
Committee Meeting

of

JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

“Deliberations with regard to automobile insurance reform”

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: March 30, 1998
9:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

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



ALSO PRESENT:

Thomas K. Musick
Office of Legislative Services
Committee Aide

Laurine Purola
Jarrod C. Grasso
Majority Staff
Committee Aides

Thomas J. Hastie
Tim Clark
Democratic Staff
Committee Aides

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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SENATE PRESIDENT DONALD T. DiFRANCESCO

(Co-Chairman): Okay. For the benefit of members, I would like to review some of the information we've got as a result of our previous discussions and the language we drafted. We could start with the threshold -- the lawsuit threshold. There is a more recent proposal that the Speaker and I and the Governor's Office, from John Farmer, have been reviewing. I believe we've reached an agreement on the language. Is it in front of everyone?

End of the paragraph on Page 16 is the crucial language.

SENATOR CODEY: The Farmer language?

PRESIDENT DiFRANCESCO: Yes.

SENATOR CODEY: I don't know whether that refers to Collins or a John Farmer.

PRESIDENT DiFRANCESCO: Farmer John.

Does anyone have a question about it? (no response)

I think we pretty much agreed on this language, and I've had discussions with the members who aren't here. They're not here because we have a session today, but they are in agreement with this, as are Senator Codey and Senator Adler.

ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman): Mr. President, the language is similar to what we were discussing the other day. We've given and taken, and I must say the involvement of all the parties, and particularly the Governor's Office, making sure that what we were after here would protect people's rights if they're injured but also have a savings. I think that this language is language that I would like to see us move forward on.

SENATOR CODEY: Jack, this essentially is the Florida language with teeth behind it in terms of criminal penalties, in terms of perjury or falsification of the--

SPEAKER COLLINS: Yes. Yes. Using the Florida language as a base and also coming up with trying to tinker with some of the problems that have been shown down there and then putting real teeth into it, I think this is good, solid language that meets really what we were after, contracts the frivolous lawsuits -- at least we believe it will -- but also allows real cases to go forward and has a savings into it.

PRESIDENT DiFRANCESCO: I think we're okay. With respect to details, once the bill is drafted, I guess we can redo that with staff. We did have an agreement, I believe, on the issue of the fraud or the prosecution of fraud, saying it that way. It's my recollection we did have an agreement on the issue of the ombudsman.

Yes.

ASSEMBLYMAN DORIA: The only thing I want to add on the ombudsman is, I think, the basic agreement was there. The only concern I have -- and I know I speak for Assemblyman Charles -- is the issue of some type of intervention for rate making on the front end. The ombudsman dealt with the back end. I think we need to have some front-end intervention and participation to guarantee that on the rate-making process the public consumer has some input. And that's very important.

PRESIDENT DiFRANCESCO: I know Senator Adler's been making that point.

SENATOR ADLER: I think we have a resolution on that, subject to the approval of the Speaker and the Senate President, in which parties could prequalify for intervention under the terms of regulations set by the Department. Those parties that are prequalified to intervene could intervene, and if successful at reducing a rate increase application and if found by the Commissioner to have brought value to the proceedings on such part as we receive reimbursement of costs and fees. But they couldn't go in there and just say, "I want a lower fee or lower increase." They would have to show actuarially and statistically a basis for their objection to the rate complication.

PRESIDENT DiFRANCESCO: Right. This is--

SENATOR ADLER: It's something we talked--

PRESIDENT DiFRANCESCO: We had discussed this issue earlier, third-party intervention -- limited third-party intervention. We think we would like to have it in--

Senator Codey.

SENATOR CODEY: Yes. I mean, it's not the public advocate.

PRESIDENT DiFRANCESCO: Right, it's not the public advocate.

SENATOR CODEY: It's not a rate counsel.

PRESIDENT DiFRANCESCO: Not rate counsel.

ASSEMBLYMAN DORIA: But it still guarantees some protection which I would agree with if we could guarantee that there would be some ability to do that.

SPEAKER COLLINS: But through what process would this happen? Is this Department of Insurance, fraud prosecutor, ombudsman--

SENATOR ADLER: No. No.

SPEAKER COLLINS: Just sits all by itself.

SENATOR ADLER: No. It's not in the government at all. It's some independent party that believes that the consumers are being gouged by a particular application. That independent party hires its own lawyers, hires its own actuaries, goes in the commission the way you could intervene in court proceedings. Their interest is appellate interest in trying to reduce rate increases and with their own costs to be reimbursed only if the Commissioner determines that that party added value to the process and brought that increase down or eliminated that increase in the application.

SPEAKER COLLINS: Did you say if the Commissioner decides?

SENATOR ADLER: The Commissioner decides it, yes. But it means to me that-- Assembly Minority Leader has spoken of having some consumer voice in the process of rate making. So it's not just the industry talking to a commissioner, and certainly this Commissioner not captive of the industry, but hypothetically, a commissioner could be captive of the industry. This allows consumers, ratepayers the comfort of knowing there is some independent voice in the process fighting strictly for the consumer.

SPEAKER COLLINS: But this voice, so to speak, only enters in under circumstances that we define these circumstances--

SENATOR ADLER: No. No. No. We define--

SPEAKER COLLINS: --when they make their judgement.

SENATOR ADLER: --the qualifications of the parties permitted to intervene, but they intervene for a 1 percent increase or for a 50 percent increase. I don't think we should set a ceiling or a floor for the amount of increase which would permit intervention. We want consumer voices heard for

any increase that's contemplated by the Department and the Commissioner. And this mechanism will do it, but think about it in cost-effectiveness terms. You're not going to see a consumer watchdog group coming in to intervene and baring the cost of lawyers and of actuaries for a 1 percent increase that's valid. But they may well jump in there for an unwarranted 10 percent or 15 percent or 20 percent increase. And that's why we want a voice in the process other than just the Commissioner talking to the carrier.

SPEAKER COLLINS: Let me just ask before we go to Assemblyman Garrett.

There's a request for a rate increase. Commissioner grants it. Right?

SENATOR CODEY: No. No. There's a year--

SPEAKER COLLINS: Before the Commissioner even can grant it, this group gets to observe and make a decision.

SENATOR ADLER: Right. Oh, absolutely. Absolutely.

Imagine this, Jack, Commissioner is sitting as a judge. Right now you got--

SPEAKER COLLINS: So the insurance companies come in and say we need a 5 percent increase.

SENATOR ADLER: Right.

SPEAKER COLLINS: That's a public announcement. Then everyone will come forward--

SENATOR ADLER: Well, not everyone. No. No. No. This is a prequalification process.

SPEAKER COLLINS: --who-- But a group that may think it should only be 3 percent.

SENATOR ADLER: But it's a prequalification process. You're not going to have a hundred different plaintiffs as a hundred different interveners submitting their own briefs and actuarial studies. Realistically, you may have one or two groups out there that are energized enough and expert enough to present legitimate actuarial data in the way that would be presentable, and they'll be prequalified.

SPEAKER COLLINS: And the Commissioner rules, and her ruling is fine?

SENATOR ADLER: Well, subject to court.

SPEAKER COLLINS: Right. Whatever other challenges.

SENATOR ADLER: Absolutely.

SPEAKER COLLINS: The same way her ruling is final now--

SENATOR ADLER: Absolutely.

SPEAKER COLLINS: --subject. This group's allowed to come in and make a presentation to the Governor.

SENATOR ADLER: Sure. Not to the Governor, no.

SPEAKER COLLINS: To the Commissioner.

SENATOR ADLER: And to fight for us. Have somebody go in there and fight for us.

SPEAKER COLLINS: I think the Commissioner fights for us.

SENATOR CODEY: Yes, but, Jack, Jack, if--

SENATOR ADLER: She fights with us, Jack.

SENATOR CODEY: --the rate increase is lowered and the Commissioner feels that this particular group was meaningful in showing her this increase was not warranted, she says "Okay, you have \$200,000 for legal fees," or "No, the increase is warranted and you have to suck up the legal cost yourselves." It's pretty fair in terms of its values. Puts the power on the Commissioner.

SPEAKER COLLINS: Let's see if Assemblyman Garrett thinks it's fair.

ASSEMBLYMAN GARRETT: One of the first pronouncements by the Chairs of this Committee when we started these hearings was how do we bring down the cost to the overall system. I think the proposal that he layed on the table just now goes 180 degrees the other way and puts cost back into the system ultimately. What you're suggesting is that although the intervener may be outside of the system to begin with, once they become involved and the Commissioner says they've done something to, in some respect, add to the decision-making process, now somebody is going to have pay their legal bills. And that, of course, is the consumers through higher premiums, because its going to be coming back to them ultimately when the carriers pay those bills.

SENATOR ADLER: Well, that could only be the--
I'm sorry, go ahead. I apologize.

ASSEMBLYMAN GARRETT: If this Committee is charged with reducing cost and this Committee is also charged with attracting carriers to want to enter the market that are not here now and to attracting carriers that are already in the market not to try to flee the market, I think we should be

opening up the system as opposed to closing it down. And that's what we're talking about here.

We have two ways already to make sure that the rates are adequately set. One is a procedural way. We have a Commissioner of Insurance who is charged with that responsibility. The second way is a market approach, and that is the carriers are in the market. If we're going to allow the market to dictate, that will play into this game as well. The market will dictate where the rates are going to go. We don't need a third alternative, and that is to bring an outside entity, public or private, into the system that's going to challenge it. My understanding is that this is not an idea that hasn't been tested elsewhere. My understanding is this is an idea that's done in other states. And in those other states, the commissioners regularly find that after they make their pronouncement as to the adequacy or the inadequacy of the rates filing by the carrier that they find that in the majority of the cases that these outside interveners have done something to add in that deliberation. And so the legal fees are, therefore, tacked on to the carriers to pay for these outside interveners. And if that's the case, those costs are just another cost that's being thrown into the system, and that all of us here as consumers are going to have to pay in the end. So I think this is going in the opposite direction as to where this Committee should be going.

PRESIDENT DiFRANCESCO: Senator Cardinale and then Senator Codey.

SENATOR CARDINALE: I'd just like to inquire of Senator Codey and Senator Adler if perhaps there is a middle ground that anyone who wishes to come, just as they do to a legislative committee, and give their

information and advice but not be in a position to profit from that -- not be in a position to recoup fees for that. And many people come before our legislative committees -- it's not unusual -- and they offer us their opinions and their advice. And we've had a whole bunch of hearings here. And they weren't being paid to do that. At least they weren't being paid by us to do that. I see no reason why that couldn't be a valid compromise, but I'd like to hear whether you think it is a valid compromise.

Is the objective to have the testimony, or is the objective to pay these people?

PRESIDENT DiFRANCESCO: Well, before you get to your respond to that, I'd like other people who haven't said anything to--

Clare, for example, I'd like to you to ask whatever questions first.

ASSEMBLYWOMAN FARRAGHER: I have a question about-- First of all, I can't see a role for a third party in this. Under the laws that constitute the Office of the Commissioner of Insurance, she is charged with the fiduciary responsibility of maintaining the health of the companies in the marketplace. Would we now be saying through this third party, through the Chairs, that they can then go in and look at the books of insurance companies? I see no other way that they would be able to gather the information. That's my question.

PRESIDENT DiFRANCESCO: Is that a bad thing?

ASSEMBLYWOMAN FARRAGHER: My opinion, yes. I think it's a very bad thing. I think it's a bad thing in that it sends a terrible message to the industry.

PRESIDENT DiFRANCESCO: I shouldn't respond. I'll let-- Is that rhetorical, or do you want somebody to address it?

ASSEMBLYWOMAN FARRAGHER: No, it's not really. I mean, is that what we're proposing?

Senator Codey or Senator Adler, you both had your arms up.

SENATOR CODEY: Yes, the objective here and why we're all sitting around this table is to lower cost. As we have it now, we have a system where the Commissioner doesn't even have actuaries. What we want is to say let these people prequalified by the Commissioner look at every rate increase, and the ones they feel that are unjustified, they would come in on. And if, in fact, their action in saying it's unjustified is proven by the Commissioner, she would award cost. If not, she doesn't award cost, but only if they bring down the cost of auto insurance for all of us would they get their cost paid. At no point would this increase rates, it would only help to reduce rates.

I don't understand why anybody would be against someone coming in on behalf of the public to say, "This rate increase is unwarranted." What's wrong with that?

PRESIDENT DiFRANCESCO: Let me to express my opinion that-- My response is today anyway, and Senator Adler raises with me (a) I think it's designed to help the Commissioner. Much has been made about the fact that the Department of Insurance doesn't have an actuary. I mean, I think Dick's mentioned that 50 times. And here you might have a group who would hire an actuary, for example, to help assist in making a determination that the rate request is unreasonable or it is reasonable; (b) I think Senator Codey was making a point that if this mechanism is in place, then perhaps

there won't be an outrageous request, because there might be some liability for costs if there is.

I know it's not the same, but I can recall over the years, years ago, how you get a utility company -- would file out for a rate increase of 35 percent in their rates and every municipality would pass a resolution, "We're against this," and "Blah-blah-blah." And, of course, I'd try to explain to them, well, it really doesn't happen, but they filed that because we have this public advocate and they fight back and forth and eventually they get what is reasonable. I would think it would be helpful, and the downside is the cost.

I understand what Assemblyman Garrett and Senator Cardinale said that there might be a cost here that we're not anticipating that would be passed on to us, and that is a concern. But I think the other points are valid. I think that there's no reason, unless you have an unregulated mark -- if we're going to have a regulated mark -- if this is a good thing to have.

Senator Adler, then Clare Farragher.

SENATOR ADLER: Let me address the cost concern of Assemblyman Garrett. I think it's a legitimate question. You've heard Blossom Peretz testify three or four weeks about how this worked successfully in California. It's my understanding that the cost to the system in California has been about \$8 million in the last three years. And while that's a cost, we don't want to add cost to the system. It's a fairly small cost if you reflect the significant savings that consumers realized by not having to pay the additional increase sought by advocates. It was avoided, as a result of the invention mechanism. I think it's a way to actually bring down costs for people. That's what we're really here to deal with, not costs for carriers necessarily, but for

costs for consumers. That's what our mission I believe is, and I think this will go a long way to doing it, as the Senate President just said.

PRESIDENT DiFRANCESCO: Assemblyman Doria, then Assemblywoman Farragher.

ASSEMBLYMAN DORIA: I would just like to agree with what you said, Mr. Chair. I think the Senate President is correct, and I think that Senator Adler and Senator Codey, also. But I do think maybe some of the solution might be to come up with some type of a cap on costs. The maximum, allowable, recoverable cost based upon maybe a percentage of what the increase was being asked for, like 1 percent, or whatever, to create some kind of a cap, so you don't have where the system can be abused, and then you can roll up millions and millions of dollars.

PRESIDENT DiFRANCESCO: We like caps.

SPEAKER COLLINS: No, we don't. No, we don't. (laughter)

PRESIDENT DiFRANCESCO: This gives Jim McGreevey something to do, maybe he can be the new Ralph Nader of the-- Clare. Assemblywoman Farragher.

ASSEMBLYWOMAN FARRAGHER: All right. Let's address California. California is a rather unusual state for a lot of reasons.

PRESIDENT DiFRANCESCO: To say the least.

ASSEMBLYWOMAN FARRAGHER: One of the things that they have that we don't have is an elected Insurance Commissioner. We have an appointed Commissioner, okay. So there's a lot of politics--

PRESIDENT DiFRANCESCO: Gerry wants to run for that.

ASSEMBLYWOMAN FARRAGHER: --in states that have--

PRESIDENT DiFRANCESCO: Gerry wants to do that. That's a good idea.

ASSEMBLYWOMAN FARRAGHER: --elected commissioners. Politics tend to play a lot in that situation. A good example is Florida, okay. A lot of decisions, a lot of statements that come out of Florida, you just go "Whoa," and then you say, "Oh, right, they have an elected commissioner." So you have a lot of politics at play. I believe that the Commissioner in the State of New Jersey being appointed and being charged through the Constitution and statutes with the responsibilities that she has, if her Office needs an actuary, let's get her one. I don't think this is the right way to go, because there is a lot of information that is proprietary. It depends on how the company is formed and how it's held. There's information that companies cannot share publicly, cannot share with each other, and don't, that this is a dangerous way to go, number one. Because of those reasons, it could cause terrible disruptions in the marketplace, not just for New Jersey, but for national companies -- could totally be a disruption there.

The other reason is, besides the costs to the system, to me we would have to say, "Well, there have been outrageous increases asked and sought in the State of New Jersey." We didn't hear that. We didn't hear that in these hearings at all. We heard how everybody is within the toughest excess profits law in the country. We heard here, too, that some companies lose money in New Jersey. They form separate subsidiaries to handle only New Jersey.

PRESIDENT DiFRANCESCO: Clare, we have the highest rates in the country.

ASSEMBLYWOMAN FARRAGHER: What?

PRESIDENT DiFRANCESCO: We have the highest rates in the country.

ASSEMBLYWOMAN FARRAGHER: We also have the usual bad weather, more cars per mile of road, densely populated, truth.

PRESIDENT DiFRANCESCO: Maybe we shouldn't live here then.

ASSEMBLYWOMAN FARRAGHER: Oh, okay. I'll agree with that.

We're saying, yes, we have the toughest excess profits law. We took away flex rates. We took a lot of that away, so every company has to come in with rate filings, which is costly. And now we're saying we're going to let somebody who we don't know come in and examine them.

PRESIDENT DiFRANCESCO: They'll be representing people, though. They're going to be representing people. There are parameters, I think, that we can develop.

ASSEMBLYWOMAN FARRAGHER: I disagree with this point--

PRESIDENT DiFRANCESCO: Really.

ASSEMBLYWOMAN FARRAGHER: --entirely. I think it's not going to attract any more companies to New Jersey. I think it's going to keep us where we are and it may cause some to leave.

SENATOR CARDINALE: It didn't work in the past. We had a public entity, that was the public advocate, that made an adversary proceeding out of every rate filing. And if you take a look at the record -- what was accomplished -- very few rates were lowered because of the public advocate.

It was a costly proceeding and it didn't work. But Clare gives the most important reason why we don't need it in New Jersey, and that is because we have a very strict cap on how much insurance companies are allowed to earn. And as long as-- Suppose somehow, you know, we had a crazy Commissioner. We haven't had one in my memory who has done this, but somebody might. Give all the companies 100 percent rate increase. What would be that the Commissioner wouldn't have the power to repeal the law. Everybody would have to get a big rebate as all of those profits were tallied and calculated.

So we don't have the kind of problem that they might have in some other states where they don't have all of the same kinds of laws that we have. It's very important that we establish competition in New Jersey. More than almost any of the other things that we have been discussing all of this time is the good that can come out of all of these discussions is, if we establish competition, if we make New Jersey a place where new insurance companies are not doing business here, today, want to come in to do business. Because there is nothing better than the creative mind of people who are trying to make a profit, to hold down costs. And if that occurred, all of our motorists would benefit. This is a disincentive because not only are you going to have to make your case, you're going to have to pay the legal fees of those who were opposing you.

Haven't we learned something from the arbitration system, which we all agree now we want to change? That's the way that worked. The lawyer got paid if only a very small amount of money was actually awarded by the arbitrator. The lawyer got paid, and how many of those cases were presented

to us where the lawyers got paid thousands, and the amount of money that was actually in contest was hundreds? We had some of those.

PRESIDENT DiFRANCESCO: Okay.

SENATOR CARDINALE: Do we need to do that again? I don't think so.

PRESIDENT DiFRANCESCO: Okay.

Senator.

SENATOR CODEY: Not nearly analogous, not even remotely.

PRESIDENT DiFRANCESCO: I think a lot of the other things we're doing are designed to, hopefully, encourage insurance companies to write business in New Jersey. I think that's part of it -- part of the change in the threshold, cutting costs -- you talk about cutting costs -- part of the transformation to a dispute resolution mechanism that is better and the same with some of the other parts of this. I don't want to view this with a skepticism that everybody is. I try to view this as a positive thing that won't be used very often, that perhaps could be helpful in the process. I mean, the costs are a factor, but there are other costs other than legal costs in a lot of these cases.

Senator Cardinale.

SENATOR CARDINALE: Why should the costs only go one way, Mr. President? Why couldn't the costs go both ways? When this group comes in and fights it and they're proven wrong, shouldn't they have to pay the costs then?

PRESIDENT DiFRANCESCO: Well, they are, aren't they?

SPEAKER COLLINS: No, but-- He means-- I think you mean the insurance companies' costs?

PRESIDENT DiFRANCESCO: No.

SENATOR CARDINALE: The cost that the insurance company--

SPEAKER COLLINS: No. Why would they have that to pay whatever the insurance companies pay. So in other words--

SENATOR CODEY: But they're already paying it to, at the hearings, to promote their cause.

SPEAKER COLLINS: Right. But you're forcing the insurance companies to defend themselves, and if they win--

SENATOR CODEY: That's what they do in front of the Commissioner.

SPEAKER COLLINS: See, but here's the way, I believe, you gentlemen have presented it. If the third party wins, then they get their insurance or their counsel fees paid. But if their argument is denied and the argument would be from the other side, shouldn't they have their counsel fees paid?

PRESIDENT DiFRANCESCO: They already have to present the case in order to get the rate increase.

SENATOR CODEY: Right. They have to present their case, and they argue against it. There's no change in cost for them.

PRESIDENT DiFRANCESCO: We're wasting too much time on this. I've just decided. We are wasting too much time with this issue. I see people who won't change their minds on this issue, so I think it is irrelevant to continue to talk about it.

SPEAKER COLLINS: Okay. I'll go with that.

PRESIDENT DiFRANCESCO: So at some point, I mean, some people are going to be for it and some people are going to be against, and we'll see where that comes out.

Paul has a point on this.

ASSEMBLYMAN DiGAETANO: I think it would be helpful to the Committee, when we do decide this-- I have very mixed emotions on this issue right now. It's ironic that maybe for the fifth or sixth time that Senator Cardinale and I see eye-to-eye on something. I also see the merits--

SENATOR CODEY: Well, that should show you might be wrong.

ASSEMBLYMAN DiGAETANO: --for having a consumer advocate here. However, I think we should only decide it when we can compare it -- someone mentioned California and probably other states that have this--

PRESIDENT DiFRANCESCO: Florida.

ASSEMBLYMAN DiGAETANO: --type of advocate -- we compare it to the other rules and regs in that state regarding the insurance companies including their excess profit laws. And I'd like to have that information when we actually decide that, if that's possible.

PRESIDENT DiFRANCESCO: We can do it in the next couple of hours. (laughter)

SPEAKER COLLINS: Somebody call somebody.

PRESIDENT DiFRANCESCO: On the dispute resolution system that we discussed several times, I think we're all pretty much in step with that.

ASSEMBLYMAN GARRETT: Before you go on to that, I just want to-- At the same time, you talked about the intervention. You also raised in the same breath the office of an ombudsman. Is that something else?

PRESIDENT DiFRANCESCO: We agreed with that. We agreed to that. Last time we all agreed to that. I'm not saying unanimously, but--

SPEAKER COLLINS: Maybe not all, but a majority.

PRESIDENT DiFRANCESCO: We discussed it. We discussed it.

ASSEMBLYMAN GARRETT: I think we agreed to wait. I never agreed to in terms of a fraud prosecutor, but--

PRESIDENT DiFRANCESCO: No. We eliminated the prosecutor himself.

ASSEMBLYMAN GARRETT: --as far as an ombudsman?

ASSEMBLYWOMAN FARRAGHER: I don't think anybody counted heads on it.

ASSEMBLYMAN GARRETT: Yes, that's one way of putting it. I don't think we've counted heads on the ombudsman. I think we just had a couple of comments on that and we moved on to another discussion.

PRESIDENT DiFRANCESCO: Okay. I felt differently. It was my impression that we moved on because we were pretty much in agreement. I don't mean that you agreed necessarily, but I'm talking about the majority.

SENATOR CODEY: Don't want third-party intervention -- don't want it.

ASSEMBLYMAN GARRETT: Do we have a definition of the ombudsman?

PRESIDENT DiFRANCESCO: Oh, yes. We had a lot of language.

ASSEMBLYMAN GARRETT: I remember that handout.

PRESIDENT DiFRANCESCO: Yes. Pretty much what that handout was. We have language, sure.

Getting back to what I said with dispute resolution. I think we all agreed on that -- on the language there. Did we not? Okay.

I'm trying to respond to Scott's question.

Scott.

ASSEMBLYMAN GARRETT: Can I just clear up on the dispute resolution?

PRESIDENT DiFRANCESCO: Oh, yes. Okay. We're on the dispute resolution.

ASSEMBLYMAN GARRETT: The version I have -- correct me if I'm wrong--

PRESIDENT DiFRANCESCO: I don't know what you were just given.

Okay, where is everybody?

I wanted to briefly touch on the territories -- the territorial cap we were talking about. We had language on the redrawing of territories with the Commission, I remember that. Now this is what I would suggest we add to that language. You ready?

Notwithstanding the provisions of section -- whatever the rate cap law is -- the territorial configuration established by the Committee or by an insurer or file, pursuant to Section 28 through 33, shall produce territorial rate

relativities which accurately reflect differences in traffic density. All those things that she was saying, population density, comparative severity of loss, and like-driving environments, which do not produce unfair cross subsidization between territories with different characteristics. Sounds good.

SPEAKER COLLINS: Now-- Well, it does sound good. My only concern is, Mr. President, I want to know a time frame of where we're going to be dealing with this. I've agreed from the beginning, and I don't want to give giant, shock increases to any driver in this State. On the other hand, I think I made it very clear my position with regard to why I don't think that this is appropriate -- I won't use the word fair -- but appropriate that some citizens are paying more so other citizens can pay less, not based on criteria other than totally a capping. So this language, at first blush to me, looks good, but what is the time frame? When are we going to have the territories put forward? What-- That the next--

See, my own feeling is I think -- and you were mentioning about the language over the territorial commission -- I don't know that we totally agreed, but what I'm thinking is -- and I'm open to discussion on this -- that those companies that can draw up new territories, I think, should do it as quickly as possible. Some have even said could be done in six months. Those companies that cannot, then a committee could help them go through this -- all of this up to the approval of the Commissioner. But I don't think that we should slow everything down when we have many of the large firms that insure most of the people in this State -- have the capability to do it right away.

I can only speak so long -- take over.

ASSEMBLYMAN DiGAETANO: Am I recognized, Mr. Chair?
Mr. Speaker? We're talking about caps now.

SPEAKER COLLINS: Territories and caps.

ASSEMBLYMAN DiGAETANO: I'm sorry. Territories, not caps.

PRESIDENT DiFRANCESCO: On the language I just handed out, or on the other language that we thought we agreed on? I'm trying to figure out, you know, because I have to have it in front of me.

ASSEMBLYMAN DiGAETANO: I'm not going to speak on any language. I want to speak on the issue of territories. And that's why the language may or may not be necessary. I don't know, Mr. President.

I feel very strongly-- This is what I was getting to before about where I agree with Senator Cardinale. I think one of the measures of success here is going to be if there are companies coming into New Jersey to write insurance that haven't written insurance ever, here, or maybe haven't written insurance in 20 or 30 years. I think there are a couple of critical issues, but this is one of the critical issues to them. It is my strong belief that we should leave the territory structuring, the territory design, geographic mapping, etc., to the people who do it best -- to the companies. We should allow our Insurance Department to do what they're designed to do, and that's regulate these companies. Only in the case where an insurance company -- and I can't imagine this case -- but only where they did not have the ability to set up their own territories should we be doing it. We set territories 30-some-odd years ago, and the Department has had the power all these years to change them.

Everybody agrees they should have been addressed long ago, but they haven't been touched. Allow the companies to set their territories and

review those territories. And I think we should also allow any company to use anyone else's filed territory. So if they want to agree, they can. They shouldn't have to default to anything that this Committee does or the Department does.

PRESIDENT DiFRANCESCO: In other words, the whole concept of a commission you disagree with.

ASSEMBLYMAN DiGAETANO: Well, I don't see where it's necessary--

PRESIDENT DiFRANCESCO: Well, I'm just asking. That way I get a feel for what you're saying.

ASSEMBLYMAN DiGAETANO: --if we allow-- That's what I'm saying. I think the insurance company should set the territories. The Department should review them. And if they don't want to do their own territory, they want to use a territory that anybody else filed--

PRESIDENT DiFRANCESCO: Well, then--

ASSEMBLYMAN DiGAETANO: --let them use it.

PRESIDENT DiFRANCESCO: --let's go on to some other issue. We're not getting very far on this one.

ASSEMBLYMAN DiGAETANO: Why not?

PRESIDENT DiFRANCESCO: Because I disagree with you. I thought I made that point many times. So, you know, I'm not going to say you're right now, when I've already said a hundred times--

ASSEMBLYMAN DiGAETANO: Mr. President, I think you misunderstand my comments.

PRESIDENT DiFRANCESCO: I thought I clarified it just now. You're saying that we shouldn't go with the commission to allow them to redraw the territories as they see fit. That's what you just said.

ASSEMBLYMAN DiGAETANO: I saw language that implemented something almost along those lines. I don't know-- It may not be this language.

SPEAKER COLLINS: Then it's our language.
That was your language.

PRESIDENT DiFRANCESCO: Yes. Well, we're not going to resolve this issue in 10 minutes. I'm leaving. I have a session. So I can't argue the philosophy now of whether we should have a commission or have the companies establish territories themselves at this point.

SPEAKER COLLINS: Or a combination.

ASSEMBLYMAN DiGAETANO: Well, Mr. President, the reason why I want to pursue this is because if you read the second line of this, I think this language, which I assume is your proposal--

PRESIDENT DiFRANCESCO: Yes.

ASSEMBLYMAN DiGAETANO: --may be workable -- combine the two.

PRESIDENT DiFRANCESCO: This is added to what I proposed once before.

ASSEMBLYMAN DiGAETANO: I'm not sure what the remainder of it is, but if you read the word "or" here--

PRESIDENT DiFRANCESCO: It's what we had. What's in the black book?

ASSEMBLYMAN DiGAETANO: This may be workable as long as it's "or."

PRESIDENT DiFRANCESCO: Well, I'm leaving. I'm going to run a session. So I don't think it's going to happen today.

I didn't raise this issue, Paul, on caps. I did not raise it. I was trying to deal with it. It wasn't an issue that I wanted any part of, necessarily, in this scheme of the reform of auto insurance, as we know it. It wasn't an issue that had come before the Committee started meeting. So I didn't raise it, so I was only trying to respond to it.

ASSEMBLYMAN DiGAETANO: I didn't get to caps. I didn't get to caps yet -- just on the territories. This is the language you put in front of us.

PRESIDENT DiFRANCESCO: Yes, I know. This is a result of us raising the issue of caps, I thought. No one ever discussed with me the redrawing of the territories before we started the meeting, so I don't know. And I have no one else here, who is sitting here, because they're all getting ready to start a session.

ASSEMBLYMAN GARRETT: I think actually your proposal, the original proposal, addresses both concerns.

PRESIDENT DiFRANCESCO: Well, you can explain it to him, and then we can talk later.

ASSEMBLYMAN GARRETT: Okay.

ASSEMBLYMAN DiGAETANO: Are we staying?

SPEAKER COLLINS: If we stay, we can roll this baby right through the Assembly. (laughter) I'll let you know.

Why don't we adjourn temporarily. If we can't come back later, we'll come back and make an announcement as soon as we can. Let's see where the Senate -- what they think their situation might be.

Mr. Leader.

ASSEMBLYMAN DORIA: Just while I'm here. By four, I have to leave.

SPEAKER COLLINS: Okay, we'll probably start about five after four. (laughter) We'll let you know.

Why don't we attempt to at least be mentally ready about quarter to three, and then we'll make a final decision. All right.

We're sorry for those of you who are out there.

Thank you.

ASSEMBLYMAN DiGAETANO: What time we coming back?

SPEAKER COLLINS: Quarter to three.

(RECESS)

AFTER RECESS:

PRESIDENT DiFRANCESCO: Mostly everybody's here.

ASSEMBLYMAN DORIA: Clare had to leave.

PRESIDENT DiFRANCESCO: Who?

ASSEMBLYMAN DORIA: Clare had to leave. She had a doctor's appointment.

PRESIDENT DiFRANCESCO: Okay. Well, do you want to pick up where we left off?

ASSEMBLYMAN DiGAETANO: Where was that?

PRESIDENT DiFRANCESCO: I don't know. (laughter)

SPEAKER COLLINS: All right. Well, I think, Mr. President, the last point of discussion -- it was sort of left out there -- was the territories, and let me maybe start it this way. I think there was agreement that territory should be redrawn. It's been 40 years from what we've heard in testimony. And, of course, when we get to new territories, we'll have a better idea of a lot of things, but particularly, in the thing that I really feel we have to look at is the cap and the fact that some citizens in this State have capped the amount of money they can pay. I'd like to talk about that, or we can use the language that was suggested by the Senate to lead to some discussions.

SENATOR CODEY: Senator DiFrancesco's language is language that says there should be no unfair cross subsidization.

Is that correct, Donnie?

PRESIDENT DiFRANCESCO: Yes.

SENATOR CODEY: Right. And then the larger territories and so as-- Although Bayonne did well, that Atlantic City and Bayonne would no longer be by themselves again with a larger pool of risks.

Is that correct, Laurine? Donnie?

PRESIDENT DiFRANCESCO: Yes. The pool would be larger and--

MS. PUROLA: Yes.

PRESIDENT DiFRANCESCO: --we added this language, I thought, to deal with things like population density, traffic densities, comparative losses, and as you said, unfair to discriminate cross subsidization.

ASSEMBLYMAN DORIA: Could we ask even before we go to this, Mr. President and Mr. Speaker, what's the process we're in right now? Are we just going to continue discussing at this point the different elements of the bill, and then the bill is going to be drafted and we're going to come back? Where are we on the process given time, at this point, and the lateness of the hour? What is the process that we're presently moving into? Are we going to make some final determinations today? I'm just trying to figure out where we are so far.

PRESIDENT DiFRANCESCO: Well, we did make some.

ASSEMBLYMAN DORIA: We made some earlier, and there are some things that we all easily agreed to. There's a number of issues like this question of territories and caps and the PIP coverage that still have to be dealt with. So we're going to continue to discuss that and then at the end make some determination. Is that where we are?

PRESIDENT DiFRANCESCO: Hopefully.

ASSEMBLYMAN DORIA: Okay. And at that point, some decisions will be made?

PRESIDENT DiFRANCESCO: Hopefully.

ASSEMBLYMAN DORIA: Okay.

SENATOR CODEY: Let's just get along -- get it on.

SPEAKER COLLINS: Wow. I tell you that coaching stuff really moves things along.

PRESIDENT DiFRANCESCO: Joe.

ASSEMBLYMAN CHARLES: Yes. I have a question about the process, too. I mean, what we're going through now -- the territories -- I've stated my position on the territories already and the caps, and I think everybody else has.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN CHARLES: So what's the point of going through that any more?

PRESIDENT DiFRANCESCO: Well, through what any more? The language of that issue?

SENATOR CODEY: No. What Joe is saying is we got the language. Let's vote.

ASSEMBLYMAN CHARLES: No. I don't have the language. I stated my view--

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN CHARLES: --previously. And I thought as of the last meeting that we were at the end of the different areas of consideration for a bill. We have been polled preliminarily and people have given preliminary decisions about where they stood on the concepts that were involved. What remained for me, anyway, was the -- seeing how those concepts looked in their detail, in their reduction to paper. I'm able and ready right now to see those conceptual agreements reduced to paper for me then to consider whether or not I like them as they have been reduced to bill form. I don't need to go through any more discussion about these different elements. I've had my discussions on them and have stated my viewpoint on them. I

want to see what they look like in writing, and I'm prepared to vote yes or no on what the proposal is that this Committee is coming forward with.

Let me just add this. I need to study the language, too. I'm not ready at this moment to read in two minutes, five minutes, or even two hours right now an entire bill setting forth all the different agreements that we have reached. I don't think that I'm capable of doing that -- not to look at all the language and what it really means. I can't consider that, as we sit here now. I have to study that in some quiet place with some other -- with some help even in some of the technical areas from people whose opinions, whose knowledge -- our staff mainly -- I have confidence in. I need to see a bill to take back with me, to come back, and then vote on.

SPEAKER COLLINS: Well, let me just ask you this, Assemblyman, under your question, that when you look at the language down on the paper, you said you've stated your position, and I really don't remember that position. I remember my position-- (laughter)

ASSEMBLYMAN CHARLES: I remember yours, too, Mr. Speaker.

SPEAKER COLLINS: You remember that one?

ASSEMBLYMAN CHARLES: Yes.

SPEAKER COLLINS: But anyhow, when you read this, then what is the next step? You'll look at it and say, "Well, I can agree with this. I can't agree with that." And we come back and discuss that or--

ASSEMBLYMAN CHARLES: Let me tell you what -- this is what I have been given. (indicating)

SPEAKER COLLINS: That's just one part.

ASSEMBLYMAN CHARLES: Why don't I have the whole thing?

SPEAKER COLLINS: Well, there isn't a whole thing yet.

ASSEMBLYMAN CHARLES: Well, what am I voting on, then?

SPEAKER COLLINS: Well, you're not voting yet.

ASSEMBLYMAN CHARLES: What am I considering? (tape recorder shut off until meeting continues)

PRESIDENT DiFRANCESCO: Okay. Can we have some quiet, please, all the members of the Committee here.

Bill, you making a dental appointment for him or--

Gerry Cardinale is going to take care of his dental problems, don't worry.

Let's see, Joe is here. Joe and Joe are here. Clare is gone. Dick is here.

Okay, we're going to adjourn this meeting at this time to Thursday morning now, members of the Committee. We will circulate a draft bill for you all to look at and consider and to comment on, on Thursday morning.

I am going to introduce a bill today, no reference, that in my view represents the direction we are going in lacking specifically in a couple of areas where they're open to argument, as you all know -- the PIP end -- 250 versus whatever, as well as the rate caps. Those are the two major issues that have not been resolved among all the members of the Committee and, hopefully, can be resolved at that time. I will advise the members of the Senate that we will be meeting on the 2nd at 2:00. It was just a joke for the press that we were going to meet on April 1, and they bought it. Realistically, it gives us an extra day. More people in the Senate are available that day for purposes of a session, so

it does fit and does make sense to put it off from Wednesday to the next day.

So don't anybody show up on Wednesday, I guess.

SPEAKER COLLINS: I won't be coming on Wednesday.

Mr. President, let me just say that we thank you, Assemblyman Charles, for bringing the proper perspective to where we are. I would like to say first off, as I've said many times, I think we're very, very close. We now have a document that we will be able to look at. There are some issues that I still feel are very, very open. Hopefully, we will resolve those Thursday morning, and I look forward to that resolution.

Unless there's something else the Senate President wants to say, we-- The four Leaders will have a press availability in the room behind us as soon as this session is over, unless anyone has a question.

PRESIDENT DiFRANCESCO: I didn't want to talk to the press.

SPEAKER COLLINS: Oh.

PRESIDENT DiFRANCESCO: Does anybody have a question about anything I said? (no response)

Okay, that's it from my standpoint.

(MEETING CONCLUDED)