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# *Public Hearing*

before

## SENATE LEGISLATIVE OVERSIGHT COMMITTEE

*“Issues arising from the V & K insurance fraud case  
and recommendations on measures  
to combat automobile insurance fraud”*

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**LOCATION:** Room 319  
State House  
Trenton, New Jersey

**DATE:** June 12, 1997  
1:00 p.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator John J. Matheussen, Chairman  
Senator John O. Bennett  
Senator John P. Scott  
Senator Ronald L. Rice  
Senator Raymond J. Zane



**ALSO PRESENT:**

Mark T. Connelly  
George J. LeBlanc  
*Office of Legislative Services  
Committee Aides*

Mike Spencer  
*Assembly Majority  
Committee Aide*

*Hearing Recorded and Transcribed by*  
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**SENATOR JOHN J. MATHEUSSEN (Chairman):** Now that Senator Bennett is here, we would like to have the Senate Oversight Committee commence.

I'd like to call the meeting to order. I'd like to, first of all, thank the Attorney General, as well as the Commissioner of Insurance, for their attendance here today. We appreciate the time out of your schedules to help us with, certainly, a problem that takes some prominence in the newspapers and in the media.

Before beginning the meeting, I'd like to make a brief statement and also open it up to the members of the Committee if they would like to add anything before getting into the testimony.

First, as you know, Senator DiFrancesco has requested that this Committee convene to explore what occurred in this particular case and to examine what legislative remedies might be appropriate to prevent similar situations in the future.

All of us who have read newspaper accounts regarding the settlement of this case were, I believe, rightfully concerned about the message being sent regarding fraud. However, as is often the case, it has been brought to our attention that the accounts did not contain all of the information.

I would like to make it clear from the onset of this meeting today that the purpose today is twofold. One, to give the Attorney General and the Insurance Commissioner an opportunity to enlighten us on how this case was resolved and to discuss with us what options we might have, if any, in addressing this issue in the future.

Senator Inverso, who I just left, is unable to be here. Senator Inverso is very much involved in this issue; however, he has prior commitments with the Appropriations Committee, which also convened at 1:00. He extended his apologies for not being here and certainly welcomes the testimony of both the General and the Commissioner.

It is the responsibility of this Committee, however, to determine, after listening to the details, whether this Legislature needs to take steps and to take those steps to give the Attorney General more tools to ensure that he is able to efficiently and effectively represent the best interest of the State, its taxpayers, and certainly its drivers.

Now, I would open it up for any Committee members who would like to make a statement.

Senator Scott.

SENATOR SCOTT: Thank you very much, Mr. Chairman. I want to commend you for having these hearings as quickly as we could possibly be there on it and also to thank the General and the Commissioner of Insurance and Banking for being with us today.

It directly impacts my District. As we know, the City of Passaic has a lot of problems with insurance fraud, and it's not going to go away too quickly unless we resolve it. I'm concerned, I guess one of the things that strikes me--

General, you had chaired the Task Force on Health Care Fraud, and I see where, perhaps, annually \$3.5 billion could be lost due to fraud. Perhaps the combination that we ask is that you review the possibility that

auto insurance and auto insurance companies, in trying to manage health care, perhaps are more susceptible to this than health care companies.

I'm anxious to get this hearing going and learn a little bit about what you found.

Thank you.

SENATOR MATHEUSSEN: Anyone else? (no response)

General, I would like to turn it over to you. Thank you for appearing today.

**ATTORNEY GENERAL PETER VERNIERO:** Thank you, Mr. Chairman, and members of the Committee. Thank you for inviting me here this afternoon.

Along with every member of my staff who has had a role in investigating and who has had a role in resolving the so-called *V and K* case, I share the frustration many have expressed with respect to the operations of these two chiropractors. Because there is much the Legislature can do to improve laws to address insurance fraud, I welcome this opportunity to discuss this matter with members of the Committee.

The decision to settle this case was not pleasant, but I want to assure this Committee that it was in the best interest of New Jersey in light of all of the facts and current law. It is important to understand what *V* and *K* were doing. They specialized in the treatment of individuals claiming to have been injured in automobile accidents. The essence of their method was that patients received the same diagnosis, the same tests, and the same treatment without particular regard to their actual condition.

Through their practice, they were able to generate billing through the JUA and the MTF in an excess of \$52 million, in addition to their billing to private insurance carriers. They have been paid approximately \$12 million on those billings before the JUA and the MTF became aware of their activities and ceased making payments. V and K instituted suit themselves against the JUA and the MTF to collect on their outstanding billings. That is important because the whole procedural--

SENATOR ZANE: Mr. Chairman, excuse me one second. Can we do something with the press? I want to listen, and I don't really like to interfere with the press, but I have them walking back and forth with cameras in everyone's face. Can they just get on the other side?

SENATOR MATHEUSSEN: Perhaps either that or the press could come over this way a little bit. We have most of the Committee members-- They are not going to be blocked if you do that.

Thank you.

ATTORNEY GENERAL VERNIERO: Okay, thank you.

SENATOR MATHEUSSEN: A little bit further, a little bit further. There you go, now you're in it. (referring to press) (laughter)

ATTORNEY GENERAL VERNIERO: V and K actually instituted suit against the JUA and the MTF to collect on their outstanding billings. Eventually, the JUA and the MTF were able to consolidate the collection actions and file counterclaims for insurance fraud. The State joined in the insurance fraud claims. The State also initiated enforcement actions on its own before the Board of Chiropractic Examiners.

*V* and *K* continued their collection effort. They filed additional suits to recover for the outstanding claims, and they filed a suit in Federal court for damages alleging the Department of Insurance employed illegal investigatory practices.

I mention that procedural history because I think it's important that the Committee understand the exact procedural posture that was present when the Department began making the critical decisions based on the facts and the current law then in effect. The Department of Insurance, under the direction of then Commissioner Fortunato, began negotiations with *V* and *K*. Late in 1993, prior to the Whitman administration assuming office, the Commissioner offered to settle the litigation by paying *V* and *K* a net of \$8 million if *V* and *K* would surrender their licenses. I want to emphasize that I refer to Commissioner Fortunato's settlement offer not to imply criticism of him, but merely to emphasize the *V and K* case has had a difficult and complicated history spanning two administrations.

In 1994, while negotiations continued, the Department of Law and Public Safety stepped up enforcement efforts against *V* and *K* and took the offensive. The Division of Criminal Justice attempted to gather evidence for a criminal prosecution. Because *V* and *K* had closed the practice, the Division could not employ investigative techniques, such as undercover operations and surveillance, that would provide direct evidence of fraud.

Witnesses were interviewed and files were reviewed, but in July of 1995, it was clear that the State was not likely to develop sufficient evidence to prove any criminal charge beyond a reasonable doubt under the laws then on the books. It was recommended that the criminal investigation be closed

and that the State continue to review evidence that might develop into civil or administrative proceedings.

The recommendation against criminal prosecution must be viewed in light of the demands of a criminal proceeding and the proofs available. This was not a case with phantom patients -- i.e., billing for the treatment of patients who either do not exist or never, in fact, received any treatment -- rather, this was a case of whether *V* and *K* submitted claims for services that they knew were not medically necessary or properly performed. Questions as to whether the testing and treatment were medically necessary and properly performed are matters of expert opinion with the potential for conflicting experts being offered by each side. In a case of this magnitude and given the nature of the soft-tissue injuries involved, it would have been virtually impossible to identify and establish, as current law requires, that the individual tests and treatments were not medically necessary and that the claims were submitted with a purpose to defraud.

Although criminal prosecution was not viable, the State took civil and enforcement action. Allow me to briefly summarize the actual settlement because there has been, as the Chair alluded to earlier, some misunderstanding of the terms of this agreement.

The State revoked the chiropractors' licenses held by *V* and *K*. This action makes it impossible for *V* and *K* to operate a business that provides unnecessary treatment for persons involved in automobile accidents. The revocations deprived *V* and *K* of the ability to practice their profession. Although, current law allows for *V* and *K* to reapply for a license -- that is an important point, that current law allows for that to happen -- they have no



right to be relicensed, and the State would have the right to oppose should an application be made to the Board. The State also denied *V* and *K* payments of \$40 million that it billed against the MTF/JUA.

As I have already stated, the difficulties of identifying and establishing specific instances of unnecessary services were next to insurmountable, and a settlement that denied payment for all outstanding claims had obvious benefits for the State. The settlement disgorged *V* and *K* of 80 percent of their claims -- as I indicated, \$40 million -- without us having to resort to further costly litigation. The State also required *V* and *K* to disgorge \$750,000, which represents a substantial portion of their known liquid assets. Prior to settling on this amount, the State conducted independent audits of *V* and *K* finances, and the settlement agreement gives the State the right to reopen the entire matter if *V* and *K* hid assets. This settlement was the best available option once it was determined that a criminal prosecution was not feasible.

Putting aside this one particular case, I believe it is important for us to discuss legal reform so that prosecutors have the tools necessary for future cases. We must improve the law.

In addition to our testimony today, Commissioner Randall and I have submitted a report to this Committee outlining 23 separate proposals which would strengthen both the criminal and civil laws and assist us in future cases. Many of these suggestions were first identified as being worthy of serious review in our initial report of the Governor's Task Force on Health Care Fraud, issued in December of 1996. Because the Committee has the

benefit of our written report, I will not take up the Committee's time by repeating the contents of that report here.

I do, however, wish to emphasize two recommendations for reform that aren't contained in the report and that I think are particularly relevant. First, I believe we need a new crime of claims fraud that relates to professional misconduct. New Jersey's Code of Criminal Justice does not address fraudulent schemes involving health care insurance in a manner that permits efficient and effective prosecution. We need an entirely new criminal offense, one that recognizes the severity of harm caused by a professional who, under color of license to practice granted by the State, steals funds available for health care.

The facts of *V and K* demonstrate that profitable, large-scaled health care fraud is accomplished by committing hundreds or even thousands of small-scaled thefts. The problem is that the case the State must prove in order to exact the appropriate punishment involves, essentially, thousands of minitrials, each of which requires the State to establish that the medical care billed was not given or was given improperly or was given without medical necessity. The difficulty and cost of the necessary investigation, prosecution, and criminal trial are simply prohibitive.

A new crime of professional misconduct, similar to the current crime of official misconduct, would address the problem of health care insurance fraud in an efficient and fair manner. The conduct of a professional who commits theft or fraud in the course of practicing his or her licensed profession is fairly equated with the conduct of a public servant who uses public office to commit unauthorized acts for personal benefit. The public

clearly has as much right to expect honest and proper behavior from a person who is licensed by the State to practice a profession as it does to expect honest and proper behavior from a person who is hired by the State to perform public duties.

Both the public servant and the licensed professional are in a special position. Under current law, a public servant who commits theft in the exercise of his official duties commits a crime of the second degree if the amount is over \$200. So we can see what an easy threshold that is when applied to a public officer. That threshold does not exist when applied to a professional. The law should be the same for professional misconduct.

As a second reform, I would recommend that professional licenses should be revoked permanently following civil fraud related to the practice of the profession. I also believe that should be the case with respect to criminal fraud. That's also in the report, but I just want to highlight the civil fraud here for a moment because that was at the heart of the *V and K* case.

Those who commit civil fraud should, in appropriate cases, be barred from practicing in that profession permanently. The theory for the ban is that the person should not again be placed in a position to abuse the public trust. The person who commits a severe civil offense related to the practice of a licensed profession should not again be placed in a position to abuse the license.

As I said, Mr. Chairman and members of the Committee, these are only two of twenty-three proposals contained in our report submitted to you today. We urge the Committee and, indeed, the entire Legislature to give

serious thought to these proposals, and certainly my office is at your disposal to assist.

In conclusion, the Division of Criminal Justice studied the *V and K* case and, under all the circumstances, determined criminal prosecution was simply not feasible. It would be fruitless and inappropriate to second-guess the judgement of professional prosecutors in a case like this because they are the most familiar with the relative of law and the realities of initiating a successful prosecution. Those of us most familiar with the facts of this case, the applicable civil and criminal laws as currently written, and the realities of both criminal and civil litigation came to the reluctant conclusion that the State's best interest would be served by entering into the settlement. *V and K* have not been left with millions of dollars of ill-gotten games, nor have their licenses merely been suspended. We have put *V and K* out of business, and we have revoked their licenses to practice here. We have more than recouped our cost and gained assurances that if any assets are discovered, the State will have a claim to them.

More important than any one case, we must improve the law. Our suggestions contained in this report have relevance beyond the *V and K* case. I look forward to working with the Legislature if and when such reforms are debated.

Thank you.

SENATOR MATHEUSSEN: General, you have already agreed that you will stay for some questioning.

What I would like to do is have the Commissioner say what she wanted to when she got here, and then we can open it up to the Committee for any questions they might have for the both of you.

Thank you.

Commissioner.

**COMMISSIONER ELIZABETH E. RANDALL:** Thank you, Mr. Chairman, Senators.

I'd just like to amplify a little bit and add to some of the comments the Attorney General has just made. My remarks are directed to some of the things I think we can do to strengthen our ability to pursue medical fraud from a civil perspective as opposed to a criminal perspective.

First of all, I want to tell you that we already have made some important progress in this area. In July of 1996, this Legislature passed a law that requires medical professionals to notify insurance companies within 21 days of the start of a course of treatment upon an auto accident victim. The regulations for this new law took effect January 1, 1997. This new system gives the insurance companies the opportunity to scrutinize questionable treatment early on before they are presented with as much as two years of medical bills, and at that time, of course, historically they have had little opportunity to then challenge those bills as having been unnecessary at the time.

Some of the changes we still need have been recommended in the Health Care Task Force Report, referred to by the Attorney General, in December of 1996. Some of these recommendations for improvements in the area of civil law are also contained in the Governor's auto reform legislation

that is now before you. These are key changes that would toughen the civil penalties we have at our disposal today. The automobile reform legislation, sponsored by Senator Cardinale and Assemblyman Garrett, calls for the creation of peer review organizations which would allow professionals in the same field to determine whether or not treatments are appropriate and necessary. This system has the potential to complement the new law requiring 21-day notification. The proposed legislation also defines a pattern of abuse as five or more related violations, meaning they involve the same victim or the same or similar actions on the part of the alleged violator. The law allows for trouble damages if a pattern is proven, and this new definition makes a pattern easier to prove.

Right now we must go to civil court to get a judgement and fine violators. The auto reform bill proposes that the Commissioner of the Department of Insurance have that option but adds others, including the levying of a civil administrative action requesting that the Attorney General bring a criminal action or referring the matter to the appropriate licensing authorities of the professional boards based in Newark.

The expense to an insurance company of investigating a fraud case can be significant. We all pay for that in our premiums. The proposed auto reform legislation makes mandatory the payment by the violator, after conviction, of the insurer's investigative expenses, costs, and attorney fees. This provision truly is a double win for us. We consider it fair and will also reduce the cost to the companies fighting fraud, thus producing savings which we believe will be in the benefit of the driving public.

The auto reform bill also would allow the State Board of Medical Examiners to make an exception in their confidentiality requirements, enabling them to share information about a pending case with the Insurance Fraud Prevention Unit or any other law enforcement agency.

Finally, the auto bill would have a penalty to those that already exist for persons who fraudulently attempt to claim PIP, Personal Injury Protection medical benefits. We create a disorderly persons offense in the statute which would result in a fine of up to \$5000 and/or six-months imprisonment if you're found guilty of having tried to falsely claim PIP benefits. Also, we add to the provision in the Governor's initiative a one-year suspension for individuals so convicted of their privileges to operate a motor vehicle. Although driving privileges to those who have defrauded the system may seem minor, we think that is a very fitting punishment to also revoke their licenses as well.

I thank you for the opportunity to amplify on the report and welcome your questions.

SENATOR MATHEUSSEN: Commissioner, thank you.

I have just a couple of questions, if I could, and then I want to make sure the other members of the Committee also have an opportunity.

To the General, I know there is a statute that allows the revocation of a practitioner's license, but in this particular case a chiropractor. I am not familiar, if you could enlighten us, what is the statute that allows them to reapply almost immediately after revocation?

ATTORNEY GENERAL VERNIERO: It's an Appellate Division case, Mr. Chairman, and the case name is *Markoff*. It was decided this year but

had been pending, of course, previous to that, which indicates that the statute N.J.S.A. 45:9-16 does not allow, in essence -- I'm interpreting now, these are my words, but this is what the court says -- it does not allow for the permanent debarment. The Chiropractic Board, in this case -- it's a medical board, but it's the same with respect to all boards -- must allow an opportunity for a professional to reapply. It doesn't mean that the license will be reinstated, but there can't be an absolute bar. I think that is a law change that can be made simply by amending the statute, either the one that I just cited or creating a separate statute.

SENATOR MATHEUSSEN: Just by adding the word permanently revoked.

ATTORNEY GENERAL VERNIERO: Just giving the Board the ability to do that. Because we have this provision that says you can't make a permanent debarment, whether we get a five-year revocation or a ten-year revocation, as long as the professional can come back it makes that time frame less relevant in terms of an initial debarment.

What is important under current law, and I assure the Committee that we will weigh in on this if and when it occurs -- although I tend to doubt that it would occur -- if V and K would attempt to reapply for their license, the State would have an ability to strongly object.

SENATOR MATHEUSSEN: I would think that if they do, the legislation hasn't been passed already, it will get passed very quickly.

You mentioned before also the difficulty in criminally prosecuting these cases because of the sometimes very small amount of damages that are actually incurred or the amount of fraud that's being done on a dollar basis.



Without a cumulative effect, has there really been much success in the past or do you anticipate much success in the future, other than the case we just had, of being able to prosecute these criminally?

ATTORNEY GENERAL VERNIERO: Well, that's a good point because it allows me to make a point, Mr. Chairman, because what has gotten lost in this discussion is the fact that the Division of Criminal Justice, as we sit here today, has over 70 criminal investigations and indictments pending. So we have been making very good cases and we have been making many investigations. We have several investigations pending. So in many times we can and do make very strong cases. In this case -- in the case of *V and K* -- it was a large-scale fraud case, but it really was seen as a large-scale fraud case and it's been depicted as that. In reality, it was a group of very tiny or relatively small little cases. When you string them all together you get this large amount, this \$52 million amount. In essence, under the current state of the law, we would have had to have a thousand minitrials, or minicases, because of that. You simply just can't have that.

The other thing that is very important for this Committee to understand is that when you have a small case -- let's say \$1000 -- that's a theft, and we could prosecute that one case for a theft. That's a third- or a fourth-degree crime. There is presumption of incarceration. That person, by and large, wouldn't even go to jail. You only start getting hard jail time when you go into second- and first-degree crimes. There is a \$75,000 bar for that. That's why I think we should have the professional misconduct statute that sets the bar of even a single instance down to \$200 or better -- \$200 or more, as we have in the case of official misconduct that is already a second-degree

crime. That would allow us to go in and have a second-degree crime of professional misconduct even on one or two of these smaller cases. When you marry that provision with the provision that Commissioner Randall indicated of having a pattern of civil fraud, then we could accomplish our objectives both civilly and criminally.

SENATOR MATHEUSSEN: You mentioned two new laws, perhaps. One, the claim fraud, making that a crime, and--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: --the other that you just mentioned again, and that was the professional misconduct.

ATTORNEY GENERAL VERNIERO: Right.

SENATOR MATHEUSSEN: If you have passed the professional misconduct, do you actually need the claim fraud as being a new criminal act? It would seem to me that you wouldn't need that cumulative effect then of claim fraud. If you had them for one, you don't need them for both.

ATTORNEY GENERAL VERNIERO: Well, I'll tell you why I would prefer to have it in both civil and criminal because I think it's always a great asset for any prosecutor of the Attorney General to have the option of going both civilly and criminally.

Let me give you an actual case -- a real example -- which, now that it's public, I'm at liberty to discuss. We announced, last week, that one of our boards out of Consumer Affairs filed a civil action revoking the license of a medical doctor in the Monmouth County area. That was a civil action. That allowed us to move in very quickly and get an order to show cause to start in

motion a process which would yield a revocation of that doctor's license because we suspected fraud.

That allows us to move very quickly to shut it down, which we want to always have that ability, because we want to protect the public who may have an ongoing client-patient relationship, and we want to stop the fraudulent activity. But, in that same case that we announced last week, I also announced we are now going to pursue it criminally. So we get the benefit of the civil system, which allows us to move very quickly, and we still have then the penalties available under the criminal system.

I'd like to preserve both and I'd actually like to see the laws strengthened in both areas.

SENATOR MATHEUSSEN: Thank you, General.

Anyone else?

Senator Scott.

SENATOR SCOTT: Thank you, Mr. Chairman. I have two questions. One for the General and one for the Commissioner, if I may.

General, one of the things that concerns me is the City of Passaic, which is in my District, and I get all the local newspapers in the County of Passaic. I think the City of Passaic had 800-plus people. At this time we don't know what beyond -- the County of Passaic, 1000 or 1500. I guess we don't really know the number. What concerns me about your conversation is the fact that we have some of these small people -- I can understand try to put them all together, but my concern is, are you saying that these people who have committed the fraud in conjunction with *V and K* and everybody else-- And from what I gather all states are under this. We have more insurance

companies going to jump in and say, “We’re not paying claims because we think the 45-some scams going on they think that they have no idea.”

Can we do anything? What’s going to happen to the people that have been involved in four or five? If you read it, they hop in a car -- even if they are not in a car, they say they were in a car, and they get a list of people-- It’s outrageous, but what are we doing there?

ATTORNEY GENERAL VERNIERO: Well, I would hope that all insurance carriers continue to review each claim on a case-by-case basis. Certainly I’m not recommending that we suspend payment of all claims that may come out of a small health care organization. I would not do that. We do need to look at each case on a case-by-case basis.

The other point that I just want to emphasize is that we were hampered in the *V and K* case given the time frame in which we were presented with this case. The operation was essentially already closed, so we were denied the surveillance technique. We were denied the ability to put undercover patients in that facility. That might have helped. I say might have because, frankly, I suspect, knowing what I know about this case, that we still would not have been able to move criminally, but it would have helped.

In some of these other cases--

SENATOR SCOTT: The small ones. The ones that there are people there who have made a living. That’s how they made their living. It’s incredible, but that’s what they did. They hopped in a car and said, “Okay, I was there.” They don’t even hop in a car.

ATTORNEY GENERAL VERNIERO: Well, that's a good point, Senator, because *V and K* was not the case of staged or phantom patients. They actually--

SENATOR SCOTT: What do we do about the little guy? Is that out of your purview? Is that local?

ATTORNEY GENERAL VERNIERO: No, I would normally defer to the local prosecutor in that case, but it's within my jurisdiction.

SENATOR SCOTT: But are you recommending to the prosecutors -- to the local prosecutors -- that they pursue this vigorously and actually make sure we know who the culprits are?

ATTORNEY GENERAL VERNIERO: The prosecutors know how I feel about this issue, Senator.

SENATOR SCOTT: That is a concern of mine because I happen to be right smack dab in the middle of that one in my District, so I'm very concerned. I would welcome any legislation that you think we can put some strength in the hand of the prosecutors to avail themselves of the legislation to get at that problem. It is huge, as we know.

Commissioner, one of the things that you mentioned -- and I know there is legislation going through the process right now -- and it's peer review. At first blush, it sounds like, "Gee, why not. Why wouldn't the doctor say something about a doctor and take a look at it?" You really hit on it here. We're talking about *V and K*. Who's watching *V and K*? Would it be peer review? What would have happened if we had-- Is it like putting the fox in the hen house? I think we, perhaps, should revisit peer review in the

insurance, but I'm a little concerned. I especially started thinking about it with this particular problem with *V* and *K*.

COMMISSIONER RANDALL: Well, Senator, I think the concept of peer review, when properly run by the Department of Insurance, has great potential to help avoid future abuses like those which occurred in the *V and K* case. As now proposed, the Department of Insurance would have to license all of the organizations that participate in peer review. While the companies would be entitled to enter into contracts with those organizations, we would preapprove which doctors work with which organizations. I think that it wouldn't be used in every instance, but most clearly the companies, once they identify what they suspect is a pattern of inappropriate treatment, would probably not hesitate to invoke their contract and send a notice to the medical providers that peer review is going to be done. Then the results of that, of course, are set out in the proposed law in terms of what happens and you can appeal, but it gives an opportunity for the treatment to stop and be looked at.

SENATOR SCOTT: Commissioner, what I asked is, do you feel that if you had peer review that *V* and *K* would have been stopped earlier in their claims?

COMMISSIONER RANDALL: Well, of course, we'll never know if it would have been sought, but it's at the option of the companies. Since they are paying the bills, I certainly think that when they get large bills, as they did in *V and K*, there is a very high likelihood that they would use peer review.

SENATOR SCOTT: No, that can be done anyway. What I'm asking is, with peer review -- I guess we're talking about -- would a chiropractor or commissioner -- whoever the peer review would be -- stand by whoever is on

that peer review? Would they have caught this early, and would they have in fact turned them in? That's the question I pose. As I said, would a doctor tell on a doctor, and so on and so forth? We know that we have problems -- professional problems -- that they would say perhaps-- As the General had mentioned the soft tissues, one's doctor and one's chiropractor is not going to say, "Oh no, he couldn't do that." They may say it to you one on one, but they're not about to publish any reports saying, "He should do it," because they could be dead wrong.

Peer review may sound pretty good, but I don't know if we're going to get ourselves into some more trouble down the road. We'll find out that peer review didn't work because you are going to have a problem, especially in this particular case. Who's to say-- If I'm the chiropractor or the doctor and I say, "He's got a sore back," and he says, "He has a sore back," is another doctor going to say, "No, he doesn't have a sore back"? You know that won't happen, so peer review could be difficult.

SENATOR MATHEUSSEN: I think we're going to attend to the sore back on Monday. I think the Commerce Committee is going to be taking up the entire automobile insurance bill package that has been forth by the administration, sponsored by Senator Cardinale. I think that peer review is in that package, and I think that's probably a better forum -- not to cut you off, Senator Scott -- but I know it is going to be a subject of a lot of testimony on Monday.

COMMISSIONER RANDALL: Well, and certainly you have something already in place which you did pass and the Governor signed last year which is a new tool. The 21-day notification law was not at our disposal

during the *V and K* case, and that represents another valuable opportunity to try and prevent future abuses.

SENATOR MATHEUSSEN: Okay.

Anything else?

SENATOR SCOTT: Well, as I read in the report today, they estimated another 40 or more insurance claim mills. Were you aware of those? I mean, is your agency aware of them? We don't know until we read in the newspapers. We have to ask the General and the Commissioner both, are your Departments aware of these claim mills going on right today, as we sit here?

ATTORNEY GENERAL VERNIERO: As I indicated we have, as we sit here, over 70 criminal investigations pending. We have almost 200 civil enforcement investigations pending. That's just in Law and Public Safety. Commissioner Randall has over 300 civil investigations pending. I suspect -- although I can't comment on any one individual case -- that among all of those pending investigations -- literally hundreds -- Senator, we have a fairly good read on at least the perimeters of the fraud or of the alleged fraud.

You eluded, earlier, to the Governor's Health Care Task Force where we spent a lot of time -- we took a lot of good testimony and we had hearings just on this point to try to inventory the extent of fraud, because before you could design legislative solutions, I think you do need to know what you're dealing with, and it's a big number and there is no question about that.

I think if we move legislatively, both on gearing up the criminal laws and providing new additional tools in the civil law, when you combine that with the expertise that both of our Departments have and the fact that we literally have hundreds of investigations pending, I think you're going to see



real progress. These cases take time. They take months and sometimes even years to develop, but they are in the pipeline is my point, and I think we are on the right track.

SENATOR MATHEUSSEN: Thank you, General.

Thank you, Senator.

Senator Zane.

SENATOR ZANE: General, in reading the report and in reading some of the clips from earlier this year, I find myself quite perplexed, and I need you to help me with this, as to why somebody was not indicted. I really find it very difficult to understand that that could happen.

We've talked about the small amounts and you made reference to that and not striking a particular threshold. There is a case, *State v. Mann* 244 N.J. Superior, it's a 1990 case. It says, "Amounts involved in theft and attempted thefts could be aggregated for the purpose of grading." So that, to me, resolves the problem you spoke about, about having sufficient amount. I sit and I think to myself, why wasn't somebody indicted for theft by deception? Why wasn't somebody indicted for purposeful destruction, alteration, or falsification of records related to care of medical or surgical chiropractic patients? I recognize that that's not that, but I'm sure that there is something very similar to it.

ATTORNEY GENERAL VERNIERO: Senator, it's an excellent question and--

SENATOR ZANE: Let me finish though. I'm not finished with it.

ATTORNEY GENERAL VERNIERO: I'm sorry.

SENATOR ZANE: And I don't understand why that did not happen. You indicated that you did not want to second-guess the judgement of professional prosecutors, and in that case, I would imagine that you're referring to the county prosecutor in that particular county or counties possibly. Am I correct?

ATTORNEY GENERAL VERNIERO: Actually, I was referring to the Division of Criminal Justice, but the same deference, I think, should apply to the county prosecutors as well.

SENATOR ZANE: I initially misunderstood and I thought you indicated there were phantom patients. You've made it clear there are not phantom patients. You have a chiropractic physician that testified someplace that he saw 222 patients in one day, rather astronomical.

Also, I believe, that there was testimony that -- from some of the doctors -- comments which were made that any patient, regardless of their medical condition, should be seen 70 or 80 times. It is my understanding that there were known patients who received treatment, but not all of the treatment, that was billed for. That, I believe, clearly constitutes fraud. There were admissions made, I believe, by V and K themselves. It's actually within the press release issued by your office, some of the admissions. One of which was, in many cases, the frequency of patient visits was scheduled without regard of the patient's need. In many cases, patient's visits were scheduled by nonprofessionals without regard to the patient's needs, and it goes on and on and on.

I just find myself troubled that somebody didn't get indicted. We all watched other cases, over the years, where there was a lot less cases that

your predecessors indicted people and lost but nevertheless proceeded with it. I almost think that should have happened to really set an example, and I recognize that -- I guess -- it is history now. I guess that the agreement would preclude any further investigation or any further prosecution. Am I correct with that?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: So it's history. I'm just amazed. I'm not being critical of you, General. I'm really not.

ATTORNEY GENERAL VERNIERO: I understand.

SENATOR ZANE: This is something to look back three years before, but something just doesn't sound right.

ATTORNEY GENERAL VERNIERO: Yes, let me see if I may clarify it. Let me just repeat that I am as frustrated as you are that my office -- the professional prosecutors in my office -- were compelled to reach the conclusion that they did.

Let me take your last point first. I believe it would be a worse message if we were to attempt the criminal process and then fail. That would send the message that you can get away with it as opposed to making prosecutions that are going to be successful where we believe we have a good chance or a likelihood of success. We simply didn't have that in this case for the variety of factors -- that the reasons that I explained.

With respect to the aggregation, I mentioned that in the report and in my testimony. In order to aggregate the little thefts into a big theft you need to prove the little thefts. That's the 1000 minitrials that I referred to in my opening statement. It would have been impractical--

SENATOR ZANE: But in all due respect, it could have all been in one big trial.

ATTORNEY GENERAL VERNIERO: Pardon me.

SENATOR ZANE: In all due respect, that could have been in one big trial.

ATTORNEY GENERAL VERNIERO: You would have to have individual proofs of the 1000 individual thefts. That's why I said, in essence, there would have been. From a prosecutor's point of view, whether you do it in one stop of the courthouse or whether you do it in 1000 courthouses, it's the same. You need 1000 separate bodies of evidence, separate burdens of proof to then aggregate up to the second-degree crime. That was simply impractical in this case. We point this out in the Health Care Fraud Task Force. Most large-scaled fraud cases are not really one big case, but a lot of little cases, and that was precisely the case we were confronted with here.

I certainly support sending a very strong message for those who would abuse the system, but if I'm going to send that message, I want to make sure that we're successful, because if we are unsuccessful, we sent the wrong message. The message being that you can get away with it because our laws are too weak.

SENATOR ZANE: General, are they confidential at this point, or are they confidential during the point in time when, maybe, you were negotiating the settlement or whoever was doing it, reports that were presented to you and to your staff that led you to conclude that you would not be successful in that criminal prosecution? And if there are such reports, could

they be made in confidence and distributed to the members of the Committee so that we can look at that?

ATTORNEY GENERAL VERNIERO: I would have to look at that myself. I don't know if that is the case because, as I said, this was such a long history. Much of it was actually started before the entire administration took office and even before I became Attorney General. I believe it was the basis of the points that I already have referenced: the interviews with the witnesses that our criminal justice people did conduct, the review of individual case files that did occur, those things. I don't know if there is a single report that exists that would explain it. In essence, Senator, my report is that report I tried to distill down-- And that's a good point. This report that Commissioner Randall and I have put together is based on interviews with our staff, my personal review of the settlement agreement, interviews with the lawyers on the civil arm of the Attorney General's Office. I don't know if there is a single report that would really answer all of your questions, other than the one that I have already given.

SENATOR ZANE: I have nothing further.

SENATOR MATHEUSSEN: Senator Rice.

SENATOR RICE: I apologize for coming in late. There was a lot that was discussed, I think I kind of got a summary. I guess, being a former investigator, one thing that disturbs me is the number of personnel that really handle these investigations. You already indicated your caseload is very heavy on both sides. There are things I raised in the past that I requested, from your office -- not necessarily while you were there -- to either look at, and everybody told me that they were too busy. That's what happened with the Newark

School Board. It should have never been a takeover had we done the same type of thing, had sanctions, went in, and did what people were asking for a number of years long before this administration.

The question that I want to raise is that these things, to me, unless we do this in a different type message, are going to continue to perpetuate themselves. Your office is only as good as the information you have, and we could only develop legislation once you get that data and any information. That requires good, strong, experienced investigators.

Is there any movement to put investigators back? What are we doing? We can't work in the back like that. What's killing the State is not the drugs on the street corners, basically, financially, it is white-collar crimes. For some reason we play with it. I don't know if it is because of golf course relationships or what, but we play with white-collar crimes, and it's bankrupting this State indirectly.

ATTORNEY GENERAL VERNIERO: I can only speak for my Department's budget, Senator, and I apologize, I don't have my budget in front of me, but I do know that the Governor's proposed budget does include additional moneys to the Division of Criminal Justice for health care fraud -- this kind of fraud.

COMMISSIONER RANDALL: Likewise, Senator, the Governor has proposed a budget to begin Fiscal Year July 1. It also includes new money for the Department of Insurance, Insurance Fraud Bureau for the hiring of more investigative staff to bring us up to a level which will be the highest level once we are able to achieve those hires. It will be the highest level in the history of the fraud investigative unit.

SENATOR RICE: Okay, and the final thing is that I won't be here for the conversation of commerce. I do agree with Senator Scott that I don't support peer review. That is like, at a time with things at a crucial point actually, the Newark Police Department to investigate its own problems right now. To me that is not going to work and to me that is not even the issue. The issue is the rate that you're moving in independently.

I just want to say that I look at all of these insurance bills that are coming through, health care, auto insurance, etc., and to me most of them are frivolous. It is interesting because sometimes legislators are not going to debate what legislation should be heard, but this administration always signs on things that are in the hopper. I still stay that there are bills in the hopper -- if you're talking about data, it is interesting no one is coming in from the administration side saying -- either this Committee or someone else's Committee -- "Let's take a look at that insurance disclosure bill." We know that there is fraud out there and we know what's going on, and if the Federal government can mandate a CRA and get some results, we should be able to do a similar thing with the insurance industry -- all of the insurance industry.

I just want to say that at election time, I don't like these frivolous bills that sound like motherhood and apple pie coming through because we went through that with Michigan verbal, we went through that with charity care things that weren't going to happen. I am concerned about the investigators, I am concerned about peer review not being the answers; but I'm more concerned, as Senator Zane indicated, that we continue to promulgate legislation, and sometimes it's not even necessary.

Being a nonlawyer, I read these books. They told me that they couldn't do A, B, C, but there is a statute, then we run through and see if there has been any amendments. We look at the pocket parts. I know how to read them. I'm saying, "This law is still good. Why is it not being enforced? Why is not being utilized while you're doing the other things that you want to do?"

SENATOR MATHEUSSEN: Thank you, Senator. Are there any other questions?

SENATOR SCOTT: General, I have a couple of questions and I'll be quick.

The \$750,000 fine, did we receive the money?

ATTORNEY GENERAL VERNIERO: There is a payment schedule in the agreement that has a phase in, and because of such a new agreement, we will make an accounting once we get the full amount.

SENATOR SCOTT: Are we going to get that money?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR SCOTT: All right, that's good.

In your letter of May 28, you indicate the statement -- and you said it this morning -- would have the right to oppose--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR SCOTT: --an application. Do you intend to oppose their application?

ATTORNEY GENERAL VERNIERO: Based on what I know at present, yes, I would oppose it.

SENATOR SCOTT: So we don't know what will happen at that time?



ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR SCOTT : Two years.

ATTORNEY GENERAL VERNIERO: I believe that it's fairly unlikely that they would even try to reapply under these circumstances, but it is possible.

SENATOR SCOTT: How about, you had cases against three other doctors.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR SCOTT: The orthopedic doctor.

ATTORNEY GENERAL VERNIERO: Well, we have three in terms of the *V and K*.

SENATOR SCOTT: Yes, that's what I mean.

ATTORNEY GENERAL VERNIERO: We have several cases against several other doctors.

SENATOR SCOTT: How are they developing? Are these people going to be--

ATTORNEY GENERAL VERNIERO: They are pending. I don't have the precise status in front of me. I was speaking, specifically, on *V and K*. They are pending, and we are being as aggressive as we can with respect to the prosecution of those cases.

SENATOR SCOTT: Based on the allegations against those three, is there a possibility that they could lose a license?

ATTORNEY GENERAL VERNIERO: Yes, of course.

SENATOR SCOTT: Hopefully we can pursue that end of it. I think that is what we are all concerned about. That they will still go out and operate.

ATTORNEY GENERAL VERNIERO: Yes, that's a very good point, Senator, and I think it emphasizes something that the Chairman indicated and that I have indicated. We want to have both the civil and the criminal tools, so we can move in both cases in both ways. First, move civilly because that is usually quicker -- that's the easiest. You can pull the license and at least stop the practice and then pursue criminal prosecution, which gives us the ultimate penalty.

SENATOR SCOTT: Legislation we can pursue now will not apply to these cases?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR SCOTT: And, if I may, Commissioner, do you have any investigative -- in the process right now on fraud or do you work with the Attorney General or do you have your own group going ahead with it? Do you have a separate investigation unit?

COMMISSIONER RANDALL: Well, we do, Senator. As the Attorney General mentioned, though, we work hand in hand. At all times the number of pending civil cases are available to the Attorney General. We use, of course, the Deputy Attorneys General to prosecute those cases civilly, and we have some 300 pending.

SENATOR SCOTT: But then you're not duplicate. You're working in conjunction with rather than duplicating.

ATTORNEY GENERAL VERNIERO: Absolutely.

COMMISSIONER RANDALL: Absolutely.

SENATOR SCOTT: That's a concern. You're doing one thing and the General is over here not aware of it and he starts somewhere else. The two don't meet until the end, and you find out that from working at different ends you get to the same middle.

SENATOR MATHEUSSEN: Senator, you had something else.

SENATOR ZANE: General, \$750,000 was the agreed settlement amount.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Not a fine, a settlement amount. Am I correct?

ATTORNEY GENERAL VERNIERO: Let me just turn to that section of the agreement so that I can be very specific. That is the settlement. That is correct. That's the way that it is phrased in the agreement.

SENATOR ZANE: My understanding is that \$250,000 of that is paid at the time of entering the settlement.

ATTORNEY GENERAL VERNIERO: Upon execution. That is correct.

SENATOR ZANE: Sometime within the next--

ATTORNEY GENERAL VERNIERO: Next year there will be another payment of a quarter of a million dollars and then a third payment--

SENATOR ZANE: Two years later?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Another quarter of a million dollars.

What protection do we have, if any at all, that this could not be set aside as bankruptcy?

ATTORNEY GENERAL VERNIERO: Well, no state has that kind of protection, the bankruptcy laws, as you know.

SENATOR ZANE: That leads me to, then, to the question-- In your statements that you read, you talked in terms of settling for \$750,000, in part, because these were liquid assets.

ATTORNEY GENERAL VERNIERO: Known at the time. That is correct.

SENATOR ZANE: Liquid assets to me would be cash, bonds, securities, etc., things that can be properly converted to cash.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: It strikes me as a little bit lenient if there was \$750,000 available, at that time, in liquid assets that there was any provision for payments, especially in light of the fact that the balance unpaid could conceivable -- unless you're getting a new revised--

ATTORNEY GENERAL VERNIERO: No.

SENATOR ZANE: It could conceivably be wiped out as bankruptcy.

ATTORNEY GENERAL VERNIERO: Well, we have -- we took as many precautions as we were able to take with respect to getting liens and mortgages -- and that is the document that was just handed to me. It's also attached, I believe, to your document -- because these were all known assets, of course, we did not have the ability to disgorge them of this entire amount all at once. They had to have the ability to have this phased in.

We took the precautions that we were able to take under existing State law, of course, always subject to bankruptcy -- that would be the cause of another hearing -- and we got the security through the use of a mortgage, which was the best security that we were able to get at the time.

We also have a provision in this agreement that says, if we find anything amiss -- and perhaps a bankruptcy proceeding, frankly, would provide evidence for that. If they go into bankruptcy and they show -- and this, of course, is hypothetical -- a wide schedule assets that should have been available to us, then that allows us to rescind the agreement and that allows for a separate cause of action.

One of the things that I have already instructed my staff to do is to monitor any activity by these two chiropractors in any forum, Federal or State.

SENATOR ZANE: Did the agreement have to be approved, finally, by you, yourself?

ATTORNEY GENERAL VERNIERO: As typically in these cases, the client signs, and the client in this case was actually the MTF -- because remember the procedural posture, these were originally claims made against the MTF -- the Department of Insurance and my office. Typically all three agencies would sign an agreement such as this, and it would go through three separate approvals.

SENATOR ZANE: Just one, and I don't want to believe it, but I don't want to ride home thinking to myself, why didn't I ask you this? Just tell me why you didn't take-- If there were the liquid assets, why didn't you take the full \$750,000?

ATTORNEY GENERAL VERNIERO: This was the best we were able to achieve in the course of this settlement. They were unwilling to give up their ability to eat and live, if you will. This was all of their assets. It was as if we emptied out their bank accounts, and they did agree to a phase in.

You make a very good point indirectly, Senator, that if we attempted to get -- let's say -- \$1 as opposed to \$750,000, which we thought was the most that we could get based on their financials, it could have invoked immediate bankruptcy and would have denied the ability for the State to even collect a penny. We went as far as the financial information and data -- and we did several audits -- allowed us to go without driving them into bankruptcy, without driving them away from the table and back into a civil litigation posture.

SENATOR ZANE: And you do know with a reasonable degree of certainty that they did, yet, \$12 million, is that not correct?

ATTORNEY GENERAL VERNIERO: Well, I don't know if it is accurate to say, Senator, that they got it. That's another misconception, I think, about this case. They put in claims for \$12 million which were paid, but that doesn't mean they got it. It doesn't mean that it went into their pocket. They had a very large-scaled operation going. They had salaries, payroll, they had technician staff, clerical support, and so forth. That \$12 million was absorbed into the system.

SENATOR ZANE: Was it believed that that entire \$12 million was fraudulent claims?

ATTORNEY GENERAL VERNIERO: No.

SENATOR ZANE: Some of that was legitimate?

ATTORNEY GENERAL VERNIERO: Yes. It is quite possible that some of those claims were legitimate.

SENATOR ZANE: May I ask you one more question because it might make me feel a little bit better?

ATTORNEY GENERAL VERNIERO: Sure.

SENATOR ZANE: The total amount that is claimed by these people over this five- or six-year period of time through two administrations was \$52 million.

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR ZANE: Of which there was payment for \$12 million.

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR ZANE: Does anybody have any handle at all on what percentage of the \$52 million or, for that matter, the \$12 million was fraudulent claims verses legitimate claims?

ATTORNEY GENERAL VERNIERO: I don't have that here, and I suspect that would be almost impossible to determine, again, based on the fact that these weren't phantom patients. It is very difficult to say that even a 10-minute examination, 2 minutes of it was fraudulent and 8 minutes of it was real. It is so very difficult, and you really put your finger on the nub of our real proof problems in this case.

We were convinced -- the professionals in my Department were convinced that the \$12 million, by the time we really got this case, had been absorbed. We could have not gotten that money back. So we did the next best thing. We disgorged them of the \$40 million of remaining claims and we took as many of their known assets as possible. We took security in the form

of mortgages and self-worth, and we worked out a payment schedule. Three payments of an almost million dollar amount, I think, is a fairly good payment schedule from the State's perspective. These are three very large payments that they are obligated to make.

SENATOR ZANE: Just a comment, Mr. Chairman. I almost think that it's unfortunate -- and there is no criticism at all on this -- that the perception that the general public has -- obviously the press and the stories that they are writing -- is that there was \$52 million. Here is an article right here from one of the better newspapers in the State that suggests that there is a \$52 million fraud perpetrated of the State of New Jersey, and what you're really saying is we don't really know what it was, but we don't think all of that was fair.

ATTORNEY GENERAL VERNIERO: That's correct.

SENATOR ZANE: So it's substantially less, in your opinion.

ATTORNEY GENERAL VERNIERO: It is unfortunate. That's why I welcome this hearing and I welcome this opportunity. The more that I can talk about this case, I think the better everyone will be because the public will get a better assurance and the Legislature will have a more precise understanding of the difficulties that all the prosecutors in this State, myself including, labor under when dealing with these very difficult cases.

SENATOR ZANE: I just have to indicate that the press release from your office, dated April 21, 1997, does indicate two things. One, that there was \$40 million billed between 1987 and 1993 for meaningless treatment and unnecessary test performed on at least 5000 patients. I guess part of what I just said is actually based upon your own press release.



ATTORNEY GENERAL VERNIERO: Well, that was in the context of the civil-- You're talking about criminal fraud verses an amount of a civil settlement.

SENATOR ZANE: Meaning the achievement of unnecessary test of \$40 million.

ATTORNEY GENERAL VERNIERO: I would have to match the press release up to the actual settlement agreement, Senator, to be able to explain why it was phrased in that way. It is my understanding that, at least with respect to the \$12 million, there was no proof that all of that was fraud in the criminal sense and that the same was true of the extra amount.

SENATOR ZANE: Thank you.

SENATOR MATHEUSSEN: Senator Rice, you have something.

SENATOR RICE: Just a couple of quick questions. Once again I was late and you may have answered them. What are we doing about participants? In other words, throughout this country, but here in New Jersey where we are concerned, a lot of things take place where people knowingly, willingly, and intend to defraud. So there are two sides to it, and there needs to be a message sent out there, also, that we can save taxpayers' dollars as to what is happening to participants once we can identify a substantial way that they were willing participants, knowingly. What happens whether the numbers are 5000 or 3000? What do we do in terms of the law itself to make sure there is equity and justice, if you will, and sanctions on both sides?

ATTORNEY GENERAL VERNIERO: The short answer, Senator, would be to enact a proposal that Commissioner Randall and I have been talking about. That would be the best assurance of true justice and would give

us tools that we think are necessary, and that would send the real message that Senator Zane and others are talking about because it is only when the law is clear and when the prosecutor's ability to make these cases is improved that we'll will be able send the true message.

I think that even now, even with the current state of the law -- and I want to come back to this point because it gets lost -- we have over 60 or 70 cases pending, right now. Criminally we have several hundred. So we are sending a strong message already. It's not as if we are sending no message. My comments today are really geared toward explaining this one case. Perhaps it is a unique case, it's certainly unique for me. It is unique in terms of what I've had to deal with since becoming Attorney General. I'm trying to explain the rationale behind this case and how we can strengthen the law to deal with future cases like this. That doesn't mean we don't have good laws with respect to other cases. We are prosecuting other cases under those laws, and we have been successful in many of them. I think we are sending a strong message.

SENATOR RICE: Well, you may be sending it to professionals who read this stuff, but I can assure you, for struggling people and low-income folk, they don't get the message unless you tell me that every time a policy is issued or a periodical used in some notice to their house like PSE&G does. I can assure that and I think it is a lot that is still taking place that you're still not aware of because the message is not there, and you find out about it once you find a position of professional.

I also want to indicate, Commissioner, I really think you should go back, just from your short period of time, and the Attorney General and my new colleagues, over the last couple of years. It is clear that there is a lot of

fraud in this State. You look at articles that say that these things take place throughout this State, but you particularly continue to name the Newark and the East Oranges. There is no way that we should have -- be the exception to New Jersey as related to auto insurance costs. There is no way they could charge us 25 percent more than anyone else. We should bring that down across the board, recognizing that this is part of the problem. I just want you to think about that because I intend to put legislation in and argue what was argued 10 years ago. We're not going to be discriminated against, and we know we have these kinds of situations throughout the State, but particularly in those high-paying territorial areas where he identified the most. The law of probability says that happens there the most because we have the heavy population, so it is easy to do the fraudulent act and get away with it and to do it in more substantial numbers.

SENATOR MATHEUSSEN: Thank you, Senator.

General, just one thing, if you would be kind enough. Since we are kind of giving ourselves the responsibility of overseeing this case -- not in place of you, but along with you -- would you be kind enough to provide this Committee with the results of the other three who participated in the *V and K* follies? One being Dirty Harry Citronbon, (phonetic spelling) who allegedly bills \$3000 a patient and did 100,000 a day. The other is Dan Parkinson, who allegedly saw 222 patients and billed \$45,265, and last but not least, Dr. Jaminson, (phonetic spelling) who apparently reviewed nonlicensed technicians reports. For a \$50 report they payed the technicians \$75, and they billed the insurance company \$2800. So we would like to see, when they come to

culmination, if you would be kind enough to let us know the results of that, so we can certainly put that aside as well. We would appreciate that.

General and Commissioner, we appreciate your time today and your testimony and certainly your suggestions. We want to get together with you, General. You have given us some very precise ideas with regard to enacting some new bills. I think you told me already that those bills are in the pipeline, or at least in the process. We would like to entertain them and move them through the Legislature as quickly as possible to give both of you the tools necessary to make the job a little bit easier and, number two, to bring people like this to justice.

ATTORNEY GENERAL VERNIERO: Thank you, Senator.

SENATOR MATHEUSSEN: Thank you both.

COMMISSIONER RANDALL: Thank you, Mr. Chairman.

SENATOR MATHEUSSEN: Next, we would like to hear one of the people who is actually responsible for getting this whole ball rolling, and that is, Tony LoCastro, from the Robert Plan, along with Marc Buro.

**M A R C V. B U R O:** Thank you, Mr. Chairman. I am Marc Buro. Along with me is Tony LoCastro, both from the Robert Plan Corporation. I would like to make a couple of comments and then really turn the mike over to Mr. LoCastro, who is instrumental in bringing this case to the forefront, in working with the Attorney General's Office and the Insurance Department, in the eventual prosecution of the case and resolution of it.

I do want to recognize that the case history is indeed rather long and rather complex. The coordination that existed between our company, the Insurance Department, and the Attorney General's Office was quite extensive.

The three different organizations, and indeed the MTF, worked very well together in packaging this case and conducting the necessary investigation, and for that we are thankful to both the DOI and the AG's office.

I would particularly like to stress, publicly, the work of one Deputy Attorney General, Lee Barry, who just did yeoman's work on this particular case and deserves a lot of credit for the hours that he put in to making the resolution of this case possible. I'd also like to, on behalf of the company, support the call for some enhanced statutory powers to be enacted. The Attorney General was right on target when he indicated that the solution to this particular matter was, in essence, the best that could be accomplished under the current statutory provisions. Although we at the company are not expert in prosecutorial matters, we do support the AG's call for enhanced statutes and enhanced criminal penalties to make the fight against insurance fraud that much easier to win.

I'd also like to indicate that the *V and K* case is just one of a number of fraud mills that are out there today treating patients, today staging accidents, today seeking reimbursement for millions of dollars. That all goes back to the policyholders of the State who are paying more than they have to because those who perpetrate fraud are finding the system inviting enough to continue to work, continue to thrive, and continue to grow, and it is something we all collectively must focus on and address. These particular investigations that are ongoing -- right now, we're involved in quite a number of them. The coordination is in existence between the companies, the Attorney General's Office, and the Insurance Fraud Division. That level of communication and coordination is in place and working. The next step that we must take is to

improve the statutory structures that exist to allow closure to be placed upon these existing cases in a more favorable light, perhaps.

With that I would like to ask Tony to talk, generally, about the *V and K* case and what we found, what we learned, what we saw and perhaps get into the second part of your agenda, if you will, which is recommendations for new statutes to improve the climate for law enforcement to prosecute and insurance companies to stop insurance fraud. With that, I pass it on to Tony.

Thank you.

**T O N Y L o C A S T R O:** Thank you. I just want to thank you for the opportunity to speak today. *V and K* was probably the first of what has now turned out to be 40 to 70 additional mills that exist today. I was very encouraged to hear that there are active, ongoing investigations that could lead to further indictments.

I just want to echo some of Marc's comments. *V and K*, I think, took advantage of what they hoped was going to be just the passing through of payments. I got the unfortunate displeasure of meeting them on a number of occasions and their first comment was, "Why didn't you just process our bills like the other computer companies did?" I think they tried to seize on the fact that in a big HMO type of environment the bills would just be shot through a computer and the fee scheduled allowance would have been spilled out and that would have been paid.

Attorney General Verniero said something very important. You needed to look at every claim and each individual claim, and what made *V and K* so unique is that every claim read alike. There really were four to five people in each car and then all eight to ten would go treat at the *V and K* clinic. They

would all start the same day, end the same day, and end up with the same identical treatment -- that would usually be \$12,000 to \$15,000. The thing that you have to remember on top of that is that they would all try to pursue bodily injury settlements and pain and suffering settlements on top of that. I think it is important to mention -- and it is something Marc touched upon -- that *V* and *K*'s attorney, in our opinion, made a real tactical error. That is that he used the courts to adjudicate these claims. What I mean by that is their attorney filed a series of special civil part case. What he would do is take six to ten claims and lump them together, and it was really mass confusion for part of the insurance companies to try to see the correlation between these claims. Had he used arbitration, which is what most of these mills use today, he probably would have collected on more than the \$12 million. Let me elaborate on that.

We have seen an explosion in the filing of PIP arbitrations from \$3000 in 1993 to \$12,000 that are on case for this year. There were actually \$10,696 last year. What has happened today is that the mills have, basically, lawyers out there who will fund the arbitration filings for them because there is a payday in return if they are successful in collecting against the insurance company. They are entitled to their own attorney fee, separate and apart from the contingency fee that they will get from the bodily injury case. So a lot of the mills have their own stable of attorneys who, at no risk to the provider, will file these arbitrations. I don't believe that it is accidental or coincidental that you have seen the arbitration filings quadruple in just the last four years. As these mills get greedier and greedier and do more and more sophisticated tests, there is cause for more arbitrations. That is why a lot of the carriers are calling

for if not peer review, then maybe some tightening up of the current arbitration system.

It is hard to say, but we just don't win these arbitrations. We lose 90 percent to 95 percent of these arbitrations. We could bring in medical expertise. We do bring medical expertise in. We do a lot of peer reviews, separate and apart from what has been called the peer review. We have a lot of independent doctors who look at the data and look at the medical records and examine the patients and tell us that there was nothing in the notes and records to reflect the need for further care.

*V* and *K* really tripped up and I will just really elaborate for a second. People were put on an assembly line. Lee Barry came up with a brilliant suggestion. He hired Coopers and Libranth to basically take thousands of cases and do a time sheet. It jumped off the pages that out of 2000 to 3000 patients, on the eighth day, everyone saw Citronbon. On the 22nd day everyone saw Parkinson. The Parkinson thing was cute because an orthopedist would render an opinion that more chiropractic care was necessary, so it really came full circle to support the need.

The thing with *V* and *K* was there was never really anything in the notes and records to reflect the need for additional care or for the ordering of what were exotic tests at the time, that are now more normal as we see them every day. It just was a very self-serving, tightly knit organization that within three to four months was done. The person was in and out in three to four months, and in came the next claim, or that person came in with their next accident. I am really calling for some tightening of the arbitration system



because I am fearful that \$12,000 is going to end up being \$20,000, and \$20,000 is going to end up being \$30,000.

Just so you know, there is a huge fee involved with arbitration. We, as carriers, pay \$600 just in filing fees as the applicants and the respondents. The attorney fee is averaging \$1400 by American Arbitration's own records as of 1995. There was supposed to be a fee schedule for these fees. When the Legislature created arbitration in 1983, there was a call for a promulgation of a fee schedule by the Supreme Court. You can look at neighboring states like New York where they allow the fee to be 20 percent of what is in dispute, with a low of \$250 and a high of \$850. They have professional full-time arbitrators that are still attorneys. I, too, worry, is a doctor rendering a decision going to be of any use? Like Senator Scott had mentioned, would a chiropractor have stopped *V* and *K*? Well, we hired several chiropractors at our own expense to help the MTF's case, and they did try to stop it. They went to the Board, which is why *V* and *K* quickly shut down. They knew the heat was on back in February of 1993 when they closed. They shut down before everybody was going to put plans into their operations and things of that nature.

We did videotape for a solid month across from their operation, and we saw the people coming in and out in one minute and two minutes. We saw Parkinson drive up in his Winnebago and see people up to as many as 200 and 300 in a day. The thing is that there is always a humorous side to everything. One of those lunch trucks would stay there all day. They wouldn't have to move because the clientele turned over so often. He didn't have to go from factory to factory. He found a good factory.

What people lose in the *V and K* thing is that they started in Passaic and Paterson, but they quickly went to Irvington, East Orange, Perth Amboy, and Newark. They went to places where they were going to have an opportunity to maybe dupe people into this.

I just want to go on record by saying that a lot of these losses may have been real fender benders, and then the street runners grab hold of these people. They go in, they get the police reports, they see who has been involved in accidents, and they convince them that it is okay to go treat and that there is going to be a pot of gold at the end of the rainbow if they just follow the protocol for three to four months.

As *V and K* got more sophisticated, the losses were getting staged. We had instances where five people in each car claimed they didn't know anyone in the car, but they all lived in the same apartment building. Some of the stuff is just defied logic, as I have been quoted as saying.

What's happening today is that the system, I think, is very out of control and that there are more than just the one *V and K* mill that exists today, and it offers opportunities for people that are somewhat creative to keep going back to the well. That's what the recent Passaic case was about. It was about 15 or so ringleaders who had this all orchestrated with, probably, five to six to maybe even ten other type of *V and K* mills.

I think we need tighter laws. I've heard commentary today that you need to punish the individuals involved along with the providers and the professionals. It's really a shame that 40 to 70 places have knocked what probably is really a decent system totally off its center at this point in time.

SENATOR MATHEUSSEN: Thank you. I'd also like to thank you for helping to bring this matter to light.

One question that I have is the professionals. We talked about the doctors, the different technicians, and what not, that are involved in the case. What about the attorneys? Do they have any charges filed against them for handling these cases?

MR. LoCASTRO: Not that I know of. It is something that still may be ongoing. There were a lot of common attorneys involved. I'll just say that we had done a lot of profiling, and I would say less than a dozen law firms were involved that represented these 5000 patients.

SENATOR MATHEUSSEN: Are you intending to file ethics charges against those attorneys? Meaning not you personally, but the company, the Robert Plan?

MR. LoCASTRO: We don't have any plans, at the moment, for that now. You have to remember one thing. The majority of these claims were State claims that we were hired to handle. We were one of five companies that -- actually we were a subcontractor. The Warner Insurance Company was giving up one of the five contracts. They did not have a claim entity at that point in time, so they hired the Robert Plan. I'm proud that our company had \$25 million of that \$45 million that wasn't payed.

You have to remember another thing. It's been quoted and I've been saying this: I basically took a real big chance not paying them because the laws are such right now that I have to pay within 60 days. I get one 45-day extension. We start at over 600 special investigative investigations. We conducted over 500 examinations under oath of the patients. All of that we

funded. We didn't get reimbursed on that by the MTF. We felt strong enough that something was wrong here to fund that. There were many times that I went beyond the 105 days only because of what we were finding, and we were denying claims faster than we could get them in. It was just amazing. They literally made up 25 percent of my entire MTF pending, and I had as much as a \$30,000 MTF pending at one point in time, and we were one of five companies.

SENATOR MATHEUSSEN: Well, knowing all that you've done, I know it's probably improper for me to ask, but I would hope that you would consider taking those profiles on those attorneys and sending them off to the Supreme Court Office on Ethics because I think those attorneys are just as guilty as anyone else and also should be scrutinized for their playment in this.

Senator Scott.

SENATOR SCOTT: One question. During all of the investigations, and so on, did you come up with names of what we would call facilitators, perhaps?

MR. LoCASTRO: Well, the runners--

SENATOR SCOTT: Not just the runner.

MR. LoCASTRO: You have a lot of laypeople that are the money behind some of these operations. It's been talked about today. You need a lot of money to run one of these places. You need the money to pay for the runners, to pay for the patients--

SENATOR SCOTT: But they would be getting money. A facilitator would get money because he would be directing--

MR. LoCASTRO: Yes.

SENATOR SCOTT: --the people to, perhaps, the lawyer and the doctor and the whole thing and the garage. Have you heard that term?

MR. LoCASTRO: There is ongoing investigation on some of the kingpins of these mills, and many of them happen to be nonmedical professionals.

SENATOR SCOTT: Yes. That's my point. I think you have laypeople, who, for lack of another term -- I heard the term facilitator -- who really would be putting together the people to sit in a car or claim, plus the lawyer-- Put the whole thing together and turn it over to the professionals to handle.

MR. LoCASTRO: This has become so rampant that you have the facilitator who will purchase the policies, purchase the vehicles involved-- They have been referred to as producers, like in a Hollywood setting. There is so much money to be made that the investment has a great return if--

SENATOR SCOTT: Then I should have asked the Attorney General -- and I guess he couldn't tell me at this point-- I was wondering if he has identified these "facilitators." I don't know how many there would be, whether it's 10 or 25, but they control the people. They feed the attorneys, they feed the chiropractors, the doctors, and so on, and they, in turn, keep very well.

Thank you.

SENATOR MATHEUSSEN: Not as well as some of the people who are actually doing the treatment and doing the actual cases.

SENATOR SCOTT: They all do.

SENATOR MATHEUSSEN: Absolutely. Thank you.

Marc.

MR. BURO: One last comment unless there is any other questions. We would appreciate the opportunity to follow up with you, perhaps, in writing with some suggestions on how some of these systemic changes can be enhanced through new legislation. We've put together a package of "reform proposals" that we are taking to Senator Cardinale and Assemblyman Garrett, as the Chairmen of the respective committees. We would appreciate the opportunity to share those with you.

SENATOR MATHEUSSEN: We would very happy, and I'm sure that myself and members of this Committee would entertain sponsorship of some of those pieces of legislation, so by all means please get that to us.

This Committee is not ending its responsibility today on this issue, we are just beginning it.

MR. BURO: I appreciate the opportunity.

Thank you, Mr. Chairman.

MR. LoCASTRO: Thank you.

SENATOR MATHEUSSEN: Thank you.

Is Michael Berger still here, from American Trial Lawyers Association? (affirmative response)

**MICHAEL BERGER:** I'd like to thank you, Senator Matheussen, for the opportunity to be here today, and Senator Scott.

I'm representing the trial lawyers today, and as I see the issue, the issue is not to cast blame, but to solve fraud. You heard today that there are thousands of cases of reported fraud where the insurance companies have reported fraud to the Department of Insurance for investigation. You've read

in the paper and you've heard Mr. LoCastro testify about the \$40 million or so, which they know is in existence, which concern fake automobile accidents and phoney medical treatment and bills issued for medical treatment not rendered.

The real issue is that these cases of known fraud -- fraud reported by the insurance companies -- are not being investigated and they are not being prosecuted. The evidence is the fact that we are here today discussing one case, one case of fraud. As I understand the testimony, this is a case of fraud which was discovered and stopped in 1993. This is now 1997.

The issue is to shut down these mills. The issue to shut down mills with their phoney accidents and phoney medical bills. The effect of money spent to shut these mills down is apparent, \$52 million dollars saved with one prosecution. Too much time, if you will, too much money has been spent on discussing the peer review, not enough money and not enough time, to be sure, has been spent, as this Committee is doing now, discussing how to shut down fraud.

What we recommend, which is much of which the Attorney General discussed today, and that is, spending money on prosecuting the fraud cases that are now backlogged with the Department of Insurance. Spending money investigating the fraud claims that have been uncovered by insurance companies to date, where there are 40 mills known by the insurance companies.

The Attorney General knows how to do this and is, I'm sure, taking action in doing so by giving immunity to witnesses to turn over the kingpins and the professionals. If any professionals are part of these rings --

and I would note as a former member of the Ethics Committee in South Jersey -- that the Ethics Committee of the Supreme Court stands willing to take the license away of any attorney who is part of a fraud ring. To be sure that if they are a part of the fraud ring -- and so far, from this 1993 case, not one attorney has been prosecuted, I would like to note -- they should be prosecuted if one is guilty.

This is no different than breaking up drug rings. If we spend the money and the resources to prosecute these mills, there will be a big difference in the fraud in this State, but this is a little bit better situation than we normally have because the insurance companies are investigating the cases and doing the legwork for the Attorney General's Office and the County Prosecutors. We do support criminalization of runners who are kingpins or facilitators, as Senator Scott has noted. We support loss for special licenses, as Senator Matheussen has mentioned. We support many of the items that are listed in the recommendations by the Attorney General.

What we are really against, and I note it because it was discussed today, is wasting millions of dollars in a peer review system where money should be used in prosecuting fraud cases where everybody knows fraud is being committed. Don't forget most of the victims of automobile accidents are our neighbors, our friends, our clients, school teachers, accountants, janitors. There are many people and we can't control whether any of us will be involved in an automobile accident. Most of these victims are honest, a few are not.

We shouldn't be dragging people through a peer review system that's more byzantine than the Clinton Health Care Program. We shouldn't be dragging people through a peer review system when they need medical care



the most, after an automobile accident. I would note that wasting money on peer review is an interesting concept because, if the insurance companies consider overutilization of medical care where there is an honest dispute between doctors, I consider -- if they consider that to be fraud -- the underutilization or the denial of medical care to accident victims by insurance companies to be fraud. Honestly, neither is fraud. What is fraud are the phoney accidents and the phoney medical bills that you have heard testimony about today.

In conclusion, we would urge you to use the money in the system wisely, to shut down the known mills, and I would ask that the State and the Department of Insurance get off peer review and get on with prosecution of cases where there are phoney accidents. When people go to jail, when professionals lose their licenses, you will see fraud controlled in this State, and there will be a lot of money put back in the system where we know a lot of money is being ripped out of the system.

I want to thank you, Senator Matheussen, for the opportunity to testify. As you know, the trial lawyers do stand ready to assist this Legislature in any way to prosecute fraud and particularly to control the bad apples in any of the professions, especially our profession. I want to thank you.

SENATOR MATHEUSSEN: Thank you, Mr. Berger.

Senator Scott, do you have any questions?

SENATOR SCOTT: No, thanks.

SENATOR MATHEUSSEN: I know you and the Trial Lawyers have a lot in common.

SENATOR SCOTT: Well, I guess we agree on something here.

SENATOR MATHEUSSEN: It sounds like it to me. I'm giving you an opportunity to agree with him.

SENATOR SCOTT: A peer review, does that mean that you're supporting my legislation on automobile insurance?

MR. BERGER: Well, there are some concepts of your legislation, Senator Scott -- and I was there in Sterling High School when you were about to be elected Governor that night.

SENATOR SCOTT: And President. Someone mentioned President. (laughter)

MR. BERGER: And President as well. You have some very interesting concepts, and I would be more than happy to discuss our view of those concepts.

SENATOR SCOTT: I think we know where we both stand.

SENATOR MATHEUSSEN: I think they have some good news and some bad news.

Mr. Berger, thank you very much and we appreciate your comments.

MR. BERGER: Thank you, Senators.

SENATOR MATHEUSSEN: I would also like to know that you do have support then for some of the criminal prosecutorial powers that the General is looking for. As far as legislation is concerned you're supporting those, as well.

MR. BERGER: Absolutely. It's the answer to controlling fraud. Yes.

SENATOR SCOTT: I think it would be interesting in hearing -- you know -- put something down for us to take a look at. If you have ideas -- I know at this point the whole Legislature is ready to do something.

SENATOR MATHEUSSEN: Absolutely.

SENATOR SCOTT: We've asked the Attorney General to let us know that something has to be done. This is outrageous, what happened -- why we're here -- it should have never happened. It did and when-- As you mentioned, how many more? We don't know.

MR. BERGER: Well, this Committee is on the right track, to be assured, and I think the Attorney General is on the right track.

Thank you for your time.

SENATOR MATHEUSSEN: Thank you.

Frank Ostrow. Did I pronounce that correctly?

**FRANK OSTROW:** Yes.

SENATOR MATHEUSSEN: Chairman of PIP Victims Against Automobile Company Abuses.

MR. OSTROW: I am Frank Ostrow, Chairman of PIP Victims Against Automobile Insurance Company Abuses.

It's by accident that I'm here because the Commerce Committee was adjourned until Monday. I really came down--

SENATOR MATHEUSSEN: I took that in a much broader sense, an accident meaning an automobile accident. Go ahead.

MR. OSTROW: You'll have to bear with me.

SENATOR MATHEUSSEN: Take your time.

MR. OSTROW: We're not supposed to be emotional after you have suffered an accident. The law says that the insurance companies are only supposed to make you feel better, they don't have to heal you.

I want to read you two pieces of testimony that I was going to give today that I delivered to the Insurance Enforcement, Consumer Protection -- Anne Marie Narcini -- and the names of the people I would not reveal to protect the innocent, but I am going to reveal the names of the insurance companies so that the guilty are known.

I'm looking at \$160 per policyholder, or \$1 billion \$80 million that's collected for the fraud that the insurance companies say the amount of which they have no knowledge. Let this freeze facts stand for themselves. This is an attachment to claimant dated June 10, 1997. I really should have somebody else read it for me.

"I'm a PIP victim, who it took four years in court to win that Allstate Insurance was responsible for my PIP insurance. After five years, I am still fighting my insurance company to receive necessary restorative treatment. I have suffered lack of proper care and treatment by doctors of my choice for these past five years, because they wouldn't treat me when the doctors found out that they may not get paid due to the lengthy amount of time. It took my attorneys, with four lawsuits, two appeals, and two Supreme Court trials, to win that I did have coverage.

"The denial of coverage by my insurance company forces me to accept less than quality treatment from the doctors of my choice. In fact, some treatments, such as rehabilitation therapy, was denied to me until four years

after the accident only to be told by the insurance company's nurse that my benefits will soon be terminated. That was May of 1997.

“My insurance company sends their nurse with me to all doctor appointments. She doesn't only accompany me to my regular appointments, but she attends the IME, Independent Medical Examination, orthopedic surgeons examination of me where she grades both the receptionist and the doctor during his examination of me, including asking the doctor, 'Hasn't she reached maximum benefits?' Which is, I understand, the law invalidates the independence of the doctor, but she is only a nurse who is payed for and forced on me by my insurance company to attend my doctor treatments. Every time she accompanies me my insurance company pays her over \$500 for each visit. Is that legal to corrupt the IME examinations of a no-fault PIP victim? In addition to all of this, the insurance company nurse told me that I could no longer be treated by the surgeon.”

We finished writing this at 2:00 this morning and she is in bad shape.

“He treated me eight months ago, he says that I will need additional surgeries to my leg to repair the damage, such as removing metal, etc. The insurance company nurse says that they will find me a different doctor to treat me. What I want to know is why I cannot have the best doctor of my choice since the insurance company's four-year delay of my getting proper treatment. I thought that the PIP law guaranteed me the right to be treated by the doctor of my choice. It seems really unfair that my auto insurance company delayed my getting timely treatment and now denies me the best doctor now.

“Presently, the medical treatments my doctor say I need are chiropractic spinal manipulations, physical therapy, removal of ankle hard burrs, spurs removed from tibia, ALC of right knee, eye therapy for blurred vision and double vision, and fusing of foot. Fusing of the foot is something that I feel that I cannot live with. I want a holistic approach to solve my cartilage problem. It’s now one inch short.

“The insurance nurses tell me” -- she has two of them -- “I can’t do what I wish, and they even tried to override what my claims representative has already approved. Neither the two nurses nor the claims representative has put any benefit denials in writing to me. If I hadn’t called my claims representative, I would have let the nurses’ intimidation stop me from my necessary physical therapy and treating with the orthopaedic surgeon to correct injuries I got in the auto accident five years ago.”

This person who wrote revealed herself, Karen Ardizione, (phonetic spelling) in her cover letter to me, she said that “I hope that the information is enough as I was uncertain as to the content. I did the best that I could, and I really appreciate your help and wish you success on Thursday.”

We’ll skip down to insurance companies. State Farm insurance. Treating doctor, Dr. Kim Slone, (phonetic spelling) unpaid. Dr. John Rotundi, (phonetic spelling) unpaid. Dr. Chicka Kim, (phonetic spelling) unpaid. Dr. Michael Gentile, (phonetic spelling) covered under regular COBRA. Date of accident is October 19, 1996, saw a patient. River Road in Kearny at 3:15 in the afternoon, weather is rainy. Agent is Tony Piccolo (phonetic spelling) at State Farm -- never responds to request for IME report. The law says that it should be provided within 30 days of receipt by the insurance company.

Gentlemen, I wish to relate, to the best of my ability, the incident which relates to my complaint. My outer door was hit from the rear during a very bad storm. The car was stopped when it was hit, and the police report clearly states that the other driver was hydroplaning. My car was totaled and my passenger was injured, as well as myself. Treatment was provided, and tests indicated that various surgical procedures were required. The documents were submitted and all treatments began. The first surgical procedure was performed on January 6, 1997 on my knee; the second procedure on January 17, 1997 on my hand; the third and final procedure was to be set up on March 5, 1997. When I arrived at the facility, I was informed by the surgeon that the insurance company had put my case under review, and no time, then or since, have I been notified in any way.

I have bills which are not paid, and even though I saw the insurance company review doctor on April 14, 1997, no report has been received even after repeated requests. I still have not had any surgery and my condition has not improved. Clearly, the insurance company policy is to delay and hopefully the problem will go away. People in my position need to know that there are answers to be found and timely treatments to be had so that they can get on with their lives. Legal matters for most of the population is a scary place to be and guidance is necessary, especially when abuse is so subtle and happening when you are injured and at a disadvantage. If the insurance company had allowed the necessary treatment, I venture to say that I would be functional today instead of mentally, physically, and emotionally distraught.

I thank you for the opportunity to tell you of this situation in the briefest possible way as all of the events and their repercussions would take a lot more pages.

I have a few copies of my response to Commissioner Randall that I didn't get to deliver to Assemblyman Garrett's Committee because I had to take the first witness home -- she couldn't stay here any longer. I won't go over it all with you. I will give you copies if I have sufficient, if not I will provide them. I'd like to -- if I can find it -- more paper than I have seen almost in claims in the Insurance Department, which I suggest that you go over and visit and see the complaints that are piled up with no one to look at them.

I would like to read you, first, Commissioner Randall's response to me. This is dated May 29, 1997. Mr. Frank Ostrow, Chairman of PIP Victims Against Auto Insurance Company Abuses.

"Dear Mr. Ostrow, Assemblyman Russo has provided me with a copy of your correspondence outlining your suggestions for auto insurance reform. Governor Whitman and I are aware of the importance of comprehensive personal injury protection. PIP benefits, requiring comprehensive medical coverage regardless of fault, ensures that medical treatment for injuries is available and paid for promptly without lawsuits or shifting the cost of treatment to the health care systems and taxpayers.

"I am aware that you have had problems in the past with your own selective insurance company and its handling of your PIP claims. I understand that you have been working with investigative child's arm to resolve these issues. I hope that you will feel free to contact Mr. if you continue to experience difficulties.



“You expressed a concern in your correspondence over the idea of peer review. The Governor has proposed peer review as a way to root out fraud and ensure that payments are only made for legitimate PIP claims. I assure you that in order to protect the interest of policyholders, peer review organizations will be required to meet strict standards. These standards will be designed to ensure that each organization acts impartially to determine the appropriateness of a treatment on a review. Under peer review, quality of care will not suffer, but the procedure for reviewing the necessity of PIP claims will be better.

“I thank you, again, for taking the time to outline your thoughts on this very serious issue. We will keep your concerns in mind as we work to enact reforms.”

That’s a dream. I’ve had to learn all of the statutes and all of the laws, and because of what I have learned in the last two and a half years -- fighting my insurance company while I am trying to get well -- I’ve been able to help one other person.

Peer review is BS, Barbara Streisand as it has been called. (laughter) I’ve delivered -- I had to deliver it by mail because I could not deliver it by hand to Anne Marie Narcini -- a second tape of the second independent medical examiner of me, and I haven’t had time, because I got involved in this and trying to stay alive, of transcribing that tape of him lying to me and then further lying in his report to the insurance company, which terminated my PIP benefits, which had been delayed because of review for three months before they started the peer review.

I'm out of pocket about \$56,000, at the moment, because if I hadn't kept paying my treaters, I'd be in worse shape than I am in now -- and I'm not in very good shape -- I don't think -- I hope I'm better. I'm better than I was, but I am getting worse again. I had a reoccurrence.

You know I'm guilty and you're guilty in the eyes of insurance companies. Why? You own an automobile. Two, you payed for your insurance; therefore, if you file a claim for anything, you're guilty of fraud. I have a friend whose mother, who I know, had 220 bones broken when she was riding in a taxi. Then she went for an IME, and he was looking at her file, reading what had occurred to her, and he said to her, "What is this a joke?" I don't know why most of the people that are victims that I am running into are women.

I was assaulted once and I represented crime victims and I know how victims feel and why they hide and why you are not having them here, but I don't understand things-- I'm a journalist, a newspaperman. *The Star-Ledger* used to be a great newspaper. You have a front-page story that said, "Top lawman asks for tougher fraud law," and it's by Kathy Carter, but do you think she told where this meeting was being held and what time, who, what, when, where, how, and why. Do you want to hear some more BS, Barbara Streisand. The last line of John McLaughlin's column says that we jacked up the price now that the insurance companies are charging for fraud that they don't know how much exists. It went from \$160 to \$200 in both articles. I don't know who is feeding them this stuff off the line, but that extra \$200, What is it paying for, he says. It's the price we pay to keep murderers and rapists off the street. Now, I have to take the time to write him a letter.

There is mention of peer review here. Why is the State of New Jersey instituting what the State of Hawaii tried for five years and has just rejected?

SENATOR MATHEUSSEN: Mr. Ostrow.

MR. OSTROW: Yes.

SENATOR MATHEUSSEN: If I could, just for a moment. A lot of today's hearing is--

MR. OSTROW: I know, on the case. We are against fraud.

SENATOR MATHEUSSEN: We are against fraud, obviously. We are also going to have hearings. I know that you came up here and said that you were mistakenly here today because you wanted to be at the Commerce Committee, which is going to hear some of the automobile insurance reform bills that are going to be coming up.

It is my understanding -- correct me if I'm wrong -- that that Commerce Committee will be meeting on Monday.

MR. OSTROW: Yes. I understand that and I will find out what time it is.

SENATOR MATHEUSSEN: And I don't want to unnecessarily cut you off, or perhaps--

MR. OSTROW: No, I've taken a lot of your time.

SENATOR MATHEUSSEN: --deny you the opportunity to make the remarks that you are because I am sure that they are very important to you; however, I know that they might be better addressed at that Commerce Committee meeting on Monday if you can attend.

MR. OSTROW: I'll be there.

SENATOR MATHEUSSEN: If you can't, I was going to suggest that some of the written statements that you had, if you wanted to leave them with us, with the Office of Legislative Services, we would make sure that they got to the Committee Chair that day.

MR. OSTROW: They already have them from the Assembly, and I'll have additional ones updated to June 16, 1997 for the Senate.

SENATOR MATHEUSSEN: We're certainly concerned for the troubles that, apparently, you and other members of your group have gone through. I'm just not so certain that -- not that we're not interested -- this is the best place to address them.

MR. OSTROW: I only want you, as I told Senator Cardinale, to try and understand that the information is not being revealed in the press and the media. I'm a newspaperman, and although the material is provided it doesn't get out anywhere.

SENATOR MATHEUSSEN: We, the Legislature, sometimes feel that frustration.

MR. OSTROW: I wonder why this suppression. I was conjuring up a statement to make and I will run it across you as a test. You see, what I see here is self-servient in the eyes of the PIP law. So I'm going to use the criminal and the civil action that can be perpetuated against me if I had lied that you use when you file a complaint.

In 1968, I was in Seattle, in the State of Washington, and I was supposed to run against U.S. Senator Magnison. The first person that approached me offered me \$300,000 and I said, "I can't win." They said,

“Why not?” I said, “I can’t take your money.” They said, “Why not?” I said, “I tell the truth.”

Thank you.

SENATOR MATHEUSSEN: Thank you, sir.

Any further comments from the Committee?

SENATOR SCOTT: I won’t comment on peer review because that is going to be on Monday.

SENATOR MATHEUSSEN: Okay. Then no further witnesses. The meeting is adjourned.

**(HEARING CONCLUDED)**

