and understand the aforementioned, agree with its contents and authorize the disbursements.

I certify that there are no outstanding liens. If there is an outstanding lien, I shall be solely responsible for repayment of that lien.

**DRAFT**

Date: \_\_\_\_\_

**DRAFT**\_\_\_\_\_  
JOHN POLLACK

20v

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION  WC(DO)-100 Interactive (r.2-21-07)	<b>ORDER</b>  <input type="checkbox"/> JUDGMENT <input checked="" type="checkbox"/> APPROVING SETTLEMENT	CASE NO'S.: 99-033379  VICINAGE: New Brunswick
---	---	--

SOCIAL SECURITY NUMBER: [REDACTED]	DOB: 04/04/1942
NAME: JOHN POLLOCK	
ADDRESS: 60 MARTIN TERRACE WOODBRIDGE, NEW JERSEY 07095	

vs

NAME: FRANK PUCCI	
ADDRESS: STATE STREET PERTH AMBOY, NEW JERSEY 08861	
NAME: HACK, PIRO ET AL.	
ADDRESS: 30 COLUMBIA TURNPIKE FLORHAM PARK, NEW JERSEY 07932-0941	
TELEPHONE NUMBER (AREA CODE): 973-301-6500	
APPEARING: JOHN WEST, ESQ.	

<input type="checkbox"/> SSN	<input checked="" type="checkbox"/> FEDERAL EMPLOYER NUMBER	<input type="checkbox"/> NJ REG NUMBER
NAME: GAYLORD, RUBINSTEIN & POPP, LLC		
ADDRESS: 1230 PARKWAY AVE., SUITE 203 TRENTON, NEW JERSEY 08628		
TELEPHONE NUMBER (AREA CODE): 609-771-8611		
APPEARING: SAMUEL M. GAYLORD, ESQ.		
NAME: MERCHANTS MUTUAL	<input type="checkbox"/> SELF-INSURED <input type="checkbox"/> TPA	
ADDRESS: C/O MERCHANTS INSURANCE P.O. BOX 868 MOORESTOWN, NEW JERSEY 08057		
CLAIM NUMBER: WC002942		
DATE OF ACCIDENT OR OCCUPATIONAL EXPOSURE: 10/5/1998		
DESCRIBE (Briefly): STEPPED IN HOLE		

Weekly Wages : \$ 1183.00      Rate(s): \$ 516.00      /      \$ 138.00

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD:

Date: \_\_\_\_\_ Permanent Paid: \$ \_\_\_\_\_ Temporary Paid: \$ \_\_\_\_\_

THIS MATTER HAVING COME BEFORE THE COURT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

- ORDER FOR JUDGMENT**  
 It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; It is Ordered and Adjudged that Petitioner be awarded compensation benefits, payable as indicated on Page 2.
- ORDER APPROVING SETTLEMENT**  
 The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; It is Ordered that this settlement be approved and the petitioner be paid as indicated on page 2.

**PERMANENT DISABILITY (Describe Percentages below followed by the Nature and Extent of Injury and Members involved):**  
 30 % of PARTIAL TOTAL *jurisdiction*  
 Due to ORTHOPEDIC AND NEUROLOGIC RESIDUALS OF CHRONIC L4/L5 HERNIATED DISC AND DEGENERATIVE DISC DISEASE AT L4/5 AND L5/S1.

**FILED**

OCT 22 2004

JUDGE LORRAINE PULLEN

**EICHEN LEVINSON, LLP**

40 Ethel Road

Edison, New Jersey 08817

(732) 777-0100

Attorneys for Plaintiff(s)

JOHN POLLACK,

Plaintiff(s),

v.

FUGI FILM, FEDERAL STORAGE  
WAREHOUSE, DIGIROLAMO  
CONSTRUCTION COMPANY, INC., ET  
ALS.,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY

DOCKET NO.: L-2289-00

CIVIL ACTION

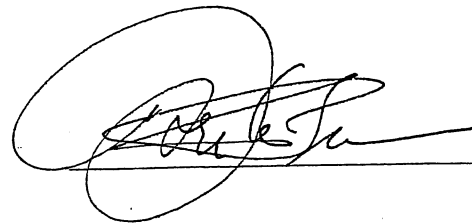
**ORDER**

This matter having been brought before the Court on Motion by DANIEL N. EPSTEIN, ESQ. of EICHEN LEVINSON, LLP, attorneys for the plaintiff, for Order permitting Plaintiff's attorney to disburse verdict funds in accordance with the settlement prepared by DANIEL N. EPSTEIN, ESQ. of EICHEN LEVINSON, LLP, in this action and good cause appearing;

IT IS on this 22 day of October, 2004;

**ORDERED** that the plaintiff deposit fund and disburse in accordance with the Settlement Statement provided by DANIEL N. EPSTEIN, ESQ. of EICHEN LEVINSON, LLP; and it is further

**ORDERED** that a copy of the within Order be served upon all parties within 7 days of the date hereof



J.S.C.

Papers filed with the Court:

( ) Answering Papers

( ) Reply Papers

HON. LORRAINE PULLEN

State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION WC-376i (r.02-08-07)	<b>ORDER FOR TOTAL DISABILITY w/Second Injury Fund</b>	CASE NO'S.: 2003-29612  VICINAGE: New Brunswick
---	--	---

PETITIONER	SOCIAL SECURITY NUMBER: [REDACTED]	DOB: 4/4/1942
	NAME: JOHN POLLOCK	
	GENDER: <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	
	ADDRESS (Including County): 60 MARTIN TERRACE WOODBIDGE, NEW JERSEY 07095	

ATTORNEY FOR PETITIONER	<input type="checkbox"/> SSN <input checked="" type="checkbox"/> FEDERAL EMPLOYER NUMBER <input type="checkbox"/> NJ REG NUMBER
	NAME: GAYLORD, RUBINSTEIN & POPP, LLC.
	ADDRESS: 1230 PARKWAY AVE. SUITE 203 TRENTON, NEW JERSEY 08628
	TELEPHONE NUMBER (AREA CODE): 609-771-8611
	APPEARING: SAMUEL M. GAYLORD, ESQ.

VS

RESPONDENT	NAME: FRANK MCBRIDE, INC.
	ADDRESS (Including County): EDISON, NEW JERSEY 08818
ATTORNEY FOR RESPONDENT	NAME: LAW OFFICES OF MONIQUE T. MORAN
	ADDRESS: 100 CENTURY PARKWAY, SUITE 120 MT. LAUREL, NEW JERSEY 08054
	TELEPHONE NUMBER (AREA CODE): 856-727-3176
	APPEARING: JEANIE KANOVICH, ESQ.
	APPEARING FOR SECOND INJURY FUND: JANE LAFFERTY, ESQ.

INSURANCE CARRIER	NAME <input type="checkbox"/> SELF-INSURED <input type="checkbox"/> TPA PMA INSURANCE GROUP
	CLAIM NUMBER: W8903-48642
	DATE OF ACCIDENT OR OCCUPATIONAL EXPOSURE: 7/15/2003
	DESCRIBE (Briefly): HIT HEAD ON PIPE
	FUND PETITION FILE DATE: 12/04/2006

Upon the proofs presented and the stipulations made, I find and determine the following facts:

**LAST COMPENSABLE ACCIDENT OR EXPOSURE**

WAGES: 1475.00	RATE: 638.00/170.00	Date of last payment of Permanent Compensation by Respondent: 07/27/2007
-------------------	------------------------	---

In accordance with the provisions of the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.), I find as follows:

Petitioner is totally and permanently disabled as of 12/25/2004

**Permanent Disability payable by Respondent (Describe Percentages, Nature and extent of Disability, and Members involved):**

30% OF PERMANENT PARTIAL TOTAL DISABILITY ORTHOPEDIC AND NEUROLOGIC IN NATURE DUE TO THE RESIDUALS OF POST CONCUSSIVE DISORDER AND C4-C5 AND C5-C6 RADICULOPATHY AND HERNIATIONS AT C5-C6 AND C7-T1.

**ORDER FOR  
TOTAL DISABILITY  
w/Second Injury Fund - Page 5**

**PRE-EXISTING NON-COMPENSABLE DISABILITIES**

Date of Onset: 1982	Origin (if known): <input type="checkbox"/> Congenital <input checked="" type="checkbox"/> Accident / Injury
Description: CERVICAL SPRAIN AND STRAIN	

Date of Onset:	Origin (if known): <input type="checkbox"/> Congenital <input type="checkbox"/> Accident / Injury
Description: RIGHT HAND CARPEL TUNNEL SYNDROME	

Date of Onset:	Origin (if known): <input type="checkbox"/> Congenital <input checked="" type="checkbox"/> Accident / Injury
Description: MAJOR DEPRESSIVE DISORDER	

Date of Onset:	Origin (if known): <input type="checkbox"/> Congenital <input checked="" type="checkbox"/> Accident / Injury
Description: ERECTION DYSFUNCTION AND HYPERTENSION	

Date of Onset:	Origin (if known): <input type="checkbox"/> Congenital <input type="checkbox"/> Accident / Injury
Description:	

Date of Onset:	Origin (if known): <input type="checkbox"/> Congenital <input type="checkbox"/> Accident / Injury
Description:	

Date of Onset:	Origin (if known): <input type="checkbox"/> Congenital <input type="checkbox"/> Accident / Injury
Description:	

(Provide like data on additional sheets as required)

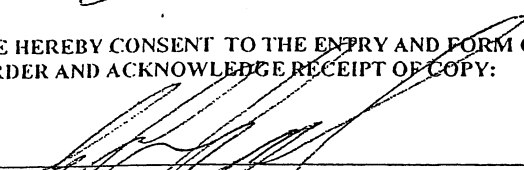
State of New Jersey Department of Labor and Workforce Development DIVISION OF WORKERS' COMPENSATION  WC-376i (r.02-08-07)	<b>ORDER FOR          TOTAL DISABILITY          w/Second Injury Fund - Page 7</b>	CASE NO'S.: 2003-29612  VICINAGE: New Brunswick
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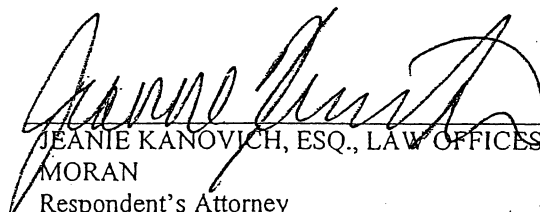
	REIMBURSE	TAX IDENTIFICATION NUMBER	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
MEDICAL FEE ALLOWED: <i>(expert and or testimonial)</i> DR. IRWIN MOSKOWITZ \$200.00 PD BY PETITIONER			\$400.00	\$200.00 PD	\$200.00
MEDICAL RECORDS	Pet. Attny.		\$88.00	\$88.00	
MEDICAL RECORDS PD BY STARK & STARK			\$200.00	\$200.00	
SAUL MYERS PD BY ATTY			\$400.00	\$200.00	\$200.00
ATTORNEY(S) FEE: GAYLORD, RUBINSTEIN & POPP, LLC		52-2436481	\$13,781.00	\$3,445.00	10,336.00
STENOGRAPHIC SERVICE: John F. Trainor, Inc.					
MISCELLANEOUS FEES: <i>(fill in below)</i> STARK & STARK			\$3,445.00	\$3,445.00	\$0.00
GAYLORD, RUBINSTEIN & POPP MOTION FOR MED AND TEMP			\$5405.52		\$5,405.52

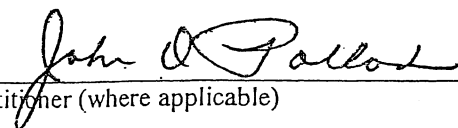
ORDER FOR CHILD SUPPORT     ADDENDUM ATTACHED

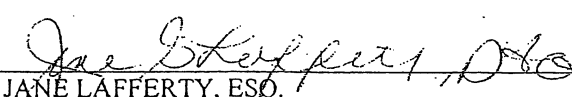
  
 HON. VIRGINIA DIETRICH, Judge of Compensation    10/25/07  
 DATE

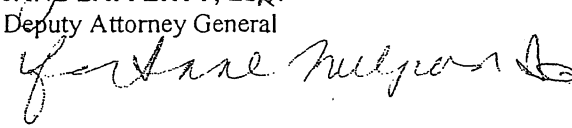
WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF COPY:

  
 SAMUEL M. GAYLORD, ESQ., GAYLORD, RUBINSTEIN & POPP, LLC.  
 Petitioner's Attorney

  
 JEANIE KANOVICH, ESQ., LAW OFFICES OF MONIQUE T. MORAN  
 Respondent's Attorney

  
 Petitioner (where applicable)

  
 JANE LAFFERTY, ESQ.  
 Deputy Attorney General



25x

# Social Security Benefit Information

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From: SOCIAL SECURITY ADMINISTRATION

---

Refer To:

190Middlesex Turnpike  
Iselin, NJ 08830-2842

Date: October 25 2007

JOHN D POLLOCK  
60 MARTIN TERRACE  
WOODBIDGE NJ 07095-3413

Information about a person's Social Security benefits is confidential by law. Except under certain circumstances specified by law and regulations, the Social Security Administration does not reveal such information to any person except the beneficiary involved, or his or her authorized representative.

Attached is the information you requested about your benefits. The attachment is an official record of your Social Security and/or supplemental security income benefits as of the date of this letter. You may use the attached information for proof of benefits.

If you have any questions concerning this official record, please contact your local Social Security Office.



Kathleen Brehm  
District Manager

# Benefits Planning Query (BPQY)

Confidential Social Security Data

NAME: JOHN D POLLOCK

SSN: |

RECORD	Social Security Disability Insurance (SSDI)	Supplemental Security Income (SSI)
	See Below	No Record
<b><u>CASH</u></b>		
Type of Benefit	Disabled Worker	
Current Status	Current Pay	
Statutory Blindness	No	
Date of Disability Onset	07/15/2003	
Date of Entitlement	04/04	
Full Amount	\$1,897.60	
Net Amount	\$1,804.00	
Others Paid On This Record	No	
Total Family Cash Benefit	\$1,897.60	
Overpayment Balance	\$0.00	
Monthly Amount Withheld	\$0.00	
<b><u>MEDICAL REVIEWS</u></b>		
Next Medical Review	10/12	
Medical Re-exam Cycle	7+ years	
<b><u>REPRESENTATION</u></b>		
Representative Payee	No	
Authorized Representative	No	

27

NAME: JOHN D POLLOCK

SSN:

HEALTH INSURANCE

MEDICARE

MEDICAID

Type	PART A	PART B	PART C/D	No Medicaid Eligibility
Start	04/2006	04/2006		
Stop	04/2007	04/2007		
Buy-In or Subsidy	No	No	0%	

SSI WORK EXCLUSIONS

Blind Work Expenses

Impairment Related Work Expenses

Student Earned Income Exclusions

PASS Exclusion

SSDI WORK ACTIVITY

Trial Work Months	Start:	End:	Used: 0 Months
Month of Cessation	N/A		
Current SGA Level	\$900.00		

RECENT EARNINGS ON RECORD

YEAR	EARNINGS	YEAR	EARNINGS	MONTHSEAR	NINGSS	MONTHS	EARNINGS
1959	\$79.88	1960	\$255.00				
1961	\$2,596.57	1962	\$2,147.35				
1963	\$2,879.63	1964	\$1,859.55				
1965	\$1,501.70	1966	\$6,224.77				
1967	\$6,790.50	1968	\$7,330.89				
1969	\$6,836.88	1970	\$8,065.77				
1971	\$8,839.24	1972	\$9,000.00				
1973	\$10,708.11	1974	\$11,242.39				
1975	\$12,756.45	1976	\$13,990.57				
1977	\$13,459.59	1978	\$14,422.47				
1979	\$22,900.00	1980	\$25,900.00				
1981	\$32,504.40	1982	\$32,400.00				
1983	\$33,181.79	1984	\$40,964.57				
1985	\$43,937.91	1986	\$38,175.26				
1987	\$30,424.33	1988	\$46,326.85				
1989	\$38,920.47	1990	\$37,819.28				
1991	\$53,527.48	1992	\$34,270.39				
1993	\$12,993.66	1994	\$33,276.30				
1995	\$23,154.85	1996	\$62,700.00				
1997	\$22,053.74	1998	\$58,349.40				

A-2459

Date Produced: 10/25/2007

ly 2001

*Handwritten mark*

---

**NAME:** JOHN D POLLOCK

**SSN:**

---

1999	\$35,351.22	2000	\$46,874.38
2001	\$91,117.47	2002	\$39,391.44
2003	\$41,682.49	2004	\$364.30

# Social Security Administration Retirement, Survivors and Disability Insurance

## Notice of Award

Mid-Atlantic Program Service Center  
300 Spring Garden Street  
Philadelphia, Pennsylvania 19123-2992  
Date: October 8, 2005  
Claim Number:

1004 MCS,PC2,1,PH,T019,058,153

000003168 03 MB 0.718

JOHN D POLLOCK  
60 MARTIN TERRACE  
WOODBIDGE, NJ 07095-3413

Received  
10/15/05  
JAP



You are entitled to monthly disability benefits beginning April 2004.

### The Date You Became Disabled

We found that you became disabled under our rules on July 15, 2003.

Our records show that you became disabled on July 15, 2003. By law, we can pay benefits no earlier than 12 months before the month of filing. Since you filed for benefits on April 15, 2005, monthly payments will begin April 2004.

### What We Will Pay And When

- You will receive \$26,084.00 around October 14, 2005.
- This is the money you are due for April 2004 through September 2005.
- Your next payment of \$1,764.00, which is for October 2005, will be received on or about the second Wednesday of November 2005.
- After that you will receive \$1,764.00 on or about the second Wednesday of each month.
- These and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.
- Later in this letter, we will show you how we figured these amounts.

The day we make payments on this record is based on your date of birth.

Enclosure(s):  
Pub 05-10153  
Pub 05-10058

C

See Next Page

21v

John Pollock  
60 Martin Terrace  
Woodbridge, New Jersey 07095

October 28, 2007

Sam Gaylord, Esq  
Gaylord, Rubinstein & Popp, LLC  
1230 Parkway Avenue, Suite 203  
Trenton, NJ 08628  
Fax # (609) 771-8612

Re: Myself vs. Pucci (Case #99-033379)  
McBride (Case #2003-29612)  
Prolonged Ordeal of NJ Workers' Compensation  
Litigation System

Dear Sam,

The following is my version of part of the prolonged legal history of my workers' compensation case (s), based upon my recollection and understanding of the sequence of events, that caused and resolved the last impediment that was delaying settlement of both workers' compensation cases captioned above which settled on October 25, 2007.

On or about June 10, 2007, it was agreed upon that both workers' compensation carriers, and the second injury fund of the State of New Jersey would award me total and permanent disability, just as Social Security did back on October 10, 2005, but that they had to work out the details of the settlement.

On or about September 28, 2007, you made known to me that the workers' compensation carrier would reduce the parsimonious jury verdict for the net damages award (see attach. Settlement Statement) in my personal injury case from \$5,480.56 to \$3,653.32 (see attach. Order Approving Settlement) in my first workers' compensation case dated 10/25/07 which represents 2/3 of the net jury award of my personal injury case in accordance with NJSA 34:15-40.

Sometime between 9/28/2007 and 10/25/2007, the workers' compensation carrier changed their mind to settle. In addition, they demanded 2/3 of the Pre-Judgment Interest (\$8,072.67) in my personal injury case given to me by the trial court. It is a form of penalty levied against the personal injury insurance carrier for refusing to settle my personal injury case out of court, and because they lost. The jury found the defendants were 80 percent negligent and liable for my permanent injury.

On October 25, 2007, the workers' compensation judge had to resolve the issue of the demand for credit against the pre-judgment interest by the workers' compensation insurance carrier. Since there was no statutory law or case law that decides the rights of petitioner and respondent in a workers' compensation case to pre-

judgment interest in a personal injury case, the judge had to use judicial discretion to decide the issue of fairness and equity. Normally, a workers' compensation case settles before a workers' personal injury case. There is statutory and case law under NJSA 34:15-40 which gives workers' compensation insurance carriers the right to post-judgment interest for monies they have disbursed and awarded to petitioners in a workers' compensation case before they settled their personal injury cases.

The workers' compensation judge decided that my position as the petitioner and the position of the workers' compensation insurance carrier had merit to claim our rights to the pre-judgment interest. The judge ruled that the workers' compensation carrier should receive 2/3 of 50 percent of the pre-judgement interest, and the rest belonged to me. The pre-judgement interest was reduced from \$8,072.67 to \$4,036.335. This amount was reduced by 2/3 which came to \$2,690.62. The judge amended the Order Approving Settlement which reduced the gross settlement from \$30,396.00 to \$26,742.66 (\$30,396.00 less \$3,653.32) and then again from a gross settlement (\$30,396.00) less \$6,344.21 to the final settlement of \$24,051.79.

At the beginning of the hearing to settle my workers' compensation cases, the judge asked me to place my left hand on a bible and swear an oath that I would tell the truth, nothing but the whole truth, so help me God. I refused to do so. I told the judge that God does not reside on this side of the wall. He lives on the other side. My thoughts and feelings are that a workers' compensation court and/or personal injury court are secular courts created by the knowledge and wisdom of political and governmental authority to administer the rule of secular law that controls the actions of mankind. Neither is a divine court of law created by the authority and wisdom of God to control the actions of all mankind, especially a political and governmental authority subject to the economic force of capitalism. If this is not truthful, then how does one explain the following actions and observations of the secular courts of the State of New Jersey.

I believe that below represents the position of the workers' compensation carrier in my workers' compensation case for my first injury:

They paid out:

\$14,920.73 for medical expenses

24,051.79 in the near future for settlement

\$38,972.52 total they paid out to me which excludes their legal expenses and administrative expenses

This is what they received:

\$9,000 from the gross settlement in my personal injury case

6,344.21 from the net settlement in my personal injury case

\$15,344.21 total from personal injury case

Recapitulation:

\$38,972.52 is what the workers' compensation insurance carrier paid out  
(-)15,344.21 is what they received from personal injury case

\$23,628.31 is what they feel is still owed to them

Below is what represents my position relating to my workers' compensation case and the settlement of my personal injury case that preceded the settlement of my workers' compensation case (s):

The Settlement Statement in my personal injury case is not bonafide and valid (defined as cogent, compelling, convincing, sound, and telling) to be a legal document that is accurate, truthful, equitable, fair, and just. It did not list an estimate for the future workers' compensation lien against the net settlement and it omitted legal expenses that were incurred to proceed with and required by the personal injury case. These costs have to be deducted from the net settlement shown to reflect a net settlement this is actual and true.

\$5,480.56 represents the net jury award for damages  
(-)2,000 cost of expert liability report for arbitrator and jury

\$3,480.56  
(-) 3,653.32 workers' comp. lien against net settlement  
(-) \$ 172.76 less than nothing left of award from jury.

Note: The expert liability report convinced the arbitrator that I was 50 percent culpable for my accident. It convinced the jury that I was 20 percent blameworthy for my work related accident.

The arbitrator felt that I should receive a gross award of \$100,000 for damages but no pre-judgment interest since I was 50 percent at fault, (Net Gross Award would have been \$50,000) before expenses.

The jury felt that I should receive a gross award of \$40,000 for damages reduced by 20 percent for my fault. The court added pre-judgment interest (\$8,072.67) for a total net gross award of \$40,072.67 before expenses and liens.

\$8,072.67 represents the pre-judgment interest  
(-)1,100.00 court sanction for late submission of expert liability report  
\$6,972.67 balance left  
(-) 2,690.62 workers' comp lien against pre-judgment interest  
\$4,282.05 balance left  
(-) 172.76 adjust for negative net jury award  
4,109.29 total balance left of net settlement in my personal injury case

Time Unit Argument:

The presiding trial judge in my personal injury case barred

Time Unit Argument Con't:

the jury from hearing the time unit argument. The trial lawyer and the presiding trial judge did tell the jury that I had a remaining life expectancy of 19.29 years based upon the actuarial tables found in the back of the rule book. Before the remaining 7 jurors (one was dismissed for misconduct) left to deliberate my case, they asked the judge if there was a standard to help them convert damages (permanent pain, suffering, loss in quality of life, disability, and impairment) into a monetary award. The judge told them there was none, only their common sense and high degree of human judgment.

I am aware that the time unit argument is a method to help a jury convert damages into monetary compensation. In my case, 19.29 years is equivalent to approximately 7,045 days. If we divide the actual and true net settlement in my personal injury case (\$4,109.29) by 7045 days, the computation results in an award to make me feel whole again of \$.58 or 58¢ per day for permanent pain, suffering, loss in quality of life, disability, and impairment. In essence, the results of my personal injury case show that the combination of the presiding trial judge and the trial lawyer handed the jury a blank slate to convert the damages into a monetary award.

This leads to the following observation. What is the purpose of a personal injury case. Is it to make a permanently injured worker to feel whole again, or is it just a sham, hoax, etc. to compensate legal counsel, expert liability and medical witness (s), pay workers' compensation liens, etc. and leave the crumbs that are left to the injured worker. Why does this permanently injured worker feel more like a victim than a beneficiary of the system. Why does he feel like a betrayed citizen, cheated taxpayer, and forsaken veteran? Why does he feel that the Constitution of the State of New Jersey is a joke when it says in Article 1 that "Government is instituted for the protection, security, and benefit of the people?"

What would have happened if I did not pursue a personal injury case, only both workers' compensation cases.

\$30,396.00 (gross settlement in workers' comp case)  
(-) 2,702.00 approx. attorney fee  
\$27,694.00 balance  
(-) 400.00 medical fees for expert reports  
\$27,294.00 approx. net settlement to petitioner  
(-) 22,141.79 actual settlement in first workers comp. case  
\$ 5,152.21 more benefit without a personal injury case  
\$5,152.21 net est. workers' comp benefit w/o personal injury case  
(-) 4,109.29 actual net settlement benefit in personal injury case  
\$1,042.92 This net loss in workers' compensation benefits shows that I would have been better off if I did not file and pursue a case for personal injury, even though the defendants

were found to be 80 percent at fault for causing the accidents resulting in my permanent injury to my lower back and disability.

I would have gained the following additional workers' compensation benefits and saved the following costs associated with my personal injury case:

\$5,152.21 additional workers compensation benefits for 1st injury  
2,000.00 saved in fee for expert liability report  
1,100.00 saved as a result of court sanction for late submission  
of expert liability report to Superior Court  
\$8,252.21 actual total benefits gained and monies saved without a personal injury case.

The total loss in my personal injury case can also be expressed as follows;

\$13,553.23 total net settlement in personal injury case  
(-) 2,000.00 fee for expert liability report  
\$11,553.23 balance  
(-) 1,100.00 court sanction for late submission of expert liability report  
\$10,453.23 balance  
(-) 6,344.21 workers comp. lien on personal injury case net settlement  
\$ 4,109.21 balance left of net settlement in personal injury case

Would a man like myself with a reasonable amount of prudence and common sense having permanent injury and disability really want to take the time, trouble, and expense to pursue a personal injury case for permanent injury and disability if he knew in advance that he would gain an additional \$4,109.02 or \$.58 (58¢) per day for permanent pain, suffering, loss in quality of life, disability, and impairment for the remaining 7045 days of his projected life expectancy? What kind of disabled but sane person would allow a personal injury lawyer to convince him to file a personal injury case for this kind of net settlement for personal injury?

I did not experience or suffer any loss in workers' compensation benefits in my second workers' compensation case because I gained the street knowledge and wisdom from my first personal injury case not to file a second personal injury case for my second work related accident and permanent injury, and for some reassurance that I was right, I got some good legal advice and counsel from the law firms of Stark & Stark and Wilentz, Goldman & Spitzer that it might not be wise or in my best interest and it would be risky to pursue a personal injury case for my second injury.

In closing Sam, I would remind you once again and appreciate that you send to me a copy of the letter from the lawyer who represented the workers' compensation insurance carrier/respondent that complained and demanded they receive 2/3 of the pre-judgment interest in my personal injury case.

Thank you.

Very truly yours,

*John D Pollock*  
John D Pollock

w/2 attach.

5 of (5)

25

HACK, PIRO, O'DAY, MERKLINGER,  
WALLACE & MCKENNA

C O U N S E L L O R S A T L A W

Peter A. Piro\*  
M. Richard Merklinger  
John M. McKenna  
Patrick M. Sages\*  
Robert G. Alencewicz (NJ & PA Bar)  
John T. West  
Thomas M. Madden  
John E. Burgio\*  
Rebecca K. Megna (NY Bar)  
Michael J. Leegan  
Gina Mendola Longarzo (NJ & NY Bar)  
Nicole J. Masella  
Erin Burke Cirelli (NJ & NY Bar)  
Kathleen B. Riordan (NJ & NY Bar)  
Renet M.A. Fagan (NJ & NY Bar)

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\* Certified by the Supreme Court of New Jersey  
as a Civil Trial Attorney

David L. Hack (Of Counsel)  
William J. O'Day (Of Counsel)  
Joseph V. Wallace (Of Counsel)  
Jeffrey A. Berson (NY Bar) (Of Counsel)

Direct Dial No: 973-593-6942

October 8, 2007

Re: John Pollock vs. Frank Pucci  
Our File No. 26C-C9997-184.033379  
Claim Petition No. 99-033379

Received 10/31/2007  
JJP

Samuel M. Gaylord, Esq.  
Gaylord, Yuska & Rubinstein, LLC  
1230 Parkway Avenue  
Suite 203  
Trenton, NJ 08628

Dear Mr. Gaylord:

By way of follow-up to our recent conference of this case, please be advised I have had an opportunity to discuss this claim with my client and also researched the issue that you raised concerning pre-judgment interest.

First, with respect to the settlement of the third party action, it appears that some of the expenses which are listed as costs are for unauthorized medical treatment and may be for other costs of suit for which at the time of that settlement the injured party was responsible for repayment of the lien minus only \$200 for expenses of suit. Please clarify what these costs were and whether they are part of the liens that are mentioned further down in the settlement statement or whether they are costs of suit which have a limitation pursuant to N.J.S.A. 34:15-40.

In addition, I would direct your attention to the case of Fireman's Fund Indemnity Co. vs. Batts 11 N.J. Super 242 (A.D. 1951) which outlines that the compensation carrier is entitled to being reimbursed for the full amount of his expenditures and the compensation carrier was also entitled to interest from the date of the entry of the judgment against tort feasons.

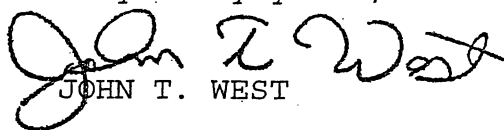
October 8, 2007

Page 2

Based upon these two issues, it is clear that the respondent is entitled to a much larger third party credit than was previously discussed. Please contact me so that we may discuss these issues and try to come to an amicable agreement with respect to the amount for which the workers' compensation carrier can claim a credit for the monies that are being paid going forward.

I look forward to hearing from you soon.

Very truly yours,

  
JOHN T. WEST

JTW:mjo

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Received 10/25/2007 JLP

Westlaw.

Page 1

78 A.2d 293

11 N.J.Super. 242, 78 A.2d 293  
(Cite as: 11 N.J.Super. 242, 78 A.2d 293)

▷  
**Fireman's Fund Indem. Co. v. Batts,**  
 N.J.Super.A.D. 1951.

Superior Court of New Jersey, Appellate Division.  
**FIREMAN'S FUND INDEMNITY CO. et al.**

v.  
**BATTS et al.**  
 No. A-765.

Argued Jan. 2, 1951.  
 Decided Jan. 16, 1951.

The **Fireman's Fund Indemnity** Company and others, brought an action in the nature of interpleader against Harry D. Batts and New Amsterdam Casualty Company, a corporation. The Superior Court, Chancery Division, 8 N.J.Super. 519, 73 A.2d 640, held that the defendant compensation carrier was entitled to be reimbursed in full for its expenditures with interest from the date of the entry of the judgment for Harry D. Batts in his action against third-party tort-feasors, and Batts appealed. The Superior Court, Appellate Division, *Jacobs, S.J.A.D.*, held that the compensation carrier had been entitled to be reimbursed in full for its expenditures without deductions for legal services rendered by Batt's attorney in the action against the third-party tort-feasors.

Affirmed.  
 West Headnotes

**[1] Workers' Compensation 413 ⇌ 2251**

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)7 Right to Proceeds of Action or Settlement

413k2250 Rights of Employer or Insurer

413k2251 k. In General. Most Cited

Cases

Where compensation carrier paid its insured's employee total of \$8,778.25, and employee subsequently brought action for damages against third-party tort-feasors and obtained judgment for \$48,000, and insurer of third-party tort-feasors paid into court sum to be disputed in interpleader action, compensation carrier was entitled to be reimbursed for its total expenditure of \$8,778.25 without deduction for legal services of attorney representing employee in action against tort-feasors. N.J.S.A. 34:15-40, 34:15-50(b, d).

**[2] Workers' Compensation 413 ⇌ 2251**

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)7 Right to Proceeds of Action or Settlement

413k2250 Rights of Employer or Insurer

413k2251 k. In General. Most Cited

Cases

Where compensation carrier had paid injured employee a total of \$8,778.25 and thereafter employee had brought action for damages against third-party tort-feasors and had obtained judgment for \$48,000, and subsequently, after dispute had arisen as to amount payable to compensation carrier, insurer of third-party tort-feasors had paid into court sum to be disputed in interpleader action, and compensation carrier was held in that action to be entitled to be reimbursed for full amount of its expenditures, compensation carrier was also entitled to interest from date of entry of judgment against tort-feasors.

\*243 \*\*294 Leo Rosenblum, Jersey City, argued the cause for the appellant Harry D. Batts (Jacob J.

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# NEW JERSEY ADVISORY COUNCIL ON SAFETY AND HEALTH

*An Association of Unions, Lawyers and Physicians  
Working for the Safety and Health of Workers*

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November 19, 2007

Testimony of Richard Marcolus before  
the Public Officers Salary Review Commission  
William L. Gormley, Chairman

Dear Chairman Gormley and Members of the Commission:

The New Jersey Advisory Council on Safety and Health, (NJACSH), is an association of unions, lawyers who represent unions and injured workers, and doctors who treat and examine injured workers. During the last five years the NJACSH has filed briefs on behalf of the New Jersey AFL-CIO, the Industrial Union Council of the AFL-CIO, District 15 of the International Association of Machinists and Aerospace Workers, and the AFL-CIO in many successful cases before the New Jersey Supreme Court. These cases include *Fiore v. Consolidated Freightways*, 140 N.J. 452, 659 A.2d 436 (1995), *Kibble v. Weeks Dredging & Const. Co.*, 161 N.J. 178, 735 A.2d 1142 (1999) and *Earl v. Johnson & Johnson*, 158 N.J. 155, 728 A.2d 820 (1999). In each case, the Court adopted the arguments that were made by the NJACSH on behalf of the Labor Movement for the protection of New Jersey workers and their families. Our purpose is to ensure that the workers' compensation system continues to protect New Jersey's workforce.

The NJACSH strongly supports judicial raises for the State's Workers' Compensation Judges. Our Judges are assigned the task of ensuring that the compensation system runs smoothly and efficiently for all parties. This means handling up to 60 cases per day per judge including emergent applications for medical treatment, trials of contested cases, approving settlements, and conferencing cases. These same judges also must decide and write their opinions without the aid of law clerks. Recently, the Compensation Judges have been assigned the responsibility of considering and enforcing child support liens, State disability liens, private health care liens, Medicare and Medicaid liens.

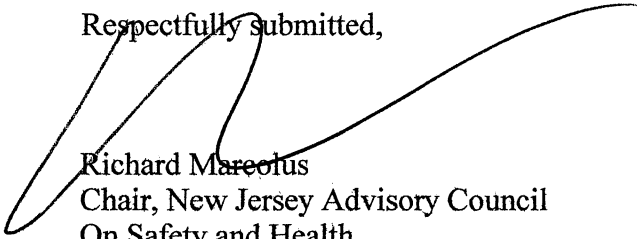
Without hardworking, caring, and competent judges, our system would shut down. Our Workers' Compensation system has been a model of fairness to all parties. While numerous states have scaled back benefits to injured workers, our system has consistently increased benefits commensurate with the cost of living to the seriously injured worker while containing costs. The NJACSH believes our system delivers quality treatment, fair and adequate compensation with room for compensation carriers to profit. However, this Commission must understand that this is a system in which the Judges play the most important role.

The citizens of this state rely on and deserve the best Compensation Judges. Statistically, a New Jersey worker will more likely appear before a Compensation Judge than any other type of judge. For most workers, their first legal experience is in the Compensation Court system. There are presently pending almost 100,000 cases in our compensation system. The task of managing this large number of cases is assigned to less than 50 judges statewide. These cases are the most critical part of a New Jersey's worker's life because these cases involve the health, the jobs and the ability of New Jersey's workers to maintain their standard of living.

The Division of Workers Compensation is fully funded, including the Judge's salaries and benefits, from premiums paid by the insurers and not from the State's general tax roles. As a result, the citizens of New Jersey do not have to bear any part of the Compensation Judges' salaries. Furthermore, the Governor recently signed legislation that removed all future Compensation Judges from the State's pension plan. Our new Compensation Judges do not have pensions. The NJACSH unsuccessfully fought this proposal. Now you have the opportunity to give back to our compensation bench a raise that is long overdue. The NJACSH fully supports this proposal.

Thank you for your time and consideration.

Respectfully submitted,



Richard Marcolus  
Chair, New Jersey Advisory Council  
On Safety and Health

OCTOBER 2007

A REPORT TO THE CHIEF JUSTICE FROM THE SUPREME COURT  
COMMITTEE ON JUDICIAL SALARIES AND PENSIONS  
CONCERNING THE NEED TO INCREASE JUDICIAL COMPENSATION

CHAIR: HON. JAYNEE LAVECCHIA, ASSOCIATE JUSTICE

VICE CHAIR: HON. MAURICE GALLIPOLI, A.J.S.C.

## INTRODUCTION

In December 2003, the statutorily created Public Officers Salary Review Commission (Commission) issued a report to the Governor and Legislature calling for compensation increases for a host of public officers including judges.<sup>1</sup> Notwithstanding the recommendations contained in the report, the Legislature deferred action on this important issue and, as a result, exacerbated a salary crisis in the judiciary.

At the time of that report, New Jersey judges had not had a salary increase since January, 2000. By 2003, the Federal District Court judicial salary, which long had been a benchmark for the New Jersey trial court salary, had been raised to \$154,700, creating more than a \$13,000 salary gap between the two positions notwithstanding their comparable duties and responsibilities. Moreover, the state court judges' relative purchasing power had been reduced as a result of inflation by 20% since 1970. More and more judges were leaving the bench before their mandatory age of retirement.

In response to those startling facts, the Commission in 2003 recommended a salary increase for every level of judge, from Tax Court, through the Superior Court to the Supreme Court and Chief Justice. To the judges' great disappointment and despair, there was no legislative action on those recommendations in 2003, 2004, and despite some hopes in 2005, none then or in 2006.

Shortly after becoming Chief Justice, James Zazzali began a major effort to advance again the issue of adequate judicial compensation. He met with Governor Corzine, Senate President Codey and Assembly Speaker Roberts as well as other leaders in both houses of the Legislature, editorial boards of the major papers in New Jersey, and the legal papers. He spoke to Bar Associations and at various public engagements, including local colleges. His efforts and the leadership extended by the Governor and legislative leaders led to an agreement to increase judicial salaries. The first phase was an \$8,000 increase, raising the Superior Court trial judges and Tax Court judges to \$149,000, through language contained in the Budget Act that became effective on July 1, 2007. That first phase was based on an

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<sup>1</sup> Public Officers Salary Review Comm., Rep. at 1 (2003).

understanding that additional consideration would be given after a reconstituted Public Officers Salary Review Commission was appointed.

Chief Justice Zazzali retired in June of 2007. Chief Justice Stuart Rabner has succeeded to the responsibilities of leading the corps of 460 judges and more than 9000 court employees. This report has been prepared for Chief Justice Rabner to enable him to present the vital need for adequate compensation for the New Jersey Judiciary to the Public Officers Salary Review Commission. It is equally necessary that the significance of this issue be made known to elected officials, members of the media, and the public, all of whom deserve to know that this issue is important not just to the judges, but to every citizen in the State.

#### Relevant Background Facts

- New Jersey trial court judges currently earn \$149,000.
- Although they have comparable duties and responsibilities, New Jersey trial court judges earn \$16,200 less than federal District Court judges.
- Historically, the Legislature and the Governor have used federal judicial salaries as a benchmark for New Jersey judicial salaries.
- The current gap between the federal judges and the New Jersey judges will widen when pending federal legislation is enacted establishing even higher federal judicial salaries.
- A significant number of New Jersey judges are leaving the bench before they reach the mandatory retirement age of 70. Between 2002 and today, 140 judges have left the bench, 90 (64%) before reaching the mandatory retirement age.
- Per capita personal income in New Jersey between 2000 and 2007 rose 25%, while New Jersey judges' salaries rose only 12%, and most of that increase occurred only since July 2007.
- Between 1970 and 2007, New Jersey judges' relative purchasing power declined by 24%.
- Even after the \$8,000 increase contained in the July 1, 2007 budget, New Jersey only improved from 39<sup>th</sup> (Jan. 1, 2007) to 37<sup>th</sup> in salary rankings compared to the other 49 states, once salaries are adjusted for the cost of living.

Recommendation of the Supreme Court Committee on Judicial Salaries and Pensions

1. The Committee recommends an increase in New Jersey trial court (Superior and Tax) compensation to \$165,000, the salary currently paid to members of the Federal District Court. Concomitant increases are recommended to compensate appropriately the positions of Assignment Judge (to \$171,800), Appellate Division Judge (to \$175,600), Associate Justice (to \$185,500) and Chief Justice (to \$192,300). Moreover, the full increase should be implemented immediately as a matter of fairness, in light of the great need to rectify the present salary inequity.
2. The Committee further recommends that an automatic cost of living increase be established. It is proposed that the cost of living provision operate similarly to such increases that generally have been provided by Congress for Federal District Court judges. We propose that the COLA adjustment become effective twelve months after implementation of the recommended salary of \$165,000.

Discussion

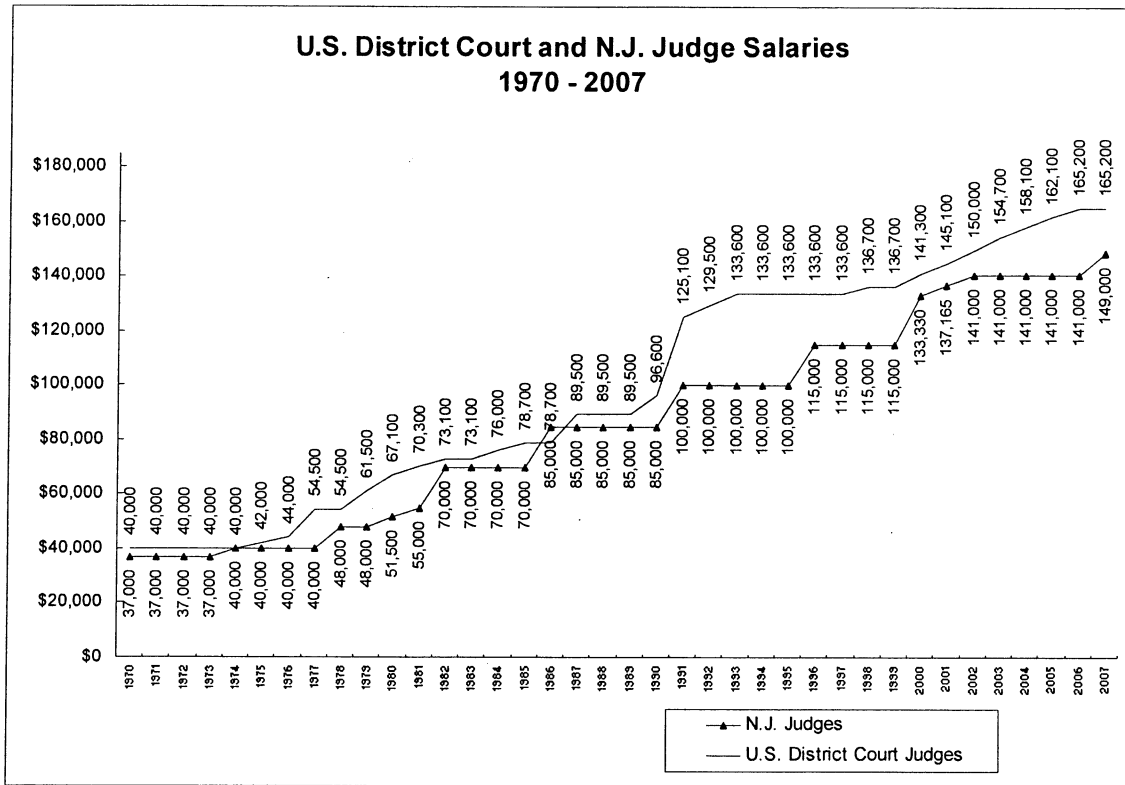
The Relationship between the salaries of Federal Judges and New Jersey Judges

“To analyze appropriately the adequacy and fairness of current judicial salaries,” this Committee’s 2003 Report to the Chief Justice asked the Commission to consider the salaries paid to the judges’ closest comparators. As the Report noted, “[t]raditionally, the salary for a federal district court judge has served as the benchmark for our trial judges. Salary parity between the two has been based on the comparable duties and responsibilities of the state and federal judiciary.”<sup>2</sup> As shown below, in the 1970’s and 1980’s, New Jersey and the United States District Court judge salaries closely tracked one another. In the early 1990’s, however, New Jersey judges’ salaries fell behind. Although

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<sup>2</sup> The Need to Increase Judicial Compensation, A Report to the Chief Justice from the Committee on Judicial Salaries and Pensions, at 3 (2003).

our judges began to catch up at the turn of the century, more recently, federal judges have received increases and New Jersey judges have fallen behind once again.



Recognizing the need for parity between the state and federal bench, the 1999 Public Officers Salary Review Commission recommended a salary increase for our state trial judges so as to match the \$141,000 paid to the federal District Court judges.<sup>3</sup> Until the recent July 2007 Budget Act increase, that was the last time that the New Jersey Legislature and Governor approved a salary increase for our judges. Moreover, the earlier state court salary increases were phased in, preventing the judges from receiving the full benefit of the \$141,000 approved in January 2000 until 2002, and thereby placing them again behind the Federal District Court judges.

In 2003 and 2004, salaries for all Federal District Court judges, including those sitting in the District of New Jersey, were increased to \$154,700<sup>4</sup> and \$158,100.<sup>5</sup> Effective January 1, 2005, federal

<sup>3</sup> Public Officers Salary Review Comm., Rep. at 11 (1999).

<sup>4</sup> Judges Receive Retroactive ECI, The Third Branch, February 2003, available in <http://www.uscourts.gov/ttb/feb03ttb/feb03.html>.

<sup>5</sup> ECI for 2005, The Third Branch, December 2004, available in <http://www.uscourts.gov/ttb/dec04ttb/eic/index.html>.

judges' salaries again were increased, this time to \$162,100.<sup>6</sup> Full-time magistrates, who have limited jurisdiction, circumscribed powers, and report to Federal District Court judges, also received a salary increase from \$129,996 in 2000 to \$149,132<sup>7</sup> in 2005. At the present time, Federal District Court judges earn \$165,200 and full-time magistrates earn \$151,984.<sup>8</sup> They continue to make more than New Jersey judges, even after the 2007 Budget Act increase.

The salary for members of the federal bench may also be augmented substantially by outside earned income from other sources such as lecturing, teaching and book royalties.<sup>9</sup> Unlike their federal counterparts, New Jersey judges are prohibited by constitutional restriction from obtaining outside earned income.<sup>10</sup> This limitation has well served our nationally recognized independent state judiciary, but it prevents our judges from increasing their earnings.

#### Impact of the cost of living on judicial salaries nationwide

The Budget Act salary increase of 2007 placed New Jersey judges sixth among the fifty states at \$149,000, behind California at \$171,648; Delaware at \$168,850; Illinois at \$163,348, Alaska at \$152,760 and Pennsylvania at \$152,115. However, when one adjusts for the cost of living, New Jersey judges rank no better than 37<sup>th</sup>, which is a very limited improvement from our position as 39<sup>th</sup> in state rankings prior to the 2007 Budget Act increase.

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> ECI Adjustments for Judges, The Third Branch, December 2005, available in <http://www.uscourts.gov/ttb/dec05ttb/eciadjustment/index.html>.

<sup>9</sup> 5 U.S.C. App. § 505.

<sup>10</sup> N.J. Const art. VI § 7, ¶ 6 (stating that judges “shall not, while in office, engage in the practice of law or other gainful pursuit.”)

**SALARIES FOR GENERAL JURISDICTION JUDGES  
JANUARY AND JUNE 2007**

STATE	SALARIES AND ADJUSTMENTS SOURCE: SURVEY OF JUDICIAL SALARIES REPORT AS OF 1/1/2007				SALARIES AND ADJUSTMENTS SOURCE: JUDICIAL SALARY RESOURCE CENTER SALARIES FOR 7/1/2007 *		
	ADJUSTMENT		ADJUSTED		ADJUSTED		
	SALARY	FACTOR	SALARY	RANK	SALARY	SALARY	RANK
Alabama	111,973	92	121,863	24	115,892 **	126,128	25
Alaska	152,760	126	121,363	26	152,760	121,363	30
Arizona	135,824	105	128,974	16	135,824 **	128,974	18
Arkansas	126,111	89	142,329	6	128,633	145,175	6
California	171,648	136	126,099	18	171,648	126,099	26
Colorado	113,232	102	111,165	35	118,973	116,801	33
Connecticut	146,780	127	115,416	32	146,780	115,416	34
Delaware	168,100	102	165,184	1	168,850	165,921	2
Florida	145,080	103	140,328	7	145,080	140,328	7
Georgia	116,749	93	125,327	20	116,749	125,327	27
Hawaii	125,856	163	77,393	49	138,444	85,134	49
Idaho	103,600	95	109,073	36	108,780	114,527	35
Illinois	157,824	97	163,239	2	163,348	168,953	1
Indiana	115,282	95	121,889	25	119,894	126,557	23
Iowa	126,020	94	133,557	10	128,544	136,232	11
Kansas	114,813	91	125,713	19	117,109	128,227	20
Kentucky	121,744	93	130,346	14	122,144	130,774	16
Louisiana	110,964	95	116,351	31	118,289	124,032	28
Maine	105,300	110	95,768	46	107,816 **	98,056	47
Maryland	128,352	127	101,167	43	134,352	105,896	44
Massachusetts	129,694	122	105,959	41	129,694	105,959	43
Michigan	139,919	101	138,248	9	139,919	138,248	9
Minnesota	121,712	99	122,867	23	125,363	126,553	24
Mississippi	104,170	92	113,668	33	104,170	113,668	36
Missouri	108,000	91	118,751	29	116,975	128,619	19
Montana	94,093	101	92,953	47	99,234	98,032	48
Nebraska	117,333	91	129,194	15	121,439	133,715	13
Nevada*	144,300	109	132,805	12	144,300	132,805	14
New Hampshire	125,208	NA	NA	NA	125,208	NA	NA
New Jersey	141,000	132	106,968	39	149,000	113,037	37
New Mexico	103,824	103	101,132	44	109,015	106,188	42
New York	136,700	125	108,976	37	136,700	108,976	41
North Carolina	115,289	95	120,959	28	121,053	127,006	22
North Dakota	98,070	93	105,033	42	104,073	111,462	38
Ohio	118,050	96	123,508	22	118,050	123,508	29
Oklahoma	118,450	89	132,489	13	118,450	132,489	15
Oregon	95,800	108	89,109	48	111,132	103,370	45
Pennsylvania	152,115	101	150,139	4	152,115	150,139	4
Rhode Island	133,216	125	106,663	40	137,212	109,863	40
South Carolina	125,265	94	133,075	11	129,022	137,066	10
South Dakota	104,041	92	113,528	34	107,162	116,934	32
Tennessee	140,000	91	154,436	3	144,480	159,378	3
Texas*	132,500	89	148,189	5	132,500	148,189	5
Utah	114,400	97	118,075	30	125,850 **	129,893	17
Vermont	117,881	120	98,541	45	122,867	102,709	46
Virginia	143,549	104	138,283	8	143,549	138,283	8
Washington	131,988	104	126,744	17	140,979 **	135,378	12
West Virginia	116,000	96	121,016	27	116,000	121,016	31
Wisconsin	119,605	96	124,672	21	122,298	127,479	21
Wyoming	109,800	102	107,333	38	113,600	111,048	39

Sources: National Center for State Courts Survey of Judicial Salaries and the Judicial Salary Resource Center on <http://www.ncsconline.org>

\* State has a range of salaries. NCSC reported the typical salary in the range.

\*\* Salaries for July 1, 2007 as reported by NCSC were confirmed by follow-up telephone calls by Quantitative Research.

\*\* Some states reported corrected data as noted.

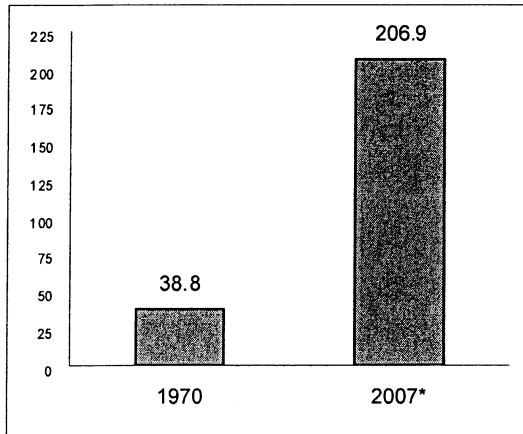
- Alabama's salary increased to \$115,892 on 10/1/2007
- Arizona's salary was corrected from \$135,800 to \$135,824
- Idaho's salary was corrected from \$108,700 to \$108,780
- Maine's salary was corrected from \$105,300 to \$107,816
- Utah's salary was corrected from \$114,000 to \$125,850
- Washington's salary increased to \$140,979 on 9/1/2007

Future increases that states are expecting:

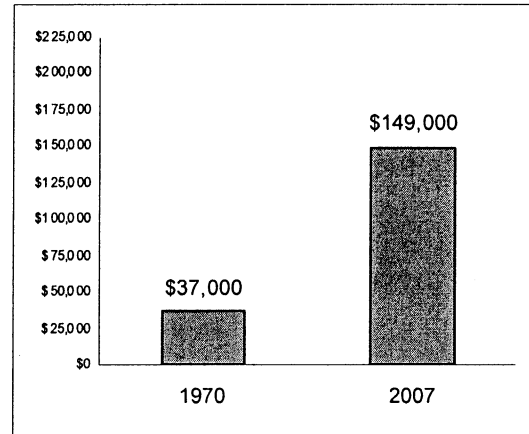
- Georgia will increase to \$120,000 on 1/1/2008
- Hawaii will increase to \$143,292 on 7/1/2008
- Maryland will increase to \$140,352 on 7/1/2008
- Minnesota will increase to \$129,124 on 7/1/2008
- New Hampshire will increase to \$129,590 on 1/1/2008
- Virginia will increase to \$155,033 on 11/25/2007
- Washington will increase to \$148,831 on 9/1/2008

Simply put, when measured by the Consumer Price Index, New Jersey judges' salaries have not kept pace with inflation:

**Consumer Price Index  
1970 and 2007**



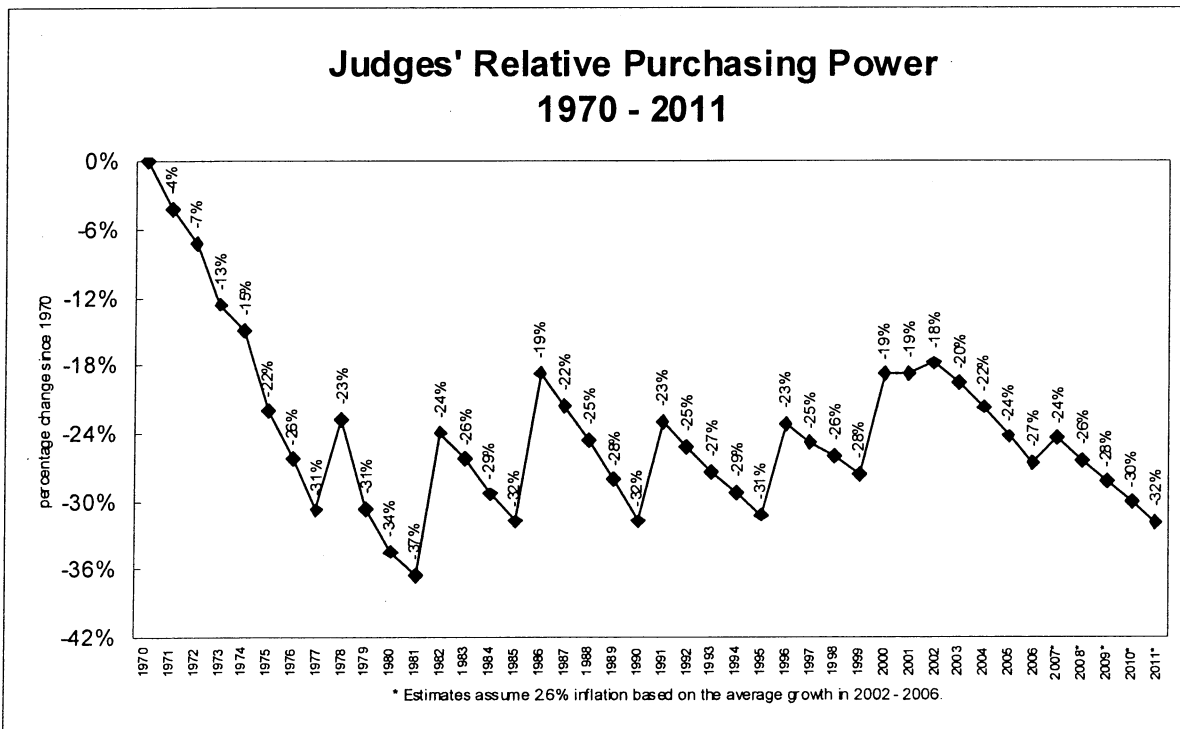
**Judge Salaries  
1970 and 2007**



\* Estimate assumes 2.6% growth based on the average growth rates in 2002 - 2006.

Because our salaries have not kept pace with inflation, our relative purchasing power has declined by 24%.<sup>11</sup>

**Judges' Relative Purchasing Power  
1970 - 2011**



<sup>11</sup> See Tables 1 and 3.

Unless action is taken now, by 2011 we estimate that our relative judicial purchasing power will decrease further by approximately eight percent.<sup>12</sup>

What is clear from the data is that, had a cost of living adjustment been made part of the 2000 judicial salaries legislation, we would not find ourselves in the position we are in today. Simply by applying the CPI on a yearly basis to the salary that the Legislature approved and the Governor enacted in 2000 would have kept the judges at salary parity. New Jersey judges' salaries today would have been \$165,000, exactly the amount that we hereby recommend.

### Keeping Pace with Inflation

	CPI	Inflation	If salaries kept pace with inflation since 2000	If salaries kept pace with inflation since 2001	If salaries kept pace with inflation since 2002
2000	172.2	3.4%	133,330		
2001	177.1	2.8%	137,124	137,165	
2002	179.9	1.6%	139,292	139,334	141,000
2003	184.0	2.3%	142,466	142,509	144,213
2004	188.9	2.7%	146,260	146,304	148,054
2005	195.3	3.4%	151,216	151,261	153,070
2006	201.6	3.2%	156,094	156,140	158,008
2007*	206.9	2.6%	160,195	160,243	162,159
2008*	212.3	2.6%	164,404	164,453	166,420
Shading indicates actual salaries					
** CPI estimates assume 2.6% growth based on the average of growth rates in 2002 - 2006.					

### Conclusion

We request fair compensation for New Jersey judges, set at a level that properly recognizes their critical role in society as well as the excellence of their performance. We request an increase in the trial court judges' compensation to \$165,000, the current salary paid to judges of the Federal District Court. Concomitant increases are sought for the salaries of Assignment Judges (to \$171,800), Appellate Division Judges (to \$175,600), Associate Justices (to \$185,500) and the Chief Justice (to \$192,300). We also request that, in the future, our judges receive automatic cost of living increases

<sup>12</sup> The estimates are based on the application of a five-year average of inflation growth. *Ibid.* See also Table 2.

similar to the adjusted increases that Congress generally has provided for Federal District Court judges. Automatic cost of living increases, effective one year after the state court judges' salaries are increased to the proposed \$165,000 level, would ensure that our judges do not lose ground over time and would eliminate the need for periodic substantial increases following years of salary stagnation.

The Public Officers Salary Commission is an independent body charged with reviewing the salaries of various public officials and making recommendations to the Governor and Legislature "concerning changes in these salaries."<sup>13</sup> The Commission fulfilled that charge four years ago and recommended an increase in judicial salaries. Today the need is even greater. We ask the Commission to adopt this requested increase in judicial compensation as its own recommendation and to urge the Legislature and Governor to implement the increase immediately.

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<sup>13</sup> N.J.S.A. 52:14-15.115.

## Table 1

### Consumer Price Index (CPI-U)

January - December	CPI-U
1970	38.8
1971	40.5
1972	41.8
1973	44.4
1974	49.3
1975	53.8
1976	56.9
1977	60.6
1978	65.2
1979	72.6
1980	82.4
1981	90.9
1982	96.5
1983	99.6
1984	103.9
1985	107.6
1986	109.6
1987	113.6
1988	118.3
1989	124.0
1990	130.7
1991	136.2
1992	140.3
1993	144.5
1994	148.2
1995	152.4
1996	156.9
1997	160.5
1998	163.0
1999	166.6
2000	172.2
2001	177.1
2002	179.9
2003	184.0
2004	188.9
2005	195.3
2006	201.6
2007**	206.9
2008**	212.3
2009**	217.9
2010**	223.6
2011**	229.5

Source: Bureau of Labor Statistics,  
CPI Detailed Report  
available in  
<http://data.bls.gov/cgi-bin/surveymost>

\*\* Estimates assume 2.6% growth based on  
the average of inflation rates in 2002-2006.

**Table 2**

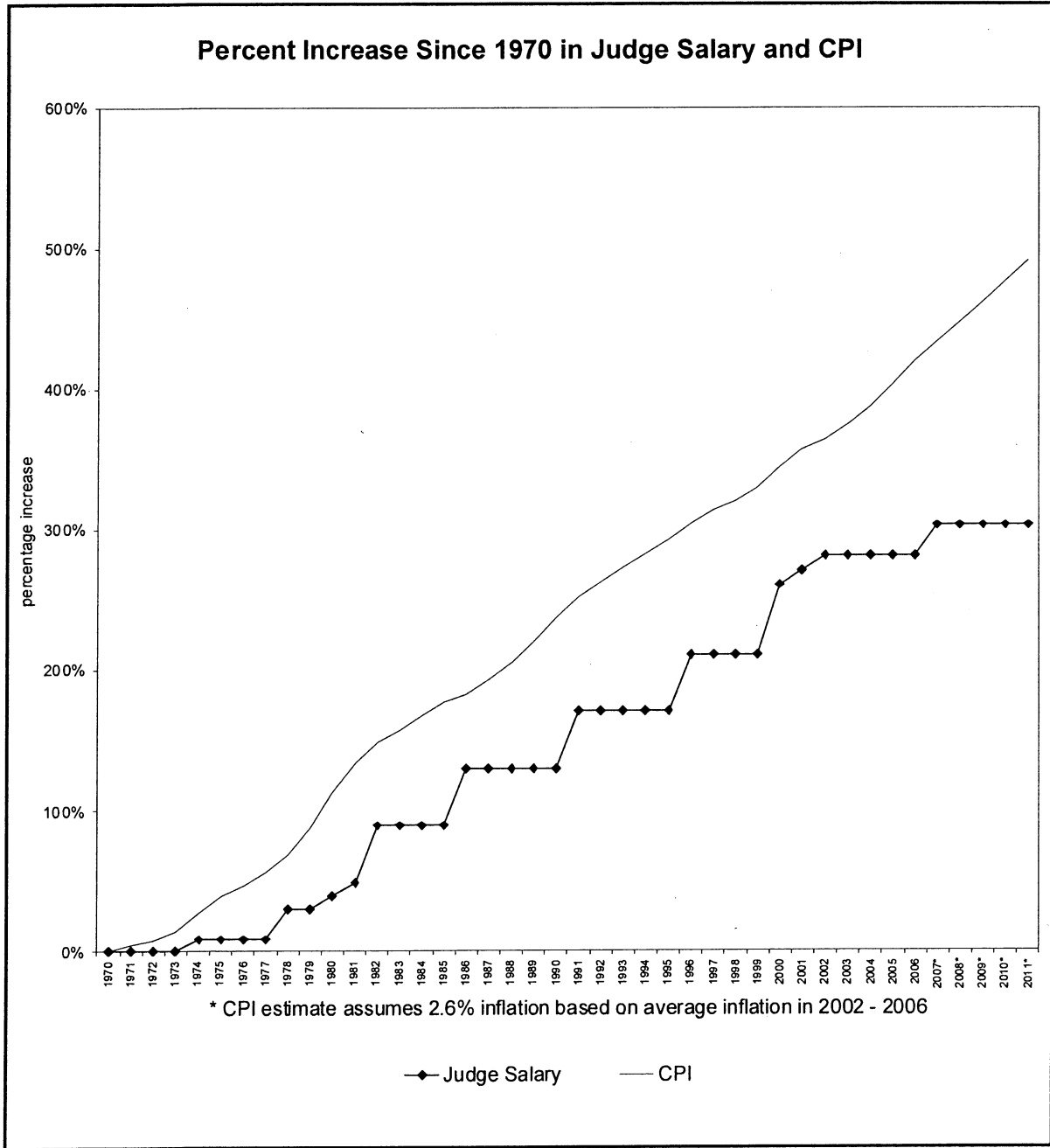
**Judges' Purchasing Power  
Expressed in 2007 Dollars**

**1970 - 2011**

Year	Actual Salary	Salary in 2007 Dollars
1970	\$37,000	\$197,299
1974	\$40,000	\$167,868
1978	\$48,000	\$152,317
1980	\$51,500	\$129,311
1981	\$55,000	\$125,185
1982	\$70,000	\$150,081
1986	\$85,000	\$160,458
1991	\$100,000	\$151,907
1996	\$115,000	\$151,645
2000	\$133,330	\$160,195
2001	\$137,165	\$160,243
2002	\$141,000	\$162,159
2003	\$141,000	\$158,546
2004	\$141,000	\$154,433
2005	\$141,000	\$149,373
2006	\$141,000	\$144,705
<b>2007*</b>	<b>\$149,000</b>	<b>\$149,000</b>
2008*	\$149,000	\$145,185
2009*	\$149,000	\$141,468
2010*	\$149,000	\$137,847
2011*	\$149,000	\$134,318

\* Estimates of CPI assume 2.6% growth based on the average inflation rates in 2002-2006.

**Table 3**



Source: Bureau of Labor Statistics, CPI Detailed Report  
available in <http://data.bls.gov/cgi-bin/surveymost>

**Table 4**

**Per Capita Personal Income  
New Jersey**

Year	Per Capita Income	Cumulative % Change
2000	38,364	
2001	39,148	2%
2002	39,296	2%
2003	39,625	3%
2004	41,626	9%
2005	43,831	14%
2006	46,344	21%
2007 *	47,947	25%

Source: Bureau of Economic Analysis,  
US Department of Commerce

[http://www.wnjp.in.net/OneStop/  
CareerCenter/LaborMarketInformation/  
lmi10/pci.htm](http://www.wnjp.in.net/OneStop/CareerCenter/LaborMarketInformation/lmi10/pci.htm)

\*Estimated based on average  
change in 2001 - 2006

SUPREME COURT COMMITTEE ON JUDICIAL SALARIES AND PENSIONS 2006-2008

Hon. Jaynee LaVecchia, Associate Justice, Supreme Court, Chair  
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## ASSOCIATION OF COMPENSATION JUDGES

State of New Jersey

November 17, 2007

Public Officers Salary Review Commission  
William L. Gormley, Chairman

Dear Chairman Gormley and Commission Members:

I write on behalf of the Association of New Jersey Judges of Workers' Compensation and respectfully offer current information regarding the breadth, scope and impact of our judges' functions with respect to the everyday life of the New Jersey workforce. The Association greatly appreciates your time and deliberative consideration of the need for an adequately funded and staffed judiciary.

The Division of Workers' Compensation is financially unique in our State government, as we are entirely self-funded. The total cost of the system, including judges' salaries, pensions, facilities and equipment, is borne exclusively by the Second Injury Fund. This Fund receives its monies from workers compensation insurance premiums paid by private sector employers. No public entity pays into this Fund; therefore a salary increase for the Division's Judiciary constitutes a budget neutral item for the State.

The value of the forty-five Division Judges to the efficient functioning of the New Jersey workforce has been widely recognized. In the fall of 2007, the New Jersey Policy Research Organization, a group closely affiliated with the New Jersey Business and Industry Association, reported: "Workers' Compensation courts throughout the State, separate from criminal and civil courts, deal with disputes efficiently and fairly, reducing contentious and expensive legal proceedings. [A]s it is currently structured, [the Workers' Compensation System] provides a high level of benefits to injured employees, while keeping costs reasonable for businesses."

Our small judiciary, without the aid of any law clerks or assigned secretarial support, annually handles over 97,000 cases. In 2006, the awards for permanent disability alone (*i.e.* excluding temporary disability awards and payments ordered for medical treatment costs) totaled over **Seven Hundred Million Dollars** (\$700,000,000). In addition, our judges daily handle

emergent and contentious motions involving the direction of medical treatment for the injured worker. Extensive settlement negotiations or hearings result in court orders directing medical care and temporary benefits for petitioners.

Each judge maintains an average daily trial/pretrial/motion calendar in excess of fifty (50) cases. Ultimately, each matter must be either settled after a pretrial conference with the judge or tried before the court without the aid of a jury. Tried matters result in bench or written decisions along with the issuance of a final order. Last year, our judges closed over Forty Six Thousand (46,000) cases. Decisions of the Workers' Compensation judges are only appealable to the Appellate Division of the Superior Court and are not subject to agency review. As such, the Appellate Division has consistently recognized the Division as a Court, which must base its decisions on competent evidence and accepted caselaw. Our standard of appellate review is the same as that of the Superior Court, without a jury. Unlike a Superior Court Judge, however, each Judge of Compensation is required by statute to approve the fairness and merits of each and every proposed disposition either by bench trial or settlement.

The scope of issues within the compensation judges' caseloads has significantly increased in recent years. Not only do judges hear matters involving permanent disability awards, temporary disability payments, emergent medical treatment and enforcement of prior orders, but also our judges are charged with the duty of safeguarding federal Medicare and Medicaid liens, private health care and state disability liens, together with the collection of New Jersey child support arrearages. From May 2001 through September 2007, judges ordered the collection of over **Nineteen Million Dollars** (\$19,000,000) in overdue, unpaid child support. Clearly, today's Worker's Compensation bench has evolved into an integral part of the social and financial welfare of the New Jersey workforce. This contribution from our judiciary encourages employers to select and grow in New Jersey, while insuring that much needed benefits are delivered expeditiously and efficiently to the injured worker. In the fall of 2007, the New Jersey Policy Research Organization further recognized that "while other states have struggled to achieve a balance in Workers Compensation, New Jersey's system thrives."

Similar to Superior Court appointments, numerous strenuous requirements must be met in order to be appointed to the Workers' Compensation bench.

Ten year State Bar membership is necessary, along with appointment by the Governor, with advice and consent from the Senate. Tenure may be obtained, as in Superior Court, following an initial period of service and upon reappointment by the Governor followed by Senate confirmation.

Our judges are proud to be serving the State of New Jersey. While the recent salary increase was helpful, it was accompanied by increases in our medical insurance and pension contributions, preceded by six (6) years without any increased compensation. We are fortunate to enjoy a small, though experienced and diverse group of jurists, sitting in vicinages throughout the state.

The overall 2006 annual premium on workers compensations insurance policies was in excess of **Two Billion Dollars (\$2,000,000,000)\***. The responsibility of benefits and lien rights ultimately comes down upon the relatively few judges of compensation. We respectfully request a fair increase in judicial compensation commensurate with our significant fiscal and social responsibilities.

Respectfully Submitted,

  
John Patrick Roche J.W.C.

*\* This is the source of the funding previously stated.*



## State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
PO BOX 381  
TRENTON, NEW JERSEY 08625-0381

JON S. CORZINE  
*Governor*

DAVID J. SOCOLOW  
*Commissioner*

November 21, 2007

Public Officers Salary Review Commission  
c/o Melissa Liebermann, Esq.  
Office of the Governor  
125 West State Street  
P.O. Box 001  
Trenton, NJ 08625

Dear Chairman Gormley and Commission Members:

I appreciate the opportunity to submit this letter as the position of the New Jersey Division of Workers' Compensation on the issues for consideration by the Public Officers Salary Review Commission.

The Workers' Compensation Court is one of the oldest continuing State agencies in New Jersey government. Founded in 1911, the workers' compensation system has provided an adjudicatory forum for the resolution of issues concerning medical treatment, wage replacement, permanent disability compensation and dependency benefits for New Jersey workers and their families with respect to employment related accidents and occupational exposures. The qualifications and responsibilities of the workers' compensation judge have been strengthened and expanded over these years. A candidate for appointment as a judge of compensation must be a licensed attorney for at least ten years and selected on a bipartisan basis through nomination by the Governor with the advice and consent of the New Jersey Senate for an initial term. After the three year initial term which includes extensive evaluations by supervising judges, recommendation by the Commissioner of Labor and Workforce Development and input from practicing attorneys, the Governor may re-nominate a judge for a tenured appointment which becomes effective with Senate re-confirmation. Judges of Compensation are precluded from engaging in the practice of law and must "devote full time their judicial duties." A Code of Judicial Conduct codified as an administrative regulation sets strict ethical and professional standards affecting the judge's judicial and personal activities.

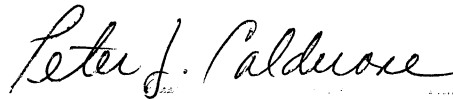
*New Jersey Is An Equal Opportunity Employer*

There are currently 45 workers' compensation judges assigned to 15 court locations throughout the State. With a caseload of over 97,000 open claim petitions, the judges have a varied and large workload each day. Moreover, expedited hearings are provided for cases involving a claimed need for medical treatment and temporary disability payments. As a trial judge, the decisions of a workers' compensation judge may be appealed to the Superior Court, Appellate Division. Unlike much of the rest of the country, New Jersey's workers' compensation court has been a stable, efficient and supported program. Both labor and business have often cited New Jersey as a model system for the resolution of work related injury cases.

The New Jersey's Workers' Compensation Court is also recognized as one of the most technologically advanced case management systems in the United States with e-mail case lists to attorneys, electronic filing of pleadings, interactive computer forms, on-line access to cases by an attorney or insurance company and other innovations. The funding for the New Jersey Division of Workers' Compensation which includes all judicial salaries and benefits is from the Second Injury Fund. This Fund is supported by a surcharge set by the Commissioner of Banking and Insurance on insurance policies purchased by insured employers and directly paid by private sector self-insured employers. No State general fund monies are utilized for the administration of the workers' compensation system in New Jersey.

The workers' compensation program in New Jersey has always provided a fair and meaningful forum for New Jersey workers and their employers. The judges of compensation are the key to maintaining the quality and direction of the program. In order to attract and retain outstanding judges of compensation who directly affect the lives of so many New Jersey citizens, a just judicial salary structure is essential. We appreciate your consideration and review of the salary issues to maintain New Jersey's reputation of judicial excellence.

Very truly yours,



Peter J. Calderone  
Director and Chief Judge



Honorable M. Allan Vogelson  
Page 2  
October 25, 2007

County Prosecutors are recognized as constitutional officers. The County Prosecutor is the foremost representative of the executive branch of government in law enforcement in his/her county. See *State v. Winne*, 12 N.J. 152 (1953). Thus, the County Prosecutor is the chief law enforcement officer of the county in which he/she has been appointed, subject only to the supervision of the New Jersey State Attorney General.

The administrative duties of a County Prosecutor are wide ranging. Most County Prosecutor's Offices throughout the State employ well in excess of 150 staff members. Staffing includes attorneys who serve as Assistant Prosecutors and the Investigators and Superior Officers who conduct investigations both at the county level and in coordination with municipal departments, and support staff who provide administrative support for the respective prosecutor's Offices.

Each year the County Prosecutor must submit to the County Board of Chosen Freeholders for review and consideration a detailed annual budget addressing operating expenses for his/her staff as well as salary and wages. By way of example, for fiscal year 2007, the Union County Prosecutor's Office submitted a proposed Operating and Expense budget of \$785,000 and a Salary and Wage Proposal totaling \$17,500,000. My office represents what could be characterized as a large office consisting of Assistant Prosecutors, Detectives and Superior Officers, Clerical, Prosecutor's Agents, Victim Witness Counselors, SANE Nurses and Intelligence Analyst(s), totaling 230 employees as of the date of this letter.

Preparation of such a comprehensive budget requires that the County Prosecutor balance fiscal responsibility with the need to provide a safe environment for the citizens of each particular county. As an adjunct to budget preparations, the County Prosecutor is involved in direct negotiations with various employee unions representing assistant prosecutors, investigative staff, superior officers, and clerical staff within their respective offices.

Further, as the chief law enforcement officer for the county, the Prosecutor is called upon to serve with a multitude of federal, state and local law enforcement agencies and social service agencies that require coordination with criminal investigations. The Prosecutor is required to interact with virtually every state agency, including the New Jersey State Police and the Attorney General's Office, and liaises directly with the Division of Criminal Justice. The Prosecutors' Offices also coordinate investigations with the United States Attorney General's Office, the Federal Bureau of Investigation, the Federal Anti-Terrorism Task Force, and the U.S. Marshall's Office. Additionally, since 9/11 the Prosecutors' Offices have faced new and challenging demands necessary to ensure the safety of our citizens such as gangs, increased drug trade, and human trafficking.

Moreover, each County Prosecutors' Office also oversees the functions of the New Jersey Sexual Assault Nurse Examiner Program and leads in the establishment of the Sexual Assault Response Teams consisting of members of the public, social service and counseling agencies and members

of law enforcement. Additionally, each County Prosecutor oversees the formulation and continuation of the Domestic Violence Response Teams that respond to domestic violence disturbances within each county. County Prosecutors are the last line of defense in protecting the rights of victims pursuant to the New Jersey Crime Victims' Bill of Rights Act, assuring that victims are treated fairly and compassionately by the criminal justice system.

Prosecutors are also directly responsible for the operation of a County Police Academy, which trains basic recruits and also provides mandatory in-service training for all sworn law enforcement officers. The Prosecutor reviews and develops training in conformity with Police Training Commission regulations. Furthermore, Prosecutors have direct oversight and supervision of all municipal prosecutors within the County and provide training and updates on a regular basis on all aspects of municipal court practice.

It should also be noted that County Prosecutors are available twenty-four hours a day, seven days a week, to respond to critical incidents that occur within their county. It is not uncommon for a County Prosecutor to be called at any time, day or night, and informed of heinous criminal acts which have just occurred. It is also not uncommon for the County Prosecutors to personally respond to such incidents when notified. Most recently, Director Richard Cañas of the Office of Homeland Security and Preparedness indicated that based upon their responsibilities for security the County Prosecutors should be designated as the County head of homeland security.

It is respectfully submitted that the broad spectrum of duties and responsibilities of the County Prosecutor are without equal within our State. Clearly the mission of serving and protecting the public is one of the foremost responsibilities that government can provide to its citizens. The County Prosecutors are uniquely placed in a position to provide those services.

Based on the foregoing, the County Prosecutors Association believes the responsibilities of County Prosecutors are equivalent to the responsibilities of an Assignment Judges of the Superior Court. More specifically, the County Prosecutor oversees the actions of each of the municipal police departments operating within the borders of the county and is also responsible for the administrative aspects of operating an efficient office. Further, Prosecutors are required to designate staff members to investigate and prosecute specific types of criminal cases including but not limited to homicides, sexual assaults, child abuse, domestic violence, and juvenile matters. We therefore feel that this decision-making process is at minimum akin to that of the Assignment Judges.

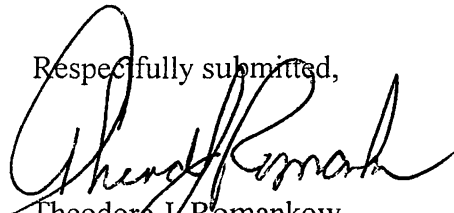
The County Prosecutors have not received an increase in salary since 2002. Accordingly, the County Prosecutors Association believes that the County Prosecutors merit an increase in salary and that such increase be on par with that of the Assignment Judges. As stated above, the County Prosecutors Association believes that the duties and responsibilities placed upon each of the

Honorable M. Allan Vogelson  
Page 4  
October 25, 2007

twenty-one County Prosecutors places them on a status at least equal to that of the Assignment Judges.

On behalf of the County Prosecutors Association of New Jersey, we are requesting the support of the Public Officers Salary Review Commission for an increase of salary consistent with the assignment judges and for the support of Assembly Bill A-1546 (Senate Bill 114). If the commission so requests, I would be willing to offer testimony with regard to the above.

Respectfully submitted,



Theodore J. Romankow  
Prosecutor of Union County

*lth*



**PUBLIC SECTOR  
MANAGERS' ASSOCIATION, INC.**

212 WEST STATE STREET, TRENTON, NJ 08608-1102  
609-392-4319 (fax) 609-392-6347 [www.psmangers.org](http://www.psmangers.org)

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November 20, 2007

William Gormley  
Chairman  
Public Officers Salary Review Commission  
c/o Melissa Lieberman  
125 West State Street  
P.O. Box 001  
Trenton, NJ 08625

Dear Mr. Gormley,

Thank you for allowing me the opportunity to write to you to discuss the lack of consistent state managers' raises since 1985 and our on-going inequity of pay increases in relation to union employees. Our organization, the Public Sector Managers' Association, represents those managers working in the executive branch of state government that have no collective bargaining rights. Both this lack of bargaining ability and being removed from the legislatively required State Compensation Plan by the Appropriations Act has created a very inequitable pay structure that now results in staff making a higher salary than their managers.

N.J.S.A. 11A:3-7 states "The Commissioner shall establish, administer, and amend an equitable State employee compensation plan which shall include pay schedules..." Notice it says an equitable compensation plan and note it is for all employees, not just union employees. The State since 1985 has refused to abide by its own laws.

All state employees were part of the State Compensation Plan until 1985, when unilaterally managers were removed from the plan because they were compressing the cabinet members who at the time were making \$55,000. Now twenty two years later, managers are still capped and can only get raises when so ordered by the Governor. We have had sporadic raises since 1985 while the unions have received yearly increases, not taking into account yearly increments that are part of the Compensation Plan

Back in FY04 the Appropriations Act required the Executive Branch to produce a report on Compression. The December 1, 2003 report stated "However, since the mid 1980's

managers' salaries have been controlled by various Management Salary Programs which limited the amount of increase an individual manager could receive. A typical mid-level manager (salary range 32) earning \$48,000.00 in 1985 would have seen his/her salary increase through application of the various Management Salary Programs to \$77,000.00 in 2001. In contrast, a typical higher level supervisor (salary range 29), represented by the Communications Workers of America, at the mid-point of his/her salary scale in 1985 earning \$33,895.10 would have seen their base annual income increase to \$78,238.40 through application of the negotiated Across-the-Board increases and annual performance Increments. In other words, the manager would have realized a **60%** increase in salary while his/her immediate subordinate would have realized a **130%** increase within the same time frame."

We would like to receive raises per the Compensation Plan in accordance with N.J.S.A. 11A:3-7. It is what we have been struggling for all these years. That would put us equal to union employees, nothing more and nothing less. Restoring the managers to the State Compensation Plan would return equity to the state salary structure that has been missing since 1985. Governor Corzine has agreed to raises during his term but is now talking about the poor state of the budget. We have heard this many, many times and it is always the excuse for not granting raises to managers while union employees get raises no matter the state of the state.

I am providing two reports to you that clearly illustrate the problem. I ask that you please take the time to familiarize yourself with our dilemma. I think you will agree that the managers have been taken complete advantage of due to the lack of bargaining rights. In fact, we filed for bargaining rights in 2003 but due to collusion between the Communication Workers of America (CWA) and the State we were denied the right to bargain by the passage of a State law.

If there is anything more you need from me, please contact me at 609-847-0984 and I will get it to you immediately. I thank you for your interest in this issue and hope you will help us.

Sincerely,



Thomas R. Kearns  
Executive Director

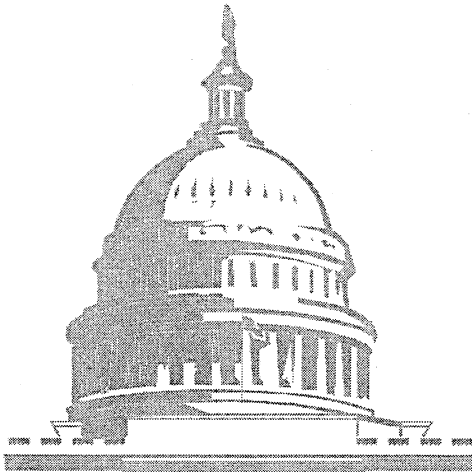
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# **SALARY COMPRESSION**

**and**

**STATE MANAGERS**

**Setting the Record Straight**



A report to the New Jersey State Legislature on improving state government by retaining the brightest and best managers.

prepared by

**PSMA**

Public Sector Managers Association  
A Professional Association of Managers

April 1996

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Public Sector Managers' Association  
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printed on recycled paper

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**PSMA**

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# Introduction

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**“Salary increases are necessary to attract and retain the brightest and best.”**

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“Salary increases are necessary to retain the brightest and the best. Raises are necessary to ensure judges’ salaries keep pace with the growing cost of living.” These remarks were made by New Jersey State officials when justifying salary increases for the state’s judges. They are statements no one can fault, whether in the private or public sector. However, despite the governor and legislature’s prudent decision to increase judge’s salaries, the principles of retaining the brightest and best through competitive salary adjustments has not been equitably applied in state government. Sadly, this trend has had many negative impacts on the managerial structure of state government including, demoralizing existing managers to the point where many are pursuing demotions back to union titles still offering regular yearly raises, and deterring the most talented staff members from accepting managerial positions, since there are more disincentives than incentives.

Clearly, the present situation is serving no one, since state taxpayers cannot receive the service they deserve when the fabric of state government, its managerial staff, continues to unravel.

As state legislators, we believe your role in reversing the present trend of negative discretionary and below cost of living salary and benefit actions is critical. During these times of doing more with less, it has never been more important to shore up state government’s foundation for implementing the needs of the taxpay-

ers—its managerial staff.

Our goal is the same—meeting the needs of the taxpayers—our method for achieving the goal is also the same—utilizing the brightest and the best people to carry forward and implement the laws you, our legislators, pass. Our roles are not mutually exclusive but dependent on one another.

It is the intent of this report to detail the plight of state managers over the past 13 years. You may be surprised by some of the facts we have provided and we are hopeful that armed with these facts, we can work together in addressing the policies which have led to the current situation. If, after reviewing this documentation, you have questions or require further clarification, please contact Beverly Lynch, Executive Director, Public Sector Managers Association (PSMA), by calling (609) 392-4319.

**Working together,  
we can build a more effective  
and efficient state government  
for New Jersey.**



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# How You Can Help

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The goal of this report is to set the record straight—to document the effect salary and benefits decisions have had on state managers, and to provide specific recommendations to address these inequities. With more than \$100 million in salary losses over the last thirteen years, managers have provided a huge cost savings to the state—a savings not matched by any other area of state government. While we understand the difficulties associated with balancing the state budget, we do not feel managers should continue to shoulder a disproportionate share of the financial burden. The following offers a number of recommendations to address these inequities, and we request your help and support in implementing these changes.

1. Replace the Salary Adjustment Committee (SAC) budget language, which has allowed discretionary decision-making on matters concerning salary compensation, with a policy authorizing salary adjustments in conformance with the Title 11A's Compensation Plan under Civil Service law;
2. Over the long term, adopt a comprehensive compensation program that is commensurate with ability and responsibility (i.e., know how, problem solving, accountability) that applies to all employees fairly, both unionized staff **and managers**;
3. Restore full health benefits to those managerial employees vested now and retiring later;
4. Eliminate discretionary decision-making on benefits and other terms and conditions of employment, which would assure managers are treated fairly; and

5. Work toward forming a partnership between the Legislature, the Executive Branch, and PSMA charged with critically examining and resolving any issues impeding the administration of effective and efficient government.

## Why We Need Your Help

### The Facts About Salary Compression

Since 1983, state managers have worked under an imposed salary "cap," which limits salary adjustments for managers earning more than \$50,000. The original intent of the \$50,000 cap was to prevent managers' salaries from automatically surpassing the salaries of their cabinet-level superiors. In 1983, the \$50,000 annual salary level was not unreasonable when compared to cabinet-level salaries or the salaries of unionized staff. Over the years, however, cabinet and uppermost management executives were granted pay increases along with unionized professional staff. Despite this practice, the \$50,000 salary cap was never adjusted for managers. Thus, the original problem the State, as employer, was trying to prevent and mitigate on behalf of its highest level personnel has now created that same severe salary compression situation for a large segment of its management personnel. The graphs and charts in this report show the extent of the salary compression, both past and present. Figure 1 on page 3 presents an historical view of salary compression for four different levels of government. Further, amendments to the New Jersey State Constitution in 1992 allow legislative oversight in determining whether existing or proposed regulations meet legislative intent.

# Why We Need Your Help *(continued)*

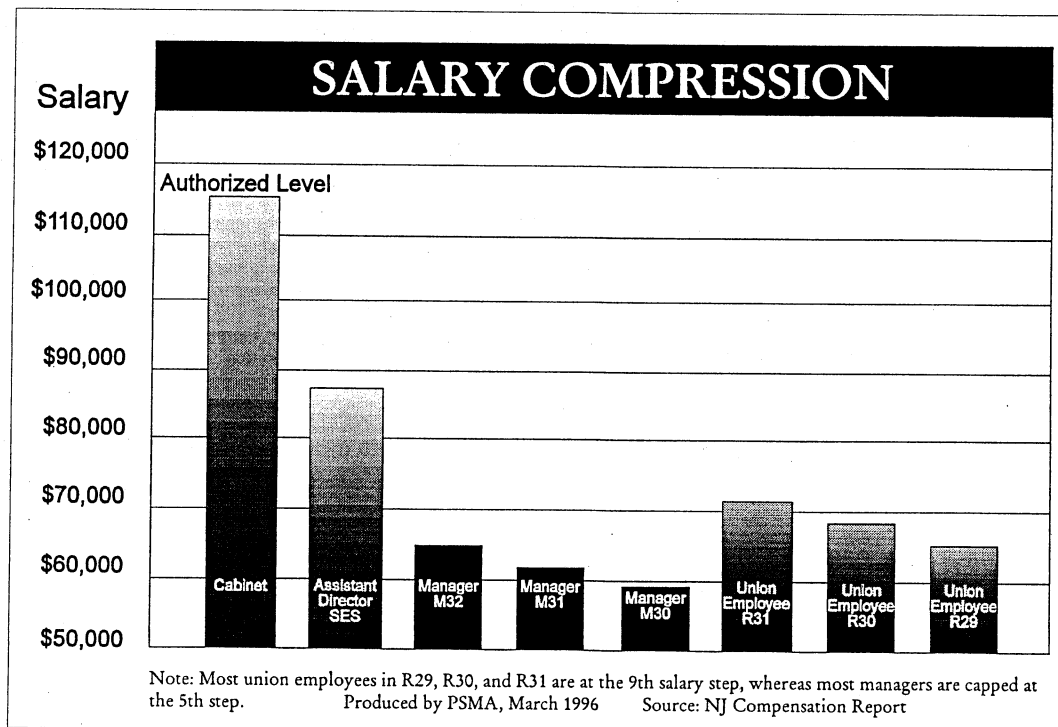
Since annual increases and cost of living adjustments have been discretionary for state managers, these individuals have lost significant purchasing power and earn below the cost of living, while cabinet, sub-cabinet and unionized employees have not been similarly impacted. Unionized employees' salaries during the period from 1983 to 1996 have increased more than double the rate of inflation, while managers' salaries have not even kept pace with inflation over the same period. Figure 2 (page 4) is a comparison of managers' salary adjustments and unionized employees' increases during this period in comparison with the annual rate of inflation.

In 1994, managers received two salary increases—a 5 percent merit-based increase in April and a 6 percent increase on July 1. These were the first salary increases for managers in four years. We applaud the courage

of officials in the present administration, and those members of the Legislature, who acted so forthrightly in addressing this issue. However, it should be noted that these 1994 managerial increases simply matched the cost-of-living raises granted to unionized employees at the same time. Therefore, the long standing salary compression problem was not eliminated, and the managers' compensation continues to be below inflation. Furthermore, in 1995, the Department of Environmental Protection (DEP) reduced the salaries of approximately 1,800 professional staff, below Range 35, five to ten percent, dropping their salary compensation one to two ranges. While not depicted in this report, since a single department was involved, the effect of this action further reduced the annual salary of some of the DEP's managers.

Figure 1

*Managers' salaries have been capped since 1983, while union employees have received annual salary increases and cost of living adjustments. Managers do not get annual salary increases and salary adjustments have been discretionary and often below the cost of living.*



# Union Workers' Salaries Surpass Managers

Figures 3 and 4 (page 5) depict the salary disparities between managers and union employees. Figure 3 provides an example of the salary compression discussed within this document in which, over the course of an eleven-year period (1983-1994), a manager's salary has increased from \$50,000 to \$65,213, equating to a rate of 3.81 percent per year. On the other hand, during this same 11 year period, a union employee starting with an annual salary of \$26,994 now earns more than the manager as a result of annual salary and cost of living increases averaging 10.5 percent. Figure 4 projects the salaries of managers in comparison with union employees over the current contract period (1995-1999). Again, without adjustments, the annual salaries of union-represented individuals will escalate well beyond the salaries of managers during this period.

In addition to the salary compression problem, we are faced with the false perception that managers earning more than \$50,000 are a source of waste in state government that should be eliminated. This perception is continually reinforced in both newspapers and radio programs. The fact is, as shown in Figure 5 (page 6), there are more unionized employees earning over \$50,000 per year than managers. Figure 6 (page 6) shows a disturbing trend since 1982—the number of union employees earning over \$50,000 is increasing each year, whereas manager numbers are decreasing over the same time period (June 1982 - February 1996). As a result, it is now quite common for subordinates to earn more than their managers. Further, a number of managers now find themselves in a position of earning thousands of dollars less per year than if they had remained in unionized positions.

Figure 2

*Managers' salary adjustments averaged below the cost of living, while average union salary increases were triple the manager's increases and double the inflation rate.*

<b>SALARY INCREASES AND INFLATION</b>			
<b>Manager and Union Positions 1983 - 1996</b>			
<b>Year</b>	<b>Managers salary adjustments</b>	<b>Inflation</b>	<b>Union (1) annual increase and/or cost of living adjustments</b>
1983			
1984		5.0%	14%
1985	2.9%	3.7%	14%
1986	3.5%	3.3%	17%
1987	3.5%	5.1%	9%
1988	5.5%	4.8%	9%
1989	4.2%	5.6%	3.5%
1990	3.0%	6.1%	16.5%
1991	4.5%	4.6%	9.5%
1992	0.0%	3.6%	4.0%
1993	0.0% (2)	3.0%	9.0%
1994	5.0% & 6.0% (3)	2.4%	10.0%
1995	0.0%	3.5%	3.5%
1996	0.0%		3.5%
Annual Avg.	3.1%	4.3%	9.42%

(1) Union position salary increase include annual increments varying between 3.5% to 5.0%.

(2) In 1993, DEP managers received a 2% bonus except those in the 9th step. This bonus was not added to the base salary.

(3) While not reflected above, in 1995, the DEP professional staff, including managers below range 35, received a 5% to 10% DECREASE in salary and a one to two reduction in salary range due to reduction in hours from 40 - 35 per week. However, they are still required to work as long as it takes to get the job completed at less salary and without overtime.

Source: US Bureau of Labor Statistics and NJ Compensation Report. Produced by PSMA, March 1996

# Compensation Disparities

Figure 3

*Union salaries have far outpaced managers' salaries.*

COMPENSATION DISPARITIES BETWEEN MANAGER AND UNION POSITIONS 1983 - 1994				
Year	Managers		Union Positions (1)	
	Salary	Salary Adjustments	Salary	Annual Increases and/or Cost of Living Adjustments
1983	\$50,000		\$26,994	
1984				14%
1985		2.9%		14%
1986		3.5%		17%
1987		3.5%		9.0%
1988		5.5%		9.0%
1989		4.2%		3.5%
1990		3.0%		16.5%
1991		4.5%		9.5%
1992		0.0%		4.0%
1993		2.0% bonus (2)		9.0%
1994	\$65,213	5.0% & 6.0%	\$65,233	10.0%
		3.8% avg.*		10.5% avg.*

\*Compounded annual salary increase

(1) Union position salary increases include annual increases varying between 3.5% to 5.0%.

(2) Bonus was not added to the base salary.

Source: NJ Compensation Report Produced by PSMA, April 1996

Figure 4

*As salary compression continues over the next 5 years, union salaries will continue to exceed managers' salaries.*

COMPENSATION DISPARITIES BETWEEN MANAGER AND UNION POSITIONS 1995 - 1999				
Year	Managers		Union Positions (1)	
	Adjustments	Salary	Annual Increases and/or Cost of Living Adjustments	Salary
1995	0.0% (2)	\$58,706	3.5%	\$58,706
1996	0.0%	\$58,706	3.5%	\$61,152
1997	0.0%	\$58,706	3.5% + \$250(bonus) + \$840	\$64,688
1998	0.0%	\$58,706	3.5% + \$420 + 840	\$67,304
1999	0.0%	\$58,706	3.5% + \$525	\$69,015

This table illustrates the salary disparity (at 5th step) between a manager (M30) and a union employee (R30) through the current contract period.

(1) Union employees will continue to receive annual increases (average 3.5%) and base increases as per current Union Contract through 1999.

(2) While not reflected above, in 1995, the DEP professional staff, including managers below range 35, received a 5% to 10% DECREASE in salary and a one to two reduction in salary range due to reduction in hours from 40 - 35 per week.

Source: CWA current settlement.

Produced by PSMA, April 1996

# Who's Making Over \$50,000 Per Year?

Figure 5

*More unionized employees earn over \$50,000 per year than managers.*

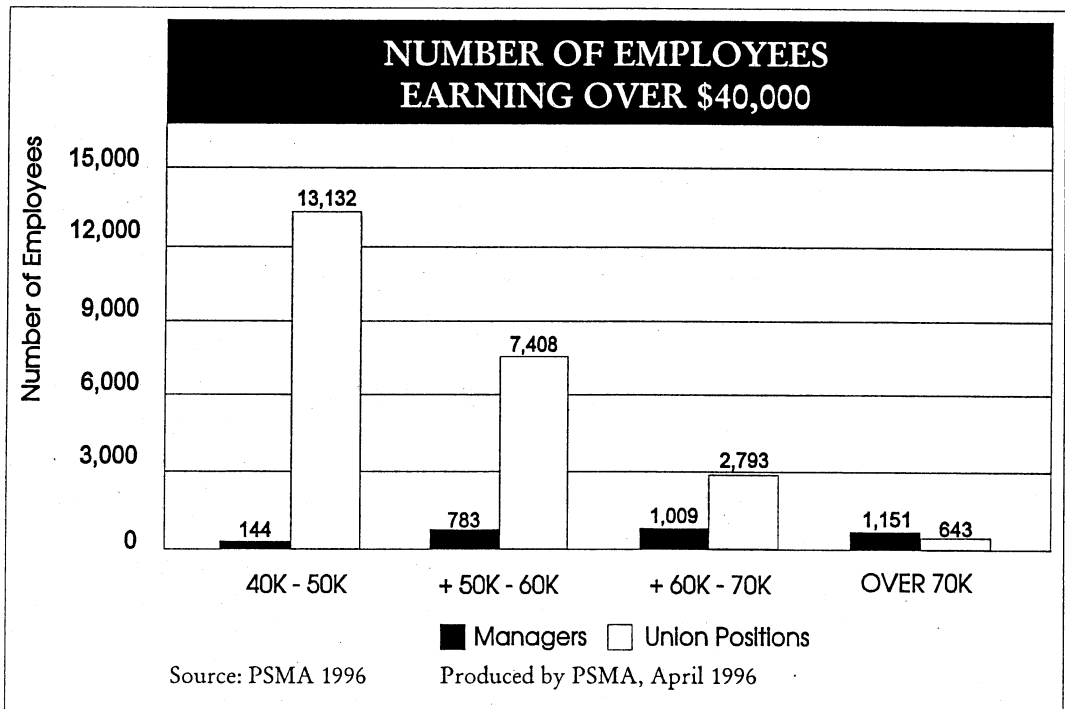
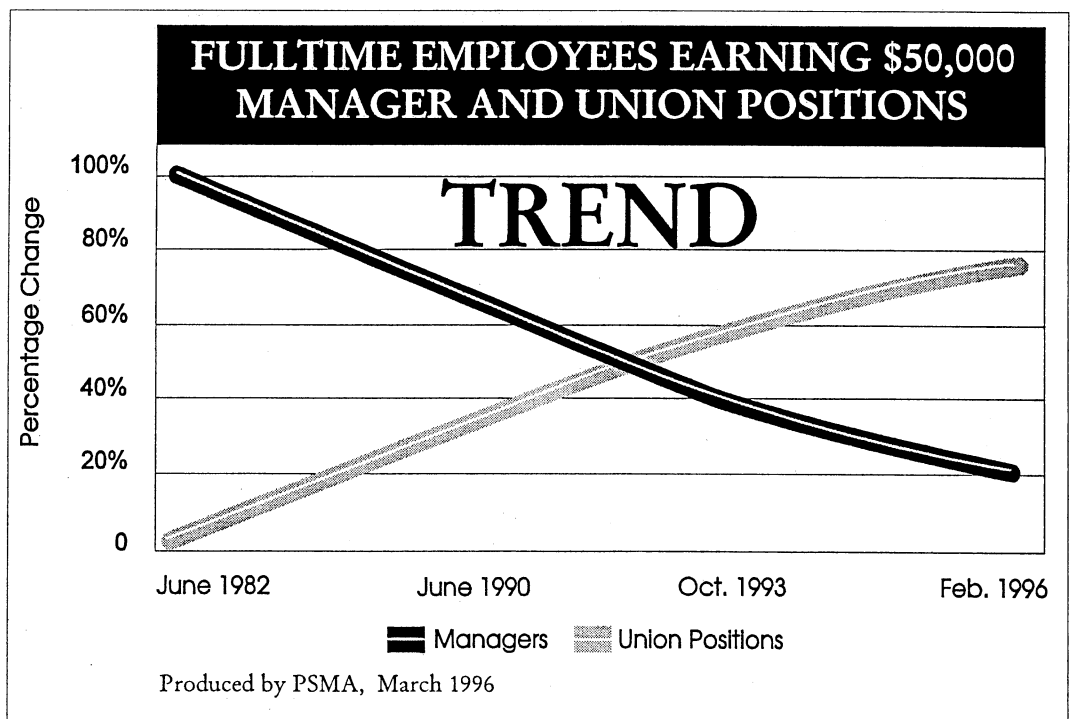


Figure 6

*The percentage of union employees earning over \$50,000 increases each year, whereas managers' numbers are falling over the same time period.*



# Staff/Manager Ratios: Private vs. Public Sector

Another false perception is that the number of managers in state government is excessive when compared to the private sector. The March 1996 issue of *Governing* magazine reports a ratio of one manager to every ten employees as typical in the private sector. In New Jersey, state government is well below this ratio, with an average of one manager for every 24 employees. (Please refer to Figure 7 page 7.)

## Salary Compensation Plan

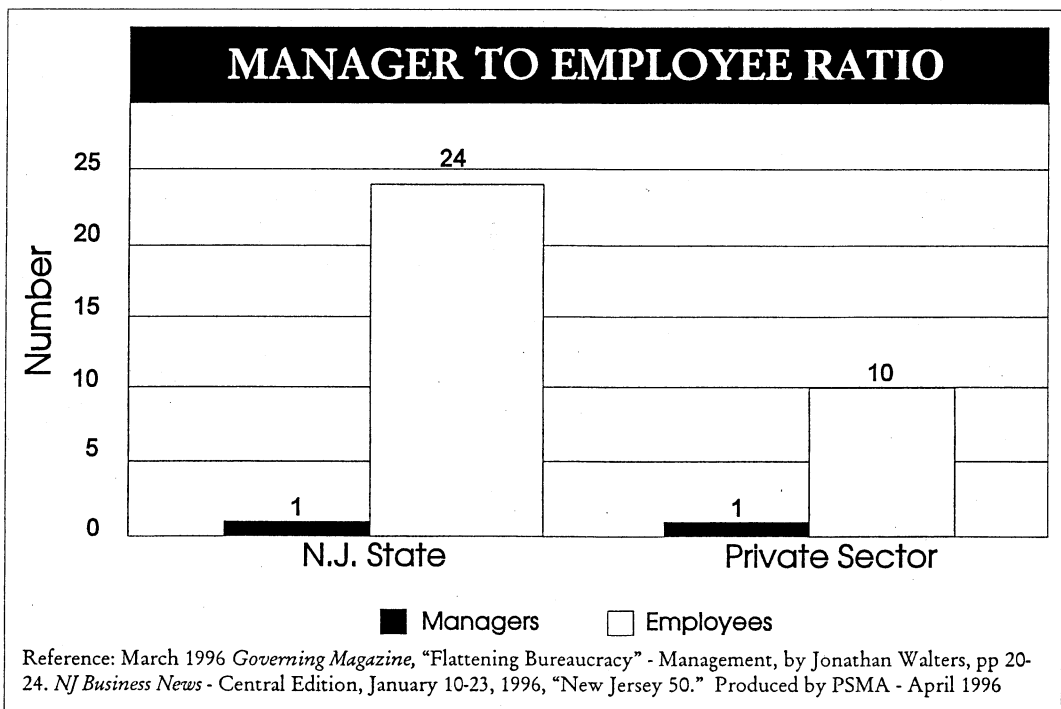
### How the SAC Has Caused Salary Compression

In 1986, the Legislature enacted the Civil Service Reform Act (Title 11A), which established the State Salary Compensation

Plan for all employees—both union and non-union. However, boilerplate budget language superseded the provisions of the Compensation Plan, and empowered a Salary Adjustment Committee (SAC), consisting of the State Treasurer, the Commissioner of Personnel and the Director, Division of Budget and Accounting, to consider thousands of individual requests for salary increases for “capped” employees. The SAC budget language is the single most important and debilitating impediment to resolving the salary compression issue. This language should be eliminated to allow non-aligned employees their rights under the Civil Service law’s Title 11A Compensation Plan as intended by the Legislature, thereby returning managers to the adopted Compensation Plan. Elimination of the SAC language would ensure managers are treated on the same basis as union-repre-

Figure 7

*In New Jersey, state government is well below the manager/employee ratio that is typical in the private sector.*



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# Salary Compensation Plan *(continued)*

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sented individuals with respect to salary and cost of living increases. Such a change would be an important step in addressing the salary compensation inequities the states' managers have endured for so many years.

Over the long term, we believe changes to the Compensation Plan should be adopted to reflect the diverse responsibilities of the various positions within state government. By considering these differing responsibilities within the workforce, a more effective Compensation Plan could be established that would provide compensation commensurate with the responsibilities of the positions involved. We would welcome the opportunity to provide input in the development of such a Compensation Plan.

## Health Benefits and Retirement

### Discretionary Actions Continue to Impact Managers

We are also concerned about the availability of health benefits and retirement provisions. Again, because the applicability of contract provisions does not translate to non-unionized employees, managers' current and future benefits in these areas continue to be subject to discretionary decisions. For example, the proposed amendments included in S-627 indicate: "State employees for whom there is no majority representation for collective bargaining purposes, that the State Health Benefits Commission may, in its sole discretion, modify the respective statutory payment

obligations of the state and such employees in a manner consistent with the terms of any collective negotiations bargaining agreement." Such language further maintains the discretionary nature of these decisions which has seriously impacted managers in state government.

To further exacerbate the salary inequities, state managers were the only employee sector to be targeted in the proposed FY 1995-1996 budget to assume an additional financial burden of medical care co-payment, while the vast majority of state employees, who have continued to receive salary increases over recent years, were not affected. A medical co-pay in year one of 7 percent imposed upon non-union employees would represent savings of only \$741,000, or 0.0049 percent, of the total \$15 billion budget.

Fortunately, this proposal was deleted from the adopted budget. Yet its very introduction raises serious questions about whether equal treatment is intended to be provided to all employees when such policy decisions continue to be made on a discretionary basis.

With the changes to the health benefits program under the new union contract settlement agreement, including the potentially substantial increases in the costs to the employee to maintain coverage under the Traditional Plan, we are concerned about state managers again shouldering more than their fair share of such costs, particularly since these costs exacerbate salary compression. Such decisions with respect to managers should no longer be discretionary.

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Managers' health benefits are subject to the sole discretion of the State Health Benefits Commission, whereas union employees' benefits are negotiated.

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# July 1997 Health Benefit Cut-off

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**After 20 years of employment, it is unjust to change the health benefit retirement provisions of an employee's terms of employment.**

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Under the current union contract settlement agreement, full health benefit coverage for retirees will not apply to state employees unless 25 years of pension service is accrued by July 1, 1997. Notwithstanding the historic salary compression which has impacted managers for so many years, the availability of health benefits coverage in retirement partially mitigated this inequity. With this cut-off, career managers will be doubly impacted. In addition to the long term salary losses of over \$100 million over the last thirteen years, resulting in a permanent reduction in pension benefits available at retirement, the possibility of substantial reductions or elimination of health benefits coverage is simply untenable. Also, with the ever increasing costs associated with transportation, auto and other insurances, and education, and while managers' salaries have not kept pace with the cost of living, managers' families are finding it difficult

to make ends meet. While we do not oppose a provision eliminating health benefits coverage in retirement for employees hired after the effective date of the settlement agreement, since these employees will be aware of this at the time of employment, to change such a substantive provision of an employee's term of employment after 20 or more years of service is unjust. We suggest this provision be revised with regard to managers to allow full health coverage to compensate for the many years of salary (and therefore pension benefits) impacts to which they have been subject. At a minimum, allowing a phase-in of this provision for a five-year period of time and/or allowing employees to buy pension credit as a means to partially mitigate the severe impacts this provision would have on long term managers would be more appropriate. We would be happy to assist in the development and implementation of such an option.



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# Summary and Highlights

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We can do more with less and we can work smarter and more efficiently, but only if we create appropriate incentives for those with the talent, ability, and vision to carry our government's initiatives forward.

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It is unfortunate a report like this had to be prepared, but we felt an overwhelming need to set the record straight and to enlist your assistance in reversing the antiquated policies that are slowly weakening the underpinnings of state government—its managerial staff. Recognizing our partnership in providing top notch government to our citizenry, we ask for your help in retaining the brightest and best by carefully considering the facts we have provided in this paper. We can do more with less and we can work smarter and more efficiently, but only if we create appropriate incentives for those with the talent, ability, and vision to carry our government's initiatives forward. A state cabinet official stated, with a smaller public sector, the state needs to further invest in its employees. We look forward to working with the Legislature and the Executive Branch to resolve these critical issues in a manner that is both fair and beneficial to our members and to the taxpayers and citizens of New Jersey.

The membership of the PSMA thanks you for your support and attention to this matter. The following highlights the issues most needing your action:

1. Replace the Salary Adjustment Committee (SAC) budget language, which has allowed discretionary decision-making on matters concerning manager salary compensation, with a policy authorizing salary adjustments in conformance with the Title 11A's Compensation Plan under Civil Service law;
2. Over the long term, adopt a compre-

hensive compensation program that is commensurate with ability and responsibility (i.e., know how, problem solving, accountability) that applies to all employees, both unionized staff **and managers**;

3. Restore full health benefits to those managerial employees vested now and retiring later;
4. Eliminate discretionary decision-making on benefits and other terms and conditions of managerial employment; and
5. Work toward forming a partnership between the Legislature, the Executive Branch, and PSMA charged with critically examining and resolving any issues impeding the administration of effective and efficient government.

State managers have a critical role for implementing government services in a timely and efficient manner. The administration must reverse the trend of the negative discretionary salary and benefits actions which have resulted in the demoralization of its managers. Reversal of these policies is the only way the state will foster a working environment that is able to retain the brightest and best managers. As we reinvent government together, let's prevent the salary and benefits inequities towards managers and create and encourage PSMA participation and teamwork in the implementation of the Innovation Through Quality Management Program.

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## Background Information About the PSMA

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The PSMA is a professional association of managers which was founded in 1991. At present, we have an active membership of nearly 1,000 career public service managers. Our members hold job titles or positions in government that are assigned to the exempt, managerial or confidential employee relations categories—categories which are not eligible under the Employer Employee Relations Act to participate in collective bargaining.

By reaching out to our membership

and external experts, we have fostered a valuable exchange of information and ideas on technical and administrative issues of concern. We have met with leaders of the Legislative and Executive Branches, offering the skills and expertise that exists within our membership, to improve the workings of government. To continue government improvement initiatives, we are currently in the process of setting up an Excellence in Government Leadership Symposium (to be held in the near future).

### PSMA's Goals

By working with officials and key staff in the Legislative and Executive Branches of government, and by publishing information to the citizens of New Jersey, we seek to accomplish several goals:

- To enhance the effectiveness of government;
- To improve the quality of management and leadership in public organizations and institutions;
- To communicate the positive contributions of all managers; and
- To ensure a fair and equitable compensation system for all managers.



**PUBLIC SECTOR  
MANAGERS' ASSOCIATION, INC.**

202 WEST STATE STREET, TRENTON, NJ 08608-1102 609-392-4319 (fax) 609-392-6347

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**NEW LOCATION!!**

*At the request of our members in North Jersey*

**PUBLIC SECTOR MANAGERS' ASSOCIATION**

*General Membership Meeting  
(moves up the Turnpike!)*

*Wednesday  
June 12, 1996*

*Crowne Plaza - Edison  
(formerly Holiday Inn)  
Edison, NJ*

*Network Reception 5:30 p.m.  
Program 6:00 p.m.*

*Featuring Special Presentation by*

*• Gerard Meara, Council 73*

*American Federation of State,*

*County and Municipal Employees (AFSCME)*

*Mr. Meara will discuss how he recently organized a new union  
representing middle management at the New Jersey Turnpike Authority*

- PSMA Happenings...a review of upcoming activities*
- 1996-97 Election of PSMA Board of Directors*
- Bring a non-member...introduce him/her to the benefits of PSMA*

*Please help us estimate the attendance...RSVP to (609) 392-4319*

**SEE YOU ON JUNE 12!**

*"A Professional Association of Public Managers"*

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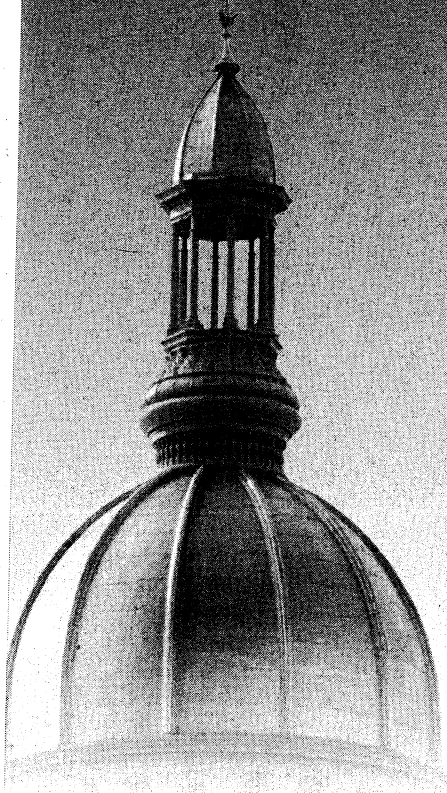
**CREATING FAIRNESS AND  
EQUITY FOR CAREER  
MANAGERS IN NEW JERSEY  
STATE GOVERNMENT**

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**Recommendations to the  
Governor and Legislature**

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Prepared by the  
Public Sector Managers' Association  
May 2006



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*printed on recycled paper*

# Executive Summary

In 1983, salaries for career managers were approaching \$50,000 per year. Department heads at that time were making approximately \$70,000 per year. To prevent the compression of top Cabinet officers, former Governor Tom Kean instituted a salary cap on career managers by removing the entire pool of career managers from the legislatively mandated State Compensation Plan.

The State Compensation Plan provided a uniform system under Civil Service laws for compensating all State employees utilizing nine "steps" or salary increases (or increments) based upon approximately 5% of the base salary for each year of service (except for the ninth step which has 18 months, as well as a special tenth step to be given in July 2006) plus contract-negotiated cost-of-living increases. In 1983, career managers were removed from this State Compensation Plan so that their salaries would not surpass the salaries of cabinet officers. Since that time unionized employees have received automatic step increases and negotiated cost of living increase, while managers have not received these same increases. Managers are not presently part of the Compensation Plan and only get raises when allowed by the Governor. This has created significant inequity and a fundamental lack of fairness. As a result managers are demoralized and few staff desire to fill vacant manager positions.

In 2004, the Commissioner of the NJ Department of Personnel, the State Treasurer, and the Director, Office of Management & Budget presented a report to the N.J. Legislature entitled "Management Salary Compression." that reaffirmed that managers have been unfairly treated. The principal conclusions:

- Managers' salary inequities could be solved by keeping public sector managers in the State Compensation Plan and allowing their salaries to increase at the same rate as their subordinates.
- The solution to the present inequity is to include public sector managers into the Appropriation language to receive the same treatment as other employees, as stated in the contract executed between the State and the Communication Workers of America.
- A long term solution is needed; however, to prevent this problem from having to be addressed by the administration and legislature on an on-going basis. Legislation should alter the current cap structure and allow managers to receive the same salary increment increases that their subordinates receive under the current State Employees Compensation Plan.
- Alternatively, allowing collective bargaining for the public sector managers may be a means to solving the problem in the long term, since a union would help the managers negotiate equity in their compensation.

In order to correct the salary inequities that have existed since 1985 the Public Sector Manager's Association, the Constitutional Representative of managers, recommends the following:

- Immediately place career managers back into the State Compensation Plan at the next highest step, grant a 5% across the board increase, and automatically award career managers cost-of-living and annual salary increments the state negotiates with the unionized work force thereafter.
- Ensure that career managers receive the same benefits as unionized employees.
- Enable career managers to be represented by collective bargaining.

# Executive Summary

*(continued from page 1)*

Removal of the career managers from the State Compensation Plan twenty years ago has proven to be a defective public policy decision. That one decision back in 1983, coupled with the lack of decisive action by the leadership of this great State, has created the disparate treatment resulting in career managers now earning the same or less than those they supervise. In fact, New Jersey now has hundreds of career managers earning less than their employees. The number of managers earning the same or just slightly more than their employees may enter into the thousands.

In 2005, career managers through PSMA tried to obtain collective bargaining rights; however, these efforts were thwarted by the Communications Workers of America who convinced the Legislature to reject this effort. As a result, career managers were denied the one recourse they had to negotiate for fair and equitable treatment. Legislation is presently pending to redress this issue. PSMA strongly supports this legislation and is asking the Governor to endorse it as well! In addition, the Governor has proposed cuts in benefits to non-unionized employees including managers. This will make a bad situation even worse.

**“There’s a lot of research that shows that in the workplace when people view their situation as inequitable, they either look to leave or they put in less effort on the job.”**

**—Dr. Steve Lorenzet, Rider University, The Times, September 14, 2003**

## Introduction

In April 1996, the Public Sector Managers’ Association (PSMA), the Constitutional Representative of managers in State government, authored a document that detailed the discrimination and disparate salary treatment of the career managers that work for the State of New Jersey vis-à-vis the pay compensation afforded the unionized employees with collective bargaining rights.

The public sector managers’ salary inequities have continued over the past ten years since that report.

“Salary increases are necessary to retain the brightest and the best. Raises are necessary to ensure judges salaries keep pace with the growing cost of living.” These remarks were made by New Jersey State officials when justifying salary increases for the state’s judges. They are statements no one can fault, whether in the private or public sector. However, despite the governor and legislature’s prudent decision to increase judge’s salaries, the principles of retaining the brightest and best through competitive salary adjustments has not been equitably applied in state government. Sadly, this trend has had many negative impacts on the managerial structure of state government including, demoralizing existing managers to the point where many are pursuing demotions back to union titles still offering regular yearly raises, and deterring the most talented staff members from accepting managerial positions, since there are more disincentives than incentives. (1996 PSMA Report)

The preceding statements are still true today. Since that time, the problems identified in that paper have been exacerbated by succeeding Administrations' continued lack of systemic reform.

Over the past years, managers have been asked continuously to do more with less, i.e., less in resources and less in salary. Managers' salaries have not kept pace with across the board salary increases negotiated for represented subordinates nor costs of living. Clearly the present situation is serving no one, since state taxpayers cannot receive the service they deserve when the fabric of state government, its managerial staff, continued to unravel.

**"In virtually every public entity, non-union workers are extended nearly identical benefits (as union employees) out of concern about employee morale."**

**—Jo Ciavaglia, Bucks County Courier Times,  
March 20, 2006**

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## Recommendations

In order to correct the salary inequities that have existed since 1985, PSMA, the Constitutional Representative of managers, recommends the following:

- Immediately place career managers back into the State Compensation Plan at the next highest step, grant a 5% across the board increase, and automatically award career managers cost-of-living and annual salary increments the state negotiates with the unionized work force thereafter.
- Ensure that career managers receive the same benefits as unionized employees.
- Enable career managers to be represented by collective bargaining.

# Findings

## Career managers are not treated fairly and equitably.

1. Public sector managers' salary inequities have continued since their salaries were capped in the early 80's.
2. Managers' salaries have not kept pace with across the board salary increases negotiated for represented subordinates nor costs of living.
3. Since the mid-80's managers realized a 60 percent increase in salary, but their subordinates realized a 130 percent increase within the same time frame.
4. There is inequity in the present system, since public sector managers get no longevity increases and no raises under any plan, unlike their employees.
5. Currently, state unionized employees are receiving an average 3.3 percent increase under the state's statutory Compensation Plan and an additional 2.9 percent in FY04 under a four year negotiated agreement running from 2003 – 2006 (agreement negotiated by Communications Workers of America and AFSCME).
6. Current statutory language provides for all state employees to receive increment increases through the Title 11A Compensation Plan, but Appropriation Act language every year removes public sector managers from the Compensation Plan.
7. Any raises that managers do receive are only granted in years when the Administration and legislature decide to give them a raise, thus making managers' compensation unpredictable, while unionized employees receive automatic cost-of-living and annual increments.
8. Managers' salaries increase at lower rates than their employees, thus causing the systematic problem of inequities and unfairness.
9. While New Jersey career managers have continued to provide high levels of dedicated service, the loss of morale and feelings of inequity have taken their toll. Career managers who are demoralized are not able to motivate and lead their staff.
10. Few staff level employees are willing to take management positions since they will receive more income by not going into management.
11. PSMA has sought to unionize and seek collective bargaining for the public sector managers, as a means of solving the long term problem of the managers' compensation unfairness since a union would help the managers negotiate equity in their compensation.
12. Career managers want to be treated with the same respect and dignity as unionized employees.
13. It should be recognized by the Administration and Legislature with regard to cuts to non-unionized employees, particularly salary or benefits, that career managers are not political appointees and have already been unfairly treated over the past two decades.
14. There is a lack of State support for State managers, especially in the area of compensation, rewarding workers in union positions and penalizing managers.
15. Capable managers have requested demotions back to union titles so that they could receive cost-of-living pay increases.

**"Most corporations try to avoid these kinds of situations because they are demoralizing for supervisors or managers and can lead to resentment and lack of productivity."**

**—Dr. Charles Fay, Rutgers University,  
The Times, September 14, 2003**

# History

In 1983, salaries for career managers were approaching \$50,000 per year. Department heads at that time were making approximately \$70,000 per year. To prevent the compression of top Cabinet officers, former Governor Tom Kean instituted a salary cap on career managers by removing the entire pool of career managers from the legislatively mandated State Compensation Plan.

The State Compensation Plan provides a uniform system under Civil Service laws, for compensating all State employees utilizing nine “steps” or salary increases (or increments). In 1983, career managers were removed from this State Compensation Plan so that their salaries would not surpass the salaries

of cabinet officers. Since that time, unionized employees have received automatic step increases and negotiated cost-of-living increases, while managers have not received these same increases.

While previous Governors have granted occasional “merit increases” these increases have been significantly less than the increases that would have resulted if the managers remained in the State Compensation Plan. The management salary programs; however, have limited the amount an individual manager could receive. In addition, for over twenty years, career managers’ annual salary adjustments have been out-paced by inflation. See Figure 1 below.

## STATE EMPLOYEES PERCENT INCREASE (1985 – 2003)

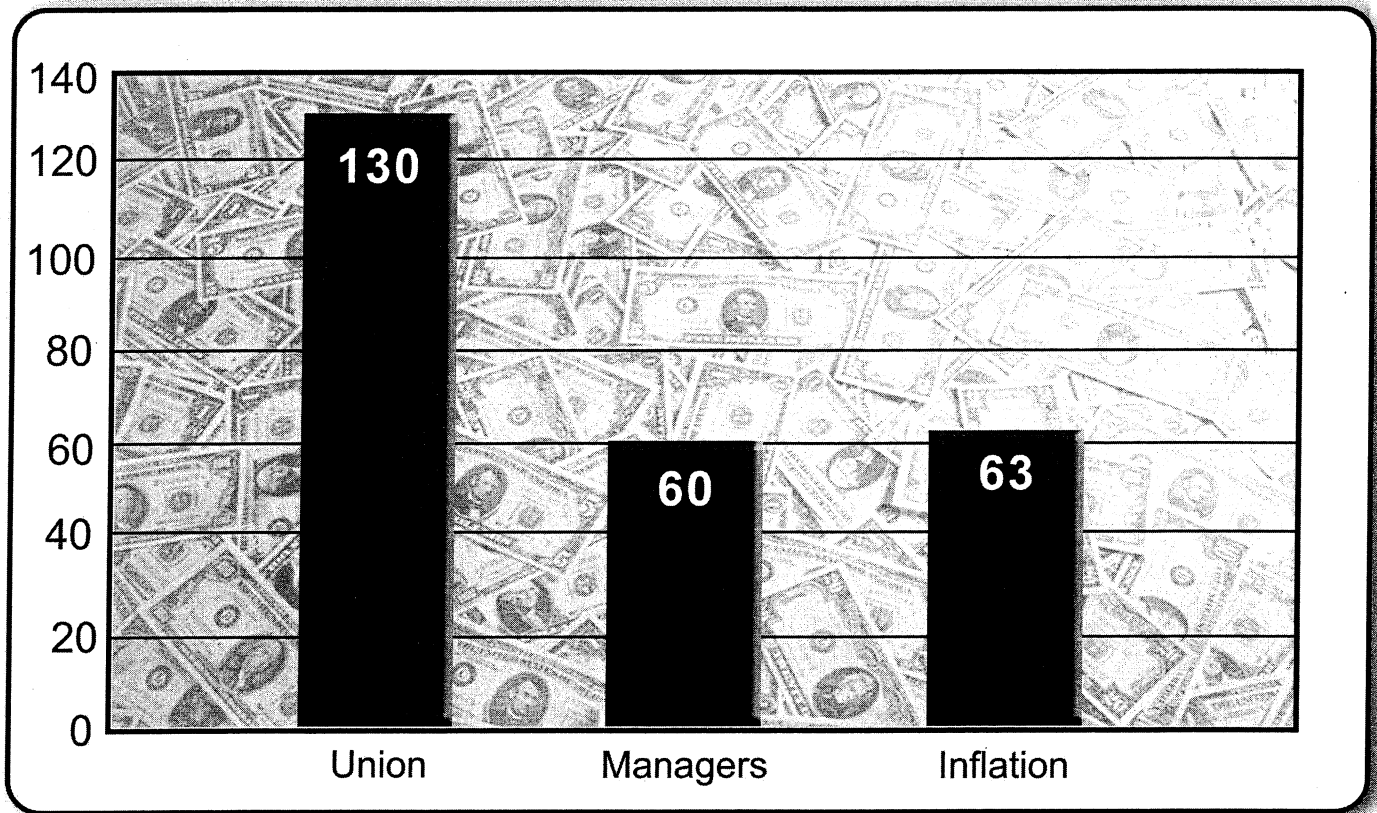


Figure 1 (Source: Management Salary Compression Report)

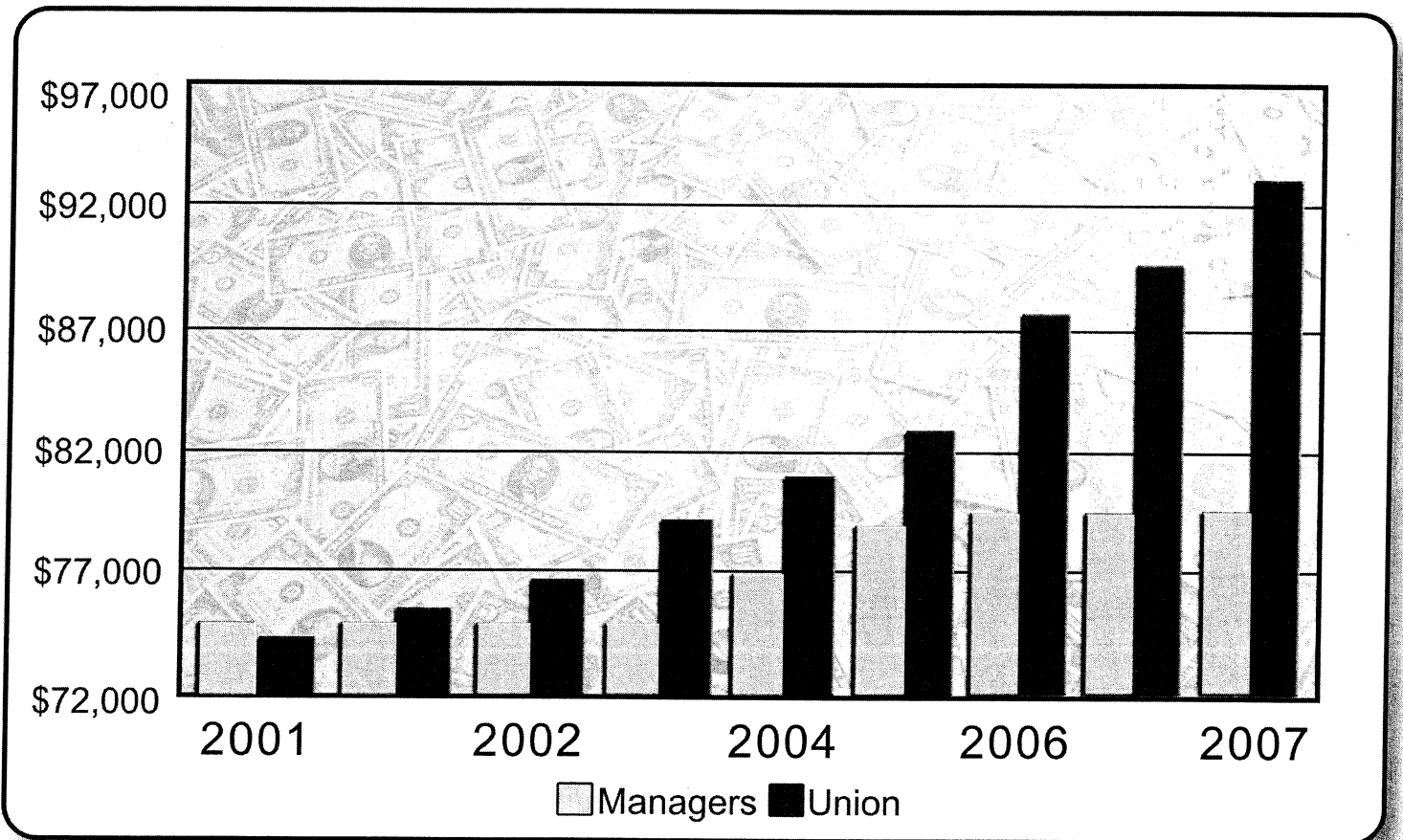
# History

(continued from page 5)

Career public sector managers in the State of New Jersey received no salary increases in 1992, 1993, 1996, 1997, 1999, 2002 and 2003 while the subordinates have been eligible and did receive annual and cost of living increases in accordance with the Department of Personnel regulations and contractual agreements.

The removal of the career managers from the State Compensation Plan twenty years ago has proven to be a defective public policy decision. That one decision back in 1983, coupled with the lack of decisive action by the leadership of this great state, has created the disparate treatment resulting in career managers now earning the same or less than those they supervise, and the manager's salary not even keeping pace with inflation. In fact, New Jersey now has hundreds of career managers earning less than their employees. The number of managers earning the same of just slightly more than their employees may enter into the thousands if this unfair and inequitable practice continues in the future.

## Managers' Salaries vs. Subordinates (2001-2007)



Source: See Table 2 on page 10.

## Several real life examples are:

- A person in the Department of Transportation was promoted from Supervising Driver Improvement (union position) making \$74,658.20 to a Manager 3 – DMV and received a salary of \$79,172.83. This increase places that person higher in salary than many long-term Manager 3 DMV and Manager 2 DMV employees. The Supervising Driver Improvement Analyst was promoted from a union title that received annual increments and cost of living raises which caused this disparity.
- A Bureau Chief in the Department of Environmental Protection was appointed to that title in March 1991. After being in the title for three years that Bureau Chief is earning a salary of \$80,557. A Section Chief (a subordinate title, union position) earning a salary of \$81,992 (Step 9 of Range 30) was promoted to Bureau Chief in June of 2003 at a starting salary of \$87,472. The Bureau Chief, who has served in the title for three years with continuous outstanding PAR ratings, is earning \$7,000 less than the recently promoted Section Chief. This is a direct result of Section Chiefs being in the compensation plan and having regular salary increases which provides a large compensation benefit when promotions to management titles occur. Existing managers in the Bureau Chief title face this inequity and are motivated to seek voluntary demotions simply to get an eventual pay increase.
- A manager in the Department of Transportation is currently assigned as a Manager (M-31) earning a salary of \$78,178. He has been in the title for thirteen years and supervises 50 employees. His colleagues in the Supervising Project Engineer title (S-31) represented by CWA earn \$85,950 (Step 9).

**There is inequity in the present system, since public sector managers get no longevity increases and no raises under any plan, unlike their employees. Any raises that managers do receive are only granted in years when the administration and the legislature decide to give them a raise, thus making managers' compensation unpredictable. Managers' salaries increase at lower rates than their employees, thus causing the systemic problem of salary compression.**

Given the above, the Fiscal Year 2004 Appropriations Act passed by the Legislature and enacted by the Governor, contained the following provision:

Notwithstanding the provisions of any other law . . . the State Treasurer, the Commissioner of Personnel and the Director of the Division of Budget and Accounting shall establish directives governing salary ranges and rates of pay, including salary increases, provided however, that across-the-board cost of living increases shall be provided to public sector managers consistent with the executed contracts between the State of New Jersey and the Communications Works of America. By December 1, 2003 a report shall be issued addressing salary compression for public managers. The implementation of such directives shall be made effective at the first full pay period of Fiscal Year 2004 as determined by such directives, with timely notification of such directives to the Joint Budget Oversight Committee or its successor.

The scope of the salary compression study was limited to the Executive Branch. Both the Judiciary and Legislature were invited to participate, though neither chose to do so. The Judiciary submitted copies of negotiated agreements and management directives detailing salary increases for Judiciary management. In short, the lower level Court Executives in the Judiciary are afforded annual raises sufficient to maintain a \$2,000 differential between them and their Professional Supervisory subordinates.

Table No. 1 on page 9 is information obtained from the New Jersey Department of Personnel. Union increases include both contractual and Compensation Plan adjustments. Though required by state law, career managers have not received State Compensation Plan adjustments since 1983. Note that many of the career managers' raises over the last 23 years were a "merit up-to percent raise." Each Department is allowed discretion to allocate raises based on merit. There is no discretion with union contracted raises.

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The lower level Court Executives in the Judiciary are afforded annual raises sufficient to maintain a \$2,000 differential between them and their Professional Supervisory subordinates.

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## ANNUAL SALARY INCREASES AND INFLATION Manager and Union Positions (1984 – 2007)

YEAR	MANAGERS	INFLATION	UNION <sup>(1)</sup>
1984	3.0%	5.0 %	14.0%
1985	2.9%	3.7 %	14.0%
1986	3.5%	3.3 %	17.0%
1987	3.5%	5.1 %	9.0%
1988	5.5%	4.8 %	9.0%
1989	4.2%	5.6 %	3.5%
1990	3.0%	6.1 %	16.5%
1991	4.5%	4.6 %	9.5%
1992	0.0%	3.6 %	4.0%
1993	0.0%	3.0 %	9.0%
1994	5.0% <sup>(2)</sup>	2.4 %	10.0%
1995	4.0% <sup>(3)</sup>	3.5 %	3.5%
1996	0.0%	2.7 %	3.5%
1997	0.0%	2.3 %	2.0%
1998	3.0%	1.6 %	2.5%
1999	0.0%	2.1 %	3.25%
2000	4.0% <sup>(3)</sup>	3.3 %	3.5%
2001	4.0% <sup>(3)</sup>	2.9 %	4.0%
2002	0.0%	2.3 %	2.0%
2003	0.0%	2.6 %	2.5%
2004	2.9%	3.4 %	2.0%
2005	2.0%	3.8 %	2.0%
2006	2.0%		4.5%
2007	Unknown		2.35%
<b>AVERAGE</b>	<b>2.5%</b>	<b>3.5 %</b>	<b>6.4%</b>

**Table No. 1**

- (1) Union position salary increase includes annual increments varying between 3.5% to 5.0% and/or COLA.
- (2) While not reflected above, in 1995, the DEP professional staff, including managers below range 35, received a 5% to 10%, DECREASE in salary and a one to two reduction in salary range due to reduction in hours from 40 – 35 per week. However, they are still required to work as long as it takes to get the job completed at less salary and without overtime pay.
- (3) Merit up to present raises, e.g., 6 percent was allocated, but most managers received significantly less.

Source: US Bureau of Labor Statistics and NJ Compensation Report. Produced by PSMA, April 2006

## COMPENSATION DISPARITIES Manager and Union Subordinate Positions (2001 - 2007)

ISSUE DATE	MANAGER	MANAGER SALARY (M-32) <sup>(1)</sup>	UNION (Contracted COLA)	UNION SALARY (M-30, Subordinate Title) <sup>(2)</sup>
June 2001	4.0% <sup>(3)</sup>	\$75,000	2.0%	\$74,000
December 2001	0.0%	\$75,000	2.0%	\$75,480
July 2002	0.0%	\$75,000	2.0%	\$76,989
January 2003	0.0%	\$75,000	2.5%	\$78,913
July 2004	2.9%	\$77,175	2.9%	\$81,201
July 2005	2.0%	\$78,719	2.0%	\$83,098
January 2006	2.0%	\$80,293	2.0%	\$87,779
July 2006	Unknown		6.5% (10 <sup>th</sup> Step Added)	\$89,754
January 2007	Unknown		2.35%	\$92,842
<b>TOTALS</b>	<b>10.9%</b>	<b>\$80,293</b>	<b>24.25%</b>	<b>\$92,842</b>

**Table No. 2**

- (1) Bureau Chief, DEP (M-32, Non-union)  
 (2) Section Chief, DEP (M-30, Union and Annual Increments)

NOTE: The data above is based on the most recent agreement between the CWA and State of New Jersey.

- (3) Merit up to present raises, e.g., 6 percent was allocated, but most managers received significantly less.

Governor Christie Todd Whitman addressed compensation disparities by granting career managers five merit raises in her eight years in office. However, those five raises were stop gap measures and failed to address the underlining problem of managers being unilaterally removed from the legislatively mandated State Compensation Plan. The State Compensation Plan was intended to keep all salaries in alignment and prevent the problem of compression we are attempting to correct.

# Summary

Every organization requires talented, committed, motivated management to initiate and sustain productivity, navigate organizational change, and align workforce activities with its vision, mission and goals. Traditionally, managers are paid higher salaries due to increased responsibility, greater accountability, and more independent authority than their direct reports.

However, since the mid-1980's managers' salaries have been controlled by various Management Salary Programs which limited the amount of increase an individual manager could receive. New Jersey is the only State in the region that has a Management Salary Program separate from the unionized Compensation Plan, and past practices instituted have consistently created unfairness and unpredictable compensation increments to public sector managers. Current statutory language provides for all state employees to receive increment increases through the Title 11A Compensation Plan, but Appropriation Act language every year removes public sector managers from the Compensation Plan.

Management salary inequities can have serious consequences for organizations. For instance, manager morale can be lowered and work stress can be significantly increased when satisfactory and excellent performance is not recognized in a fashion similar to that in which represented employees are recognized (through regular salary increases and ATBs). Decreased morale can be linked to lost productivity, lowered pride in the organization's public identity, and lowered management alignment with the administration's vision and policies. Additionally, internal recruitment into managerial positions can be limited due to staff preference to receive regular, dependable increases and negotiated ATBs. Finally, it can become increasingly difficult to sustain a motivated managerial cadre in an environment in which some talented managers have returned to, or explored being able to return to, staff positions that receive annual increments and negotiated ATBs.

In 2005, career managers through PSMA tried to obtain collective bargaining rights; however, these efforts were thwarted by the Communications Workers of America who convinced the Legislature to reject this effort. As a result, career managers were denied the one recourse they had to negotiate for fair and equitable treatment. Legislation is presently pending to redress this issue. PSMA strongly supports this legislation and is asking the Governor to endorse it as well! In addition, the governor has proposed cuts in benefits to non-unionized employees including managers. This will make a bad situation even worse.

Again, New Jersey's talented and dedicated managers will be asked to perform and implement the Administration's goals and objectives in response to the Legislature's mandates without fail. In successful public and private agencies today, people are seen as a key driver in achieving productivity gains, more so than any other investment. And yet, how much longer will the public sector managers have to wait to finally experience the immediate and long-term solutions for fair and equitable treatment, i.e., compensation and benefits that have been given to all unionized state employees for more than two decades?

---

**Clearly, it is time  
for the Governor  
of the State of  
New Jersey to  
immediately  
correct a problem  
that has been  
ignored by  
previous  
Administrations  
for far too long.**

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# References

- (1) Our Report: "*Salary Compression & State Managers – Setting the Record Straight,*" prepared by PSMA, April 1996.
- (2) The Report: "*Management Salary Compression,*" A Report to the N.J. Legislature, December 1, 2003, submitted by: Commissioner, NJDOP; State Treasurer & Director, Office of Management & Budget; and Recommendations Memorandum of the above Report from N.J. Senate to Budget Director dated April 16, 2004.
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- (4) Frederick Herzberg, et. al. "*The Motivation to Work,*" Wiley & Sons, New York, 1959
- (5) Ferdinand F. Fournies, "*Revised & Updated Coaching for Improved Work Performance, How to Get Better Results from your Employees!*", McGraw-Hill, New York, 2000.

# Mission Statement

By working with officials and key staff in the Legislative and Executive Branches of government, and by publishing information to the citizens of New Jersey, we seek to accomplish several goals:

- To enhance the effectiveness of government;
- To improve the quality of management and leadership in public organizations and institutions;
- To communicate the positive contributions of all managers; and
- To ensure a fair and equitable compensation system for all managers.



## State of New Jersey

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Commissioners

November 2, 2007

Senator William Gormley  
A NJ Limited Partnership  
DLA Piper US LLC  
17 Gordon's Alley - Suite 100  
Atlantic City, NJ 08401

Dear Senator Gormley:

As the Executive Director of the State Commission of Investigation (SCI), and with the approval of the Commissioners, I respectfully submit this letter asking the Public Officers Salary Review Commission to seek inclusion of the SCI as you prepare to review and recommend salary increases for public entities under your purview. Our request is to increase the salaries of SCI Commissioners. Historically, the SCI Commissioners received the same salary as Legislators. That parity existed from 1968 through 1992, thereafter the Legislature received raises and the Commissioners of the SCI were overlooked.

By way of background and justification for this request, I submit that the SCI is established as a permanent Legislative Commission (*N.J.S.A. 52:9M-1 (et seq.)*)

The Commission consists of four appointed Commissioners who select staff to accomplish the mission of conducting independent non-partisan investigations of organized crime, racketeering, public corruption, taxpayers concerns and controversial matters pertaining to public peace, safety and justice. In addition, the Commissioners are charged with the responsibility, when required, to make recommendations concerning removal of public officers, to propose legislative reform of existing law, and to encourage change to facilitate effective administration and enforcement of the law.

The Commissioners meet *in hanc* at a minimum of every other week and, in addition, serve on separate dates as hearing officers at depositions of witnesses, and preside at all public and private hearings involving investigations on a wide variety of matters impacting upon the responsibilities of state, county and local government affecting the eight million people of the State of New Jersey. All four Commissioners remain on call to

November 2, 2007

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provide daily guidance on investigations and other matters to the Commission staff and to respond at the behest of the Executive Director. The Chair, among other duties, also serves as Administrative Commissioner. He/she is the liaison for the Commissioners with the SCI management staff, which involves almost daily contact sometimes up to seven days a week. In addition, the Chair provides direction to the Executive Director on setting agendas and presides at all Commission meetings and public hearings.

A panoramic review of the reports and activities of the SCI Commissioners since the inception of the agency in 1968 reveals outstanding contribution to the public dialogue through recommendations to the Governor and the Legislature. The SCI reports inform the citizens of New Jersey on ways to curtail crime, reduce incentives that corrupt public officials and promote effective legislation to enhance the performance of government at all levels and improve the quality of life in our State.

In our most recent report, published in October 2007, the Commission undertook an exhaustive review of higher education in New Jersey and found a system vulnerable to waste, abuse and violations of the public trust. Other recent investigations exposed flaws in the Charity Care system, showed the ease with which convicted felons may legally purchase firearms ammunition and detailed questionable compensation packages for public school administrators. Our reports and investigations on organized crime within New Jersey are continually updated to reflect new trends and serve as resources for the law enforcement community.

SCI records show that in 2006 and 2007 alone, our Commissioners held nearly 40 business meetings, approximately 30 executive sessions, and public hearings.

There are other obligations that require the official presence of Commissioners that cannot be precisely logged. For example, they have participated in confidential conferences with the Attorney General, the U.S. Attorney for New Jersey, legislative leaders and other public officials. The record particularly cannot demonstrate the many hours spent privately by each Commissioner in reviewing and revising drafts of SCI reports preparatory to authorizing their publication, the review of memos prepared by staff to familiarize the Commissioners with a proposed witness's anticipated testimony and the review and editing of summaries of the hearings. The coming year's investigative agenda promises to be even more ambitious, compelling and time consuming.

By way of comparison, the New York State's Commission of Investigation (NYSCI) has a parallel responsibility and operational format comparable to ours. Their Commissioners are also considered as "part time." The Chairman of the NYSCI's salary is \$109,800 per year and the other five Commissioners receive \$101,600 per year.

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Three of our Commissioners have been receiving an annual salary of \$35,000 since 2000, and one can only receive \$15,000 annually due to a PERS pension restriction. The original salary for the Commissioners in 1968 was \$15,000 raised to \$18,000 in 1980 and to \$25,000 in 1984. This compensation hardly has kept pace with inflation over 35 years.

The argument has been made that our Commissioners do not serve full time. However, their oversight responsibility for the conduct of the staff, their on-call time and their constant involvement in formulating policy decisions -- serving literally 8-to 10-hour days as hearing officers in executive sessions (depositions) and maintaining continuous presence and participation in public hearings sometimes held over a 4-day period -- belies the myth of part-time status. The appointment authorities should also be aware that the position of a Commissioner at the SCI does significantly restrict the economic and social opportunities and activities of those who serve. They must be ever mindful of potential conflicts of interest that may arise of an ethical and legal nature, which has a significant impact upon their professional careers. It is, therefore, respectfully submitted that this level of activity elevates their involvement in official business to a level in which they should be entitled to the same salary scale as other public bodies, such as members of administrative commissions, for example, the Parole Board and the Casino Control Commission or at the very least ongoing and permanent parity with salaries of the Legislators.

It is further respectfully requested that your recommendation include a provision that would allow the Chair of the Commission, who is appointed by the Governor, to receive an additional stipend to be agreed upon yearly by the three Commissioners based upon the additional substantive administrative duties he or she performs which, using the recent past as a criteria, can double his/her workload over the course of a year.

In addition as alluded to previously, one of our Commissioners is on a Public Employee Retirement System (PERS) pension, and the current law (Chapter 278 P.L. 2001) limits anyone on a PERS pension to receive no more than \$15,000 annually for service. The law does not apply to a Police and Fire Retirement System (PFRS) or a State Police pensioner. A pensioner from either of those systems may receive a fully authorized salary if serving in a Commissioner's role. The SCI presently employs eight (8) retired members of other state pension systems as full-time staff members without pay restrictions. This anomaly does not appear to be equitable, nor practical since it limits the Appointing Authorities pool of otherwise highly qualified, potential Commissioner candidates. It is respectfully suggested that a recommendation be made to the Legislature to correct that inequity for a PERS pensioner who assumes an appointed position as an SCI Commissioner.

Thank you for your consideration of this reasonable and fiscally modest request by an Executive Director who, by observation and daily contact, recognizes the quality, dedication and effort put forth by the Commissioners of the SCI to fulfill their statutory mission.

**ADDITIONAL APPENDIX MATERIAL**

*submitted to the*

**PUBLIC OFFICERS SALARY REVIEW COMMISSION**

*for the*

**November 19, 2007 MEETING**

**Submitted by John D. Pollock, Private Citizen:**

Michael Rispoli, "N.J. debt surpasses \$38 billion," *Home News Tribune*, November 17, 2007.

Tom Baldwin, "Chief justice says pay judges more," *Home News Tribune*, November 15, 2007.

Tom Baldwin, "Panel ponders pay hike for Jersey judges," *Home News Tribune*, November 14, 2007.

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rs: 1-16

**SENATOR WILLIAM L. GORMLEY (Chair):** We're now on the record.

First of all, I want to thank everyone for their patience. I think everybody is uniquely aware of the weather predicament in New Jersey today and the backlog on the roads. As I'd like to point out, we all gained a unique -- greater familiarity of the Parkway today, if they were on the road. (laughter)

What we're going to do is-- We have, to be entered in the record, a correspondence from the Association of Compensation Judges. And we have correspondence from the New Jersey Advisory Council on Safety and Health. We're going to enter that in the record. And we have as a deadline for our report, by statute, December 1, although the last report was submitted on December 30 -- December 8.

But what I'd like to do is, if any members receive independent correspondence as to any requests that would come under the purview of what the Commission might -- may or may not recommend -- I'd appreciate those being entered into the record, also. And also, let's find some way that, as anything is entered into the record, we make sure it's available to the public in some form so they can see what's being entered into the record. I mean, if something were to come in after this hearing, people with an interest in it should know where it's available, or maybe it could be posted somewhere online so people could see it.

**JUDGE VOGELSON:** Mr. Chairman, I have received correspondence from the State Prosecutors Association. And I will forward that to all the members. I thought that it had gone to everybody, but--

**SENATOR GORMLEY:** I assume it will.

JUDGE VOGELSON: Okay.

SENATOR GORMLEY: Hopefully it wasn't being delivered by the Parkway. (laughter)

JUDGE VOGELSON: No.

SENATOR GORMLEY: Also, I've received correspondence, as I mentioned before, from the SCI. But it's important that we enter it into the record. But it's also important that people know we're receiving this correspondence and the public be made aware of it.

We'd like now to proceed with testimony. And I believe we have somebody who has registered to testify.

Come on up.

Which microphone should he go to? (referring to PA microphone)

HEARING REPORTER: Either one.

SENATOR GORMLEY: Either one is on. Okay, great.

Thank you.

Thank you for your patience. And we would appreciate you stating your name. And we'd very much like to hear your testimony at this time.

**JOHN D. POLLOCK:** Okay. First of all, I'd like to thank the members of the Commission for allowing me this opportunity to testify.

My name is John Pollock. I'm a retired steamfitter, out of Local 9, on disability pension.

I'm just going to really cut to the chase on this. The problem here is that -- not that-- I don't think the problem rests so much with

giving judges a raise in New Jersey. I mean, we know that everybody is in debt. The Federal government is in debt. We've all got bills. (laughter)

SENATOR GORMLEY: We've mastered debt in New Jersey though. We've taken it to a different level.

Go ahead.

MR. POLLOCK: To a different level.

And we're just talking about adding more debt.

I don't think that's the problem. The problem is the culture -- saying that they're the best and the brightest minds. The best and the brightest minds create laws, and there are other people who execute those laws.

My particular testimony today -- complaint -- was N.J.S.A. 3415-40. As a result of that law, in my personal injury case -- on the gross settlement on my personal injury case, 38.29 percent went to satisfy the lien of the workers' compensation insurance carriers; 27.64 percent went for the fees for the expert testimony of the liability witnesses, the medical witnesses, the reports, so on; 18.61 percent was for the legal fees for my personal injury lawyer. There were miscellaneous legal and medical fees, and a court penalty -- a sanction for getting the liability report not in on time -- and that came to 5.21 percent. It left me -- which I feel I'm a victimized plaintiff -- with a 10.25 percentage out of that gross settlement.

Later, when we got to the -- settled the workers' comp case -- I'm not going to name the attorney, because this is a public hearing -- they wanted to take all the money, because there was no money left from the award. It was completely wiped out. I got nothing for my permanent injury to my lower back. But there was prejudgment interest that was

awarded to me. So, of course, the workers' compensation insurance carrier wanted all of that money too.

Fortunately, we had a very decent, honorable workers' compensation judge. And she said she would take the prejudgment interest, and she would cut it in half, and then she would award the workers' compensation insurance carrier two-thirds of that.

The point I'm making here is that the judges approved the settlement -- two judges in Middlesex County. That doesn't show me -- not representing the brightest and the best minds that the State has to offer. That should have never been approved. I don't think any of you gentlemen on this committee would settle for just 10.25 percent. You would feel just as I do, that it's an absurd settlement, and not a sensible settlement, to receive from the court system of this State. It's not representative of the best and brightest legal minds in this state. And I don't think that -- the legislators who crafted this N.J.S.A. 3415-40 -- that was their intent: that an injured plaintiff -- that's all they would get out of a settlement, is 10.25 percent. And the rest would go for fees. And then even out of that -- when we say the 10 -- it involves not, again, the award from the jury. But all it is, is the prejudgment interest that the court awarded me.

I think that's terrible. I can't see any judges being proud of something like that. Even the Supreme Court justices, I don't think, would be proud of something like that.

SENATOR GORMLEY: If I may--

MR. POLLOCK: Sure.

SENATOR GORMLEY: First of all, thank you for your testimony.

MR. POLLOCK: Thank you.

SENATOR GORMLEY: There was a situation in your particular case-- You're saying there-- And by the way, I know you're trying to be very circumspect, which I appreciate, in terms of saying names. But with the press here, don't worry, they'll have the names. (laughter)

So you are saying that luckily, in the system -- in terms of your opinion -- there was somebody in the system who did step in and rectify the situation.

MR. POLLOCK: No, it hasn't been rectified.

SENATOR GORMLEY: It hasn't been rectified now?

MR. POLLOCK: In other words, to go through that time, trouble, and expense--

SENATOR GORMLEY: I understand.

MR. POLLOCK: --it makes the personal injury case system seem like it's a hoax, it's a farce. Everyone gets their money out of the settlement, and then the person that's injured becomes the victim, and they basically -- they get the crumbs of what's left. They get nothing out of it.

So what's-- The point I'm saying is, with the best and brightest legal minds in New Jersey, what is the purpose of a personal injury case -- to get crumbs?

JUSTICE COLEMAN: I, fortunately, served at all of the levels -- workers' compensation judge, Superior Court judge, and Appellate Division judge, and also in the State Supreme Court.

I'd just like to call your attention to one little fact. The personal injury case that you had was not one of those cases. And I'm saying this because you seem very competent as a person. That was not one

of those cases that required expressed approval by a Superior Court judge. That settlement did not require a court's approval.

The process there was, the lawyers made the settlement. And then once the settlement was completed, the lawyers filed the necessary papers with the court and the clerk's office to, essentially, dismiss the personal injury case. So that case did not require the court's approval.

And once the case got to the judge at workers' compensation, pursuant to the statutory provision-- And it has a legitimate purpose, too. The purpose is to try to encourage early provision for medical care and compensation to injured workers, and fight later about what is the amount that anybody should receive, by way of reimbursement. There are two statutes. And you said you were happy with the way the workers' compensation judge handled the matter.

So what happened, if I may respectfully suggest to you, is a matter that was almost exclusively in the hands of the lawyers and not the Superior Court judge.

MR. POLLOCK: I disagree with you. With all due respect, I disagree with you. The judge interrupted the summation of my personal injury lawyer. At the time, the jury as well as I were ignorant, because it was a secret sidebar discussion. He barred the time unit argument from being presented to the jury.

Now, at the end--

JUSTICE COLEMAN: That happened to be the right ruling.

JUDGE VOGELSON: That's right.

JUSTICE COLEMAN: That's the course -- that's the law.

MR. POLLOCK: I'm saying-- But at the end, the jury asked the judge if he could give them some guidance and a standard to help them convert those damages into a monetary award. The judge said there was no standard. That's not true. The standard is the time unit argument that he barred. It's in that document that I sent -- that I wrote to Chairman Gormley.

JUSTICE COLEMAN: I can understand how you feel that the system didn't serve you well.

MR. POLLOCK: That's correct.

JUSTICE COLEMAN: And I might add--

MR. POLLOCK: I'm a veteran.

JUSTICE COLEMAN: --that was one of the issues that--

SENATOR GORMLEY: Which branch?

MR. POLLOCK: Army.

JUSTICE COLEMAN: --I always looked at.

MR. POLLOCK: I have a certificate that's in there -- a recognition signed by the Secretary of Defense.

SENATOR GORMLEY: When did you serve?

MR. POLLOCK: During the Vietnam War, 1964 to 1966.

SENATOR GORMLEY: Were you in country?

MR. POLLOCK: Overseas.

SENATOR GORMLEY: Okay.

MR. POLLOCK: In the Arab world.

SENATOR GORMLEY: I'm sorry for interrupting, Justice. I apologize.

JUSTICE COLEMAN: I'm finished.

MR. POLLOCK: So what I'm saying is, I understand where these justices are coming from. But I'm going to say, unequivocally and categorically, that I feel like a victimized plaintiff, a forsaken veteran, a betrayed citizen, and a cheated taxpayer.

SENATOR GORMLEY: Okay.

Do I have any other comments from the members of the committee? (no response)

I want to thank you for your testimony. There can always be disagreements about a particular case. But your primary point is, without question, very telling and correct.

MR. POLLOCK: Thank you.

SENATOR GORMLEY: If we make a recommendation to raise these salaries, and we don't ensure that they are the best and the brightest-- I mean, we may disagree about a case, but where we have a common compact is, any increases in salaries, or whatever we might recommend, it's incumbent on the court and the system -- either through the county bar association, the State Bar Association, the new committee that was formed -- Justice Coleman is on it. It's an extra screening committee, in terms of the competence of names submitted. If we, shall we say, make a recommendation for any increase, it's incumbent upon those who administer the system that that promise of the best and the brightest be fulfilled, so that there will be people--

We might disagree on an individual case. And I think you could see the Justice was dealing in good faith with you, in terms of the law, although you might have a disagreement.

People deserve that, if we're saying, "This will be as politically free a system of influence as there is anywhere in the country, and the best."

So your point is a very good one. And I really do appreciate you waiting and taking the time. And you've been, I think, a very important witness.

And thank you for your time.

MR. POLLOCK: Thank you, Chairman and the rest of the committee. I also hope that you do--

The one note I will say here is, on the -- that you do-- All of you do have -- with this in mind -- on this Commission -- that you all have the prudence, fortitude, the moderation, and the wisdom to feel comfortable that you make a fair and just recommendation under the current economic conditions of this State, that will be fair to the truly brightest and best judges in this state, and also to the citizens, and common people, and veterans like myself that served this state and this country.

SENATOR GORMLEY: That's well-stated, and that should be the overall mission. You're correct.

Thank you.

MR. POLLOCK: Thank you very much.

JUSTICE COLEMAN: Thank you.

SENATOR GORMLEY: Any other witnesses?

**RICHARD MARCOLUS, ESQ.:** Good morning.

SENATOR GORMLEY: Again, thank you for your patience. We appreciate it.

MR. MARCOLUS: Things happen for a reason, Senator.

SENATOR GORMLEY: Okay.

And would you just please state your name?

MR. MARCOLUS: Sure. My name is Richard Marcolus, and I'm here to give testimony in support of the raises for the judiciary.

I, essentially, want to make my testimony brief. But I'm, essentially, wearing three hats. Number one: I am a workers' compensation lawyer. That's what I make a living on, that's what I've done for 25 years, and that's all I've done. Number two: I am the Chair of the New Jersey Advisory Council on Safety and Health, which is an organization made up of unions, physicians, attorneys, and civil organizations, whose goal and purpose is to ensure that the workers of the State of New Jersey are properly protected by the Workers' Compensation Act and its statutory purpose. The third reason why I'm here is-- Unfortunately, I wanted to bring my dad today but he is a little under the weather. And I'm actually glad he stayed home. But he is a member, and I am also a member, of Local 1342, which is a carpenters' union in Essex County. And my dad and Mr. Critchley's family go back a long way. And as a member of a union, I'm here in support of the raise for the compensation judges in this state.

In particular, I think it's important for the people of the State of New Jersey-- I said before I started that things happen for a reason. And that gentleman who just testified told you his experience. And like most New Jerseyans, your chances of appearing before a judge are most likely to be before a workers' compensation judge. And that's where a lot of people get their experience of what it's like to be within the judiciary of the State of New Jersey. And that's why we need the brightest and we need the best people. And that gentleman over there is an example.

We talked before, and his experience was through the workers' compensation system. And it's important for this Commission to understand that that system only functions if the judges do their job. It's very different than Superior Court. There's no jury trials. Appellate review of a compensation judge's decision is-- The scope of that review is limited. Judges are given great deference in their decisions, they're given great deference in how they handle their cases, how they manage their caseloads. And I don't want to repeat what's in the position paper from the New Jersey Advisory Council, but there are over a hundred thousand cases pending in the State of New Jersey, and that's not because it's extremely busy now. That's how it always is. And there's only -- less than 50 judges. They cover the whole state. They work hard. They're there in the morning. They don't have law clerks; they do their own opinions.

And I really have to say I think they deserve a raise. And as I've been here -- and I know, Judge Coleman, you were a workers' compensation judge before I was probably practicing. And the practice has changed because of decisions like yours, and in the cases that you've decided at the Supreme Court level. What we are expected to do in workers' compensation court is different than it was 25 years ago. It's not put in a report -- we put in a report, and a judge decides a case. It's expert testimony. It's labor intensive, and these judges are working.

The Federal government has now placed a burden on our workers' compensation system through placing the Medicare and Medicaid liens -- that we are now forced to deal with, and the judges are forced to deal with. These hold up petitioners' cases. It's a problem.

And I think if there is anything I can impress upon this Commission, it's that the judges of this state, whether they're Superior Court or workers' compensation judges -- it's time for a raise. It's been seven years. Recently, our workers' compensation judges -- not the ones who are sitting presently -- but any new judge does not get a pension. They were taken out of the pension system. So now if somebody -- whoever it may be -- decides, "Gees, I would like to be a workers' compensation judge," and wants to go through the process, they do not have a pension, which--

JUSTICE COLEMAN: None at all?

MR. MARCOLUS: They have a 401k, Judge, which is not a pension. If you were a judge before, or you're a judge now sitting, you get a pension. And that pension is gone. Okay?

JUDGE VOGELSON: In other words -- excuse me -- you're saying, prior--

MR. MARCOLUS: Prior to the recent amendment to the State budget--

JUDGE VOGELSON: So those judges sitting at that time would receive a pension. But from that point on, it's a 401k. Is that my understanding?

MR. MARCOLUS: Yes.

The last thing I would like to say is that, as a member of the carpenters' union, it's important for working-class people that this raise -- not only for the workers' compensation judges, but the Superior Court judges -- takes place, because if our state doesn't have the proper people in place, the system doesn't work. And it's hard-working judges that run and do the work that needs to be done for the public.

SENATOR GORMLEY: Thank you very much for your time. We appreciate your testimony.

MR. MARCOLUS: Thank you.

SENATOR GORMLEY: Justice Coleman, just for the record, you are a member of a panel that was set up about two years ago to do an additional screening of names that are nominated, which also has two non-members of the bar on it that were appointed. Could you briefly go over the additional screening process that's been added for members of the judiciary? I think this is important -- to go over this.

JUSTICE COLEMAN: Do we--

SENATOR GORMLEY: We're concluded.

MR. MARCOLUS: Thank you.

JUSTICE COLEMAN: Governor Corzine established a judicial screening panel, and I think we organized somewhere around January or February '07. And since that time, we have been reviewing the questionnaire that the Governor's Office has, historically, required each person under consideration for a Superior Court judgeship to submit. It is a lengthy questionnaire. And the Governor's Office sends, to the panel -- and this is a seven-person panel -- the questionnaires, to screen the candidate and make a recommendation to the Governor's Office.

Pursuant to the executive order that established the panel, our deliberations and report to the Governor are strictly confidential. And the Governor has intended, and plans to continue, to treat them as confidential, because it's designed to aide the Governor in the Governor's constitutional role as the person to nominate judges to the Superior Court. We do not look at prosecutor applicants for the county prosecutors' position.

The seven-person panel has six lawyers and one lay person, who is a Ph.D. person, I think in English, out of Kean University. And one of the members -- although is a licensed attorney in New Jersey -- is in practice to the limited extent, as he serves as general counsel to a corporation. And there are five retired judges and justices on the panel.

We have looked at a number of candidates, and we still have more work to do. We do not, pursuant to the executive order, look at the candidates that are under consideration for a workers' compensation judgeship. And I think one explanation might be -- nor do we look at, as I said before, prosecutors or administrative law judges. I think one reason might be -- is that that would make our work a bit too burdensome. If we overload, we will not be able to render the kind of quality service that the Governor is expecting and the State deserves.

It might be possible, somewhere along the line, for the record, for some information to be utilized, in connection with what we are seeing by way of the applicant pool, in terms of the salaries. But, again, that's all confidential now.

SENATOR GORMLEY: I wanted to bring this point out, because it's, shall we say, an additional screening process.

JUSTICE COLEMAN: Yes.

SENATOR GORMLEY: We can talk to the public and say it's the best and the brightest. But all they have to do -- whether they be right or wrong -- is experience one circumstance where they just didn't seem that bright. And that then taints the entire system.

I think one of the highlights for me this year, in terms of the judiciary-- I was at the swearing in of the Chief Justice. And he wanted to

single somebody out who paid attention to him when he was just prosecuting cases on the Federal level and sending crooks to jail. And he singled out Michael Critchley, of all people, saying, "Who was-- I was nobody. I couldn't go to political events or whatever. He just recommended me." And I think that no one questions that the Chief Justice is in that category that one of -- our first witness was talking about.

I guess my point is, whatever recommendation we make, whether it be enhancing the screening committee that was just mentioned by the Justice -- that you are going-- I can give all the examples in other states why we're better. I can tell the story of a justice in Pennsylvania who allegedly was going to run over another justice with a car. And we could tell all the examples in New York about elected judges. And we are superior.

But if we make any recommendations to take this to a different level, it's incumbent upon the review process to make it very clear this is the least political process in the country, if we claim it's the best. So that's why I very much appreciate the testimony of the first witness.

And I appreciate everybody taking the time to be here today. The record will be open for any more correspondence that we might have, which will be made available to the public as it comes in.

And I want to thank everybody for attending today.

Thank you very much.

JUSTICE COLEMAN: Just one little final comment, if I might.

SENATOR GORMLEY: Go ahead.

JUSTICE COLEMAN: Although our committee -- screening committee -- does not look at workers' compensation candidates, I can assure you that the process has been improved tremendously over the years,

over what it was like when I was appointed to that court in 1964. The salaries have been increased and tied in with the Superior Court judgeship. And the qualification of the candidate has been increased, the work experience has been increased, and the training has been increased so that, today, I think you have a high caliber of judges serving in the workers' compensation court.

Because of that, it is no surprise that in today's world, the workers' compensation judges have a much better chance of, as the jargon goes, being elevated from the workers' compensation court to the Superior Court. In my generation, it was rare. There were only like two or three of us, over a 25-year period, that were elevated from the workers' compensation to the Superior Court. Judge Ackerman was the first, and I was the second. But that has changed drastically. It is, in today's world, looked at as a -- almost a training ground for the preparation for the Superior Court, in many respects. And it's a wonderful place to look for good Superior Court candidates, too.

Thank you.

SENATOR GORMLEY: Okay.

Any other comments? (no response)

I want to thank everybody for their participation today.

Thank you very much.

**(HEARING CONCLUDED)**