
Committee Meeting

of

JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

*“Testimony from the Commissioner of Banking and Insurance
and invited witnesses”*

LOCATION: Room 319
State House
Trenton, New Jersey

DATE: February 23, 1998
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

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*

Tom Hastie
Tim Clark
*Democratic Staff
Committee Aides*

***Meeting Recorded and Transcribed by
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ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman): We would like to begin today's session. We would like to welcome all of you to today's meeting of the Joint Committee on Automobile Insurance Reform. And the plan is, our last meeting in this fashion, at least with testifiers, and so on, prior to us solving the problem.

Let me just point out, and I do this all the time -- and I have to say that for the most part, I guess, in all of the situations, people understand what we are doing here. What we will be doing today, as in each of the previous meetings, is hearing testimony from people who want to talk. In the past, we had particular areas of this so very important issue. Today, we have-- Some people are coming back. We're honored to have the Commissioner with us. We also have basically a potpourri of suggestions and ideas that will bring these public meetings with testifiers to a close.

All of this is being transcribed, and, as I've stated at each meeting, as has the Senate President, that information is given to all of us. There are members who are not here right now, will be coming in, and there are some here who will be leaving. This is a Committee day, and a number of us have bills to testify on, and so on. But I want to make it very clear, and I think everybody understands this, that we get all of the information through the transcriptions and, very honestly, through discussions with staff and our colleagues. So I mention that, as you testify through the day, feel quite comfortable that your comments are part of our decision-making process.

Just a short mention to all the colleagues. These microphones that are around here are live, so if you want to say something nice about the Chairman, whisper it loudly. But other than that, be careful. Okay.

And with that, our first witness today is the Honorable Elizabeth Randall, the Commissioner of Banking and Insurance.

Good morning, Commissioner.

COMMISSIONER ELIZABETH E. RANDALL: Good morning, Mr. Speaker. Thank you.

Mr. Speaker, Senators, Assemblypersons, thank you for the chance to be here this morning. While I don't have anything I don't think too radically different to say this morning than that which I've said previously, I do appreciate the chance to be here. Let me offer some comments on behalf of the administration and the Department of Banking and Insurance.

By way of just a brief recap, you will recall that it was just a little bit more than a year ago that we announced a plan to dramatically change the way insurance companies do business here in New Jersey. The Governor, over a year ago, announced her intention to terminate the automatic, so-called flex increases, which companies, of course, have been receiving just for the asking for many years. Today, with your help, the automatic increase is a thing of the past.

July 1, 1997 marked the first time companies did not get the automatic increase in rates. That one change alone, in my view, will help stem the tide of the ever escalating rates that we have been witnessing. We were just reminded of what that rate escalation means to drivers here in New Jersey with the recent release of the 1996 nationwide statistics. And while the report is always a full calendar year behind, it told us what we already knew. And that is that New Jersey rates continue to be the highest in the country.

So two things must be done: first, continue to stem that tide of increases; and secondly and most importantly, let's do something which actually will decrease the cost of automobile insurance. The additional actions that this Committee is poised to take will complete a promise of reform. Again, some things of significance have already happened. The Governor and this Legislature promised to advance the fight against fraud by hiring 50 additional fraud investigators, and you have delivered on that promise. We will soon have 150 investigators at the Department. That is the highest level of fraud investigators since the inception of the Fraud Unit back in 1983.

We have also insisted that companies make insurance available in our urban areas. As the Governor has often said, "This is one New Jersey." The effort to increase auto insurance availability in our urban areas is well under way. As part of auto reform legislation last June, you approved the creation of Automobile Insurance Urban Enterprise Zones. I recently announced 25 cities which constitute our new auto UEZ locations.

The regulations governing the UEZs will be published in the March 2 *New Jersey Register*, but we have already notified all auto insurance companies of their obligation to make insurance as accessible to our urban residents as it is to our suburban and rural residents.

You and the Governor were determined to change the surcharge system, and I report to you today that indeed that promise is being kept. New rating regulations without surcharges will receive final adoption on March 2. Each company must present a new plan for our approval no later than April 1. As plans are approved, drivers will not see surcharges added to their bills but will have a fairer evaluation made of their driving record and experience when

they are billed at the beginning of each policy year. With the reform legislation signed last June, some very good things have indeed happened. We've accomplished a great deal of what the Governor proposed, but we still need to reach the most important goal of actually reducing the cost of the premium.

The Governor's Plan of January 1997 proposed to reduce the cost by reducing fraud, containing fees paid for medical treatments, reducing the number of lawsuits, and offering choices in coverage with guaranteed savings attached to each choice. We continue today to stand behind those principles.

We know that reducing lawsuits, containing medical fees, and offering consumers more choice in coverage can be done in more than one way. In her State of the State message this year, the Governor expressed her openness to any modifications of her program, as long as they accomplish our original goals. I think you share the Governor's view that four principles should guide this Committee's efforts. I would like to restate those goals.

1. Offer real, guaranteed savings.
2. Offer affordable, available car insurance for every good driver on a statewide basis.
3. Minimize any cost shifts from the auto insurance system to the health care system.
4. And finally, accomplish reform without encouraging additional litigation and lawsuits.

On the specific topic of peer review, you've heard some conflicting statements about PROs and how they differ or don't differ from so-called independent medical examinations. We have proposed using peer review

organizations to eliminate unnecessary spending on medical treatment. These PROs, as we call them, would not -- and I emphasize would not -- be hired by, nor would they report to, the insurance companies. My Department would be responsible for hiring an agent to manage the peer review system. The agent would report to the Commissioner of Insurance, not to the insurance companies. Medical professionals would be responsible for making decisions about the appropriateness and necessity of medical treatment rather than today's arbitration system in which lawyers are used to make decisions about medical treatment.

No company would be able to engage the PRO of its choice. In fact, until it became necessary to exchange certain information, the insurance company wouldn't even know which peer review organization had been assigned to its case. The function of PROs is to have medical practitioners of the same discipline review their colleagues' work and determine if it is appropriate and necessary. They will not have a stake in whether they agree or disagree with the treatment because the insurance companies will not be hiring them or assigning them to cases.

By contrast, the independent medical examinations that you've heard about, so-called IMEs, are indeed hired by the insurance companies. Their function is to review treatment with a specific eye towards whether or not the treatment being given should be paid for by the auto insurance company. In disputed cases that go to arbitration, the IMEs act as hired witnesses for the insurance companies.

While on the subject of medical bills, I also want to mention that we are concerned about proposals which suggest cutting medical benefits to a

fraction of what they are today. Such proposals, on their face, seem to contradict two of the Governor's required components of reform, namely, minimizing cost shifts to the health insurance system and, secondly, achieving reform without encouraging additional lawsuits.

Proposals which would abolish or drastically reduce PIP for all drivers would require those at-fault drivers who have no other health coverage to ultimately seek charity care. It also would force drivers who were not at fault to sue to have their medical bills over \$10,000, let us say for example, paid. Either way, the health care system would ultimately bear that cost. So if you sue because you do have a legal case, it's quite possible that the doctors won't get paid in timely fashion. If you don't sue, because you really don't have a legal case, when your \$10,000 of PIP coverage runs out, you're going to have to go to your employer's health insurance. If you can't get any relief there, you are going to be a beneficiary of the charity care system.

I also would like to point out that we've taken a look at the proposal to drop PIP from \$250,000 to \$10,000. Surprisingly enough, that one move, in and of itself, would only save about \$40 off the average premium. I don't think the majority would want to take the risk of being left somewhat scantily insured on a medical basis, on a first-party basis, just to save \$40 in terms of their premium. Why is the savings so small? One would expect that such a drastic drop from 250,000 to 10,000 would result in a more drastic drop in premium. One reason that doesn't happen is found in the entity known as the UCJF, which, of course, publicly is perhaps not widely understood, but is a mechanism which is certainly understood by the insurance industry here in New Jersey. Even though we all carry the required \$250,000

of medical coverage today through our own insurance policy, insurance companies are individually responsible for paying only the first 75,000 for any given insured's accident bills. Any bills above 75,000 are paid by the company and then forwarded to the UCJF for reimbursement.

Each year the UCJF, which is the Unsatisfied Claim and Judgment Fund, estimates the amount it needs to reimburse medical claims for the following year and assesses all the companies a share of the total. Basically, the system is set up so that if a serious accident does occur not only your company, but all the companies doing business in the state do share essentially in those more catastrophic type of risks. And this is a well-known, of course, insurance mechanism. It doesn't really affect policyholders, but it is a pooling of the risk for those more serious accidents.

When we, as individuals, pay our insurance bills, the cost of paying for those bills above \$75,000 is included in our individual premiums. Even if we reduce the amount of coverage required today, we are still responsible for the medical bills of those who were injured in the past up right until the present day. Those are ongoing, very significant costs. The savings by lowering coverage amounts today would be limited to about \$40 because of the tremendous obligation to continue to pay the bills that are currently in the queue, and those obligations will continue, of course, for all those who are injured until such time as they are deemed to have achieved a recovery.

Another suggestion made to the Committee is to eliminate no-fault. As you know, New Jersey law says that no matter who causes the accident, your own insurance will pay for your medical bills, as well as lost wages. However, in exchange for this guarantee of payment without

consideration of who is at fault, we have agreed to limits on the type of injury which allows us to sue for pain and suffering. And that is the give-and-take, here in New Jersey, of no-fault.

Those who are pushing for this change suggest that reducing medical payments to 10,000 and suing for anything over that is the way to go. They also suggest that there be no limits, as are required today, on the reasons an injured party can sue for pain and suffering. Although you're not required to have those limits today, about 88 percent of our drivers do pick the more restrictive, so-called verbal threshold. And, of course, those who recommend the abolition of no-fault would propose a scenario in which anyone can sue, no matter how minor the injury, and claim that this change would save an average of \$150 per policy.

We do not agree with those estimated savings. I know they've emanated from a look at states like Georgia and Connecticut. We do say that for the 12 percent of New Jersey drivers who currently have a no-threshold or so-called zero threshold, they pay more today. And if we were to totally repeal no-fault, those people -- that 12 percent -- of the motoring public might actually see some savings. But for the 88 percent of New Jersey drivers who now have the verbal threshold with a limited right to sue, going to an unlimited right to sue, in our view, would mean a significant increase in the cost of a policy.

Our New Jersey-specific analysis shows an interesting statistic with regard to litigation. That is that those who have no restrictions on their right to sue are 3.4 times more likely to bring a lawsuit than those who have a less-restrictive verbal threshold. If you remove all limits on lawsuit activity, it's

our view that this will necessarily increase the number of lawsuits and the intended legal costs associated with them. Then, it's also our conclusion that premiums logically will also increase. Because this proposal would neither reduce costs nor discourage additional lawsuits, and therefore would not meet several of the tenets that the Governor has laid out for reform, we have not supported it.

Again, I think my comments may not represent anything extremely different from what I've said in the past, but I appreciate the chance to clarify our review and would certainly like to answer any questions.

SPEAKER COLLINS: Thank you, Commissioner.

Before I call on some of the members-- Maybe I'll bat cleanup. I have a few questions for you, but maybe they'll be touched by others. But I do have just one point of clarification. I have before me your written statement, and you, in giving it to us orally, made slight changes -- nothing too major -- but I do want to ask you this. In the written statement, you said at the end with regard to the elimination of no-fault -- the written statement says, "And therefore would not meet the Governor's and leadership's goals, we cannot support it." What I think I heard you just say is we have not supported it. Now, maybe I'm just picking on words. Is the position of the Department, at least today, that you cannot support the elimination of no-fault, or is it, which I think is a more open statement -- what I think I heard you say -- we have not supported it up until this point? Could you--

COMMISSIONER RANDALL: We have not-- I see no reason why I would modify that today--

SPEAKER COLLINS: Right.

COMMISSIONER RANDALL: --because our analysis does not agree with the analysis of savings that the proponents of the repeal of no-fault have set forth. And, of course, unless we were convinced to the contrary, I would maintain our position that we do not agree that the savings will be achieved that the proponents of no-fault repeal have suggested to you.

SPEAKER COLLINS: Okay. Well, let me just say this, as I turn to my colleagues, I've been through this-- We've had excellent testimony. Some of it overwhelming, statistically, I think. But in my own feeble mind, I've been picking up two things. One, that if we were to do what everybody says, people would basically drive for free with no insurance costs. Or two, the one that really fascinates me, Commissioner, is we have a lot of almost guaranteed savings if we can do this, but when we ask the next question, then there's always the vagary of, well, maybe we wouldn't save as much. So we're going to continue to sift through this and, hopefully, come up with something.

Minority Leader of the Assembly, Joe Doria.

ASSEMBLYMAN DORIA: Thank you, Mr. Speaker, Mr. Chairman. I wanted to thank the Commissioner for coming and for presenting her testimony. I know that, obviously, she's been working diligently to try to deal with this problem of the cost of car insurance.

One of the questions for you, Commissioner. You speak here, verbal threshold versus nonverbal, moving away from the whole issue of no-fault, but rather, specifically, verbal, nonverbal, the traditional. And you say that those who go with the traditional have a likelihood of suing 3.4 times more than someone who goes with the verbal threshold. Is that correct?

COMMISSIONER RANDALL: In New Jersey, yes.

ASSEMBLYMAN DORIA: In New Jersey.

My next question is, when you look at the actual costs, the actual payout, not the number of times they sue, but rather the actual payout, again percentage-wise because obviously the numbers are going to be different because there's significantly more people -- 88 percent choose verbal threshold, 12 percent choose the traditional threshold -- and in the comparison, what are the numbers like? Because we've tried to get the answer-- Senator Adler has asked that a number of times: What are the actual costs, rather than the times they sue -- the actual costs for the traditional threshold versus the verbal threshold? Because it seems like when we ask the insurance companies that have been here, they automatically say, "Well, it should be higher, and we charge this much more -- \$250, \$300 more -- on a policy for these people." But no one has been able to give us the actual statistics, and a number of them has said that the Department has those statistics. So what I'm asking you is, do those numbers exist? Do those numbers exist and what do they actually show? That's what the companies have been saying.

COMMISSIONER RANDALL: We'll certainly provide whatever we have in the Department. We'll make available and--

ASSEMBLYMAN DORIA: But do you know if they exist?

COMMISSIONER RANDALL: I know the differential -- the exact differential in any given company between what they charge you for nothreshold versus a restricted right to sue. The actual difference in pricing is something we have at the Department. So we can tell you how much more expensive it is with Company A to have the full legal rights versus restricted

legal rights. And we should be able to check that pricing on any of the 66 companies that write automobile insurance business.

ASSEMBLYMAN DORIA: And the filings that they give you would then show the actual output of money to justify that difference in cost -- that differential.

COMMISSIONER RANDALL: How the actuarial presentation is made I am not certain, but we can certainly share that with the Committee and tell you what underlying information is part of that rate-pricing filing that we have.

ASSEMBLYMAN DORIA: So that the claims, actuarially, obviously-- The actuary-- Through you, Mr. Chairman, the actuary's analysis is based on claims. So what you're saying is, then, that the claims based upon what you think -- and again I understand you don't have it before you, and I well understand that, and I'm not trying to put you on the spot -- that at least logically the claims for those who actually have the traditional threshold should proportionately be significantly higher to justify the increased cost that they pay.

COMMISSIONER RANDALL: Yes, they should be higher. And given the actual statistic in frequency of lawsuits, it being higher in what you called traditional coverage, one again logically would think because they do have more liberal lawsuit rights, they bring more lawsuits, there are more settlements achieved, and they are entitled to bring lawsuits for lesser injuries, in fact for any injury. So there are pain and suffering awards that would be paid out, obviously, if you have traditional coverage, which would not even get to court in theory if you have the verbal threshold coverage. So one would

think that in logic, if you just tried to put apples against apples, that the payouts, yes, indeed, are greater for people who enjoy more liberal rights to go to court.

ASSEMBLYMAN DORIA: I would tend to agree with you logically, but the question is nobody has been able to show us the actuality, and that's the issue. Now, one of the companies that's been here present when we've asked that question says that they gather those statistics, which seems to be, to my mind, amazing. And that's why I would ask if the Department could provide us with those statistics. I think every member of this Committee would like to see that -- the actuality that the cost is higher.

COMMISSIONER RANDALL: We'll be-- We'll provide you with everything that we have on that point, yes.

ASSEMBLYMAN DORIA: Thank you. Thank you very much.

SPEAKER COLLINS: Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: Good morning, Commissioner.

COMMISSIONER RANDALL: Good morning.

ASSEMBLYMAN DiGAETANO: On Page 6 of your testimony -- just about the middle, a little bit below -- you talk about an exchange for the guarantee of payment on PIP with greater limits on the type of injury which allows us to sue, and that's the true give-and-take of no-fault. In fact, no-fault doesn't address a pain and suffering suit, isn't that right? No-fault is only for payment of PIP claims.

COMMISSIONER RANDALL: In New Jersey, as I define no-fault, it is for medical payments.

ASSEMBLYMAN DiGAETANO: Right. And the only limitation we have to sue is if you choose the verbal threshold or if you don't select the unlimited coverage or whatever we're calling it, is that right?

COMMISSIONER RANDALL: Right.

ASSEMBLYMAN DiGAETANO: So with no-fault for PIP and with an unlimited right to sue, which we have right now, isn't it true that there's no trade-off whatsoever? I mean, you suggest that there is a trade-off for this guaranteed payment, but no-fault doesn't even address that. No-fault is only your PIP coverage.

COMMISSIONER RANDALL: Well, I agree with you that the definition of no-fault is certainly a threshold matter, no pun intended, but that's a critical issue to look at the outset is how we in New Jersey have defined no-fault. And I would certainly concede that the trade-off that we, in theory, I think that the Legislature, sought to achieve has not been achieved. I think policywise there was a theory that there would be a trade-off, and that in exchange for prompt payment of relatively generous medical benefits, one might see fewer lawsuits.

ASSEMBLYMAN DiGAETANO: Yes.

COMMISSIONER RANDALL: And I'm not sure that we've achieved that trade-off.

ASSEMBLYMAN DiGAETANO: What I was getting at though, the initial sales pitch, as I put it, for no-fault wasn't that you would give up the right to sue. Because, in fact, no-fault was instituted in New Jersey sometime in the early '70s -- I think around '72 -- and verbal threshold wasn't passed

until sometime in the late '80s. So for 15, 16, 17 years, we had no-fault without limitation on right to sue. So they're are not mutually exclusive.

COMMISSIONER RANDALL: And I-- Are you including the dollar thresholds historically that we also had prior to the verbal? Because I tend to think of the whole process as one that developed first with a lawsuit right that was tied to a dollar threshold, and then we moved towards today's verbal threshold.

ASSEMBLYMAN DiGAETANO: No. No. Actually, what I'm trying to do is disconnect the two, because there is no tie to no-fault and pain and suffering. No-fault is for your personal injury and your lost wages, you know, the kind of hard-fact losses. And it really doesn't address the right to sue for pain and suffering. They're mutually exclusive.

COMMISSIONER RANDALL: I think you can have two separate discussions about them. I do think that the-- And I've been asked this question, do we think -- is it our view that no-fault has worked? And my answer to that question has been that to the extent that we have insured a prompt first-party payment of medical bills to people, no-fault in that sense has worked and has been somewhat successful.

ASSEMBLYMAN DiGAETANO: It's probably like my handwriting, hard to read. (laughter)

COMMISSIONER RANDALL: This is my Deputy Commissioner, Cynthia Codella--

DEPUTY COMMISSIONER CYNTHIA L. CODELLA:
Good morning.

COMMISSIONER RANDALL: --who obviously is very familiar with the history of the issue, that's why she's here today with me -- makes the point that there's always been a threshold of some sort for years in New Jersey in terms of a restriction.

ASSEMBLYMAN DiGAETANO: But you've always had the option not to take it?

COMMISSIONER RANDALL: Yes. Yes. I think there's always been a choice. No?

DEPUTY COMMISSIONER CODELLA: No. The choice came later. May I? May I?

ASSEMBLYMAN DiGAETANO: Please.

DEPUTY COMMISSIONER CODELLA: Thank you. If I can clarify it a little bit for you. When-- No-fault is indeed a combination of the two factors, Assemblyman. One doesn't exist without the other. I'd like to clarify that. The no-fault is the-- The premise of no-fault is that we are able to get a prompt payment of the medical bills, with the purpose intended, as the Commissioner mentioned, of being able to accept some limitations on the right to sue.

ASSEMBLYMAN DiGAETANO: For pain and suffering?

DEPUTY COMMISSIONER CODELLA: That is correct. From the beginning, the thresholds were different than they are today, but there always has been a threshold. In the beginning, however, the thresholds were relatively -- they were monetary amounts -- they were relatively low. And it really wasn't until we went to a verbal threshold that we began to have the option of the choice situation come into play. So today one could simply say

that no-fault exists in this state, but for an additional premium, a policyholder is able to purchase the opportunity to have medical bills paid from penny one and not have the limitations on the right to sue. But they would have to pay additional, which they do, for that. So, basically speaking, the no-fault system does indeed require both elements to be there. In essence, those were the zero thresholds today. You don't have any limitations -- have the opportunities, so to speak, to get their medical paid from penny one and be able to sue for any particular injury without having to meet any threshold. And that is a premium coverage, so, therefore, they pay more for it. But, in essence, they're almost stepping partially out of the no-fault system to do so even though they still get their medical.

When we talk about the issues of pricing, it's very important to understand that the pricing and the volatility of the pricing is based a lot on the measure of balance between the two parts of no-fault.

ASSEMBLYMAN DiGAETANO: I understand that, and I share the Minority Leader's sentiments on trying to ascertain what the actual difference is in payout. Because, as the Minority Leader mentioned moments ago, the testimony before this Committee is that the insurers don't track that information. Yet, the Department of Insurance allows them to charge a premium for the difference. And I can't imagine that we would do that without actually looking at what the payout is separate and apart from the verbal threshold, if you will.

DEPUTY COMMISSIONER CODELLA: We will certainly, carefully look at the ISO, the Insurance Service Office, statistics that we do have in the Department, which are New Jersey-only statistics and try to

develop that for you. But I might add this, if I may, to the analysis. I've had the opportunity of sitting in to listen to some of the hearings, and I know that there has been an indication that the cost of the payout on the cases in those states, for example, that don't have no-fault/have recently repealed no-fault is less than the cost of the payout here. And that is, I believe, some of the core that gets to your question, Assemblyman Doria.

It would seem to me that we have to-- I think it's important to bear in mind when we look at our analysis -- and we will try to produce what we can for you in New Jersey on New Jersey because that has to be New Jersey looked at. The reason I say that is, if I take the two most recent states, such as Georgia and California, that recently -- I'm sorry, not California, Connecticut -- that recently abolished no-fault, I see that the restrictions to sue in both those states with the thresholds that they had were far less prohibitive, if you will, than what we have here. So when the changes occurred, there wasn't a dramatic change as I think we might see here in New Jersey because there is a dramatic difference between those thresholds. And I think that's important to keep in mind.

And the other part of it is that when it comes to the fact that we would now be talking, and this is another part of this great change that would occur and why it is greater-- We do have, you know-- It's been proposed that perhaps there should be this 10,000 med pay in correlation to the whole process with an ability to sue without any restrictions. That would mean, of course, that all of those bills that may be incurred -- whether they be medical or lost wages, what have you -- would also have to be sued for after 10,000, something that doesn't exist today, which would be, again, a tremendous

difference. And all of those things, I think, do somewhat point to an increased level of activity. The question is, and I think it's one that you have all wisely asked is, is that level of activity going to be enough to neutralize the increase in suit? In other words, is there going to be a lower payout that occurs and that level of activity somehow neutralizes this increase in suits? So that essentially, that's where you go with this. And I think that's probably part of the core question.

ASSEMBLYMAN DiGAETANO: We have had discussions in this Committee and some testimony on the specific issue you raised. I think the question lies in the attitude of the insureds. And I think some might say that in order to take that position that you would have to sue for lost wages, etc., is to take the position that the insurance companies don't want to pay. And I think in some claims, they don't want to pay and will always continue to take that position because they believe they're right. But, at the same time, there have been discussions that because of New Jersey's penalty, if you will, or lack thereof of a strong penalty, for nonpayment, that there's been a suggestion that insurance companies, as prudent business practitioners, if you will, delay or initially refuse to make payments which they might believe are somewhat justified. And the reason for that is because they may be able to settle at a lower amount or they get to use the money for an extended period of time.

Now, I guess, there has to be a decision made as to which one of those you believe. Do they just not want to pay? Are they gaming the system? And if the insurance companies are acting the way they should act, then most people would say they are in other states. And I happen to believe they would in this state, even with a fault system is -- the claims they feel justified, they

would pay, and they would pay them promptly. The only question in my mind is, is there enough of a penalty -- and I shouldn't say that there is a question in my mind because you're obviously familiar with the bill that I have sponsored in this legislative session called the Bad Faith bill, which would substantially increase the penalties for not paying a just claim. I think that question has to be answered before I come to a conclusion that we're going to have this proliferation of lawsuits for just claims. And, by the way, for the unjust claims, I think you should have to sue for that and incur the expense and ultimately lose, if you're bringing an unjust claim. You shouldn't force an insurance company to pay.

So I think that question has to be answered, but testimony has been brought before this Committee. That's obviously not a question unless you wish to respond. I have a few other questions, though, if I may.

SPEAKER COLLINS: That wasn't a question?

ASSEMBLYMAN DiGAETANO: I didn't phrase it as a question.

SPEAKER COLLINS: Just raise your voice at the end.

ASSEMBLYMAN DiGAETANO: Commissioner, if I may, or Assistant Commissioner, do we know of any state of the 50 that has what everyone would classify as no-fault that has recovery from one's own insurance policy regardless of fault for all claims?

DEPUTY COMMISSIONER CODELLA: By all claims, do you mean both--

ASSEMBLYMAN DiGAETANO: All claims.

DEPUTY COMMISSIONER CODELLA: Pain and suffering as well?

ASSEMBLYMAN DiGAETANO: Everything. Is there any state that does that, true no-fault?

DEPUTY COMMISSIONER CODELLA: That's-- I do not know of any state that does that, but I also am not 100 percent sure that would be a definition of true no-fault either. The true no-fault, again, doesn't incorporate the payment for pain and suffering out of a person's own policy, just the payment for the medical and the ability to go after the responsible party.

ASSEMBLYMAN DiGAETANO: I understand. But that's the definition that we--

DEPUTY COMMISSIONER CODELLA: Okay.

ASSEMBLYMAN DiGAETANO: --and maybe some other states have given to no-fault.

DEPUTY COMMISSIONER CODELLA: The answer to your--

ASSEMBLYMAN DiGAETANO: No-fault in and of itself-- You take the phrase -- means you don't determine fault to get paid. You don't need to determine fault. So I pose the question--

DEPUTY COMMISSIONER CODELLA: No. The answer--

ASSEMBLYMAN DiGAETANO: --what does that look like?

DEPUTY COMMISSIONER CODELLA: The answer is no. In other words, the first part-- You're talking about payments for benefits for pain and suffering off one's own policy.

ASSEMBLYMAN DiGAETANO: Right.

DEPUTY COMMISSIONER CODELLA: And that doesn't exist to the best of my knowledge on any primary basis. If there are situations even

here or if the other party is uninsured, that you can make a claim against your uninsured motorist coverage for those pain and suffering.

ASSEMBLYMAN DiGAETANO: Are there any-- Is there any information that you can share with this Committee as to what that might look like actuarially? What those costs might be if you simply said, let's move New Jersey to true no-fault, never have to determine who's at fault, make all your claims against your own insurance carrier, have a minimum insurance, buy as much as you like?

COMMISSIONER RANDALL: One of the things we expressed a desire to support, as an option, was contained in the Governor's original proposal, and it really emanates from Senator Cardinale's proposal that among the choices that insureds would be given, one would be a pure no-fault, first-party option.

ASSEMBLYMAN DiGAETANO: For all claims?

COMMISSIONER RANDALL: Yes, for -- inclusive of pain and suffering.

ASSEMBLYMAN DiGAETANO: Right. Thank you.

Is there information at the Department that we might have available to this Committee as to what the costs associated therewith would be? What the estimated premiums would be?

COMMISSIONER RANDALL: We haven't worked out the pricing. It would be a new, rather cutting edge approach to take, and we have some models. There are some New Jersey experiences which might be helpful, for example, the workers' compensation system as it exists in New Jersey might be a starting point for analysis in the cost.

ASSEMBLYMAN DiGAETANO: Would you agree that that type policy would substantially reduce the litigation in that you would never have to spend any time determining who's at fault or proving who's at fault? You would simply prove your claim and be done with it, so to speak.

COMMISSIONER RANDALL: Its attractiveness for many lies in the fact that the pricing could be positively impacted through reduced litigation because you would not be going to court in the classic sense of bringing a lawsuit. And if that were to result in an expedited pain and suffering award, that's the attractiveness that many feel lies in that option, too.

ASSEMBLYMAN DiGAETANO: Commissioner, just two other areas of questioning, if I may. The current reduction, as I understand it from the policyholders, for switching one's personal injury coverage to one's own health coverage is in the area of \$30. Is that--

DEPUTY COMMISSIONER CODELLA: Yes.

COMMISSIONER RANDALL: Yes, \$30 to \$50 has been our estimate. And actually, I think, only about 5 percent of drivers today exercise that option to save some money by making their health care carrier primary.

ASSEMBLYMAN DiGAETANO: Is that because only \$30 of one's policy is attributable to payments by the insurance companies in general for personal injury?

COMMISSIONER RANDALL: No, I don't think that's the case. I think you would see savings be increased if more than 5 percent of the motoring public actually took advantage of those savings.

ASSEMBLYMAN DiGAETANO: Why would we allow an insurance company to reduce a premium only \$30 if we chose not to be

covered under that policy for PIP -- and I'm loosely classifying that -- why would we allow an insurance company in the State of New Jersey to give only a \$30, or so, reduction if that wasn't the amount that's attributable to that insurance company's payout for personal injury? There should be an equal and opposite charge or reduction, if you will. If you take it right out of the policy, why shouldn't it be commensurate with the amount they're going to pay out?

COMMISSIONER RANDALL: Well, again, there's a relationship between the number of people that are making that option and the savings throughout the system, and that affects the actual price break that all the participants would get.

ASSEMBLYMAN DiGAETANO: If I choose to take my coverage out-- If they never have to pay a dollar for my health coverage, why shouldn't the reduction be equal and opposite to whatever the charge would be, and that, in and of itself, based only on what they would pay out for my injuries? I don't understand why we would allow that.

DEPUTY COMMISSIONER CODELLA: We can provide you very definitive proof on that because we have the analyses that were done early on to determine what that should be because the choice was there. I might add, though, that we still have the cooling effect, if you will, in terms of the cost in the auto insurance system to the UCJF claims, that the Commissioner mentioned in her testimony, that are figured into some of the pricing that takes place here as well.

ASSEMBLYMAN DiGAETANO: Why would we do that? Only those participating in it should pay into it, or only those with the -- having the availability should pay into it, shouldn't it?

DEPUTY COMMISSIONER CODELLA: Well, as I said to you, we have the exact analysis for you that we can provide to the Committee, so they can look carefully at that because it was done for that purpose.

ASSEMBLYMAN DiGAETANO: I would like to see that. If the Chair would agree, I'd share that with the Committee.

The final area is we've heard a substantial amount of testimony that the real answer to New Jersey's premium war, if you will, lies in bringing additional competition to New Jersey. Some years ago, the Legislature acted on a piece of legislation to put a pretty substantial restriction on an insurance company's ability to leave the state. I'd like to know what, if anything, is being done in the Department -- discussions with other companies who either may have left some years ago or never operated here and might be attracted to come back here. And in those discussions, if you will, what are the reasons they give for not playing in the State of New Jersey?

COMMISSIONER RANDALL: To the extent the companies offer any reasons-- Well, let me back up and say we have had interest. We periodically get companies who are nationally active, multistate companies who will ask us for information on how to gain entrance into New Jersey. And we send them all of the information -- packet that they would need to make application to begin writing insurance here. Sometimes we hear back from them with further questions. Sometimes we don't. So we're not necessarily always going to get a statement of a business reason as to why they decide not

to exercise the option and file that application with us. Anecdotally, you'll hear that companies decide not to do it because of it not being an attractive or profitable business decision for them. So it comes down to perhaps just a financial analysis on their part and the projection that it's not going to be financially profitable enough, and that would certainly make some degree of sense.

But we have certainly tried to be proactive in terms of making that information available, and through the National Association of Insurance Commissioners, our participation in that organization, we try and certainly communicate to the companies if we've changed any of the rules, how have we changed them. If there's been recent legislative change like last July 1, based on what you passed, we try and communicate that to companies in the expectation and hope that they may become interested in coming here.

ASSEMBLYMAN DiGAETANO: Has there been any discussions within the Department or with other companies as to specifically what they might -- what might change their minds? I mean, obviously, there's been some change in the legislation. And, in those discussions, have they offered any suggestions whatsoever, I mean, from them to you -- not what we might hypothesize?

COMMISSIONER RANDALL: There has been a lot of commentary on the ability to come and go in our market, and withdrawing from the marketplace is something which is a statutory framework which has been established for a few years now. We do not prevent a company, once it comes here, from leaving, but we do require you to go through a lengthy process that takes up to five years total. We make you find a replacement

carrier so that you cannot leave without ensuring us that someone is going to pick up the business of covering all those drivers that you may have acquired before you leave. So it's a process which is comparatively described by some companies as more cumbersome in New Jersey than other states.

ASSEMBLYMAN DiGAETANO: Yes. I've heard that as many times as I have the territorial rate gaps and the take-all-comers aspect.

The final question on this specific issue is, are the other states, the other 49 states of the 50 -- do they have such restrictive withdrawal regulations or laws, or are we the only one, and if we're not the only one, what do the other ones look like?

COMMISSIONER RANDALL: I don't think there's anything that models ours. There may be some other states which would require perhaps the effort to find a replacement carrier so that insureds are not left totally out by themselves. But I think our mechanism is probably as extensive as any state's.

ASSEMBLYMAN DiGAETANO: Thank you.

SPEAKER COLLINS: Thank you, Assemblyman.

Senator Cardinale.

SENATOR CARDINALE: Thank you, Mr. Chairman. Initially, I have a couple of observations, and then I have a series of questions.

SPEAKER COLLINS: Please.

SENATOR CARDINALE: The question has arisen here, and I don't think, with all due respect, that it has been fully answered -- the interrelationship between PIP and bodily injury liability. Initially, when PIP was, and the limits on the right to sue for bodily injury liability were placed,

there were challenges. And the New Jersey courts used the interrelationship, the trade-off, that because you got immediate payment on PIP, they allowed the limitations on the right to sue that had been, even the very mild ones at the beginning. They allowed them to maintain. Therefore, were you to deal with just one of those, you would probably have to deal with both, not because of the legislative act, but because of the rights that the court would deem needed.

It's interesting that very often before my Committee people have talked about the refusal by insurance companies to pay legitimate claims. That their rates are backed by some sort of actuarial study which would make them obligated to pay certain claims, but then they refuse to pay those claims. Now, I would ask the Commissioner, would that not result in very substantial profits for those companies if they're collecting the premium and not paying their obligation? Would they not have very substantial profits?

COMMISSIONER RANDALL: If they're successful in avoiding obligations, it should boost a profit margin, yes.

SENATOR CARDINALE: Are there very many companies then who are exceeding the limitation of 6 percent on profit that we have placed in New Jersey?

COMMISSIONER RANDALL: No. No. Not in recent years. We've had the Excess Profits Reports come in every July 1. They must be filed with us annually, and we've not found the companies, after we go back and forth and satisfy ourselves-- We do the analysis under the Excess Profits law and have not found the companies in violation making an excess profit.

SENATOR CARDINALE: So, therefore, that practice can't be resulting in anything but perhaps maybe a control on premiums, if in fact that practice occurs?

COMMISSIONER RANDALL: Well, it certainly isn't boosting profits beyond the limitations of our law.

SENATOR CARDINALE: Thank you.

There has been -- and I'm a little surprised at your answer-- The analysis that was done with respect to the first-party pain and suffering coverage. I can tell you that the analysis was done by my staff initially, and we came up with 30 percent on the mandatory coverages as the saving. And I can tell you that there was testimony before my Committee by State Farm Insurance that said, were that bill to be enacted, they would love to do that with a 25 percent reduction in premium, but they could live with the 30 percent. And they did some sort of analysis that led them to give that testimony before my Committee. And it was my understanding that in the Governor's Plan some actuarial study was done with that particular option that talked about either a 15 percent or 18 percent reduction in premium, if that option were to be selected. And it would seem to me that -- I was told at least -- at that time that an actuarial study had been done by the Department that led to that number.

COMMISSIONER RANDALL: Are you talking, I think, about the guaranteed savings that was attached to one of the choices?

SENATOR CARDINALE: The guaranteed savings attached to what you called scheduled benefits, which is not exactly the same as my bill, but was similar.

COMMISSIONER RANDALL: Yes, we did have some analysis, and the savings that we felt we were able to guarantee in accordance with that choice came from a number of sources. It comes-- We can't forget it comes from the litigation savings, the way we would structure it, too, as well as the institution of peer review, which was an underlying assumption in the guaranteed savings as well. The institution of PRO we felt was also a part of what got you to, I think, the 15 percent savings we attached to that choice.

SENATOR CARDINALE: Repeatedly, over all the years I have been involved with the Committee dealing with insurance, there has been an acceptance of the fact that approximately, on the bodily injury side -- approximately 60 percent of the cost to the insurance company is litigation costs essentially, whether that be medical or testimony, whether that be something -- whatever else. That for the insurance company to get \$8000 into the hands of an injured party costs \$24,000. Now, that includes both lawyers. So that it was that aspect, if that refreshes your memory, that could be saved so that then both parties could be paid, even the party at fault could be paid, and yet there would be a substantial saving left over.

I have some questions that arise out of your testimony. You mentioned that you will soon be up to the level of 150 new investigators. Can you tell us what they're doing?

COMMISSIONER RANDALL: Well, we have an ongoing analysis of the companies themselves, and part of our job, I've always considered, is to make sure that the people with tremendous resources, namely companies, are doing their jobs in terms of the Special Investigative Units that they have. So I think one of the significant things we were going to be able to enhance with

the 50 new fraud investigators is the Audit Program of the 66 auto insurance companies that we have doing business. Essentially, what we had found, going back a year or so ago, is that on a random audit basis, it was our conclusion that there were files that we uncovered in which payouts were being made arguably too quickly and not enough was done to question a potential claim which might or might not be proven to perhaps be something that shouldn't have been paid. So, in that sense, I think that one of the primary things that I see the new Unit doing is beefing up that Audit Program.

SENATOR CARDINALE: So you're going to use them to investigate the insurance companies, but it seems to me that one of the chief sources of fraud in our system -- and these are supposed to be fraud investigators -- are legal mills and medical mills.

I can recall having testimony before my Committee under a different administration where they set up certain operations within the Department. And they took a bus and they took a car and they staged an accident, and they found that there were police who were involved, that there were lawyers who were involved, that there were doctors that were involved in gaming the system because suddenly there were other people who claimed to have been on those vehicles, who were filing claims that they were-- I can recall a school bus operator coming before our Committee and talking about how there must have been 400 people on this bus, because they had a flat tire, that got into one of these mills.

Has the Department any plan to take a substantial number of these investigators, put wires on them, have them go before some of these legal

mills and medical mills, and document the transactions that are taking place there so as to make an example of some of the dishonest people?

Before we get into putting limits on the people who are legitimately and honestly injured, shouldn't we be going after the people who are ripping off the system, who are gaming the system, who are out-and-out-- A doctor not doing an examination. I recall, as a result of that that someone from the Department appeared at this doctor's office and saw the doctor in the parking lot. And he said, "Just go in and tell the girl that, you know, you were supposed to examine me." Are you doing those kinds of things? And if not, why aren't you doing them?

COMMISSIONER RANDALL: I certainly don't want to leave the impression that there's a limitation on what I just described. We do undercover investigations. We have for some time, and part of the resources of the new 50 add to the previous 100 investigators there. There are two ways to look at it. One is, yes, making the insurance companies in a preventative way do their jobs on the front lines better. But for the actual criminal activity, either civil and criminal-- But for the type of activity which you described, we have worked, and continue to work, extensively with the State Police, the Attorney General's Office, actually -- most importantly -- the 21 county Prosecutors' Offices, as much as the Division of Criminal Justice, because the county prosecutors frankly are very, very familiar with some of the actual rings that might go on in their counties. And we've had a number of fairly successful endeavors, I would say, this past year.

There was one in Jersey City, I think in the news within the past few days, in which we worked with the Hudson County Prosecutor's Office.

The law enforcement personnel with whom we work are critical to us. But it's a very-- It's a successful, highly cooperative effort, and we -- when we are going to uncover or work as part of a sting operation, we don't do it alone. We don't go out as just the Insurance Fraud Prevention Unit and coordinate it and plan it. It will inevitably take place in one of the 21 counties, and we usually go to that Prosecutor's Office as a threshold matter and start working with them. So the answer to your question is, yes, we do extensive work in that area.

There are some new criminal tools. I think most recently a criminal law that was sponsored by Senator Matheussen, which is going to aid us in the effort to actually bring some of those people to prosecution. So we have more tools coming our way legally on the criminal side to prosecute those rings.

SENATOR CARDINALE: You see, I don't want to beat this to death, but you have some tools available to you that the insurance company does not have available to it. An example of that would be Allstate having uncovered a whole series of these kinds of operations which were very extensive and very widespread. The best that they could do was file a civil suit. It's amazing to me that the Department was not in on that and indicting everybody in sight, frankly, who was involved with all of those things, be they the lawyer, be they the doctor, be they the false claimant.

And I think from what has come before my Committee, that's a very substantial problem in New Jersey. And it may be greater than the 15 percent that we talk about as being fraud. And I have seen in the past some reports that have indicated that that may amount to as much as 40 percent of what's going on in the system. The hard and soft fraud that is getting-- And

I think if people knew that your Department had 100 of its investigators out all the time doing these scam operations, doing these sting operations, that you would put a severe limitation on the legal mills and the medical mills, and you would put the fear of God into the people who would tend to want to game the system themselves as individuals by claiming that they were in accidents that they weren't in, etc., and so forth. But that's a suggestion and--

COMMISSIONER RANDALL: I just want to mention that publicly I give credit to Allstate or any other company that can pursue the civil course of action very aggressively. We were involved in Passaic County where Allstate did bring to light hundreds of people involved in potential fraud, and we worked with the Passaic County Prosecutor on the criminal elements on that particular fraud ring. It's a big one.

SENATOR CARDINALE: How many people were indicted?

COMMISSIONER RANDALL: Ultimately, I think about 12, 15 people.

SENATOR CARDINALE: How many of those were lawyers?

UNIDENTIFIED SPEAKER FROM AUDIENCE: Sixty-seven people were arrested in Passaic County.

COMMISSIONER RANDALL: I don't know how many have been indicted. I know--

SENATOR CARDINALE: How many of them were the lawyers who were involved in that ring? How many of them were the doctors included in that ring?

COMMISSIONER RANDALL: I-- There were some referrals of attorney misconduct made to the Office of Attorney Ethics. I think, though,

the arrests were the people who were involved in the actual operation, day-to-day, of the ring. I don't know of any doctors--

SENATOR CARDINALE: It's only anecdotal. It's because of what I've read in the paper. But I don't think any lawyers or any doctors -- maybe one doctor -- have been penalized as a result of that. But it is also my impression that without those professionals, the people who are bringing false lawsuits in the hope of recovering a bodily injury claim for a bodily injury which did not exist would be powerless to game the system. So that you need to go -- not to all of the tentacles of the octopus, but go to the head. And if you go to the head, I think then you will get someplace. And that is not going to harm any honestly injured individual from getting reimbursement for their claims. It may help them get reimbursement for their claims.

You talk in your report about peer review. And it seems to me that the Department -- or that your attitude towards peer review has changed a little bit. And that your attitude toward peer review has now come around a little bit more toward the aspect of independence between the doctor and the insurance company. This is a variance from what the original submission by the Governor's Office -- which I sponsored for this, as a matter of fact -- is, and could you elaborate on that just a little bit more? How do you see that working in some sort of detail?

COMMISSIONER RANDALL: The-- These are some relatively minor amendments, but there were changes in August, last August, made to the administration proposal at that time. But really, all they've really attempted to do was to ensure that independence and meet the criticisms by some that peer review organizations would really just amount to people whose

opinions were going to be beholding to the insurance companies and somehow that sooner or later in the process the insurance companies would be successful in somehow steering business or getting into a relationship with peer review organizations of their choice. And to meet those concerns, we structured a mechanism which was essentially more of a blind process designed to keep some separation so that that cozy relationship, if you will, would not develop because it would undermine the objective of peer review. They were not, though, dramatic in the sense of-- I don't think they alter the objective of peer review.

SENATOR CARDINALE: So would it be safe to say that your Department would now be behind a plan that an insurance company would do its own little investigation initially and separate out claims that it believes, for whatever mechanism they use, are questionable -- then submit those claims to your Department. Your Department would then engage a peer review organization to review those claims. For whatever methodology, they would review them and then take that report back to your Department, who would then report back to the insurance company. So that never would there be a contact essentially of any kind of -- any sort of relationship develop between the insurance company and the peer review organization. Is that the kind of mechanism now acceptable to your Department?

COMMISSIONER RANDALL: That's what we're trying to achieve.

SENATOR CARDINALE: Okay.

COMMISSIONER RANDALL: That we're a middle person in the mechanism so that-- Although at some point, of course, the insurance

company has to know that there is a peer review organization by name with named individuals to whom they're going to be making their appeal. But they wouldn't know up front. They would have had no ability to choose who was going to do the review.

SENATOR CARDINALE: You've had some discussion with Assemblyman DiGaetano about the cost involved if PIP is dropped and the cost involved if you lower PIP to \$10,000. I happen to agree with your numbers on the lowering to \$10,000 because we did a staff analysis that was almost identical to the number that you came up with. I think we came to 35. You came to 40. The question that was apparent to us was not just the Unsatisfied Claim and Judgment Fund, but another factor that I didn't hear you mention, and I'd just like to comment on it. And that is that most of the claims are satisfied within the first \$15,000. That it is the rare claim which goes for -- not terribly rare, but it is a minority of the claims which go above \$15,000, and therefore, even though those claims are going to be very large, there are very few of them, and that most of the money is a cost factor in the first \$15,000 of the coverage. It's like the first dollar of insurance costs the most and the second dollar costs a little less and the tenth dollar costs a little less because of reaching those levels in the claims. Is that a major factor that knocks down the saving when you go from the 250,000 to 10,000?

COMMISSIONER RANDALL: Right, that is, the lion's share of the claims are at a figure below -- I don't know what percentage -- but all studies concur that the vast majority of claims fall under the \$15,000.

SENATOR CARDINALE: Even the trial lawyers, when they came and testified before this Committee, said 85 percent of the claims would be

satisfied with the 50 original proposals, which they had, which was 15. It's changed to 10 now. But they have come before my Committee any number of times and said, "Why must we have all of this coverage, when 85 percent of the actuals would be covered?" But, of course, then 85 percent of the cost is in that first number of dollars.

The question arose earlier about what is the legitimate basis for the higher premium paid by a zero threshold person as opposed to a verbal threshold person. And I think that is a critical issue before this Committee. It was my understanding, and perhaps I'm mistaken, that the Department was going to require, when those thresholds were set up, that there would be a separate rating pool for zero threshold and for verbal threshold. Do you know if that, in fact, the rating pool has been established for those individual categories?

DEPUTY COMMISSIONER CODELLA: I'm not sure what you mean by rating pool, Senator. There is separate pricing that takes place.

SENATOR CARDINALE: No, I'm not talking about the pricing. The pricing is based on something. The pricing is supposed to be based on experience.

DEPUTY COMMISSIONER CODELLA: Right. On actuarial data.

SENATOR CARDINALE: Okay. Now, if there is no actuarial data, how do we have -- and that's what I mean by rating pool-- What is happening to the 12 percent? What are the claims being paid out? That's the information that's being asked for. It was my understanding, when that law passed, that there would be a separate rating pool for each category and that

insurers would be required to justify the premiums for each category on the basis of their experience in each category. Now, is that being done, or is it not being done?

DEPUTY COMMISSIONER CODELLA: Well, the study that I referred to before, the ISO study, which encompasses carriers in New Jersey that represent about 45 percent of the market, do have actuarial justification in their figures to show that the costs are greater to the tune, I think, of approximately two and a half -- somewhere between two and a half, 2 percent to 2.5 percent-- I'm sorry, two to two and a half times the costs for the zero -- two and half times the verbal costs. Now, that we do have. That's what we need to go back to and look to and try to determine some of the dollar amounts to answer some of the other questions were here -- that were presented here before. So we do have that as the most viable collection of data that we had.

We've not done a study per se on all of the filings. Filings, of course, are done individually. The reason the ISO data is valuable to us is because it does represent data accumulated from carriers representing that much of the market in New Jersey. So that's what we will look to and work with on.

SENATOR CARDINALE: I think the ISO study would be very useful for us, but my question goes a little bit beyond that. Some insurance company comes in and they are filing rates, and they are asking for a rate increase, let's say, and I think that's been happening. Are they required to furnish backup data for the increase that they're requesting in PIP, for the increase that they're requesting in bodily injury with a verbal, for the increase

that they're requesting for bodily injury with a zero threshold? They are required to give you that individualized data.

DEPUTY COMMISSIONER CODELLA: Actuarial analysis for the increases they want to have, where they want to have them.

SENATOR CARDINALE: Then, I think, that's what Assemblyman Doria is asking you for.

DEPUTY COMMISSIONER CODELLA: But--

SENATOR CARDINALE: And it's incomprehensible to me that our Insurance Department would not have that information because you would have it from the filings. Perhaps not from a separate study that you've done, but you would at least have it from the filings that have been made by the insurance companies.

I have nothing further. Thank you.

SPEAKER COLLINS: Thank you, Senator.

Senator Adler.

SENATOR ADLER: Good morning, Commissioner.

COMMISSIONER RANDALL: Good morning.

SENATOR ADLER: And Deputy Commissioner.

DEPUTY COMMISSIONER CODELLA: Good morning.

SENATOR ADLER: I'm just going to try and follow up on questions that -- the three previous questions -- the four previous questions have asked really because I think a lot of us are grappling with whether or not to scrap this no-fault system or to maintain it and change it substantially to reduce costs for drivers. And I think that's your goal, too, to reduce costs for drivers.

Let me go to the verbal threshold area first because I think one of the dilemmas we're facing is whether or not, if we eliminate the verbal, we would reduce medical costs sufficiently to offset the anticipated increase in BI claims. Do you have any feelings on, first of all, data relative to the treatment -- for PIP purposes of treatment of folks with verbal threshold versus folks with no threshold? Do you have a sense of on average who costs the PIP system more?

COMMISSIONER RANDALL: You mean the 12 percent who have zero--

SENATOR ADLER: Yes.

COMMISSIONER RANDALL: --versus the balance of the drivers?

SENATOR ADLER: Do they treat more? Do they treat less? Do they treat the same?

COMMISSIONER RANDALL: I don't know if we-- Yes, I don't know that -- how that would -- might be filed with us. I mean, we can see if we have anything that would, at the Department, at all which would be responsive to that.

SENATOR ADLER: Deputy or assistant?

DEPUTY COMMISSIONER CODELLA: Yes, I'm just saying, we may have it. I just don't know in what form, and I would have to take a look at that for you.

SENATOR ADLER: Okay. Because it seems to me that's a critical question. Some people are asking us to scrap the current system. The thought that even though BI claims would increase, diagnostic testing and some of the

more exotic testing that right now is sometimes permitted would decrease, and the decrease in some costs would offset the increase in other costs in such a way as to have a net savings for the system and justify your rate reduction and a cost reduction that goes with the rate reduction. Do you have any actuarial support for that or opposition to that?

COMMISSIONER RANDALL: The one piece that we were able to look at on a New Jersey-specific basis was just the frequency of lawsuits and to acknowledge, as I think it would be logical, that the frequency of lawsuits among those who have no threshold is almost three and a half times greater than those who have some restriction or the verbal threshold. In terms of medical payouts, we will have to certainly look further. On the other end on the medical payouts, we know the litigation frequency is higher.

SENATOR ADLER: Could you do that quickly?

COMMISSIONER RANDALL: Sure.

SENATOR ADLER: And I don't mean to be sarcastic or demeaning, but that seems to be a pretty important question. The Speaker has a bill in that relies on that trade-off as a net savings. We would like to know if that's valid. I've had a bill in the past that does exactly that. I would like to know if that's valid. If it is, we should go that way. If we'll save money increasing BI claims or reducing PIP claims more than the increase, that would be the route to go. And for us to not know that answer, collectively -- I don't say that critically of the Department -- for us collectively not to know that answer, this late into the game, after this many years of study, I think is pretty frustrating for us, collectively, including yourselves. Again, this is not criticism, but that's a pretty important question, it seems to me.

Let me follow up on what Senator Cardinale was asking before about some of the fraud that's out there. Do we have a mechanism yet to permanently revoke a medical license of somebody participating in fraud?

COMMISSIONER RANDALL: I think the Attorney General has been before the Oversight Committee and has supported such a legislative change. I think today, unless I'm mistaken, we haven't had a change in the criminal law yet.

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

COMMISSIONER RANDALL: Allows for permanent revocation?
(speaking to associates)

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

COMMISSIONER RANDALL: I think it may have been part of Senator Matheussen's bill, which was only signed into law in the lame-duck session, I think.

SENATOR ADLER: I think it doesn't actually officially revoke or automatically revoke. Would the Department support an automatic revocation for any sort of provider that participates in a fraud like that? Knowingly participates, not somebody who just happens to walk by the office, but--

SPEAKER COLLINS: Senator, I know I haven't interrupted any of the other questions, and I'll go--

SENATOR ADLER: But I'm a Democrat, I understand.

SPEAKER COLLINS: --back, but Assemblywoman Farragher would like to make a point here.

ASSEMBLYWOMAN FARRAGHER: I have some information that's relatively new. Last Thursday, the Speaker and I, along with several cosponsors, introduced a bill, similar to the Health Insurance Claims Fraud bill that we passed already, that addresses auto insurance fraud and criminalizes it. And, of course, it has to go through Committee, and what will remain, I don't know, but it goes after everyone in that bill. It goes after the providers, the attorneys, and so on.

SPEAKER COLLINS: Every citizen in the State of New Jersey we're going to get eventually.

ASSEMBLYWOMAN FARRAGHER: Every crooked one anyway.

SENATOR ADLER: Well, we can't get lawyers.

ASSEMBLYMAN DORIA: Get all the crooked ones.

ASSEMBLYWOMAN FARRAGHER: We're getting all the crooked ones anyway. And the intent of this rather-- It's rather heavy-handed, second-degree crime, but we want to send a clear message that we're not going to put up with this stuff anymore. And that just happened on Thursday. I believe the number is A-1751.

SPEAKER COLLINS: Thank you, Assemblywoman.

SENATOR ADLER: Anybody else?

SPEAKER COLLINS: Senator, I'm waiting.

SENATOR ADLER: Let me ask the Department's position on that bill, as you've heard it described, in very general terms. Isn't that one of the directions that we, as a state, should go?

COMMISSIONER RANDALL: We-- We--

SENATOR ADLER: Not that the Matheussen bill didn't go a good distance, but let's go all the way and actually punish these people, as the Assemblywoman just described. Where's the Department on that issue?

COMMISSIONER RANDALL: We've long supported the ability to be able to have licenses revoked subject to the Attorney General saying that due process and the Boards are following procedure since all of those professional licensing Boards are, I believe, under the auspices of the Attorney General. But I know that he has spoken to this issue as well. And I think we should have some mechanism to go beyond what at one point was a maximum five-year suspension, which was considered permanent but subject for reapplication by the licensee. Under appropriate circumstances, we would support the ability of the court to be able to permanently revoke and irrevocably revoke that license.

SENATOR ADLER: Permanently and irrevocably beyond the five years?

COMMISSIONER RANDALL: Yes.

SENATOR ADLER: Okay. So really permanently -- to death.

You heard the Assembly Majority Leader asking questions about bad faith. What's the Department's position with respect to adding a bad faith component as he has a bill that would do?

COMMISSIONER RANDALL: Some time ago we took a look at the bill, and I believe it creates a new legal cause of action. Our position has been throughout the process that much of what we see should be something that could be handled under the Unfair Claims Practices Act, which is on the books. And I know the sponsor and the Assemblyman, Majority Leader, has

also done his own analysis of that Unfair Claims Practices Act to see if it goes far enough. Our view has been that it has the ability to pretty much take care of the same needs in terms of addressing bad faith claims, that we think that existing statute covers the same ground as the new cause of action, which the bill would create.

SENATOR ADLER: Would the Department have any opposition to passage of a general reform bill that would include the Assembly Majority Leader's, I think, stronger and probably more effective bad faith provisions?

COMMISSIONER RANDALL: We had some concerns that we expressed in a letter. I don't think those have changed, but I-- Certainly we could supply the Committee with some of the comments that we had that were fairly specific when we analyzed that bill in the last legislative session.

SENATOR ADLER: I think we would be anxious to hear that because, frankly, we heard some testimony that would suggest that there is a process out there of bad faith on the part of carriers. In some instances, and subject to technical changes, in a letter, I think we would be inclined-- At least I speak for myself, I would be inclined to support the approach the Assembly Majority Leader's proposing with respect to that practice of bad faith on the part of carriers.

We had some what I would characterize as terrific testimony from the Ratepayer Advocate, from Blossom Peretz, a few weeks ago regarding various changes that she would make in the system to open up the process of rate making. Can you describe what changes you would support with respect to opening up the system of rate making to have more of a consumer view?

COMMISSIONER RANDALL: In our view, we have a process which doesn't preclude anyone's participation, that it's open, very open now. We haven't had prior-approved rate increases of late, so there haven't been hearings that the public would be interested in attending. But to be candid, we think the process is open, doesn't preclude anyone from having their say, communicating with us, objecting. People can come in and see all the documents on file. All the documents are public records, and we certainly make available for inspection. So our view really is that we don't think there is a tremendous benefit or advantage that's going to be gained by following the course of action that the Ratepayer Advocate testified to a couple of weeks ago.

SENATOR ADLER: So you would disagree with the Ratepayer Advocate? You think the public perceives the system, the process as a fair and open process in which the public's views are adequately addressed?

COMMISSIONER RANDALL: Well, whether or not they know that they could participate, I can't answer for all the residents, but the process is open. I guess, that's my point, and that maybe people need to be appraised of how they can object, how they can learn about a rate filing, but it is a very open process right now.

SENATOR ADLER: Do you think the system would benefit -- well, consumers-- Do you think consumers would benefit in having either a Ratepayer Advocate participating in the process on an official basis or third-party intervention by consumer interest groups, as part of the rate-making process?

COMMISSIONER RANDALL: I know of nothing that would currently preclude a third-party intervention. We haven't had any recently,

but I assume that's always an option if some interested party wanted to try and intervene in a case.

We did take a look at the historical role that the Ratepayer Advocate played a few years ago in the Department when we had an Insurance Ratepayer Advocate. And we analyzed the number of times they saw to intervene or were successful in providing a recommendation that was ultimately lower than that which the Department may have granted. Their track record, in our view, added nothing of substance, nothing of value. There was a mechanism set up, but in some instances, we even found that the Department of Insurance actuary, our witness reviewing it, came in with a recommendation that was lower than what the Ratepayer Advocate was recommending. So, in terms of it having at least, at one point in time, been tried, we just didn't find that there was a track record that was of any significance or added any value as far as consumer advocacy.

SENATOR ADLER: Let me just clarify in my mind. When you state your sort of gentle opposition to what the Ratepayer Advocate is proposing -- that's my characterization, you could dispute it you would like to -- are you speaking on behalf of the Department or on behalf of the administration with respect to the Ratepayer Advocate's proposals?

COMMISSIONER RANDALL: Well, let me speak as Commissioner and on behalf of the Department that it would not be my recommendation that we expand along the lines that we had historically. To bring back the Ratepayer Advocate and resurrect it as it once existed, I think I would be able to demonstrate for you all that when it was there and when it was in place, it's hard to really come to the conclusion that it really functioned

in terms of bringing down rates or saving premium dollars for drivers. It just didn't succeed.

SENATOR ADLER: Let me try to get your 1998 view of the constitutionality of mandatory rate reductions. In 1997, although I think we had differing administration positions over the course of the year, earlier in the year, it was the Governor's view, I believe, that mandatory rate reductions were unconstitutional. And then later in the year -- always an election year, that's right -- she changed position and believed that, in fact, mandatory rate reductions were constitutional. What's the 1998 administration view on mandatory rate reductions?

COMMISSIONER RANDALL: The rate reductions that we advocated in 1997, we still stand by today. Those rate reductions, as we put them into a legislative proposal, were tied though to a number of changes in the system. They also were not changes which would have applied to all similarly situated drivers. So the distinguishing characteristic of rate reductions to meet a constitutional test would be that they are tied to significant changes in today's system which result in taking some costs out of the system. And that they obviously apply to not every driver. To take a 15 percent or even 20 percent figure, which some might say it shall be guaranteed to all drivers, we thought was defective. Because you certainly couldn't say that just because Driver A makes the same choice of coverage as Driver B, that both are entitled to a 20 percent savings if Driver B has a horrendous driving record, which makes them truly a bad driver, versus Driver A. So it does get down to the fine points of the bill, but you definitely need to really talk about the good drivers being entitled to guaranteed rate reductions.

SENATOR ADLER: Let me talk for a second about coverage in the urban areas, because we've heard a lot of testimony about affordability issues and availability issues. And there seems to be a belief among many of the witnesses who've testified and probably among many of the legislators on this panel that there are carriers that are redlining certain districts. They are staying out of certain territories. They don't want to sell policies in Newark, in Paterson, in Camden, in some of our urban centers throughout the state and maybe in some rural areas, as well as the suburban areas. Tell me where we are with the regulatory process, and how we are going to get to all the drivers who want to buy policies, who want to spend the money that carriers will ask of those insureds?

COMMISSIONER RANDALL: Last July's reform package of legislation contains a very important program for urban drivers. The Urban Enterprise Zone Initiative, I think, is going to go a long way towards minimally making insurance more available in our urban areas. And, of course, that program, by regulation, is under way. We have promulgated the regulation which is entitled to go through a period of comment. We've identified an advisory board to assist us. We've identified preliminarily 25 cities, which by our study in the past six months we view as underserved urban areas. And the program is effectively designed to say to all of the auto insurance companies in the state, if you have a statewide business here and you have 5 percent of all the business in this state, we're going to make sure that you correspondingly have that share of your business in our traditionally underserved areas. And we'll start with these 25 UEZs for auto insurance.

If you don't -- and it's very easy to match up the numbers. We know what the statewide percentage of market share is for all of our companies. We'll be able to now match it up and say, are you doing the same percentage of business in those urban areas. If you're not, we're going to begin the process of making sure, through an assigned process of drivers, that you are assigned through our residual market, known as the private automobile insurance market -- that we're going to assign those drivers to you. We'll give you a chance to do it as you would in anywhere else in the state. We'll give you the same chance to market voluntarily to the urban areas, but if you don't start compliance, we're going to start assigning you drivers. So the time frames are all in place for that program, and we are very optimistic about it.

SENATOR ADLER: I'm not as optimistic because of the time frames in part. I'm also not optimistic about the percentages, but let's talk about the time frames for a second. You would expect folks to start working on these regulations in June, is that probably when that should start, or do you think it will be strung out beyond that?

COMMISSIONER RANDALL: Well, let's see, we went over -- I'll let the Deputy talk to the specific timetable that-- I approved the regulations to be sent over to the *New Jersey Register*. They are due to be published, I think, March 2. They should appear in the *Register*. Whatever the minimum public opportunity is we have to allow. Essentially, as soon as we can adopt those regulations, we'll have the program up and running.

DEPUTY COMMISSIONER CODELLA: One of the things we've done, which is a little out of the ordinary in the usual course of proposing and adopting regs, is that immediately upon sending these regs to OAL for proposal

and to be listed in the *Register*, we also shared them with the carriers already so that they could understand what was required of them and so that we would not lose time waiting for the proposal in the common period and the adoption period.

That's not to say that's not important and that we won't adjust necessarily as we go through that process anything that needs to be said. We do believe that, essentially, the concept will remain the same and that the carriers who needed to know what was going to be expected of them numerically, what had to be written -- those who do have to increase their share in the urban areas we wanted them to know it quickly. So they have that already, and that means that they have every opportunity to begin immediately, and some, I believe, have to address this through any new or different or beefed up marketing channels that they wish to use.

The UEZ allows for the mechanism of working with UEZ agents, but there are also carriers involved who are direct writers who would have to address this through their own marketing mechanism, and we wanted to make sure that they started on it right away. I do have some anecdotal information that some of these carriers have indeed done that by increasing some advertising in the areas, and so forth, and so on. So we feel that at least the attention that we wanted to it is being paid and that they are beginning to go in that direction already.

SENATOR ADLER: I've got to tell you I'm a little concerned about the timing of this because the law was passed in June, signed by the Governor in early July I guess. Now here it is February, and we just got the proposals for the regs.

This sunsets the year 2000. Does the Department have a position on whether or not we should extend the sunset to see if this works?

COMMISSIONER RANDALL: Well, certainly, Senator, hopefully it will work, in which case I think you'd find us advocating the continuation of the program if it proves to be successful. But what we have done for the last six months is to undertake the relatively difficult task of trying to identify the 25 most underserved areas. We wanted it to be a sound process because, while we couldn't include, perhaps, everyone who might want to be initially designated as a UEZ here, we felt that the process has to be fair.

We started by looking at cities that are contained in the State's Master Plan areas and then had to go to agents and ask all the companies who do business-- We surveyed all the auto companies and asked where they had agents, in what areas. We were trying to identify underserved areas, and it was a multimonth process, but we did it as quickly as we could, and we think we have a very fair set of 25 cities that will be the focus of the program.

SENATOR ADLER: Does the Department have a position now on whether or not we'd extend the sunset? If it were up to you -- if the Department could decide now -- would it extend the sunset, or would you want to keep it as December 2000 for now?

COMMISSIONER RANDALL: Well, I'd say that if we are successful, I would recommend it be continued. We'll know that, I think, in fairly short order into the program.

SENATOR ADLER: How are you going to gauge success?

COMMISSIONER RANDALL: It will be a compliance effort. I think, in this instance, it will be pretty easy to measure compliance, matching

up numbers, since we required companies to give us statewide numbers -- number of cars insured in the state -- and we'll be able to pick out of that number of cars insured in the Urban Enterprise Zones. We'll be able to effectively give them passing or failing grades based on meeting of percentage goal. So I think we'll be able to determine success pretty easily.

SENATOR ADLER: How many insureds would fall under this program do you think?

COMMISSIONER RANDALL: Policyholder-wise--

DEPUTY COMMISSIONER CODELLA: I'd be happy to give you an estimate of the number.

SENATOR ADLER: The reason I ask is because I have some concern that if this policy is widely successful and every carrier complies, it will still leave a large volume of potential insureds without availability because the figure that is set in the bill that was passed isn't high enough to meet the need that is out there in our urban areas and our areas that are being redlined currently. Does the Department have a position on the adequacy of the number that was set by the bill?

DEPUTY COMMISSIONER CODELLA: We did have a strong feeling -- continue to have a feeling -- that the mechanism you are referring to would be an increase -- is the 5 percent that is going to be allowed to be written through the PAIP. We feel very strongly in looking at that that we must remember the history of the past with regard to the assigned risk pools, particularly what evolved with the JUA, that would be extremely cautious to do and take measures that get the business written in a voluntary market, not

in an assigned type of market. We think that there is enough time with this program to be able to see whether it does indeed meet the needs.

We are talking about getting carriers to -- certainly a fair number of them -- to increase their share in those urban areas, and it really will be very important to obviously continue to assess that. The law that set the PAIP up and to begin with only allowed for a maximum of 10 percent total that would ever go in there for these very same concerns about not creating another pool.

There are, last count I think it was, a smidgin under 3 percent being written through there of those who qualify. If we were to go to the max of the 5 percent needed in this program, and we may not need to, but if we were, we would be at 8 percent already. I think we would have to rethink this and look at the whole thing at that point. There always needs to be caution about creating anything that begins to take away from all of the efforts that should be there to put the business in the voluntary books of business of the companies rather than to in any assigned risk pool. I think we all have that feel from all of the unfortunate experiences, frankly, that went with the JUA and the MDF.

COMMISSIONER RANDALL: In answer to your question, Senator, in 1998 the UEZ program -- we anticipate another 76,000 vehicles coming in via the initial phase of the program by 12/31/98.

SENATOR ADLER: But don't we have a lot more urban drivers than that, a lot more urban vehicles than that, that right now can't get insurance because of availability, not affordability and not because, unlike the PAIP system which is for bad drivers, good drivers who happen to live in urban

areas who just can't get to an agent who is allowed to write business in their area? Isn't it a numbers problem for urban drivers?

COMMISSIONER RANDALL: Well, I'm not saying that 76,000, if we were to hit that target, would solve the problem in every urban area, and I would imagine there would be more work yet to do. That number also is separate and apart from what I hope will be more direct marketing or agents by the companies themselves in an effort to go out and develop their own program of compliance without having to have one of these 76,000 assigned, if you will, through the program, which we are prepared to do and will do. But you could see the numbers improve if the companies decide that the marketing plan is their preferred way to go, which they may.

SENATOR ADLER: Well, voluntary is sort of a euphemism in this context. They are trying to cream the best drivers in an involuntary context, isn't that really the reality here?

COMMISSIONER RANDALL: Well, an urban resident-- However the urban resident gets their insurance product-- We certainly will do it in a number of ways. I certainly have no objection to a company deciding to come in and directly market or solicit business the same way they do in other areas of the state. That's something we expect, frankly, to comply with. The take-all-eligibles requirement, which we also have, we expect that kind of continuing outreach to people, and hopefully it will be made on a statewide effort, maybe in areas where it's not being made now.

SENATOR ADLER: Let me just summarize what you were testifying earlier about gauging success. You were talking about success under the current 5 percent system, that you would want all carriers to voluntarily

insure drivers up to 5 percent overall, right? You are not gaging success as providing availability to all urban drivers who could afford to pay--

COMMISSIONER RANDALL: Well, success will be measured on a company-by-company basis, almost in the nature of a report card for every auto carrier. Larger companies, obviously, have a larger obligation, but they all have an obligation based on their size and the amount of business they do in the state. So it will be an individual report card by report card. The 5 percent has to do with the amount of the residual market that we would be willing to farm out essential to the various--

SENATOR ADLER: I guess that's where I'm sort of stuck. I don't think our gauge of success, as a state, is whether each carrier gets to 5 percent figure. Our gauge of success has to be whether or not drivers, whether they live in rural areas, suburban areas, or urban areas, have access to affordable insurance coverage. That's what we have to wrestle with as a Legislature.

DEPUTY COMMISSIONER CODELLA: I think one of the things about the program is that there is access to, as we know, a limited degree today which means that there are -- just off the top of my head -- let's say 50 percent of the carriers are in the urban areas to an amount equal to their statewide share or more in the urban areas. What we need to do is spread that amongst all the carriers. What this program is saying that those other carriers that are not in there to the degree they should be in there need to get in there as well so that you do have 100 percent of the carriers writing on essentially a parity basis between what they write in the state and what they write in the urban areas.

So just by virtue of the fact that you have -- and again please don't quote me on the 50 percent, but just for the sake of argument, you have 50 percent of the companies coming in and being more aggressive to get business there. It adds to those who are doing that already, and we have the full complement of carriers, then, doing business as they should. I think that's what we have look for in terms of measuring success, which what the reporting hopefully will show us begins to happen as we see their enforced count in these areas hopefully rise. They will be reporting on a regular basis.

SENATOR ADLER: Let me change topics and talk about the arbitration process. We've heard significant testimony from folks indicating that the arbitration process seems to be biased in favor of awarding PIP recoveries, PIP suits, and attorneys fees. Would the Department support a system of professional arbitrators rather than practicing lawyer arbitrators, as currently is the process? Would the Department support a system such as the New York arbitration system here for New Jersey?

COMMISSIONER RANDALL: We prefer peer review organizations. If a specific proposal based on New York or something we could look at, we'd be happy to give a prompt review of it and comment. Legislatively the peer review proposal has been the one that has actually been put in legislative form. I know there is a New York model, which some have suggested might be appropriate for New Jersey; although, the core of the difference still remains that even professional arbitrators in New York are still attorneys -- albeit they're full-time, I believe, or can't engage in plaintiffs' trial work or negligence work if they do have an outside practice. So there remains a philosophical difference in approach between the New York system and peer

review. We prefer peer review, and we'd be happy to give you a comment on any type of change to today's arbitration system.

SENATOR ADLER: If you could submit to the Committee, subsequent to today's hearing, if you can -- send an analysis of how you think a New York-style PIP arbitration process will work here in New Jersey, I think that would be very helpful to us.

Thank you, Speaker.

SPEAKER COLLINS: Thank you, Senator.

Senator Cardinale just wanted to make a point of clarification I believe.

SENATOR CARDINALE: Yes. In the bill that passed -- we passed it in June, I think the Governor signed it in July -- there is a pretty clear statement that your Department has two authorities with respect to the doctors and other licensed professionals. You can either refer to the Attorney General for criminal prosecution or you can refer to the professional boards.

Now, I had occasion to look at that professional board licensing because the Attorney General asked me to put in a bill that would strengthen what they could do. The issue was the doctor who was convicted but not yet sentenced. The professional board has absolute, complete authority to revoke the license of anyone, whether permanent or temporary, today in the law. Absolute authority on someone who is engaged in fraud. They don't have to be convicted just someone who they believe is engaged in fraud. So I think that ought to be exercised.

I'm just going to ask, while I have the floor, one question that I forgot, if that's okay?

SPEAKER COLLINS: One question. Go right ahead, Senator.

SENATOR CARDINALE: It was suggested at a meeting -- a bunch of us got together and someone threw this out. It was a new suggestion that I had never heard before in insurance -- and there is not many of those around -- that recovery be limited to the amount of coverage carried on bodily injury. I would appreciate your Department's analyzing what that might do to insurance rates in New Jersey because it seems like an eminently fair proposal and one that, in fact, we enacted partially in that bill last year. We said that if you are not insured, you can't recover, but if you're insured for \$10,000 or \$15,000, why should you be able, under the same logic, to recover more than \$10,000 or \$15,000? That was a suggestion that was made by another Senator -- another new Senator -- and I thought it was something that deserved the light of day and perhaps some mention at this Committee as a proposal and for your Department to give us some idea of what we might anticipate as a savings as a result of that kind of a measure.

SPEAKER COLLINS: Assemblyman Doria for a quick question.

ASSEMBLYMAN DORIA: I just want to get a clarification as it relates to PIP and no-fault, and I just want to clarify. It sounded as if -- and I don't think you were intending to say this, and I think the Deputy Commissioner is the one that made the comment -- you are saying that if you are going to do away with no-fault, you have to do away with PIP. I don't think that is true. I think PIP is a part of no-fault, but one can exist without the other. Am I correct? You can have PIP coverage up to \$250,000 even if there was no no-fault.

DEPUTY COMMISSIONER CODELLA: Yes, that can occur, that is correct. I wasn't trying to infer it wouldn't, but the balance in the system that has been created here, that we have tried to work towards, has had both elements to it. Today you have PIP with the zero threshold. You have PIP without it.

ASSEMBLYMAN DORIA: PIP can exist without -- whatever the threshold may be.

DEPUTY COMMISSIONER CODELLA: It does, but I think it's the costing factor, though, that we have to remember when you have that kind of system, which is why I wanted to emphasize that yes, it does exist today, but it also costs more.

ASSEMBLYMAN DORIA: Well, yes, the cost is \$30 or \$40 based upon what we are saying. I understand that it is all tied together and I know the complications, but the reality is, if you don't take the PIP, you are saving \$40.

DEPUTY COMMISSIONER CODELLA: Oh, I'm sorry, I meant to refer to the cost differential between those who have no threshold--

ASSEMBLYMAN DORIA: Oh, okay, you are talking about the threshold, not the PIP. Okay.

I just wanted to clarify that because I think that is an important issue to understand, that we created the system, we can take any part and change it in any way we want. Am I correct?

COMMISSIONER RANDALL: Yes.

ASSEMBLYMAN DORIA: So that we can integrate it, move it around. The system that we created is something the Legislature, over the last 20-some-odd years, has put together.

Thank you, Mr. Chairman.

SPEAKER COLLINS: Thank you, Mr. Leader.

Commissioner, Deputy Commissioner, we are really just warming up here so stay relaxed. (laughter) Because eventually I get to ask some questions along here.

I did want to make mention we have a number of other people who will be testifying and I, in trying to be fair continually through this, whether we're perceived that way or not, the Senate President and I have worked very hard at it-- I want to make mention we will go through all of the testifiers today because it is our plan to have this be our last meeting. But there are seven of them, and I would like to just suggest now as you are thinking of your comments that we are going to limit the testimony to roughly 10 minutes or 10 minutes. So, as you are sitting here waiting, if you could start to put those comments into that time frame, I think it would be helpful to all.

Majority Leader of the Senate, Senator Bennett.

SENATOR BENNETT: Thank you, Mr. Speaker.

Commissioner, Deputy Commissioner, I apologize for being late today. I got the earliest flight I could get, but it still only gets us in at 10:30 in the morning.

One of the things that I've had trouble wrestling with is we discussed so many different areas of the insurance, but we keep having people

come back to us and say the insurance companies make so much money. The insurance companies are just making these immense profits. If XYZ Insurance Company comes forward and asks for a rate increase -- there are two parts to the question. One, is the company that comes in and asks for a rate increase -- I'd like it if someone here could walk me through what you are able to do when looking toward seeing whether or not they are entitled to a rate increase.

The second part of that goes, do you have any mechanism that if a company doesn't come forward and yet you believe that that profit margin is such that has become excessive, can you open the door to bring them in to be able to see what their profits are?

The first part of the question is: XYZ Company applies for a 7 percent rate increase, what does the insurance company do in order to assure that that increase being requested is fair or not fair, and how do you play into what the size of the profits are that the company has?

COMMISSIONER RANDALL: Let me attempt to deal with the excess profits question, we touched on it only briefly this morning, and then ask Deputy Commissioner Codella to give you detail on the rate-filing process.

SENATOR BENNETT: Okay.

COMMISSIONER RANDALL: We haven't had a lot of rate filings before us pending, which is the good news, but there is a very set process with a review time and deadlines by which the Department -- within which we must act. It is a separate, but related, question as far as prior approval rate filings verses excess profits. The Excess Profit Report is statutorily required every July 1. The companies must file with us each and every year a form as specified as dealing with a profit and loss statement, a certified, audited

financial statement. All the auto carriers must do this. We go through a review process and ultimately determine whether or not they are obliged to give money back to policyholders -- which would be what would have to happen--

SENATOR BENNETT: Okay.

COMMISSIONER RANDALL: --if we deem them to have an excess profit in any given year. The sum and substance of how it works is that in any given year, each and every year, there is a three-year look back period and essentially a three-year period prior to the year in which they filed. We then look at what they have made and decide if there is a rebate obligation.

If a company begins to start to make money and is successful over a period of two and three and four years, obviously they get into that fourth year, if they get into what is basically an average of over 6 percent in any given year, they are going to have an excess profit that is triggered. Certainly the companies, I think, are very aware of it in the sense that they know that if they were to somehow be successful in obtaining an inappropriately large rate increase that ultimately that is going to be reflected down the road when they have a profit and loss statement filed. So that it really wouldn't benefit them to go through expensive rebate programs, if you will, periodically through overcharging up front.

As far as-- That's done annually, and I'll let Cynthia Codella speak to just the process for any given rate application.

SENATOR BENNETT: Before she does that-- When you are going through on the excess profits and you are looking towards -- on those reports, do you also take into consideration whatever is in the reserves and the

interest that is earned on the reserves and the income that comes in from that? Is that counted as part of the profit, or is it just the claims verses the revenues from the policies?

COMMISSIONER RANDALL: Interest income is included and is looked at.

DEPUTY COMMISSIONER CODELLA: A brief run down of the process. We have 25 days from the time we receive a filing to deem it complete. From the time that it is deemed complete, then we have 90 days from that point forward to make a determination on the filing with an additional 30-day extension if we need that. A hearing may be requested by the filer or any interested person within the first 60 days. If a hearing is requested the Commissioner has to determine if this is a contested case, and proper notification of that hearing goes out in writing within 75 days of the request.

A rate increase is warranted if the carrier can show that its projected premium is less than the sum of its projected losses, allowable expenses, such as salaries and commissions, and profit allowed by law. This all must be supported by actuarial data. So basically that is more or less the premise in the time line that's involved and the things we look in, but I think the key factor is that it all must be supported by submitted actuarial data of the carriers.

SENATOR BENNETT: So those that would be saying-- I really don't know, and that's why I'm just trying to get to the bottom. We keep hearing how insurance companies are making such huge profits, but in reality,

at least on an annual basis, you would be able to see if that's true or not? I'm really trying to zero in on that so that--

COMMISSIONER RANDALL: Yes, we see it for each company each year, and their profits relative to other states are lower here. That still may be too much for some who view a 4 percent or 5 percent profit margin in their view is too high. These are the other states of late, the past few years, carriers in New Jersey make less here than other states.

SENATOR BENNETT: But they're not making -- and I don't know the answer, so I suppose that's bad for a lawyer, to ask this question if you don't know the answer.

The percentage of the profits is not increasing? That's really the question I want to know the answer to. Here in New Jersey has that profit percentage been increasing in the last three years?

COMMISSIONER RANDALL: I can speak to, let's see, 1995-- 1996 was a little bit higher than 1995. It went up slightly. I don't recall what 1994 was, and we don't have 1997 yet. But did it go up from 1995 to 1996 in New Jersey? Yes. Has it triggered the excess profits? No.

SENATOR BENNETT: Okay.

COMMISSIONER RANDALL: If you continue though-- If companies on average make 8 percent and 9 percent profit in New Jersey for two or three years, you're going to see those excess profit rebates being ordered by us. But if they made 3 percent, 4 percent, and then 7.5 percent in the third year, they are not necessarily going to be in an immediate excess profits mode.

SENATOR BENNETT: Okay.

DEPUTY COMMISSIONER CODELLA: I might add this, and perhaps it will help the analysis a little. A company has an opportunity, as it assesses its performance, to decide whether it would like to return dividends to its policyholders, and there have been a number of companies that have done that in the state in the past several years, and that is a perfectly legitimate thing to do.

When we look at the national statistics that are provided on the profitability of companies, I've been advised -- I have not checked it myself, but I have been advised -- that the return of the dividends is not normally included in that report. The one that I'm particularly thinking of is the NAIC, so I just thought I would mention that. That means that certain carriers have gotten dividends back. It can be a way not to actually find itself in an excess profit situation based on the formula that we use here in New Jersey to determine excess profits.

SPEAKER COLLINS: Thank you, Senator.

Commissioner, I have a number of questions, and they are sort of questions that have evolved over the hearings that we've had, of course, some of my own particular areas of interest, and I would like to just go down them rather quickly. Just somewhat quick responses if you so desire, and none of them will be etched in stone. Just some reactions to some of the things we've heard.

First off, let me just say that -- and I have shared this with the Governor and shared it with others-- This might be the first time to go this far publicly, but it is our last meeting, at least our planned last meeting. I don't think anyone would argue that in New Jersey we have the best automobile

coverage in the United States. If you are in an accident, there is probably no better state to be in when you're in that accident than being a New Jersey resident.

Obviously, and even if it's perceptually, even if it's wrong, whatever it is, the people in this state feel that to get that they are either paying too much or, if it's accurate amount of money for it, they can't afford it, at least many of them. And those that want to can always up it to as high as they want. So under that premise, from the beginning -- I've shared this with the Governor and the Senate President -- this Assemblyman believes that we have to make drastic changes in what we are doing because the citizens are saying-- For 23 years I know it's been a problem. I've listened to it for 13. You've listened to it probably for at least 14 as a legislator and now as the Commissioner, and we just have to do something. Only time will tell -- this is the big problem -- only time will tell if what we do is right. We won't know next week or next month or whatever.

So with that, here are some of the questions that I have. One -- and we sort of dealt with the PIP question, and so on, but I'm intrigued by the mentality of: If we have a quarter of a million dollars, 85 percent of -- and we've heard this testimony, and I say it's not etched in stone is \$15,000 or less than -- the payments, and then it goes up from there.

I've asked this question a number of times, maybe you can help me with it. If we were to drop the PIP coverage to some number -- I won't say \$15,000, let's say \$20,000 or \$25,000, whatever it would be -- there would be some kind of rate deduction. I don't care if it's \$40 or \$400 or \$4, there would be a rate reduction. Then, if we had some kind of plan put forth by the

experts where individuals would literally -- I've even said write a check to Commissioner Elizabeth Randall, \$5. Five million drivers, \$5.00 dollars each, \$25 million you put in a little account over there to pay for the catastrophic problems, I think we'd save money. Why can't we do that?

COMMISSIONER RANDALL: I think we can explore that, Mr. Speaker. I don't know that anyone has maybe gotten into the details of a catastrophic fund. I also worry about the people somewhere in the middle, which is why we always wanted to maintain the \$250,000 but with appropriate preventative measures so that it is not abused. Somewhere in between the \$20,000 injury and the \$150,000 injury is someone who may have been fairly severely hurt, obviously, and if the \$5 checks only cover you above \$150,000 in medicals, there is again that consideration of the in between area.

Again, who pays? If people's health insurance is going to pay, if they have it. We just have to know that everyone is very much aware of what they are going to do, and if we, as a state, through charity care, are going to pick it up, that may be a legislative decision as well. But we just to have track where the costs are going to go because, unfortunately, there will continue to be those severe injuries.

SPEAKER COLLINS: Exactly, and I don't have the details of it, and it is a very elementary idea, but see, I've reached the point -- and that is what the dialogue will go from here -- that yes, there might be some slippage through the cracks. But it is obvious to me -- and I'm not worried about elections or polls or whatever having the impact of what I'm going to say. People in this state, rightly or wrongly, as I say to many who come up to me very frustrated about auto insurance -- they say, "Well, it should be

affordable.” I said, “Well, what’s affordable?” No one has answered that for me. I ask generally this question, “Well, what should you pay?” It always stops people at first. “We just know that it is too high.”

The problem is that it is literally affecting people’s -- in my judgement -- quality of life in New Jersey far beyond those who slip through the cracks because it’s affecting a much greater percentage, and it’s almost like we’ve reached-- We have a system, as I said, that is the best if you are in an accident, but since most people aren’t, it’s affecting their quality of life. It’s almost like, “Well, if you’re in an accident it’s a bad roll of the dice,” under your premise, and I know that could happen, “and you get slipped through the cracks,” but the majority of people -- the majority of people -- would benefit, at least, in a calmness of a less stress-filled life -- though I think they would react to it -- but a less stress-filled life that auto insurance is too high, so that’s all. And we can work, if we get that far, on what the numbers should be, where it should be, and so on.

That leads me to a question we have heard quite a bit about -- You said their health coverage, and so on. There are some strong supporters of getting rid of no-fault to move to the primary care health person and particularly when it comes to those who it would fall on Medicare, “Federal money, not State money.” It has a certain appeal. Why is there anything wrong with that, of getting rid of no-fault as it is, and let alone the other arguments that those people whose primary coverer is Medicare, wouldn’t that save New Jersey money?

COMMISSIONER RANDALL: As long as-- Again, Mr. Speaker, if we can insure the motoring public and the Medicare recipients that as a

Medicare recipient, you will have your automobile-related medical bills payed by Medicare. We have to certainly have that assurance through the Federal program that again there won't be any slippage, especially with all of our Medicare recipients who might assume that they would be covered for auto-related accidents. So we would need to just certainly verify that fact.

SPEAKER COLLINS: The burden would be on the public really to be sure of that, the public who really wants changes. It would be like -- because I hear, in all the other issues from alcoholism to AIDS, education. You know, we always dump it back on education. Would I assume that we would have to educate the public more that they would be eligible for some of these benefits?

COMMISSIONER RANDALL: No question. I would think whatever you do--

SPEAKER COLLINS: The old education. Okay.

COMMISSIONER RANDALL: --would require that.

SPEAKER COLLINS: Along this line -- and I don't know, I've inferred from some of your comments that you may have thought you were answering this or maybe I've read more into it, but let me get directly. There are some people who feel-- Again, no one is questioning if we are in an accident in New Jersey, but the whole idea of minipolicies, policies that maybe just cover medical and let all the rest fall aside, wherever it would be, do you have any feelings on minipolicies in the broadest sense? I don't know if it would be down to this level or this level or this level.

COMMISSIONER RANDALL: Conceptually I think it is a choice -- represents a choice for drivers that they don't have today, so an expansion

of choice is something which we have supported. We had four original choices, and one of which may survive this process and come out maybe a little differently than we had proposed it. Essentially I think we tried to deal with the concept of a minipolicy as a choice and really could support something because it does represent an additional choice for the drivers.

SPEAKER COLLINS: Let me move into some of the-- In my mind, there we are talking about the policies themselves. Let me move to a couple of other things. One is that we've listened to a lot of people who say, well, we have to get rid of the right to sue and, let's say, we have to cut back on lawyers and lawsuits, and so on. Then we have pretty much the opponents of that saying this, "Well it's the insurance companies that are making too much money, and you have to look at them," and then we have some people in between. Let me look at a few of those.

First, you mentioned that the Excess Profits laws in New Jersey, I hear continually, are some of the toughest in the country, and so on. You have answered for the Majority Leader the process, and so on. We hear this thing that "Yeah, but you really can't get into their books." Is there any credibility of that, or do we have to change the law to really let you get into their books? I don't know what you're doing now -- those who say that statement, but is there anything we have to do there, or is this good enough?

SENATOR CARDINALE: Assemblyman, can I answer that? I'd like to take the prerogative of the Chair because I sponsored the bill that is law for about 10 years now in New Jersey. The Insurance Department is entitled even to the computer tapes of the insurance companies, and we added six actuaries under the same law so that anyone who says to you that they can't

get at the insurance companies is someone who is not familiar with the law of the State of New Jersey or trying to deliberately deceive you, one or the other.

SPEAKER COLLINS: I would go with the second sometimes on that, Senator. (laughter) I see it in, like, political statements as much as anywhere.

However, that leads me to the Senator's commentary before -- with regard to fraud and the wiring, and so on, that's good stuff. (laughter) (indiscernible) gets us rolling, and he is right. People are frustrated. We know it, and they want not just to have lower rates, they want the bad folks caught wherever they are, whether it's professionals or right on down the line. It leads me to this: Are you using all of your powers under this law to the best of your ability do you think? Are you getting in there, getting those tapes? Are you going right into their trash cans and finding what they have? (laughter)

COMMISSIONER RANDALL: I can't think of anything further on the financial side that we could ask for--

SPEAKER COLLINS: You do, okay.

COMMISSIONER RANDALL: --that we don't get, and if we--

SPEAKER COLLINS: That's a good enough answer.

COMMISSIONER RANDALL: We go back after the filings come in, and we go through them singly-- They are certified, audited financials. If we need any scrap of paper, we go back to them and demand clarification or additional information. But I can think of no stone that we leave unturned annually when we look at those profit and loss statements.

SPEAKER COLLINS: That's the answer I would hope we would hear.

Another idea that came up, led to a little bit of discussion, and I'll say intrigues me in the sense that there is an indication that 75 percent of the people in this state would save -- cost of auto insurance would go down, and that is the whole idea of removing the rate cap for "urban territories." I'll leave it as broad as that, and so on. What is your reaction to that?

COMMISSIONER RANDALL: Part of the reform -- the July 1 law, that has been mentioned several times here today, does ask our Department to undertake a study of the cap, the differential that--

SPEAKER COLLINS: Right, the 130 percent.

COMMISSIONER RANDALL: Right. Well, 135 today is the cap by law, and we have begun that study per the legislative mandate of July 1. It doesn't speak to the territories themselves, but it does speak to this differential. I'd have to say that we want to reserve some judgement on -- until we actually look at the cap and come back to you with a report that recommends some action on the caps either good, bad, or indifferent. But we were commissioned by you to undertake that study, and that is due year end, 1/1/99, so we owe you that review of the current differential in caps.

SPEAKER COLLINS: 1/1/99, that's after 3/30/98. (laughter) I just was wondering about that. (laughter)

Along that line another area that gets some people upset is the extreme cost for young people to become insured. We know the actuarial reports, and so on, and so forth. I've heard arguments with regard to the territorial caps of well, that's not fair, and, for example, if 75 percent of the people would save money and the other 25 percent would have an increase, that's not fair. I don't hear the same outcry when it comes to young people,

teenagers, 17 or 18, getting their license and then insurance, though most of it falls on parents, so it's older people paying for younger people to drive. Do you have any feelings about that one area of the cost of auto insurance? Is this something that is unfair? My 17-year-old children were wonderful children. They were going to be good drivers, good citizens, and their mother had to pay all this money for them to drive. Do you have any feelings on that?

COMMISSIONER RANDALL: Your point is very well taken. While there is some basis for charging the inexperienced youthful drivers more statistically -- there is basis for that -- it could be offset by, again giving our drivers -- and the young ones would have the same choice as all of us -- to effectively not buy any more coverage than they determine they need. Some relief could come to those drivers through a possible minipolicy as you have described it.

SPEAKER COLLINS: We've spent a lot of discussion here on medical bills and bodily injury and lawyers and insurance companies, and so on. Part of your responsibilities -- and I know you carried them out along the fraud line, etc. -- moves into other areas, and the one that comes to my mind is automobile repair. You hear story after story after story that "Well, what's your insurance? I'll add the extra money on for the deductible, or I won't do it," and so on, and so forth. Do you do anything with looking at auto repair, or should we be looking at it? We had a discussion in the Legislature last time, I guess my phrase would be like, an HMO for auto repairs. It was not particularly successful. Is that something that we should look at?

COMMISSIONER RANDALL: Yes, we did look at that issue and the projected savings -- and we did do a study on this -- proved not as

significant as we would have hoped if we were to give the companies the ability to set up these managed care for auto body repair networks, if you will.

But in terms of at least trying to contain abuses within the system, certainly that fraud investigative unit has and will continue to go in undercover to avoid the scenarios and they have occurred, where you have someone taking a sledgehammer behind closed doors to the front fender, and obviously, then having, you know, inflated bills that rip off the system and drive up the costs.

For the most part, as with most things, we have a number of small businesses engaged in the auto body repair business who do the proper job and do not inflate bills and do the right thing. I think our focus has been and will continue to be on the detecting the fraud and abuse if it's there.

SPEAKER COLLINS: We have a reduction by State law for defensive driving courses, I believe it's 5 percent. It's my understanding that some other states have a much higher number including the state to our west, Pennsylvania, which I understand might be even as much as three times that saving. Is there any reason why we are at 5 and others are higher or maybe lower?

If you were a defensive driver in New Jersey and you're a defensive driver in Pennsylvania that you should get three times the savings in Pennsylvania than you do in New Jersey-- We're as smart as they are and we'll take the course. Why wouldn't it be more similar?

COMMISSIONER RANDALL: The program started at 5 percent, you're exactly right, and what we will do is now monitor the results to see if we could justify a mandate higher than 5 percent. This being a mandate that comes from the Department to all of the insurance companies we do have to

make sure that we as a Department can insist on a certain percentage reduction for those who successfully complete the course and we have to have some track records, some back up for that.

We are now beginning to look at some results, and they are statistical. For those who have successfully completed the defensive driving course and gotten their 5 percent reduction, did it yield results? Were they effectively safer drivers less frequently involved in accidents? That ties into how much of a further reduction you could consider giving those drivers. Again, we are looking at and it's an annual review, and if could certainly make it higher than 5 percent we would like to do that.

SPEAKER COLLINS: Is that like 3/30/98 that report will be in?

COMMISSIONER RANDALL: Well that's an annual review. I don't know if it's before 3/30/98, but it's certainly annual.

SPEAKER COLLINS: If we were to put in legislation -- and we've heard and there has been some debate-- In fact, Senator Adler eluded to a guaranteed savings, and so on. As I remember the constitutionality question was just arbitrarily walk in and say you must reduce your rates 10 percent. There are some who wanted the Governor to do that. She said she viewed that as unconstitutional. Then she came up with a guaranteed savings based on actuarial data that I believe came from the Department, and so on.

Would the Department -- and you deal with our automobile insurance carriers. Even the legislation that we put in-- The Governor said, you said today, there should be guaranteed savings. Is that something that should be in the legislation itself, that there would be a guaranteed savings of 4 percent for this and 3 percent for that? I mean, should that be in the

legislation, or should that fall under regulation or just your own powers? Do you have a feeling on that?

COMMISSIONER RANDALL: There is more flexibility, I think, if you consider delegating it to the Commissioner to determine the appropriate mandated reduction. I think it probably is more flexible and fluid than would be something written into the statute. However, it is something that if you do put in statute might have to be revisited periodically, but I think either way it's the discretion certainly of the Legislature. We would be willing to undertake that regulatory responsibility. If you delegate it to us, I think it might result in the system being a little bit more flexible.

SPEAKER COLLINS: Just two more questions. One, earlier in the discussion the Majority Leader was asking about bringing more companies in and the way you go about doing it, and so on, and so forth. Of course, we were talking about the difficulties that companies have to leave, which has gotten a lot more attention over the years when they want to leave or threaten to leave, and we have these standards, and so on.

What would be your knee-jerk reaction to just one aspect of it -- we have this that you have to stay for 5 years, and so on, and so forth -- a shorter trial period, to bring more competition in? All the other rules being the same, but they are not coming in, so if they came in and didn't like it, a shorter period to get out.

COMMISSIONER RANDALL: I'm reminded we actually do have that flexibility now, that it can be shorter than 5 years.

SPEAKER COLLINS: Okay.

DEPUTY COMMISSIONER CODELLA: Minimum one, maximum five.

SPEAKER COLLINS: Okay.

My last question is this and I don't know that you are privy to this. We had a number of testifiers in the past, the Deputy Commissioner has been here, and today we have a letter from the Mayor of Woodbridge, (laughter) who has indicated that he would like to come before the Committee if we have any more meetings. He suggests some things, but he has something in here and I would just like your reaction to it. I quote. "Right now, the insurance industry virtually runs the Department of Insurance." Is that true, Commissioner?

COMMISSIONER RANDALL: That is not true. Was I copied on that letter? I would like to respond, but certainly--

SPEAKER COLLINS: No, I was just wondering if you would just agree that that was a true statement.

COMMISSIONER RANDALL: No, I disagree with that statement.

SPEAKER COLLINS: Do you believe that the Insurance Department is run by lawyers or auto repairs or doctors or insurance companies or anything?

COMMISSIONER RANDALL: None of the above.

SPEAKER COLLINS: But all, I guess, are involved in your decision-making process. Their input.

COMMISSIONER RANDALL: In terms of outreach, I would hope so. We try to have a very open process.

SPEAKER COLLINS: I thank you both.

ASSEMBLYWOMAN FARRAGHER: Mr. Speaker, there was one question that wasn't asked in all of this, and with your permission I would like to just, Commissioner, ask you what would be your feeling on changing the existing rating territories?

For example, particularly in the urban areas. Like the City of Newark in and of itself is a rating territory, I believe, but yet outskirts of Newark might be called suburban. So what would be your feeling on removing the rating territories as they exist and allowing the companies to develop their own rating areas as they do in other states?

COMMISSIONER RANDALL: I do think the rating territories need to be reviewed, at the very least. They have been on the books for many decades, and we anticipated that would be the next step after doing the mandatory study that you have requested on the cap itself. The next logical question would be the territories and whether or not there should be any change.

ASSEMBLYWOMAN FARRAGHER: Would that have to be done by legislation, or could your Department just undertake that study?

COMMISSIONER RANDALL: I don't believe the territories are set in statute, but I think we have the ability to at least make recommendations on change.

ASSEMBLYWOMAN FARRAGHER: Thank you.

SPEAKER COLLINS: Let me just say, on behalf of the Committee, we very much thank you for coming in today. I know this personally that any information or any questions that we bring to your office --

you have always been responsive, I'm sure you will be. I can just say that we have every intention of this Committee, I think every member, though our ideas now might not all be coming together -- but this is it. We've had enough of it, and we very much want you involved in what we are going to do to change the automobile insurance system here in New Jersey.

So thank you very much for coming in, and you, Deputy Commissioner, thank you, also.

COMMISSIONER RANDALL: Thank you, Mr. Speaker, and members of the Committee. Thank you very much.

SPEAKER COLLINS: Now, as I has said earlier, we surely want to hear from the rest of the citizens who wish to testify. If you would just keep your comments, if at all possible, to 10 minutes.

Next we would like to have Laurie Clark, Legislative Representative from the Garden State Automotive Federation.

L A U R I E A. C L A R K: Thank you very much, Mr. Speaker. It is opportune that I am here since I represent the small businesses you spoke of earlier in your questioning of the Commissioners, representing those that are collision repair experts and members of the Garden State Automotive Federation.

The members of the collision repair industry have unique knowledge and experience regarding the insurance claims process. This is primarily because, in addition to being an expert in the business of repairing vehicles, the shop owner must be an expert on the subject of prompt claims settlement and the laws governing the settlement of claims. This is an absolute necessity in order to stay in business. In developing this expertise, one very

beneficial side effect has occurred. The members of the industry have become true advocates for their customers, the consumers of this state.

I'm only going to talk about two issues, and I am going to try to adhere to your guidelines as best as possible. The first is the Unfair Claim Settlement Practices Act. It has also been referred to as the bad faith issue. Especially in light of the fact that you may choose to select an insurance industry-suggested remedy, the membership of GSAF believes this law should be amended to provide for an individual cause of action. We believe the balance of power between the insurance company and the consumer is weighted too heavily in favor of the insurance company.

Enactment of a bill like Assemblyman DiGaetano and Doria's bill, A-1433, would provide consumers with the fairness they deserve. I think it's a very good time for me to explain to you how this process works for a consumer in an automobile repair case.

If you have an unresolved dispute with your insurance company regarding a motor vehicle repair, you may opt to file a complaint with the New Jersey Department of Banking and Insurance. After all of the information has been exchanged between the company and the Department and they investigate it, the Department will issue you a letter in writing describing the findings. Then they may say that indeed you have a problem, the insurance company has not fulfilled its obligations. They attempt to enforce the order, they attempt to get a good result for you as a Department, but the Department cannot enforce that letter.

If the company doesn't agree with the Department's determination, then you have to go to court to file to enforce the order. In

most cases, a judge will uphold the Department's order. The problem is that the average consumer does not have the time to go to court. If and when they do recover and have the order upheld, they can't recover their attorneys' fees. So it's a very difficult process for the consumer and they truly need greater standing. So this is how a law like Assemblyman DiGaetano and Doria's bill would benefit the consumer.

Our second issue for today is the issue of aftermarket parts. Normally when I testify before a group such as this, I would prefer to have an industry expert with me, someone who truly repairs a vehicle, and they have a bit more technical knowledge. If you will bear with me, we can have that information provided to you at an earlier (*sic*) date, but if you will bear with me and try not to get too technical, you will probably be surprised at the amount of knowledge that I do have on this issue.

SPEAKER COLLINS: Nothing would surprise me.

MS. CLARK: Thank you, Mr. Speaker.

The members of GSAF are opposed to the use of these parts for many reasons but primarily the following. The parts are not crash tested in accordance with Federal standards as are original equipment manufactured by the automaker. The parts void the new car warranty of most vehicles manufactured by the major automakers. Last, but not least, they do not restore the vehicle to preaccident condition, which is the reason we carry insurance.

Aftermarket parts have been around for quite some time, but it was not until recent years that the problem as become serious. In past years, the biggest complaint was that the parts did not fit well or fit at all. This type

of problem will lead to delays in making repairs and resulted in a diminished value of the vehicle. At that point the main issue was one of economics rather than safety.

Although the economic issues remain, now even more serious issues have surfaced. With the introduction of the unibody vehicle and safety features like air bags, the questions of liability and safety come to the forefront. The unibody vehicle, which is the type of vehicle we all now drive if we are driving a late model car, is designed to collapse in a predetermined pattern with the intent to absorb the force of an impact and distribute the force of the impact throughout the vehicle in order to protect the passenger compartment.

This is accomplished by creating crush zones in the vehicle and making the vehicle parts weaker at certain points and stronger at others. This is contrary to the design of older vehicles, which were just the opposite. They were made very, very difficult to collapse or bend. So what we would notice is that passengers had a much poorer chance of surviving a collision, so the unibody vehicle was developed to protect the passenger compartment.

Today, after a vehicle is designed, it is crash tested under controlled, monitored conditions to be sure it will perform as intended when it is involved in a real collision. A dummy is placed in the vehicle to represent the passenger. After the test, the dummy is examined to see what injuries would have occurred if it were a real person. If the vehicle fails to function as designed and expected, it's back to the drawing board. Changes will be made to the vehicle until the vehicle will provide the desired protection for the passenger compartment and until it meets national safety standards, prior to being approved for sale in the United States.

I'm just going to illustrate a couple parts of the vehicle which will make it easy for you to understand the problem with aftermarket parts. The windshield of a car, for example, is a structural panel on the unibody vehicle. In a roller accident, the windshield will prevent the roof from collapsing. It will also act as a retention panel to keep passengers from being thrown from the vehicle.

The hood is another basic example. The hood is intentionally made weak in the middle section, it is built strong around the hinge area. This allows a hood to collapse in an accident rather than letting go at the hinge area and possibly going through the windshield, which could result in decapitation of a passenger.

Similarly, frame rails are also built with weak and strong areas. Even the ways the parts are welded together, where the welds are placed, and the amount of welds play a key role in the creation of the crash pulse of a vehicle. Aftermarket parts have been found to have missing welds, welds in the wrong place, and a lesser amount of welds. The aftermarket parts are not required to be crash tested as a vehicle is when manufactured, and without crash testing there is no way to know how parts will react in a collision.

We believe the present regulations governing aftermarket parts do not work fairly to protect the consumer. First, the issue of aftermarket parts is too serious to be governed by minimum standards. Second, we go back to the issue of the Unfair Claims Practices Act. Even if the consumer is successful, there is no provision for a cause of action so the consumer can seek damages, in fact, if the Department finds out that a particular company keeps coming up with constant violation of the aftermarket parts law.

I am very confident that the Commissioner is doing an excellent job, and if you bring this issue to the Department, they will indeed attempt to prove a general business practice has taken place, but it is very difficult and it doesn't give the consumer fast results. It appears to be too cumbersome a process to really give the consumers satisfaction.

We believe legislative intervention is needed to rectify these problems. Legislation has been introduced in the Assembly by Assemblymen Impreveduto and Moran and in the Senate by Senator Singer. It would provide for stronger regulations that are guidelines in the use of aftermarket parts. We believe that enactment of these bills would be an excellent complement, in addition to the bills sponsored by Assemblyman Doria, to any reform package which is introduced.

In closing, we urge you to preserve the existing mandatory coverage limits and the no-fault system. We believe the minimum coverage levels are barely adequate to cover most damages. Thank you very much for the opportunity. I'm sorry I didn't provide you with any cost-savings alternatives, but we would be happy to provide them. Our industry consultant has a list, and we are going to prepare a letter for the Committee for your use in the future.

SPEAKER COLLINS: Well, we're always interested in cost savings, so please send the letter.

Senator Cardinale.

SENATOR CARDINALE: Just one question, Laurie.

MS. CLARK: Sure.

SENATOR CARDINALE: How would you react to a proposal if it should pass this Committee that any repair shop, any of the individuals involved, would be subject to a 10-year mandatory jail sentence for offering to cover a deductible?

MS. CLARK: Let me just say, because the Speaker touched on this issue before, if you have any involvement with the industry itself, the professional portion of the industry, and there are bad apples in every industry, we cannot believe when people say that-- People are familiar with the old-time concept-- I remember being a new driver and being in an accident and my dad telling me make sure you tell the guy you don't want to pay the deductible. It has become a folk type of knowledge that we seem to all have, but this is not the reality.

Since repair facilities became licensed, every facility I know of, and I'd be happy to bring the representatives in, would be scared to death because they don't know who is coming into the shop and it is against the law and they will have to close down. It's very hard to stay in business as it is. To do that with the deductible it's very difficult.

SENATOR CARDINALE: Laurie, I don't know anyone who pays the deductible.

MS. CLARK: Everyone says that, but I wish that somebody would tell me who.

SENATOR CARDINALE: I don't know anyone who pays the deductible.

MS. CLARK: Everyone tells me that.

SPEAKER COLLINS: We have one.

SENATOR CARDINALE: We have one.

SPEAKER COLLINS: Let the record note that Assemblywoman Farragher payed the deductible. (laughter) And let the record note the Speaker will pay the deductible if he is in an accident, and Assemblyman Garrett will.

Laurie, you didn't answer the Senator's question. What about that 10-year penalty?

MS. CLARK: Let me answer the Senator's question. Right off the cup I ran this by the membership the other day because I was encountering this concept. Why do people still think that consumers aren't paying the deductible? Several years ago when we had the reform proposals--

SENATOR CARDINALE: That's not the question. I'm sure there are legitimate shops--

MS. CLARK: Right, but in other words--

SENATOR CARDINALE: --where that-- There are shops and we all know that they exist today--

MS. CLARK: Right.

SENATOR CARDINALE: --where they make this offer with regularity.

MS. CLARK: We would advocate very strenuous penalties.

SENATOR CARDINALE: Would your organization support a stringent measure so that once we get the Department to send in all of these sting operators that we can do something when we find someone who is violating the law?

MS. CLARK: Absolutely.

SPEAKER COLLINS: You will support them.

SENATOR CARDINALE: You'll support it.

MS. CLARK: In fact, let me just tell you, in case you are not aware--

SENATOR CARDINALE: You don't need to tell me anything else. I heard the answer I want.

MS. CLARK: Okay. As an industry we have a bill pending that would increase the scope of our own license and make it tougher to become licensed. We have promoted this as an industry. So, yes, we would be happy to work you on that and thank you for asking.

SPEAKER COLLINS: Any other questions of Laurie? (negative response)

Thank you very much. Thank you for waiting.

MS. CLARK: Thank you very much, Mr. Speaker.

SPEAKER COLLINS: Angelo Carnivale, retired, New Jersey Department of Insurance.

ANGELO CARNIVALE: Thank you very much.

SPEAKER COLLINS: Is it a good retirement, Angelo?

MR. CARNIVALE: Yes, it's been very good, thank you.

SPEAKER COLLINS: Enjoy it.

MR. CARNIVALE: And I hope it continues for a long time.

My name is Angelo Carnivale, and I want to thank you all for giving me the opportunity to come before your Committee and talk about automobile insurance as a concerned citizen of the State of New Jersey.

I have been retired from State service now for a number of years, but I did work in State service for 36 years -- 36-plus years, and during that time, for one year I worked with the Department of Education as an auditor. Then for 35 years I worked in the Department of Insurance. Of those 35 years in the Department of Insurance, 25 of them were with the Actuarial Services Property Liability Division. My last title there was Assistant Chief of the Division, so I do have some experience in the area of actuarial functioning as far as automobile is concerned. The last 10 years of my service I was manager of the Automation Division, and we helped to automate the Department, which was also very interesting and rewarding.

I come here without a stack of actuarial or statistical reports, but rather, my appearance here is to impart some ideas and suggestions on what I think may help you in bringing about auto reform in New Jersey based on my experience in that area.

That State of New Jersey by its geographic location, demographics, and density of automobiles presents an automobile exposure unlike any other state in the union. Accordingly, any automobile rating system introduced in the state will produce rates which are moderately high depending on coverage selection. The current system which incorporates no-fault coverage has proven to promote rates which are excessively high and unaffordable for many in this compulsory insurance state. Thus, we are faced with a problem of many uninsured motorists.

What are some of our problems, and how can we do something about correcting them? The current no-fault system promotes excessive costs in the medical and legal areas due to unnecessary testing and treatment plans

combined with a considerable amount of fraud. My first recommendation is to eliminate no-fault in New Jersey and return to the tort system. Also, I would suggest the retention of compulsory insurance, specifically bodily injury, property damage, liability, and medical payments coverage. With respect to the uninsured and underinsured coverage and the physical damages coverages of comprehensive and collision, I would suggest that they remain as optional coverage.

The medical payments coverage would be payable to the insured by his or her insurer shortly after treatment. The time line for payment of the medical payments coverage should be included in the statute. I also support the concept of fee schedules and peer review.

Next, I think what this state needs is more competition. In order to bring back the big auto writers such as the GEICOs of the world and to get rid of all these pup companies that seem to be springing up in the state, my second recommendation is to change the rating law from the current prior approval to a file-and-use system with significant penalties for unsubstantiated filings. This will not open the hen house to the fox, but will promote competition in rate and coverages.

Making premiums more affordable is a key concern to all of us. Coverage selection will govern to a great extent what those rates will be, but my next section recommendation is to suggest that we review the expense elements of the premium dollar. I believe that if we legislate in New Jersey that all automobile coverage be written on a direct basis that we could guarantee, except for those companies that are already writing on a direct basis, a 10 percent savings in premium.

To combat fraud in a more efficient manner, it would be my recommendation that the current State Fraud Division be restructured with a management team composing of the chief, the assistant chief, and the clerical staff but that the investigators be employees of the insurance companies that are doing business in this state. By so doing this you bring ownership of the fraud problem right into the companies' laps. I was really concerned at one of the previous meetings that I heard -- and correct me if I'm incorrect on this -- that the budget for the Fraud Division was something in the neighborhood of \$14 million and that the savings in terms of fraud that was found was something in the order of \$2 million. That doesn't seem appropriate to me. I think something should be done about that.

Also, I think we could enter an element in the rate filings that gave credit to companies that uncovered fraud through their agents. To make our--

SPEAKER COLLINS: Angelo, if I may.

MR. CARNIVALE: Yes.

SPEAKER COLLINS: We have 150 fraud investigators right now. Do you mean that -- and you mention the chief and the subchief and the clerical and so--

MR. CARNIVALE: Have the management and the State service but have the employees--

SPEAKER COLLINS: Those 150 people, would they no longer have a job unless they were hired by the insurance companies?

MR. CARNIVALE: They would probably be hired by the insurance company.

SPEAKER COLLINS: Okay, go ahead on.

MR. CARNIVALE: Okay.

To make insurance identification cards more effective, it is my recommendation -- and this is a high-tech thing -- that we bring into consideration a smart card for an identification card. This marked card would be deactivated at the moment the insured decides not to pay his premium. When he doesn't pay his premium, the company could then deactivate the card. If he was stopped by a police officer, the card would be invalid and that person would be prosecuted. I think this could be done; it will take some investigation and there is some cost elements involved.

I am really concerned about the fact that so many insureds go out -- they can't afford insurance. They go out and buy a policy and make the first payment, have that card in their pocketbook, and drive the rest of the year without paying.

My next point is to curtail fraud in the physical damage area. That insurance companies be permitted to own and operate their own collision repair facilities. I think that would take care of this problem of the paying up of the deductible.

My last recommendation is that the entire question of territorial definitions in the automobile rating system be reviewed. My suggestion is that we have, to start with, three territorial definitions, urban, suburban, and rural, and that there be a modifier that reflects the fact that many vehicles, although they are parked in Newark, that individual drives and often parks their cars in other areas, and it's not reflected in our current system. I think to bring about some equity in our rating system that should be done.

That's all I have, and I thank you very much for giving me some time here.

SPEAKER COLLINS: Thank you, and let me just ask that last question. It might be better to ask the insurance companies, and we will eventually. That idea -- and we heard that before in an argument -- with regard to the territorial rating in the urban caps of living in, as you said, Newark but most of the time your driving is in other parts of the state. Excuse my naivete, but can that be calculated into the rates? Could the companies do something like that?

MR. CARNIVALE: Well, when they ask you -- when the questionnaire comes to you-- They have in the classification system a drive-to-work definition. If you indicate that you live in Newark and you drive to Passaic or wherever and that's where you spend most of your time with your vehicle, that could be calculated, yes.

SPEAKER COLLINS: Any questions for Mr. Carnivale? (negative response)

Thank you very much.

MR. CARNIVALE: Thank you.

SPEAKER COLLINS: And just as a personal note, of course it was your life, but I picked up that you had been to other hearings and it's good to see an interested citizen.

MR. CARNIVALE: I'm very interested because, since 1972 when I was part of the Department and we introduced the no-fault law, it was destined to fail.

SPEAKER COLLINS: Well, so glad that you were there to help.

(laughter)

MR. CARNIVALE: I must say that--

SPEAKER COLLINS: You're the guy I'm looking for.

MR. CARNIVALE: I must say that at the time, I raised serious objection, especially to the dollar amount of \$200 as a threshold, which was a little bit absurd.

SPEAKER COLLINS: Well, thank you. I meant that for coming in. We appreciate it.

MR. CARNIVALE: Thank you.

SPEAKER COLLINS: Barbara Geiger-Parker, Executive Director of New Jersey Head Injury Association.

BARBARA GEIGER - PARKER: Good afternoon, Speaker Collins, and members of the Committee. I'm Barbara Geiger-Parker, the Executive Director of the Brain Injury Association of New Jersey. We recently changed our name. I'm joined by Robin Cincotta, who is the Director of our Advocacy and Public Affairs Department. I think I should be able to meet your 10-minute limit, I will talk quickly.

This is the second time that I've testified in front of you during these auto insurance hearings. On January 22 I spoke strictly on the importance of maintaining personal injury protection at the current level of \$250,000. In order to avoid a cost shift to other payers and to maintain a car crash survivor's access to needed rehabilitation care after an injury, I again strongly urge the members of the Committee to maintain the mandatory \$250,000 minimum PIP benefit.

The proposals to reduce access to health care through a limited medical policy or buy down approach will only result in shifts to other systems and will result in less than optimal health recovery. Those who are most at risk for injury through automobile crashes, 15- to 24-year-olds, are also those with a least amount of money with which to purchase insurance and the most likely to feel that they are invincible and cannot be injured in an automobile crash.

Although we ask that you maintain mandatory PIP coverage at \$250,000, we also recognize that you must implement cost savings during this auto insurance reform. To this end we have developed some suggestions that we believe will result in cost savings of several hundred dollars while maintaining the benefits that the citizens of New Jersey buy insurance for, access to medical care, access to the courts, and access to automotive repair.

As all of us in the room are keenly aware, we have a real problem in New Jersey. We are the most densely populated state in the nation. There are a lot of cars on the road, approximately 782 cars per square mile, compared to the countrywide average of 56 cars per square mile. We also drive much more than the rest of country, approximately 60.5 million miles traveled from 1990 to 1996 as compared to 47.5 million miles traveled to the rest of the country.

We drive expensive cars that are expensive to fix, we earn more money and have more to protect, we are more litigious, and we have excellent benefits, including one of the best trauma systems in the nation. All of these factors lead to the high cost of auto insurance premiums in New Jersey, yet the debate continues to focus on reducing access to care as the mechanism to save

costs. We believe that there are some other areas to look at in which the Legislature can both save money and retain benefits.

First, as Speaker Collins had mentioned, replace the urban drivers subsidy. Allstate has testified that people living outside the most congested cities in New Jersey are paying more than they should for automobile insurance. Allstate estimated that about 75 percent of drivers are paying those subsidies which average \$160 for a typical policyholder with two cars. Eighty dollars per car could be saved without losing or reducing benefits.

Mandate the payment of deductibles for collision and comprehensive coverage be made directly to the insurance company that will then pay the entire amount to the vendor eliminating the temptation to waive the deductible.

Research has shown that 41 percent of New Jersey citizens believe that it is all right to increase an insurance claim to make up for the deductible. This is a temptation that can be easily controlled by simply having the insurance company collect the deductible. We don't have a position on, certainly, Senator Cardinale's suggestion that people be in prison for 10 years.

SPEAKER COLLINS: Or longer.

SENATOR CARDINALE: How about a guillotine? (laughter)

MS. GEIGER-PARKER: We would definitely be against a guillotine. (laughter)

We also believe that--

SPEAKER COLLINS: As would the Speaker. (laughter)

MS. GEIGER-PARKER: Our third recommendation is to work with the insurance industry to redraw the territories that have been in place for more than 30 years.

4. Institute a deductible on the liability part of insurance with subsequent savings based on the deductible just as we do with collision and comprehensive.

5. Institute independent peer review. Consult with health care and professional societies in the design of a responsive and fair system.

6. Allow the Department of Banking and Insurance to study the effectiveness of the medical fee schedule and determine the fee schedule through regulation as currently allowable under law. Do not tie the fee schedule to the Medicare rate because this is based on political maneuvering and certainly not on true health care costs.

7. As previously mentioned, enact act of bad faith law that imposes a fine or other penalties on insurance companies that do not pay bills on a timely basis.

8. Allow the 21-day notification law and the new medical fraud law to make an impact on auto insurance. Use what is learned from these laws to target case managers in areas of overutilization and, or insurance fraud.

9. Enact safety legislation to decrease the number of injuries and the number of costs. For example, combine the graduated driver's license and the primary seat belt law, both of which have decreased injuries in other states, with a final version of auto insurance reform. We also should enforce legislation that requires an eye exam every 10 years to maintain your driver's license and require mandatory retesting of individuals over a certain age.

We believe these ideas, if enacted, would produce a savings between \$100 and \$200 per car. However, the savings must be part of a mandatory rollback to ensure that cost savings is passed on to the consumer. One of the suggestions that the Brain Injury Association is putting forth may indeed create a cost shift. The industry has testified that eliminating the urban subsidy will create savings to the 25 percent of the market that is suburban but most likely will increase costs in the urban areas -- I'm sorry, of 75 percent of the market that is suburban but most likely increase costs in the urban areas which creates a disincentive to carry insurance and most likely increases the number of uninsured drivers.

If the Legislature feels that this is bad policy, as some members have stated, then we must create a subsidy to alleviate the burden on the urban drivers but not unduly charge the suburban drivers. One idea for a subsidy is a program that is broad based, captures funds based on the amount of driving a person does, and also captures funds from commercial traffic and out-of-state drivers.

The Committee should explore the feasibility of subsidizing auto insurance by increasing the astonishingly low per gallon gas tax in New Jersey. I know that a tax increase is not a popular idea but please listen on. The New Jersey tax on gasoline is only 10.5 cents per gallon. To put this in perspective, Delaware's gas tax is 23 cents per gallon, Pennsylvania's is 25.8 cents per gallon, New York's is 26.8 cents per gallon, and Connecticut's gas tax is 36 cents per gallon. Once again, New Jersey's tax is 10.5 cents.

The latest data that we have located is that in 1995 New Jersey gas usage was 3.9 billion gallons. Every penny increase in the gas tax generates

\$39 million. Although, there are inherent problems with raising a tax of any kind, any amount, there is a way to sell this to the citizens of our state. A gas tax would allow us to export our costs to out-of-state individuals who use our roads but do not have to pay our insurance rates. It is also a fair way to spread the subsidy across the users of the system, which allows all drivers an advantage in buying insurance knowing that insurance is affordable to all our citizens.

Thank you for giving me this time today. Let me end my testimony with a final statement on the importance of personal injury protection. PIP covers the extensive rehabilitative costs that are needed after an injury in a motor vehicle crash, health insurance does not. Many people do not know what kind of care is needed after an injury.

At the first public hearings held in mid-December, you witnessed, as did I, the number of individuals who came forward and testified to the importance of personal injury protection in their recovery. There have been a number of proposals to reduce the PIP option in order to save short-term costs. The proponents of these proposals argue that about 85 percent of all PIP claims are under \$15,000, so if you reduce the coverage to \$10,000 or \$15,000, you would save approximately 5 percent of the premiums' costs which translates to about \$50 per year. This mere \$4.20 a month provided \$250,000 in PIP coverage. The proponents of this plan, we feel, are being penny-wise and pound-foolish.

The insurance industry testifies the majority of the problems associated with PIP are on the low end. That is where the Legislature should focus their reform efforts through cost controls like case management and

independent peer review. But don't restrict the care of those who are seriously injured to save a few dollars a month.

Follow our suggestions and save a few dollars under any of the areas that we outlined. It will save the State money in the long run through access to rehab and enable many people to continue to getting the care that they so desperately need after an injury.

Thank you for my time today and I'd be happy to respond to any questions.

SPEAKER COLLINS: Thank you, and let me just ask a couple of questions. One, interestingly and I won't go into which particular points, but it's almost as if you have been driving in my car with me going back and forth, but it is not a gas increase, but with some of the suggestions that you have made. Let me just pick one that you brought up. You brought up a subsidy for urban drivers, however we decide to do that. What is your reaction to a subsidy -- catastrophic fund that I've asked about -- this will be the sixth time I think. If we reduce the PIP and, then, we have this amount of money, \$40 million, \$50 million which will carry over every year, with \$50 million coming if you did \$10 dollars, what do you think of that idea?

MS. GEIGER-PARKER: We're really very much committed to access to care. We understand how that is working with our current no-fault system, where there does seem to be good access, timely, availability of services. I'm not sure what -- how much money is needed to be able to create a fund that doesn't -- that's able to, once again, continue the care that people need. We're certainly not wedded to any particular way of doing that.

SPEAKER COLLINS: So long as the money is there is what your concern is?

MS. GEIGER-PARKER: Well, as long as the services are there, and generally you need money, you know, to get those services.

SPEAKER COLLINS: So we might have a net for brain injury people or seriously injured, and maybe a net for urban drivers. I mean, they'd be somewhat similar, wouldn't they be? I mean, I use the same word net, net. I'm not asking for the details, but--

MS. GEIGER-PARKER: Well, once again, I mean, you know, I think there needs to be attention paid to having a system in place that provides the insurance that you buy insurance for.

SPEAKER COLLINS: You also, and through all of the-- I'll just make this as a comment. With all of the reasons why our rates are so high -- well-stated -- obviously though, either the people in this State don't know that or really don't care about it, because I think you would agree there are many people who feel that auto insurance costs in New Jersey, whatever the reason, are too high, and that's something we have to deal with.

My last question is this: You brought up those who have testified, particularly at our first meeting, with regard to the necessity of having this protection for the most seriously injured people, and so on. You alluded to them, and I can picture them now. It's very telling testimony, as has happened whenever we're making changes, whether it's auto insurance -- we started, when I first came, with the verbal threshold to medical. However, those people, I think to a person, when they testified that first day, said they were

opposed to peer review. You support peer review. Is there any-- Am I wrong? I see the head being shook. I guarantee you--

MS. GEIGER-PARKER: Some of them did oppose.

SPEAKER COLLINS: I'm not saying all of them, but there were a number of them who absolutely agreed with your position who did not want peer review. Are they wrong? Are you wrong? Or is it just something we picked up in time?

MS. GEIGER-PARKER: Well, it might be because of the experience that users of the system have had with independent medical exams, which are not so independent. And I think that as long as there is an independent, fair system, consumers are not harmed. And so, if you need to use the system for legitimate purposes, it should be there.

I would also like to kind of go back--

SPEAKER COLLINS: Well, all of the systems are good if we use it for legitimate purposes. If we were all legitimate, we wouldn't have half the problems that we hear about. Unfortunately, it's one of the human frailties that some people are not legitimate. Go ahead.

MS. GEIGER-PARKER: Well, another kind of human frailty is, I think, an unwillingness to necessarily voluntarily pay for what you want and what you need. You know, I find it interesting, looking at kind of the discussions around school reform and municipal tax reform, that although at some level people say they don't like how much they're paying, when you talk about some ways to reduce costs, there is opposition.

SPEAKER COLLINS: You have been in my car. (laughter)

MS. GEIGER-PARKER: But I think it is human nature. We don't necessarily pay our health insurance the same way that we pay our auto insurance. And, you know, people want the best and want to pay the least.

SPEAKER COLLINS: Any other questions? (no response) Then we're safe, Senator Cardinale left, my good colleagues.

Thank you very much.

MS. GEIGER-PARKER: Thank you.

SPEAKER COLLINS: David M. Myers, M.D., orthopedic surgeon. Doctor?

Now, if we all stay on our 10 minutes, we're out of here right on time.

No pressure, Doctor. (laughter)

DAVID M. MYERS, M.D.: Thanks a lot.

SPEAKER COLLINS: I'm sorry, I did skip someone. There were hyphenated names, of which my daughter is one, got me confused. Stay there, Doctor, but I will go to Christine Carlson Glazer.

Where are you? I'm sorry I skipped. You'll be next.

DR. MYERS: Okay. I'm David Myers, and I'm here as a person from the street. I'm a Board-certified orthopedic surgeon, with a 25-year practice in inner-city environments -- Irvington and Paterson. I'm here, basically, for my patients, who are never heard. They're the voiceless urban minority who are most adversely affected, often, by what these committees decide. I came to explain and offer concepts, concrete proposals based on over 20 years of practice in the inner-city, minority community.

I see what goes on every day, and I find it incredibly hard to believe that the investigators for the insurance companies, or for the State for that matter, have such a hard time finding the obvious corruption in the PIP system.

There is a widespread perception by the industry, in the first place -- and this goes on to perceptions before we go on to solutions -- that the inner-city patients' injuries are mostly fraudulent or frivolous. This preconception is a major disservice and fosters legislative action, on some occasions, punitive to that constituency by governing their access to care.

I treat these people. They have real injuries. They've got real findings and real pain. What they don't have is the clout to fight back when they are terminated from benefits that they have paid for and deserve by whatever flavor of the day, bottom-line gimmick is available to their insurer.

Their auto insurance is their only payer, since most do not have any other health insurance. If their care is denied and they are hurt to an extent they cannot work, they get fired almost immediately from their menial jobs and often have to go on to public assistance of some sort. They can't just go to their private doctor and pay cash, because they don't have any cash, and they can't use other health insurance because, like I said before, they don't have any.

Job loss, depression, family destruction is the endless cycle in these communities that I serve, and nobody seems to care at the higher levels. I just ask you to please don't legislate away any more of the few rights that they still retain.

On to solutions: Does fraud exist? You bet it does. But the real dollars are not lost in sensational, staged accident scenarios that we read about, although they absolutely should be prosecuted to the nth degree. The real serious fraud is much more insidious, invasive, and cancerous, but yet, it's altogether obvious for those who are out there in this community.

Major fraud exists, gentlemen, in the mobile testing units, often owned by nonphysicians, which go from one chiropractic door to another, performing expensive tests of poor quality and absolutely no treatment-enhancing value. MRIs are valuable, but the ones done in mobile units are of unreadable quality. We also see muscle strength testing; range of motion testing; surface EMGs, which are not the traditional EMGs that we see; spinal fluoroscopy, which only role is to impress jurors at a trial; and thermography, which is an outdated test since the advent of MRI. These tests are ordered, and the profit from each is shared between the provider and the mobile unit owner.

On the surface, these arrangements between these people may appear to be legal, in fact, may be legal -- shared rent, equipment rental, shared marketing costs -- but add nothing to the treatment of patients but thousands of dollars. The results of these useless procedures are usually not even understood by the provider ordering them and are rarely, if ever, used to change the course of treatment when the results are available.

These tests are used to beat the verbal, with the suggestion that they are, in fact, objective evidence of major injuries. If you want to find out how critical these mobile tests are, eliminate them. I suggest eliminate them from the PIP fee schedule. You will see that the providers suddenly decide that

they don't need these tests to treat the patient adequately. It would save tens of millions of dollars and not affect care one bit.

I suggest investigators look carefully at all mobile units and their arrangements with the providers. Eliminate all mobile-testing services for PIP injuries owned by anyone who has no involvement in the direct care of that patient, and/or eliminate business individuals who front these mobile-testing services but who have no health care provider's license in this state.

Fraud also exists in every major urban police department, where officers and/or public personnel sell the list of police reports to runners or cappers, as they are known in our neighborhoods, so that the runner can call on patients, often before they can get home from the police department, to offer them money to go to such-and-such an attorney or such-and-such a chiropractor or other medical provider. The patients who go with these runners are frequently poor people, often don't understand English, and I don't blame them as much as I do the runners and the practitioners who pay the runners.

You disbar lawyers and take the license from unscrupulous medical practitioners, as you very well should, but the largess moves on with their business to the next greedy lawyer or the next greedy chiropractor. In Passaic and Essex County, if I was so inclined, I could buy a whole patient from a runner for \$900. Then I could take care of his medical needs and refer him to a lawyer with the explicit understanding that that lawyer would send me back a patient. Therefore, for the \$900, I get the patient I bought and the patient I got back from the attorney for the referral.

What this does, gentlemen, is put thousands of people into the system who have minor injuries and who, on their own, never would have sought medical care in the first place or sued for pain and suffering. This is a daily fact of life in the large urban areas and certainly in the communities where I practice. You must hit the source of this. It should be a criminal, not a civil, penalty to entice any accident victim to go to any particular lawyer or chiropractor or any medical provider for any type of monetary gain. Make it a criminal offense for any medical practitioner to refer a patient to an attorney. There is no reason that any doctor should be sending a patient to an attorney -- none that I can think of, and I've been doing this for 25 years.

This would eliminate this back scratching, patient for client, which drives this specific abuse. Understand that most of the time, the attorney is the gatekeeper in this system, not the provider, as most people believe.

The inner-city population goes first to the emergency room, and then they go to an attorney, not necessarily to sue, but first to get them to help assist them in getting treatment before they see a physician because they don't know who is going to pay their bills.

Fraud exists in major, even public, MRI companies who share marketing expenses, "rent MRI time to chiropractors," or other, some more sublime connections, which encourage referrals by giving value in some form back to the referral source. The arrangements on the surface, in fact, may be legal because they're nefarious smoke screens for illegal fee splitting.

PIP payments should only be made to MRI centers which have passed a State-certification process. I hate to tell you, but the majority of privately owned centers in this state, with the expedited certificate of need

process, got the certificate of need process, but they never got State certified after they did that, and that just happens to be the way it works, and I don't know why that is.

Fraud exists in massive overtreatment by chiropractors and some practitioners, and I emphasize the word some. As an orthopedist who regularly does consultations on chiropractic patients for extremity injuries, since they can't treat the extremities, I can comment with authority. I believe that after six or eight weeks of chiropractic care, the patient, if not better, should at least be referred to an appropriate AMA Board-certified specialist, at least for a consultation to determine if the care is on course.

Finally and in conclusion, I ask, do we need to deny patient rights to eliminate this fraud and abuse? I say, definitely not. The concept of peer review, IMEs, and managed care is all the same in my experience, and that is to deny care. It is a retrospective review. It does not address what the provider sees in the acute phases of the treatment. It is often just a review of records, with an arbitrary decision that this patient only had a soft-tissue injury and that they always get better in six weeks, no matter what; therefore, treatment beyond that time for those problems should be denied. And, gentlemen, I'd like to remind you that the brain, the spinal cord, the heart, the lungs, the liver -- those are soft tissues. That happens to be the standardized language for most of the review reports that I've had the opportunity to see. Now, that's a great concept for the insurer, but it's very bad for the patient policyholder.

Even as we sit here, State and Federal Legislatures are drafting legislation to fight the abuses of HMOs, and an HMO is just an

institutionalized peer review organization. Medical societies are salivating for peer review, especially my own, the New Jersey State Medical Society, because it will allow formation of a whole new bureaucracy where their members can make additional revenues, including myself, I might add. Peer review is a disaster for any patient who does not have the wherewithal to afford his own care if some distant reviewer does not deem their care appropriate.

For any physician or chiropractor to look at just records many months after the care has been rendered and deny that care without having seen the bruises, the swelling, the tears, the spasm, the numbness, the discomfort of the patient, as the treating provider does, in my opinion, is guilty of ethical malpractice. In my many years of practice, I've seen thousands of so-called independent examinations and peer reviews, and rarely do they ever find the patient has any residual problems or ever has any need of any care. If they did, they wouldn't get much more work from that referral source.

If you look carefully at how the organizations are paid, a large number of these organizations are paid by the percentage of money they save the insurer. And if that isn't a conflict of interest, then I don't know what is.

And finally, I ask as you deliberate to think of those who are not here, the minorities and those without an agenda and the voiceless people who sit in these inner-city communities, and never ever confuse fraud with adequate care. I believe that patients have the right to receive care until they feel better, if that's possible and within reason. After all, gentlemen, that is why they buy insurance in the first place. Thank you.

SPEAKER COLLINS: Thank you, Doctor. Let me just say, and I am not angered or even vexed by this part of your commentary, but on three

different occasions you had suggested that there are some here -- in fact, you said all -- that overlook the unheard from, and so on, in the urban areas, and so on, and so forth. I don't know that that's true. Experiences that all people have, including yours and everyone in this room, and legislators, of course, goes into decision making. And as I am quick to point out, with great pride, as someone who represents rural communities -- 39, the largest having 19,000 people -- that they feel more so even than the urban constituencies, when they think about it, are the unheard from and the unknown, etc., etc.

Decision making is difficult, just as you have indicated, and when we make them, we make them to the best of our abilities, trying to take into consideration all of the information that we have and, of course, coupled with our own experiences. And it's your experiences that I find quite interesting and I want to say, I thought, well-presented and put some thoughts in my mind. And the first one is this, that these mobile centers that we've heard of before, and that I really am not familiar with because my experiences don't touch on them, and I depend on others and in our future discussions -- but doesn't that somewhat fly in the face, because I see those as treatment centers for people who can't get to treatment centers. And in this case, I would think the urban communities would fall under that. Is there an--

DR. MYERS: Well, I think I understand what you're saying; however, there's no urban community in this state that I'm aware of that doesn't have an MRI center or an electrodiagnostic center within a few blocks, certainly, within the cities that I'm talking about. I don't see anybody that has to have a mobile center come to their door versus going a few blocks. If they

can get to their chiropractor's office, they can sure get to somebody within that city to get these tests, if, in fact, they have enough injuries.

SPEAKER COLLINS: So therefore, they might fall more into the rural area where they might need them because--

DR. MYERS: I would think the rural areas would have a much different need, when there are people who don't, but certainly not in the inner-city environment.

And I would like to comment on the fact that it just happens to be the perception, and I'm sure it is not the case, that the Assembly and the Senate doesn't seem to care about these people. It's the perception of the people themselves that no one seems to care, and that's what I see. I'm sure you do care, and I know this is an extremely vexing problem, and anything you can do to help it is okay with me because it doesn't make any difference to me what the individual program ends up being, I'll just work with it.

SPEAKER COLLINS: Sure. We appreciate that. Perception is difficult. You know, it's perceived that we're all crooks and bums and stupid.

DR. MYERS: Oh, I don't--

SPEAKER COLLINS: I'm not saying you. I know you wouldn't think that. And if we always react to perception, we really wouldn't be here unless we really -- the perception that we are masochists would be true.

Let me ask one other question, and it's just for my own knowledge. What is your view of chiropractic? Is that something that's positive for--

DR. MYERS: I don't see anything chiropractors-- There is a large number of honest, well-established chiropractors who do a good job. And, as a matter of fact, I think chiropractors do as good a job as the medical

profession and certainly as the orthopedists do in the initial care of these patients. What I hate to see, and I'm sure what you have seen and I see on a regular basis, is chiropractic care that goes on months and years.

SPEAKER COLLINS: You had indicated a time frame, six weeks, I think.

DR. MYERS: Yes. Many, many years. I think, six or eight weeks of chiropractic care, if you have not made a change, if you have not improved, then perhaps it's time for somebody else to take a look. That's probably true of my treatment, too. If I've treated someone for that length of time, perhaps I should get a consult or send them to a chiropractor.

But the fact of the matter is, you've got to change your approach if you're not making any headway. And that's my problem. I see chiropractor's bills that are 20-pages long.

SPEAKER COLLINS: Okay. And my last question is this, and it sort of deals with the vexation that we have to deal with in this issue. You sat here, good faith, gave good background, excellent presentation. Right before you, representing the New Jersey Brain Association, good presentation, caring, and so on. You two are absolutely on opposite ends of peer review. Now, I'm just one little guy trying to decide. Who do I listen to, you or the previous testifier, let alone all the others?

DR. MYERS: I think the problem is that peer review IMEs have got a very bad name. They got a bad name because of how they've been run and who's been paying them. I believe that some of the things I've heard here today are positive. I think peer review that is absolutely and totally independent may have a role. I have no problem with peer review. I have less

problem, as a Board-certified doctor with impeccable credentials peer review is good for me. But I don't want it to deny care on the basis of what I've seen in the past. Peer review has been a disaster, and review by insurance companies has been a disaster for people with real problems. If it can be totally independent-- The only way for me to see that this is totally independent is not pay for it. I think that doctors in this state, that have a license in this state, ought to be required to review these cases and not have to charge a fee for it.

SPEAKER COLLINS: Sort of like lawyers do.

DR. MYERS: Absolutely. It's a pro bono thing. I believe that as an orthopedist or as a chiropractor in this state, if you want your license, you have to have assigned to you X number of cases. You don't know where they're coming from or who they're with, and then, you'd have independent review. I don't see any other way to do it. If you have money in it, it's not going to be independent.

SPEAKER COLLINS: Anything else. The Doctor's pretty comfortable sitting there.

Senator Cardinale.

SENATOR CARDINALE: You've stroked my interest here with your comments about peer review. One, insurance company doctors-- We don't have peer review today, so I don't see how peer review could have gotten a bad name. We don't have it as to automobile insurance. We have insurance companies that employ doctors to give them medical advice because they don't know enough about medicine to make independent judgments so that they can proceed. Now, that's a totally different cat from peer review.

Peer review is someone who would review that -- the plaintiff's side of the case and come to a judgment, just like you have come to that this 20-page long chiropractor's report is overutilization and shouldn't be done.

The peer review that has been introduced and that is supported by the Department is one where the insurance company does not employ the peer review organization, the Department does, and they use that as their independent expert. Whether they give a positive or a negative, they're still employable because it's the Department that doesn't have an axe to grind that is employing them on one case or another case.

I love your idea about peer review boards that would be voluntarily staffed by members of a given profession because that's the way peer review works in the professional boards. And perhaps people don't know that here, but in the professional boards, when one of us is being peer reviewed, it's a voluntary, rotating membership, and there is no money involved for those individuals, and they can give as independent assessment as you can possibly get.

DR. MYERS: Well, I think that's absolutely correct, Senator Cardinale. I believe that the-- Like I said, the peer review that's been described here today is different than what you normally hear. I would just like to know how the Department is going to select who is going to be doing the peer review. I hope it's not going to contract with a managed care organization to do that because you're going to be right back-- I still believe managed care organizations, having been involved with one at some length in the past, are basically just institutionalized peer review organizations. That's my biggest fear.

Where the Committee -- where the Department is going to get their reviewers from, that's a major concern for myself and for my patients.

SPEAKER COLLINS: Thank you, Doctor. We appreciate it.

Christine Carlson Glazer, Associate Vice President for Health Policy and Operations, University Health Systems.

CHRISTINE CARLSON GLAZER: That's a mouth full, isn't it?

SPEAKER COLLINS: I'm sorry, I just skipped right by your name.

MS. GLAZER: That's fine. Good afternoon. My name is Christine Carlson Glazer, and I'm Vice President of Operations at University Health System of New Jersey. On behalf of our member hospitals, I'd like to thank you for the opportunity to be here today, as well as the significant time that each of you has already devoted to the issue of automobile insurance reform.

UHS represents 16 of the state's major teaching hospitals, including all three of the state's Level I trauma centers, five of the state's seven Level II trauma centers, and the state's largest comprehensive rehabilitation institute. Because of their trauma level status and the comprehensive rehabilitation designation, our hospitals see the most severe auto accident cases. University Health System is also an active member in the Coalition to Preserve Personal Injury Protection.

I'd like to offer some observations on what I believe are some viable approaches to lowering coverage premiums without jeopardizing the medical care required for genuinely injured accident victims. By this I mean

individuals who are not out to take advantage of the system, but whose primary objective is gaining as complete a recovery as possible after sustaining real injuries in a motor vehicle crash.

Assuring genuinely injured persons access to needed medical care can only be accomplished by maintaining the current \$250,000 minimum personal injury protection benefit. Doing otherwise would deny those individuals who are flown into one of our trauma centers after an automobile crash the only hope they have for full recovery.

If you find yourself in a trauma center, neither your focus nor that of your loved one's is on fattening your wallet; it's hoping that you, *A*, survive, *B*, don't end up paralyzed, *C*, do not have a brain injury, *D*, can walk out with your mental faculties intact.

The same holds true for someone recovering at a comprehensive rehabilitation hospital. These individuals worry about whether or not they will ever be able to return to work and not be a burden to family members, not about finding a way to hit the lawsuit jackpot.

All of the testimony that we have heard suggests that the vast majority of fraud committed by individuals faking or exaggerating injury occurs at less than the \$10,000 level. How does lowering PIP counter that fraud? The answer is, it doesn't. It only jeopardizes the care available to those individuals who are genuinely injured.

There have been proposals to let other health coverage providers pick up these costs. One proposal suggests letting an individual's private health insurance provider, Medicare, or Medicaid cover medical costs between \$10,000 and \$75,000. The problem with this is that there are 1.3 million

people in this state without health insurance coverage. The average age of an auto crash victim in New Jersey is 38.5 years of age, or more than 25 years away from Medicare eligibility. Also, before someone is eligible for Medicaid, they have to spend down their assets, and this typically takes months before they are even deemed eligible.

Moreover, shifting the cost to health insurers only means that they pay out more, and eventually their premiums will have to rise. Shifting costs to Medicaid only further burdens that system. Eventually the taxpayers pay.

If you do not want to deny care to those who truly need it, then you only have one option for PIP coverage, and that is to maintain the \$250,000 level.

UHS is also troubled by the prospect of eliminating no-fault. One of the benefits of the current system is that it places the emphasis on getting appropriate treatment to those persons injured in an automobile crash as quickly as possible, without regard to fault. Nor should access to care be encumbered by lawsuits aimed at finding out who is at fault. Even short delays in the provision of necessary rehabilitative care can often mean the difference between whether or not an individual will suffer irreversible harm.

So how do you lower costs? Among the proposals considered in the past is establishing a medical fee schedule for PIP tied to Medicare rates. Legitimate providers have already taken it on the chin by enduring the current medical fee schedule that has not been updated since 1991. Moreover, a revision that had been proposed in the past, namely, providing reimbursement at 120 percent of the Medicare rate, simply offers too low a payment to trauma

centers, surgeons, and other health care professionals for the care they provide to victims of motor vehicle crashes.

The Medicare fee schedule is driven by the Federal budget process, not by medical costs. Additionally, the Medicare fee schedule is an ever declining form of payment. As part of the Federal Balanced Budget Act of 1997, President Clinton has enacted the largest reductions in Medicare since the program's inception in 1965. For New Jersey, the impact is a reduction in Medicare revenue of more than \$155 million in the first year alone. Over five years, the impact for New Jersey is \$1.5 billion.

Put simply, Medicare does not recognize the higher cost of operating a trauma center. Trauma centers are expensive because they are equipped to save lives. They are equipped both in terms of human and technological resources. As an example, a Level I trauma center must have a trauma surgeon and trauma team not just on call, but on staff 24 hours a day. That is a cost that no medical fee schedule to date has ever recognized.

New Jersey has already made a significant investment in establishing a premier system of trauma hospitals. Because of our network of trauma hospitals and doctors, a motorist who sustains life-threatening injuries in an automobile crash has a better chance of surviving in New Jersey than anywhere else in the nation. But at 120 percent of Medicare rates, I can say with confidence that our designated trauma centers will not survive.

Efforts to reform automobile insurance should focus on where fraud is prevalent, not threaten a system that saves lives. For the sake of all crash victims, I encourage you not to jeopardize our trauma system by lowering

reimbursement through a medical fee schedule that does not recognize the true cost of recovery.

As you move forward in developing a proposal to lower automobile insurance premiums, do not lose sight of the fact that the Legislature has already taken steps in that direction.

First, you enacted legislation requiring medical providers to notify insurers within 21 days that medical treatment is being provided to someone injured in an automobile crash. Allowing insurers to review this care before the bills mount is certainly a reasonable approach to stemming the flow of payments for unnecessary or fraudulent care. Perhaps the Joint Committee-- I know you made many requests of Commissioner Randall today, but perhaps the Committee can also make inquiry regarding the level of savings that consumers have realized as a result of the 21-day notification law.

Remember, too, that legislation was only recently enacted to strengthen the State's ability to crack down on medical fraud. For too long, a small segment of society has profited by taking advantage of the system and has, therefore, placed genuinely injured persons at risk of losing access to treatment.

I was also encouraged to hear today Assemblywoman Farragher's description of Assembly Bill No. 1751 that would institute more criminal penalties for everyone involved in fraud. And we would be very supportive of any measure that would do that.

SPEAKER COLLINS: That's Assemblywoman Farragher and Speaker Collins' bill. Go right ahead.

MS. GLAZER: I apologize.

SPEAKER COLLINS: Since you liked it. If you didn't like it, it's her bill.

MS. GLAZER: Okay. These two laws represent -- actually the three laws now -- a step already toward lower insurance premiums. In both instances, the medical community made a contribution toward the solution by supporting measures that subject individual practitioners to the possibility of reimbursement denial and prosecution. We ask your consideration now of having others who profit from the system, legitimately and not, also accept some of the burden.

The lawyers do not want to hear about peer review. But UHS believes medical practitioners are better able than lawyers to recognize the difference between appropriate and inappropriate medical care. Lawyers practice law; doctors practice medicine.

SPEAKER COLLINS: If I may, just because I need to pick my enthusiasm up occasionally, you'll be the one I ask, okay. I'll accept that statement, but is the whole purpose of peer review-- Let me ask you, I've asked this before. Because that doctor who recommended what should be done is probably not doing a good job, isn't that what it's all about? I mean, if doctors are going to be on the peer review, aren't they really looking to see what this other doctor said because this other equally professional person may have done it wrong? Isn't that what this is all about, peer review?

MS. GLAZER: Yes.

SPEAKER COLLINS: Okay. That's all I wanted to hear you say. Go ahead on.

MS. GLAZER: The insurers tell us that peer review can reduce premiums by \$40. If they are right, UHSNJ encourages you to add these savings--

SPEAKER COLLINS: I hate to interrupt again. That's the first time I heard that one. Would you back that one up there. Who said that we would save \$40 with peer review?

MS. GLAZER: I believe it was the insurance industry that -- in testimony on February 9--

SPEAKER COLLINS: And I see some heads shaking because, let me just say, I've not been a supporter of peer review, though I'm open to the discussion, but no one has ever told me what would be saved. That's why I jumped on that.

MS. GLAZER: I'll have to check some notes, but I know that I do--

SPEAKER COLLINS: Well, at least we have a number, but I saw some--

MS. GLAZER: --have \$40 written in there, and I know we didn't pay for any actuarial studies.

SPEAKER COLLINS: I saw some heads shaking behind you. But that's all right.

MS. GLAZER: If there is a cost savings involved with that, we would certainly encourage you to look at that.

SPEAKER COLLINS: We're all for cost savings.

MS. GLAZER: And we would encourage that those savings be already added to these savings that should be acquired by motorists through

the 21-day notification and the fraudulent practice bills that have already been signed into law.

We do ask, however, that peer review be used only as a means of promoting appropriateness of care and not be used to deny appropriate care. We would support the Commissioner's position this morning that it be an independent peer review process, that like practitioners review like practitioners, and that there is no direct involvement from the insurance industry in the form of payment. By having a peer review organization report to a State agency that can better monitor for objective review, you also allow the State to -- the State has an opportunity to allow public oversight of the process rather than have it controlled through the insurance providers and allows an opportunity for the State to take an active role in educating practitioners about the appropriate treatments to be provided.

Another cost reduction proposal the Legislature may want to pursue is the one put forth by the Trial Attorneys. They contend that premiums can be reduced by \$30, or thereabouts, through the elimination of the verbal threshold. There are unscrupulous practitioners who offer certain medical treatments and prescribe certain diagnostic procedures not as a patient remedy, but rather to meet lawsuit threshold requirements. Perhaps eliminating the verbal threshold or even tightening the verbal threshold would result in some cost savings to the system.

If you, as legislators, believe that eliminating the verbal threshold provides yet another opportunity for premium reduction, you would get our support on that.

In closing, I hope that at the conclusion of this Joint Committee's deliberations you will conclude that cutting access to care is not a remedy for high automobile insurance premiums. New Jersey is the most densely populated state. Our roads are well traveled and usually congested. Motorists are less than courteous and often in a hurry. These conditions result in accidents and crashes. They're going to happen, and they can happen to anyone. Do not put the hope for recovery at risk by reducing PIP coverage or lowering reimbursements to medical providers.

Thank you for your consideration, and if you have any questions, I'll be happy to--

SPEAKER COLLINS: Well, thank you. I don't have any questions, but he does. The Majority Leader.

ASSEMBLYMAN DiGAETANO: Thank you.

Ms. Glazer, the peer review that you support-- Let me preface what I'm going to ask you by saying that I have not been supportive of the peer review that was proposed seven or eight months ago, but I remain open to the concept. The peer review that you proposed -- or that you support -- is it retrospective or prospective?

MS. GLAZER: I believe to have the most effective peer review that you need to have a concurrent review, which is more of a case management style than a retrospective denial. The fact of the matter is that those practitioners provide the care. I believe the majority of them are not providing that care thinking that it's unnecessary. So I think to retroactively deny it may be inappropriate.

But a concurrent review or a case management type of system, I think, may have some benefit.

ASSEMBLYMAN DiGAETANO: Wouldn't that automatically, if it were prospective -- and that's one of the proposals that's been bantered about-- If it were strictly prospective, wouldn't that pretty much leave the hospital systems and the medical providers totally out of the system because they generally aren't providing treatment on a long-term basis. I mean, if somebody comes into one of your hospitals, they're going to stay in for a short period of time. They're always going to be looking retrospectively at that. So if it was prospective and someone -- a doctor kept a patient in a hospital three days longer than the norm or what they should have, nothing will ever be done about that. Isn't that the case?

MS. GLAZER: Well, one of the things that many of our hospitals have in place right now, and it's with the Medicaid managed care population and some of the other companies, is a concurrent review of a patient's treatment. Now, granted, when somebody is flown into a trauma center, they're going to be stabilized no matter what, and that, obviously, would be retrospective. But any--

ASSEMBLYMAN DiGAETANO: By the way, I've heard no debate about those patients who are flown into a trauma center. I don't think they're in contention.

MS. GLAZER: No, we're just concerned that the level of coverage might be reduced in an effort to save premiums. But I think concurrent review, where you have a case management person assigned to the patient and the treatment protocols, it's been very effective.

ASSEMBLYMAN DiGAETANO: Well, that sounds more like an HMO, and I don't think some of the other medical providers support that, and quite frankly, I'm not sure whether there's a consensus to do that or any other peer review at the moment. But really my point is this: It almost seems to me-- And by the way, I believe in both chiropractic and medicine. It almost seems to me that this is an attack for ongoing care, longer term care -- is an attack by the medicine group -- surgical, medicine, etc. -- against the nonmedicinal group, if you want to call them that, the chiropractic, because really it's chiropractors who give the long-term care.

The other issue that maybe you'd like to address, and I would be happy to have you address this, is while someone before you mentioned that he once saw a list of chiropractic bills going on for pages and pages and pages, isn't it true that the surgical procedures to address that particular problem or in general medical bills are many -- at least not several times what the chiropractic bills are?

MS. GLAZER: In a severe auto accident case, I would imagine that that's absolutely correct, that the medical bills would be higher.

ASSEMBLYMAN DiGAETANO: But, Ms. Glazer, we seem to be talking not about the severe cases, and that's why I said before, a person flown into a trauma center is not a contention here. Nobody is debating that. But it almost seems that what this discussion -- especially the discussion of peer review -- centers around strictly soft-tissue injury and, in general, the not so severe cases, not so severe injury cases.

And that's what troubles me because I'm not-- I don't know, and I don't know if anybody on the Committee knows, where do you draw the line

on this? And I listen to everybody's position. You're entitled to have your position, but if it's your position that basically everybody else should be potentially impacted to the negative but your group is, for all intents and purposes, left out of it, the position sometimes loses some of its strength.

MS. GLAZER: I'm not asking that our group be left out of it. I just want to ensure that the patients who come in continue to have access to treatment. And the No. 1 payer, right now, for auto crash victims that exceed their cap is Medicaid. If these patients come into hospitals and trauma centers and they exhaust their cap while they're there, trying to get them placed outside--

ASSEMBLYMAN DiGAETANO: No, I wasn't addressing the cap then. I was strictly addressing the peer review. And I wonder, if you will, just under any peer review concept, how you would visualize the hospitals being involved and how would any of those bills ever be reviewed, and if they were "decided to be inappropriate," what would happen -- or procedures in the hospital that you bill for?

MS. GLAZER: I think the peer review system, I always envision that the insurance -- that there would be the ability to review any case, whether it be a trauma surgeon reviewing another trauma surgeon's protocols and treatments, that that would be certainly acceptable under that system if there looked like there was a problem with a patient's treatment. Our only concern was that like practitioners review like practitioners and that you didn't have-- And also that a practicing practitioner review a practicing practitioner--

ASSEMBLYMAN DiGAETANO: Sure.

MS. GLAZER: --not a retired person, but--

ASSEMBLYMAN DiGAETANO: Do you envision that the peer reviewers would examine the patient involved in the case, or would they just look at the paperwork, so to speak?

MS. GLAZER: I think it's incredibly important to meet with the patient.

ASSEMBLYMAN DiGAETANO: Okay. Thank you very much.

SPEAKER COLLINS: Anyone else?

ASSEMBLYWOMAN FARRAGHER: Just a comment, Mr. Speaker, if I might.

SPEAKER COLLINS: Pardon me?

ASSEMBLYWOMAN FARRAGHER: I just have a comment, if I might.

SPEAKER COLLINS: Please, Assemblywoman.

ASSEMBLYWOMAN FARRAGHER: With regard to tying the reimbursements to the Medicare fee schedule, that's something that the Commissioner and I discussed last June, the fact that the Medicare fee schedule is, in fact, geared to illnesses rather than the types of injuries that you can see in automobile accidents. And it's something that the Department is aware of and is seriously looking at. Thank you.

SPEAKER COLLINS: Thank you very much.

W. Thomas Harper Jr., President, Independent Insurance Agents of New Jersey; and Michael A. Smith, Chairman, Independent Insurance Agents. Gentlemen, thank you.

And Mr. Biggins and Mr. Robinson, we'll be right there.

Just again, to point out, where we have committee meetings, and so on, all of the members will surely, first by word of mouth, hear what you say, but secondarily, we have the transcripts.

But, gentlemen, please.

W. THOMAS HARPER: Thank you, Mr. Speaker and members of the Committee. I appreciate the opportunity to address you today.

The Independent Insurance Agents of New Jersey represent over 10,000 licensed insurance agents in the state, with well over 1.3 million auto customers. We're here today, basically, to give our Association's view on the retention of no-fault insurance. We basically feel that no-fault insurance, despite a lot of criticism that it has received, has basically served the citizens better than the non-no-fault system that was existing prior to 1973.

We feel that no-fault has worked in this state, actually, since the early 1920s, with the enactment of workers' compensation insurance. We have a system that delivers benefits to people when they're injured that theoretically could reduce litigation by providing people first-party benefits.

We would like to see the costs to the system reduced. We think that managed care is a concept that works. We have seen managed care work in health insurance. I think managed care is a concept that is relatively new and has to be watched carefully, but we think that the opportunity to reduce the cost of medical insurance, across the board, does exist. It's worked in New Jersey workers' compensation. We have companies, currently, that are offering 5 percent to 20 percent discounts on workers' compensation costs. It may work a little bit better because workers' compensation is more of a pure no-fault system, with a lot less litigation involved.

We agree with the concept of peer review. We think that peer review is a way not to second guess treatment in all cases, but as a fraud detection device. You know, there is unnecessary treatment that is going on, for whatever reason, and we think that peer review is a viable option for that.

We think that more choice should be offered to the consumer. We deal with the consumer on a front-line basis on auto insurance. We hear their complaints, often, before you hear them. As I've said at some legislative breakfasts I've attended, we're usually the ones giving them your phone numbers, so you can hold us responsible for some of it.

SPEAKER COLLINS: Yes, we really appreciate that, too. (laughter) In fact, I'm going to give you my home number, so you can -- I like it on the Internet, so you can give it. (laughter)

MR. HARPER: If you've got a fax at home, we can work on that, too. (laughter)

We'd like to see-- We'd actually like to go as far as to see a no-fault or a court system set up separately for auto insurance claims, something on the basis of what's being done currently in workers' compensation. We think that the claims in workers' compensation-- In workers' compensation, it's a little bit different because mainly what you're doing is to determine the extent of disability and degree of disability. We think something similar could be set up in New Jersey, where you have judges that are appointed, eliminating the need for a jury trial. The judge, after hearing from both sides -- attorneys would certainly be welcome to present for either side -- the judge could determine a degree of negligence, recommend damage, stipulate legal fees based on allowable percentages and maximums that would be set by legislation.

We think there should be an appeals process, but the appeals process should center on what was presented in that court. We think you get more benefit to the consumer, which is ultimately what insurance is supposed to provide.

We think that more choice in the purchase of automobile should be made available to the public but cautiously. I'm not sure what the magic number is as to how much PIP benefit should be available. My own personal opinion, as a buyer of auto insurance -- who has to pay for his bill at the end of this week, unhappily -- I would continue to carry \$250,000. That makes me feel comfortable.

I think, in any type of counseling that we do with our clients, we're always trying to find a comfort level for them, whether it's business insurance, home owner's insurance, life insurance, or health insurance. We offer them many different alternatives, and they pick what's most important to them, and that's what they want to be covered for. I think that a well-informed consumer can make choices. I think we shouldn't sell the public totally short, but I think that in some respects, we have to lead.

We don't want to shift it to health care. I think auto insurance is a perfect vehicle to pay for auto insurance medical expenses. I'd hate to see a cost shift to either Medicare or employer -- mainly employer-sponsored health care or no insurance at all, which is the alternative.

Finally, we agree that fraud is a significant part of the system. I recently read a statistic that over 40 percent of the people in the country -- and this is not just in the State of New Jersey -- are either highly or fairly tolerant of insurance fraud for a varying number of reasons. They think they're

entitled to the benefit. They've been paying in for all these years, and now it's their chance to get something back from it.

The State of Pennsylvania has instituted a public education awareness campaign on auto insurance. I believe that the industry has helped support that. And if I could, I'll just show you one of their ads that impressed me. It says, "Who pays for insurance fraud?" "You do." "Stealing from an insurance company--" And again, this goes beyond the benefits -- the benefits of this go beyond just auto insurance because they have a billboard in Pennsylvania that says, nationwide \$38,000 per minute is spent on insurance fraud. We all pay for it. It's like shoplifting. We steal from ourselves when we commit insurance fraud.

So we would like to see the public educated more, so they understand that by committing insurance fraud or by tolerating insurance fraud, you're stealing from yourself.

We'd like to see the consumer get more involved in their treatment if they are injured. We'd like to see the consumer sign off on medical bills. You go into the doctor; the doctor treats you for an injury; there's a space at the bottom of the bill that's submitted to the insurance company where the patient signs and says, "Yes, these treatments were explained to me, and I did receive them," so that you don't have people being charged for treatments that they never received and later on wouldn't know whether they received them or not after a course of treatment like that.

We'd like to see a 1-800 number. The State of Pennsylvania has also instituted an 800 FRAUD number, so that if somebody is trying to coerce you into committing fraud that you could pick up the phone and make an

anonymous phone call to the Department of Insurance Fraud Prevention Division. We think that unless you change the public attitude and get the public more involved in reducing their own costs, that what you're going to have is what you have currently -- everybody wanting a maximum of benefits for the minimum amount of money available to pay. I'm one of them. As I said, my bill is due at the end of the week, and I've got to pay for it.

Thank you for the opportunity of giving you some brief testimony today. If I could answer any questions--

SPEAKER COLLINS: Well, I thank you. Let me just say this. I appreciated your comment that you're one of them, and I don't see anything wrong with that. We all would like to get the most we can for the least amount of money. Where I struggle, as one of the previous testifiers said, the vexing problem-- I'm not vexed by any of it until people won't own up to what you just said, that this is what we want, this is what we get. I mean, as long as we sit there and understand it all.

But where I, and as a lifelong educator and hopefully, teaching every grade from junior high school through graduate school in college-- You see, I'm not a big fan of education such as you've just indicated with what's going on in Pennsylvania, and so on -- just my own personal view -- because of this mentality that I think happens that "Yeah, it costs us all money, but I'm going to make more, right now, on this opportunity to be" -- for the lack of a better term -- "slightly dishonest than I'm ever paying with the increase." And if we don't have the moral standard of "Hey, this is wrong," whatever the cost is, I just don't think that works.

But obviously, a lot of money is spent on it, and you're comfortable with it. You know, it's one of those things where we all have our own judgments. But education, as important as it is -- I think, in a formal way to educate people on all of these other issues I just think makes us feel good and doesn't accomplish a lot. But, you know, we'll never be able to prove it, so-- I like your ad.

With that, the Majority Leader had a question.

ASSEMBLYMAN DiGAETANO: Mr. Harper, it is, right?

MR. HARPER: Yes, sir.

ASSEMBLYMAN DiGAETANO: I tend to think that most people around the State of New Jersey agree with all of us here and you that fraud has to be rooted out and fraud should be punished, some think by death or dismemberment, some a little lesser penalty. But here's my question to you:

While we would all agree that someone who staged an accident, faked an injury, if you will, didn't give treatment billed for, etc. -- we would all agree that that's fraud. I have a couple of questions. If a chiropractor treats a patient for four months or five months, and a peer review organization said, "Well, you really didn't need to treat that patient more than six or eight weeks" -- as we heard someone testify earlier, because after six or eight weeks, you're really not getting any further benefit -- is that fraud?

MR. HARPER: It's an interesting question, and I'll -- as not a medical practitioner, I will--

ASSEMBLYMAN DiGAETANO: No, I'm not asking for a professional opinion. I'm just asking for your opinion as a consumer or as an insurance agent.

MR. HARPER: I would say that that would vary on a case-by-case basis. I have two close friends of mine who are chiropractors, and we have had this discussion. And in talking to them-- In talking to a friend of mine as recently as last Friday evening, he said that everybody's threshold for pain is different, and that you can go and take one person who should respond after six weeks, another person won't be able to respond until eight weeks. Some people have such a low tolerance for pain that at some point he tells them, "Look, there's nothing more I can do for you. We've pursued this as far as we can, and I can't help you anymore."

Unfortunately, I think that his ability or his judgment to release a patient is not shared by all practitioners. And I think that you can see in certain cases, with certain practitioners -- not on a case-by-case basis, but overall, looking at all of it that there are practitioners who are going to keep that person on. And my friend has indicated he has had patients come to him who have been treated for two years for an incident -- and come to him and have him say, "Treatment is not going to help you. He's been giving you the treatment. As long as you agree that he's been giving you the treatment, I can't help you any more, because I would do exactly the same thing."

At some point, you have to determine it's not the course of treatment. I think, if there's a pattern of abuse, that peer review can bring that out. But to try to do it on each individual basis, I would not like to be the one making those decisions.

ASSEMBLYMAN DiGAETANO: But really, that's what we're going to do if we go to peer review. Somebody is going to be making those decisions. Someone is going to be making those decisions, even if they

examine the patient, are not going to be the one that was treating that patient, are not going to be the one that heard that patient say, "Well, I know you didn't cure me, but for the three days after I had my chiropractic adjustment, I felt better." That's not really my point. I'm going to get to my point.

If you had an automobile accident, and you accepted a check from the insurance company for \$5000, and it was-- You're collecting on collision, let's say; you have a \$500 deductible. If you collected a check from your insurance company that they believe is a settlement for that damage, minus your deductible, which would give you a check for \$4500, if you then went to a body shop and the body shop agreed to do the repairs on that vehicle for \$4500, would you be guilty of fraud? The answer is yes.

MR. HARPER: Yes, absolutely.

ASSEMBLYMAN DiGAETANO: If you have a body shop that the insurance company sends you to, and they estimate the vehicle, and they pay you your check of \$4500 -- they estimate that \$5000; they pay you your check of \$4500 -- and you brought that vehicle to another body shop, and they gave you an estimate, maybe because they've known you for a number of years or did some other business, and they deducted 10 percent, which would be that same \$500, would you still be guilty of fraud?

MR. HARPER: Based on the theory -- the theory of insurance making you whole, yes.

ASSEMBLYMAN DiGAETANO: Therein lies the problem with the death or dismemberment to those who are guilty of fraud, in and of itself. I would say to you that if we surveyed the people of the State of New Jersey and they were asked, "If you got a body shop to do your repairs for \$500 less

than some other body shop or with the insurance company body shop, are you guilty of fraud by accepting the \$4500?" I would think you'd get -- I don't say you'd get 100 percent, but you'd get darn close to it that would say there's nothing wrong with that. If you said to them they collected a check for \$4500 and had the body shop put used door skins or glass or something like that and did the work for \$4500, although I think under the law they'd be guilty of fraud, I think overwhelmingly they would tell you they were not guilty of fraud.

But interestingly enough, all that constitutes fraud. The entire discussion before this Committee in several days of hearings, hours and hours and hours of testimony, has not for one moment touched on the fraud that may or may not be occurring -- most people think it is -- as far as the property damage aspect of this, as an attorney. And do you know why I don't think that's the case, because therein lies the answer to what people want or don't want. They don't believe the examples I just gave you on the body shop is fraud. They believe that someone who faked an accident, tried to collect; someone who billed for treatment, tried to collect; and the other examples that have been brought before this Committee about chiropractic -- mostly chiropractic, by the way, and I think unfairly, in many cases -- that's what they're looking at.

Yet, you talk to people who have been going to chiropractors for years, and they will tell you just what I said before, for three or four days after I get my adjustment, my neck feels better. It's not permanent. It's not a cure, but it feels better.

And then, finally, the other side is, you have different treatments. And when you have disk problems, it's an interesting one because that's the injury that's been most discussed when it comes to soft-tissue injuries and the abuse -- disk problems in New Jersey. And I don't always believe what surveys say, but the *New Jersey Law Journal*, here, charted the price of pain, median awards by injury type for five years, '92 to '97, and they plotted New Jersey against a national average. And that's what we get compared to all the time.

And interestingly enough, for disk injuries we are about 20 percent below the national average in pain -- 20 percent below for the injury that people keep talking about. That's what chiropractors do most, disks.

So tell me where the savings is on the peer review if it's simply not denying treatment, the way some would argue HMOs do?

MR. HARPER: I think the savings come in a couple of areas. I think you have-- And, again, not to categorize any large percentage of any one group as dishonest. I think that's grossly unfair. I think you have conflicts of interest among a lot of different professionals.

For example, I personally have a problem with five or six doctors getting together and setting up a rehabilitation clinic that they own and then refer patients to. I think there's a conflict of interest there.

ASSEMBLYMAN DiGAETANO: I agree.

MR. HARPER: I think there's a conflict of interest when they open up an MRI -- a group of doctors, and then refer their own patients to that MRI. I think some of those types of treatments--

I have talked to claims adjusters who have said that some of the treatments that patients are being sent for really have nothing to do with their

injury, and they have found cases where a medical group owns the place, the rehabilitation or the diagnostic center that this was referred to. I think those things are dishonest -- possibly dishonest, probably unethical, I mean, at least at the standards of ethics that I currently have.

Those are the types of things that I think you have to look for. I think the case -- the *V and K* case, up in North Jersey -- I think peer review would have discovered that long before--

ASSEMBLYMAN DiGAETANO: Let me stop you there for a second.

MR. HARPER: Sure.

ASSEMBLYMAN DiGAETANO: That's interesting. Let me tell you why. The discovery of this mill was by the insurers, okay -- the insurers who have the ability to send these claimants to doctors, to their own doctors. And in some of these *V and K* cases, I understand, there was no injury.

Now, what happens when you deny the payment? Then the patient has to litigate. And the litigation involved New Jersey -- in New Jersey's law right now, arbitration, which has been -- if you listen to all the testimony, except for the American Arbitration Association -- is the bane of our auto insurance system because the insurance companies lose 90 percent of them and those judgments are made by lawyers rather than doctors. And I guess what they're saying is automobile cases should be heard by judges who aren't lawyers -- never were -- there should be judges who were doctors, that we should go back to having the nonjudicial -- nonattorney types -- appointed to the judiciary.

John Tiene says, yes, as long as John gets one of those appointments. (referring to member of audience) (laughter)

But all that having been said, the testimony that has been presented to other committees in this area -- this area of the amount of cases you lose, and I would think it would be very difficult to prove that you have an injury, even in front of an arbitrator, when there was no injury or no accident. And when the accident was at such a low rate of speed that the entire damage was \$47, as one group presented a case in front of us, which was just wiping paint off a bumper, clearly a staged accident, I find it hard to believe that the arbitration system is going to still award those claims that have been denied.

And, by the way, that particular case, where the insurance company said they paid out \$57,000 for \$47 worth of property damage -- \$57,000, multiple injuries -- they didn't deny the claims. They didn't send them to their IME and deny. They paid them.

But the interesting thing is, in testimony before an Assembly committee early last year, in '97, is that the difference between the new reformed peer review that was set up in Pennsylvania and New Jersey's experience is, most cases, less than 2 percent are challenged. Their case taken to peer review -- both cases. The difference in won/loss ratio, 10 percent of the claims that are challenged, that's 10 percent of 2 percent; that's 0.2 percent of the cases. And I think therein lies the reason why insurance companies weren't willing to tell us that -- and John Tiene agrees -- that we're going to save beau coup dollars by going to peer review because the difference, at least in those cases, doesn't seem to be there.

So I would be very interested in hearing how you think that's the be all and end all, and how much you think it's going to save.

MR. HARPER: One thing about insurance reform, and I think that maybe the last 10 years have shown us this, there have been a lot of reforms that were made in the late '80s and early '90s that, at the time, I thought were ridiculous. I can honestly say that some of those have actually saved money in the long run. In the short run, it's hard to say.

Our rates are based on actuarial statistics, which have a life of their own and take some time to develop. To say that peer review is going to save \$50 per policy, I'm certainly not qualified to give that opinion. I'm more of a salesman than an actuary, so I couldn't tell you.

But I think, in the long run, if it has the effect -- if it has no other effect than reducing the number of fraudulent claims or useless treatments, it has served the citizens well.

ASSEMBLYMAN DiGAETANO: You missed my point. I'll just wrap it up by saying, those most widely publicized cases, the insurance companies had the ability to deny them with their own IMEs. They didn't. They paid them.

SPEAKER COLLINS: Any other questions? (no response)

Thank you very much.

MR. HARPER: Thank you.

SPEAKER COLLINS: Wilmar Biggins, Clinton Robinson, Secretary and President of New Jersey Urban Insurance Brokers and Agents Association.

Thank you, gentlemen.

WILMAR BIGGINS: All right. Good afternoon.

SPEAKER COLLINS: Thank you for sticking with us, and please--

MR. BIGGINS: Thank you. I guess this is on. (referring to microphone)

SPEAKER COLLINS: You have to push the button.

MR. BIGGINS: It is. I guess I'll just have to speak louder.

SPEAKER COLLINS: That's right.

MR. BIGGINS: Okay. Mr. Chairman and members of the Committee, I hope my portion will be short and sweet.

SPEAKER COLLINS: You've waited this long, we'll wait for you. Go right ahead.

MR. BIGGINS: We are really the true representatives of brokers and agents in the urban areas. This also includes the Hispanic brokers, primarily in Hudson County and throughout parts of the state.

Permit me to briefly review our present no-fault situation before getting into our proposal, which we believe will relieve the New Jersey drivers of a financially stifling predicament called New Jersey auto insurance.

Realizing that the premiums are too high and unaffordable in many cases, an additional problem brought on by this intolerable and devastating condition is the lack of availability of auto insurance in the urban areas. This noncompany representation has presently put out of business and continues to put out of business many local brokers. There are no representations in the urban areas by 99 percent of the companies that write business for people that live in the urban areas, so what provision will be made

for the licensed insurance brokers to be allowed to serve the people in the areas?

As you know, our people have to go to the suburban areas to get their insurance, which, of course, brings into account additional problems. The figure that the Commissioner stated of 76,000 uninsured to be addressed is so far away from the truth that it's ridiculous. In Newark alone, there are 76,000 uninsured motorists. At a meeting early on this year or the latter part of -- last year, with the Commissioner, primarily the Deputy Commissioner -- they admitted that the figures are closer to 450,000 uninsured motorists.

We also believe an immediate binding should be given to writing brokers and agents. This will relieve many hardships presently endured by our clients, who must wait three to five days or more before their auto insurance is in effect. And note, these people are the ones with good driving records. So why should a person with nine or more points or whose auto insurance has been canceled for nonpayment of premium over 30 days have the right to get immediate coverage, and the people with good driving records be made to wait three to five days or more for their insurance to become effective? The last example mentioned are, of course, paid, qualified applicants.

Under our present no-fault system, if a person has an accident and is injured as a result of this accident, the best case scenario is the injured party will have to pay an initial deductible of \$250 and then 20 percent of the next \$5000, which will equal \$1000. Therefore, the initial out-of-pocket expense will be \$1250. The company in this situation will pay 80 percent of the first \$5000, which equals \$4000, and 100 percent of any amount above that, up to \$250,000. Let's further assume in this illustration a family of five is injured

in this accident. This then will bring the total at risk of \$1,250,000. Now, I understand there is a fund to aid in subsidizing this loss, but there still remains the fact that someone must, I assume, put up the reserve for these losses.

Now, although the insurance companies have not complained of this situation, it remains a problem, along with the trivalent lawsuits that plague our court systems brought on by the zero threshold. We believe our proposal will help to reduce or eliminate this condition.

Now, please note the second page of the forms that I passed out to you -- under the press release. I assume that you have them. As far as our proposal is concerned regarding the medical expense, which is personal injury protection, the current maximum amount out-of-pocket, as afore stated, expense under the personal injury protection is \$250. The Association recommends changing this to a \$1000 deductible. After the policy owner pays the first \$1000 of medical expense, the insurer would pay 100 percent up to the policy limits. The Association recommends a minimum \$50,000 limit and that the policy owner have the option of purchasing additional coverage from insurers in increments of \$25,000 up to \$300,000. All first-party benefits will remain.

As far as the new threshold on lawsuits, under the Association proposal, anyone reaching \$50,000 in medical expense would then have the right to sue for medical coverage reimbursement and for pain and suffering. This would render the current zero threshold void. The verbal threshold for noneconomic loss will remain the same. The \$50,000 will be an overall maximum with sublimits on first-party benefits.

The minimum liability limits: The Association recommends that in addition to \$50,000 for medical expenses, the State-mandated minimum liability limits should be changed to \$25,000 of combined, single-limit liability. This coverage would include bodily injury liability, as well as property damage.

Now, although we have not had an actuarial study completed on the above proposal, we believe, based on our experience, that this policy will cost \$400 to \$500 less a year.

As far as the peer review is concerned, the Association position on the peer review is that it should consist of medical personal as opposed to attorneys.

Thank you. Wasn't that short?

SPEAKER COLLINS: Well, as short as -- as the Majority Leader in the Senate was just saying, whether or not we agree, it was laid out very nicely. We appreciate that.

Assemblyman Garrett.

ASSEMBLYMAN GARRETT: Nicely, but I have a question, though, on something you said. Under the new threshold on lawsuits, you said, I believe, the \$50,000, which is the threshold, will be an overall maximum with sublimits on first-party benefits. I'm sorry?

CLINTON ROBINSON: That's similar to what's happening in New York. New York has an overall \$50,000 that's coverage for disability payments and other sick payments. All that's included in the \$50,000 that New York has. The reason why we came up with this is that New York can sell insurance to everyone with unlimited minimums. All the companies there are very successful and they're doing business. You come right across the water,

over here, and nobody can buy insurance if they're in the wrong area. Trust me, if you're in the right area, you can buy it. But still we have a limit on what's going on. There's something wrong with the insurance company that's here that's doing business that's different than New York. It just seems like there's just a gap of water that changes everything. That's crazy.

I'm saying, if we've been working so hard doing it our way, why don't we look at somebody else's way? We've been trying to change the system bits and pieces, but you really have to just trash it or do something different. I'm not saying take the existing policy out, just offer a lower policy for a person to come in -- a Plan B so that the insurance companies can be a little bit more successful.

ASSEMBLYMAN GARRETT: So to make sure that I understand what Plan B is, if I opt for Plan B--

MR. ROBINSON: Yes.

ASSEMBLYMAN GARRETT: --and I'm in an accident--

MR. ROBINSON: Correct.

ASSEMBLYMAN GARRETT: --and I have a fracture, and my treatment costs \$5000--

MR. ROBINSON: Correct.

ASSEMBLYMAN GARRETT: --I'd have my medicals reimbursed after the first thousand dollars?

MR. ROBINSON: Correct.

ASSEMBLYMAN GARRETT: Because PIP would pick up after that.

MR. ROBINSON: Correct.

ASSEMBLYMAN GARRETT: But now, when I want to sue you, since you were the guy that rear-ended me, that caused this--

MR. ROBINSON: Correct.

ASSEMBLYMAN GARRETT: --I would not be able to sue you for pain and suffering because my medical did not reach the \$50,000 threshold?

MR. ROBINSON: Correct, because it falls in the same place as it does now with the existing policies. If somebody hits you from the rear end now, if you have the verbal threshold, you cannot sue, unless you have pain and -- I mean, something other than pain and suffering. Am I right or am I wrong?

ASSEMBLYMAN GARRETT: Under--

MR. ROBINSON: The verbal threshold as it is today--

ASSEMBLYMAN GARRETT: Under the verbal threshold as it is today, under my hypothetical, I would fall into one of the categories, so I would be able to sue. But you're suggesting -- to make sure I'm clear on it -- you're suggesting, in that scenario, I would not be able to sue because I have not-- I can't sue for pain and suffering because I have not got over the hurdle of meeting \$50,000 medical. I would only be able to sue you for--

Wait a minute. Well, I guess I don't have to sue you for medical because that's covered. I'd be able to sue you for economic losses -- I'd be able to sue you for economic losses for being out of work and my loss of wages, if I met the threshold.

Okay. I just wanted to make sure I was on the same page and understanding it. No other questions on this.

MR. ROBINSON: The reason why we came up with this is that you have to realize one thing. You've heard here before that a lot of people in the urban areas have problems locating insurance. After they locate it, they have problems paying for it. The second is--

And I was going through some things as you were talking about it. Prudential made a lot of money selling life insurance. Everybody doesn't buy a \$100,000 policy. They also offer debit insurance. So the people of the lower class can be able to have, what, life insurance so that-- I'm just trying to work it the same way with the auto.

ASSEMBLYMAN GARRETT: Okay. You used the term just now, people of the lower class, they would be able to buy the policy.

MR. ROBINSON: Correct.

ASSEMBLYMAN GARRETT: When the Governor and other people such as myself have come out with proposals that you have multiple choice plans out there, you know, a Cadillac version that would cost a Cadillac price and a cheap version, a Pinto version that's going to be a cheap price, people -- the critics of those proposals, when you have two plans out there, say that that is unfair because then you are saying to the -- what words did you say? -- the lower class that they will be unable to afford the Cadillac plan, and maybe some people here will, but other people here that won't be able to afford it, they'll only buy the Pinto plan. Is that a fair system for New Jersey?

MR. ROBINSON: But it's happening right now, today, with the same plans you have now. You have minimum 15/30. When you go out to the suburbs to get the policies, they don't sell it. They sell you 100/300 as

their minimum because the companies “don’t want to write the low coverage.” So they’re still stuck at the higher limits.

What I’m trying to say is, offer something lower so the insurance companies won’t be at risk for that much and also the agents can still stay in business.

ASSEMBLYMAN GARRETT: You’re an urban agent?

MR. ROBINSON: Yes.

ASSEMBLYMAN GARRETT: And if you had that option to sell both the, A, the Cadillac and, B, the cheaper plan, you would be selling some of that to the lower class -- the class that wouldn’t be able to afford that.

MR. ROBINSON: I’ll give you an instance.

ASSEMBLYMAN GARRETT: But my question is, do you feel comfortable with that? Do you think that’s a fair system to offer them?

MR. ROBINSON: I think it’s fair because right now, today, as it stands now, it’s so many people driving without insurance, and it’s hard on them to trying to get back and forth to work. You have to make a decision. You can pay for your insurance, but just say, if you have to go to work and you don’t have the money to pay and you have to drive your car to get there-- Just like the doctor said before, people lose their jobs behind this, and it’s happened many, many, many times more.

And every time you go to a suburban area, whatever city it is, and I’ll use one like Saddlebrook, Saddle River, whatever. You drive through Saddle River looking for an insurance agent. They’re all white. I’m a black man. Hopefully, I don’t have dreads or a pony tail. But if I drive through the city, I’m going to see a white cop and he’s going to pull me over just to

question me, “What am I doing in the area?” if a don’t look clean and dressed up with a suit on. And that’s what I’m saying, it’s happening each and every day today.

It happened to another client of mine, a friend of mine. Her son was going to college and this happened to him. They pulled him off, took his car, put him in jail. Instead of saying normally if it was somebody there, they would have said, “Hey, park the car, you’ll get somebody else to come pick the car up.”

MR. BIGGINS: May I add to this?

MR. ROBINSON: But it just happens constantly. More and more you hear about it. You don’t hear it here because it doesn’t come this way. Everybody complains back in the urban areas, and it’s over and over. They just-- The kids say what? I could steal a car and drive instead of going out here trying to get a license and drive legally. I might as well do it. What are they going to do to me? They’re not going to do nothing to me. Let me ride.

MR. BIGGINS: May I add, Senator--

SPEAKER COLLINS: I hate when a pragmatic view is brought before us. (laughter)

MR. ROBINSON: I’m with you on that, when I have to say it like that, because it’s real.

SPEAKER COLLINS: Sure is.

MR. ROBINSON: That’s right.

SPEAKER COLLINS: Yes, sir.

MR. BIGGINS: Senator Cardinale used the example of a person that is a clean up or a maintenance individual in a hotel or a younger person, whatever, where the income is not that great, but they need insurance. Of course, then they will have to purchase-- At least they will have something like Mr. Robinson just said, some type of insurance. So that individual who purchases that lower policy, as opposed to the attorney, imagine he can't afford something better, so naturally he would be concerned about that. But that's one of the examples of this. And we believe, by putting that limit of \$50,000 as a threshold, if you will, that would, I believe, have a tremendous effect on bringing that premium down.

ASSEMBLYMAN GARRETT: I don't doubt that.

MR. ROBINSON: I'll give you another instance, too. My son is 17 years old, graduated from school. He's in college now, but he got a car given to him from his grandfather -- given to him. Grandfather is 80 something years old, had a car, just gave it to him, cost nothing. It costs him \$1500 for liability because we live in the wrong town. And you tell me, is that crazy or what? It's real. It's real. I mean, I see his friends buy a car for \$1000. One guy, his parents died and left him \$5000. He went and bought a car for \$2000, paid the insurance down payment, didn't pay the second payment, got into an accident, and then he just-- I thought I had it, I thought I had it. I thought I had it. He only had liability on the car.

ASSEMBLYMAN GARRETT: Right.

MR. ROBINSON: He lost the car. But I'm saying, it happens like that. I mean, if you're in the area where you got it going on and it's like that, that's great. But if you don't, it's really hard. And you think, if you have two

or three kids and they're 17, that's how much it really runs -- \$700, \$800 every six months. That's \$1600. I don't care how you multiply it or divide it. They buy a car for \$800. They got to buy three cars for the year just to pay for the insurance.

ASSEMBLYMAN GARRETT: Do you want to comment as part of your testimony -- I can imagine your answer but -- on the territorial rating aspect?

SPEAKER COLLINS: That was going to be my question.

MR. ROBINSON: Oh, no. I'll give you some information on that. Don't get me started.

SPEAKER COLLINS: No. You can get started. Just get right to it. You seem a little shy as you're speaking forth on these ideas. (laughter) Go right to it. We don't have to-- Go.

MR. ROBINSON: All right. All right. I'll tell you an instance-- This is what happens. You go down to Newark. If you live on McCarter Highway-- If you live on the west side of McCarter Highway, you got one rate. If you live on the east side of McCarter Highway, you got a whole new rate. And they are selling insurance over there today with an admitted company. And what I'm stating is that I understand the insurance companies how they look and how they view it, but if we were to change-- And I keep talking about New York. New York goes by zip code. The zip code would eliminate all of that two -- Area 2 down there that everybody gets hit with. Everybody starts jumping.

SPEAKER COLLINS: Just don't mention zip codes right now. Do you know anything about school funding? (laughter)

MR. ROBINSON: Well, I'm talking about insurance.

SPEAKER COLLINS: Come another day on that zip code.

ASSEMBLYMAN DORIA: That's because the Federal government screws up these zip codes.

SPEAKER COLLINS: It's the Federal government is right, Mr. Leader.

MR. ROBINSON: All right. Well, if that's the case, then we got to do something else. And the only way we can do it, we have the UEZ, which is good, looks good, but will it work? I don't think so.

SPEAKER COLLINS: The Deputy Commissioner is right in the audience.

MR. ROBINSON: Right. But-- I know-- I know-- She knows-- But the other side of the coin is we still need a plan, and we don't have a plan. We just have a whole bunch of hocus-pocus-- One guy said he wanted to charge something on the gas so they could lower the rates.

SPEAKER COLLINS: No. That was a woman. But that's all right. You don't like that one?

MR. ROBINSON: No. I don't like one. I don't think nobody would. I buy my gas in New York.

ASSEMBLYMAN DORIA: Well, you buy in New Jersey now.

SPEAKER COLLINS: But we're cheaper than New York. (laughter) We're cheaper than-- You're into New York, I can tell that.

Mr. Biggins.

MR. BIGGINS: Just to add to your question, as far as the territorial rate, I think it's tremendously unfair. I myself sell and live in the

area of Plainfield, and right now Plainfield is 039 area. But it's also combined with Westfield, Union, North Plainfield, etc., and because of that we have one of the best rates in the state because Plainfield is combined. However, if you take Plainfield and put it in an area by itself, such as presently as Newark and also the East Orange-Orange combination, you got a rise in rates. So I think that the present system is definitely unfair.

ASSEMBLYMAN GARRETT: Is what?

MR. BIGGINS: The present system, as far as the rating, is definitely unfair. It should be changed.

SPEAKER COLLINS: Anything else?

MR. ROBINSON: I just want to say one other thing, and this will be it.

SPEAKER COLLINS: Go ahead.

MR. ROBINSON: If you don't do something -- and this is serious -- because like we all say the insurance is this and the insurance is that, but more and more people are going to start driving now without insurance. They can't get it. A guy works at a job-- A lady works at a job in the daytime. She has to be there at 9:00. In the suburban areas, they open up at 10:00. They close at 5:00. She gets off at 6:00. She can't get it. They're not open on Saturday. It's no way they can get it. They cry to us all the time about getting it. They cannot buy it. We tell them what the problem is, and they said, "You're crazy," because they can't believe the country would go this way. But it has. That's how it is.

The only way to solve this thing is to come up with a separate plan for that area, and then everybody can get it. Just think, your son or daughter

that's 18 or 17 years old can buy this minimum policy. Now, if you want to get the bigger policy, you can buy it. But just say they don't have any money, the family-- You know, I mean, the person gets started, they don't buy \$500,000 of life insurance, they start off with 25, 50. But in my area, they start with 5 and 10. So I'm just only saying that if you don't have a plan like that, it just won't-- Nothing is going to happen. They not going to-- They can't get the 15, 30, I don't care how you say it. The guy was up here, who spoke before me, he knows they don't sell it. When you walk in and you want the minimum coverage, they say "Well, ah-ah-ah-ah won't you come back next week, and we'll check and see if we can get you coverage." And they do that. You call right now and say you're from the urban area. You need insurance. They don't know who you are on the phone. And they'll give you an appointment way out in the future.

I told the State about the same thing. A person had a payment they had to pay one day. It was going to cancel today, it was too late to pay. So I said I've got to get my insurance in. They said, "If I don't pay it today, I'm going to lose it." They was riding around trying to find it, because they always buy it in our area like that, but they couldn't buy it. So I called up State Farm for them and said, "Could I make an appointment for them?" They needed insurance. They gave him an appointment three weeks out. Three weeks out. State Farm did. So, if you don't believe what I'm saying, try it. It works. And they drive without insurance.

If you didn't have your car fixed, would you rent a cab to come here or would you borrow somebody's car and drive. You would probably drive, and hopefully, they would have insurance. But if it was reversed, and

it was you that was driving your own car and couldn't get insurance and you had to go put food on your table, what would you do? Trust me, you would break the law. You would break the law.

SPEAKER COLLINS: Let the record show, the Speaker would not break the law. (laughter) I have to get all that on the record, you never know.

MR. ROBINSON: All right. All right.

SPEAKER COLLINS: Gentlemen, thank you very much--

MR. ROBINSON: Thank you.

MR. BIGGINS: Thank you.

SPEAKER COLLINS: --for your testimony, and thank you very much for waiting. (applause from audience) Oh, we got applause for you.

Well, let me just say this to all those who testified and still are here and to all the people who have spent the time and energy through this entire process, we very much appreciate it.

What we plan to do now is take that information and work out a piece of legislation that at least will be there for public discussion and debate, etc., just as we do with every other piece of legislation that eventually becomes law in New Jersey. But I want to say again in conclusion, particularly to all those who aren't here, that we have the transcripts of all the testimony, we have listened in good faith, and the presentations have been in good faith. And I think every member of this Committee -- and I'll stretch it out to the Legislature and to the citizens of this State -- we want to do something to take this if not financial burden, emotional burden off the people of New Jersey. We're going to make a good faith effort to do it. We hope to meet the March 30 deadline, and hopefully, sometime in the future, whenever it plays out, that

people will say that what was done here was the right thing. And we thank all of you for being participants.

This Committee meeting is recessed, and we'll look forward to the big public meetings some time in the future.

Thank you.

(MEETING CONCLUDED)