
C O R R E C T E D C O P Y

Committee Meeting

of

JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

*“Testimony regarding recent anti-fraud reforms and additional remedies,
the problem of the uninsured driver and the ‘mini-policy’ alternative”*

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

DATE: February 9, 1998
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

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



ALSO PRESENT:

Thomas K. Musick
Office of Legislative Services
Committee Aide

Laurine Purola
Jarrod C. Grasso
Majority Staff
Committee Aides

Tom Hastie
Tim Clark
Democratic Staff
Committee Aides

Meeting Recorded and Transcribed by
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Senate President Donald T. DiFrancesco et al.
from R.C. Van Essendelft
Regional Vice President
Government Employees Insurance Company

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ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman): Good morning, everyone, and thank you for your patience. A somewhat hectic day today with regard to legislators, but as those of you who have been here before, and I see a number of familiar faces-- This hearing is being transcribed, and we have all of the information that has been presented in the previous meetings, and we surely will have all the information today -- and even the possibility of another meeting.

What we plan to do today is to hear from individuals with a potpourri of concerns and thoughts, but everyone with the same goal, and that is, to do the best we can in putting together an automobile insurance program for New Jersey citizens that meets their needs and, of course, keeps costs low.

So we thank all of you in advance, who will testify today. And very honestly, I know I speak for the Committee and Co-Chair, Senator DiFrancesco, in thanking all of you who have testified already. It has been very educational to us. At times your expertise brings awe, and at other times we're trying to get some of the particulars. After these Committee meetings, we will, hopefully, put together a plan that will meet the needs of New Jersey citizens.

We have a number of people who wish to testify today. We would ask-- We want to give every one of you consideration and treat you in a respectful way, but we also hope that you will realize that there are many people who wish to share their thoughts with us. If you could be specific to what you would like us to remember most when you leave the desk, it will probably help your presentation.

With that, I would like to call on Senator Ronald Rice, the Senator from District 28.

I did not see the Senator. I understand he was here. He may have stepped out, so when he comes back in, we'll give him the opportunity to testify.

We then would like to call on Jay H. Greenblatt, the President of the New Jersey State Bar Association.

Mr. President -- and Mr. Constituent of mine.

JAY H. GREENBLATT, ESQ.: Very happily so, I might say.

SPEAKER COLLINS: Well, sit right down and say that into the microphone. (laughter)

You said, what, Mr. Constituent?

MR. GREENBLATT: I said, "And very happily a constituent."

SPEAKER COLLINS: Just give me your testimony, and this is over.

MR. GREENBLATT: And I believe that I speak for all the residents of Pittsgrove Township, at least.

SPEAKER COLLINS: Oh, keep going. This is good.

Thank you for coming, Mr. President. Please.

MR. GREENBLATT: Good morning to the Committee members and the staff. I thank you for the opportunity to appear before you this morning.

The State Bar Association of New Jersey supports all efforts to weed out fraud at its roots and eliminate incentives to commit fraud. We support increased sanctions. We support license revocations for those who

commit fraud. We support clear enforcement standards to prosecute fraud and enhanced monetary fines and jail terms for convicted offenders.

Additionally, we supported part of Governor Whitman's automobile insurance plan providing for additional fraud investigators within the Division of Insurance Fraud Prevention. And finally, most recently, although we had concerns about the legislation's constitutionality, we certainly favored those portions of a new law which criminalized knowing commission of health care claims fraud.

It goes without saying that we support vigorous prosecution of criminal charges such as theft by deception, when a driver or passenger stages an accident or a medical provider falsifies his bill or intentional damage to a car is done. We support prosecution of civil offenses such as collecting deductible costs. In other words, the incentive to commit fraud has to be addressed through a strengthening of both our civil and criminal laws to deter fraud. Our laws must send a clear message that committing automobile insurance fraud does not pay.

Now this is particularly true given an Eagleton survey showing that 41 percent of New Jersey respondents said it's okay to inflate insurance claims to make up for deductibles, compared with 28 percent in a national survey.

I want to address some innuendos you've heard throughout these hearings about attorneys who take cases of dubious merit to recover a fee. Our attorney discipline system is often regarded as the strongest in the country, and that's because our Supreme Court has extensive control of attorney discipline. That court control is furthered by one of the most extensive disciplinary structures in the nation, funded by an annual assessment on New Jersey

lawyers. Complaints and investigation of lawyer misconduct are reviewed by district ethics committees, which include nonlawyer participation. Hundreds of lawyer volunteers serve on panels to ensure swift discipline. Lawyers in New Jersey support strong and effective discipline against the few dishonest members of the profession. Next to a victimized client or a defrauded party, an honest lawyer is the principal victim of these wrongdoers, because a lifetime of honest work is sullied whenever headlines announce some unforgivable act by a member of our profession.

Let me turn to specific recommendations I'd like to offer the Committee. And that's the main purpose of my appearance here today. And let me preface it by saying this: These recommendations are made to you, although not formally endorsed by our Board of Trustees. It is a recommendation that has come through our committee system and a recommendation that has reached our Executive Committee, and I feel certain would be fully endorsed.

First, we call for the immediate appointment of a special prosecutor from the ranks of the Office of Attorney General, with sufficient staffing expertise to aggressively prosecute fraud and deter future conduct. People don't cheat on their income taxes because they fear consequences. Automobile insurance fraud must be prevented in the same way.

Second, although we applaud the Division of Insurance Fraud Prevention for its efforts to combat insurance fraud, these efforts are not enough. We recommend the Legislature direct the Department of Insurance to promulgate strict requirements with respect to proof of residency and location of vehicle upon the application for insurance.

Third, fines assessed by the Division of Insurance Fraud Prevention should have mandatory minimums. This will send a clear message to cheaters that fraud will not be tolerated.

Fourth, the Division of Insurance Fraud Prevention should be mandated to render a determination on a case within six months of the filing of a claim. This, we believe, will save money and eliminate case backlogs.

And finally, the Department of Insurance should be required to report to the Legislature as to the efficacy of its fraud prevention program.

Now, in that respect, let me say that after the last round of hearings -- I don't mean the round of hearings before this Committee, but the other committees that were taking testimony in the past -- we called upon representatives of the insurance industry to meet at the Law Center in New Brunswick. I met then with several representatives of the New Jersey State Bar Association, as well as representatives of insurance carriers and the industry in New Jersey in what we called a roundtable discussion -- a small group. We have had at least four such meetings.

As a result of those meetings, we try to reach a consensus between ourselves on how we might go about reducing insurance costs in the State of New Jersey while keeping the quality of justice in the State of New Jersey. We reached consensus in the area of fraud in time for us to present something to you, and I believe that you got a copy of a statute that we proposed.

It seemed to me that there was a lot of anecdotal data being provided to you at those hearings. You may well be back five or six years from now, and it would be nice to have something other than anecdotal data to determine whether or not you're getting a bang for your buck. That being so

and there being a one-sentence existing statute -- 17:33A-13 -- which requires the Commissioner to report annually to certain committees -- and I believe that those committees do change from time to time with regard to their area of concern -- we have proposed a statute for you with a number of subsections requiring the Commissioner to report to the Legislature. You may direct how you will those reports to be made, but that those reports be made annually of:

the number of new cases referred to the Division;

the source of the referrals, the number of cases closed in the preceding year;

the final disposition of each case, the number of cases remaining open and their status;

the number and amount of penalties assessed;

the number and amount of penalties collected;

the number of cases referred to the Division of Insurance Fraud Prevention by the Division of Insurance Fraud Prevention to State professional licencing authorities and the Office of Attorney Ethics, together with the results of such referrals;

the number of cases referred for criminal prosecution and the status of each;

the number of employees, by category, in the Division of Insurance Fraud Prevention, Department of Banking and Insurance, and the expenses of the Division categorized to reflect salaries, other employment expenses, and such other expense categories as accounting principles would normally require for such entities; and any other activities of the Division, of course.

So we are asking that this reporting be done so that you know what actually is being done; and so that there is accountability so that we know whether or not the carriers are doing their part; whether or not the Division is doing its part; to what extent attorneys have been involved in dishonest acts; to what extent physicians, chiropractors, others have been involved in dishonest acts; what has been done about it; how much it has cost to do all of this. And then you will be able to make a determination of whether or not there has been the reduction in the cost of insurance in the State of New Jersey attributable to fraud that has anecdotally been provided to you.

We believe that it will result in a reduction of costs. We believe that it will certainly result in greater justice in the State of New Jersey, because the State of New Jersey, as any state, should not tolerate such activity regardless. And you also will know how much it is costing you and eventually costing the premium payers in New Jersey.

Now, we believe that these suggestions will improve the investigation, prosecution, and results of the State's fraud prevention program, ultimately reduce fraud, and save New Jersey premium dollars.

I thank you for the opportunity to be here. That concludes my formal statements, and I will do my best to answer any questions you might pose.

SPEAKER COLLINS: Thank you very much, Mr. President.

Any questions of anyone? (no response)

I have a question. What would be your reaction to this statement, that anyone who would be driving a vehicle in New Jersey -- an uninsured vehicle -- and was to be involved in an accident that their ability to sue in that

accident would be taken away? If you're an uninsured driver, you're on the road, you're in an accident, any rights you have to sue another person would be taken away. Do you know the reaction to that?

MR. GREENBLATT: Things run through my mind as to how the person is uninsured. Was it willfully? Was it because of the lapse of a policy? Was it the fact that they went out--

SPEAKER COLLINS: Willfully.

MR. GREENBLATT: Let's assume that they went out and that they purchased a vehicle, and they submitted an insurance company name and a number and then allowed it to lapse deliberately and, therefore, were uninsured. It would not offend me that they should not be part of a system where they willfully chose to not be part of that system. You pay your dues, you get all the benefits of membership.

SPEAKER COLLINS: Assemblyman Charles.

ASSEMBLYMAN CHARLES: Would the hypothetical you posed him -- that involved the uninsured person actually driving the vehicle -- actually driving the vehicle? What would be your opinion if that person who was uninsured was a passenger in a vehicle?

MR. GREENBLATT: I would not be of the same opinion.

ASSEMBLYMAN CHARLES: And what would be your opinion if that person was not at fault in causing the accident, if that person were rear-ended?

MR. GREENBLATT: We're now speaking of the driver?

ASSEMBLYMAN CHARLES: The driver, as a driver, yes. If the driver were not at fault at all and was run into by a drunken driver?

MR. GREENBLATT: I have to draw the line-- I'm speaking as an individual at this point in time. Please understand that. But I'm going to draw the line and say that fault is an important concept. You know our position with regard to no-fault, so fault is an important concept, and it's a concept that people understand. And people have to understand a system of justice in order to respect a system of justice. So, that being so, fault can also be attributed to someone not buying in, so to speak. And if someone deliberately tries to capitalize upon that which the system affords them, in a dishonest way -- they're at fault -- and it doesn't offend me, individually, for someone not to be able to resort to our system of justice if they hadn't qualified to resort to our system of justice.

If you're a foreign corporation, and you don't register to do business in the State of New Jersey, you may not be allowed to resort to the State of New Jersey for compensation to satisfy your needs. So, too, here, if someone chooses, deliberately, to hopefully afford themselves the benefit of the use of a vehicle in New Jersey, while everyone else is insured, and they choose not to be insured, it doesn't offend me that they should not be able to recover.

SPEAKER COLLINS: If you would, you indicated that we know your position on no-fault. Why don't you state your position on no-fault.

MR. GREENBLATT: My position is your position.

SPEAKER COLLINS: Which is?

MR. GREENBLATT: My position is that no-fault is a -- it flies in the face of reason. People forget that in the early '70s, the Bar Association opposed it. As I've said before, if you get lawyers to oppose something, it's a shoe in. (laughter) That being so, now lawyers are being faulted for the ills of

no-fault. No-fault is a game played on a field that the Legislature laid out and according to rules that the Legislature made. And the game is set up so that there are certain hurdles, just like in computer games. And you have to get over these little jumps, and so forth. And lawyers are bound to represent their clients within the parameters of the law in the best interests of the client. And if you are going to create a situation that extends the process, increases the costs, then you can't blame the bar for it.

No-fault is a failure, and to attempt to overcome it by penalizing those who would abuse it one at a time and individually is a -- and I don't mean to sound too much like I'm from Salem County, but it's like--

SPEAKER COLLINS: There's nothing wrong with that. Be as Salem County as you want. Go ahead.

MR. GREENBLATT: Well, it's something like having a pile of manure and swatting the--

SPEAKER COLLINS: Slow down on that. (laughter) A compost pile, more in the other parts of the state.

MR. GREENBLATT: Well, you call it what you will, but we're talking about no-fault now. (laughter) --and swatting the flies one at a time instead of cleaning up the place.

You have created -- you, I mean the Legislature -- generally created a trough, and those who would eat and drink from that trough have come to that trough, and if you want to clean it up, get rid of the trough and don't try and control the horse -- as you see them, or the individuals, as I see them -- who are abusing that process.

SPEAKER COLLINS: I should have known a Salem County idiom would solve all of our problems. Well stated.

Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: Thank you very much, Mr. Chairman.

Mr. Greenblatt, we have heard testimony on this issue and others related in the past two hearings. One of the items or one of the criticisms of moving back to a fault system is that there is generally believed that the number of suits, the number of claims would increase. If we begin on the premise that this State's antifrivolous lawsuit statute, if you will, is not working and that frivolous claims are not being adequately penalized, do you have any suggestions to this Committee that we might incorporate into some statute on auto insurance that would be a better attempt at ferreting out and limiting the frivolous type claims from getting into the system?

MR. GREENBLATT: First, let's go back to the matter of definition of what you mean by frivolous type claims. And I don't mean to quibble over that, but I've been at this for 35 years. There were many claims 35 years ago that were not claims. I mean, for instance, just because somebody said that a husband could sue a wife and a wife could sue a husband now for an automobile accident -- when I started practicing law, you couldn't do that. No one costed out how much it would cost for additional judges and additional court personnel, and so forth, to handle all those claims, but there are a lot of claims where that type of interspousal immunity no longer exists.

That which is considered a frivolous claim 15 years ago might have gone to the Supreme Court, and champions of justice have now created rights

for individuals that we never dreamed of 20 or 25 years ago. They were considered frivolous back then. We have a society today that it's something for everybody. Everybody has a right to everything, and maybe that's good. We're considered to be on the cutting edge.

You can't call them all frivolous claims. We have given to society -- the courts, not the lawyers -- but the courts have given to society and the Legislature has given to society statutory rights of action that were never dreamed of in the past. So we have all of this coming down the assembly line, but it's the same old factory and the same old assembly line that we've had for 35 years. It's hard to get it all through.

All I'm saying is that the no-fault system has increased the cost. The no-fault system has delayed the conveyor belt. If you're talking about the small case, the little fender bender where somebody has a sore shoulder, that's not a frivolous claim. That's a small claim. And that was handled very easily in the past, because the cost of doing business handles that. A person comes into a lawyer with a small case like that, the lawyer says, "All right, who's your doctor? All right, go to the doctor, fine. How much are your medical expenses?" The doctor is not going to wait to be paid in a fault system. The doctor is going to treat according to the doctors' oath that the doctor took as a physician and started practicing medicine. The doctor is not going to run up a great big bill knowing the trough is going to pay for it, because it's going to get cranked out of that system. So that case is going to get settled very quickly because nobody is going to be making money out of it, because there's nothing around to draw the flies anymore.

ASSEMBLYMAN DiGAETANO: So are you suggesting, Mr. Greenblatt, that the case or cases that were presented to us as egregious violations, if you will, of our system -- and I'll name one where there was a \$50 repair bill, basically, to clean the bumper off a vehicle, and in that incident some \$50,000 or \$60,000 was paid out for testing and medical or other treatments, obviously prompting some later suit for pain and suffering. But are you saying that this would be avoided simply by going back to a fault-based system, since the treaters wouldn't want to wait for payment?

MR. GREENBLATT: I don't know if it would in that particular case, but I know it would in a lot of cases. I know it would-- If you say to me that you need objective evidence of something, and the only way you're going to get it is through a particular test, and if you don't get that you're not going to have a right to go to court, as God made little green apples, somebody's going to recommend that that test be done.

I mean, you're making the rules of the game, and I don't fault anyone for saying it is best that that test be done under those circumstances. So I don't know in that case. But I will tell you this, it's not unusual -- it's unusual, but it's not unheard of, and I know that in my office-- I worked on it this weekend. One of the attorneys in my office is about to start a trial where the photographs don't show any damage whatsoever. It's a minor tap. But the doctors on both sides agree that there were some quite severe injuries as a result of it.

ASSEMBLYMAN DiGAETANO: Thank you.

Mr. Greenblatt, it has been suggested to me that some of the more notable payments, if you will, or awards in litigation for pain and suffering

have been as a result of very compassionate juries, if you will, but really in many cases -- or in some of those cases -- not related directly to the incident or to the injuries received therein. Do you have any position, or have you ever considered a system whereby those litigants would have automatic access to a trial in front of a judge, but there would be some additional compensation for the court for a trial before a jury, let's say some additional payment put up, depending on how many days you tried your case before a jury, if you chose the jury trial?

MR. GREENBLATT: Well, again, let's start off with the quality of the basis for the question, that you have heard that some juries are runaway juries. By the same token, I have heard that some juries where there should have been an award have given no award. And, in retrospect, one might have said, "I wish I would have waived the jury. I would have been better off with the judge." You know, it's like, if you want to get the definition of justice, you go and you wait at the back of the courtroom and you talk to the winner. That will give you the definition of justice.

So it's, again, anecdotal. I think what you're really asking is whether or not we can reduce the rights that a person has to a jury in order to accelerate the cases running through the system and reduce the cost of the system in several ways and make the litigants pay for it. I would very definitely oppose that. I think that certainly isn't a logical way and a proper way of addressing a problem.

There are many times when the use of the jury is the highest quality of justice can get, and I really believe that every citizen should cherish that right in this country and hold tight to it.

ASSEMBLYMAN DiGAETANO: Thank you.

I draw from your responses to my questions that you don't believe there's anything wrong -- or you don't believe there are any changes that should be implemented with regard to our access and our process of litigating claims as we know it today. So let me ask you the question that I might have assumed earlier, but I'd like to hear your position on that, as the Speaker asked before. What is your position on the criticism of moving back to a fault-based system as to the number of claims that would be filed, the number of claims that would be litigated?

MR. GREENBLATT: Again, as I said before, I practiced under a fault system -- a pure fault system. It takes care of itself because the small claims -- the small claims are settled, because they're not being financed by the promise that the medical expenses are going to be paid as tied into the litigated piece of the case. That being so, the economics of the matter drives settlements of the small claims. It did then.

Also, I think you're going to crank out a large piece of the medical expense that's involved. You're going to crank out a large piece of the expense that's involved in the payment of counsel fees and arbitrations. So I do believe it would work on that basis.

Now, have I run a test on it? No, I haven't run a test on it. But I know this isn't working this way.

ASSEMBLYMAN DiGAETANO: Thank you.

SPEAKER COLLINS: Thank you very much, Mr. Greenblatt.

MR. GREENBLATT: I thank--

SPEAKER COLLINS: Behold, Assemblyman Charles.

ASSEMBLYMAN CHARLES: Yes, yes.

One of the things that we've been hearing during this testimony by some who believe that the small claims are being inflated, who feel that nonexistent claims or injuries are being made to appear as real injuries, is the claim that there are a lot of exotic tests that are being used now to satisfy the objective injury criterion of the law. One of these things that we've heard here is that these new tests come up, you've never seen them before, and suddenly they appear.

I think one of the issues that presents is, should there be some list of tests that are usable and that are admissible in cases like this? If so, should that be something that the Department of Insurance or some other government agency establishes and then says to the litigants and to their attorneys that these are the kinds of tests that we will allow to be admissible into evidence showing the various injuries? Now, what would be your reaction to that, and do you have any thoughts about how, in some sort of a non-case-by-case basis or test-by-test basis in a court of law, we might establish tests that should be admitted into evidence to prove injuries?

MR. GREENBLATT: Okay. You're now -- as I understand it -- presupposing a no-fault system with thresholds--

ASSEMBLYMAN CHARLES: Yes.

MR. GREENBLATT: --that must be met.

ASSEMBLYMAN CHARLES: Yes.

MR. GREENBLATT: So now-- I mean, you're putting me into an area where I don't belong and I'm not comfortable--

ASSEMBLYMAN CHARLES: But you're a lawyer, though.

MR. GREENBLATT: --but I'm here. I'll answer your question.

No, I don't think that there should be a list of tests which can be used. I think what you're trying to avoid is the lack of confidence-- You know, a test is done. The question is, should it have been done, was it necessary? And then, is it a justifiable test? Is it a quality test from a medical point of view? And then, has it been read properly, or is it being slanted in favor of one side or the other? Then you go to an arbitration on it, and then there is a perception that the arbitration is loaded in favor of the attorneys, because one attorney is going to wash the back of another attorney before whom that attorney may appear in the future. So it's a lot of perceptions all the way down the line.

Let me suggest something to you that-- And again, I don't speak for the Bar Association. I'm just speaking now as an individual. Let me suggest to you that if I have an automobile accident and I want my car to be fixed under the property damage provision, my insurance company may give me the names of two or three shops in my area, and if I take it to one of those shops, whatever the bill is going to be -- the estimate -- it's going to be accepted by my insurance company because they have a history with that shop.

Would that work with diagnostic testing? Would it work if, after a year period of time of a contract between a company and a particular MRI establishment, that if you go to that MRI establishment, they're going to be bound by it and there is not going to be an arbitration with regard to the reading of it? That is a possibility.

But to start having a Legislature make medical decisions on what types of tests are acceptable from a medical point of view, I would not suggest that you get involved in that.

ASSEMBLYMAN CHARLES: Thank you.

SPEAKER COLLINS: Thank you very much for your testimony.

MR. GREENBLATT: Thank you very much for this opportunity.

SPEAKER COLLINS: Senator Ronald Rice, 28th District.

Good morning, Senator.

SENATOR RONALD L. RICE: Good morning. Good morning to the Committee members, also.

Mr. Chairman, first of all, let me thank you, the Committee, and those who give me an opportunity to come before you this morning. I'm not due in Trenton today, but I think it's important that I be here to testify.

I came to the Legislature in 1986. In fact, driving down here, I was thinking of what I was going to testify, how long I've been arguing auto insurance, but the hue and cry has been really unheard by the Legislature, because I was simply a voice in the wilderness coming from urban America that no one wants to pay attention to.

And to be quite frank, when I first started in '86, I really didn't know that much about auto insurance. If you recall, I had a special election when Senator Caulfield died, and I walked in, in the middle of verbal threshold, the Michigan verbal. It didn't take me long to understand what that was, and the options that we have in the insurance today is an option because I fought that issue, the Lesniak bill.

There was an initiative also I argued that no one paid attention to, including some studies, including this arbitrary and capricious, drawn out of the air, for territories.

I would also like to preface my remarks by saying to you this morning that I'm not an attorney. I'm simply a full-time legislator representing the real people who drive vehicles and have a need to drive those vehicles and be protected at a reasonable cost, as necessary. And I represent a district that's consistently discriminated against by the industry.

So I'm not going to sit here and argue the fraud in the industry and the things we have documented over the years that I have been here. But what I will say to you is that the arguments I've raised for 12 years, roughly, I will continue to raise them. And I find it interesting that out of 16 Senators in the Democratic Party -- I think I'm maybe No. 6 in seniority now, in such a short period of time-- Maybe one reason I'm back is because I pay attention.

I read with interest some of the comments coming out of this Committee in terms of the speakers. And I see that some people would like to see urban drivers and those who touch our suburban borders have insurance -- I think, number one, that's important -- and now insurance that's affordable. I think that's tremendous.

The problem I'm having is that what I'm reading is that urban dwellers would have insurance, but for what we pay will receive less of coverage or benefits. The problem I have with that, in Essex County, if you live in Livingston and you pay \$100 for insurance coverage, and I live in Newark and pay \$100 for insurance coverage, I expect the same benefits and coverage as the person in Livingston, if everything is equal as it relates to me, the person

who is the driver. And that's not what I'm reading, and it's starting to anger me.

Also, I've been here long enough-- And I support attorneys, by the way. Some people misunderstand that. But I've been here long enough to understand that the people who argue insurance, it is always the industry and attorneys. The driving public never really gets a good chance to talk about the problems they have and maybe some of the suggestions they have. So we don't hold these hearings in Camden and Newark, etc.

If you look at history -- 27 territories -- if you realize that out of 27 territories this cap only affects the cities of Newark, East Orange, and Orange, which are in territories by themselves. You see, I was under the impression at one time that this discriminatory practice of the caps went across the state, particularly in urban communities. I found that wasn't true. So it gets narrowed down even further as to discriminatory practice of these industries, and we have allowed that as legislators because most of us don't have to worry about those votes. And I find that very interesting.

Also I read in the paper where it says that the cap of 35 percent is what certain territories are paying. That's not true. You're not telling the whole story. Where there is a 35 percent cap, those drivers are really paying up to 135 percent.

This reminds me of my history, Mr. Chairman, which you can appreciate. And believe it or not, the attorneys here can appreciate it also, because what's been happening in these areas of urban -- and particularly in the State of New Jersey -- is worse than the law back in the 1800s. The law in the 1800s, even though it was related to education, was *Plessey v. Ferguson* --

separate but equal. The insurance laws of today, the reason I said we are worse is because, it is separate but unequal.

I think that's a slap in the face for all of us. If we raise the issue of urban, folks that would not be -- and he's been arguing the same old slavery argument saying, "They feel like they're being stepped upon." Well, first of all, urban happens to be diverse, middle-class, low income, no income, black, white, Latino, young, and old. So it's not that kind of an argument.

I want to say to you that the real issues that need to be addressed, number one is affordability. Number two is access to insurance, including local access. And what's really important is equity in costs and equity in the benefits received for that cost and the coverage.

Now, Mr. Chairman, as someone who loves his city, the City of Newark in which I live, I have to tell you that adopting the industry plan which we've been reading about and hearing about will cause disaster in our urban areas. We're already paying the highest rates in the state. A lot of people have already been forced to choose between insuring their cars and feeding their families. Now, I do not see how raising the price is going to improve the situation at all.

Insurance companies love to talk about higher prices. They claim higher prices would increase competition. But insurance companies do not want to compete in urban areas. That is why they took all of their agents out, and it is their way of not breaking the law.

Years ago, we passed a law that said companies had to write policies for everyone, not just the rich, middle-class people in the suburbs. The companies said they didn't want to do this, and they still say they didn't want

to do it. We said, as the Legislature, as the government, that they had to do it. They took all their agents out of the city. I guess they can't break the law by saying no to all of us down here, so what they do is just find a way to make sure that we can't ask for insurance.

Ten years ago, Newark had plenty of agents to sell insurance. Now we have to drive up Route 280 and other highways to get to Montclair and Livingston just to get insurance, and they still don't want to insure us. And yet these companies have the nerve to say they want competition.

Another problem, Mr. Chairman to the Committee, is how we draw lines in New Jersey. If you live on one side of the line, the insurance is affordable. If you live on the other side, it is more expensive. I'm from Richmond, Virginia. And in Virginia we lived, during my years there in the '50s, on one side of the tracks or the other. I need not characterize that any further, because those of you who are historians understand what it means.

All of Morris County is on one side of the line in the north. The City of Newark is on the other side. On one side of the line there are a lot of people who drive into Newark, who make a lot of money with good jobs. The other side of the line has fewer city folks who drive into the suburb, who fix machines, hang drywall, and clean buildings for a lot less money. We both drive on the same roads. We both drive our cars in the cities and suburbs. But one side pays a lot less for insurance than the other side.

Newark, a city of approximately 320,000, even though the census says less, is its own territory. In contrast, the great unbroken suburbia, which runs from the New York border down to Rocky Hill, just outside of Princeton, an area with roughly 700,000 people, is in another territory. Atlantic City, an

urban area of 38,000 people, has a territory all to itself. The surrounding four counties, which happen to be Ocean, Atlantic, Cape May, and Cumberland, an area with almost 900,000 people, is in a rating territory of its own.

Now, if we keep carving up the state, we're not going to solve the problem. Cities and suburbs should be in the same rating territory, and I've always argued that we don't need 27. We need a lot less -- a big one that includes my area, Bergen and Morris and Passaic counties. If we keep drawing lines around the cities, rates will remain high in the cities.

We should look where people drive their cars, not where they park them. Now, it's interesting, because somebody has indicated that we're going to charge more in urban cities because more vehicles are in urban cities -- they come into urban cities. And so what they're really indicating, that the law of probability would dictate that the chances of having an accident in an urban city because of the influx of traffic is greater. Having some academic abilities and an understanding of statistics, I don't argue the law of probability in that scenario. What I do argue is what we have not done.

I really believe that this Committee should force some research immediately, because, you see, if you have that influx into New Jersey cities, that influx into Newark, even that influx into Livingston, if the industry wants to shift that way, it seems to me that the law of probability, one would assume -- would have to research it -- is when we call for the no-fault, who is at fault. It seems to me that the majority of the folks causing accidents are going to be those rushing to the city to go to work, don't understand our roadways and the changes in it. I really believe that, but yet, urban cities and others are penalized because we get the "influx" of traffic. And I have a problem with

that scenario, and I really hope this Committee thinks seriously of having the State Police put all their data together, all the insurance industry, in any given city, where the people actually live who were identified as causing the accident itself.

In conclusion, let me just say that we should look at not only where people live, but it seems to me that if you take areas like the cities that prevents that risk from being spread, then you have to take suburban areas to allow the risk to be spread among a wider pool of people.

You're going to get higher rates for the cities if you do that, because you get a lot of people in spreading suburbs, so you're reducing it, but in the cities you actually get congesting things and make it substantially worse. What the companies said to this is, let me keep the line by raising prices, and that just isn't fair.

Let me say one more thing, Mr. Chairman, if I can. Allstate, which I read about, likes to say that we have great political subsidies in New Jersey. I don't know what that means, but I do know that any insurance system has some subsidies. If it didn't, everyone would keep their money, pay for their own losses, and insurance companies would go out of business. In the past the State has taken action to subsidize targeted groups to make health insurance more affordable and more available, and I was part of those initiatives, especially for older people. Individual health plans are community rated. Prices for small employer plans are limited by the two-to-one rating band, and we have abolished the preexisting condition exemption.

So the question is, why do we do these things -- or why did we do these things? Because the State has determined that health insurance has an

overriding social benefit. To avoid even higher bills for charity care, the Legislature wanted as many people to buy health insurance as possible. To get there, the State took steps to make the system more equitable and to make it more available for those who need it. During the last elections we talked about these programs as good for our people, and they are.

Well, auto insurance is not just good social policy, it is the law in New Jersey. We have told people they have to buy it. It costs a lot of money. So if we are so concerned about affordability and availability controls for our health insurance system, why are we considering doing away with a less-effective system of controls for a mandatory auto insurance system? To me that just doesn't make any good sense.

In closing, Mr. Chairman, I simply, on behalf of the constituency I represent and many others, including urban brokerages, ask that this Committee not be pushed around, but be objective. Don't rush the time frame, if you don't have to. That's a political commitment, the date. That's our problem down here, too.

But we need a system that would eliminate the redlining of urban communities by the insurance industry, address the disparities in rates paid by urban motorists in comparison to their suburban counterparts, and provide for significant opportunity for economic growth for minority brokers and agents.

Once again, the system of insurance in New Jersey is separate but unequal, which is more detrimental and worse than *Plessey v. Ferguson* education law, which was separate but equal.

Thank you very much, Mr. Chairman.

SPEAKER COLLINS: Thank you, Senator.

Any questions from any of the members? (no response)

Thank you very much, Senator, for coming in today.

SENATOR RICE: On my way out, let me just say -- and I know I'm going to be criticized for saying it for the record -- I tried to get the Legislature to expand this Committee to the Senate side, and I want to commend Senator Adler for being here. And they can criticize this thought, but I'm a little disappointed that some of the other Senators from both parties aren't here. This is a very crucial issue, and we're pushing deadlines, and I really hope you hold a hearing up in the north part, where you can talk to people in East Orange, Newark, and Orange itself.

Thank you.

SPEAKER COLLINS: Well, Senator, just let me say, as I said earlier, and you weren't here in the room, that all of this testimony is transcribed. As you well know as a legislator, various commitments take people in and out, and we have your comments and all the others that have been made before every committee.

SENATOR RICE: Mr. Chairman, I appreciate that. But sometime we can hear better than we can read. Thank you very much.

SPEAKER COLLINS: Thank you.

Assemblyman Alex DeCroce, 26th District; and Mr. John Kroger, agent, State Farm Insurance Company.

A S S E M B L Y M A N A L E X D e C R O C E: Thank you, Mr. Chairman. Thank you for allowing me to come before you today -- before this Committee. Let me assure you that I have every confidence in the ability of this Committee to adjust the rates in the insurance field, and I want to assure

my esteemed colleague in the Senate, Senator Rice, that I'm very confident, seeing the quality of members on the Assembly side, both Republican and Democratic, that we're going to accomplish everything we want to do, despite the fact that Senator Adler is sitting over there on his own. (laughter)

SPEAKER COLLINS: Only temporarily, Assemblyman.

ASSEMBLYMAN DeCROCE: Yes, I know that.

Mr. Speaker, Chairman, it's been mentioned many times over that most drivers in New Jersey pay too much for insurance, and that our state has the highest average rates in the country. This is, in part, attributed to the fact that New Jersey is one of the most densely populated states in the nation. It can be further explained that the insurance laws that govern our motorists make it mandatory to pay that money to support those laws even though they do not need the necessary coverage.

I think it is important to remember that the cost to operate the insurance system now in place here in New Jersey is reflected in the laws our Legislature has voted on in the past. Clearly, the motoring public wants those laws and regulations changed that make auto insurance in New Jersey the most expensive in the nation.

This Joint Committee on Automobile Insurance Reform was selected by Governor Whitman to come up with a compromise plan that will pass the legislative process and meet with the Governor's approval. This will not be an easy task; however, knowing the members of this Committee, I'm sure the job will get done.

Mr. Chairman, the high cost of auto insurance rates in New Jersey can be traced to four main causes. They are a system that encourages lawsuits,

overregulation, little choice in consumers choosing the coverage they need and the type of insurance they carry, and finally, fraud. Many of these issues I'm sure you've heard before.

If the Committee recognizes the root causes of the problem, I'm certain it will be able to draft legislation to remedy these problems that have been with the motorists of this state for over 30 years.

New Jersey law, as currently written, encourages lawsuits. We now have a no-fault system and a fault system. Motorists are given a benefit package prescribed by law known as no-fault, which is simply medical payments, lost wages, and frankly, funeral expenses collected from your own insurance company, regardless of fault. Then a person is granted the right to sue for pain and suffering for a nonserious injury. Persons who are not seriously injured should be precluded from bringing suit. This was the original concept when the no-fault system was first introduced.

Now people have a choice to either carry the verbal threshold or no threshold at all. The courts have weakened the wording of the verbal threshold, making it possible to collect damages from both a no-fault system, as well as a fault system. We believe, from the information gathered, that we must limit lawsuits to only those who are seriously injured. New Jersey should have only one tightly written verbal threshold, not two. That threshold should be written to allow all persons to sue but only for serious injury. We believe that some sort of legal screening board, however you might want to call it, could determine if a person coming before it meets the standard as set forth by the new verbal threshold. Only after review could a case enter the judicial system.

It will take a process such as the one just outlined to rid our courts of the frivolous lawsuits and fraud which is causing auto insurance to cost so much.

Mr. Chairman, the regulatory climate in New Jersey has resulted in fewer insurance companies entering into the market here, more so here in New Jersey than in any other state. This fact alone should send a message to those who ask what are we doing wrong.

For starters, we propose the Committee consider modifying withdrawal barriers to new companies considering coming into New Jersey. Overregulation robs our state of the number of the companies in the marketplace and the competition that drives the cost of insurance downward.

As you know, all persons registering a car in our state are required to buy certain coverages regardless of their needs or their ability to pay for these State mandates. Government has legislated a repressive program to make individual decision making on the part of the consumer a no-choice decision. We believe that one of the recommendations set forth in your report to the Governor should contain an invitation to all insurance companies to submit to the Department of Insurance a set of plans that would allow consumers to choose the type and the amount of insurance they need and can afford. A basic protection auto insurance policy with lower amounts of coverage would meet the needs of many urban motorists. At the same time, this policy would make insurance affordable to many persons in the urban areas who may not be able to afford it presently.

It is estimated by Motor Vehicle that over 250,000 people or more drive uninsured automobiles every day on the roads of New Jersey. We think

that by offering a policy as outlined above, it would go a long way in bringing those drivers back within the law.

We suggest that the Committee consider a plan that can deliver the required auto insurance to our urban motorists. Where a company did not meet a given quota by writing policies in a certain territory, they might be assigned them, as is now the case with the Personal Automobile Insurance Plan -- commonly called the Assigned Risk Plan.

At the center of the Committee's work on automobile insurance reform should be an antifraud plan. Medical overtreatment is fraud. We need a program that will reduce excessive and unnecessary medical treatment, which increases the cost of both no-fault personal injury protection coverage and public liability insurance. The Coalition Against Insurance Fraud and Abuse estimates that more than 20 cents on every dollar goes to cover the cost of fraud. Medical peer review, as was made law in Pennsylvania several years back, has effectively reduced the incident of fraud in Pennsylvania and has helped to reduce the cost of automobile insurance. It is worth noting that the New Jersey Medical Society has endorsed this concept.

I thank the Committee for your indulgence. I wanted to bring to you the thoughts coming to my offices from our constituents and certain resources that we have available to us, and I thought it something that this Committee should at least have to take back and consider.

Thank you very much.

SPEAKER COLLINS: Thank you very much, Assemblyman.

Any questions? (no response)

Thank you.

ASSEMBLYMAN DeCROCE: It's been a pleasure.

SPEAKER COLLINS: John Dyke, the President of New Jersey Auto Agents Alliance; and Ken Curtis, Chairman, New Jersey Auto Agents Alliance.

Let me just say, as you gentlemen are taking your seats, thank you very much for being so patient and holding over from our last session.

Gentlemen.

KEN CURTIS: Good morning. I'm Ken Curtis. I'm Chairman of the New Jersey Auto Agents Alliance, and we want to give you a plan today that will make insurance available to all citizens in New Jersey and lower premiums by encouraging competition between insurance companies. We call it a play or pay program. We favor many of the rate-reducing ideas that we've heard here at this testimony, including PIP reform, stricter fraud prevention, improved arbitration. However, lower rates-- And we've also heard about the minipolicy. Lower rates and minipolicies by themselves are not going to guarantee availability to all drivers.

There is a 30-year history of insurance companies avoiding urban areas and certain underage drivers. This is not going to be corrected overnight. There must be some sort of enforcement mechanism, and we feel the play or pay plan would be such an enforcement mechanism.

It would increase the competition among insurance companies, because it would increase the potential profit for these less-desirable drivers.

Here is how the play or pay would work. Our present system would work fine if all companies wrote their fair share of all of the different drivers, whether that be urban or underage. However, it is a natural tendency

for the insurance companies to go for the more profitable business and stay away from the less profitable or risky business.

The pay or play would encourage the insurance companies to make insurance available in all areas and for all drivers. The pay or play would allow the insurance companies to write any area that they want to, any driver that they want to, but they would be encouraged to write all drivers and in all areas. By allowing the insurance companies to write the business that they want to in areas that they want to would also reduce the need for the take all comers.

The companies would not be required to write any business that they feel uncomfortable with; however, their actions could place an undue burden on the remaining companies. The remaining companies are called the players, because they are the ones who are writing the less-desirable business. The companies choosing not to write this less-desirable business would become payers. They would pay into a fund, and this fund would be distributed equitably among the players.

The distribution of the fund would be a thank you to the players for carrying more than their fair share of the burden. It also makes the writing of this less-desirable business more profitable. The amount of funds paid by the payers and the amount of funds distributed to the players would be controlled by a governing body made up entirely of industry people. The Insurance Department would be the overseer. The expenses of the governing body would be borne by the insurance industry and not the taxpayer.

Thank you.

John.

JOHN KERRY DYKE: I just wanted to add that in the past few years we've seen over 2000 auto insurance agents lose their ability to sell car insurance in New Jersey. Many insurance companies -- not all, but many insurance companies -- have attempted to limit or reduce their auto insurance production for certain classes of business, whether that be young drivers or senior citizens or in certain geographic areas, as you heard Senator Rice describe before.

Different terms have been used to describe this, as you have read in the papers and heard your constituents say. You've heard availability crisis. You've heard redlining. You've heard agency terminations. Whatever you call it, the basic result is simple. The result is that consumers in certain areas of New Jersey can no longer purchase car insurance.

Under our mechanism, insurance companies will write their fair share of auto insurance business or pay monetary sums into a revenue distribution mechanism that will be distributed to the players -- the ones who are doing their fair share. What you're doing here is setting up a new economy for insurance. The distribution system could be any mechanism that you desire. We had described the present AIRE mechanism, which is in use right now. It is the Auto Insurance Risk Exchange, which distributes the threshold moneys, and the form should be developed in a fair and nondiscriminatory measure by the Commissioner in the Department of Banking and Insurance.

Under this system, it will encourage competition and make insurance available to all areas of New Jersey and all classes of business. It's just not an area system, it also provides for classes. Again, it could be used for young drivers or senior citizens, as well as for urban areas.

SENATE PRESIDENT DONALD T. DiFRANCESCO (Co-Chairman): Any questions of either witness?

Senator Adler?

SENATOR ADLER: You understand that the proposed or conceptual plan for these regulations that the Department is supposed to issue, that would allocate or assign folks who can't get picked up by carriers?

MR. DYKE: Yes, that's the UEZ mechanism. You had passed that law through the Senate and Assembly in June. It's effective January 1. The law is effective January 1, but not one UEZ agent has been appointed. Not one auto insurance risk has been written through the UEZAR mechanism. In all fairness, the Department is developing regulations for that, but that's limited to only 5 percent, through the law that you had done. The UEZAR is limited to 5 percent market share. Five percent market share could easily be filled up by the City of Newark alone.

Under our system here, we're just saying it's a play or pay system, and that carriers-- Perhaps a carrier may not even be experienced writing urban business. Perhaps they have no experience. In that way, maybe they shouldn't write urban business if they have no experience, but they should pay money -- monetary sums -- to those carriers that do have the experience and do have the ability.

SENATOR ADLER: If we expanded the pool of so-called UEZ agents, using your term, and make it a take-all-comers thing for the agents--

MR. DYKE: I think that would be a lot better plan. I mean, to extend it beyond that 5 percent, yes, that would help out the urban areas most certainly.

SENATOR ADLER: Would that ultimately work out in a market with that inducement -- would meet the needs, would meet urban drivers'--

MR. DYKE: Yes. You would have to expand it beyond that 5 percent. I think you still have to develop some type of play or pay in there to ensure that what had happened several years ago doesn't happen again, that we don't suddenly appoint 2000 agents and find out that 2000 agents are gone a few years later. There would have to be some type of safeguard so insurance is available to all citizens in our state.

SENATOR ADLER: When you're talking about safeguards, you're now talking about safeguards for the agents, in addition to safeguards for the drivers, right?

MR. DYKE: Well, I think the agents and the consumers are tied together. I think there is a real tying together, especially in the urban areas. We see that very prevalent, that consumers want to deal with an agent in their neighborhood, perhaps that speaks their language, perhaps is of their nationality, or perhaps is just somebody who is friendly who they know in the neighborhood. We see that a lot in urban areas, and those agents have disappeared, and as a result, many of those consumers have opted for the 100 percent savings, which is driving without car insurance.

SENATOR ADLER: That's a cost-shifting method. The rest of us pick it up along the way.

Tell me why it wouldn't ultimately work out for the state, for the uninsured, meaning the urban problem, if we just opened up the pool of UEZ agents?

MR. DYKE: Again, with the UEZ agents, they can be terminated under the UEZ law, and that business will disappear very quickly under the UEZ law. We also have the UEZAR, which is the PAIP expansion. I think that's a good idea for those agents that qualify. They'd be able to place eligible persons into PAIP. That would solve some of the availability, but again, the law as it stands now that's effective January 1, not one UEZ agent has been appointed, not one policy has been written, and in all fairness, there are regulations that are being developed.

Again, it's 5 percent of the marketplace right now. If you want to expand that beyond 5 percent, I think that will help us. Five percent, again, could be filled up by the City of Newark alone. It doesn't solve the situation, and once it's filled up, it's filled up.

MR. CURTIS: I also want to mention that the availability problem is not necessarily just urban. There are underage drivers -- teenagers have difficulty getting insurance, and also some of the senior citizens. So the UEZ only addresses the urban problem and not a statewide problem.

MR. DYKE: Correct, the problem did start in urban areas. Perhaps they were the most vulnerable, but as consumers spread out, as they leave the City of Newark and look for insurance in the surrounding areas, the suburbs, many of those suburban agents have been terminated and eliminated as well, because simply their loss ratios have increased, or perhaps they've insured too many people from Newark. So we've seen it start in the urban areas, that's correct. It most certainly was an urban problem, and the UEZ was designed to help that problem, but it's spread out to suburban areas as well.

PRESIDENT DiFRANCESCO: Assemblyman Charles.

ASSEMBLYMAN CHARLES: Yes. The play or pay plan, is that going to have a big or have a great disincentive and create very unattractive circumstances for insurance companies so that we're going to have no insurance companies wanting to come in and all those who are currently doing business wanting to get out automatically?

MR. DYKE: I'm glad you brought that up. We want to add onto that, that is not the solution. We support many of the items that have been discussed here previously, and it should be added in conjunction with those items. I think it will make some of the carriers who are playing -- and there's only, let's say in urban areas, about three or four or five carriers that are really writing business. I think it will make them very happy. But I think you have to develop other reforms.

You've talked about PIP reforms and various other reforms that have come before this Committee. The pay or play will work with any of those reforms, no matter what you decide to do. But I think it has to be, and it must be, in conjunction with those other reforms.

ASSEMBLYMAN CHARLES: You say it will work, but one of the things that we've been hearing -- at least from the insurance industry -- is that none of this works, even with the reforms that have been discussed, the threshold and all of that, unless there is just an unregulated market and competition in its freest form is permitted for insurance companies.

MR. DYKE: I'm actually for an all free market, but I come from an old family agency that's been in business 57 years, and I grew up in the business. You know, we've had a problem. I'm in a semiurban area. I live and work a mile away, and I think if you made it a totally free market at this point

in time-- And we've gone through the history. We've gone through the assigned risk. We've gone through the JUA, the MTF. We've gone through a dysfunctional voluntary system. I think that if you suddenly made it a free market and, let's say, eliminate the take all comers and eliminate some other laws, that I think that it will be very -- or almost impossible -- to purchase insurance, let's say, in Camden, Newark, or other areas. It's hard to get it now. I think you will make it impossible without some type of system to jump-start it.

And that's what this pay or play is. It's a jump-start. It's not the solution. It should be done in conjunction with other reforms, but you need something to jump-start the system of fairness.

PRESIDENT DiFRANCESCO: Anyone further? (no response)

Well, thank you very much for being with us. I appreciate it.

MR. DYKE: Thank you very much, and we wish you the best with this Committee.

PRESIDENT DiFRANCESCO: We'll need it.

Okay, John Kozak and Frank Solis.

You're both from the AARP?

JOHN J. KOZAK: That's correct.

PRESIDENT DiFRANCESCO: Okay. The three of you?

MR. KOZAK: Well, this is Tony Tucker. He's kind of a late show, and he's just going to be sitting in here. He's one of our favorite people. He's also a member of the AARP, and he's on the State Legislative Committee, too.

PRESIDENT DiFRANCESCO: Okay.

MR. KOZAK: All right.

PRESIDENT DiFRANCESCO: Feel free to participate, now that you're up here at the table.

FRANK SOLIS: We won't stay too long.

MR. KOZAK: No. As a matter of fact, our presentation probably will be one of the shortest that you have today, as you can see by the handouts.

PRESIDENT DiFRANCESCO: Now, let's ask, is your microphone on? Is the red light on?

MR. KOZAK: Yes, it is now. Okay, it wasn't before. Thank you.

I'd like to say good morning, at this particular time. My name is John Kozak. I am a member of the AARP State Legislative Committee, and I'd like to introduce Frank Solis, who is the State Legislative Committee Chairman, who is going to make some additional remarks relative to automobile insurance.

Just in passing, for your information, there are almost 1.3 million individual AARP members who are card-carrying members in the State of New Jersey. We have over 130 chapters, with approximately 5000 active AARP members. We want to thank you for allowing us to testify regarding automobile--

PRESIDENT DiFRANCESCO: Let me ask you this question, because Senator Codey wanted me to ask this. How old do you have to be to be a member?

MR. KOZAK: You have to be 50.

PRESIDENT DiFRANCESCO: Fifty?

MR. KOZAK: Yes.

PRESIDENT DiFRANCESCO: Okay.

MR. KOZAK: And as a matter of fact, when you are 50, I can guarantee you are going to be bombarded by requests for you to join the AARP.

PRESIDENT DiFRANCESCO: Really.

Did you hear that, Senator?

SENATOR CODEY: You knew that before me.

MR. KOZAK: Are you all members? No, you're too young.

But bear in mind that we would certainly like to have you as members, when and if you pass the magic age of 50, okay. I can tell you, I'm a little bit over that age myself.

We would like to thank you for having us here and have us testify very, very, very briefly relative to automobile insurance reform.

Basically, the overall problem that we have with regard to older drivers is that in some instances they may be denied auto insurance coverage because of their age, or they might be charged unreasonably high rates in order to retain coverage, regardless of their individual risk characteristics.

As you already know, and I don't have to remind you of this again, in 1997, New Jersey had the highest automobile insurance rates in the country, and the average cost is over \$1000 for each car for each year. This rapid and constant increasing auto insurance rate structure has actually hurt older persons living on fixed incomes. Many older people need the use of an automobile in order to maintain independent living in their own homes. And, as a parenthetical expression, I might add that I'm involved in an AARP program called Tax Aid, and the majority of individuals who come in to our

particular program are older senior citizens, and it amazes me as to making a determination as to how many of them can survive with their high property taxes and also their high automobile insurance -- their automobile insurance rates.

The AARP's overall position: The New Jersey State Legislative Committee -- SLC -- supports legislative enactment of the following. Enact true no-fault automobile insurance covering bodily injury and requiring reasonable survivor benefits and a stronger verbal threshold, sufficient to eliminate lawsuits for relatively minor injuries but which allows lawsuits in cases of death and certain specific serious injuries. This, in effect, is what the Michigan plan, which we looked at, has in their overall structure.

It should prohibit insurance companies from canceling or failing to renew auto insurance policies or raising rates on the basis of age alone. It should take swift--

PRESIDENT DiFRANCESCO: Excuse me.

MR. KOZAK: Yes.

PRESIDENT DiFRANCESCO: Do you believe that they do that now?

MR. KOZAK: I know in the past they've done it, because we've had many, many, many complaints from individual senior citizens that, because of their age, there was random canceling of their automobile insurance policies.

PRESIDENT DiFRANCESCO: Do you, in any way, log that -- those complaints -- or identify--

MR. KOZAK: Do we log them, no. But we--

PRESIDENT DiFRANCESCO: I mean, for our purposes, is there anything that you could give us that would, you know, prove that?

MR. KOZAK: I do know, for instance, that -- not recently, but in the past -- we had received in our State office and members of the State Legislative Committee had received individual complaints from individual seniors that-- In one instance, their insurance policies were just canceled, randomly, because of the fact that they were under this -- what is it? -- three-for-two or one-for-two ruling. In other words, for every two insurance policies that an insurance company was able to obtain, they had the option of eliminating one of the older policies that they had. And hopefully this has been eliminated.

In some instances, because of the fact that individuals were over 60 years old and in some cases a little bit younger, they were also told that their policies were canceled. And the reasoning, probably, behind it -- and I won't say it's a definite fact -- but I would assume that--

PRESIDENT DiFRANCESCO: Are you going to justify it now? Are you going to justify it?

MR. KOZAK: Yes. I'm going to try to justify it. --to sign up younger, individual drivers who, in fact, were able to pay a higher individual premium--

PRESIDENT DiFRANCESCO: Oh, I see what you mean.

MR. KOZAK: That's the reason for that. And that's the reasoning advanced, okay.

So any more questions?

PRESIDENT DiFRANCESCO: No, go ahead.

MR. KOZAK: Okay. Another overall position with AARP is to take swift, effective disciplinary action, as well as criminal and monetary penalties, against unfair market practices, any discriminatory pricing and service, and outright fraud. Impose heavy fines and penalties on insurance companies or companies who knowingly sell policies that are duplicative, worthless, or fraudulent.

PRESIDENT DiFRANCESCO: Well, that sounds pretty easy, doesn't it? I mean--

MR. KOZAK: It's a possibility. It's a remote possibility.

PRESIDENT DiFRANCESCO: You would think we do that now, wouldn't you? Wouldn't you think we do that now? If somebody sells a policy that's worthless, fraudulent?

MR. KOZAK: No, but there is a possibility that senior citizens may have a policy that would be duplicative of the actual coverage--

PRESIDENT DiFRANCESCO: Right, I see.

MR. KOZAK: --that they had, okay?

PRESIDENT DiFRANCESCO: Okay. Go ahead.

MR. KOZAK: And consider statutory changes that would bring reinsurers under the scope of the State regulatory authorities.

Conduct a study and evaluate closed claims in order to establish how legal settlements and awards figure into insurance costs. In other words, find out if and how these legal settlements and awards actually make a contribution to the overall insurance costs.

Establish government and/or industry funded hot lines in order to answer the consumers' insurance questions.

Establish an independent medical peer review organization of qualified specialists in order to handle appeals of medical claims, including rapid times for adjudication. We feel that it's important that we take medical claims out of the hands of individual claim adjusters and also the legal profession.

Establish an auto insurance consumer advocate to be in but not of the Insurance Department, and to pay -- with his or her pay and review to be done by the Treasury Department. This person should be completely independent, something quite similar to the Ratepayer Advocate that we have right now.

Our overall conclusions: The AARP policy does not support choices of insurance that would lower the benefits or result in insufficient coverage. The point we wish to make over here is that coverage should be adequate for everyone.

Automobile insurance reform in New Jersey should allow people to obtain adequate coverage at affordable rates.

Protect people from uninsured drivers. When I was coming over here this morning, I had a thought. If I may, I'd like to incorporate that in my testimony. Why not have the individuals who are uninsured show evidence of insurance when they apply for their driver's licenses, okay? And if they don't have insurance, then there would be a good possibility that their licenses would not be renewed.

PRESIDENT DiFRANCESCO: Well, insurance-- What kind of insurance? In other words, my 17-year-old daughter gets her driver's license.

MR. KOZAK: Okay, fine.

PRESIDENT DiFRANCESCO: She doesn't own a car.

MR. KOZAK: Right. Well, in that particular case, she's just getting her license--

PRESIDENT DiFRANCESCO: Right.

MR. KOZAK: --so that could be an exception to the overall rule. But by and large--

PRESIDENT DiFRANCESCO: Of course, I've owned these cars for years. You know, they never have the money to buy any cars, so how about--

Don't we now do it with the registration for the vehicle, we ask for that information? Yes, we do. I mean, I know I fill it out.

MR. KOZAK: That's another possibility.

PRESIDENT DiFRANCESCO: Well, that's what we do now.

MR. KOZAK: Yes.

PRESIDENT DiFRANCESCO: So when you're filling out the registration for the car that you own, you put your license number down, as well as--

MR. KOZAK: Yes, on the back of the form.

PRESIDENT DiFRANCESCO: --I guess, your Social Security number, if you want to. I guess, if you don't want to, they investigate you, but you put that down, too. I think the insurance information is on there with the policy number. That has to all be on there.

MR. KOZAK: Yes, it is.

PRESIDENT DiFRANCESCO: So you think we need to go beyond that?

MR. KOZAK: I think that if an individual doesn't have some sort of proof, relative to having insurance-- In other words, you're supposed to have a State-- Like, for instance, I have a State of New Jersey Insurance Identification Card, okay. What this card says is, who my company is and what the actual vehicle is.

PRESIDENT DiFRANCESCO: Right, if you own the car.

MR. KOZAK: Yes.

PRESIDENT DiFRANCESCO: Well, you know, the common complaint that we get is not that when you get your driver's license or when you renew your license you should provide this information, is that how come-- This is a common thing that I think we all go through. Why, if there are so many people uninsured, driving vehicles that they own, why can't we require them to show proof of insurance when they buy the car and when they renew the registration? I mean, we get this all the time.

And, of course, we do require that. But, yet, everyone says there are a million uninsured drivers. Or I assume they relate that to owners of vehicles, to a great extent. So we get a lot of reasons back.

For example, some insurance companies, I suppose, would suggest that if you're on some form of a monthly payment or a quarterly payment or a semiannual payment, that the insurance -- that they don't pay the insurance-- They pay something to get an insurance card.

MR. KOZAK: Right, that's correct.

PRESIDENT DiFRANCESCO: And then they stop paying, and therefore they don't have insurance. I don't know. It's a very difficult

question for us to respond to, because it seems like we ought to be able to control this a little better than we do--

MR. KOZAK: Yes, that, I think, is the biggest--

PRESIDENT DiFRANCESCO: --and yet we don't.

MR. KOZAK: That, I think, is the biggest problem, because in a lot of cases, as you say, an individual might just sign up, get the card, and just make that very, very first monthly payment.

PRESIDENT DiFRANCESCO: They finance-- I think you can finance your insurance coverage, and if you don't pay your finance company or whatever, and you're canceled, but you have the car and you have a valid registration--

MR. KOZAK: Yes, that's true, too.

PRESIDENT DiFRANCESCO: So that's a problem that's been in existence for all the years that I've been around, and it doesn't seem to be resolved in any way.

But requiring someone who has a renewal of his driver's license to provide insurance information -- on what car? I mean, suppose you have two cars or three cars? Suppose you have an old car and a new car? I mean, how do you--

MR. KOZAK: That might be a little tough. So, evidently, my thought is shot down.

PRESIDENT DiFRANCESCO: I know what you're saying. No, I'm just trying to make sure that I understand exactly what you mean so that--

MR. KOZAK: This is only one thought to try to find out how do we get to these individuals who are uninsured.

PRESIDENT DiFRANCESCO: Did somebody cut you off? Is that why you thought of this when you were driving here? Did somebody cut you off on the highway or something?

MR. KOZAK: No, but I thought of other things when somebody cuts me off, I'll tell you that.

PRESIDENT DiFRANCESCO: Go ahead. Continue.

MR. KOZAK: And individuals who don't use their turn signals when they're turning. Okay.

We should also stimulate competition among automobile insurance companies. Allow speedy recovery for individual persons with legitimate claims. Keep auto insurance rates in line with actual costs, not lower the current required personal injury protection coverage from \$250,000 down to \$50,000. Ensure that no new deficits are created as a result of auto insurance -- no more JUAs or MFTs -- and aggressively attack fraud and abuse.

I think that possibly is the key. Aggressively attack fraud and abuse.

I thank you very much for allowing us to make this presentation.

PRESIDENT DiFRANCESCO: Thank you.

MR. KOZAK: If you have any additional questions for me?

PRESIDENT DiFRANCESCO: Any questions?

Clare, do you have anything more to add?

ASSEMBLYWOMAN FARRAGHER: Well, just a comment. Mr. Chairman -- just a comment, with regard to the driver's license.

A constituent of mine has actually suggested that -- quite some time ago, actually -- that we totally overhaul the system and require at least PIP

coverage for every licensed driver -- that they at least have a PIP policy to cover them, because if they don't own a car, then they can't get insurance. It's very expensive.

PRESIDENT DiFRANCESCO: Proof of some form of health insurance.

ASSEMBLYWOMAN FARRAGHER: Some form of insurance. That has been his suggestion, to insure drivers and cars separately. Insure drivers for the personal injury protection part, and then, insure the cars separate from that for the collision and comp, and so on.

He also suggested that there might be even some liability portion included in that, but that is not the way we do it now. You can purchase insurance for a nonowned vehicle, but it's expensive.

PRESIDENT DiFRANCESCO: Okay, thank you.

Anyone else?

MR. KOZAK: At this time, we--

PRESIDENT DiFRANCESCO: Obviously we agree with a lot of what you say in here, particularly about fraud and the other things. You do mention two controversial issues -- at least two, anyway -- and one is the medical peer review situation, as well as not reducing the PIP coverage from 250 to 50. I don't know if anybody suggested that, but--

In other words, you think that we should leave the personal injury protection at 250 alone?

MR. KOZAK: At 250, that's correct.

PRESIDENT DiFRANCESCO: Leave it alone.

MR. KOZAK: And with regard to the peer review organization, we feel that the best group that can adjudicate whether an individual needs to get either additional medical treatment or the medical treatment that he or she feels is necessary should be done by doctors, okay, because we feel that they would be the best qualified individuals in order to make those specific decisions.

PRESIDENT DiFRANCESCO: Well, yes. Of course, the other side argues that if it's a doctor hired by an insurance company, you know, your broken arm may not be broken. So, you know, we get that kind of testimony, too.

MR. KOZAK: Maybe they shouldn't be hired by an insurance company.

PRESIDENT DiFRANCESCO: Yes, that seems to be the drift of where everybody is going -- as you say, independent.

MR. KOZAK: Independent. That's the key word.

PRESIDENT DiFRANCESCO: Okay. Well, I'll look for that mail that you were talking about, since I'm 53 now, and I haven't seen anything yet. I get a lot of junk mail, but--

MR. SOLIS: Just a kid.

MR. KOZAK: We'll make sure you'll get it. You're going to be right up at the head of our list.

PRESIDENT DiFRANCESCO: I'm worried I'll be canceled because I'm too old -- my insurance policy, now.

MR. KOZAK: At this point I'd like to turn it over to Frank Solis, who is our Chairman. He lives up north.

MR. SOLIS: I just want to personalize this. I usually focus on the people who are retired, on limited income, and everything we do here involves people. I'll give you a case that's typical.

A lady was talking to me. She happened to be a widow. She worked for eight years, so she's not getting a heck of a lot of Social Security. Her husband didn't have any retirement pay, so she's living on -- I'm guessing, because I don't know -- about \$700 to \$1000 a month from Social Security, possibly.

These people are-- You would never recognize them. They're legally poor, maybe, but they're not -- they don't look like poor people. They dress neatly, maybe not in the latest fashion. They have a modest but neat home, and they survive by drawing down from their savings. Usually, when they bought their home, it was \$14,000, maybe, to buy the house. Now it's worth \$60,000, \$90,000. And they were saving money, and they have a little nest egg that they draw down. They get by.

And when you think of people that are getting \$700 to \$1000 a month, and they need a car-- As John points out, you need a car to be independent these days to live in your home, and you have to pay \$1000 a year for auto insurance. It's just out of sight.

I'm not pleading for anything special for these people. These are the same people that were hurt by the property taxes increase. They were scared, because they thought they'd lose that modest house.

And President DiFrancesco, we thank you. We thank the legislators for freezing that property tax. That was wonderful.

But here they are with car insurance, and why should they have to draw down from their savings just for the privilege of driving a car.

And I've heard people talk about, well, maybe a 10 percent or 15 percent reduction in the rates. That doesn't do it. That's not enough. I think you guys ought to target something a heck of a lot more, maybe 50 percent. Some people have mentioned to me 50 percent. But make it, hey-- Make it-- Make a big decrease in this auto insurance rate. People need it.

PRESIDENT DiFRANCESCO: Frank, let me ask you, I think the last time that this was addressed, there is, in fact, if you're over 65, a specific mandated discount, so to speak. What is it?

MR. DAVIS (Committee Aide): Five percent.

PRESIDENT DiFRANCESCO: Five percent?

MR. SOLIS: Yes, 5 percent.

MR. DAVIS: We built it in back in the '80s.

PRESIDENT DiFRANCESCO: I thought it was more than that.

SENATOR CODEY: I don't know if that adequately reflects the claim experience for those people over 65.

PRESIDENT DiFRANCESCO: I think it was arbitrary, wasn't it?

SENATOR CODEY: I would think it was done with something--

Tom, I don't know if you know-- The 5 percent figure, for those over 65, how was that arrived at? Was it based on actuary experience?

MR. HASTIE (Democratic Committee Aide): I would defer to Dale.

SENATOR CODEY: No, Dale deferred, too.

MR. DAVIS: I know there wasn't--

MR. KOZAK: I might add that when you talk in terms of 5 percent, it's only \$50.

MR. SOLIS: Well, there's not much difference between \$950 a year and \$1000 a year. And we do have a 55-Alive Program. If people take that, they can get a reduction in their rate. These things help, but we're talking 5 percent, 10 percent. And just picture these people who are getting \$700 -- and that may be high -- or \$1000 a month, that's their income. Everything else to survive comes out of savings. That's an awful lot. They need a bigger reduction than that.

PRESIDENT DiFRANCESCO: Well, I mean, obviously, if that person is not driving -- can't be driving a car a whole lot. That also should be-- I think Senator Codey is probably alluding to things like if they're just driving their car downtown once in a while, that ought to be factored into a lower rate because of a lack of use of the automobile and the miles driven, so to speak.

SENATOR CODEY: You don't know how to rate the claims experience of those over 65.

MR. SOLIS: That's a good point. There are some senior citizens that actually only drive the car during the daytime.

PRESIDENT DiFRANCESCO: Well, there's a senior citizen approaching us now -- (laughter) -- Speaker Collins. You can tell by his hair that he's--

MR. KOZAK: I just--

PRESIDENT DiFRANCESCO: And my lack of it.

But I did want to mention it, because Frank just mentioned the bill that you sponsored, Speaker Collins.

MR. KOZAK: Yes, we want to thank you very much for sponsoring A-3 and getting it through the Legislature. It's going to help a lot of very, very--

PRESIDENT DiFRANCESCO: Well, you said, it's not enough, though. Didn't you say--

MR. KOZAK: It's going to help the very, very lowest of income individuals who are qualified under PAAD, but we still could use a heck of a lot more, okay.

PRESIDENT DiFRANCESCO: Jack belongs to AARP, don't you?

SPEAKER COLLINS: Well, I'm only 37. It's the hair. If I may, let me just say, you know, you look more about two years older than me.

MR. SOLIS: He's the oldest. He's the oldest one here, Speaker Collins.

SPEAKER COLLINS: If I may just say this--

T O N Y T U C K E R: I'm only 75.

SPEAKER COLLINS: --that I appreciate your comments. But I do want to say this. You're very kind, and I listened to carefully what you've said. It wasn't me that got it through the Legislature, it was in our House with the support of the Minority Leader. Senator DiFrancesco is the sponsor in the Senate, and it was moved on the floor by Senator Codey. So it was the entire Legislature, and we hope that we'll be able to do more in the future. But thank you for your comments.

MR. KOZAK: We thank you all. We really appreciate it, especially those who are very, very poor and who are on the PAAD Program.

SPEAKER COLLINS: William O'Neill, President, Commercial Investigation, Incorporated.

Mr. O'Neill and--

WILLIAM O'NEILL: And-- I see Clare Farragher here. I'd like to thank her for inviting me to testify in front of the Committee today.

My background, I'd like to tell you Commercial Investigation is a licensed private investigation company. We specialize in the investigation of insurance claims. For the past 20 years, we've had a lot of investigations in the area of PIP, personal injury protection coverage. We employ 90 to 100 people, and again, this is an area of speciality.

I know fraud has a major impact on auto insurance, and I'm here today to give you a different perspective and, perhaps, shed some light on how serious the problem is in an area of fraud that I haven't seen addressed anywhere else. When you hear the numbers, maybe you'll get an idea of how much impact fraud has on the entire system. Fraud in personal injury protection, we have lots of it. There's uninjured people who get medical treatment and just pursue a claim. People who exaggerate minor injuries and continue treating long after their need for treatment is gone. We have treating resources who prescribe expensive and unnecessary diagnostic treatment, excessive treatment.

We have fraud in the area of lost wages -- self-employed people who continue to work and collect benefits. People who work off the books -- provide false promises of employment so they can collect these benefits. All those have a major impact. That's not the area I'm going to speak about today.

It's an area that you probably haven't heard before -- they're

specifically PIP claims that are filed by passengers and pedestrians who are not entitled to benefits that PIP implies. Now, on the surface, it looks like this problem shouldn't exist. Anybody that's involved in an accident in the State of New Jersey is entitled to PIP coverage. You may have your own coverage. If not, perhaps, your resident relative. You don't have coverage in the household, you can get benefits from the car you rent. The insurance carries and insures that vehicle. Absent coverage on that vehicle, you can file a claim with the Unsatisfied Claim and Judgement Fund. There really isn't any reason for anybody to file for benefits as a matter of fact.

So how much of a problem is there really in this area? Well, last year, my company investigated 10,811 claims for PIP benefits filed by passengers and pedestrians. Of that total, 4335 of the claimants were not eligible for the benefits. That's 39 percent. How serious is that -- 39 percent -- on 4335 people? The average figure we get from carriers in the cost of the PIP plan for medical, loss wages, etc., is about \$10,000 -- some carriers more, some less. That's \$43,335,000 we saved our clients last year. And that's the good news.

The bad news is that's not the real number. On many of those cases, we eliminated bodily injury claims. Bodily injury claims awarded faster than PIP. So what should we do with this number? Double up-- Let's round it off -- \$80 million. That's a lot of fraud. That's still not the true number. We're a small company -- 10,811 cases -- very limited number of cases that are actually filed in the course of a year. There's more bad news. We don't catch it all -- 39 percent. The past couple of months have been 42 percent, 44 percent. We estimate probably 50 percent of the claims for PIP benefits filed

by passengers or pedestrians contain some element of fraud. That's an awful lot of fraud, probably an area that you haven't even looked at previously.

Who files these claims? Why were they filed? There's really no reason for anybody to file a false claim, since they're entitled to PIP benefits through somebody. Let me give you some examples of why people do it. If a passenger or pedestrian was the owner of an uninsured motor vehicle, he doesn't get PIP benefits from anybody: not from the resident relatives; he doesn't have his own coverage, he can't file against the car he was in; and he would be denied by the Unsatisfied Claim and Judgment Fund. There's case law on it. We saved one insurance company \$1 million on the same situation in the case of *Kennedy v. Allstate*. The claimant had an uninsured motor vehicle, and he's not entitled to the benefits. So I can tell you, if a passenger or a pedestrian owned an uninsured vehicle, he's not likely to list it on his affidavit of no insurance.

Who else files false claims? People who want to avoid the verbal threshold, their own, their spouses, their parents. If they want to file a claim for soft-tissue injuries, they're not going to tell you they're still getting the verbal threshold. And they don't. We see it all the time. We also see professional claimants. They file multiple claims, and they change their names slightly, their Social Security slightly, their address slightly. They're not going to tell if there's insurance available, and they're certainly not going to tell you they don't exist except on paper.

SPEAKER COLLINS: Hold one second.

Senator Codey.

SENATOR CODEY: Mr. O'Neill, do you think people file claims because there's a sense that the companies will settle with them?

MR. O'NEILL: Absolutely. And if you're asserting to the verbal threshold-- Let me use this situation. Suppose I'm married and I'm going to be a false claimant here. My wife has a policy and there is a verbal threshold on it. I also have an uncle who resides in the household. While I'm not subject to the tort threshold on my uncle's policy, I am subject to the tort threshold of my spouse. So if I have a soft-tissue injury and want to file a claim, I'll put a PIP claim into my uncle's policy. The carrier that's going to pay me the BI claim says, "Well, that's where his coverage is." And I settle the BI claim. Where really in reality I have the verbal threshold, I've avoided it.

We also have strange situations. We have some attorneys who have everyone involved in an auto accident, when they come into the office, sign an affidavit of no insurance. The reason being they only have to send the paperwork to one carrier that way, and in their minds, it will balance out in the end. Some carriers are going to pay the PIP. People aren't filing them anyway.

SENATOR CODEY: So do you think if carriers were more aggressive in terms of not settling claims that may send a message to a lot of these people?

MR. O'NEILL: No. I think your carriers are being more aggressive, and it's growing -- that effort is growing. The problem I see right now is the 105-day rule that the carrier has to respond and to pay my PIP claim. Let me give you an example of PIP. PIP coverage, first of all, is the most important coverage in the policy, in my mind. The people that I deal with, clients that I deal with, they do need their medical bills paid, and they do

need to know they have some income during their recovery period. I don't recommend any changes in the availability of that type of coverage. I think it's basic, and it's good coverage. You need that.

I've been involved in auto accidents myself. It's good to have that to fall back on. You know you have coverage and you can get medical bills paid. I have people who didn't know they would qualify for PIP as a passenger -- injured people that didn't go get medical treatment. When they find out that they have the coverage available, they're very happy. So I don't recommend changes.

Your 105-day rule: the carrier basically has 60 days to respond; by sending a delay letter, they get another 45 days. In cases where people were truly eligible, which is more than half the cases that we investigate -- probably half, we don't catch them all -- we can resolve any issues that come up in that 60 to 75 days, not usually a problem for people who are entitled to the coverage; they're cooperative, and they give us the information.

On that 39 percent or 40 percent where they're not entitled to benefits, that takes us a lot longer to uncover. These people have the financial incentive not to provide information. They will delay in responding to us, they will respond incompletely, or they will provide additional false information.

We see phantom claimants. Claimant is listed on the police report as a passenger, he's getting extensive medical treatment, and he may be represented by an attorney. When we look into it, his name doesn't exist. There's no record on him anywhere. His Social Security number was never issued by the Social Security Administration. When we press on that, if he's represented by an attorney, he'll lose contact and eventually not-- Our effort

stops a lot of that, but that effort takes time. If somebody's not eligible, it takes an average of 90 to 120 days for us to complete our investigation. We are either at or beyond the requirement of the 105-day respond time to the carriers.

I think you might want to look at something along the lines, if someone is not responsive in providing the information that's needed for carriers to make that decision, there should be some way to extend that 105-day rule. Apparently, we have people who are entitled to benefits that may be denied. But conversely, and probably worse, we have a lot of people who are not eligible for benefits who are paid because of the 105-day rule. Those problems we run into and receive more and more frequently, and plenty others seem to get around the industry.

The disabled vehicle. We'll see someone who is the owner of an uninsured motor vehicle on the date of the accident. He's filed a claim. In over 20 years of investigating PIP claims, I have yet to see someone who lists "I have a vehicle and it wasn't insured." We generally find that vehicle late in the process -- 80, 90, 100 days -- and at that point we will be notified by the claimant or his attorney that the vehicle was disabled on an impact. Now we have to start a whole new investigation to determine if that's true. We have some ways to determine that. The vehicle has parking tickets on it before the date of accident and after the date of accident, either it wasn't disabled or someone was pushing it around town. We see moving violations issued upon the vehicle. We look at the oil change tags on it. We are very thorough at what we do, but that's not the purpose of being here today.

There is one other area where you can help us -- DMV records, motor vehicle records. I know that's an ongoing problem. I've been attempting to address it myself for several years, and I'm sure Clare would go along with me on that. It generally takes four to six weeks to get a written motor vehicle record back. It's the most critical element of what we do. All the investigation we do is to find out where the person lives on the date of accident and who lives there. That's late in the process again, especially when people are not being truthful. So at 90 days, at 100 days or a little longer, we find out we have ordered vehicle records on six or seven or eight people. It's going to take four to six weeks to get that other information. How could a carrier comply with the 105-day rule with that kind of turnaround time on the vehicle records?

Assemblyman, years ago I got a letter--

SPEAKER COLLINS: If I may--

MR. O'NEILL: Yes.

SPEAKER COLLINS: --do you have a solution to that?

MR. O'NEILL: Excuse me?

SPEAKER COLLINS: Do you have a solution to that?

MR. O'NEILL: Yes. Privatize it. Put it on the computer as the DMV records are in New York and other states, Florida. The second positive, we would be feeling as a company to rehire people that have been laid off at DMV at our expense and continue to pay the expense of the DMV records. The turnaround time of the records is absolutely critical. Apparently, we can get records by telephone. We have telephone access -- limited access -- for auto

insurance information. This problem is a very time-consuming and expensive process.

I'll give you an example. We've been told we're the largest single user of DMV records in this state. We use something like 300 to 500 records a day. We have a dozen people in my office who spend their entire day dialing into DMV. They get a busy signal on average of 20 to 25 times when they call in. When they finally do get through, they can run three searches, and they're off. On the average case we need seven.

SPEAKER COLLINS: Again, my question is, what would you have us do?

MR. O'NEILL: Hire more people or allow us to hire people at our expense to respond to this. We would make it available to the entire insurance industry. Right now, we have our own internal database network we've put together 14 years ago. We could add that to it and make it available only to insurance carriers. That's some way to get the information faster. Currently, we'll have to ask for an insurance record and get back-- The record will not be available for 180 days. How does that fly with 105-day rule? I need to know if somebody's Uncle Charlie had a policy.

SPEAKER COLLINS: If I may, and as I said earlier, we surely want everyone to be able to make their presentations, and so on. We have a number of people who would like to.

I will accept-- I think all of us will accept that there's a problem here, and that's why I asked what a solution would be. If it takes 130 days and the law says 105, obviously, you can't do it. So we have to deal with that.

MR. O'NEILL: We could deal with it more--

SPEAKER COLLINS: As I've said, you've gone into a lot of examples. We'll accept that. What we really are looking for is suggestions of how to make it better.

MR. O'NEILL: I suggest-- A 105-day rule, in most cases, that's probably enough time. When people are not being cooperative in providing information, there needs to be a mechanism. If I need to know where someone lived on a date of an accident, I have three false addresses, that takes me well past 105 days. I still don't meet-- And the reason I have a false address is because I have a claimant who has a reason to lie. If they haven't provided accurate information or don't respond to what the carrier asks for, there has to be some mechanism where that claim doesn't have to be paid. Extending the 105-day rule in that situation, that the people have not been cooperative, is one possible solution.

SPEAKER COLLINS: Assemblyman Doria.

ASSEMBLYMAN DORIA: Yes. I need a clarification. You said a significant number of people put in falsified PIP claims. But then you said most people would be covered anyway under PIP. So why would they try to false-- I mean, I understand the situation with the uncle and the wife. But if they have legitimate coverage on the PIP, which everybody should the way the system works--

MR. O'NEILL: Yes.

ASSEMBLYMAN DORIA: --why would they falsify claims, and how would they falsify claims? I can understand some examples, but maybe if you could give me some other examples. It just seems to me contradictory that there would be such significant number of false claims, since everybody's

covered by the \$250,000 rule. I can see the BI, the bodily injury, and the verbal threshold versus the, you know, the nonverbal threshold.

MR. O'NEILL: Actually--

ASSEMBLYMAN DORIA: But why PIP claims, specifically, since everybody has \$250,000?

MR. O'NEILL: Well, PIP claims is a launching pad for all bodily injury fraud as well. The thing we run into most often is someone that has uninsured vehicle, then they're not entitled to PIP in any circumstance that remained at all. There's case law on that.

ASSEMBLYMAN DORIA: Yes, but there wouldn't be that many--

MR. O'NEILL: Well, there's this new number--

ASSEMBLYMAN DORIA: You're saying that most of these claims are uninsured vehicle people?

MR. O'NEILL: Not most of them. We probably run into these three things about equally. That's No. 1, that's the one we like to find because it's pretty cut and dry. He had a car. He had no insurance. We have the disabled vehicle problem now -- the second problem that we have with people looking to avoid the verbal threshold. So they will pursue coverage from the vehicle they're in almost anywhere else but if their spouse or parent had the verbal threshold available. We have people also that have moved themselves from one house to another retroactively to access higher UM coverage in case of an abandoned vehicle. A lot of these involve fraud rings, some of them don't.

ASSEMBLYMAN DORIA: Excuse me. What's UM coverage?

MR. O'NEILL: Uninsured motorist coverage. If you were struck by a passing vehicle and you live with your uncle and he has minimum coverage on that, well, that's nice, you get \$15,000. However, if your other uncle has \$250,000, it would be more beneficial if you have lived there.

ASSEMBLYMAN DORIA: But again, the PIP-- Everybody has \$250,000. I understand all the rest. I'm trying to understand why somebody would place falsified claims under PIP. I understand bodily injury. I understand uninsured motorists. I understand why you would do it with the verbal and the nonverbal threshold. My question is, why specifically would someone put in a falsified PIP claim, given the fact that their PIP coverage no matter where you are or what kind of policy-- If you have a policy, I understand that. Why you would put in a falsified PIP claim, since it's 250,000 max for everybody?

MR. O'NEILL: Well, if you're actually injured in an accident, you would be right. But if you have a minor injury in an accident and want to pursue a bodily injury claim, you're certainly going to avoid the verbal threshold by claiming no coverage/some coverage somewhere else. We have claimants that file multiple claims under slightly different names, and they're not real people. They're people only on paper.

ASSEMBLYMAN DORIA: And those are all--

MR. O'NEILL: These are false claims.

ASSEMBLYMAN DORIA: Again, maybe I'm thick, but let me just try--

MR. O'NEILL: For us to uncover that--

ASSEMBLYMAN DORIA: I'm trying to understand. You're going back to the verbal threshold. Okay. What I'm saying is not the verbal threshold. Forget about anything bodily injury. I'm talking about pure and simple PIP claim. Why would somebody falsify a PIP claim? Forget about the bodily injury, forget about verbal threshold, why would they falsify the PIP claim? That's the issue I'm trying to get clear here.

MR. O'NEILL: In almost every case we find is to format a bodily injury claim of some sort. And most of the time, they would not be entitled to file that bodily injury claim. That's where most of your money comes from.

ASSEMBLYMAN DORIA: So you're saying that the PIP claim is only-- The reason why they falsify--

MR. O'NEILL: It's a vehicle.

ASSEMBLYMAN DORIA: --their coverage so that they would be under another policy that gives them the opportunity to get the bodily--

MR. O'NEILL: That's correct.

ASSEMBLYMAN DORIA: --injury benefit.

MR. O'NEILL: That's correct.

ASSEMBLYMAN DORIA: That's the only reason.

MR. O'NEILL: That and the--

ASSEMBLYMAN DORIA: And the uninsured motorists?

MR. O'NEILL: Right. We have--

ASSEMBLYMAN DORIA: Those are the two reasons. Okay, I just wanted to clarify.

MR. O'NEILL: We have 39 percent of the claims we investigated last year where they have those reasons.

ASSEMBLYMAN DORIA: That's 39 percent?

MR. O'NEILL: Thirty nine percent. The last couple of months--

ASSEMBLYMAN DORIA: What about the--

MR. O'NEILL: --it's been 42 percent and 44 percent.

ASSEMBLYMAN DORIA: What about the other 61 percent of the claims that are--

MR. O'NEILL: Well, again, we don't catch it all. We can assume that they're all nice, innocent people that have valid claims. We're not perfect at our job -- it's probably closer to 50 percent file false claims.

KEVIN D. SCHWEER: At times--

MR. O'NEILL: Go ahead.

MR. SCHWEER: At times, one other reason we find is that we have resident relatives that don't want to get their insurance carrier involved, where they will have a claimant that does have coverage in his household, and he will go to his uncle and explain no-fault to the uncle. And the first thing the uncle will respond is, if his vehicle was not involved in the accident, he does not want to involve his insurance carrier. The first thing, generally, they are going to feel is that their rates are going to go up. So many times the resident relative will go back to the injured party and tell them, "Do not file under my policy."

MR. O'NEILL: I think your point is well taken on that, and in that situation, we have someone who is going to get PIP benefits. They're entitled to it, and they'll either get it from policy A or policy B. I agree. That's not the problem we run into most of the time.

ASSEMBLYMAN DORIA: Yes, I would say in the end somebody's going to pay, so it really doesn't matter.

MR. O'NEILL: Right.

ASSEMBLYMAN DORIA: From my point of view, it's not really fraud, because--

MR. O'NEILL: But that's not the problem we run into.

ASSEMBLYMAN DORIA: Because they've got to pay it out of one policy or another and there is a maximum 250,000. So that doesn't seem like fraud to me.

MR. O'NEILL: You would be surprised when we find a verbal threshold, the person that was getting extensive treatment suddenly gets cured. It's like they went to Lourdes. They can't make a bodily injury claim. The need for medical treatment disappears.

SPEAKER COLLINS: Assemblywoman.

ASSEMBLYWOMAN FARRAGHER: I would just like to comment on the availability of the motor vehicle records. It is a problem of not having enough positions filled in the Department of Transportation in that Division. And it not only affects private companies such as Mr. O'Neill's, but it also affects our own Insurance Fraud Department. And Mr. O'Neill and I had had a meeting with the Director, and we discovered that they're running into the same problem. So there is something that does need to be addressed. The Motor Vehicle Division is doing the best they can given the personnel that they have. Mr. O'Neill had suggested setting up a fund where the insurance industry would fund certain positions, and that was frowned upon by the

Department. So we're still at square one on that proposal, but that was one way that they thought they could resolve their problem.

MR. O'NEILL: There is budget constraints. Again, the industry, my own company would be more than happy to pay for the cost of the employees. It is that critical for us in getting records on time.

SPEAKER COLLINS: I heard you say that. It intrigued me. You've said it again. The only thing we have in the middle of that is this is frowned upon, but I'll talk to the Assemblywoman about that and see what is going on there.

MR. O'NEILL: We would make the records available specifically to the insurance industry and any attorneys involved in it. That's our only business. That's all we do is investigate insurance claims. These records are not only critical to PIP, they're critical for every aspect of auto coverage that we're involved in, specifically for fraud. Title histories on a vehicle, we find the passenger in one car had owned the other vehicle and vice versa. And without those records, we don't know that.

SPEAKER COLLINS: Assemblywoman.

ASSEMBLYWOMAN FARRAGHER: One of the problems that we ran up against was at the same time that this was all happening was the confidentially issue of motor vehicle records being the No. 1 headline in the papers.

MR. O'NEILL: That was perfect timing--

ASSEMBLYWOMAN FARRAGHER: Yes. And so it was just not a good time.

SPEAKER COLLINS: Any questions from any other member?

(no response)

Mr. O'Neill, thank you very much for coming in and getting in, particularly on a personal note, what you're doing helps all of us. Fraud, as we've heard, time and time again is costing us all money.

MR. O'NEILL: This is only one small aspect of it, also. And it's probably actually a minor aspect than even other aspects of PIP fraud. We can see where the numbers are, and again, we don't investigate anywhere near the total number of claims that are made each year. And that numbers are like this for a small company, it's incredible.

SPEAKER COLLINS: Thank you very much -- appreciate it.

MR. SCHWEER: Excuse me.

I'd like to add one thing.

SPEAKER COLLINS: Please.

MR. SCHWEER: John Kozak had touched on with reference to entering -- proving that you had insurance at time of licensing. I think that was a very good idea, but I think it should be more at time of registration of your vehicle. As you see in the state of New York, presently, when you register a motor vehicle, you do have to provide proof of insurance. That information is recorded directly onto their computer system. If at any time that your insurance lapses during the course of the registration of that vehicle, the insurance carrier is required to notify the New York Department of Motor Vehicles, at which time your registration is then suspended. I think that is something that New Jersey ought to take a look at implementing.

SPEAKER COLLINS: Well, as you can see all the heads shaking up here, we already do that. Is New York more successful than us?

MR. SCHWEER: It is not recorded on the computer system. It is filed under microfiche. And presently, there's nothing policing the information that you're going to put down when you register that vehicle. Reviewing motor vehicle records on a daily basis for the past 18 years, I've come across a lot of interesting things when I get a copy of the microfiche back. There have been a lot of people at time of registration that they've been putting they have New Jersey insurance. Just information that is just -- no validity.

MR. O'NEILL: You can list Abraham Lincoln on there and nobody checks it.

MR. SCHWEER: There is no control. In New York, they do have to verify. They have to come in with documentation that they do have valid insurance at the time of registration.

SPEAKER COLLINS: Now, when you say the time of registration in New York, if I were in New York -- when I get my registration in February, I would have to, when I send it back and the information and check with it -- I would have to indicate my insurance company. Is that what you're saying? That's when it's done in New York?

MR. SCHWEER: That is correct.

SPEAKER COLLINS: And then it's continually reviewed in New York, while in New Jersey, we sort of set it aside.

MR. SCHWEER: That's--

MR. O'NEILL: We accept what's listed and it goes away.

ASSEMBLYMAN CHARLES: What do you have to send--

SPEAKER COLLINS: Assemblyman.

ASSEMBLYMAN CHARLES: Does Jack have to send a copy of his policy along with his registration? Is that what they do in New York?

MR. SCHWEER: I'm not exactly sure how they validate the information, but I do know on the back end, if that policy is to lapse during the course of the vehicle registration, the Department of Motor Vehicles is notified and action is then taken where the registration privileges of that party are revoked.

ASSEMBLYMAN CHARLES: Yes, but we have that requirement in the State of New Jersey, too. And the process of notifying the DMV of your insurance, that's on the form that we send back also. That's why I have to question about a deck sheet or a face sheet -- does that also have to be sent back with your registration?

MR. SCHWEER: In New York?

ASSEMBLYMAN CHARLES: In New York.

MR. SCHWEER: In New York, I'm not exactly sure what their process is.

ASSEMBLYMAN CHARLES: Because when we send it back in New Jersey, we have to indicate the insurance company, what our policy number is, and so on. That's our representation, the applying registered representation, about where their insurance comes from.

MR. O'NEILL: If you read the applications and some of the bizarre things that are listed on there for insurance coverage, obviously, not much is being done to check the validity of that, at least early on. Carriers are

required to notify you if the policy lapses earlier. That's nice -- there's no policy existing, nobody's going to be notifying you.

ASSEMBLYMAN CHARLES: But you see, now, that's the-- The problem you are addressing now is not one that the Legislature-- The Legislature has done all that they can do. Now if the policy gets canceled for whatever reason, the question then becomes, does -- is the practice in New Jersey is where the carriers are notifying DMV, or are the carriers notifying DMV and nothing is happening after that's being done?

MR. O'NEILL: Even if the carriers were notified and proper action was taken, again, up front--

ASSEMBLYMAN CHARLES: Which is the case though? I mean, which is the case?

MR. O'NEILL: If I listed Abraham Lincoln and for--

ASSEMBLYMAN CHARLES: I'm sorry, Jack.

SPEAKER COLLINS: I hear that. Let me ask, both of you said "and proper action is taken." Let's go back to New York. What does New York do-- Do you know what New York does when they find out there's a vehicle that is registered no longer is insured?

MR. SCHWEER: They suspend your registration.

SPEAKER COLLINS: They suspend your registration.

MR. SCHWEER: They suspend your registration privileges.

SPEAKER COLLINS: So you're still out driving when--

MR. O'NEILL: Unless you get caught.

SPEAKER COLLINS: You're found out when you get caught.

MR. SCHWEER: Unless you get caught.

SPEAKER COLLINS: Okay.

MR. O'NEILL: But it does act as a deterrent.

SPEAKER COLLINS: Assemblyman Garrett.

ASSEMBLYMAN GARRETT: Just a quick question. In your testimony, you've written and you also have testified to this -- you said you have uncovered attorneys who have all auto accidents clients sign an affidavit of no insurance at the initial interview simply to save them from having to send information to insurance companies.

MR. O'NEILL: Yes.

ASSEMBLYMAN GARRETT: How do you know that?

MR. O'NEILL: Excuse me?

ASSEMBLYMAN GARRETT: How do you know that?

MR. O'NEILL: Claimants have told us that. "When did you sign an affidavit of no insurance?" "They kind of gave it to me with the paperwork"; one signed it blank; one had it filled out later, lots of times.

ASSEMBLYMAN GARRETT: Okay. And with regard to the-- On that note still, do the carriers follow up with the Department as far as the fraud in that situation?

MR. O'NEILL: I believe they do. Once we are done with the investigation, we give it back to the carrier. What they do with it after that, we really don't follow up on it.

ASSEMBLYMAN GARRETT: With regard to the fraudulent PIP claims that you talked about in various different capacities here, is fraud that's being perpetrated here due to the actions of the medical community that is providing the treatment?

MR. O'NEILL: Well, that's a different aspect of it that I--

ASSEMBLYMAN GARRETT: Is that an area you're--

MR. O'NEILL: --touched on early on. If someone is accessing medical treatment to build a bodily injury claim--

ASSEMBLYMAN GARRETT: Yes.

MR. O'NEILL: --people that are not injured who get treatment. We have people who are injured, but treat much longer than necessary. We have medical providers providing expensive and unnecessary medical treatments, diagnostic treatments. These are all reasons of what, specifically, I was dealing with today. These were additional reasons.

ASSEMBLYMAN GARRETT: But it's something that you've investigated over your number of years and you've come across.

MR. O'NEILL: Yes.

ASSEMBLYMAN GARRETT: Okay. And do you have any information -- how is that being directed? Is that just being done at the, I'll say, the whim of the medical community, or is that being directed in any way, shape, or form by the attorneys that are involved in lawsuits, if you know?

MR. O'NEILL: I have no specific information on that. Based on my experience, it's a combination of both.

ASSEMBLYMAN GARRETT: We heard testimony previously from the bar that it's not the legal community that's directing any of this. That it's the medical community completely. That they're the ones who know what needs to be done in order to meet the verbal threshold. And so it is the medical community that is simply the ones that are leading their patients to

get the unnecessary or extensive treatment -- that the bar is not involved. But you're not -- that's not your area?

MR. O'NEILL: Well, again, I have no specific information, but when I see the same attorneys' names referring people to the same doctors and the same high medical bills coming back from those doctors, I think if it walks like a duck and it quacks, it's a duck.

ASSEMBLYMAN GARRETT: Thank you, Mr. Assembly Speaker.

SPEAKER COLLINS: Thank you very much for your testimony, gentlemen.

MR. O'NEILL: Thank you.

MR. SCHWEER: Thank you.

SPEAKER COLLINS: If I may, we have a number of other people to testify. In fact, 10 different testifiers or groups of testifiers. If I may, again, not at all trying to cut anyone short, but if I may, if we could keep in a perspective of roughly 10-minute presentations -- unless the members of the Committee extend it -- I think it would be helpful. And we have a number of people who are going to be testifying on fraud. We are willing to stipulate that there is fraud. There is all kinds of fraud. There are very skillful people committing fraud. If we can move past that to solutions and recommendations, that's what we're really about. So keeping that in mind in general-- As I said, I don't mean to disrespect anyone. I surely want you to make your points, but if we could keep some kind of time frame in mind. Thank you.

With that, we have John Friedman and Donna Augustyniak. Thank you both.

Assemblywoman Farragher.

ASSEMBLYWOMAN FARRAGHER: I would just like to mention that it was through Mr. O'Neill that Donna Augustyniak was suggested as a good person to testify before this Committee.

SPEAKER COLLINS: Well, that puts the spotlight on you. I don't know if that good or bad, but thank you both for coming, please.

JOHN P. FRIEDMAN: Mr. Speaker, thank you.

My name is John Friedman, Assistant Vice President and Legislative Counsel with USAA. Donna Augustyniak is a Manager in our Special Investigations Unit, based here in New Jersey.

Very quickly about USAA: It's a reciprocal that provides financial services to members of the U.S. military and their families. We're based in San Antonio. We're the fifth largest auto writer in the United States and the fourth largest home owners insurer in New Jersey. We're the eighth largest writer of auto insurance and write about 73,000 policies. Donna's resume is part of our written testimony. I won't read it, except that it documents her extensive experience and background in insurance fraud, her participation in many organizations dedicated to fighting insurance fraud. And I'll let her go on from there.

DONNA AUGUSTYNIAK: Thank you.

USAA's claims security mission is to maximize fraud cost avoidance while minimizing unwarranted cost and risk within claims. This includes providing fraud and auto theft control support to our regional operations, providing training, advice, and assistance on fraud and auto theft control-related matters to regional operations and others as warranted to

promote and support external and internal initiatives and resources that enhance fraud and auto theft control and to support law enforcement action as appropriate.

Each year thousands of dollars are lost to automobile fraud. This money comes out of the pockets of all of us who purchase automobile insurance, and it is for this reason that special investigation units were formed to investigate claims that appear to be fraudulent or suspicious.

In a recent study by the Insurance Research Council, 36 percent of 1000 people in a telephone survey, living in the United States, felt that it was all right to overstate their insurance claim to make up for premium paid in previous years -- up from 19 percent reported in 1993. Over 40 percent, up from 22 percent in 1993, felt it was acceptable to pay a claim to get out of paying a collision deductible the claimant might otherwise be required to pay. The results speak for themselves. This is a huge growing problem for everyone.

Insurers have invested millions of dollars to combat auto insurance fraud and abuse in the State of New Jersey. The statutory and regulatory loopholes and lack of prosecution of insurance fraud cases continue to be a major problem. For example, our insurance investigators have limited access to DMV records, which makes it more difficult to investigate insurance fraud cases. It can take up to six weeks to get information by mail, and insurance investigators are limited to doing one title search per day. No one has the time to stand in line for hours to verify information, only to be told they have to come back the next day if they have more than one file which requires that verification. Law enforcement, insurance investigators, and licensed private

investigators should be granted easier access to the Division of Motor Vehicle records.

There should be language in the fraud statute allowing insurance investigators, whether working for State or county agencies or in private industry, immunity to work together to combat insurance fraud. They should be able to access appropriate records, as needed, relating to their investigation. Today, there is only immunity for communications within the Insurance Fraud Division. An expansion of the current fraud immunity section of the statute so that it protects communication with other fraud investigators would facilitate more complete and timely investigations, which would result in faster resolution of claims.

I congratulate the Legislature on passing the Health Care Claims Fraud Act. This is a step forward and shows an interest in the insurance fraud problem in New Jersey. We recommend that the Legislature go one step further and make all insurance fraud a criminal offense. Perhaps, it's time to pass a specific insurance fraud criminal code allowing prosecutors the leverage to charge these groups or individuals appropriately, instead of prosecuting for theft by deception, which is the crime used in most instances today.

The people that are responsible for insurance fraud schemes are often the professionals who create the scheme. These are usually well thought out for the purpose of scamming the insurance company to make a huge profit. These individuals, many times when caught, take this in stride as the cost of doing business. They frequently lose their licenses for a brief period and are back in business within months.

There are a number of ways we can attempt to attack this problem. First, grant immunity to the members of the professional boards so they can make appropriate decisions without the threat of personal lawsuit. Second, make penalties for professionals who engage in patterns of fraud accountable with much stronger penalties than one single insurance fraud. The new Health Care Claims Fraud Act is an important first step. The next and more critical step is enhancement of prosecution.

Another step to consider is to change the PIP laws to involve the insured more directly by providing that the insured or claimant seeking first-party benefits under a policy can be compelled to provide a statement under oath with regard to their treatment.

In PIP arbitrations, insurance companies defend claims brought by a provider, represented by an attorney who presents an assignment of benefits at a PIP arbitration with no insured present to verify the treatment. This practice usually is seen more frequently in cases involving subjective complaints about pain and involving diagnostic procedures. In many cases, we suspect that the individuals involved in these claims have multiple names, addresses, Social Security numbers, and fit the profile of the professional claimant.

Yet the system allows the insured, claimant, or patient to step out of the picture. This is almost impossible to prove, and the arbitrator invariably awards some amount, plus attorney fees, to the claimant. This is a typical pattern in some of the larger ring-type operations that involve attorneys, medical providers, and runners and cappers.

Peer review of PIP claims is another avenue to deter costs that should be considered by the Legislature. This has been successful in Pennsylvania and would improve our ability to deter and detect frauds. There also has been some testimony about New York's arbitration system. While that system works better than New Jersey's, New York also has a good medical fee schedule and case law that maintains the integrity of the verbal threshold, which, in our view, are more significant contributors to the successes of the New York system.

Vehicle fraud also continues to be a major problem. An increasing number of insureds who find themselves in financial difficulties, as a result of either high mileage on a leased vehicle or with a vehicle purchased with high monthly payments they cannot any longer afford, burn or report their vehicles stolen to have the insurance company pay off the lease or loan.

A remedy might be to allow insurance companies to deny all payments, whether to the loss payee or insured, and make the insured pay the loss payee through restitution in the courts after he or she is prosecuted. The contract for the car loan or lease is an agreement between the insured and the lease or loan company or bank, and it should not be the burden of the insurance company to pay for losses that are a deliberate act of fraud by the insured. The insurance company would continue to be responsible to report the fraudulent act to the appropriate law enforcement agencies, as required by the statutes.

I've attached a number of articles to my report, and I thank you very much for the opportunity to address you this morning

SPEAKER COLLINS: If I may, you in your statement said that peer review of PIP claims is another avenue to deter costs that should be considered by the Legislature. This has been successful in Pennsylvania. Could you tell us how it's been successful, and what that statement means -- it has been successful?

MS. AUGUSTYNIAK: It has actually decreased claims and settlements by some 8 percent. There is control by the medical community, and the people that are actually reviewing the claims are physicians, rather than attorneys, who have an understanding of that--

SPEAKER COLLINS: I understand that. But what-- When you say that 8 percent number, would you elucidate on that?

MS. AUGUSTYNIAK: Where did I get that from?

SPEAKER COLLINS: Well, what does it mean? Where-- What was 8 percent-- There were 8 percent less fraudulent claims? There were-- If you would just make a statement, maybe that would help me.

MS. AUGUSTYNIAK: There were 8 percent less claims made.

MR. FRIEDMAN: Fewer.

MS. AUGUSTYNIAK: Fewer claims made as a result of that. And the amounts of the claims have also decreased somewhat.

SPEAKER COLLINS: So because there's a peer review with doctors looking at what other doctors have said is wrong with this person, right--

MS. AUGUSTYNIAK: Correct.

SPEAKER COLLINS: --that 8 percent fewer claims have taken place? Could this be tied to 8 percent fewer accidents? Do we know if there were any fewer accidents?

MS. AUGUSTYNIAK: I don't believe there were.

SPEAKER COLLINS: So it's the same number of accidents, but because they're afraid of these doctors blowing the whistle on them, you think your statistic shows 8 percent?

MS. AUGUSTYNIAK: I think it's much more beneficial.

SPEAKER COLLINS: Okay. Thank you.

Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: Thank you, Mr. Speaker.

I noticed on Page 5 of your testimony that you say toward the close of the last paragraph, "The lease or loan company or bank should not be the burden of the insurance company to pay for losses that are a deliberate act of fraud by the insured." Are you saying that if an insurance company today has proof that an insured deliberately burned his or her vehicle that they're still compelled to pay for that loss?

MS. AUGUSTYNIAK: Yes, that's correct.

ASSEMBLYMAN DiGAETANO: There's nothing in the law that permits them to deny that payment?

MS. AUGUSTYNIAK: That they do not deny the payment because there is a--

MR. FRIEDMAN: Loss payee.

MS. AUGUSTYNIAK: --loss payee listed.

ASSEMBLYMAN DiGAETANO: I understand. But you close that with “a deliberate act of fraud by the insured.” We have insurance companies on a regular basis denying payments for fraudulent claims where there was no injury or the injury occurred some other way or there was no treatment, etc. And what you’re saying is for physical damage or for collision or comprehensive loss, whichever this is, if it’s a deliberate act, the insurance company is compelled to pay?

MS. AUGUSTYNIAK: If there is a loss payee that the insurance company is paying, and that we have to go after the insured in civil court.

ASSEMBLYMAN DiGAETANO: Oh, I see. What about if the insured is the payee? Can the insurance companies currently deny their payment?

MS. AUGUSTYNIAK: If the insured is the payee, yes, we can.

ASSEMBLYMAN DiGAETANO: Okay, so this-- What you’re contending is, that only implies where there is a lease company or a finance company of some kind?

MS. AUGUSTYNIAK: Correct. What I’m saying is the insured should be responsible for the act they’ve committed.

ASSEMBLYMAN DiGAETANO: On those cases -- I agree with what you’re saying -- but in those cases, isn’t it really the insurance that the lease company or the finance company is requiring the vehicle owner, if you will, or lessee to carry. Isn’t that correct?

MS. AUGUSTYNIAK: That’s correct.

ASSEMBLYMAN DiGAETANO: So, indirectly, it’s the financial institution’s policy and that’s what makes them the lost payee?

MS. AUGUSTYNIAK: Correct.

ASSEMBLYMAN DiGAETANO: Okay. Thank you.

SENATOR BENNETT: Any other questions?

ASSEMBLYWOMAN FARRAGHER: Mr. Chairman.

SENATOR BENNETT: Yes, I'm sorry, Assemblywoman Farragher.

ASSEMBLYWOMAN FARRAGHER: Mr. Chairman, I guess it was in 1992, when I was Chairman of the Insurance Committee, we had a day where we had people come in and testify on auto arson, and we had a whole presentation on it. And what we discovered was that, I think it was, 90-plus percent of all auto arsons were owner involved. They were typically done to avoid high car payments or to get out of leases. The way that these things could be identified by the insurance companies was the lack of any personal property of the vehicle owner in the car. And the notion that people would steal cars and then go and burn them was likened to a bank robber robbing a bank and then burning the money.

It was after that, I believe, that we first instituted a requirement that the fire departments report and the police departments report the auto arsons -- suspected arsons. It hadn't been done up until that time on a regular basis. It wasn't a requirement. I believe it is now. I'm pretty sure we did that at some point between then and now. That particular type of a fraud is a problem, and I think that maybe we need to address it in a different way than we do today.

SENATOR BENNETT: Okay.

Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: Thank you, Mr. Chairman.

Just to follow up, Ms. Augustyniak, in that same paragraph when you talk about the loss and insuring that the person who commits the deliberate act of fraud should reimburse, I guess you're saying, the insurance company-- Are you saying now that the insurance companies do not have the ability to seek compensation from the policyholder if they deliberately committed an act of fraud and torched their vehicle? Or are you suggesting that the policy -- that the companies find it difficult to get that compensation? Are they prohibited by law, or are they finding it difficult to get reimbursed?

MS. AUGUSTYNIAK: They're not prohibited from filing suit through the civil court. But to get a lien against a person's property or something down the road through the court is an avenue I suppose that could be pursued, but it's costly for the insurance industry to do that. And I don't believe that they should have to go through that effort if it's someone's deliberate act.

ASSEMBLYMAN DiGAETANO: So, under your suggestions to this Committee, how would that restitution occur?

MS. AUGUSTYNIAK: It could occur either through the Attorney General's Office or through the Insurance Fraud Division.

ASSEMBLYMAN DiGAETANO: Who would have to pursue the same process to collect, wouldn't they? A lien on their assets or something of that nature?

MS. AUGUSTYNIAK: Yes.

ASSEMBLYMAN DiGAETANO: So you're suggesting that the State do it rather than -- on behalf of the insurance company?

MS. AUGUSTYNIAK: Yes. I'm saying that some teeth should be put into it so that these things get done, and they get done by the appropriate agency.

ASSEMBLYMAN DiGAETANO: Is there any other area of civil law in the State of New Jersey that you might be familiar with where that's permitted?

MS. AUGUSTYNIAK: No.

ASSEMBLYMAN DiGAETANO: Thank you.

SENATOR BENNETT: Thank you very much.

The next witnesses that I ask down are from the Consumers for Civil Justice, Dolores Phillips, the Chairperson, and Peter Guzzo, the Executive Director and Legislative Agent.

Good morning.

DOLORES PHILLIPS: Good morning. I think it's still morning, or is it afternoon? Good afternoon. My name is Dolores Phillips, and in this particular role today, I am serving as the Chair of Consumers for Civil Justice. I am here today representing the Board of Trustees, who has authorized me to come before this esteemed Committee and offer to you our decisions and discussions that have resulted in recommendations that we would like to offer to the Committee today.

On behalf of the Board, I would like to thank Chairman DiGaetano, and I guess which was Chairman Collins but now Chairman Bennett, for the opportunity to testify today. To my left is Myles O'Malley, who is a Board member, and also the Director of the White Lung Association.

To my right is Pete Guzzo, who is the Legislative Agent and Executive Director of Consumers for Civil Justice.

The coalition represents 15-member organizations that span from consumer to citizens organizations to environmental and labor organizations. The combined membership is approximately a million members, and our role, as through our charter, is actually to protect access to the civil justice system in New Jersey. I'm going to provide you the Board's positions and our recommendations today for auto insurance reform, and I will try to make that succinct. And Myles O'Malley will be following me with the statement on our specific recommendations. Mr. Guzzo is present here, as you know, who has over 25 years of experience both through the Legislature and Department of Insurance, on automobile insurance itself -- will be available for questions also.

While the CCJ Board has not taken positions on all aspects of automobile insurance reform, the issues of maintaining or abolishing no-fault or repealing the verbal threshold and some of-- Excuse me, let me restart that. I'm trying actually to read from a statement, which is always difficult for me, because I've heard the extemporaneous. I wanted to point out that the CCJ Board has not taken positions on all of these issues, but we are able to do today is present to you the definitive positions that we have pulled together. My point here was that we have not taken a definitive position on abolishing no-fault or on the verbal threshold, but we have in other areas that we would like to offer to you today.

CCJ is opposed to both unduly limiting the ability of victims of an automobile accident to the access to courts, and we are supportive of maintaining the level of care provided to these victims at the same time and at

the same level as provided today under no-fault. CCJ also believes that it is possible to reduce rates without reducing the rights or benefits to the citizens of New Jersey, and this is what we are asking this esteemed Committee to take strong consideration of.

I would like to give you a brief perspective on the automobile insurance system and from our perspective. While you know that the purpose of liability insurance may be to protect the assets of the insured against judgements, the purpose of compulsory liability and no-fault insurance in New Jersey is to provide reparation to the innocent victims of careless, reckless, and negligent and at-fault drivers for bodily injuries and property damage up to at least 15,000, 30,000, and 5000 in benefits in first-party medical coverage up to 250,000.

Although compulsory no-fault PIP insurance provides reparation for so-called special damages, both economic and medical losses, to the victims of automobile accidents, regardless of fault, general damages remain a viable aspect of New Jersey's jurisprudence and provide indemnification for other than economic losses, i.e., pain and suffering, and for economic loss that is not compensable under no-fault, based on a fault or negligence system. Accordingly, the argument that many drivers are compelled to purchase such coverages without needing it, that is that they have little or no assets to protect, is specious. Compulsory liability insurance, therefore, is not confiscatory considered within the context of its historical purpose and function. In fact, to the contrary, compulsory liability insurance provides reparation for the victims of motor vehicle accidents whatever their assets or economic status.

Furthermore, compulsory liability insurance appears to be undeniably mandated by several significant sociodemographic factors specifically relevant to New Jersey, which increases the risk of and the exposure to motor vehicle accidents. Consequently, the argument that compulsory liability insurance drives up the rates of auto insurance is ill founded. Although auto insurance rates are ultimately based on claim frequency and severity, the factors affecting both frequency and claim are related to causes external to the auto insurance system. These factors include, but are not limited to, New Jersey having the second highest rate in the nation for motor vehicle accidents, the second highest rate for traffic volume, and the fact that New Jersey is the most densely populated state per square mile in the nation.

These factors all contribute to a high incidence of motor vehicle accidents and underlie the need for New Jersey to maintain an avenue of legal redress for noneconomic, general damages and for economic damages beyond the limits of no-fault coverage. Finally, New Jersey's compulsory liability insurance law has also been sanctioned by the New Jersey courts as evincing and promoting a public policy to provide financial protection for the victims of automobile accidents.

We have also noticed that the following trends indicate how consumers have borne the brunt of so-called auto insurance reforms in New Jersey, while the industry has prospered. And we'd like to give you some facts on these. The no-fault threshold, which restricts the rights of an injured victim of an auto accident to sue, has risen from \$200 in 1972 to \$1500 in 1984 to \$1800 in 1987 to a verbal threshold in 1988. From 1972 to 1990, personal injury protection, also known as PIP, benefits were unlimited. In 1990, the

PIP benefits were reduced to \$250,000. Also in 1990, the PIP benefits were made subject to a \$250 deductible and a copay of 20 percent of benefits up to \$5000. Now this amounts to a policyholder obligation of up to \$1250 on a \$5000 PIP claim. And additionally since 1972, the mandatory minimum limits of liability coverage have remained unchanged as the 15-30-5 scenario. While the rights of victims of auto accidents to recover for damages and the level of PIP benefits has been reduced over the years, the average premium has continued to rise, indeed almost double, from \$640 in 1987 to \$1020 in 1997, and the industry has prospered.

It is the auto insurance industry that we ask this Committee today to tackle. The National Association of Insurance Commissioners, NAIC, has indicated that auto insurance industry profits in New Jersey rose from 4.1 percent to 7.7 percent in 1995, while its investment income for the same year was 11.2 percent -- almost twice the national average for insurance companies which is 6.8 percent. In 1996, according to the NAIC, industry profits reached an average of 8 percent, up from 7.7 percent in 1995. Profits are at their highest level in New Jersey since 1986.

Furthermore, in 1995 profits--

SENATOR BENNETT: Dolores, excuse me, just a second.

Scott.

ASSEMBLYMAN GARRETT: Just a quick question on that point.

The fact that their profits are going up from the investment side of the picture, is that indicative of what's happening on their loss ratio at the same time?

MS. PHILLIPS: I can't answer the loss ratio, but I think that we do need to point out the fact that the profit has continued to rise and benefits lowered is what specifically concerns us.

Pete, could you answer that, because I don't understand that aspect of it.

PETER P. GUZZO: Well, you can't disassociate their investment earnings because they're drawn from their premiums. I mean, it's a combined picture. There are other factors involved with their loss ratio, but the bottom line is they make money off of investments.

ASSEMBLYMAN GARRETT: I'll just close it as-- I don't invest really, but what I hear is that we've gone through a fairly good stock market cycle of recent, so it would seem to be that maybe the industry is doing well in the investment side of the picture because they are investing well in the stock market, which is fine. And that's appropriate for any industry to be involved with, but that does not say that they're equally doing as well on their loss ratio side of the picture. And that's why we're here, as a Committee, to investigate -- to find out, whether or not things are as rosy as you are picturing them, as far as them simply doing business in the auto insurance industry.

MR. GUZZO: We have specific recommendations to help them reduce the loss ratio, which Mr. O'Malley will get into. But, you know, Assemblyman, just a comment, the fact that the consumers premiums have risen -- I don't know if all consumers' investment profits have doubled the way the industry has. And from the consumers' point of view, the point we're making is, consumers should not bear the brunt of auto insurance reform while the industry is prospering -- however you define prospering. But we agree--

And the group will address how to reduce the loss ratio with cost-saving proposals.

ASSEMBLYMAN GARRETT: And just one last question on that. In light of the fact that you're suggesting that the industry, as a whole, is doing at their highest level in years, is there an indication that New Jersey is now being bombarded with carriers who previously did not want to do business in this state and now saying that they want to come back into New Jersey and do business?

MS. PHILLIPS: I actually was just going to go into that in my testimony. May I continue?

ASSEMBLYMAN GARRETT: Certainly.

MS. PHILLIPS: Thank you.

If I may continue, furthermore -- to just finish with the testimony on the issue of rates and profits -- in 1995, the profits in comprehensive and collision lines of auto insurance -- this is nothing to do with pain and suffering -- were remarkably high, 43.1 percent in New Jersey versus 11.7 percent nationally. Consumers are calling for change, which you all certainly saw through the last election. And J. Robert Hunter, who is the Director of Insurance for the Consumer Federation of America, has stated recently in an article in the November 9, 1997 edition of *The Record* that rates for comprehensive and collision should be dropped significantly by 10 percent or more and "that should occur now." We reiterate that call to this Committee.

Likewise, a flurry of recent developments indicate that the outlook for New Jersey auto insurance companies is much brighter and has been brighter than the insurance industry would have us believe. For example, two

major auto insurers, both State Farm and New Jersey Manufacturers, recently announced large rebates to their customers. Allstate has decided it will continue to do business in New Jersey. New Jersey Manufacturers is expanding its physical plant in Trenton by 42 percent. Metropolitan Property and Casualty Company, one of the nation's largest insurers, has entered the New Jersey auto insurance market. Only two of the 66 auto insurance groups that do business in the state have rate hikes pending before the State Department of Banking and Insurance. The Palisades Safety and Insurance Association, which came to New Jersey just five years ago, has grown into the tenth largest auto insurer in the state and is ready to open a second company that will take it from 48,000 to 200,000 policies.

Let me address the -- some of the proposals that have actually come forward to the Legislature that we feel have been predominately anticonsumer. If the purpose of compulsory liability-no-fault auto insurance is to protect the innocent victims of careless, reckless, negligent, and at-fault drivers, what would be the consequences of changing this system to a so-called choice or minipolicy system?

Let me provide you an example. Let's say Driver A chooses to give up her right to sue and be sued or she chooses a minipolicy which provides her with lower than current limits of liability insurance coverage. She then proceeds to ram into Driver B's auto. Driver B cannot sue Driver A, or if she can sue, she can only sue for a minuscule amount of recovery for pain and suffering damages. Yet this accident could result in a lifetime of pain or suffering, let's say, for instance, with recurrent headaches or other damages, which may restrict the physical activity or the ability to work of Driver A.

Excuse me, that was Driver *B*. Furthermore, some day Driver *A* might be smacked into also, and she, too, will be unable to sue for pain and suffering or limited to recovering hardly any damages.

CCJ finds most alarming any proposition that would require motorists who wish to preserve their rights to sue for pain and suffering to pay higher premiums than motorists who surrender their rights. The very idea of selling access to the courthouse is both repugnant and a direct violation of everything our civil justice system stands for in this country. CCJ also cannot accept proposals which simply seek to reduce the cost of automobile insurance by reducing benefits or shifting the cost of benefits to the innocent victims of automobile accidents who utilize them. Such proposals do not seek to reduce the cost of insurance by economy or by finding better and more efficient ways of delivering a given amount of benefit in the interest of the true premium reduction.

True reform involves providing the same level of benefits at a reduced premium. And we believe this is what New Jersey's citizens called for in the last election. Such proposals to shift the cost of benefits also vitiate the doctrine of individual responsibility to exercise the duty of care imposed by law. In the place of individual responsibility, such proposals that hold liability insurance is not a reparation system by which, through actuarial pricing, negligent, reckless, and irresponsible motorists are forced to pay for pain and suffering claims awarded to their innocent victims.

Rather liability insurance would become a risk-transfer device by which at-fault drivers safeguard their own realizable assets and have no obligation, moral or legal, to pay for the pain and suffering of their hapless

victims. Thus, costs would be allocated to those who suffer the pain and suffering loss rather than to those who cause it. This proposal is also based on the fallacy that there is no difference between an allocation of costs based on negligent causation and one based on loss sustained.

For example, under the current liability system, a cautious family might choose to be assessed only a very low dollar amount charge for causing pain and suffering loss to others. Under a first-party system, this same family could be assessed a much higher dollar charge for pain and suffering benefits collectible under its own auto insurance policy because of the negligence of others. Where is the fairness and equity of this proposed system?

Finally, under the guise of fighting fraud, which the auto insurance industry has failed to do effectively in New Jersey to this date, the industry is now proposing instituting the use of peer review organizations, or PROs, which would be used to review the medical treatment of an injured party, to ascertain the medical necessity and efficacy of the medical treatment. While the CCJ Board of Directors has various positions on PROs, we all agree that if PROs were to be adopted, the tightest controls should be instituted by the Legislature to guarantee that an insurer could not use PROs to its own advantage. For example, an insurer should not be permitted to delay a legitimate payment to a claimant until the PRO makes its determination.

I will now ask Mr. O'Malley to provide CCJ's specific recommendations for auto insurance reform.

MYLES O'MALLEY: Good afternoon, Committee members.

I want to talk about some CCJ proposals to reduce rates without reducing the rights of victims of auto accidents.

Members of the Committee, there is no doubt in my mind that trying to understand the workings of the automobile insurance industry is like trying to nail one's shadow to the wall. You think you've got it, but as soon as you move, you see that it's in a very different place. And while I do not pretend to know what is in your minds, I dare say, all of you at times must be overwhelmed by the rhetoric and the deluge of facts that this wealthiest of businesses, the insurance industry, spews at us.

Without a clear understanding of how this industry works, how can you, as policymakers, and how can all of us, as consumers, judge what is the truth? You heard Ms. Phillips discuss the profits of the auto insurance industry in 1995 and 1996 a few minutes ago. While these past years certainly appear to have been prosperous years for the industry, representatives of the industry will tell you that times are pretty tough.

It is the contention of CCJ that the auto industry must be subject to better public accountability and more objective standard -- accounting standards. Is there a brave soul on the Committee who can truthfully tell the public that he or she clearly understands the accounting and reserve standards used by the industry to determine reserves, surplus, and profits? Would that brave soul then explain the excess profits law, and that law's relationship to reserves, surplus, and profits? I can't. But you've been here for many, many days now, perhaps one of you would undertake that.

Can anyone on this Committee state that he or she knows whether all reserves are counted as profits? Or a portion of those reserves? Are some of the reserves counted as losses? Are the reserves handled neutrally, as an accounting device? Objective standards -- objective accounting standards

would provide consumers with a clearer picture of what are fair rates and reasonable profits. For this reason, CCJ encourages this Committee to call upon the services of an independent accounting firm or even the expertise of the United States Government Accounting Office to review the business practices employed by the automobile insurance industry.

Second, as cited by Governor Whitman in her January 14, 1997 State of the State message, every family in New Jersey spends a minimum of \$161 each year to pay for fraudulent auto insurance claims. Fraudulent claims refer to payments for nontreatment, staged accidents, or nonexistent accidents. The Governor drew her data from the insurance industry group, the Coalition Against Insurance Fraud, based in Washington, D.C. An insurance industry spokesman has stated that the cost of fraud to policyholders is probably closer to \$250 per family.

Under New Jersey State law, auto insurers are required to maintain their own fraud divisions and report claims they determine to be fraudulent to the State. Let me break off just for a minute, Mr. O'Neill's testimony I found extraordinarily interesting this morning. Thirty-nine percent of the claims he investigates he has determined to be "fraudulent." Are they indeed, from a legal standpoint fraudulent, and if so, have they been reported for prosecution?

On January 21, 1997, Commissioner of Banking and Insurance, Elizabeth Randall, was quoted as saying in a newspaper article that "auto insurers failed to report approximately 22,000 cases of fraud to the State, far more than the 13,000 cases they did report." The Commissioner continued that she wasn't sure why insurance companies are not reporting cases of fraud to the State, but she said, "Some insurers may feel it less costly and easier just

to pay fraudulent claims” -- *The Record*, January 21, 1997. *The Courier-Post*, on January 12, 1997, also reported that despite their claims that fraud is rampant, auto insurance companies settle more than 90 percent of their cases out of court, saying they don’t have the time or the money to investigate the validity of most claims under \$10,000.

CCJ continues to call for a mandatory auto insurance rollback of 20 percent without any reduction in rights or benefits to be funded through the elimination of fraudulent claims, which the industry admits it now pays. The industry now lacks the proper incentive to effectively fight fraud since it simply passes the cost on to consumers in its rate filings. By mandating a 20 percent rollback, the industry will now have the ultimate incentive to root out fraud, since every dollar of fraudulent claims it prevents or recovers will revert to the industry as profit and help fund the cost of the rollback. This is the free market system working at its best.

And I think what we have to do here is kind of undo recent history. I think we have to mandate this rollback, because we have seen a relaxation of benefits--

PRESIDENT DiFRANCESCO: Let me ask you a question, sir.

MR. O’MALLEY: Yes, sir.

PRESIDENT DiFRANCESCO: Are you in favor of mandated insurance -- automobile insurance?

MR. O’MALLEY: Yes.

PRESIDENT DiFRANCESCO: Are you in favor of telling me that I have to buy auto insurance?

MR. O’MALLEY: Absolutely.

PRESIDENT DiFRANCESCO: Okay. Are you in favor of telling me I have to buy a certain amount of auto insurance?

MR. O'MALLEY: There should be minimums. Yes, sir.

PRESIDENT DiFRANCESCO: Like minimum of what and where?

MR. O'MALLEY: The current minimum is fine.

PRESIDENT DiFRANCESCO: What is that?

MR. O'MALLEY: As we stated earlier, the numbers are 15, 30, and 5.

MS. PHILLIPS: But, Senator DiFrancesco--

PRESIDENT DiFRANCESCO: Dolores, I'm asking him the question. Why do you want--

MS. PHILLIPS: But I'm Chair of the Board, and--

PRESIDENT DiFRANCESCO: A simple question I asked. Is he in favor of mandating insurance?

MS. PHILLIPS: I wanted to say that we don't have a specific position on that. We have a position of over--

PRESIDENT DiFRANCESCO: Well, he's talking about freedom in America and all of this stuff. I want to know whether, you know, you favor a mandated system or not -- a nonmandated system.

MR. O'MALLEY: We stated in our position--

PRESIDENT DiFRANCESCO: What?

MR. O'MALLEY: Ms. Phillips read the position earlier.

PRESIDENT DiFRANCESCO: I just read it. I just read it. You're in favor of a primary seat belt law, prohibiting the use of cell phones while you're driving, and--

MR. O'MALLEY: That's correct.

PRESIDENT DiFRANCESCO: --0.08 blood alcohol content law. I read it. I read it.

MR. O'MALLEY: That's right.

PRESIDENT DiFRANCESCO: I'm just saying-- I'm talking about whether or not-- I'm trying to figure out, based on what you're saying, whether you really believe we ought to have a mandated system or not. Well, some of what you said--

MR. O'MALLEY: Well, it's not what I believe. It's--

PRESIDENT DiFRANCESCO: --perhaps you're convincing me we shouldn't.

MR. O'MALLEY: I'm speaking today, as you know, as a representative of CCJ. I am a Board member.

PRESIDENT DiFRANCESCO: Right.

MR. O'MALLEY: So it's not what I believe. It's what I say as representative of the CCJ position.

PRESIDENT DiFRANCESCO: I understand all that.

MR. O'MALLEY: Okay.

PRESIDENT DiFRANCESCO: I understand, of course, you representing an association, naturally. I understand that.

MR. O'MALLEY: Okay.

PRESIDENT DiFRANCESCO: Well, I just asked a simple question.

MR. O'MALLEY: And you got your--

PRESIDENT DiFRANCESCO: Now what-- Do you favor my ability to choose options? For example, I want to have an option of buying \$50,000 of medical coverage instead of \$250,000.

MR. O'MALLEY: Absolutely.

PRESIDENT DiFRANCESCO: You against that?

MR. O'MALLEY: Absolutely not.

PRESIDENT DiFRANCESCO: You're not against that?

MR. O'MALLEY: Absolutely not.

PRESIDENT DiFRANCESCO: Okay. Are you in favor of eliminating no-fault or not eliminating? What is your position on no-fault?

MS. PHILLIPS: Senator--

MR. O'MALLEY: I personally don't have a position on no-fault.

PRESIDENT DiFRANCESCO: Dolores, why do you want to interrupt?

MS. PHILLIPS: Because I--

MR. O'MALLEY: And CCJ--

PRESIDENT DiFRANCESCO: You can explain it after he finishes.

MR. O'MALLEY: We want to leave no-fault exactly as it is. That's the official position of CCJ.

PRESIDENT DiFRANCESCO: Okay. So you like no-fault the way it is? And the PIP provisions, correct?

MR. O'MALLEY: The current amounts are fine, yes.

PRESIDENT DiFRANCESCO: Okay. The 250,000 or whatever.

MR. O'MALLEY: That's right.

May I continue?

PRESIDENT DiFRANCESCO: Sure.

SPEAKER COLLINS: Well, I don't think you have to continue.

We have your written statement. Obviously, the Co-Chair of the Committee has already read it, as have other members. So we move off that-- As I said, we have a number of people we want to hear from. I have put in a very flexible 10-minutes rule. I think-- Let me finish. I would like to somehow stick to that. But instead of this -- we have it before us -- anything else you would like to add?

MR. O'MALLEY: If you'll just give me about 30 seconds to--

SPEAKER COLLINS: I'll give you even more than that. Go ahead.

MR. O'MALLEY: --sum this up. I don't have to read this whole thing--

SPEAKER COLLINS: Surely.

MR. O'MALLEY: --but I would like to sum it up.

SPEAKER COLLINS: Absolutely.

MR. O'MALLEY: Frequency of claims and severity of accidents -- those are the issues that need to be addressed. So we can spend day after day after day in hearings, but we have to address some very important policies concerning how do we drive automobiles in the State of New Jersey. One of

our Midwestern states has no speed limit. I think it might be Utah or Montana.

SPEAKER COLLINS: Montana.

MR. O'MALLEY: It's Montana. We just raised our speed limit to 65 miles per hour. That has to, based upon all the statistics that we've seen, increase the rate of mortality and the rate of auto accidents in the state. That's the best argument the insurance--

PRESIDENT DiFRANCESCO: Why do you make a statement like that?

MR. O'MALLEY: Hold on, please, I just wanted my 30 seconds.

SPEAKER COLLINS: No. No. Let me just say this.

MR. O'MALLEY: Okay.

SPEAKER COLLINS: We will be as courteous as we can be, but if a member of the Committee wants to say something, please allow us to.

MR. O'MALLEY: Absolutely. My apologies for that.

PRESIDENT DiFRANCESCO: I want you to present to me the evidence that you're talking about; that's, raising the speed limit in Montana or having unlimited speed limit has resulted in more fatalities. Now, we have not raised our speed limit to 65 all over the State of New Jersey.

MR. O'MALLEY: No, we have not.

PRESIDENT DiFRANCESCO: You're aware of that, right?

MR. O'MALLEY: Absolutely.

PRESIDENT DiFRANCESCO: Okay.

MR. GUZZO: Yes. The 0.08 blood alcohol level needs to be addressed. You know, one of the best thought--

PRESIDENT DiFRANCESCO: You want to discuss that as part of this hearing? You want to discuss that now in five minutes -- 30 seconds?

MR. GUZZO: No, I don't want to discuss it now, but I just want to say this.

PRESIDENT DiFRANCESCO: I read that. I read what you said about that.

MR. GUZZO: One of the most effective nonprofit advocacy groups in the state is a member of CCJ, and that's MADD, Mothers Against Drunk Driving.

PRESIDENT DiFRANCESCO: Dolores and Peter, I thought we were discussing our present automobile insurance system here.

MR. GUZZO: Senator, may I make a statement?

PRESIDENT DiFRANCESCO: Let me just finish. And, therefore, to get into things like raising the speed limit or lowering the speed limit, raising the blood alcohol content or lowering it, talking about using cell phones or not using them, is that what you want to discuss here today?

MR. GUZZO: Senator, what--

PRESIDENT DiFRANCESCO: Or do you want to use a different forum for that--

MR. GUZZO: No.

PRESIDENT DiFRANCESCO: --because that's a different issue in my book.

MR. GUZZO: No, it isn't. Respectfully, Senator, let--

PRESIDENT DiFRANCESCO: It's a different issue, Pete. We're not talking about the mechanics, the statutory law that deals with automobile insurance.

MR. GUZZO: Senator--

PRESIDENT DiFRANCESCO: Discussing 0.08 can require hours of discussion, and I would be happy to do that with you at another time.

MR. GUZZO: Senator, the insurance-- Respectfully, may I say this. We're sitting here as a consumer group, not to say we represent the only consumer group, but we're being allowed 10 minutes. I've sat through every one of these hearings, and my clock tells me the insurance industry has had about six hours of testimony. Now--

SPEAKER COLLINS: Mr. Guzzo. Mr. Guzzo.

MR. GUZZO: Yes, sir.

SPEAKER COLLINS: I don't know what your clock says. I guarantee you don't have that information available, because you have no record of it. You have been-- This group has been on here much longer than 10 minutes. I was courteous. I asked--

I can read. The members of the Committee can read. I said, please, move off the written statement and wrap up.

MR. GUZZO: May I--

SPEAKER COLLINS: Let me finish--

MR. GUZZO: I'm sorry.

SPEAKER COLLINS: --sir. The gentlemen said he wanted 30 seconds. I said you could have more, and no one has stopped you.

MR. GUZZO: Okay. But, Senator DiFrancesco, what I'm trying to say is-- We don't want to take that much time. We would like to have another forum. But the point we're making is, yes, these measures do address the cost of auto insurance, because auto insurance is driven by frequency and claims. You-- May I finish, may I finish, please, Senator?

PRESIDENT DiFRANCESCO: I don't want you to start talking about 0.08.

MR. GUZZO: I'm not talking about it.

PRESIDENT DiFRANCESCO: I want to cut you off because it's a different issue, Pete. I know you don't think it is. It is. There are a lot of factors that can affect the cost of auto insurance that maybe we're not dealing with here today. We're dealing with the statute.

MR. GUZZO: And we're saying--

PRESIDENT DiFRANCESCO: We're dealing with the statute, Pete. There are other factors involved in -- that cause accidents or do not cause accidents. Obviously, drinking can cause an accident while you're driving, but so can other things.

MR. GUZZO: But, Senator, we're saying, before you take away the rights of consumers, let's look at other ways to reduce the cost of insurance. That's our point.

PRESIDENT DiFRANCESCO: Okay. Okay.

SPEAKER COLLINS: We thank you for that point. Anything else you would like to add?

MS. PHILLIPS: Well, let me just close by asking -- unfortunately, you missed my initial statement.

SPEAKER COLLINS: No. No. I listened to every word.

Did we not, Mr. Minority Leader?

That's why we were running our own clock. We were running our own clock.

ASSEMBLYMAN DORIA: Everything's piped inside. (referring to remote speakers in conference room)

MS. PHILLIPS: Oh, thank you. I'm glad you listened to it.

But let us reiterate, again, that we are asking the Committee to please consider reducing rates through a number of other means before you obstruct our access to the civil justice system or reduce rights and benefits of any type.

Thank you.

SPEAKER COLLINS: Thank you, and thank you for your testimony.

George D'Annunzio.

Thank you for coming. Please begin.

GEORGE D'ANNUNZIO, D.C.: Good afternoon, and thank you for having me here today. My name is Dr. George D'Annunzio. I'm a chiropractic physician. I practice in Edison, New Jersey. I have been practicing chiropractic now for about six years in this state. I'm here on my own personal accord today at my request.

Approximately 20 percent of my practice encompasses that of doing independent medical evaluations and peer reviews for the insurance industry. Approximately 25 percent of my practice is involved with

performing independent evaluations for plaintiffs, and another 50 percent of my practice is based upon treatment of major medical patients.

I'm here because of what I see that transpires in some of the urban areas of Middlesex County, New Jersey. I have had the opportunity to perform independent medical evaluations on a number of patients. And I see gross overutilization of services, self-referrals. We see the performance of diagnostic testing that's unnecessary -- medical records that do not substantiate it. We see multiple discharge of durable medical goods with little to no basis.

There are multiple facilities that have physical therapists and physical therapy corporations within the chiropractic offices of very questionable integrity, and it's questionable as to who actually owns them. Many things that I talk about are nothing new, how flagrant they are is what's an issue.

Recently I had the opportunity to perform an evaluation on an individual who was seen 61 times within 73 days, five months after a motor vehicle accident, with a bill in excess of \$7000. There was not one record in the entire medical file that substantiated the treatment or causally related it to the motor vehicle accident in question.

Of course, when the treating doctor did not get paid, he was somewhat upset. In this state, the only issue -- or the only recourse that we have against someone who performs something like this is peer review, and peer review is a necessary and important topic. How do we substantiate the treatment that this doctor provided? How does he substantiate it? And how does he continue to provide it under the auspices? The patient was never seen

for an independent evaluation, and subsequently, he should be paid for his treatment, regardless of necessity.

It's like that across the board. Diagnostic centers, transportation of patients from Middlesex County, New Jersey, to Staten Island to Bloomfield, New Jersey, for X rays or diagnostic tests. The same physicians reading reports almost identical. I had an interesting scenario in that an actual MRI was performed by a medical doctor on a patient. Two months later this patient decided to go to a chiropractor. That chiropractor ordered that same MRI from one of these traveling services that performs an MRI on a truck. It will come to your office and pay you to park in your parking lot. It couldn't have possibly been on the same person, not possible. What was a pathological condition, which required medical attention, was completely omitted from the second MRI report, but there was a disk herniation, and there was a causal relationship of a loss of lordosis to muscle spasm, which is invisible on an MRI.

What goes on that I see in the trenches of medical care being rendered to patients is appalling. We have doctors who typically look to urban areas, they generate offices -- multiple offices in multiple areas of the state, and they have no accountability for what they do. I brought some documents with me that are just some examples, and I omitted all the patients' names. If I could make them available to the Committee.

SPEAKER COLLINS: Doctor, you can make them available. If you remember, awhile back, I said we have a number of people who are going to come forward with fraud, you're one of them. We'll accept fraud and we surely would like those documents. What should we do? There is fraud, there's bad people, what should we do?

MR. D'ANNUNZIO: I'll be honest with you, I've done work with special investigation units of insurance companies, I've done work for New Jersey Department of Insurance Fraud Investigation, and I've done some consulting work with the New Jersey Department of Consumer Affairs, including one at the Deputy Attorney General's.

I'm going to be honest with you, the State agencies are so incredibly understaffed and underprovided. There are a small number of people that are actually investigating hundreds, if not thousands, of doctors and thousands of claims. It's not possible. What we need to do is accountability of physicians. The fraud is rampant. On an attending physician's form, question number nine was has a patient ever had the same or similar condition. I can't tell you how many times I've seen patients that this is marked off no and that doctor treated the person, or was actively treating the patient, for the same condition.

SPEAKER COLLINS: Let me ask this, let's say you are whomever -- not you personally -- but you see this. What should happen in that case?

MR. D'ANNUNZIO: In that case, my personal opinion is that it's fraud, it's illegal, it's deceptive. Decisions are being made upon payment and treatment based upon a form submitted that's inaccurate. What should be done? The severity of the damage is based upon what we all come with. What is best for the state? The answer to that is the severity of the fraud. Is that as bad as treating a patient that's not there? The physician certainly needs to be reprimanded, fined, and repeated offenses clearly should be disciplined severely.

SPEAKER COLLINS: Such as taking away the person's license.

MR. D'ANNUNZIO: Temporary suspension of license.

SPEAKER COLLINS: So the first thing is a fine or whatever and then like another chance.

MR. D'ANNUNZIO: Well, I think that there needs to be gradations of the fraud because we see fraud as severe as ordering tests that are completely unnecessary. It's a doctor opinion, but when we see things like a doctor misrepresenting a file or files that don't contain medical records to substantiate care, disciplinary action is needed because there is no other way to stop it.

When we see treatment so excessive of five times per week to an IME, or perhaps maybe six months, it's unjustified, it's not within medical standards. What happens, unfortunately, is this goes through peer review, it goes to an arbitration -- and I've been in arbitrations on behalf of insurance companies. I sometimes feel like I am talking to the walls that surround this room because what is said isn't heard, and the arbitrator, many times, sides with the plaintiff's attorney and an award is given.

I went to one recently with--

SPEAKER COLLINS: Let me ask this, as someone who is yet to be convinced that peer review is the savior of the system -- but still open to it -- that before they get to that arbitration you had a medical doctor or medical personnel treat them. Is that not correct?

MR. D'ANNUNZIO: Yes.

SPEAKER COLLINS: Now, so we are honing in on these attorneys, and so on, and so forth, who are going along with the doctor who gave them the information about what's wrong with this person, correct?

MR. D'ANNUNZIO: Correct.

SPEAKER COLLINS: Now, do you want to just spend a little time on that doctor? What should we do to that doctor?

MR. D'ANNUNZIO: The doctor should be disciplined, like I said. I mean, I'm going to be honest with you because I understand the position on peer review. We need credentialing for peer review doctors. My issue is that many doctors in this state feel that if somebody has been involved in a motor vehicle accident, they have to watch what they bill, what tests they can order, and what durable goods they can administer. When going to an arbitration-- And I'm going to be honest with you -- like I said I've been to them -- arbitrations are unfair. I recently brought the scope of practice--

SPEAKER COLLINS: Unfair to whom?

MR. D'ANNUNZIO: I think unfair, in my honest opinion, to the people of the State of New Jersey.

SPEAKER COLLINS: Obviously, in your honest opinion. You don't have to keep repeating that. In other words, we are not in a courtroom, but I'll ask the question, you just give me your answer.

MR. D'ANNUNZIO: To the people of the state and to the insurance industry because it accounts for money they have to pay. I recently went to one where I brought the scope of practice of chiropractic. The doctor violated in excess of seven laws on that scope of practice. He had no notes; he had tests that were statistically impossible, undiagnostic X rays; he had a "neurologist" come to his office and perform an evaluation which was completely normal in his report and he proceeded to do \$2225 of electro-diagnostic testing.

SPEAKER COLLINS: And the arbitration board sided with him?

MR. D'ANNUNZIO: The arbitrator turned to me and said, "What should we give this doctor?" I said what I just said--

SPEAKER COLLINS: Let me ask you this. Why do you think they -- I'm inferring from your comments -- are just sort of laissez-faire and let it go through or just tinker a little bit. Why do you think that happens?

MR. D'ANNUNZIO: I think it's multifold. First and foremost, they are not physicians.

SPEAKER COLLINS: But remember it's a physician who gave the first number.

MR. D'ANNUNZIO: And you have two opposing opinions by physicians.

SPEAKER COLLINS: Well, my point being that you keep saying, "Well, it's not a physician that's sitting there." But a physician is the first determiner of the cost to send them -- to this panel.

MR. D'ANNUNZIO: Remember, if an individual files for fee arbitration and if he treated a patient five times a week for six months, it's his opinion that it was necessary, regardless of all medical documentation to say this is unnecessary. The answer is that I deserve to be paid. I did this service--

SPEAKER COLLINS: But away from that, why do you think the board is so receptive to allowing the payment to take place?

MR. D'ANNUNZIO: Are you referring to the chiropractic board or the--

SPEAKER COLLINS: No, the arbitration board.

MR. D'ANNUNZIO: The arbitration.

SPEAKER COLLINS: Why do you think? That's all, why do you think?

MR. D'ANNUNZIO: I think it's lack of medical knowledge and understanding, as well as there are many instances, I think, where some of these arbitrators are rather friendly with some of the plaintiff attorneys.

SPEAKER COLLINS: Are there not defense attorneys on there, also?

MR. D'ANNUNZIO: In some instances, yes.

SPEAKER COLLINS: Do you think this -- just you think-- As we heard earlier in testimony that a poll was done by the Insurance Research Council that 36 percent of the people in a telephone survey felt that it was all right to overstate their insurance claim to make up for premium paid in previous years. Do you think that might be part of this casual attitude of the arbitration board?

MR. D'ANNUNZIO: I honestly can't comment on that.

SPEAKER COLLINS: Just your thought. Because as soon as I saw that number and the other one that says over 40 percent felt that it was acceptable to put in a claim to get out of paying a collision deductible, I think we are at the crux of the matter, and that is that everyone can be upset until that ring goes by and it's their chance to grab it. It's a foible of human nature, I would think. What do you think?

MR. D'ANNUNZIO: Well, I think that, again, we have to look at where the costs are coming from. These patients don't know what's being billed to them. They honestly don't. I think that if you are saying that people artificially inflate their claim to try and recuperate something that they have

paid over the years, I think you are talking about the integrity and character of individual people. I'm not a sociologist or psychologist.

SPEAKER COLLINS: But you were comfortable questioning the individual character of the arbitration board just a few moments ago.

MR. D'ANNUNZIO: I could tell you from personal experience, in numerous arbitrations, I have seen arbitration awards that certainly, on a medical basis, are unsubstantiated. I know that--

SPEAKER COLLINS: But not to drag this out, but you're comfortable saying that the arbitration board might be friendly with the plaintiffs' attorneys, and so on, but when it came to a general cross section of the society, you're not as comfortable because you don't have the experiences in that.

MR. D'ANNUNZIO: I'm comfortable with the experience that I have had with the arbitration board, it's been slighted. Again, I can only talk to you from experience--

SPEAKER COLLINS: Sure, I understand.

MR. D'ANNUNZIO: --and from working in this arena and from dealing with-- I had a question posed to me by a claims adjustor not too long ago where they had a \$12,000 claim in chiropractic, and they lost 100 percent on the arbitration award. It was hard for me to believe because I saw the file after this.

SPEAKER COLLINS: Let me ask you this. When you go before these arbitration boards -- you've been going before them you say -- what is your capacity in going before them?

MR. D'ANNUNZIO: My capacity is that if I have been retained by the insurance company.

SPEAKER COLLINS: So the insurance company retains you to go in and say what the chiropractor, who sent the person there in the first place -- was wrong.

MR. D'ANNUNZIO: No. The insurance company pays me for my opinion regarding medical necessity of treatment as rendered based upon, A, an independent evaluation and a peer review.

SPEAKER COLLINS: I used the wrong term wrong. But your opinion as compared to the other person's opinion.

MR. D'ANNUNZIO: Right.

SPEAKER COLLINS: How often, when you have gone in there, have you -- just in your recollection, and even if you didn't have to say it publicly -- do you think you would say, "Well, I think what they did was all right," and in fact you say to yourself that they should have probably done a little more. Do any of those cases come to your mind?

MR. D'ANNUNZIO: That's occurred. What else has occurred, and probably more numerous, is say, "Was treatment necessary?" A person got involved in a car accident, they got hurt. I treat these people, I know they get hurt, I've seen them get hurt, I've seen the repercussions, and I see the long- term effects.

What I'm referring to, and one of the problems in our state that I see, is not that a person didn't deserve any care, but the amount of care, the amount of testing, the source of the testing, the source of the studies that were

performed are extremely questionable in origin, poorly diagnostic, and then we have to submit everything to the standards of care of medicine.

In a hospital setting there is peer review by medical physicians. Was this surgery indicated based upon these lab test, UKG results, or whatever, and it's reviewed by a medical board. In the legal profession, legal bills are arbitrated by attorneys, accounting by accountants, New Jersey PIP and medical bills are arbitrated by attorneys.

Is it more appropriate to have a panel?

SPEAKER COLLINS: So let me just ask this. So you believe that peer review would be a solution to the problem?

MR. D'ANNUNZIO: I believe that peer review would be instrumental. I believe that an arbitration system with medical physicians, chiropractors, whatever specialty, on the panel -- not necessarily independent of any attorneys--

SPEAKER COLLINS: Okay.

MR. D'ANNUNZIO: --but maybe with attorneys.

SPEAKER COLLINS: So you think that there should be some change in the arbitration system?

MR. D'ANNUNZIO: I feel that--

SPEAKER COLLINS: Is there anything else you'd like to tell us to do?

MR. D'ANNUNZIO: We see some things that are unfair across the board, and it's unfair that some medical doctors or chiropractors will perform an independent evaluation in five minutes and cut somebody off or determine there is--

SPEAKER COLLINS: But as the Senate President just said to the last testifiers, the Legislature can do so much. The thing that has fascinated me with peer review in the arguments and, yet, I have yet to hear, even in all of this testimony, any particular -- no offense to some who say, why does it have to be guaranteed? -- but anyone to come up with a number that what we would save by having peer review.

But, aside from that, I am fascinated how various professions come and not really willing to say members of my profession are no good, fraudulent people who are ripping off the system and killing New Jersey. We won't say that--

MR. D'ANNUNZIO: Well, I--

SPEAKER COLLINS: Let me just finish. --whether it's your profession, the attorneys, other medical people, or insurance companies. No one will ever say that. It's always like, well, there are problems and we should review this. The bottom line is we have bad people in this state, not all, maybe no more so than any other state. There are people-- There are almost 8 million of us. We would all like to be good, but there are some bad ones.

How can the Legislature deal with them, particularly when we hear issue after issue that goes into the ethics, the profession, what the rules are? We are the Legislature. We can come up with all kinds of arbitration boards, peer review, but if they are bad people, we can't stop it. How can we stop the bad people?

MR. D'ANNUNZIO: One, discipline, *B*, allocating funds for further investigation by State agencies. I know in my work with State agencies how understaffed they are, and they come to me and they say what about this

doctor, who may own five or six offices around the State of New Jersey. You can label them with whatever you want. If you want a finger-pointing session that's one thing.

The truth in the matter is that one doctor who may have five or six offices, self-referrals for imaging, everything you could imagine, the investigations, the costs of sending people in there is tremendous. They are understaffed, and worse yet, this state has had a pretty poor record with some of the convictions.

SPEAKER COLLINS: Let me ask you this question -- and I'll be quiet and you can finish up or if anyone has any questions -- and that's this. You gave me a theoretical example of a doctor, five or six places, and so on. Should the Legislature be dealing with that, or should the medical society be dealing with it?

MR. D'ANNUNZIO: I agree 100 percent that the chiropractic board and chiropractics should be dealing with that. The medical society and the medical board should be dealing with that. The way those boards work is that gets forwarded to the Department of Consumer Affairs for investigation, and we go back to the same adage that we are understaffed.

SPEAKER COLLINS: I've been in government for 13 years, I've served in a college in this state for 30 years, and understaffing is always the problem. Wherever it is we are understaffed, everybody is understaffed. I'm not saying-- It is true in certain areas. We've heard some excellent testimony of particulars, and you have added quite a bit with regard to it. The difficulty is there that at the same time we are worrying about auto insurance, we're

worrying about every other cost of government, called taxes, and so on, but I hear you.

MR. D'ANNUNZIO: And again, we're looking for a solution to a very large problem. There is no, I think, one specific answer to that problem. What I do believe is very important in this state is our ability to discipline those fraudulent doctors. I'll give you an example. The MRI centers in a truck are willing to pay me \$2000 a day to park in my parking lot to do MRIs on my patients. Global imagining centers sends me maybe a bottle of champagne at Christmas. That's \$2000 a day, maybe one or two times a month becomes very enticing. I asked him, "What if I don't have room in my parking lot?" He said, "We'll park it on the street." It happens every day all over the state.

SPEAKER COLLINS: Let me ask you this, and then really we will rap it up. First, educate me, what's wrong with that?

MR. D'ANNUNZIO: What's wrong with that. Most of these doctors order MRIs across the board to try and suffice the verbal threshold in this state because they are told by the attorneys, without an MRI, you're not going to get over the verbal threshold. So I have to have an MRI, and hopefully it will have a disk hernia.

SPEAKER COLLINS: No, I'm not worried about the MRI. What about this \$2000 a day kind of thing. What's wrong there? When you say if you can't be in your parking lot, they can park on the street, what's wrong with that?

MR. D'ANNUNZIO: I don't know if that money is turned over to the municipality for parking on their street.

SPEAKER COLLINS: But is that the Legislature's job to stop this? That's what I keep asking you. What do you want us to do with this MRI thing that you mentioned a few times? Do you want us to shut down all mobile MRI?

MR. D'ANNUNZIO: No, by no means. Traveling diagnostic centers, whether that be MRIs, electrodiagnostic testing, or anything paying exorbitant rental fees, it's unreasonable. And because it exists doctors have a propensity to order more testing, in and of itself, when review of a file may or may not be indicated.

SPEAKER COLLINS: Anyone else have any questions for the doctor? (negative response)

Thank you very much.

Let me just say this. Excellent presentation, you were very helpful to me in your responses to my questions. They have been building up through a lot of other testifiers for seven committees, and you did an excellent job of bringing them into prospective for me. I appreciate it very much.

MR. D'ANNUNZIO: Thank you.

SPEAKER COLLINS: Thank you.

MR. D'ANNUNZIO: Thank you for the opportunity to present today.

SPEAKER COLLINS: Dr. Edward Magaziner, the President of New Jersey Society of Physical Medicine and Rehabilitation.

EDWARD S. MAGAZINER, M.D.: Good afternoon.

SPEAKER COLLINS: Good afternoon, Doctor.

DR. MAGAZINER: I'm Dr. Magaziner, as you said, the President of the New Jersey Society of Physical Medicine and Rehabilitation, and we are called physiatrists or rehabilitation specialists. Our Society represents about 150 physicians, and we are located at virtually every hospital in the state, virtually all of the rehab centers including JFK, Kessler, UMDNJ, and virtually every head injury center or rehabilitation center, and many of us are located in private practices across the state. We care for the injured and disabled in the state, whether it's from a car accident or stroke or illness or from occupational or sports injuries.

Today I am here to talk about PIP. At present, New Jersey offers one of the best systems of coverage for its drivers and citizens. Before the implementation of PIP, individuals could not obtain medical care until their court case is settled, from the onset of rapid access to the trauma system and the excellent hospital care to the access to the needed rehabilitation care, not only for the head injured or the spinal cord injured or patients with fractures, but also to the patients with muscular skeletal, or soft-tissue, injury.

I'm here today because I am deeply concerned that this system, although imperfect, may be dismantled, not because of the costs, but because of the political pressures to do something and to do something fast, to keep political promises. I am deeply concerned that the patients, the ones who can afford it the least, will be affected the most. I'm deeply concerned that I will not be able to help my patients, and I'm concerned that the quality and access to care may be lost.

I'm here today to plead to you to work on fixing the system, not just focus on providers and physicians, but also to look at all the problems

from the abuses to automobile repair to the excessive lawsuits and awards to the abuses of the insurance companies and overzealous patients.

I would like to take a moment to talk about the rehabilitation after a motor vehicle accident. After the immediate trauma care and hospitalization, the patient's injuries are often disabling. The person's ability to work and function can be impaired or even lost. We all know about Christopher Reeves, Ben Vereen, and Gloria Estefan and their injuries. We also know how quality rehabilitation was used to maximize their function, reduce their pain, and restore them to meaningful, productive lives.

Quality care can be expensive. I worry that if the \$250,000 cap is lowered, only the rich will have access to quality care and that there will be as cost shifting to the Medicaid and social security systems. I would also like to discuss soft-tissue injury. Automobile accidents are unique to soft-tissue injury in that with high-velocity or high-force impacts of one or two tons in a vehicle it can cause tremendous damages to soft tissues through the transmission of forces.

Often, these injuries cannot be seen on X rays, but if you've ever experienced an injury such as this, it can be just as devastating, if not more devastating, than if you had a fracture of the bone. At least a fracture of the bone heals quickly. Soft-tissue injuries can last a lot longer, if not a lifetime, and be very disabling.

Let me give you an example, if I may. I have a patient I am treating who was in a motor vehicle accident. She is a professional and in her 40s. She works as a counselor for the school system part-time, she works in her own private practice as a counselor in psychology, and is going to school

at night to get her doctoral degree in psychology. The last thing that this person wanted was a motor vehicle accident to interrupt her life; nonetheless she was injured.

There were no fractures, nothing to be seen on CAT scans, MRI had minimal findings, but she suffers from daily, constant migraine and muscle tension headaches. Initially, she had a mild concussion and concentration problems. She had developed post-traumatic stress disorder and depression, she had anxiety and difficulty coping with her situation. She also had a severe cervical sprain, a moderate thoracic sprain, and a severe limb sprain. This motivated professional patient had to undergo intensive treatments. She could not balance going for therapies, continuing with her job in education, and coping with her constant pain every day.

Eventually we had to place her on disability. Now without proper treatment she would probably remain on disability the rest of her life and go on social security. What a loss it would have been. She was referred to me from a chiropractor who, after appropriate care, was unable to help further. We used the team management model and provided her with physical therapy, a psychologist to help deal with the depression, and I sent her to a neurologist to assist with medication to manage her migraines. She also required nerve blocks, trigger-point injections into the muscle to break up muscle spasm, various joint injections, acupuncture, and a radio frequency neuolysis procedure to the cervical exipotal nerves to decrease the pain from the headaches and the cervical area.

I am happy to say that this patient was in my office the other day, and she finally had a smile on her face, once again. Her headaches were under

control as was her post-traumatic anxiety and depression. Her low-back and midback injuries were remarkably reduced, and her neck pain was becoming more tolerable. She was looking about returning back to work and school in April.

Now, with the right care she remained off of disability. She has her life back. I tell you today that I have hundreds of these stories like this happy success story. The patients owe this to a good PIP system where the patient has the right to choose their physician and the right to go for reasonable medical care, at least as long as progress is still being made.

SPEAKER COLLINS: Doctor.

DR. MAGAZINER: Yes, sir.

SPEAKER COLLINS: What makes you think or what concerns do you have that there will be a change that will not allow this to take place?

DR. MAGAZINER: I have concerns that if the dismantling of the no-fault and the PIP system goes to managed care or private health insurance or people don't have health insurance that they won't have access to this quality care which we have developed in New Jersey and is one of the finest quality cares for patients. Whether it's treatment of acute care in the trauma system in the hospital to the rehabilitation care afterwards, we owe it to our citizens of New Jersey to at least try to remain that quality.

SPEAKER COLLINS: So your testimony is based on the fact that we have a system now that is taking care of people, as you said the best quality. I don't think anyone would argue that New Jersey has the best protection in America. Someone recently told me that maybe Michigan had better, but as

I pointed out to that person, Michigan has unlimited payment, but they really don't have the same rights to sue that we have, so New Jersey has the best.

Obviously, I'm sure you would accept that -- at least we're told-- Most of us believe that New Jersey citizens don't want to pay for all of it. So we have the best coverage, but the citizens don't want to pay what they are now paying. Do you have any suggestions along that line?

DR. MAGAZINER: Do you want me to get off the track or do you want me to-- I kind of talk about that as we go on.

SPEAKER COLLINS: The tracks are fine for you, but we are trying to learn-- And as I said I'm on this side of the desk so often. What happens is -- if you could just take your thoughts and paraphrase them more than reading. You're not the only one, we all do it, we read speeches, we do this, but we have been here for session after session after session. The very first one we had, and some people struggled with it, particularly in the media areas -- that only one testifier in the very first session we had said anything about cost. Everyone else talked about the issues you have, you're addressing, and so many others have.

I don't want to try and confuse you or take you off the track, but let me ask this question and maybe you can go back to the cause. Is there any circumstance you could see where this unlimited, caring professional system that we have here in New Jersey should not exist? Such as if the person who had this injury caused the accident. Was that something-- Everyone should be treated the same no matter if they caused the accident or didn't cause the accident?

DR. MAGAZINER: Yes, I think that the people that cause the accident have a right to medical care, because what's going to happen with those people? They still have to get medical care. We have to take care of them because of our Hippocratic oath and take care of them, and also if it doesn't get paid by the insurance system, then it is going to go on to the social security and disability and other systems.

SPEAKER COLLINS: Well, I would think if they fell out of the system -- but you've made it very clear, the best coverage, it should just go on, and you went on to muscle injections and psychologists and all that. In your thinking -- in your personal thinking -- there should be no limit to this, no matter how the person got in this position.

DR. MAGAZINER: A limit to the cost of it or a limit--

SPEAKER COLLINS: No, the cost to what's offered. Of course, you could offer it for free, then we wouldn't have a problem, not that we are asking you to. Should there be any limit to, as you were saying, injections for nerves? You were talking about someone who went far beyond MRIs. It doesn't show up, no broken bones -- this is soft tissue. Is there any limit to what should be spent on a person in that case?

DR. MAGAZINER: We proposed the \$250,000 cap on injury and we still maintain that.

SPEAKER COLLINS: Let me ask you one other question, and then I'll let you go back on track and let someone else-- We've heard testimony -- and give me great leeway with the number -- let's say 85 percent of all of the injuries or all the payments in these accident cases are less than \$15,000, we have a quarter of a million dollar threshold -- 85 percent. Then,

of course, that other 15 percent doesn't immediately jump to a quarter of a million, it's all in between.

You're not an insurance person, but I've asked this of them, maybe you can help me out. If we were to reduce the PIP to, let's say, \$25,000 and then have each of five million drivers in New Jersey pay \$10 every year for catastrophic injuries, such as you have described, that would be \$50 million coming in to the coffers every year -- do you think a system like that might be able to work?

DR. MAGAZINER: Perhaps.

SPEAKER COLLINS: Good answer.

DR. MAGAZINER: I'm not a statistician or actuary. As long as in that \$25,000 patients had access to good care and that they weren't pushed into seeing physicians that they might not want to see or get a care from practitioners that they might not want to go to, such as in a managed care system.

SPEAKER COLLINS: So -- and, of course, then we come back to that cost won't matter, it will all be the choice of the injured person is sort of at the heart of your position.

DR. MAGAZINER: That's pretty much correct.

SPEAKER COLLINS: Okay, go right ahead back on track.

DR. MAGAZINER: I'll try to sum it up in just a few more minutes.

I'd like to talk a little about the PIP fee schedule. The present fee schedule has not been increased or changed since 1991. If you compare it to usual and customary fee schedule that's put out by Medicaid, the present PIP

fee schedule is in line or in the lower portion of what's considered usual and customary. I'm not for lowering the fee schedule down to Medicare levels. I think there is a level at which quality care will be difficult to provide if the reimbursements are too low.

I've already seen hospitals close. I've seen rehab centers merge and close. I've seen physical therapists in private practice that used to provide 35 to 45 minutes of care sell out to larger corporations. I've seen physicians who have had to join corporate medical care because they have had to go out of practice. What I worry about is, if the fee schedule is too low, good providers who practice quality care will be sacrificed and therapists will have to hire more nonskilled therapy aides to care for the patient to increase their volume to be able to offset their cost. I see a lot of people joining large corporations to be able to do that.

SPEAKER COLLINS: Doctor, again, let me-- Obviously, and I think you and I agreed on this, the heart of your testimony -- and I don't know if you have to go further in this part of it -- is that you, even when you brought in the Hippocratic oath, committed to help a patient all the way, in any way, in the best care, and so on. We understand that. You don't have to compare that to all the other programs.

Our question is-- Everyone would like to continue that. I guarantee you go out and ask everyone if they would like to have the best medical coverage possible, always do. That's the whole argument in health care, also. We are faced with this little challenge that I keep hearing that it costs too much to drive in New Jersey. Do you have any suggestions on what we could do there?

DR. MAGAZINER: Yes, I do.

SPEAKER COLLINS: Thank you.

DR. MAGAZINER: I'd like to take a moment to talk about fraud and abuse. The New Jersey Society have given our supports and reduction of true fraud and abuse at every level. You must not confuse or penalize a caring physician or a therapist who is treating a patient who is in pain and demanding care or treating a patient that might seem that we are treating them excessively or for a longer period of time. We also support the rooting out of true fraud and abuse, not only by providers, but also in the auto repair industry with attorneys and even insurance companies.

I'd like to talk a bit about peer review. The implementation of peer review system would restrict the ability of persons injured in a motor vehicle accident from receiving proper health care from the treating doctors. Peer review would stack the deck against an insured person by transforming judgement to decide the best medical treatment from the patient's doctor to the peer review organization.

SPEAKER COLLINS: Doctor, keep the track open. Now, you heard the previous testifier, he's a peer review person. He's a doctor of chiropractic. Is he wrong?

DR. MAGAZINER: No, I don't think he's entirely wrong.

SPEAKER COLLINS: He's not wrong. He wants peer review. He doesn't want-- He wants someone to analyze what that treating physician does. How can you say he's not wrong?

DR. MAGAZINER: What I was going to come to conclude is that the only peer review system that we, as physicians and in my specialty, could

accept is one that is truly independent from the automobile insurance companies, one that is somehow regulated by an independent body.

SPEAKER COLLINS: Regulated by whom?

DR. MAGAZINER: An independent body.

SPEAKER COLLINS: Independent body.

DR. MAGAZINER: Paid for and regulated by an independent body. That's the only way that we can foresee a system that would work.

SPEAKER COLLINS: Having a group from your organization be the peer reviewers, you don't think that would work?

DR. MAGAZINER: No, I think it should be a physician of like specialty examining patients of like specialty on a rotating basis of some sort.

SPEAKER COLLINS: Okay.

DR. MAGAZINER: And people that just don't make their career out of doing peer review, and perhaps limiting them to doing it only for two years, and then they are off the peer review board so they go on to treating other patients.

SPEAKER COLLINS: Okay.

DR. MAGAZINER: We have proposals of that.

In regards to other abusive practices I'd like to talk a moment about insurance companies, and I apologize, I'm not talking about all insurance companies. There are good doctors and bad doctors, and there are good insurance companies and bad insurance companies. In regard to reimbursement issues and delaying tactics, one problem is that insurance companies--

SPEAKER COLLINS: Doctor.

DR. MAGAZINER: Yes, sir.

SPEAKER COLLINS: I'm sorry and-- What you're going to talk about now, delaying tactics and pay, do any of those have an affect on automobile insurance? Of course, everyone has their position, but as we heard earlier, cell phones, whether insurance companies are paying, and so on. They are particulars that the Department of Insurance has to deal with, not the Legislature. We are trying to set up a policy for the State of New Jersey that insures people with the best protection for the best dollar, and if you could sort of stay on that I'd appreciate it.

DR. MAGAZINER: I won't mention anything--

SPEAKER COLLINS: And many others, by the way -- let me just say this. Many others over the days have strayed all over the place. We're just going to try and use you to keep people on track now.

DR. MAGAZINER: I won't talk about it, but I just wanted to mention that the reason I wanted to bring it up was because I heard another testimony that no one brought that up. That it was only some person from the insurance company were saying that there is nothing wrong with the payment system for physicians and providers. So I thought--

SPEAKER COLLINS: Let me just say, as someone who represents 200,000 people in Salem, Gloucester, and Cumberland County, I know it's a problem because I get those calls in my office all the time, as do other legislators.

DR. MAGAZINER: Then I won't bring that up.

I'd like to conclude in my final comments in terms of how possibly to fix the system. We feel that one should combat all types of true

fraud and abuse from the automobile repair industry to various treatment mills and excessive testing that might be done.

If you do peer review, it may save money, but it must be independent and of like speciality. We think that there should be a crack down on insurance company pass-throughs and of fraudulent, unethical practices. I feel that the \$250,000 cap should be preserved to maintain quality of care. I believe we should maintain the present fee schedule, also to maintain quality of care.

In terms of the total pie of the premium, 15 percent of the premium, from the statistics that I was given, goes towards medical care; 30 percent goes towards paying for attorneys and lawsuits and things like that. I'm just saying that we shouldn't try to save the entire system to lower the premium by taking it out of the hospitals and the providers that are trying to take care of the patients. The bottom line is that I want to get my patient back to work and back to their family, that's all I care about. In terms of whether they win the lottery or they've got something after that, I'm doing my job if I get them back to work and back to their family.

Thank you very much.

SPEAKER COLLINS: I just have one final question. At least five times you said true fraud and abuse. The word true, what do you mean by that, true fraud and abuse?

DR. MAGAZINER: Well, I think the kinds of things that you see on *48 Hours* where people are seeing their attorney first before they see their doctor. Their attorney is the gate keeper rather than their primary care

physician. They are being sent into mills of physicians where they are going in circular files and getting all kinds of tests and therapies.

I've seen cases where the attorney sends them to a nonphysician to do diagnostic tests, and then somewhere down the line they send them to a physician. There are cases where people aren't really getting therapies, but they are signing the super bill for it, and those are the kinds of fraudulent practices that I am talking about, excessive treatment well beyond when the patient has any chance of improvement, testing that is nonproven and doesn't have validity, things like that.

SPEAKER COLLINS: Thank you very much.

DR. MAGAZINER: You're very welcome. Thank you very much.

SPEAKER COLLINS: I appreciate you staying on track. I appreciate it, thank you.

What we are going to do here is, we have a number of people have yet to testify. I am going to have Dr. Klingert come forward, then we have five other individuals. What we would ask is that you can either give us written testimony, mail us written testimony, or -- this is what we would hope you could do, but we have no right to impose on your schedule -- to come back on February the 23, which will be the next and final scheduled meeting for this Committee.

The only people who will be testifying at that Committee are those who did not get to testify today, and we are also going to ask the Insurance Commissioner to come in and respond to questions, and so on, that we have put together through this period of time. So those who will not be called, this will be our last testifier today. We apologize. We tried that 10-minute rule,

but, of course, I was an abuser of it the last two people, and we would like to have an exchange of ideas.

Please, if you would like, come back and you will be the only testifiers, and if you cannot and have a written statement today or if you would mail us a written statement, I would assure you that every member will get it, along with a little stick um on there from me saying this was a kind person who was here and didn't get to testify, and I'm sure they will look at it.

Thank you very much, again. The next meeting of this Committee will be February the 23, two weeks from today.

Dr. Klingert.

R I C H A R D K L I N G E R T, D.C.: Good afternoon, Honorable Chairmen. I have a prepared text; however, I am going to breeze through it in light of I appreciate your effort for staying around for me.

SPEAKER COLLINS: Well, you can breeze like a little zephyr if you'd like, but it's better not to-- You're a skilled man, I can tell, I've been watching you out there -- I didn't know who you were, but I was watching your interest. I'm sure you can handle it. Use that as a guide, but just talk to us.

MR. KLINGERT: Thank you very much.

First of all, my name is Dr. Richard Klingert. I'm a chiropractor in private practice for 21 years. I just want you to know that I don't work for any insurance company and at no time have I been involved in that sort of situation. However, I want you to know that I've done IMEs or ICEs, chiropractic examinations. Of the 21 years that I've been doing these exams I have not seen the blatant accusations that I've heard by my colleague of a few minutes ago. So I just want to leave it at that for now.

I would like to thank the Committee for this opportunity. I do represent the Council of New Jersey Chiropractors. I want you to know that I have a personal interest in insurance. I have five children, four of which who drive. I pay \$14,000 a year, and I assure you that I am quite upset with that insurance rate. With that in mind I would like to move on to the questions.

I have 11 questions here. We are not going to go through all 11 of them, but I just want to read them out to you. What makes chiropractic different from other well-meaning medical approaches? Why has chiropractic been so vigorously attacked? What impact can chiropractic have on soft-tissue injury or healing? Why is long-term treatment considered unnecessary and in many cases considered fraudulent? Should we, as health care providers, establish a better protocol for treatment? How can we develop better communication between treating doctors and insurance carriers? How can we expose chiropractors that negatively impact our system? How can we effectively evaluate the treatment necessary and the duration of care? What kinds of diagnostic testing are reasonable and necessary? Should there be diagnostic protocol standards? What measures can be taken to combat insurance fraud? Is managed care the answer to rising insurance rates?

These answers that I pose are not meant to antagonize, but to challenge all of us to present truthful and accurate answers. The consumer deserves nothing but the best of health care for the most economical and judicious cost.

So what I would like to do is pass through a couple of these questions. There are, before you in the booklet, some articles and research data that have been scientifically derived, not by chiropractic per se, but

endorsed by chiropractic because they are valid. I'd like you, at some time, take a look at it because it is very pertinent to soft-tissue injury.

As you'll see, you cannot propose the same treatment for a whiplash injury as you would a simple soft-tissue strain, such as snow-shoveling injury. Although a simple strain may heal within 10 or 12 treatment visits, the complexity of an inertia induced whiplash trauma may require a more complex treatment plan coupled with rehabilitation efforts.

Let's move on to some further down on the line questions. What impact in chiropractic have on soft tissue? I refer you to the chiropractic rehabilitation care article. In this article the authors discuss the physiology and stages of soft-tissue healing and the therapeutic affects of chiropractic adjustments.

Why is long-term treatment considered unnecessary and in many cases fraudulent? Once again, I ask you to turn to that article, as well as the vehicle damage and passenger injury.

Should we as health care providers establish a protocol for treatment? Enclosed in the packet please refer to the 1993 New Jersey Chiropractic Standards. This was a standard that was adopted by all the chiropractic organizations in New Jersey. I think it's important to understand that we do have standards, and if these standards were adhered to, I think we could avoid a lot of the issues we are discussing today.

How can we develop better communication between treating doctors and insurance carriers? I would like you to know that the Council's Insurance Committee has established an in-house insurance workshop program. Over the past several years we have sponsored half-day workshops

with insurance company adjusters. Our guest speakers include Drs. Chris Kent (phonetic spelling), Patrick Gintempo (phonetic spelling), and myself. Our goal was to bridge a communication gap between the adjusters and the Council members. At the workshop we present an insurance manual that reflects our standard of care. I have included a sample manual for the Committee Chairmen. The positive responses to these workshops have been overwhelming.

How do we expose the chiropractors that negatively impact the system? The new fraud bill enacted in 1998 should make a significant impact, as well as our State Board of Chiropractic Examiners, which have been active in dealing with the bad element of our profession.

How can we effectively evaluate the treatment necessity and duration of care? I believe a better understanding of serious effects of soft-tissue injury and early treatment will help in cost containment. Some states have initiated a minimum number of treatment visits before more expensive diagnostic tests can be ordered. Hawaii, for example, requires 30 visits before more comprehensive diagnostic tests will be authorized. A form of peer review should be considered, but I'm not going to get into that because I could probably spend another 20 minutes. So we'll move on to the next question.

What kinds of diagnostic testing are reasonable and necessary, and should there be diagnostic protocol? Technology today is very effective but also expensive. Maybe we should look carefully in establishing comprehensive fee schedule for some of the more expensive diagnostic tests, such as the MRI and EMGs. In 1991 we had a fee schedule for PIP that was established, and I think a number of these tests were not included on that fee schedule. I might

be wrong, but in my evaluation that is what I saw and noted. So that's a consideration. Why not look at how Hawaii has restricted their test and see if it has been effective in cost containment.

What measures can be taken to combat insurance fraud? First of all, the 21-day rule and the new fraud I think will effectively curb this aspect, but let's give it some time to pan out.

Is managed care the answer to rising insurance rates? I don't believe that managed care has any place in PIP. Managed care was originally established for a preventative care and look how it has developed. I feel that people who are injured should absolutely have the right to choose the doctor of their liking. We already have a fee schedule that has not had increase since its inception in 1991. The consumer already had a choice of selecting their major medical carrier if they don't want PIP coverage.

Furthermore, how has this choice impacted cost containment? I'm sure that you are aware that on January 22, 1998 the Bartlett Associates testified. Given testimony by Nancy Pinkin, to my right, was presented on behalf of the Council of New Jersey Chiropractors. In her presentation she gave our views and suggestions on how to lower insurance premiums. I've enclosed her testimony because I don't want to be redundant, anticipating the amount of time that's been taken today. However, I would be glad to review any points of concern

In the future, if there are any subsequent Committees meetings, the Council of New Jersey Chiropractors would be interested in bringing before you a noted expert, either Drs. Murphy, Christie, or Merchowski (phonetic spellings) on soft-tissue injuries.

I thank you for your time. Are there any questions?

SPEAKER COLLINS: Let me ask this. That you're a chiropractor representing the Council.

MR. KLINGERT: Yes, sir.

SPEAKER COLLINS: There has been, if not direct, statements of illusion to the number of times that there are medical procedures that are taking place with regard to automobile injuries that are questionable, in many areas of medicine, but a lot of it dealing with chiropractic. You even heard some of that today.

How do we deal in a particular way with bad anybody, but chiropractors? Let's go to your profession, what should we be doing there? How should we be finding out who these people are?

MR. KLINGERT: One of the answers is, reverting back to Hawaii. They assume an injury. Let's face it, a two-ton automobile hits a 150-pound person, they are going to be damaged. With that, there is a certain amount of care that's going to be required. In your packet there is an entire article on soft-tissue injury; in fact, it's the second article in the packet. In the article it discusses in detail the-- It's called "Chapter 13, Chiropractic Rehabilitative Care."

There is a certain amount of care that has to be rendered within the first 30 to 60 days. In Hawaii they don't allow you to do extensive diagnostic tests until there has been some treatment rendered. I think that's one way of curbing some of these baseline studies as some of the doctors or clinics or PI mills, as you may say. Some people have established some baseline studies with expensive testing and then treated the patient for a period

of time and done secondary testing to verify if there has been any change of condition of the patient.

I think that allowing a patient a certain period of time to be treated with the generally acceptable mode of evaluation-- First of all, if it's not life threatening, we go into a soft-tissue evaluation, a detailed case history, the standard X rays that a chiropractor if he does a specialty technique or the ones provided by the hospital, as well as the physical examination -- should be enough to establish the amount of care needed to initiate a case. Then every 30 days a patient should have a physical exam to evaluate its progress. That's not hard to do nor is it expensive. After 30, 60, or 90 days -- say a 90-day period -- if the patient has not shown objective improvement, then maybe a protocol should be set up as to the kind of testing should be established.

For instance, one of the most effective tests to evaluate soft tissue being the MRI, of course, being much more detailed than the X ray and actually showing you what soft-tissue can do. The expense of an MRI: \$1000 for a lumbar study or a \$1000 for a cervical study. To me I think that ought to be evaluated and see if there can be some fee adjustments in that area, as well as the EMGs or evoke potentials -- I'm trying to think of some of the other tests.

SPEAKER COLLINS: That's all right, I wouldn't understand them anyway.

MR. KLINGERT: Okay. But, any rate, I'm not against these tests. I think they are valid, and I think they do differentiate the degree of severity of injury. However, being done as early as they are and maybe the frequency that they are being done is in overuse.

SPEAKER COLLINS: Doctor, thank you very much for coming in. We appreciate it. For the five other testifiers who have indicated that they would come back on the 23, we thank you in advance.

This session is adjourned. February 23, is the next meeting.

(MEETING CONCLUDED)