

Public Hearing

before

SENATE COMMERCE COMMITTEE

“Automobile insurance including the Governor’s automobile insurance plan, uninsured motorists, automobile insurance fraud, and other recommendations on improving insurance in New Jersey”

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: May 12, 1997
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Gerald Cardinale, Chairman
Senator John H. Adler
Senator Raymond J. Lesniak



ALSO PRESENT:

Dale C. Davis Jr.
Office of Legislative Services
Committee Aide

Laurine Purola
Senate Majority
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SENATOR GERALD CARDINALE (Chairman): We're going to begin this public hearing. All of the appropriate notices, according to the Open Public Meetings Act, have been issued. And while not all of the Committee members are yet here, I think it is important that we enter some items onto the record in advance of hearing the testimony of the witnesses.

One of the things that I would like to put into the official record of this hearing is a report which has been submitted to us by one of our former colleagues in the Senate, now a Congressman, Jim Saxton, who heads a Committee in Washington -- of the Congress -- who has come to-- I'm going to read just the executive summary, which is very short, but I think the entire report ought to be entered into the hearing record.

The executive summary says, "Americans pay exorbitant amounts for auto insurance thanks to excessive litigation and escalating fraud and abuse. One reform that would help address these problems is Auto Choice. With Auto Choice, drivers could choose to opt out of recovery for pain and suffering damages in return for significant premium savings and quicker compensation for economic losses. Drivers who prefer to remain with their state's existing insurance system would be substantively unaffected.

"This study estimates that Auto Choice would reduce auto insurance premiums 32 percent nationwide, or \$45 billion, in 1997. Over five years, Auto Choice would make available a total of \$246 billion in savings. On the individual level, Auto Choice would save the average policy \$243. Low-income drivers would realize substantially greater savings -- 48 percent on average."

He gives tables of the impact within each state of the adoption of the Auto Choice Plan, and New Jersey would benefit to the extent of \$342 on our average policy, which is equivalent to 29 percent.

I want to welcome you to another of our hearings on automobile insurance. At the other hearings we heard from a number of people, each with their own view as to what is the matter with our system and each suggesting ways in which it can be fixed. This presents a dilemma for the members of the Legislature, because there is such a divergence of opinion.

All agree that they want a reduction in premiums, but to reduce premiums means that we must make some trade-offs. Some say repeal no-fault, some value the first-party personal injury protection medical benefits above everything else; indeed, there are even those who believe that the amount of medical benefits should be increased, so that catastrophic injuries will be paid for as they were when we had unlimited medical benefits. Others strongly object to any further limitation on the right to sue for pain and suffering on the grounds that all persons deserve their day in court. Some would have us remove all current lawsuit restrictions.

Obviously, we cannot accomplish all of these objectives and, at the same time, pretend that premiums will go down. We constantly read in the press that New Jersey has the highest rates in the country. These figures are very misleading because they compare both no-fault and non-no-fault states.

New Jersey's average premium reflects the \$250,000 medical expense benefits which all of our policies provide. In the majority of other states that we're being compared to, all of the people who are injured receive their medical payments from their health insurance or from tort claims, not

from automobile insurance. The full cost of automobile accident claims in these states, therefore, is not reflected in these so-called average figures. Many of those who encourage repeal of no-fault don't realize that it's the no-fault feature which provides acute care and rehabilitation after an accident. Some legislators even have reduced bills to repeal no-fault and have additional provisions in another form.

If the majority of other states don't have no-fault and their automobile insurance policies don't pay for injuries in automobile accidents, why do we have it? Why do we keep it? The answer is that the Legislature has believed, until now, that no-fault, despite its faults, provides many positive benefits to people which the alternative system, the tort system, does not.

Under the tort system, recovery is based on proving negligence. To receive reimbursement for injury, medical expense, or loss of property you must sue the party who was negligent. Recovery often takes years. You hope that the person who is responsible for your injuries carries enough coverage to reimburse you fully, for both your injuries and your pain and suffering. Our current \$15,000 minimum policy frequently does not accomplish either.

Lawsuits are time consuming, and they are the most expensive way for the automobile insurance system to deliver benefits. That's why the Legislature, in 1972, adopted no-fault. But they didn't adopt real no-fault. They continued to allow lawsuits, as has every Legislature since.

Under no-fault, every person injured in an automobile accident gets necessary medical coverage and loss of income from his own insurer regardless of who is at fault. Under no-fault, nearly 85 cents of every benefit dollar goes directly back to the insured in payment for his medical treatment

and lost wages. Under the tort system, however, less than 50 cents of every benefit dollar goes to the injured person in the form of benefits. Expensive legal fees for both the defendant and the plaintiff, court costs, and witness fees eat into the victim's reimbursement. All of the costs connected with expensive litigation are ultimately passed on to policyholders in their premiums. When insurers pay out large claims, premiums for everyone go up.

The reason that the Legislature initially adopted no-fault and the reason we have retained is that it is simply more economical, more efficient than the tort system to provide the same benefits. Because no-fault provides medical and wage loss benefits to all drivers, without determination of fault, there are more people collecting benefits than there are under a tort system. This, however, presents added costs, so one of the features which is central to a no-fault system is that while motorists get these additional benefits, there has to be a trade-off -- a reduction in some other feature if you want to keep the cost of the policy down.

In New Jersey our law places a restriction on the right to sue for pain and suffering but always allows lawsuits for unrecovered economic loss. The theory behind no-fault is that if you are made whole by your own insurer promptly, there is less need for you to sue. It is my belief that this trade-off is not well understood by the public.

New Jersey drivers are so accustomed to having their medical bills automatically paid by their automobile insurer that they do not realize that this benefit is not available in non-no-fault states. Repeal no-fault makes a great sound bite, but most of those who hear the rhetoric don't fully

understand the implications. At best, repeal would result in cost shifting to individuals, health insurance, of charity care.

Ironically, because of the way in which New Jersey law is structured, the limitation on the right to sue for pain and suffering, which was intended to save money, has actually resulted in higher costs. As the lawsuit threshold has been raised over the years, the utilization of no-fault medical benefits increased. When the verbal threshold was introduced in 1989, for example, people began seeking more medical treatment to prove that they had an injury which meets the definition of serious injury therefore giving them the right to sue for pain and suffering.

There is no downside to bringing suit. There is no downside for doctors or lawyers who encourage overutilization or fraudulent claims. There is very strong incentive for all involved to game the system. Many believe that attorneys encourage the buildup of high medical expense because pain and suffering awards are usually based on a multiple of the amount of medical treatment.

For example, the average automobile insurance medical expense claim has risen from \$1496 in 1981 to \$8985 in 1993 and, today, is probably around \$12,000. This increase in the utilization of medical benefits which parallels the increase in the lawsuit threshold has occurred in other states, as well.

After Massachusetts raised its lawsuit threshold from \$500 to \$2000, the median number of medical treatments rose from 13 to 30 per accident. In both states, this phenomena has had a dramatic effect upon

premiums. Moreover, the premiums which we pay for medical benefits do not even cover the cost.

The Department of Insurance has long had a policy of requiring insurers to subsidize the medical expense premium by shifting some of that cost to collision and comprehensive coverage. Therefore, if we succeed in reducing excessive claims for medical benefits, it will have a beneficial effect beyond reducing the personal injury protection premium.

In short, the rise in insurance premiums in New Jersey has been partly caused by the unwillingness of many policyholders and others to accept the concept of a trade-off. They are not committed to the idea of eliminating lawsuits for minor accidents. The high costs associated with lawsuits must be built into the insurance premium. It is ironic that over 80 percent of motorists do not ever abuse the system, but the minority who do cause the premiums to rise for everyone.

The Governor's insurance reform proposal attempts to deal with this issue by giving drivers a choice. It has been criticized because to reduce your premium substantially, you're required to forgo the right to sue for noneconomic loss. To substantially reduce premiums, you would have to reduce the amount of money which is paid out in claims. It is that simple.

What is not often said is that the Governor's proposal always allows the right to sue for unrecovered economic loss and contains other alternatives for policyholders. You can retain the right to sue for every injury -- similar to the zero threshold under the present system. You can retain the right to sue on a limited basis for serious injuries, or you can elect to receive pay and suffering payments from your own insurer on a no-fault, no-sue basis.

The latter option has all of the advantages of no-fault in that most all of the benefit dollar will go directly to policyholders in the form of payments while retaining the right to collect for pain and suffering. It's a much less expensive way to deliver payments than is the tort system because it eliminates the high transaction costs -- mostly legal fees -- inherent in the tort system.

I want to say a few words about some of the other aspects of the insurance market in this State. One of the things which can help to bring premiums down is the fostering of genuine price competition among insurers. We are seeing that to a greater degree than ever before. During most of the 1980s, there was virtually no competition in our automobile insurance market. More than 75 percent of all drivers in the State paid the same premium rate -- that established by the Insurance Services Office. Fifty percent of these drivers were in the infamous JUA, and they were charged the voluntary market rate.

While people complained then about rates being too high, we know now that the rates for at least 50 percent of the drivers in the State were artificially low. The money that the JUA insured were paying was \$3 billion less than it took to pay their claims. This was the amount of the JUA and MTF deficit, which we have bonded and which, thanks to Governor Whitman, is being paid off not through our insurance premiums, but rather from relatively small surcharges levied by the Division of Motor Vehicles on accidents and violations, as well as some which has been swallowed by the insurance companies.

In 1988, the Legislature acted to make some structural changes in the insurance market in the hope of bringing about more competition. While

enacting legislation which would have mandated depopulation of the JUA, it also moved to give insurers greater incentive to write new business by modifying the cancellation laws to permit insurers to cancel a small portion of their business each year. Thus, if a person insured by the JUA was insured in the voluntary market by an insurer and the policyholder subsequently proved to generate a lot of claims, the insurer would have some leeway to cancel the policy. Insurers were permitted to cancel 2 percent of their policyholders in any territory, as well as one policy for every two new ones which they wrote. At the same time this was enacted, every insurer was required to take a proportional number of policyholders out of the JUA and write them in the voluntary market.

At the same time, to foster price competition and to break up the virtual cartel which existed as the result of the large percentage of insurers using the same ISO rate, large insurers were required to file their own rates based on their own claims experience but were given an incentive in the form of relief from long and expensive regulatory rate approval delays. They were permitted to increase or decrease their rates once each year in accordance with changes in the Consumer Price Index if, and only if, the increase would not produce an excessive rate.

Thus, it was hoped that the introduction of this mechanism would result in premiums which were more reflective of the insurers' actual costs because they could be adjusted quickly either up or down to reflect market conditions. This came to be known as the infamous flex rate. As a result of this and the elimination of the Insurance Services Office as the filer of premiums

for the vast majority of the insurers, prices did become differentiated and somewhat more competitive.

Insurers began to write new business. The prior approval system is still in effect for larger rate requests and continues to be used. The flex rate had the advantage of taking some pressure off both the Department and the insurers and has eliminated some of the large expenses of frequent prior approval filings, the cost of which was always passed on to the policyholder.

Contrary to popular conception, the flex rate is not an automatic, nor does the State say -- does the statute say that it has to be implemented every July 1. The Commissioner has full power to challenge any insurer which does not warrant a rate increase for whatever reason and can order that insurers rescind the rate.

Both of these measures were originally intended to make the insurance market more competitive. The 2 percent cancellation law, however, has unquestionably been abused by some insurers, who are churning policies in the take-all-comers market which we have had since the passage of the FAIR Act.

I support modifying but not eliminating completely the right to cancel policyholders. I do not think that drivers who have been insured with a company for a long time and who have a clean record or a minor accident should be canceled. Unwarranted use of the cancellation provision has been very unpopular with policyholders, and I think they're right. Churning adds unnecessary administrative costs to the system which eventually results in higher-than-needed premiums.

Similarly, the surcharge system has been unpopular with policyholders. This Commerce Committee has taken measures to repeal some surcharges already. While most insurers always surcharged for accidents, surcharging for violations began in the Florio administration under the misguided belief that drivers with a violation are bad drivers and should have to pay more. It is clear that the public agrees with that assessment. I believe that surcharge repeal should be an important part of a reform program. It strikes me as simply unfair that a driver who has had no accidents gets surcharged for points when the only difference between that driver and most others is being cited for what many others are also doing regularly.

Finally, much as been said about the cost of fraud in the insurance system. We've read this weekend about a pair of chiropractors who have had their licenses suspended because they were running an injury mill costing policyholders millions. Their penalty amounts to a slap on the wrist which provides little deterrent for others, whether doctors or lawyers or claimants.

Some say that 20 percent of policy cost is attributable to fraud. There undoubtedly is outright fraud taking place on a regular basis by means of such things as filing claims for medical treatment which was never received or which was unneeded, falsifying an address in order to receive a more favorable premium, filing claims for stolen cars which never existed, and faking injury or even faking accidents in order to sue. Everyone agrees that this is wrong, but it is difficult to eliminate even such obvious fraud.

Trial lawyers and others object to a medical panel to review questionable medical claims. They want lawyers to continue to determine what is necessary treatment. Certainly no one is without the possibility of bias,

but an impartial panel of doctors seems to me to be a more logical process than having lawyers make what should be medical decisions. There is a need to make sound judgements based on medical not legal necessity. Certainly, the high and growing cost of claims, as well as the fraud which pervades the system, cries out for better controls.

There are also a number of gray areas which might fall under the general heading of fraud but which are almost impossible to track down. Many are down in the normal course of business by ordinary people who would never consider themselves to be criminals. These include inflating medical bills and overusing medical benefits in order to gain standing to file a lawsuit, making a deal with the repair shop to avoid paying all or part of the deductible, and conspiring to have an insurer to pay damage to a care which was not caused by the accident for which the policyholder is being reimbursed.

All of this is as much fraud as anything else, but much of it is hard to prove. How much does this impact the insurance premium? How much of it can be eliminated? How expensive in both finances and annoyance to the innocent will such fraud control involve? In my mind, the call for an across-the-board premium reduction to force insurers to eliminate fraud has been invented by some of the interest groups who are using it to deflect discussion from the real issues.

Our challenge is to honestly evaluate the whole picture and to better balance the trade-offs no matter whose ox might be gored in the process. Our constituents demand lower premiums, and premiums can be lower but not unless we're willing to break the stranglehold currently exercised by all of the

special interests who share responsibility for past failure of attempts to establish a system which is fair to the motorists.

My constituents and yours are tired of finger-pointing. They don't care much where past fault lies. They want us to solve their problem. Let's begin.

SENATOR LESNIAK: Mr. Chairman, just briefly, if I may--

I want to commend you for a comprehensive and fair analysis of this history of auto insurance here in the State of New Jersey.

However, to be a little fairer, I just want to add for the record two things. The \$3 billion debt, which was under the JUA, was created due to -- during the Kean administration and due to the JUA going on a cash-flow basis and not reserving, which caused an (indiscernible), a surcharge on the policyholders that was over \$200, headed to over \$300, and that was eliminated under the Florio administration.

I do believe, though, that finger-pointing is not going to solve this problem, and as you say, we have to take that history that brought us to this date and move forward to solve the problems with the current system. But I do want to make sure that the record reflects what I just said.

Thank you.

SENATOR CARDINALE: Senator Adler.

SENATOR ADLER: I do want to echo Senator Lesniak's comments. It is to your credit that we're having these hearings. I say this critically of all of us, we did not have these hearings three years ago. The problem has been around the entire time we've been in the Legislature -- all of us -- some of us for many years. But it's good that we are addressing it in a

forceful way today, and hopefully, we will reach some sort of consensus on what's good for drivers, for ratepayers for the State.

SENATOR CARDINALE: Thank you very much.

We have with us to testify the Commissioner of Insurance and Banking, the Honorable Elizabeth Randall.

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

SENATOR LESNIAK: Red is on. Green is off. (referring to microphone) We do things backwards here. Not that often--

COMMISSIONER RANDALL: I actually don't have extensive prepared remarks -- for which I apologize -- but in essence, the Chairman's opening remarks have covered much of the ground which I would have addressed this morning.

I briefly just want to reiterate that which the Governor has already spoken to on this issue. Back in January, the Governor announced a program for reform. It is all encompassing and it is comprehensive. As the Chairman indicated, there is not the ability to point to any one factor of the problem and say, "It is only medical costs" or "only the legal system that is at fault." It is partially fraud, but it is not only fraud. All of the factors, all of the cost drivers in the system need to be addressed, and that is what the Governor did in January when she proposed a program which dealt with expansion of choices of coverage, dealt with fraud, and dealt with bringing fairness back into our system.

Several weeks ago, the Governor again spoke about the issue and decided to ask this House, along with the General Assembly, to take action on

particular aspects of her proposal which she thinks need attention as soon as possible. And when I say that, I know that she has indicated she would like the Legislature to consider acting on some of the specifics of her program before you break for your summer recess.

The aspects of the program that she would like to see addressed speak to those things about which the public has complained probably more than anything else. First, is the elimination of the surcharges. Secondly, is the change in the law so as to prohibit the insurance companies from dropping good drivers for really what would be an array of reasons but very few of which are actually valid reasons. Those two, surcharges and the nonrenewal of good drivers, probably represent the top number one and two complaints that we hear at the Department and I'm sure, perhaps, represent some of the top complaints that you all hear from your constituents, as well. Thirdly, the Governor would like to see the end to the July 1 flex increase that has been in law since 1988, and finally, she would like to see the Legislature act on her initiatives to combat fraud.

Fraud is all encompassing. It can be civil fraud. It can be criminal fraud. It can be the type of fraud in which there are phony accidents, staged accidents, nonexistent victims, and nonexistent medical bills. Or it can be what we call the harder-to-detect fraud, overutilization of medical treatment, inappropriate or excessive use of unnecessary medical procedures. All of it is fraud. And, as the Chairman indicated, the estimates run as high as 20 percent of everyone's premium today being attributable to fraud.

These aspects of the program, I think, can be actually acted upon within the next six weeks. That leaves, though, for discussion another very

important part of the Governor's proposal, and that deals with the expansion of choices of types of coverage -- an important debate which I think we can and must have if we are to take the comprehensive approach that everyone agrees is necessary if we are to really squeeze all of the excess costs out of the system.

Essentially, there are some other things that I think should be brought up and debated in the next six weeks in conjunction with the four principal points of the Governor's program, and they deal with bringing fairness into the urban areas -- a portion of the Governor's program addresses Urban Enterprise Zones for automobile insurance. This is an initiative which I think is much needed and could be very successful in making automobile insurance more available to the residents of our urban areas--

Also, I think, very important in terms of its potential for meaningful cost reduction are medical cost controls, and I refer specifically to things like the notion of peer review, as well as an arbitration system reform and a medical fee schedule. These all speak to reducing what some would characterize as the medical fraud or fraud and waste that we see through inappropriate, excessive, or unnecessary medical treatments.

Those are really the key things that I'd like to highlight today, and would certainly--

I know this is not the time, Mr. Chairman, to talk in specifics in terms of the Governor's administration proposal, since that is not before you today in this public hearing, but I certainly would be pleased to answer any questions.

SENATOR CARDINALE: Thank you very much.

As you're probably aware, over the weekend, there was a great deal of press with respect to a recent fraud ring. While I think most of us knew about this for a very long time, for the first time, some of the smaller details were put into news articles. I find some of those -- and I've already heard from any number of people with respect to some of those -- somewhat disturbing. I'd like to ask you about a few of those.

Early on, before this weekend, I had the opportunity to discuss this particular case with one of the insurance companies that had been involved in referring this fraud to yourself and to the Attorney General. This insurer indicated to me that this case was the tip of the iceberg. I said to him, "What do you mean?" He said, "There's a lot more going on than just these two particular providers." I said, "Well, how many of them are there?" He said, "There are at least a dozen" -- I have no way of knowing whether this is true, but I'm relaying the conversation to you -- "at least a dozen similar rings operating in New Jersey today." I said, "What are you doing about it?" He said, "When we refer these things to the Department, we seem to be falling on deaf ears. As a matter of fact, when we referred this case to the Department, we were fined."

I haven't checked on whether that's true or not true, but it seems to me -- and I've heard this cry that we need more fraud investigators -- that we do have some fraud investigators, and I would like to know why they are not going after the balance of the fraud, why I see nothing in this article with respect to anything but the health care providers, and it occurs to me that there has to be runners involved. It occurs to me that there has to be lawyers involved in sending these cases, because I don't think that these people are all

going to the doctor to receive care for nonexistent injuries and wasting their time. It seems to me there must be some motivation. There must be something beyond that.

I'd like to know why the Department appears to have been -- and I know you've only been the Commissioner for a year and a half, and I know this was going on long before you came there, and this case was in operation long before you came there, so this is not a personal-- But I'd like to know what is being done in that Fraud Division to get at these kinds of problems, what has been done, do you have any better plans for the utilization of the people, and what are you doing with the 80 people who are there now?

COMMISSIONER RANDALL: Well, thank you for the chance to address that. I agree that this, unfortunately, may be the tip of the iceberg. I think that we have begun to see, with the bringing of this case to fruition, a change in our shift and our focus at the Fraud Bureau. Historically, we spent a lot of time, a lot of resources, and a lot of those investigators' energies pursuing individuals for civil penalties -- individuals who may have not reregistered their car in a timely fashion when moving into the State, may have decided that they were going to move out of the State but improperly kept their registration here in New Jersey because they could actually get a lower rate than they might get in, say, Manhattan or Philadelphia. There were thousands upon thousands of what I would call individually based cases that were researched and brought.

What we have started to do is to shift our focus to what I would call more of the rings and more of the situations which involve licensed professionals. That is not to say that if we find someone who is evading our

rate we won't prosecute that person and bring them in for a penalty, but where the millions upon millions of dollars can be lost is in the areas where you have people who are paid in the system, and I'm talking now about those medical providers, possibly the lawyers who bring cases based on built-up medicals that really have no basis. Those are the kinds of instances which involve a myriad of people.

This case was one in which we began to see that while it wasn't criminal fraud -- because patients were actually visited -- it was civil fraud, because of the caliber, quality, and the extent of the billing that was really far in excess of that which was appropriate. In this case, while the Attorney General could not make out a case for criminal prosecution resulting in jail time, we were successful in stopping \$40 million of the \$52 million that had actually been sought, and as well, we pursued the fine of \$750,000 against the remaining assets of the two doctors involved.

Their assets right now-- One of them is in substantial problems with liens and other judgements against him, and our asset search showed that while they could come up with \$750,000, that was probably the most we were going to be able to extract from them by way of penalty. We could have continued litigation with these two doctors, but then their lawyers would have liens on file against the assets for further legal defense fees, which would have eaten into, ultimately, the amount of that \$750,000 fine that we could expect to get at the end.

Their licenses have been suspended for a total of five years. They've been out of the business for three. There are two years remaining on the license revocations of the two chiropractors involved; after which, they will

have to seek the discretionary reactivation of their licenses from the Board of Chiropractors. That is not, certainly, a given. They will not be automatically reinstated at that time.

Were moneys lost? Yes, significant sums. Was the course of treatment adequate? In many cases, it was very poor or inadequate medical treatment.

But I do think we have to take this as a beginning in terms of looking at what I would call organized endeavors that are bilking the system, and we have to expand our efforts and look beyond the medical providers to others who are also gaining from the system -- other medical providers, not just chiropractors, as well as the lawyers who may be involved in bringing those suits.

SENATOR CARDINALE: Now, one of your answers provokes another question. You say this was not criminal fraud because some services were actually provided. But I see here, in this article, a referral to a particular provider doing complex tests with respect to injury on 222 patients a day. I see another reference to another provider billing \$100,000 per day for his services. I see another reference to the treatment of 300 patients in a single day by someone doing treatment. It seems to me that some of that, by sheer volume, has got to be fraudulent. It seems that some of that has got to be criminal. By simply dropping his license in New Jersey, the fellow who did all of these examinations seems to have gotten away with it, because if he has dropped his New Jersey license--

Why aren't we going after this individual criminally? It seems to me we've got to have something -- unless there is something I don't know, and

I think the members of the Committee would like to know why these obvious fraudulent perpetrators are, in fact, being allowed to get away with it.

COMMISSIONER RANDALL: Well, while I will defer to the Attorney General's sound advice in not being able to make out the criminal elements of a criminal fraud case, I will say that I think they looked at it. I think the key was the patients actually did exist, they actually did make office visits, and there was some sort of hands-on treatment that was rendered.

Now, that is not to say that it might not have been a borderline case of trying to pursue a type of criminal fraud as opposed to the civil fraud, but, unfortunately-- I will say this, we have cases which probably are crystal clear in terms of the existence of criminal activity, and I'm talking about cases in which there are fictitious patients or actually, perhaps, patients with real names but who actually never make the office visit and patients who are actually never even seen by a medical provider. Those cases, as egregious as they are and shocking, I think are out there and will give us the sufficient basis upon which to pursue both civil and criminal activity.

Here, we looked at both and the Attorney General's Office pursued the civil angle. I will say that I think when you get into some of the other cases that we think are out there, I think we'll see both angles pursued because I think there is actually criminal activity that rises to a level which in, I would say, everyone's legal opinion would probably be outright criminal fraud.

SENATOR CARDINALE: Is it correct that the company which brought this particular fraudulent case to your attention -- to the attention of the Department, I realize it wasn't your attention -- was fined by the Department?

COMMISSIONER RANDALL: I don't know that, Senator, but it would have been several years ago. I will check. I don't know why that would have been the case. It sounds to me like a company that comes across this type of information is doing the right thing in referring it to the Department of Insurance.

SENATOR CARDINALE: It would certainly seem to me to be a deterrent against reporting fraud if the consequence of reporting it is to be subjecting oneself to a fine, and I would guess that that would hold true whether one was a medical practitioner or an insurance company. The insurance companies are being severely criticized for simply passing fraud on in the form of premiums, and if somehow the Department is encouraging that behavior, then I think it should stop.

One of the other things that you've mentioned is that the lawyers' fees would take precedence over the fines. In other words, you shortened the proceedings so that the lawyers' fees would be not quite as extensive so that there would be some money left to pay the fines.

Now, is there some law that you would like to see us pass that would have the fines take precedence over the defense lawyers' fees in cases where you're bringing fraud actions?

COMMISSIONER RANDALL: That's an interesting question to pursue. Right now, I think there's probably been some litigation and interpretation of the existing law, which probably allows a lien -- for the defense of a civil case -- to take some priority over a civil penalty which is ultimately levied against an individual. But I would think we could get back to you with perhaps some suggestions, because it's the kind of thing that does

erode our ability to ultimately get at the assets, if, in fact, it's a given that the attorneys' fees are going to take precedence.

This case had gone on for several years, and of course, we recognized that there were only X number of dollars in assets left, and that it made sense for us to recover as much as we could, which is why we ultimately made a judgement to settle for three-quarters of a million dollars.

SENATOR CARDINALE: Has any attempt been made to identify whether each of these patients who was being treated in this clinic -- and there certainly must have been a lot of them for this amount of money to have been involved -- was represented by a different lawyer? Or were many of them represented by the same lawyer, or were there a dozen lawyers who were involved in these particular referrals? And is there any plan to take any kind of steps to see whether there is any recourse against any of the other professionals -- whether they be lawyers or anything else -- who were in cahoots with these characters?

COMMISSIONER RANDALL: Yes. Now in this particular case, while there happened to, I think, have been several lawyers involved -- but many of them did go to the same lawyer -- we actually, I think, were successful in intervening here before many of the treated individuals actually filed lawsuits and sought out lawyers.

But it is an important point to note that lawyers are not beyond the scope of our efforts. They are very, very much, unfortunately, a part of the problem. I think that what we have to do is, while we recognize that lawyers' licenses are controlled by the judicial branch and the Office of Attorney Ethics, nonetheless, it is our desire to make sure that any evidence of unethical,

improper behavior is immediately reported to that agency just as we would report it to the licensing boards which govern the professional licenses.

The attorneys are in a slightly different realm in terms of who oversees the attorneys; however, I will say that historically I think the Attorney Ethics Board has dealt with lawyers fairly severely when they find evidence of ethical improprieties. Certainly, a conviction for civil fraud, for example, I think might result in fairly severe penalties. Certainly, a criminal conviction for fraud very well could lead to disbarment of an attorney permanently.

SENATOR CARDINALE: Now, I understand the coulds and the maybes. Has any one attorney involved with this particular ring been sanctioned in any way?

COMMISSIONER RANDALL: I don't know for a fact that there were any cases brought against attorneys out of this case. We have brought some in the fraud division and reported it as some attorney misconduct. But I don't know for a fact that any attorneys in this case were brought before the Attorney Ethics Board.

SENATOR CARDINALE: In terms of any of the patients on whom -- on behalf of whom these medical treatments were sort of documented as a result of the \$12 million that was, in fact, paid or the \$40 million that was, in fact, not paid, have any of those patients recovered, through settlement or judgement, moneys as a result of claims filed in terms of a lawsuit?

COMMISSIONER RANDALL: Again, we'd have to check. I don't-- We will check with the Attorney General's Office. I think we were able to intervene and essentially expose this situation and blow it up before the legal process went in the direction it ultimately would have gone in -- and it was

headed toward, I'm sure, numerous lawsuits being settled in which both victim and lawyer would have probably walked away happy with the check. But I think we were able to really expose the operation and essentially shut it down before we got to that point.

But we will check on that information for you, Mr. Chairman.

SENATOR CARDINALE: Thank you.

It was also indicated to me -- and I have no way of knowing whether this is true or not and that's why I'm asking you the question -- that some of the initial judicial determinations in this particular case -- some of the motions that were filed, and so forth -- were decided in favor of these practitioners. Is there any truth to that?

COMMISSIONER RANDALL: I know the case took several years, and we had one of our top people from the Attorney General's Office working on it. Again, I didn't necessarily hear of any adverse legal consequences. There might have been some motions filed in the course of litigation. But, as I understand it, the ultimate result was a good result given the fact that there were very few assets left and that we were in the civil courts as opposed to criminal courts.

SENATOR CARDINALE: When protests were made about these individual circumstances for each individual patient, were any of the questions of whether or not treatment was actually required? Were any of those referred to any of the existing panels which make determinations with respect to whether treatment is valid or is not valid? And the second part of that is, did any of those panels indicate that this treatment, which has subsequently been

proven to be fraudulent, was okay to go ahead? Do you understand my question?

COMMISSIONER RANDALL: I think I do, Senator.

When you talk about existing panels, I don't know of any existing panels that looked at the course of medical treatment; although, I think we probably were in a position, as the State, to consult with experts because in preparation for trial we would have the need to go forward and document through our experts that certain treatments were inappropriate or unnecessary.

This does speak to what would have been an ideal case for something like the peer review system, which I would think would perfectly fit in and talk about having -- in this case, it would have been chiropractors -- independent chiropractors in a position to be able to pass some judgement, objectively, over the course of treatment that was taking place here.

But I don't know of any panel review, other than our litigation preparation in which we looked at the actual medical questions -- those were done in the course of our preparation for a possible trial.

SENATOR CARDINALE: Again, it's been represented to me, but I don't have any way of knowing whether it's true or not -- and I'd like to get an answer before we complete our deliberations on these bills-- And certainly one of the more controversial things we're going to discuss is, how is the present review system working -- where the review is done by a panel of attorneys in an arbitration proceeding with respect to whether or not medical treatment is required -- as opposed to the proposal that the administration has made?

It's been represented to me that panels of lawyers did, in fact -- in some of these cases, not in all of them -- indicate that the treatment was perfectly okay, that there was nothing wrong, and that this treatment should continue. If that is the case, I think it's a fairly strong argument for the thought that perhaps that process needs some sort of improvement, such as the administration has suggested. So I think that information coming back to this Committee would be very important information for us to have.

Are there any questions from other members of the Committee?

Senator Lesniak.

SENATOR LESNIAK: Thank you, Mr. Chairman.

Thank you, Commissioner.

I would like you to convey to the Governor, if you could -- to ask her to support another bill in addition to the ones she is promoting, and that is a bill that this Committee has released, that the Senate has passed, and that would be to prohibit the termination of insurance agents for writing too many insurance policies. And I understand the position with regard to these insurance enterprise zones, but my concern-- And by the way, many of these insurance agents are minority agents -- African-American, Hispanic, Portuguese agents -- who have been unfairly terminated because they're abiding by the law, and that is the take-all-comers law.

I just want to put my pitch in, too. When you want to make insurance more available in urban areas, don't make it less affordable at the same time, and that we stand on the same footing with everybody else in this State. And just because you live in Elizabeth or Camden or anywhere else, you should still be able to go to an agent in your town to get the auto insurance

written. I would just hope that maybe you could convey that message and maybe help us, even in the Assembly, to get it passed.

Thank you.

COMMISSIONER RANDALL: Thank you.

SENATOR CARDINALE: Thank you, Senator Lesniak. Thank you on two scores. Thank you for supporting my bill to the Commissioner. I've done that many times. I would hope that bill does receive favorable treatment in the other House, and I would hope that when it gets to the Governor's desk it is, in fact, signed.

Senator Adler, do you have questions?

SENATOR ADLER: Yes. Thank you, Mr. Chairman.

Commissioner, thank you for joining us this morning.

I don't want to spend too much more time on this chiropractor scandal. I want to talk about the big picture. I guess I'm still struggling with the notion that a \$750,000 fine is adequate in the context of fraud that's been reported to be \$52 million. Maybe I'm injecting common sense here, and I apologize if I am, but it seems to me that that's almost rewarding the fraud to have such a small fine relative to the huge amount of the fraud that was perpetrated upon ratepayers in New Jersey. Tell me again how you square the fine amount -- a relatively small amount -- with the fraud amount -- an outrageously large amount.

COMMISSIONER RANDALL: Well, they tried to bill the JUA and MTF \$52 million. They actually were bold enough to submit bills in that amount -- \$40 million of it was never paid. The \$12 million they were compensated for ran an operation involving payment to hundreds of people.

They did, in fact, have an operation that was very sophisticated, employing lots of staff, lots of personnel, whom they paid extremely well and, obviously, motivated to do some of the wrong things, I think, as well.

So the operational expenses were used to support their endeavor, and when we looked at the assets of the two doctors-- We looked at what they had left-- One of them, as I said, has a number of judgements and liens against him already, and the other had a little bit more in terms of assets, but we actually got, I think, the maximum fine that we could have in terms of what was left. But at least the \$40 million-- They sought \$52 million. They never got nearly that amount.

SENATOR ADLER: They got \$12 million. So they got -- I can't do the math fast enough. That's 2 percent -- a little more than 2 percent -- back in fines?

COMMISSIONER RANDALL: Right, but they used it to support an operation and pay an extensive staff and pay for the medical equipment procedures and all the personnel who ran the operation.

SENATOR ADLER: Okay, I'm told that it's closer to 5 percent or something like that. So we're getting there. So the other 95 percent of loss was spread through ratepayers in the State. Is that right? The amount that was not recovered of what was actually received as fraud.

COMMISSIONER RANDALL: They were moneys that we deemed not recoverable.

SENATOR ADLER: So we as ratepayers, ultimately, eat that. Is that the way it ends up working?

COMMISSIONER RANDALL: I think that's, generally speaking, what happens with payments when they're put back into the system.

SENATOR ADLER: You talked about a couple of different measures that you want to have this Legislature support and pass into legislation for the Governor's signature. You talked about surcharges, a provision for protecting good drivers from being dropped, and you talked about flex-rate increases.

If we drop surcharges, what's going to happen to ratepayers who don't current have surcharges? What will happen to their rates?

COMMISSIONER RANDALL: It would depend on where they fit in a ratings system. There would have to be a prior approval by the Department of a tiered rating system, and that would take into account factors like driving history. So it's fair to say that if you are a driver with a very bad driving record, you probably will wind up still paying more than the driver who has one or two speeding tickets over a 10-year history of driving experience. But the answer there is going to depend on the type of tier that you will fit into, and that's going to be submitted by the companies who must get the approval -- prior approval -- of our Department and must lay out exactly what criteria would be used for the different rating systems or tiers that they would want to charge drivers for.

SENATOR ADLER: So for the average driver who has not-- Maybe this isn't the average driver. For the driver who has not had either a motor vehicle accident or a moving violation in 15 or 20 years, what's going to happen to that person's rates if we get rid of surcharges?

COMMISSIONER RANDALL: Well, if you have that kind of a record, you're going to wind up in the top, preferred tier with the best possible rate that can be offered by a company. So that kind of driver, in theory, should certainly be not paying as much as they would now, because you'd have the benefit to demonstrate, by your driving history, that you have a really clean record.

SENATOR ADLER: I agree that person shouldn't be. I guess what I'm asking you is: Do we have statistics that will tell us what will happen if we get rid of surcharges?

COMMISSIONER RANDALL: That will have to-- There will have to be some projections when the tiered rating system is implemented. The rules have to be laid out in terms of what criteria we as a Department would accept in terms of laying out your rating plans. So they'd have to follow the general guidelines that our Department would promulgate by regulation, and if we don't like the tier system that they submit to us, they'll have to modify it or they wouldn't be able to actually write automobile insurance. But it has to be a fair system which is geared toward taking into account length of driving record and general experience.

SENATOR ADLER: It is your desire and the Governor's desire that we in the Legislature vote on eliminating the surcharges without knowing what will actually happen with the rates that the tiers would institute?

COMMISSIONER RANDALL: Well, I don't think in legislation you could necessarily project where all the migration of the current business is going to go. But I think you can project that the abolition of the surcharge system with a substituted tiered rating system will, overall, be a fairer system.

I think the problem with the surcharges has been that they were originally designed to penalize bad drivers, but that definition of who should be surcharged as a bad driver has grown so broad that you have people who really are fairly good driving risks, but they wind up being surcharged for three years because they've had one accident or, perhaps, one speeding ticket -- not even an accident, a moving violation. Those kinds of infractions, I think, are resulting in a system which is fundamentally unfair right now.

SENATOR ADLER: Is it fair to say that if we get rid of surcharges that some people who are not surcharged now will see rate increases?

COMMISSIONER RANDALL: Some people who not surcharged now?

SENATOR ADLER: That's right.

COMMISSIONER RANDALL: I don't think you can make that projection. I think it would really depend on the types of criteria that we allow to be used when the companies want to compete against each other with tiered rating.

SENATOR ADLER: So you can't assure me and the Legislature that the administration would not approve a tier system that would actually increase rates for people who are currently not surcharged?

COMMISSIONER RANDALL: The only thing I think we can guarantee is that the tiered rating system would be a fairer system than we have now in terms of: Those who should enjoy the best rates should really be the folks who have the best driving records, and you will not be paying anything three-year extra surcharge simply because you have what I would consider to be a minor infraction.

SENATOR ADLER: I think that part of it is terrific. I think the concern -- at least, I'm feeling -- is that people who are currently not surcharged will see rate increases as a revenue-neutral bill shifts costs back to drivers who currently are not bearing some of the expense of the surcharges.

COMMISSIONER RANDALL: Well, if the principle of fairness is adhered to, I think what you will see is that the bad drivers will definitely be paying a lot of money.

SENATOR ADLER: Because I have to question the premise on-- We're talking about auto insurance. I don't think there has been a lot of fairness in the system for many, many years. Maybe you can inject that where it hasn't been present before.

I was thrilled in January when I heard the Governor talk about supporting the notion of the elimination of flex-rate increases which jack up people's rates year after year after year. I wonder if you have a sense, having been working for the Governor now for several months, why you think the Governor waited until 1997 to propose something that's been in the legislative forum for several years.

COMMISSIONER RANDALL: She's supported aspects of this program for a long time. Things like peer review, she supported much prior to 1997. I think she has accomplished a number of things, but I think she thought that more had to be done and putting them together in one proposal, I think, was designed to give it some impetus.

But there are things like the Urban Enterprise Zone concept, things like medical peer review, which she has long been a supporter of, and that's why I think, when, on an individual basis, those bills didn't move, I

think she decided that it was wise for her to bring them to the fore by attempting to put them into one comprehensive plan and highlight by speaking about it in January, which she did.

SENATOR ADLER: Has the Governor been long supportive of the notion of eliminating flex-rate increases?

COMMISSIONER RANDALL: I think that was an aspect of the program which I think she added on in January. I think that was probably something which struck her as, again, bringing an element of fairness to the system. Companies have been getting automatic increases, and it's counter to our system of prior approval, which calls for a justification of any rate increases.

SENATOR ADLER: Are you personally surprised that it would take the Governor three years in office to recognize that these automatic rate increases year after year would be very, very troubling to most drivers in New Jersey?

COMMISSIONER RANDALL: To me, it's an element of fairness in the system. I think it's a response to the notion that drivers feel rates are unreasonably high.

SENATOR ADLER: Is that a relatively recent revelation to the Governor, or did she realize that from the get go?

COMMISSIONER RANDALL: I think she's realized that people continue to feel their rates are too high and that they want fairness in the system. They want a lot of things in the system. They want fairness in the system. They want the rates as low as reasonably possible, and they also want

an expansion of the types of coverage from which they're allowed to pick. So I think her program attempts to be responsive to each of those.

SENATOR ADLER: Has the Department made any investigation as to what costs could be removed from the system were we to require that those with health insurance have their automobile injuries treated through their health insurance rather than through PIP?

COMMISSIONER RANDALL: We did look at that, and, as the Chairman noted, there is a tremendous cost shift if you accept the premise that we have a lot of accidents, and unfortunately they will probably-- A state like New Jersey will continue to experience accidents in large numbers.

We looked at what would happen if we tried to shift the cost of treating accident victims to the health care system and, as a legal matter, recognized there is a large problem right at the outset in two respects. One is our inability, through State law, to force self-insured health plans to cover auto accidents. It's beyond our authority to do so. Also, we have a problem in reaching, from a jurisdiction standpoint with State law, any out-of-state health plans that are sold to cover New Jerseyans who are employed and live and work here. If the health plan is an out-of-state health plan and it says by its terms they will not cover accidents for -- auto accidents for their employees, we have an inability to get to those folks. So there seemed to be a problem in even attempting to shift it over to the employer-based health system.

Even if you are successful in doing that, we have to look at the numbers, and we realize that there are a lot of people who would find themselves unable to shift it over to their employers' place of business, and those folks would wind up being responsible, perhaps, from dollar one for

100 percent of their own medical bills. That results in a potential charity care problem, as well.

SENATOR ADLER: I'm surprised there is not a way for us to work with business to solve this problem. I've worked with business successfully in the State to solve lots of economic problems, lots of regulatory problems. We've gone a long way to reducing the cost of health care in our State, and I think that business people would acknowledge that we do not see the sort of fraud in medical treatment in the health insurance context that most of us believe is rampant in the PIP context.

I'm surprised we can't figure out, at least for that high percentage of those New Jersey residents who do have health insurance, why we couldn't realize a very substantial savings, at least for that very large population of New Jersey drivers.

COMMISSIONER RANDALL: Well, you make a good point. Right now, at least if your employer is willing to cover the auto accidents, you can make your employer -- through your health plan -- the primary carrier. Some people do that, and it is an option for insureds, and you can look through your selection form and pick that option today. Unfortunately, the problem we are finding is also fraud on the employer health side, as well, unfortunately. So we do have the need to control it on the both the health side, as well as the PIP side.

SENATOR ADLER: Well, we've seen employer health care costs drop very substantially over the course of this decade, and I don't think we've seen the same sort of reduction in total costs in the PIP context. I'm wondering if we were more aggressive in shifting people over or giving

incentives to business or even considering mandates for business -- but somehow getting people treated through their health insurance -- whether we would experience the same sort of cost reduction in the auto context that we've certainly seen in other health contexts over the course of the decade.

COMMISSIONER RANDALL: Well, I think encouraging people to talk to their employer and encouraging their employer to provide the coverage is definitely a positive thing.

SENATOR ADLER: Do we have any studies at all about how much -- what the cost reduction would be if we shifted people over from PIP to health?

COMMISSIONER RANDALL: Well, right now, I think the insurance industry will say that you'll save about 5 percent if you're willing to make that shift in your coverage selection form today, and if-- You have to be cautioned to make sure that your place of employment will cover you for it, but if they do, you'll probably save about 5 percent on your bill.

SENATOR ADLER: So 5 percent translates into \$50 for the average driver?

COMMISSIONER RANDALL: On an average \$1000--

SENATOR ADLER: Per car? So that would be a start. If we just did that, we would bring costs down a little bit right away.

COMMISSIONER RANDALL: Yes. Some people do that today.

SENATOR ADLER: Okay.

COMMISSIONER RANDALL: Some people are saving that today.

SENATOR ADLER: That's all for now.

SENATOR CARDINALE: Thank you.

I just want to follow up on a question that Senator Adler asked. Senator Adler talked about the tiered system. I know that the history of insurance in New Jersey is such that at times there has been a sort of what I have to term -- maybe it's the wrong term to use but -- sort of a political desire to benefit, to artificially lower certain rates for higher risks which has had the probably unintended consequence -- and I think that's what Senator Adler was getting at -- of raising rates for those who present a lesser risk. One of the chief examples I can think of with respect to that is territorial caps, but I could also refer to the old JUA rates as having had a very similar kind of effect.

I would just like to hear how the Department would position itself with respect to rates that would ensue in the tiering system. Because it would seem to me that if someone is not being surcharged now, that is because of events which don't exist on the record, and it would seem that that person would inevitably be designed to be included in a system as a good driver, whatever that means -- a low-risk driver, so that that would be the individual who would be at the bottom rate. But then again, Senator Adler I think is very right to say that if we don't charge sufficient rates to the people who are currently being surcharged, then we risk that total base having to rise to cover those extreme cases.

Let me give you an example from a hearing that was held back when I was a neophyte in this body.

SENATOR ADLER: In the '30s.

Tom-- (laughter)

SENATOR CARDINALE: We were considering--

SENATOR ADLER: I apologize for him. I apologize. It's a shocking comment. (laughter)

SENATOR CARDINALE: We were considering the JUA, and a bill that a particular driver had experienced was brought before the Committee in an attempt to generate our sympathy for this particular driver. The bill for just liability insurance for that particular driver -- this is back in the early '80s -- was \$7500, \$7200, some number like that. And we all said, "Oh, my God, how can an insurance company charge that much money for just liability insurance," for this poor individual only made \$15,000 and whose car only cost \$15,000 in the first place.

I see Elmer smiling. He remembers that hearing. (referring to audience member)

That driver, indeed, was rated at the maximum probably that was chargeable because that driver, indeed, had accidents with great regularity and created a major impact on the system.

Now, if you do not allow -- and I haven't seen the tendency to allow -- a very high-risk rate somewhere for people who have that kind of impact on the system, then I think the impact that Senator Adler is discussing might very well come to pass. And I'd like to know how you will react when such rates are presented to you by an individual company which says, "We want to give good drivers a very low rate, but in order to do that, we have to give the bad drivers who come to us -- and we've got take-all-comers -- we've got to give them a very high rate." How would you react to that?

COMMISSIONER RANDALL: I think we're going to have to allow for a high rate to be charged a bad driver. When I say a high rate, I

mean, there may still be some ultimate subsidy or cap, but I think we have to be willing to acknowledge what I think the drivers feel, truly, which is that if you are a drain on the system and you have numerous accidents, numerous claims, and essentially are a risk on the road, a real hazard on the road, you should have to pay more.

I saw a letter to the editor recently on the subject, and one letter writer wrote in and said, "Why are the rates high? Because I'm at fault. I'm a high-risk driver, and until I learn to really better improve my driving habits, I am going to pay more. So what is the problem? The problem is me." Now, of course, you don't usually get people who are so quick to pass the judgement back to themselves as far as blame, but I do think, generally speaking, that a truly high rate, a tough rate is what I think should happen if you are a hazard on the road. And if we have that kind of balance, I don't think we will see what Senator Adler is afraid we're going to see, which would be a further sort of subsidy passed back up the line, which would hit the truly good drivers, or decent, moderate -- moderate-to-good drivers.

SENATOR CARDINALE: Thank you.

I want to just pursue one other question that Senator Adler asked, and I heard your answer, but he was addressing the \$12 million that was, in fact, paid to the fraudulent ring that has recently been exposed. I think your answer was that the reason you couldn't go after more of it was because that \$12 million had been dissipated, that it had been used, and they no longer had that money in their possession. Wasn't some of that money, at least, paid to other licensed individuals, who carry licenses in the State of New Jersey? And couldn't recovery against those individuals on a secondary basis be pursued at

the present time? Maybe it is, but is it, and, if not, why not go after those individuals?

COMMISSIONER RANDALL: That's a good question. There may be some ancillary actions that arise from this case, and we'll see what those are and report back to you if there are further actions that effectively spin off of this case. The actions that I'm aware of just speak to the two principles here who essentially administered the whole thing and orchestrated it.

SENATOR CARDINALE: I thank you very much.

Senator Adler.

SENATOR ADLER: I appreciated your answer just now about -- in answer to the Chairman's question -- the concern for good drivers and having costs shifted to them. We've talked a lot about fraud in one microcosmic context -- this one chiropractic fraud ring -- but I know that Consumers for Civil Justice have talked about the rampant nature of fraud, the Department has talked about the rampant nature of fraud in our State.

How would the administration feel about our giving you every conceivable fraud tool you'll want, increasing the penalties even beyond what the Governor sought -- and I have a bill that would increase the penalties beyond what the Governor sought -- give you every power you need to combat fraud in the State, and mandate a rate reduction now, along with the empowerment of the administration to go get the bad guys, to go get the bad actors who are costing all of us money? How would the administration feel about that concept?

COMMISSIONER RANDALL: If government could actually eradicate all of the fraud, then we might be able to tie it to some sort of mandated relief. I'm not sure government can do it all, even if you were to generously double the budget with the State fraud investigators -- and we do want to increase it and bring them up to a higher level than they've ever been in the past -- but I don't think that government can actually be out there in the field following 4.5 million vehicles and making sure that when those people have accidents, they're not inclined to, perhaps, submit a phony claim.

We need help from the insurance companies themselves, and I think they are prepared to step up their efforts. They're the ones who see the claims come in, hundreds of thousands of them every year coming in. And I think they're in a position to help best spot it and then to work with us on things that we might think actually might be criminal in nature. But I think we have to monitor our efforts.

Now, to the extent we're successful, then I think it's fair to expect that the rates, most certainly, will come down, because those savings should be passed along. But I think that we have to-- It's impossible to, I think, project that we can eradicate all fraud and say that because you give us a few more investigators in Trenton that we will succeed in changing everyone's attitudes about perpetrating fraud. It is pervasive and the attitude is, unfortunately, pervasive, as well. When four out of every ten people think it's okay to cheat one's insurance company, it shows you that we need a lot of help in changing the public attitude about it.

SENATOR ADLER: I just want to make this clear in my mind. It seems to me everybody has to be involved in trying to combat fraud. You

mentioned the carriers. I believe trial attorneys for the plaintiff and defense side, I believe medical doctors, I believe regular citizens, regular neighbors, and eyewitnesses to accidents, everybody just has to do it.

But, since our enforcement efforts have been admittedly lax over the last several years and insurance consumers -- ratepayers have been picking up the cost of that over the last couple of years, don't you think the administration would want to support the notion of rate reductions now to sort of make up for the losses that we as drivers have eaten over the last several years?

COMMISSIONER RANDALL: I think our better focus is to reduce the payouts, reduce the money that is going out to pay for the unnecessary legal or medical costs. If we can do that, then we'll be in a position to actually start ordering rebates. Because when the rates come in and they show us that they're excessive, we'll be able to order rebates going back to consumers. We have those legal tools on the books now, but I think our real challenge should be to lower the billions of dollars that are going out in medical and legal claims payments. Because, right now, the companies are in a position where they can document those for us and say that the resulting rates are needed to cover all those payments that go out the door, and the payments are going out the door, and they have the checks to prove it.

So I think if we can attack that, we'll be able, then, to indicate to the companies that their rates will soon be excessive based on our analysis, and that's when we could order them to give money back to consumers.

SENATOR ADLER: What's your sense of soon? How long would it take for drivers to see the benefits of the tough, new election-year fraud policy?

COMMISSIONER RANDALL: I think it depends on how much we can get done by July 1, and whether or not the Legislature can be convinced to pursue this, perhaps, in November. The more we can do in terms of the Governor's comprehensive plan, the more dollars we'll get out of the system.

The fraud measures that the Governor has proposed, that she would like the Legislature to act on by July 1, go into effect immediately. And within a matter of months, I would think, those would bear some fruit. But there are other cost savers, things like peer review, which would bring in more dollars in savings, and things like expansion of choices in coverage, which I think will bring yet more savings to the system. So it's when they get done. Each one will add the potential, though, for more savings.

SENATOR ADLER: So you wouldn't want to mandate a rate reduction right now just for fraud relief we're going to see in a couple of months after passage of the fraud prevention measures? We can't get rate relief unless we buy the Governor's whole package?

COMMISSIONER RANDALL: I think it's difficult to actually project an exact savings, to actually quantify it, unless you do the whole program, and I don't know that that's something that we can ask the drivers to wait for. I think they're looking for at least some progress on the issue by, perhaps, the summer.

SENATOR ADLER: Well, why don't we just give ourselves -- I don't know, I'm estimating here, you're the expert -- \$100 rate relief per driver

for the fraud prevention measures that are going to be successful, give ourselves another \$50 for the health cost shift-- We could implement -- realize at least \$150 in savings over the next couple of months while we move forward with a more aggressive reform effort.

COMMISSIONER RANDALL: Well, some of the fraud initiatives alone, we've projected a little bit more modestly, at 5 percent. That's \$50, not \$100. The health care shift, which, arguably, can save another \$50, we think is a legal challenge and something that involves a whole other debate about whether or not the business community is in a position to be able to take on that added burden. But I think that's another debate that could add another \$50 along the way. So it's another piece which, if enacted, would bring more savings. But I think it has to happen before you can then say you'll get the money back into the consumers' pockets. You have to know what costs you're definitively taking out of the system.

I think you have to enact it and then give it a few months, and when those costs come off the books with the insurance companies, that's when I think it's appropriate to say to the companies, "Now we'll force you to guarantee that that savings goes back into the pockets of the drivers."

SENATOR ADLER: So the administration's position is that the administration should have done this a couple of years ago so that we could now have what rate relief is being promised for the future?

COMMISSIONER RANDALL: I'm not sure I understand your question.

SENATOR ADLER: We should have done this a couple of years ago so that we could now have the benefits we're not going to see for a while.

COMMISSIONER RANDALL: Well, we've done some good things in the past few years, which you all have given to the Governor to sign. You know, things like reporting -- requiring that the companies, within 21 days-- The medical providers tell the companies that they're pursuing a course of treatment. And we've tried to give some relief to the system by abolishing surcharges for two-point tickets, and we have a 5 percent savings that you'll get if you complete a defensive driving course.

I mean there are some things that you all have done to try and bring some relief to drivers over the past few years, but clearly it hasn't been enough. Clearly, we have to do more.

SENATOR ADLER: How much money do you think the system could have saved if we hadn't laid off the fraud investigators earlier in the Governor's administration?

COMMISSIONER RANDALL: No one was-- They weren't laid off. There has been attrition. There hasn't been a lay off in the Fraud Unit.

SENATOR ADLER: Okay. The failure to replace those individuals.

COMMISSIONER RANDALL: I think their workload has been pretty steady. They've continued to bring in fines and generate convictions in a very steady way, much as they did in the last year of the prior administration. So there hasn't really been a noticeable falloff in terms of their work product. We've lost people, I think, to other competitive jobs. The attrition has been because fraud investigators have been recruited to go work for county prosecutor offices or the Division of Criminal Justice, local law enforcement. So we've lost our best people to some other investigatory types of positions.

But I think when we get the 50 new investigators, I think we'll be in a position to maybe go after, in a large way, some of those organized rings that we spoke about earlier. And that will make a big difference because with those-- With the successful shutting down of those operations, you really can start to take some major dollars out of the system.

SENATOR ADLER: I don't want to quarrel with you about details, but it's my understanding that fines are actually down very substantially from about four years ago. Is that not your understanding?

COMMISSIONER RANDALL: The fines-- There's a difference between the fines that may have been imposed -- where some people have been judgement proof -- and fines collected. We've been at about \$2 million or better for the last four or five years, so that's been steady. The actual fines-revenues brought in has not diminished during the Governor's first three years here.

There was a time back in 1993 when there was a large -- there were a large number of fines imposed; they proved to be against some judgement-proof individuals. A number of these individual rate-evader cases were pursued, and they result -- they didn't come to fruition. We got civil judgements against them but were only-- In that particular year, while we imposed over \$7 million -- in the last year of the prior administration -- again, we only were successful in collecting about \$2 million. That \$2 million figure has been constant.

SENATOR ADLER: I guess I'm a little confused. You're happy with the number of investigators over the last couple of years because the figure is constant, or you're happy with those you've kept, but--

COMMISSIONER RANDALL: No. We'd like to see more. We'd like to see more. In fact, what the Governor has committed to doing is replenishing those who left us through retirement or resignation and she's adding more. She is bringing us up to what we were and she's adding more.

SENATOR ADLER: Do you have any sense of why she let the attrition occur and not have those people replaced?

COMMISSIONER RANDALL: I don't think there was any major discussion about it. I think it was a gradual phenomena. A few left each year and weren't replaced.

SENATOR ADLER: Thank you, Mr. Chairman.

SENATOR CARDINALE: I'd just like to, on that final point -- and perhaps we can let you go, it's been a long morning for you, I'm sure-- But it's my impression that those fraud investigators are not paid for out of the General Fund, but they are paid for out of moneys which are billed back to the insurance companies. Is that correct?

COMMISSIONER RANDALL: That is correct.

SENATOR CARDINALE: So that there is no budgetary saving to the administration as a result of not having more fraud investigators?

COMMISSIONER RANDALL: It is totally supported by an assessment on the industry.

SENATOR CARDINALE: So that if there is any beneficiary, it's not the State budget, and it's not due to the income tax cut or any of the other implications that are veiled in political rhetoric.

I want to thank you very much for being very patient with us and for answering our questions. And I look forward to the follow-up information

that you're going to get for us on some of the questions that remain open. Thank you very, very much.

COMMISSIONER RANDALL: All right. Thank you, Mr. Chairman. Thank you.

SENATOR CARDINALE: Dr. Thomas Terrill, the University Health System of New Jersey.

THOMAS E. TERRILL, Ph.D.: Good morning. I'm Tom Terrill, President of the University Health System of New Jersey. I am here this morning to commend the Committee for addressing the issue of insurance fraud, in general, and automobile insurance fraud in particular.

Our organization represents 18 of the State's major teaching hospitals, including all 3 of the State's Level I trauma centers, 5 of the State's 7 Level II trauma centers, and the State's largest comprehensive rehabilitation institute. UHSNJ hospitals provide care in nearly 50 percent of New Jersey's no-fault cases, and because of their trauma level status and comprehensive rehabilitation designation, our hospitals see the most severe automobile accident cases.

University Health System of New Jersey first wishes to applaud the efforts to preserve the current \$250,000 minimum level of personal injury, or PIP, coverage. Earlier proposals to reduce coverage were rooted in the mistaken notion that making less money available for care would somehow reduce fraud. I can assure you that the notion of committing fraud never once crosses the minds of either the patients transported to New Jersey trauma hospitals or the surgeons and nurses struggling to save their lives.

By proposing the continuation of \$250,000 personal injury protection coverage, the Department of Banking and Insurance, as well as Governor Whitman, have sent a clear signal that the intent of their automobile insurance reform proposal is not to deny seriously injured persons access to appropriate care.

UHSNJ, nevertheless, appreciates the need to weed the fraud and abuse that unnecessarily raises insurance premiums for honest motorists who simply want protection against loss. We, therefore, endorse legitimate efforts to reduce fraudulent claims; however, in so much as some provisions in the latest reform proposal represent a good faith effort to this end, we find the one-size-fits-all approach problematic.

Simply put, it fails to recognize the additional cost of providing medical care for truly serious injuries. While these provisions may scare off some of the abuse, they raise an even greater risk of denying appropriate care to persons who seek not to profit from their injuries, but rather to have their level of function restored to the greatest extent possible.

Let me offer some specific concerns. Implementation of a medical fee schedule tied to Medicare rates fails to recognize the higher costs of operating a trauma unit. Trauma centers are expensive because they are equipped, both in terms of human and technological resources, to save lives. Because of their existence, a motorist who sustains life-threatening injuries in an automobile accident has a much greater chance of surviving here in New Jersey than elsewhere in the nation. But at 120 percent of Medicare rates, I can say with confidence that our designated trauma centers will not survive. While some trauma hospitals may be able to shift operational costs to other

revenue sources, that simply relieves insurers of an obligation being picked up by other payers.

Moreover, this still leaves the question of the trauma centers' ability to sustain a properly trained team of trauma surgeons. Critics will say these doctors make enough already. Reimbursement at 120 percent of Medicare rates and these doctors will simply not find it feasible; they will certainly opt to forego the after-midnight and holiday 10-hour surgeries in exchange for line of practice with more reasonable hours and better pay. New Jersey has already made a significant investment in establishing a premier system of trauma hospitals. Efforts to reform automobile insurance should focus on where the fraud is prevalent, not threaten a system that saves lives.

Our next area of concern is with peer review provisions. Peer review organizations should be used only as a means of promoting appropriateness of care. They should not give rise to opportunities to deny needed care. While a preliminary version of the reform legislation reflected an apparent intent to promote the impartiality of these organizations, UHSNJ believes that additional safeguards are necessary to ensure that appropriate care is not denied.

Above all, the peer review organization should be comprised of practitioners reviewing medical care in which they have direct experience and for which they are licensed to practice. UHSNJ offers the following suggestions on how the legitimate needs of the insured can best be protected:

First, peer review organizations should be held accountable not to insurance providers, but rather a State agency that can better monitor for objective review. To this end, UHSNJ suggests that peer review organizations

contract directly with the State -- say, the Department of Health -- and be accessed by random, case-by-case assignment to insurers.

Next, persons serving on the peer review panels should, in the disciplines where appropriate, be board certified. Other providers not subject to board certification should be sanctioned by whatever certification authority may best denote a high level of training and expertise. In either case, members should possess direct experience in the practices they review.

We take no position on offering insureds various access to legal remedies. We do, however, urge that whatever legal recourse is necessary to ensure recovery of legitimate medical expenses and maintenance of livelihood be diligently maintained.

We offer this final point of concern with regard to the sense of urgency in promoting the adoption of reform: Fully understand the scope of the problem expected to be countered before instituting drastic change. New Jersey is the most densely populated State. Our roads are well traveled and usually congested. Motorists are, as the recent crackdown on the less-than-courteous driver suggests, often in a hurry.

Given these conditions, reform advocates and the proponents must remain cognizant of the fact that accidents are going to happen. We must all recognize, however, that there are those who do take advantage of these conditions and legitimate efforts to counter fraud must be pursued.

To this end, and in closing, we encourage those who would implement these reforms to undertake a comprehensive study of the fraud not prevalent. Get a grasp on the kind of injuries that are most likely to give rise to the abuse. Identify the conditions under which it is now most prevalent, as

well as the characteristics of the medical practitioners, attorneys, and insured who are most apt to commit it. Target this abuse, not innocent victims who might otherwise be subjected to a denial of care.

In the zeal to reform, do not let bad drivers or dangerous drivers get a break that is going to shift financial costs to good drivers or, even worse, force medical undertreatment upon the accident victims whose only goal is to return to their prior level of function.

Thank you, again, for your consideration of these remarks.

SENATOR CARDINALE: Thank you very much.

Are there any questions? (no response)

Thank you very much.

Elmer Matthews.

ELMER M. MATTHEWS, ESQ.: Thank you, Mr. Chairman.

As most of you know, I'm the New Jersey Counsel for the American Insurance Association, an association representative of major property-casualty companies, most of whom are licensed in New Jersey.

Initially, I'd like to congratulate the Chairman on that comprehensive statement at the beginning of the hearing. I think it not only covered past history to restrict any finger-pointing that any person might have, but I also think it set the stage for where we are and where we should be going.

We've come a long way in New Jersey, and sometimes we've come by a circuitous and often wrong route. We seen a number of pieces of legislation come on the scene as insurance reform, and this is yet another; although, this is a little bit variant because this is the first time I've testified

before a Committee about two bills that have yet to be introduced. One that has a long shelf life, and one that may not have any shelf life at all.

I think I'm referring to Senate Bill No. 2090, which is the extension of the choice doctrine in the Governor's program. The other is 2091, which is the residue and remainder bill. I don't want to talk about 2090 except to say that there should be some things included in your action this spring with respect to if not the choice, at least tightening up some of the existing choices that we do have.

To that extent, I think we can agree with what Representative Saxton said in his statement, that this is palpable empirical evidence that the choice type of legislation could produce a premium saving. As he indicated to the Department and to the Governor's office and, I think, to this Committee, we at the American Insurance Association promised to do an actuarial study when the choice bill came into fruition. In other words, we knew exactly what it was going to cover. We did some preliminary work on it, and we find that the choice program would effect substantial reductions. So please don't abandon it. I realize the politics of the moment may not help us do it, but I think it's something that you should look at and revisit if we're talking about lowering premiums.

Now with respect to 2091, that is the balance of the Governor's program which covers fraud on one side and fairness in the other -- the fairness section had to do with what they were going to do to the insurance industry. But the fraud section I won't dwell on because others will talk about it this morning and this afternoon.

For example, the PRO bill definitely will take costs out of the PIP side of the system. All you have to do is cross the Delaware River and see the experience that they've had in the State of Pennsylvania. I know Alex Archimedes intends to address his comments to that. I don't want to take any language off his stage or prolong the time period.

But it's essential that all of these items that are in 2091 remain in 2091, especially because there seems to be a great human cry to cover the so-called fairness part of the package. So I would exhort you to leave the PRO bill -- despite pressures to take it out -- leave the arbitration procedure in.

Medical necessity should be decided by doctors and not by lawyers, and I say that as a lawyer. Medical necessity should be the subject of medical judgement. The Medicaid fee schedule should also remain in this bill. If we're talking about taking costs out, the best way to take costs out is by regulating, putting a cap on these fees. Both the fee schedule and the PRO bill had a plausible, palpable effect in Pennsylvania.

Then, of course, the UEZ bill-- It's a concept to try and help increase writings in the urban areas. The UEZ bill comes out of the gate with hobbles on it -- if I could use a racetrack simile. We do have the cap on premiums in urban areas, a percentage over the base rate, and it's very, very difficult to convince a company to come into an area where it is guaranteed that it's going to lose money. This is pure empirical fact.

Now, there could be ways of improving that UEZ bill to give companies an incentive to come in, and I would recommend, perhaps, going back to the original draft of the UEZ bill as it was drawn by the Department, without the amendments that were put on that bill in the Assembly

Committee. Again, I will leave the UEZ bill to others, because I know others are going to talk about it. But I do know that urban areas are a big problem. From undertake all comers: There are companies in New Jersey, whom I will not name, who are struggling under that load. And when you struggle under that load, your surplus comes down, your operating costs go up, and problems are created not only for the regulated, but for the regulator. So revisit the UEZ bill.

I'd like to just turn briefly now to the fraud bill -- to the fraud sections of the bill, and I'm trying to figure out exactly what is in the bill that is going to increase fraud activity. I go back, as you do, Mr. Chairman, to 1988 when this Legislature passed the Fraud Prevention Act. Senator Lesniak was then the Chairman of this Committee.

And it was a noble thought to bring the industry into the investigation of fraud and create a Division of Fraud Prevention in the Department of Insurance. I remember it very vividly. We put a cap, though, on the amount of money that could be assessed against the industry at a half a million dollars in 1988. In that first year, I think the Department assessed the industry for about \$282,000.

I reviewed the current budget over the weekend. The assessment indicated in this year's tentative budget is \$11.3 million for fraud. Last year, it was \$11 million. We applaud the beefing up of the Fraud Division, but for God's sake, if you beef it up, get some results out of it. I heard the statistics thrown out this morning that the fines are about \$2.5 million. No matter how you slice it, spending \$11 million to get \$2.5 million back is not, in my way, playing at the right casino. (laughter)

Interestingly enough -- and people don't realize this -- at the time of the Fraud Act and at the time of FAIRA, there was a requirement that all companies set up a Special Investigations Unit to adopt a fraud plan, and all companies did. They had to under penalty, and all of them did. And, interestingly enough, they're all in operation.

I reached out to a company last week -- who shall remain nameless, because I find as a representative of a trade association, if I talk to too many companies on one issue at the same time, I might have the U.S. Attorney breathing down my neck because of antifraud implications-- But one company told me that they spent approximately \$325,000 on their SIU -- on their Special Investigations Unit, and they reviewed every claim that went through the company went through this unit. They selected about 450 cases that had a slight aroma of fraud about them. Out of those 450, approximately 150 were found to have definitive fraud indications. The amount of money that was saved by spending that \$350,000 was \$6,421,000. They're playing at the right casino. I wonder whether the Fraud Division ought to come out and talk to our Special Investigations Unit to try and get it straight.

I don't know what else is in the bill to cover fraud beyond the things I talked about, the PRO and things of that nature. But actual fraud attacks-- The thing is, you've got to be hands on. You've got to do things hands on in investigation.

I share your feelings of aghastness, really, at the settlement of that chiropractic suit. It was just-- It's mind boggling that these people are being fined \$750,000 and are being suspended for three years -- I think it is-- Is it two years? I thought it was three years, so maybe they could go to law school

and then come back and be called a chiropractor and a lawyer. But in two years they can come back and do business at the same old stand.

I can say that, Raymond, because I'm a lawyer.

They can go back and do business at the same old stand, and that troubles me. There should be more to this. The idea that a \$750,000 fine being assessed because of liens that lawyers had-- If lawyers have that lien, I've never found it in the statute. I think it's a wonderful thing (laughter) if, in a criminal case, your charging lien could keep the State from fining your client. I think we ought to take another look at that, because I don't think such a lien is on the books.

But, again, I'm rambling on, on the sections of the statute, but I do want to comment on the so-called fairness sections of the statute. You know, beware of things with interesting titles. The fairness section, *A*, would abolish the surcharges, *B*, would control nonrenewals, and three, do away with the flex rate -- all things that have a severe impact on company pricing and activity.

Of course, when you abolish the surcharges -- and you have to remember the surcharges didn't come from the industry. The surcharges came from the Legislature. The Legislature said, "Look, penalize the bad driver so the good driver won't be hurt. So when you get somebody who has accidents or has points, make up your rates with those surcharges." Rather than get rate increases, we got surcharges.

Now, in its infinite wisdom, the Legislature says, "People are unhappy about surcharges. People who are the so-called 'bad drivers' may not really be bad drivers, so let's do away with surcharges." But, as Senator Adler

indicated, when you do away with the surcharges, a full-tide level raises all boats. There has to be premium income replaced, and that, of course, will be done through the tier-rating concept. The question is: Will the tier-rating concept accomplish revenue neutrality? This law would require it. And I commend you for that. I do think that if it is done properly and supervised by the Department of Insurance properly and not arbitrarily, that the people who are now paying higher premiums through the surcharge mechanism will continue to be paying higher premiums and those who get in that class of tier rating where they have no accidents or they have no points, they will be, probably, in the same level or possibly at a reduced level because you can identify that kind of a policyholder as a person who is a valid underwriting judgement subject for a company.

Now, with respect to the nonrenewal item-- I know I'm taking a lot of time, and I'm trying to speed along here. With respect to the nonrenewal items, I see you're abolishing the two-for-one rule. Why you're doing it, I really don't know. The two-for-one rule was not something that the industry, again, invented, nor was the 2 percent rule something that the industry recommended or asked for. And I think your staff can probably confirm that to me.

It was given to allow people to control, to some extent, their underwriting judgement. The two-for-one, really, was something that encouraged people to write in certain areas. Whether it's worked or not is problematical. But, obviously, the people who have been nonrenewed speak with a louder voice than the people who did get coverage under that rule. I leave that to your judgement. But you are abolishing it in this bill, and it's

going to have an impact on our ability to underwrite, especially in the face of what's going on in take-all-comers.

The 2 percent rule has got the same, same problem. Remember that the 2 percent rule represents less than 2 percent of the insured policyholders in New Jersey. Are we throwing out the baby with the bathwater here? There has to-- The companies have to have some ability to exercise underwriting judgement. You just can't have companies come into New Jersey and say, "This is what you've got to write. This is when you've got to write it. This is how much you've got to charge for it. If you haven't got enough surplus, bring some more surplus in, and don't let the door hit you on the way out." I mean, it's ridiculous to think in the face of take-all-comers that companies should be denied the ability to exercise some underwriting judgement.

Now, you've tempered that with the so-called good-driver discount, which none of us have yet seen, but we've got confidence that you will do something that is realistic. Like, for example, a person who has been an insured of a company for seven years and been a clean risk should not be nonrenewed and I agree with that. I think that is the right thing to do, and things of that nature, I think, should be in the definition of good driver. But in our verve to change things, let's be careful that we don't abolish two-for-one and 2 percent and remove any semblance of control of a company over its underwriting process.

You know, companies are in the insurance business -- not only property-casualty, but in all facets of the industry -- to make a profit. In New

Jersey, consistently for years, we have not made a profit. It's interesting, we have the strongest excess profits law in the country.

Passed it in 1982, when you were Chairman of the Commerce Committee.

And you could count the excess profits that were returned on one hand involving companies, and most of the fingers on that hand were done in the year when Deputy Commissioner Jackson interpreted the excess profits rule to apply to each individual company in a holding company and not the holding company itself. And I don't like to use a company's name in vain, but I remember very specifically that the year in question the Chubb Group of insurance companies had a \$14 million loss in private-passenger automobile and one subsidiary had a \$39,000 profit, and they had to pay it back under the excess profit law. That's one of the fingers on that hand.

So think about what you're doing with respect to rates. Let's face it, the flex rate, again, is something that we didn't ask for. Those of us who have been around the table for a few years know what we've gone through in rate filings in New Jersey. You know, rate filings in New Jersey -- or rate structure in New Jersey -- and I'm not ashamed to say it, have been political for 30 years. It's almost cyclical. You don't get rates every 2 or every 4 years, depending upon a legislative or gubernatorial election.

I can remember when ISO made the rates for 80 percent of the companies in New Jersey, and when ISO filed for a rate increase, it was Armageddon. You know, the headlines across the top of the papers were "ISO Files for a Rate Increase," and everybody ran for cover.

And I look at the bills that are coming here now, and the one thing, the one tool that you gave to the industry to keep pace with inflation to not require repetitive filings for rate increases is being thrown away. I just wonder whether we're doing the right thing in the face of an excess profits law, in face of a Clifford Formula that allows you only 2.5 percent over perceived profit.

So I question -- I don't want to say your wisdom, but I will say your judgement in doing away with the flex rate. There must be some way to get away from the shibboleth that companies are getting an automatic rate increase every year. It isn't true in New York, across the river. It's not true in Texas, where Commissioner Hunter (phonetic spelling) wrote their flex-rate program which is working. Why is it these things are working in New Jersey? Because rates are political, and when someone files for rates, it is Armageddon.

We, as an industry, want to write. We want to do the right thing. We want to charge a fair but adequate rate. The statutes require us to do that. They don't let us lowball. They don't let us sell bread for five cents a loaf and make it up on volume. We just can't do that.

So look at this from the standpoint of how it reflects upon an industry that wants to work with you and has tried to work with you for many years. We sit here in this springtime of our lives -- in the last six to eight months of this administration -- and we say to ourselves, "What's going to happen to us?" Because spasmodically, in that four-year cycle, we're supposed to lie down, assume the fetal position, and get kicked in the ribs as an industry.

But I don't think you ought to do that, because things are happening to us again this year that you don't realize when you take away the

flex rate. And I'm talking about in the month of June, the Department of Insurance is going to assess what they called the final PLIGA under FAIRA against the industry. I bet you thought that when you passed FAIRA that it was only for seven years. The interpretation is that the eighth year is not a true-up assessment now, it's a full \$180 million assessment based upon premium volume -- \$180 million is coming into the State General Fund and not into the Insurance Department, because of this assessment.

The Fraud Division assessment will take place in June -- \$11.3 million. We will get the assessment in August for the Department of Insurance. That is, as far as I can ascertain -- and these figures in the budget are difficult to construe sometimes, but it looks to me like \$23 million in addition to the fraud assessment. Then, down the road, and not specifically on private-passenger automobile insurance, but in the property-casualty field, we're looking at an assessment of about \$12 million for the FAIR plan. The PLIGA numbers don't go into rates because of what was in FAIRA, but all those other things go into rates.

Take a step back and look at yourselves sitting on the other side of the table. You've heard me so many times that maybe you've got a disinclination to believe me, but I do want to tell you that we do want to work with you. We do want to make sure that the bill that you passed will be good for the consumer, because we feel if it's good for the consumer and if it's fair, it will be good for us, too.

So do your best to keep whatever is left of this package together. Don't abandon the choice provision. It has possibilities that could really save

premium income. I apologize for the time I spent here this morning, but I wanted to give you that message.

Thank you.

SENATOR CARDINALE: Thank you.

I have a question or two. I appreciate your efforts -- over a long period of time -- to come to our hearings and to give us information that we can use in our deliberations. But you talked about-- You made a statement: You said the companies aren't making profits in New Jersey. Now, I hear what you're saying, but this is maybe the sixth or seventh hearing, symposium -- you put them all together -- all around the State that I've been at in this current round, and at almost every one of them, I've heard someone from the Trial Bar, generally, get up and say the insurance companies have never made more money in New Jersey. They doubled their profits last year. Now, how do I put those two statements together? Are you right or are they right?

MR. MATTHEWS: All you have to do is talk to the Department of Insurance. I don't characterize ATLA as great actuaries. (laughter) ATLA are the ones that have recommended as a solution to the insurance problem that we reduce rates by -- we reduce PIP down to \$15,000 and reduce rates. When no-fault went in, in 1971, ATLA reduced the threshold to \$200 and proposed, successfully, a rate rollback of 10 percent or 15 percent. I try to block those things out of my memory as to the exact number.

But there are years when we do make a profit, okay. Now there is a perception that that number may be as high -- depending upon how the actuary looks at it -- as much as 6 percent profit on surplus this year. But if you go back over the past 20 years, you'll see that probably 17 out of those 20

years, the company lost money. Because of the rating system in New Jersey, when you file for rates or you predict what your profit is going to be, because of the inclusion -- and it should be included -- of investment income, we have to project our underwriting budget at a loss. It's usually a minus percent.

So when you talk about a company making money on automobile insurance, look at the State of Virginia. In the State of Virginia, they have the lowest automobile insurance premiums on average in this Mid-Atlantic region. They have the highest profits. We have the highest premiums in New Jersey, and we have the lowest profits. And I think you'll find that the profits that are measurable are not underwriting profits but investment-income profits in the face of this rising market.

SENATOR CARDINALE: You had made some comments about the nonrenewals. The complaint that we get about nonrenewals deals with something that you don't seem to have any problem with: the nonrenewal of drivers who have good records. I don't get very many complaints from drivers who say, "You know, I've got a lot of points, and I've had 16 accidents, and I was nonrenewed. Do something for me." The typical complaint that I get is, "I've been with the company for 20 years, and for some reason, unbeknownst to me, I've been canceled. And I can't figure it out. I have a great deal of difficulty replacing that insurance at anything approaching the rate that I have been paying," or, sometimes, at any rate.

Now that's what we are faced with as legislators, that there seems to be an inherent unfairness in the way the 2 percent rule -- it's not the 2 percent rule, but the way it's being applied. It seems to be that companies

are applying it against drivers who are, in fact, not high risk. Would you care to address that?

MR. MATTHEWS: Yes. I think that basically what you're saying is that the complaints you get are the demonstrative complaints from people who feel that they are being put upon. And I have sympathy for people who are being put upon. There is no question about the fact that there are people who are being -- who fall victim to the so-called 2 percent ax, that may not have the type of insurance record that would warrant, in their own minds, this termination procedure.

But I have to hasten to say that not all companies are doing this. I think if you look at the record of people who have been terminated, there is a consistent pattern within some companies. And to some extent, when we face up to this, we throw out the baby with the bathwater and we say, "Well, because one company is doing it, all companies are going to do it."

But I don't know how you can make a universal rule beyond that that you're putting in this here, and that is, defining a good driver and say, "Okay. We don't think the 2 percent rule" -- which you gave to us -- "should be utilized in that situation." I accept that.

SENATOR CARDINALE: Okay.

Senator Lesniak, do you have any questions? (negative response)

Thank you. Thank you very much.

MR. MATTHEWS: Thank you very much. Thanks for your time.

SENATOR CARDINALE: Mark Granstrand and Alex Archimedes have requested to come up here together. I guess they feel strength in numbers.

MARK GRANSTRAND: My name is Mark Granstrand. On behalf of State Farm--

Is this on? (referring to microphone)

MR. DAVIS (Committee Aide): It should be red. (referring to microphone)

MR. GRANSTRAND: It's red.

My name is Mark Granstrand. On behalf of State Farm Insurance Companies, I would like to thank the Committee for the opportunity to participate in this important discussion on insurance fraud. My objective is to briefly inform the members of this Committee of the many activities and initiatives the insurance companies have undertaken to combat the growing problem of insurance fraud and abuse here in New Jersey.

In no means do I speak to you today with all of the answers to combating insurance fraud; however, I am here today to tell you that the insurance companies are at the forefront of the fight against insurance fraud and have been long before the current administration and current Legislature identified fraud in their insurance reform proposals.

Before I inform this Committee of what we're doing to fight fraud, there are two caveats in our fight that need to be identified. They are: First, public attitudes. In recent surveys, 37 percent of all New Jersey respondents -- compared to 24 percent nationally -- agree that it's all right to increase an insurance claim to make up for past premium. Additionally, 41 percent of those surveyed in New Jersey -- and 28 percent nationally -- agree that it's all right to increase an insurance claim to make up for the deductible. These

statistics speak loudly that New Jerseyans think it's okay to commit fraud. A bar graph showing the survey results is attached.

The second caveat is enforcement. The insurance industry submitted 16,441 suspicious claims to the State's Insurance Fraud Division in 1996 and over 62,000 claim files in the last four years. Only a fraction of these claims, however, were actually reviewed and processed by the Division. Further, only \$2 million in fines were collected by the Insurance Fraud Division in 1996.

The insurance industry has a zero tolerance of insurance fraud. As Special Investigative Units Manager for State Farm in New York and New Jersey, I'd like to provide examples of our actions in the fight against insurance fraud by commenting on a five-point industry agenda for fighting fraud. Working closely with the SIU managers of other New Jersey insurers, I know this agenda is representative of the industry's fight against fraud.

Before this Committee considers any type of reform which would include a get-tough stance on insurance companies' actions, it is absolutely imperative that you understand the following insurance company initiatives.

Initiative one, first, special investigative units and referrals. Insurance companies have been committed to fighting insurance fraud long before it became fashionable. In fact, some companies have been operating Special Investigation Units, or SIUs, for over two decades. Through the work of SIUs, insurance companies investigate and develop cases that are referred to the New Jersey Division of Fraud Prevention which prepares these cases for civil and criminal prosecution by the State Attorney General's Office.

As I mentioned earlier in my testimony, insurance companies in New Jersey investigated and submitted 16,441 suspicious claim files to the Insurance Fraud Division in 1996 -- over the past four years, well over 60,000.

The second, on which I will comment on State Farm's procedures-- State Farm activities range from sponsoring seminars for the FBI and other law enforcement agencies, regular fraud detection, education programs for all company employees, continuing education programs for company SIU employees, and utilizing state-of-the-art video surveillance technology.

Beyond our in-house schools and training, which we consider to be the standard of the industry, we worked with the National Insurance Crime Bureau, or NICB, in developing their Special Investigation Academy and continue to act as their instructors there. Additionally, our SIU personnel are frequently and recurringly called upon as presenters for other industry and community groups and organizations, similar to my role here today.

The third initiative: Public education and outreach. The industry is actively getting the word out to our companies' employees and the general public that insurance fraud is costly to consumers and can no longer be acceptable conduct. This is being done through television and radio advertisements, recurring articles in industry and company publications, through providing articles and interviews on the topics of insurance fraud to the general news media, and preparing speeches for community groups.

In New Jersey insurers participate in the New Jersey Insurance News Service's "Sure Talk" speakers' bureau, a program that has reached tens of thousands of New Jerseyans in the past four years.

Fourth, databases. In an effort to develop databases of information on numerous fraudulent activities and practices, the property-casualty insurance industry exchanges information, much of it electronically, with such agencies as the New Jersey Division of Fraud Prevention, the New Jersey Division of Motor Vehicles, the National Insurance Crime Bureau, the Coalition Against Insurance Fraud, and the American Insurance Group.

The fifth initiative, legal and regulatory remedies. To assist law enforcement agencies, regulators, and legislators in developing more effective programs to combat insurance crimes, insurers provide data, research, and information. The industry also supports and works for the implementation of tougher enforcement policies and penalties for those who commit insurance fraud.

State Farm receives requests from law enforcement and other agencies to assist with investigations, and we actively participate in such requests. Our participation with these investigations includes agreeing to issue fictitious insurance policies, donating undercover vehicles, extending the use of State Farm facilities to the use of task forces, and contributing financial support. Some of these undercover operations have closed with positive results and others are ongoing, even as I speak here today.

Now, contrary to what many may think, insurance companies are not law enforcement agencies. We can only identify suspicious claims, withhold claim payments when fraud or abuse is suspected, and provide evidence to law enforcement officials. We cannot levy civil fines or prosecute criminals who defraud New Jersey motorists.

The five-point agenda I have just outlined clearly indicates that insurance companies in New Jersey are serious about the fight against insurance fraud. The accusation that companies would rather pay a fraudulent claim than investigate is totally unfounded. Our financial commitment to fighting fraud is staggering. Insurance companies are spending in excess of \$25 million a year in direct funding to combat insurance fraud here in New Jersey. If the cost of funding national or regional programs, such as the NICBG or Coalition Against Insurance Fraud and the State Division of Fraud Prevention were included, our financial commitment climbs to over \$50 million per year. The impact of the industry's investment to prevent insurance crime is tremendous, saving more than \$200 million in fraudulent claims deducted or prevented each year.

Insurance companies, like you, are very frustrated with the insurance fraud. The current administration's immediate reaction has been a call for greater diligence by the insurance industry or face numerous fines. Is that really the answer to the problem?

Insurance companies and consumers are the victims of fraud. Because of its existence, companies spend millions each year to investigate and detect suspicious claims -- costs which are inevitably paid for through premiums. The administration has asked the Legislature to consider stiffer penalties for insurance companies. I compare that to levying a fine against a victim of a robbery or mugging for not avoiding the crime. Another solution being offered for some legislators is to have insurance companies roll back 20 percent to compensate for insurance fraud. Is that practical? Would this

Legislature support a 10 percent rollback on the prices that a retail store charges for clothing to compensate for theft?

To effect the greatest change, this Legislature, the Governor, the Department of Banking and Insurance, law enforcement, insurance companies, and national organizations must join together and look to the greatest offender, the system itself. Enough pointing fingers, it's time to get to the root of the problem and start making an impact.

As witnessed by my testimony here today, the fight against insurance fraud is not a new battle for insurance companies. We're glad to see this issue brought to the forefront of insurance reform discussions, and we look forward to working with those parties and organizations who are serious about this challenge. The quicker we can change the current system that allows such widespread abuse, the sooner we can begin to discuss the issue of controlling the costs of auto insurance here in New Jersey.

And on a personal note, you had discussed previously about the paper and the fines that had taken place for the lawsuit that the Attorney General's Office handled-- Most, if not all, of the insurance companies were peripherally involved with that matter. As a matter of fact, the Attorney General's Office requested that the insurance companies -- and I can say on behalf of State Farm -- not make any payments on the claims that were being sued for by all the other insurance companies. It wasn't just the State of New Jersey versus these people. We held complete payment of any claim -- took it completely through the lawsuit -- so that we wouldn't be giving additional moneys to these people in order to fight the State of New Jersey and the Fraud Division. So we were very much involved with them.

Thank you.

SENATOR CARDINALE: You have some familiarity with that case?

MR. GRANSTRAND: Very much so, yes.

SENATOR CARDINALE: Can you answer any of the questions that we posed to the Commissioner? A, it would occur to me that if you have these databases that you can correlate which attorneys and which law firms are directly involved with which doctors, and has any of that correlation been done?

MR. GRANSTRAND: By the Insurance Department, the Fraud Bureau? Not to my knowledge.

SENATOR CARDINALE: By your company?

MR. GRANSTRAND: Yes.

SENATOR CARDINALE: Have you correlated it?

MR. GRANSTRAND: Yes.

SENATOR CARDINALE: Do you know which ones the bad actors are?

MR. GRANSTRAND: Yes.

SENATOR CARDINALE: Have you reported that to the Department?

MR. GRANSTRAND: Yes.

SENATOR CARDINALE: Have they taken any action?

MR. GRANSTRAND: Only the action that was previously taken through the lawsuit and the Attorney General's Office.

SENATOR CARDINALE: Do you know of any action that has resulted -- any legal action that has resulted in financial benefit to any of the operations of that ring through the pain and suffering aspect of what is happening, either through settlement or through judicial determinations?

MR. GRANSTRAND: I'm sorry. The question is: Do I know if there are--

SENATOR CARDINALE: There was a ring. There was a ring going on there.

MR. GRANSTRAND: Yes.

SENATOR CARDINALE: The ring involved-- As I understand the operation of the ring, attorneys referring people to these particular doctors--

MR. GRANSTRAND: Correct.

SENATOR CARDINALE: Those attorneys were pursuing lawsuits.

MR. GRANSTRAND: Correct.

SENATOR CARDINALE: And that's why they were referring the people, to establish the claim in the lawsuit.

MR. GRANSTRAND: Correct.

SENATOR CARDINALE: Were any of those lawsuits fruitful?

MR. GRANSTRAND: Yes.

SENATOR CARDINALE: So that attorneys got money and clients got money as a result of the operations of this fraudulent ring?

MR. GRANSTRAND: I believe so.

SENATOR CARDINALE: Has anything been done in an attempt to recover those moneys?

MR. GRANSTRAND: Not to my knowledge.

SENATOR CARDINALE: Is your company pursuing that?

MR. GRANSTRAND: We had pursued it, yes. We are in the process of-- First of all, to explain, it is beyond just two doctors. It goes to 14 to 16 different facilities. Some of these facilities and attorneys have handled people who make insurance fraud part of their business. For those people, we have refused to make payment to them. That's the extent, I believe, of what most of the insurance companies have done at this point.

SENATOR CARDINALE: It has always been a source of wonder to me that insurance companies would settle doubtful pain-and-suffering claims rather than pursue them through the courts. Now, I want to just make a comparison and have you tell us why my thought doesn't work.

The malpractice insurers in New Jersey -- there are only a couple that do most of the business -- embarked on a policy some years ago of not paying claims that they had any suspicion, whatsoever, at all, were invalid claims. They announced that every case would go to trial. I don't believe they'd really do that. But they have had an experience that currently, attorneys -- and I've spoken to trial attorneys about this and they said this is true-- That attorneys will not take cases without merit in the malpractice area. But that does not seem to hold true -- and that's anecdotal evidence -- in the auto area, and it seems to be a major problem.

Why can't you do the same thing that the malpractice companies did and bring this under control simply by the action of the insurance companies making attorneys understand that there is no profit in this system?

MR. GRANSTRAND: I think most companies have begun doing that. For example, last year in New Jersey, we had 62 lawsuits with our Special Investigation Unit, which we brought to fruition, some of them starting back in, perhaps, 1993, 1994, 1995. We tried 62 cases and won 62 cases. Those are the cases in which we have a preponderance of evidence that there is some type of fraud involved.

With the rampant lack of medical management there is and the high fees, you certainly -- and you walk into a courtroom and you don't have this predominance of fraud, the likelihood is the insurance company will not come up to be a winner in that particular case because these people who have presented a claim and breached a threshold will be able to secure some funds through a jury trial.

SENATOR CARDINALE: Now, you've talked about the preponderance of the evidence. There is a measure that is before this Committee that deals with the question of the standards of evidence. Do you see this as a problem, currently, in New Jersey? Are evidentiary standards allowing recovery in cases where there is doubtful responsibility?

MR. GRANSTRAND: I don't think it's evidentiary information. I think it is more the -- and probably quite correctly -- courts want to make sure that an innocent party receives benefit through the court system. That's taken through the basis of medical information being supplied by physicians being accurate -- sometimes it's not. It becomes a question between our doctor

versus their doctor, and in those cases, most of the time, some compromise of some type takes place, whether it's with the jury panel or prior to that.

The difference with the fraud cases is, you have a tremendous amount of information beyond just the medical end of it. Normally, you have physical evidence that you may not have on some of the other cases that you're investigating and that is what -- or perhaps even the background of the individual you're dealing with, which you don't have on the large number of cases. So on those fraud cases you have a lot more information in which to defend yourself.

SENATOR CARDINALE: The controversy to which I'm referring -- and I don't know if you're answering the question I think I'm asking--

MR. GRANSTRAND: Okay.

SENATOR CARDINALE: --deals with the controversy between contributory and comparative negligence. That's a provision in one bill that is before us. Would there be a substantial difference in insurance premiums in New Jersey if we went to a standard of contributory negligence?

MR. GRANSTRAND: My personal opinion is, no. If you go back a number of years in New Jersey, we had contributory negligence in New Jersey and went to comparative negligence. I think the court system went along almost in the exact same fashion as it did previously. So that I certainly don't see a reduction in premium by bringing in this type of system.

SENATOR CARDINALE: Thank you.

A L E X C. A R C H I M E D E S: Good afternoon, Mr. Chairman. Thank you for the opportunity to testify before this Committee today. I am Alex Archimedes, President of Parkway Insurance Company.

A recent editorial, dated April 17, 1997, in the *Courier-Post*, quoted an individual as saying, "The laws in this State invite fraud and abuse." The editorial then went on to say, "Well, then, why hasn't there been a concentrated effort to get those laws changed?" The position of the paper is if auto insurance laws encourage or allow fraud, fix them. That's a good question. Why don't we fix those laws? It seems as though over the past few years, we have been unwilling or unable to address the real issues and pass responsible laws that will fix the real problems.

One specific case in point relates to personal injury protection.

As you stated earlier, Mr. Chairman, New Jersey's level of PIP coverage is \$250,000, which is the second highest in the nation.

And for the sake of this discussion today, I'm not disputing that coverage limit. People with serious injuries should have a coverage available that allows them to get the proper medical attention and treatment. Where we see fraud and abuse is at levels much less than the maximum provided.

On this page (indicating) there are a bunch of statistics dealing with PIP. You have quoted many of these statistics, and in the interest of time, I will not repeat them again; however, I do allow them for the record.

The vast majority of PIP claims are legitimate people who are injured, people who are receiving legitimate treatment; unfortunately, a small percentage of claims are subject to PIP fraud and abuse, and the facts are supported by examples that any company in this State could show regarding the incidents of fraud and abuse in the personal injury protection area.

I'd like to take just a couple of minutes to talk about a few live examples -- real examples -- that we face. These are a couple of files that we

have at Parkway. (indicating) One situation -- and I will be very brief with the examples-- Our insured was involved in an accident with another vehicle. Both vehicles were driven from the scene, and there were no injuries reported to police at the scene. Damage to the other car was minimal, and the damage to our insured vehicle was, literally, a broken taillight.

An investigator, who later interviewed our insured -- when asked what the impact felt like, said that it was so minor he didn't even realize he had been hit. There were three other occupants in our insured's car: Three males, 20, 40, and 64 years old. They were being driven home from work. They all worked together at the same location.

One of the males, who did not have any insurance available to him, was pursuing PIP through our policy. He alleges the following injuries: headache, facial pain, sprain and strain of the neck, sprain and strain of the thoracic, sprain and strain of the lumbar, neuritis, thoracic and lumbosacral radiculitis, sprains and strains of sacroiliac region, cervical root lesions, lumbosacral root lesions, and disk displacement -- all from a broken taillight. The claimant, who was interviewed by an IME doctor -- or reviewed by an IME doctor -- reported he has not missed any time from work as part of his treatment.

During another segment, where an investigator was interviewing our insured, he was asked if he had brought his Social Security card, and his reply was, "I bought it." At that point, his attorney asked for a brief intermission, they left the room, and when he came back in and the recorder was turned back on, he said he had made a mistake and changed his testimony to, "I brought it." And at that point, we took the Social Security number.

When the number was run against the Index Bureau, 19 different names came back on that Social Security number in other events. None of them were our claimant.

A chiropractic IME--

SENATOR CARDINALE: What happened to him?

MR. ARCHIMEDES: Pardon me?

SENATOR CARDINALE: What happened to him as a result of that?

MR. ARCHIMEDES: This case is still ongoing. We actually have an action against some of the individuals related to this, so the jury is still out, so to speak. But we're firm in not paying this, that's for sure.

A chiropractic IME was conducted and the doctor concluded -- and this was a chiropractic IME -- that the claimant did suffer minor sprains and strains, but it was probably a result of the fact that he worked in a cement factory and routinely carried 200-pound bags of cement.

Record reviews were done on all the bills, and as it turned out, there was little correlation between services performed and between what was listed as treatments. There was conflict in services actually performed and the services' bill, and the documentation was substandard. During the course of treatment, numerous diagnostic tests were done, including muscle testing, electromyography, nerve conduction studies, reflex studies, range-of-motion measurements, x-rays, MRIs, echographies, on and on and on. These tests totaled over \$8000 over the three-month period.

In total, during 101 days that this individual was treating, he visited 80 different providers for treatment -- some 3 and 4 in a day. And I

have a calender here that shows 3 and 4 providers visited in the same day, and he did not miss any time from work. And all this from a broken taillight. (laughter)

To add insult to injury, when my PIP manager was talking to the office manager at one of these providers who was calling up to find out the status of their bill -- and we said we had some concerns, and we were not satisfied with records -- her comment to my PIP manager was, "Just pay the bill, because we're going to take this to arbitration, and you're going to lose just like all you companies do."

One other incident, very quickly, was a situation where our insured and a passenger were involved in an accident. Both claimants were represented by the same attorney. Both treated with the same doctors, as they had done in a prior incident, as confirmed through the Central Index Bureau. Both alleged that they suffered carpal tunnel syndrome, TMJ, soft-tissue injury, and psychological disorders.

We had numerous independent medical exams that were done on ortho, neuro, psychological, and TMJ, and they were all negative for further treatment. In spite of that, both individuals had a carpel tunnel relief surgery, even though the doctors advised against it. In spite of our efforts to obtain medical opinions from all the disciplines and advising the plaintiffs that they had reached maximum benefits, they continued to treat. We continued to deny bills. This was finally taken to an arbitration, and we lost in arbitration. Even with all the IMEs, with all the negatives that were shown, the company lost in arbitration.

SENATOR CARDINALE: And that arbitration was done by whom?

MR. ARCHIMEDES: Lawyers. Not medical doctors, lawyers. And lawyers decided on the appropriateness and necessity of medical treatment and overruled what independent IME doctors had said.

SENATOR CARDINALE: Are the lawyers who served on these panels also lawyers who bring cases in court?

MR. ARCHIMEDES: Yes.

SENATOR CARDINALE: So that while-- They are not allowed to serve on these panels with respect to cases that they're involved in personally, are they?

MR. ARCHIMEDES: No.

SENATOR CARDINALE: But one serves on one guy's case and the other serves on another guy's case. Is that how it works?

MR. ARCHIMEDES: Yes.

The point of all of this is that we need the tools to be able to effectively fight fraud in a cost-effective manner that will, ultimately, provide a return to the New Jersey driving public. One tool that the Commissioner talked about that was passed last year -- that was a first step -- was the PIP 21-day rule. It was a first step, however, it's not enough.

Over the past two decades, the cost effectiveness of PIP has eroded through the arbitration process, through increases in experimental diagnostic procedures, and through duplicative and unnecessary medical treatment. It's obvious that these excessive treatments provide financial gain to a handful of

abusive providers, allow an opportunity to pierce the verbal threshold, and ultimately, increase the value of a lawsuit for pain and suffering.

The PIP peer review bill is intended to institute cost-saving measures with respect to PIP medical expense benefits. Simply put, disputes regarding medical necessity and appropriateness would be subject to PIP peer review -- to a peer review panel of qualified New Jersey doctors who specialize in the same field as the services under review.

The peer review process would not reduce coverage or legitimate medical treatment and would not impact the vast majority of the New Jersey public. It is a focused approach to attacking fraud and abuse related to unnecessary and inappropriate medical treatment. The bill contains numerous safeguards regarding peer review organizations, including licensing procedures, regulation and oversight by the State, and follow-up to ensure impartiality.

There are other measures that could be added to even guarantee further the impartiality. That seems to be a contention amongst various groups, and I think we would welcome even more ability to make it impartial. But the major point and the driving point through this whole process is, doctors should decide what is appropriate medical treatment and not attorneys. It is commonsense approach to a very serious problem.

As much as we've tried to get this piece of responsible legislation heard and passed over the past few years, our attempts have been unsuccessful. Powerful special interest groups continue to fight these responsible reform measures because it is against their own self-interest. If we are serious about fighting fraud, then a bill such as peer review is a good first step.

The *Courier-Post* asked why we don't fix those laws. Well, we should, because it's in the interest of the most important group in this State, the people.

Thank you.

SENATOR CARDINALE: Thank you very much.

Bernard Flynn.

ROBERT H. ZETTERSTROM, ESQ.: Good afternoon, Mr. Chairman.

Just for the record, I'm not Bernard Flynn. Mr. Flynn had to leave to go to a Labor Committee meeting in Pennsauken. My name is Robert Zetterstrom. I'm an attorney with New Jersey Manufacturers Insurance Company. I am a pinch hitter.

We are here today-- New Jersey Manufacturers Insurance Company has in force approximately 270,000 private-passenger automobile insurance policies covering about 500,000 New Jersey drivers. We are rather unique in that our policyholders are not subject to surcharges for motor vehicle violations or accidents. Not one of our insureds has been nonrenewed pursuant to the 2 percent rule, and less than two-tenths of 1 percent has been nonrenewed for what we think is good reason and good cause. By insuring good drivers and keeping administrative costs low, NJM consistently offers attractive rates and returns dividends to policyholders.

The scaled-down version of the automobile insurance measure recently announced by Governor Whitman and legislative leadership does not benefit our policyholders. We believe that in order to achieve long-term savings for NJM insureds and other good drivers throughout the State, the

reform package must include meaningful cost-saving measures, such as medical review, which is needed to supplant the American Arbitration Association's control over personal injury protection -- medical treatment disputes.

We would also endorse a tightening of the verbal threshold, which will preclude a number of lawsuits for pain and suffering in cases of nonserious injury. Lastly, we would advocate stiffer criminal penalties for insurance fraud perpetrators, including the creating of a State Insurance Fraud Prosecutor to coordinate and improve New Jersey's antifraud efforts.

Mr. Chairman, you've already heard a lot about the medical peer review. New Jersey Manufacturers Insurance Company is very much supportive of that legislation. We believe that it will fetter out a lot of fraud which we've heard about recently -- as early as yesterday's front-page article in *The Star-Ledger*. So I'm not going to repeat what's already in our written statement, most of that you've already heard from other witnesses.

NJM also would advocate the verbal threshold tightening aspect. In the Governor's reform package there are four choices. Choice C deals with a verbal-type threshold provision. In the event that the four choices are looked again, we would advocate that that threshold language that now exists be enacted into law.

We believe that when the verbal threshold was first enacted in 1988, that Governor Kean wanted the strict construction, and that was essential to the appropriate application of the threshold criteria. Nevertheless, the initial verbal threshold, as applied by the court system, has fallen short of the result intended by the Legislature. Therefore, the intention of the proposal in Governor Whitman's original draft bill is clear; less than severe personal

injury claims for pain and suffering resulting from automobile accidents are to be eliminated from the judicial system in those instances where an individual has chosen this coverage option in exchange for lower premiums.

Mr. Chairman, you talked about a trade-off in your opening statement. We believe that the fairness of that trade-off needs to be pursued.

In addition to a tightening of the verbal threshold, we are advocating fraud prevention, and we've heard a lot about that today. Again, I won't go through a number of statements that have already been made by industry representatives.

We have one additional idea to put before this Committee. Medical peer review and a stronger verbal threshold will certainly address abusive practices, but more can be done to prevent fraud than hiring investigators and fining insurance companies. Prosecutors must currently prove misappropriation through fraud in amounts of \$75,000 or greater before jail time is a realistic possibility. We think the threshold should be lowered, recognizing the practical difficulties prosecutors face in investigating and aggregating individual insurance claims to reach \$75,000.

Also, we believe consideration should be given to the creation of a single State Insurance Fraud Prosecutor to coordinate information and action among the various agencies involved in the fighting of fraud. Such a person could be designated administratively by the Attorney General to facilitate antifraud efforts, creating little if any additional bureaucracy. The form the position takes is less important than the substance and the message such a special prosecutor would send to the public. Serious fraud cases must result in serious criminal penalties to deter future conduct. We believe civil fines

simply amount to the cost of doing business and will not deter fraud in the future.

We have always diligently fought at NJM to fight fraud. Our Special Investigative Unit is directed by a former prosecutor with experience in the New Jersey Division of Criminal Justice and U.S. Attorney General's Office and includes a number of former ranking officers of the New Jersey State Police. We believe our battle against insurance fraud can be waged more effectively with these initiatives in place.

Thank you.

SENATOR CARDINALE: Thank you very much.

Ray Kalainikas.

RAY KALAINIKAS: Senator, some time in December I asked the Legislature, by way of a piece of mail, if they would consider replacing the entire system of auto insurance in New Jersey with that which is taking place in Virginia -- their system of auto insurance -- with all the restrictions that exist on attorneys, or lawyers, in Virginia. The reason I put that request in was because, generally, I think when a person looks for auto insurance, they will go to a number of companies seeing which companies offer the best coverage and the best price.

It seems to me as a citizen -- a layperson -- that every time a change occurs in the State of New Jersey -- via the Legislature -- concerning auto insurance, the cost of auto insurance goes up. So for the first time I'm asking the State Legislature consider doing shopping by way of state. What other state has a better system of auto insurance that would fit the people of New Jersey.

I've looked at Virginia because Virginia is in the metro belt. The metro belt goes from Massachusetts to Virginia. So we have all those states in the metro belt, going from Massachusetts to Virginia; Virginia is at the bottom of the belt, but it is still within the belt. And according to the latest statistics -- at least, according to newspapers -- we're told, on average, people in New Jersey pay \$1013 per vehicle with respect to auto insurance. With respect to Virginia, they pay \$552 per vehicle.

I know people -- and this is going over a number of years -- who have worked in Washington, lived in Virginia, for some reason or another they get a job in New Jersey. They come up to New Jersey, they ask for the same coverage, and they literally fall off their chair when they find out what they have to pay for the same coverage in New Jersey. So it becomes very clear that in Virginia, overall, the cost of auto insurance is less expensive.

So it would seem to me that the only way one can do an end run around the special interests in New Jersey, with respect to change, is simply to scrap the entire system that we have in New Jersey and to take on the system that exists in Virginia with all the restrictions on attorneys. I would like to see this be a one-page bill. And I think it's possible that if it were a one-page bill, that the people in Virginia could make sure it would adhere to what is in Virginia. In other words, make all the changes and then have the people in Virginia say, "Yes" or "No" this is the Virginia system or it's not the Virginia system and have the insurance companies pay the cost for the experts in Virginia to make that determination. But keep it a one-page bill.

I asked Rose Heck if she would consider sponsoring this, and she agreed to consider sponsoring this. It's currently in OLS, and I'm told it's got

40 or 50 pages. That's not what I was looking for, and I'm told it's similar to Virginia, but not quite Virginia. So it's really not what I'm asking for, but it's going in that direction. I still would like to see it be a one-page bill. Scrap the New Jersey system, take on the Virginia system with all the restrictions on attorneys. It sounds monumental, but I think the people in Virginia could put it in place if we pay them to put it in place, contrary to all the special interests in New Jersey.

One of the concerns I have -- and Senator, I see you seem to favor mandatory auto insurance by what has taken place recently with respect to what you've put in regarding mandatory auto insurance--

I would hold mandatory auto insurance to not be consistent with the purpose of government. It would seem to me that government's purpose is to ensure -- and I guess I'm looking at it from a religious perspective and I think Jefferson held this-- Government's purpose is to ensure that one human being is not master over another human being. The way one achieves that is for government to prohibit one human being from woefully depriving any other human being of their rights of life, liberty, and the pursuit of happiness. When a person decides to buy auto insurance or not buy auto insurance, that person is not willfully depriving anybody of their right of life, liberty, and the pursuit of happiness. So government has no right to interfere with that decision that an individual decides upon, whether they want insurance or whether they do not want auto insurance. So, therefore, government has no right to determine that a human being must buy auto insurance.

When you have mandatory auto insurance, your auto insurance premium, effectively, becomes a tax. We don't call it that, but that's really

what it is when government forces an individual to buy auto insurance. Your auto insurance premium is a tax.

I pay \$1800 a year for one car -- a Plymouth *Sundance* '94. I think it's ridiculously high, and Prudential is my company. I cannot seem to lower it. And I, at this point, do not have any points or accident points against me. So I'm paying \$1800 a year. I cannot imagine I would pay that if I were in Virginia. I'm sure it would be considerably less. If we pay, on average, \$1013 a year in New Jersey and, on average, in Virginia, they pay \$552 a year, it would probably at least be cut in half -- \$900 and something.

But if we can't put the Virginia system into place -- because I see many obstacles and many people would not like to see it occur -- at least let us eliminate mandatory auto insurance. That, to me -- mandatory auto insurance -- is a violation of the purpose of government, and since this is a government body we're dealing with -- the Legislature -- it seems incumbent upon this Legislature to eliminate auto insurance.

I know in Virginia they were going somewhat in that direction, because you don't have to buy auto insurance, but every year when you register your car, you have to pay \$400 to have that freedom -- if you want to call it a freedom. It's kind of an indirect way of forcing you to buy auto insurance, when you pay your \$400, I realize that. Even though they say you can drive around without auto insurance, you're in some way actually paying for auto insurance in Virginia. So it's a very indirect and somewhat deceptive way of saying there is the freedom to drive around without auto insurance in Virginia. I would like to see a situation where actually you would have to pay nothing with your registration and still not have to buy auto insurance.

I realize the problems. I realize, as an individual, the interested groups that would lose a lot of money if the rates would substantially go down, and all of those groups would be opposed to any real change. But if no other change could occur other than eliminating mandatory auto insurance, then let that be the change, if that's the only change. If that's the only realistic change we can work for, I would work for that change, I really would.

But Virginia, in my opinion -- because it's in the metro belt -- I think, is a reasonable state to look at in terms of saying, "Let us take on their system," as opposed to, say, keeping it the way it is. That's all I have to say.

Thank you very much.

Unless you have a question, Senator.

SENATOR CARDINALE: Thank you.

I'd just like to observe a couple of things. One, I have no philosophical bias with respect to whether or not we should have mandatory insurance in New Jersey or not. If I've given you that impression, I have given you the wrong impression. I do support continuation of mandatory insurance, because I believe, from what I have been able to see, that it is what the public wants in New Jersey, not because it's what I want. And if I become convinced otherwise, I could very easily -- on a philosophical or any other basis -- support abandoning the idea of mandatory insurance, and as a matter of fact, I have some jottings that are very similar to what they do on that point in Virginia.

Secondly, you had made those comments with respect to Virginia and staff has looked into them. There are a couple of things that you should be aware of that staff has discovered. One of those is that they don't have PIP coverage in Virginia, and PIP coverage is a very substantial portion of what

people pay for in New Jersey, and they do not have that. And, obviously, if you do not buy something, it costs less than if you do buy it. That is a piece of the Governor's program, and to that extent, it is something that we are dealing with and is something that I am introducing to retain because it is part of the Governor's program.

There are those who have said we should go closer to Virginia. They have said we should take PIP from \$250,000 down to \$15,000. Now, I haven't discussed that here. I have discussed it in some other meetings. Frankly, we wouldn't save very much money, because most of the claims are under \$15,000, currently. So if you have to pay most of the claims that you have to pay now, all you would accomplish is you would take those people who had a catastrophe--

Now, there is something we could do with PIP, we could make \$15,000 where it starts, so that it truly becomes catastrophic insurance -- start it at \$15,000 and go up to \$250,000. So those with catastrophic injuries could be guaranteed to be protected and not become a burden on all of the rest of the people through the tax rolls and charity care, and so forth. We could do that. I don't see a lot of a ground swell of support for that kind of a measure, but that is something that I've got down in some of my jottings as a result of some of these hearings that we've been holding.

The third point I'd like to make to you that makes us dissimilar to Virginia -- not that we couldn't do it-- But for us to put the kinds of controls on attorneys that they put on in Virginia would probably require a constitutional amendment in New Jersey, because our Supreme Court has

consistently ruled that they, not we, control attorneys. There is very little that we can do to overcome the ultimate arbiter of those kinds of rules.

We could, I suppose, pass a constitutional amendment that gave some different group than lawyers -- and that's what judges are, they're lawyers -- control over lawyers, and set up some sort of panel that would do that. I don't think it would be very easy to get that through the Legislature to be put on the ballot if, unfortunately, we don't have initiative and referendum in New Jersey. I think it would pass in a flash if we were able to put it on the ballot, but I just don't think we're going to be able to control lawyers to that degree that they do have in Virginia. Were we to be able to, maybe we could come closer to the rates that people have in Virginia, and I think it's very good of you to have brought that to our attention.

I just wanted to let you know what we have found with respect to the research -- and I also wanted to let you know that our staff doesn't just forget about things that people say. They do look into them and give us reports back as to what these comparisons are and how it would impact on the people of New Jersey if we were to pursue some of those items.

MR. KALAINIKAS: Senator, I guess really what surprises me and keeps sticking in my head is the fact that you hold to the perception that you really view the general public as supporting mandatory auto insurance. And if, all of a sudden, some sort of survey were to go forth across the State indicating that your perception is incorrect, would you change your mind?

SENATOR CARDINALE: I've said that.

MR. KALAINIKAS: You would?

SENATOR CARDINALE: I just said it two minutes ago, and this is being recorded.

MR. KALAINIKAS: Well, I just want to verify that, because it's surprised me, it really has.

But thank you very much.

SENATOR CARDINALE: Thank you.

Michael Berger.

For the benefit of everyone, after Mr. Berger, there are two other witnesses who I have left for last because, in fact, they have testified previously before the Committee. But I will hear them again.

MICHAEL S. BERGER, ESQ.: Senator, I'd like to thank you for the opportunity to appear before you.

I also want to thank you for coming down to Camden County last week to listen to what Camden County residents had to say about auto insurance, auto insurance reforms, and some of the problems they observed. Also, I want to thank you for the patience you showed in light of some incredibly rude people who were not paying attention to proper decorum during that particular symposium.

What I'd like to address are just a couple of brief issues. As you probably know, there are, on average, about 200,000 automobile accidents in this State every year, and you know that those 200,000 accidents generate a number of injuries, most of which, as you know, are legitimate injuries.

One of the things that you did when you listened to the citizens in Camden County was to understand that there are many citizens who have complaints about their insurance companies for failing to pay medical bills, as

is required by the contracts. We all know that when the premium is due, we're required to pay it in a timely fashion, otherwise, our rights to those insurance benefits are cut off.

But by the same token, the purpose of no-fault and PIP coverage was to provide speedy access to the doctor of the patient's choice, speedy payment of bills, and medical treatment that would repair any damage which was done as a result of a traumatic injury in an automobile accident. While the trend of lawsuits has declined during the past five years 25 percent -- and to verify that, I invite you to contact the Administrative Office of the Courts-- Bodily injury lawsuits have declined 25 percent, but the number of claims against insurance companies for failure to pay medical bills has increased dramatically. Currently, there are about 16,000 lawsuit actions filed now in the State of New Jersey because of the insurance companies' failure to pay medical bills. The failure to pay medical bills is a concept which the insurance companies have decided is an important way to cut down medical costs, discourage people from getting further treatment that might be needed, and, most importantly, the issue that you raised -- it was an issue today -- where you said that medical benefits should be separated from the legal benefits.

I think on your part, that is probably the most important thing that has been said today in this respect. It is in the interest of the insurance companies to prevent treatment in order to also prevent and create a barrier for a lawsuit for pain and suffering. We have a very severe, a very difficult threshold to meet. In fact, I brought for you the model jury charge instruction which each judge reads to the jurors, and it is the level and threshold which a

plaintiff must surpass in order to be compensated. And it is, in fact, one of the strictest in the country.

But once we separate the issue of medical treatment from legal consequences, as you so aptly describe it, I think we'll get to the bottom of the problem of overuse of medical treatment -- which is fraud -- and the system which allows the undertreatment, through the insurance companies, which is another form of fraud.

We've heard discussions about independent medical exams from the last two insurance company representatives. I'd like to present to you, and for your consideration, a little bit different picture, and that is, that doctors who are selected by the insurance companies are doctors who will, predictably, find nothing wrong with the claimant. The examinations -- and I've been to many of them -- last about five minutes. The examinations are cursory. The doctors who are involved in those examinations charge between \$300 and \$750 per exam. One neurologist in Camden County -- whom I think is a very good doctor when he treats his own patients -- has earned in sworn testimony -- which I have secured through his deposition -- over \$3 million from insurance companies in the last 10 years, conducting so-called independent medical exams.

So that if the medical treatment issue is separated from the consequences of the legal system -- much as Senator Adler reported to this Committee -- that is, when an automobile accident through either HMO coverage or health insurance-- There are no such complaints about overutilization and overtreatment. We've done a good job in cutting the costs

of health care through the systems that are in place, because there is no linkage between medical care and legal consequences.

A separate aspect that I would also like to mention to this Committee is that -- with respect to the issue of fraud -- the trial lawyers have supported and will continue to support criminal sanctions, civil sanctions, loss of license of any professional, including lawyers and anyone employed by lawyers, who is connected with and seeks to be fraudulent in the bringing of claims or perpetuation of such fraudulent claims in the legal system.

Our organization will do anything that is asked of us to make sure that fraud is not part of the system. I think it is a small part of the system, obviously, with potentially large consequences, but let it be known that lawyers and trial lawyers do not condone fraud. And I agree with the Senator when he said why is a chiropractor who has bilked the system or attempted to bilk the system of \$52 million slapped on the wrist with a minor penalty. It really does make no sense.

So I want to thank you for the opportunity to speak today. We have creative ideas we're willing to share. Again, I want to thank you for coming down to Camden County. We enjoyed your participation in that symposium.

Thank you, Senator.

SENATOR CARDINALE: I always wanted to see Camden County. (laughter) It was a pleasure, and now I know where I saw you before. I was trying to figure that out.

MR. BERGER: Yes. We shook hands.

SENATOR CARDINALE: You raise an issue -- that puzzles me a little bit -- in one of your statements. It has to be a year or so ago that we dealt with the issue of an HMO option on PIP for the consumer. It was my impression that your organization was vehemently opposed to giving the consumer the ability to choose an HMO option for PIP coverage. That doesn't seem to comport with the statement that you've made here today. What is the position?

MR. BERGER: I don't remember what the position was, because I wasn't in a position with respect to that issue. So I can't really speak to that, quite honestly, but I'll find out. But the whole issue, as you know, revolves around the verbal threshold. If there were no verbal threshold, I'd like to lay out for just a second, the types of cost savings that might be engendered from that.

Both the claimant and the insurance companies are doing the same thing from different directions. The claimant is trying to pierce the verbal threshold, and the insurance companies are trying to prevent the verbal threshold from being pierced. So rather than having the fast resolution of claims, the verbal threshold has, in fact, engendered a lot of litigation.

For example, in Camden County now, the cases which are required to go to mandatory arbitration are appealed by the Allstate Insurance Company 82 percent of the time -- and that was a study done over the last six months -- all because of the verbal threshold. The verbal threshold causes more tests to be done, more doctors to be hired on both sides -- both the insurance side and the plaintiff's side. So once you--

Again, getting back to your point about linkage of medical treatment with illegal consequences, once you have a verbal threshold, then all of the litigation revolves around the verbal threshold. The medical care revolves around the verbal threshold. The costs of the court system revolve the verbal threshold. And, in fact, most of the cases tried in the court system in the automobile insurance arena now are verbal threshold cases. Most of the appeals in the Appellate Division are verbal threshold cases.

So if you were able to unlink -- by the elimination of the verbal threshold, repeal of no-fault, you would find tremendous cost savings in all of those arenas. And if you have an opportunity to speak with lawyers who started practicing years before I did -- both lawyers who represent insurance companies and lawyers who represent injured victims -- they would all tell you that the legal verbal threshold has been the sole cause of the increase in the rates of insurance, as well as the increase in the costs of litigation. I would also invite you to speak with any judges, and I'm sure you know a few in this State, who would also confirm exactly what it was like before the verbal threshold and what it's like now.

Thank you.

SENATOR CARDINALE: Thank you very much.

Mr. Frank Ostrow.

I want to thank you for coming a second time to the Committee.

FRANK OSTROW: I appreciate being here, Senator Cardinale, and I'll make it shorter than I did last time. I'll probably be at your third with additional information that we've garnered in the interim.

I will read this (indicating) and present the rest of it as exhibits and material we gained in Massachusetts for your review. I'm sorry there are only four of you here.

Chairman Cardinale, and Senators of the Commerce Committee, I thank you for the opportunity to speak at this public forum. I'll only take about five minutes of your time.

Hopefully, the lazy and partisan press will report what transpires here, having not done so at your first joint public meeting with the Assembly Insurance Committee. Consider that you and your reporting of the facts are to us, innocent auto accident victims, only a hope that you'll have our interests at heart and that you'll change bad laws extant into laws that really help and do not hinder victim-claimants as you, as our elected officials, remain our humble public servants and not the slaves of the auto insurance companies.

Auto policyholders pay premiums. Auto policyholders -- 5.5 million, unless it was a mistake in the printing from 4.5 million last month -- elect politicians. What is PVAICA, of which I am Chairman? We are PIP Victims Against Auto Insurance Companies' Abuses. We are not supplicants before you. We are innocent auto accident victims being maligned by you and others by characterizing us as receiving beneficial treatment for injuries.

You are wrong, as are those who perpetrate this myth. Our money paid for our insurance premiums, for years -- me, 54 years, before I was injured. Our money paid for the benefits we have to fight for to receive. The previous speaker, I'll support 1000 percent.

To treat us and our treaters, providers, and suppliers with civility-- Comedy is standard here, but it's not with your claims representative. He

abuses you so that you will stop your treatment and go away. You're treated with disdain, contempt, and increasing pain. This is therapy for me, I think -- almost two and a half years now.

PVAAICA's purpose is to promote the betterment of auto owners' public health and recovery, while seeking to enlighten the Legislature and the press, media, general public, to inform them regarding the incessant continual abuses that insurance companies perpetrate upon claimants. Also, the abuse of claimants' treaters, providers, and suppliers and to safeguard all our constitutional, civil, and insurance contractual rights while claimants strive to be healed by their treaters, et al.

What can the Senate and Assembly accomplish for innocent accident victims? Eliminate the interest-only penalty that now is the only penalty that an insurance company has to pay. Most choose not to, and they flaunt with the same disdain they show for claimants by deliberately not paying bills in a timely fashion and in violation of the laws.

Two, replace this interest on nonprompt payment of bills with a simple double, triple, and quadruple penalty of the entire amount of each bill not paid within seven days, as is done in the Commonwealth of Massachusetts' laws under Public Ways and Works 90 §340, on Pages 118 through 121, WESTLAW. And I have the exhibits and the statutes from Massachusetts for your review. In addition, as penalty impose punitive damages plus costs and attorneys' fees.

Three, extend this auto repair bill payment law to all doctors', physicians', treaters', providers', and suppliers' bills to replace the present abused 90-day law, which is automatically extended to 105 days or 6 months

or a year by artful abuse by the insurance claims representatives with creative dodges that you could hardly believe.

A bill is a bill, whether for a fender dent or broken bodies. Make the payment in seven days with a penalty of double, triple, and quadruple the longer the insurance company delays payment. It's not their money. It's the policyholder-claimants' money.

Four, penalize insurance company claims representatives for their uncivil treatment to claimants, treaters, providers, et al. It has got to stop. Innocent auto victims are sick and injured. They do not need to be further abused by the people they paid to protect them. Policyholders are entitled to respect and civility, especially when they are trying to recover. If not, then let's go back to lawsuits.

Why am I in full-dress U.S. Marine uniform today? Because this is a battle for human rights (displays emotion); for human decency for us and our treaters and providers against unwittingly duped politicians and greedy money, actuarially driven money crunchers who use our money and the inhuman laws they managed to get written by politicians, like you, who unthinkingly were duped into thinking that the insurance companies would really respect those laws without weaseling out of as much as possible by first cunningly couched legal terminology they concocted.

Their lawyers seduced you with their legal language that is twisted and manipulates the innocent victim-claimant and their treaters and providers with impunity, and they have no fear of the meager interest penalty. It's a joke. They laugh at us, and they laugh at you, and they continue to make 28 percent interest on their money.

You never thought that their lawyers would subvert your good intentions. Well, they anticipated it, and they write it into law, and you put your name on it. You were used. We continue to be abused. Despite your good intentions, I'm coming down hard on you because I'm your conscience. Three times the public was led to believe that your insurance-company-written plans would fix the problem with these laws. Well, in politics as in baseball games, it's three strikes, you're out. This year it's a new ball game.

What's the latest game? If you don't know of this one, I have a copy of it here for you. (indicating) Assemblyman Garrett's office giving false directions to the second planned joint meeting of the Committees, which was supposed to be held tomorrow. Why? Is it the idea that the public should get lost? It's pretty tough up in Sparta, but I lived up there. What happens when the now 5.5 million auto drivers pay their \$1000 premiums? That's \$5.5 billion.

Now, Senator Cardinale, you want \$1 from each of us -- that's \$5.5 million -- to fix the uninsured problem. For how many years do we pay this \$5.5 million surcharge? What happens when drivers violate a driving law? Pay the fine first, and if not, you pay a penalty -- even your auto insurance policy, if you don't pay your premium on time, right? What happens when auto insurance companies violate New Jersey statutes? Nothing.

You and others accuse innocent auto victims of receiving generous benefits. You're dead wrong. The auto insurance companies say that fixing half a broken leg is enough, that will make the claimant feel better. The statutes say, we don't have to make you well, just make you feel better -- right? -- and we'll take a year to pay the doctors.

Somebody at the last meeting said they were coming down in Massachusetts' law instructions. Talk to the doctors up there and see how fast they get paid. They get paid at the end of the lawsuit. They give all their treatment for free until that time.

The innocent policyholder-accident victim paid his auto premium. It was a contract. And I have the Massachusetts' contract that I would like to have applied here in New Jersey. The contract was to fix both broken legs, not just one. It was a contract to obey the law and pay the doctors in a timely manner, not as late as you are able to figure ways to postpone payment -- even arbitration and lawsuits to avoid timely payments -- and no penalties.

In about six months, I'll go to arbitration. If I can find a way to sue them, I'll do that, too. We Marine fight for the right. We fight for the dead and their families. We fight for the helpless. We fight for those without voices. (displays emotion) We fight for the powerless. We fight against injustices. We fight against the powerful. We do not stop fighting until we're dead.

So do the right thing this time. Penalize the insurance companies for their past pervasive abuses of the laws with massive punitive damage. They only understand money, and they don't think of anything else. It is not their money. It's taken by laws from taxpayers. It's the money from policyholders' premiums. Can you really do what is right for auto owners? Or should I believe what a shop manager told me yesterday when I told him about this public meeting? Here's what he said, "Don't waste your time. You're going to get screwed anyway. You have better things to do with your time." But I took the time anyway. Is he right?

I suggest you check the over-500 uninvestigated complaints in the insurance enforcement and consumer protection department. Then, it's really up to you, isn't it? You want to remain the public's humble servants.

See in Massachusetts' Public Ways and Works -- I've enclosed it here. "In the case where benefits due and payable remain unpaid for more than 30 days, any unpaid party shall be deemed a party to a contract with the insurer responsible for payment and shall, therefore, have a right to commence an action in contract for the payment or amounts therein determined to be due in accordance with the provisions of this chapter -- and a speedy trial in the judicial district court. If unpaid party recovers a judgement for any amount due and payable by the insurer, the court shall assess against the insurer in addition thereto, costs and reasonable attorney fees." That's 90 § 34M.

I've also appended Massachusetts statutes 90 § 34A -- all the pages -- and 90 § 34M, and here is the map (indicating) with Route 94 made into 84, which I faxed back to your office and then faxed up to the fax number from the Technical Institute. Then I sent it to them, and I got a letter back, and I told them, "Send me what you sent to Senator Cardinale and enlarge it so I can see it." And it was 94 all the way, because 84 is in Pennsylvania.

Thank you for your time.

SENATOR CARDINALE: On behalf of Assemblyman Garrett, I'm sure that it was in inadvertent error by someone on his staff. I'm sure that he did not want to keep people from coming to his hearing.

MR. OSTROW: I don't appreciate you making the same kind of excuses I hear continually from my claims representative.

SENATOR CARDINALE: I wanted--

MR. OSTROW: Don't make excuses for other people, sir, when you aren't--

SENATOR CARDINALE: I want to just--

MR. OSTROW: --certain of the facts.

SENATOR CARDINALE: I want to just make sure that another--

MR. OSTROW: I told the technical school that they would be blamed for it.

SENATOR CARDINALE: Sir, I want to make sure that there isn't a compounding of the error. Because the hearing, which was originally scheduled for tomorrow, has been postponed until the 20th -- am told that it will be taking place on the 20th -- and if you-- I'm not clear. Do you know have good directions for that hearing?

MR. OSTROW: I make maps. I'm a Marine. We were five-days off maps when we hit Okinawa. I know that territory. I got the correct map here. (indicating) I'm supplying it to you, and I also supplied it to the legislative Committee to send out to all the people who, hopefully, will not get lost on their way.

SENATOR CARDINALE: Thank you very much.

MR. OSTROW: Thank you, sir.

SENATOR CARDINALE: I appreciate it. I won't get lost on my way.

Peter Guzzo.

P E T E R G U Z Z O: Senator, thank you for the opportunity. Actually, I signed up just to keep a place in line. Again, we've spoken a number of times, but haven't sat here and listened to, let me call it, a stream of

consciousness, of various speakers. I really felt compelled to come up just to take a few minutes-- And I will try to be brief.

We've all seen various versions of a film from years ago where you have six characters giving their versions of what actually took place at the scene of a crime, and I sort of feel I've sat through that today listening. Unfortunately, as with Laurine and Dale, I've been around the Legislature a long time.

I actually started, as you may know, Senator, in 1970, and one of the first assignments that I had was, the then head of the Division of Research of OLS handed me a copy of Keaton O'Connors' basic protection plan. And as a student from right out of graduate school I thought, "I have to sit and read this?" It turned out, actually, I found it interesting, and here we are 27 years later. I only give that background because I have been around auto insurance a long time.

Let me just, if you don't mind, sort of wander a bit in terms of some of the comments I've heard today. You know that old saying -- and, again, I'm a trained historian with a doctorate in history -- people who don't know history, repeat it. One of the events that I was present at -- but I heard a different interpretation today-- And I'm not trying to point fingers at the insurance industry, but it was the insurance industry spokespeople who made various comments today.

The history of no-fault: \$200 with a mandated 15 percent reduction was something that the trial lawyers did. Now, I must have missed something because I can tell you, as Secretary to the original No-Fault Study Commission back in 1971, the \$200 threshold came about because of an

actuarial -- closed-claim actuarial study done by the actuary at the Department of Insurance at the time, Phil Stern (phonetic spelling). That showed that 67 percent of the claims -- bodily liability injury claims -- were eliminated -- would be eliminated by the \$200 threshold, and that's the genesis of an amendment that was proposed as that bill went through the Legislature mandating a 15 percent decrease. Because the Department of Insurance presented that figure, legislators were very leery at that time that they would see this rate decrease, so they put in the 15 percent.

Secondly, the two-for-one provision, the flex-rating provision, the territorial and classification caps that came about-- You know, it's like the chicken or the egg story. I heard a spokesperson for the industry say, "We didn't want these." Again, I must have been somewhere else, because I was Secretary to that JUA Study Commission, also -- along with Laurine and others. And I have to tell you, these were part of compromises going back and forth. One of the ways that the JUA bill was enacted was to get the industry to participate in the implementation of that law. The sponsor of that bill felt that cooperation, rather than a hammer, was the best way to approach this.

I have to tell you, based on what happened is, we still have the two-for-one. We still have the flex rating. And, yes, we do have the territorial and classification capping -- and I'll address that in a second. We don't have the JUA, for better or worse, but one of the reasons -- without going through history and getting into discussions of who's responsible for what-- I think we all know that one of the reasons the JUA failed was because the industry did not depopulate the JUA and the then Department of Insurance did not, at that point, appoint the Depopulation Committee that was mandated to do the

depopulation study. There was never an oversight commission appointed, as was meant to be required by law. So there are various ways we can go

Territorial and classification capping; they were restrained. They were restricted. But what they were before was astronomical compared to where they've ended up today. I only present these things because there are a lot of opinions and a lot of facts in terms of where they're going. Yes, no one wears white hats.

Now, Senator, one comment you made, which I have to take some issue with -- and I hope I quote this correctly-- You said, "The 20 percent reduction was invented by special interests that diverted attention from the real problem." Consumers for Civil Justice, who I represent here--

SENATOR CARDINALE: I expressed that as my opinion. I didn't say it was a fact.

MR. GUZZO: Okay. No, I understand that.

But as the group that presented this -- I don't know if we were first or what, but Consumers for Civil Justice did come out with this proposal at the time, and I can tell you, there was no intent on the part of the Board of Directors of Consumers for Civil Justice to divert attention from the real problem. I think today we can even see 70 percent of this hearing today had to do with the real problem, and that is fraud.

We all agree fraud is the problem. I think where we differ is we simply have come up with an approach whereby we're saying, let the marketplace, let the industry -- who we feel, in spite of what's said today, has not done their job-- These are not our numbers.

You know, we commend the Governor for raising this issue, because we really feel that she if didn't present this issue in the State of the State, we might not see the industry today with such an interest in fraud. But the numbers -- \$160 in every policyholders' premium, 22,000 cases of unreported fraud, 90 percent of all claims under \$10,000 settled. These are not our numbers. These are numbers presented by the industry, and these are numbers presented by the Governor.

We simply have a different approach. We feel, just as this Governor has said, in some cases, privatization works best. We're saying, let the industry deal with fraud. The industry is blaming the government. The government is blaming the industry. We don't really care how fraud is eliminated. If you want more fraud investigators, fine. We're simply saying our approach was not put out there to be nonsensical or to divert attention. We feel, if the industry is responsible for recouping that \$160 and that this is profit to them, that they will do a better job than they're doing now, because they simply pass it along right now. That is our contention.

We could go on, but I will just leave it at that, Senator. One of the things I would ask that someone in a legislative position do -- because I was around when the excess profit law was drafted--

I can't tell you I fully understand the excess profit law. I think before we talk about profits and what have you, I'd like to have a full understanding, and I think you would, too, as to what goes into the excess profit law and what is counted. You know, we hear statements that you could count on a hand -- on four fingers -- how many times the excess profit law has been triggered. Well, what about the fact that companies pay dividends out

before the July 1 deadline to avoid triggering the excess profit law? But I would like to see a clear understanding--

We asked the Commissioner, Senator, three times over the past two months: Are all reserves counted in the formula for determining excess profits? I really don't know, but I can tell you, I got two different answers. One answer was, yes. One answer was, no, not all reserves. So I don't fully understand.

Finally, again, in terms of what numbers are we using-- When someone was speaking-- One of the industry spokespersons was speaking about profits and where these numbers come from. These numbers that we're now talking about that show profits doubling, investment income double the national average, these are numbers from the National Association of Insurance Commissioners. Now, if that isn't the most credible, thorough body in this country when it comes to insurance numbers, I don't know what is then. But that's where these numbers came from. These are not consumer numbers. These are not lawyer numbers. These are numbers that came from the Governor, from the industry, from the Commissioner of Insurance, from the Department, and from the NAIC.

Gov-- I almost called you Governor. (laughter)

Senator, thank you for the opportunity. And listen, I have to commend you, also, as one of the previous speakers did.

The forum at Camden was a very good forum, but it was a trying forum. You know, 600 people very much interested in insurance, and I think the legislators up there -- you and Senator Scott and the Representatives -- did a tremendous job in representing yourselves in front of that crowd.

I'd be glad to answer questions, but thank you very much.

SENATOR CARDINALE: I have only one question. You've talked about eliminating this fraud, and you've given a number: 20 percent. Do you think that there is any chance that all 20 percent of that fraud can be eliminated without spending more money on the elimination of the fraud than is actually saved by eliminating it?

MR. GUZZO: Do I think it can be done?

SENATOR CARDINALE: Yes.

MR. GUZZO: Personally, Senator, and maybe it's my bias, I think the industry has the wherewithal. I have tremendous respect for the industry and their capabilities. Now, if they say that it's going to take them-- Let them come back with a figure, use the 20 percent, if you want, as a starting point. Is it going to cost them 5 percent? Then, do a 15 percent. I mean, I've heard some industry people say it's going to cost them \$8 for every \$1 of fraud they eliminate. I don't know a business that could operate that inefficiently and survive. I have to question that. I really have to question that.

Now it's not -- and I understand what the industry is saying--

SENATOR CARDINALE: You just heard the Commissioner, on that point, tell you that they're spending about \$11 million and they get back about \$2 million for the \$11 million that they spend. Now, that's a hard number right from the Department, and that's the Department's effort with respect--

The Department has some advantages that the insurance companies don't. The Department has an Attorney General who can come in and doesn't cost them anything. They have lawyers who work as part of State

government. They have subpoena powers, which the insurance companies don't have. They have a whole enforcement agency that can levy fines. They've got a lot of advantages that the insurance companies don't have, and I don't think we can-- I'm not sure, but I don't think we can delegate to the insurance companies. That's why we have a separate division.

Now, how can the companies do so much better on the proportion? I mean, maybe they can get rid of a good portion of the 20 percent, but is that going to cost 150 percent to get rid of the 20 percent, and then, what is going to happen to premiums? There comes a point of diminishing returns in all human endeavors. Now, I'm not suggesting that they shouldn't try to get rid of fraud. I am impressed that they have brought certain cases. I am impressed that they have referred lots of additional ones to the Department.

And I think that there is a great deal of production, but I think you were with the Department--

MR. GUZZO: Yes.

SENATOR CARDINALE: --when this incident came about. There was a sting operation and a Dr. Sherman (phonetic spelling) lost his license in that because of that investigations ensuing that sting operation. But, you know, not one lawyer who was involved in that process ever had anything done. They're still in business. I think if you only attack this problem from one point or another point but not from all of the points, it seems to me that you can't-- You're not going to solve anything. You're going to have to take a very balanced and rounded approach in order to solve anything.

The point that you bring up, fraud, is an important one. I'm not denying its importance. It is an important point, but I just don't think all of it can ever be eliminated. I think there has a point of diminishing returns, and I think we need to change many other laws and many other public attitudes.

MR. GUZZO: Senator, may I take a stab at answering the question that you presented?

Number one, yes, I'm aware of the fact, obviously, that the insurance companies don't have the prosecutorial -- or the right to prosecute-- But it's by their own admission and the Department's admission that there are thousands of cases they don't report. I'm saying--

SENATOR CARDINALE: They said they reported 16,000 cases of fraud last year.

MR. GUZZO: But I'm saying on the other side, I'm saying--

SENATOR CARDINALE: Sixty thousand--

MR. GUZZO: Right.

SENATOR CARDINALE: --in the last four years. That's a lot of fraud cases.

MR. GUZZO: It is.

SENATOR CARDINALE: We just saw one in the newspaper.

MR. GUZZO: Senator, you know, you asked me, and I'll try to answer it if I may-- But what I'm saying is this: Again, they are presenting that there is \$160 in everyone's premium that is attributable to fraud. Now, how do they know that there is \$160? How do they come up with this number? We didn't come up with it.

Now, I'm saying that if there is a system that allows that cost to be passed on, why go through the effort of pursuing it? Because they can recoup it, it's less of a burden on them.

Secondly, we're not saying where the fraud is coming from. We never said, "These people are innocent. These people are guilty." Why should the consumers bear the cost? The industry is pointing at the administration. The administration is pointing at the industry.

And secondly, my understanding of what this administration is about, Senator, is that the private sector can do the job better than government. If we really were going to go after fraud in terms of beefing up government, you would need more than 20 or 30 investigators. The cost of government to pursue this, to me, would be astronomical compared to letting the private sector do it.

Why is it that we feel -- not we-- Why is it that this administration, Senator -- and this is not said in a partisan way, I'm talking philosophically-- Why is it that the private sector could run prisons better, why is it that they could run certain facilities better, but, suddenly, we think the insurance industry is not capable of doing something better than government? I happen to think that the insurance industry can do it better than government, but they need an incentive, and they need a motive.

Now, one gentleman -- I think from State Farm -- mentioned, why not mandate a reduction in the cost of clothing if there is-- Well, the State doesn't mandate that everybody buy clothes. We're talking about a product, and the one thing you and I do agree on -- that we've said -- is that insurance

should be mandatory to protect the victims. So there's a reason why I think the government could come in and mandate a decrease in rates.

Again, however fraud is eliminated, we have raised the issue, and you've recognized this, that fraud is an important element. How we get rid of it, fine, but the consumer shouldn't have to bear that cost, Senator, that's all we've been saying.

SENATOR CARDINALE: Thank you.

MR. GUZZO: Thank you, Senator.

SENATOR CARDINALE: The hearing is adjourned.

(HEARING CONCLUDED)