
Public Hearing

before

SENATE COMMERCE COMMITTEE

SENATE BILL No. 1358

*(Eliminates compulsory liability and no-fault automobile insurance;
reinstates financial responsibility laws; uses doctrine of
contributory negligence in motor vehicle accidents)*

and

SENATE BILL No. 1365

*(Eliminates suits for noneconomic loss and economic loss for bodily injury
and death in auto accidents; requires insurers to offer scheduled first-party
coverage for those losses; reduces rates 30 percent)*

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

DATE: September 19, 1996
10:15 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Gerald Cardinale, Chairman
Senator Jack Sinagra, Vice-Chairman
Senator Joseph M. Kyrillos Jr.
Senator John H. Adler
Senator Raymond J. Lesniak

ALSO PRESENT:

Dale C. Davis Jr.
Office of Legislative Services
Aide, Senate Commerce Committee



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SENATOR GERALD CARDINALE (Chairman): We are going to begin to hear from those who have come to discuss this issue.

I mentioned a moment ago that this is the first of several hearings that we will be holding, hopefully, around the State of New Jersey. Hopefully, some of them at least will be in the evening hours, and they will allow us to get input from the public.

It's my personal belief, having been in the Legislature for almost 18 years, that all too often we hear from the same voices. We hear from the voices of the various interest groups who can come in the daytime, who can come to Trenton, who do know what's on the agenda, and who have an interest in the outcome that is particular to them. All too often that eliminates the public interest -- the broader public interest. And I think automobile insurance in New Jersey has suffered very markedly -- the whole situation has suffered very markedly from that inattentiveness which we have all been guilty of to the broader public interest.

In the early '70s, automobile insurance, under the pure tort law then in effect, was such a problem that the Legislature felt compelled to embark on an experimental new system called -- which they termed and which had been called and has been called up till this time no-fault. What they were attempting to do was to eliminate lawsuits and to, thereby, decrease the inherent costs and pass those savings on to the consumer.

The inventor of this idea was a law professor from the University of Virginia, and his name is Jeffrey O'Connell. And from then until now he's been quite outspoken about what has actually been done in New Jersey and strenuously objects to the title no-fault being applied to it. He uses New Jersey

in his talks around the country as an exact example of what one should not do if one is attempting to enact a no-fault program.

Indeed, our consumers are now experiencing high premiums and, in some parts of the State, an availability crisis despite those very high premiums. I have had, personally, consumers say to me that they have gone to as many as 30 outlets for insurance before they finally obtained coverage. Now we have a law that says, take all comers, and various strategies are engaged in by insurers to avoid taking new auto business, despite the law which requires that they do it.

The premiums when one does obtain insurance are very high. I have had people say to me that they dread getting a letter from their insurance company almost as much as they dread getting a letter from the taxing authorities, because, in both instances, they think it means they are going to have to pay more. In too many situations, that's exactly the case, they are paying more.

With these high premiums, one would think that auto insurers would be clamoring to come into New Jersey to avail themselves of these high revenues, but the opposite is the case. Every time I hear an ad by GEICO soliciting auto insurance business -- the trailer on that ad has bugged me for many years: Not available in New Jersey.

I recently attended a meeting which reported on loss ratios throughout the United States by insurance companies. Loss ratios in New Jersey are among the highest of any state. With that being the case, it's easily understandable why companies, despite the laws which were passed, the Fair Act, which was passed in recent administration to keep companies from leaving

New Jersey-- Despite that law, companies are still leaving New Jersey. We lost CIGNA, a very major company, creating somewhat of a crisis in availability in some of the other companies and, in fact, driving some brokers out of business because they couldn't place those lost policies.

I've participated in meeting after meeting, and the time I've been in this Legislature, I've been at meeting after meeting where this problem has been discussed. We have attempted sometimes wholesale changes and sometimes a little tinkering around the edges, and everything that we have done has led to increased problems. I have come to the conclusion that while, indeed, New Jersey may always have some factors which will tend to make rates more, there is one factor which I have heard time and time again over the years, and it's always been about the same number -- that transaction cost in New Jersey is about two-thirds of the overall costs of insurance companies. That means that for an insurance company to actually pay to an injured party \$1000, today in New Jersey, it is costing the insurance company for that claim about \$3200. The difference between the \$1000 and the \$2200 (*sic*) is transaction cost. No business could long endure with a transaction cost of two times the actual benefit that is being given to the consumer.

Many of the proposals that we have seen over the years have involved diminution of coverage. You diminished the coverage and you can cut the cost. Well, those who have criticized those programs are very right that we are really not doing very much for the public if we simply have less coverage for a little less money. And pretty soon, the premiums get back up there to where there is less coverage for the same or even more money.

The only thing that I have seen over the years that we can safely attack without harming the interest of the broader public is to attack the transaction cost. And so what I've put into this bill is a 30 percent reduction by making insurance essentially pain and suffering insurance, first-party coverage, similar to life insurance, similar to home owners insurance. Most often one doesn't have to go to court to be paid on a life insurance policy. Most often one doesn't have to go to court to be paid on a home owners policy. So there is a lower transaction cost in both of those, and the consumers of New Jersey have experienced that, and they know that settlements come in much less than the number of years that sometimes had taken to achieve settlements in auto cases.

Now, what we have proposed, so that the consumer will not be injured by some slight of hand that takes place as we create a schedule of payouts for the various injuries that may be suffered in an automobile accident, is we've provided that there be a closed-claim study. For those of you who don't know what a closed-claim study is, this is a claim study which will deal with what is actually being paid to the individual insurers as a result of real occurrences today. By studying what is actually being paid, we can preserve the interest of the consumer, and the consumer will then be in a position where they are suffering no disadvantage from this new system. However, we are also writing in a 30 percent reduction in premium.

That 30 percent reduction in premium is part of the legislation. One would expect that insurers would not be happy with being mandated to have a 30 percent reduction in premium. However, at the same meeting I referred to a little while ago, I heard a major insurance company in the State

of New Jersey -- one of the major auto writers in the State of New Jersey -- say, and I think they will say it again today, that they, in fact, think they're very close to being able to meet this 30 percent if indeed this law is passed.

Now, what does that mean to the consumer? Means this: you pay 30 percent less and you have the same coverage that you have today. No diminution of coverage. It also means that instead of waiting three years to get your pain and suffering award, you'll get it immediately. It also means that you'll get that pain and suffering award without proving who was at fault. So there will not be these claims and counterclaims of: Well, it was his fault, it was her fault, and it was someone else's fault. I think that's a great benefit in addition to the 30 percent.

Now, if you take a close look at it, that means that both parties in the accident are being paid so there is, in essence, a real benefit to the consumers including those who were at fault. We've made an exception. The only exception that we've made is an exception for drunk drivers. Drunk drivers will continue to be part of the present system and can be sued, and that is a concession to what I think is a very real problem in our society, a problem that we've attempted to remedy and that we've made some steps toward remedying, and that is that some people continue to drive despite not having the capacity to drive. And so we would continue to penalize those individuals. However, it has also seemed to me that it's very little penalty for those individuals when the payor is not themselves. It's generally a third party, the insurance company. However, we've made that concession because I think that it makes good public policy sense.

I've been told that this bill is dead on arrival in the Legislature, as would be any bill that would be introduced that would cut out money for interest groups. Now, let's face it, that two-thirds is not just going into smoke and into the air. That two-thirds is going to a very real people who exist in our economy. That two-thirds is coming out of some degree insurance companies in terms of their claims procedures. To some degree, it is coming out of lawyers for both sides. To some degree, it is coming out of people who provide other services with respect to ameliorating the damages that occur: doctors, others.

Those groups are ever present at our meetings. Those groups are going to protest, because those groups don't want to lose that two-thirds. They're living fat and happy off those two-thirds. I'll tell you something. I'll share a little anecdote with you -- or it's not exactly an anecdote -- a little story of what's going on with me, personally, over the last little bit of time. For a long time in my dental practice, I never had occasion to give a deposition or had very few occasions to give a deposition for which I would be paid to write a report for which I would be paid. But, over the last couple of years, I've gotten mentioned in some articles that have been in a law journal, various law journals. This year, I've received any number of fees for giving depositions and reports whether they be for plaintiff or the defense side of an issue. Because I made the statement in one of those -- I was quoted in one of those articles as having said that I would do such things if I was called upon, and I would give an honest report. And I received some fees for that. And those fees are very nice. Now, it's not a major part of my income. I don't make any representation that it is. But I could understand that if someone were doing

that full-time, if some doctor were doing that full-time, that doctor would object to the loss of that income, because it's a lot easier to sit down and answer some questions or write a report than actually provide services to people.

I expect that we will hear, from many quarters today, objections to this approach. I expect that those who predict that this bill is dead on arrival will be correct if that is all that we hear from. I am hopeful that we will begin to get input from the public not just to this Committee, but to the entire Legislature. I believe the public is fed up with the availability crisis. I believe the public is fed up with the high cost of insurance, and I believe the public will, indeed, want us -- whether they will express it to us is the question -- but I believe they will want us to deal with this issue keeping uppermost the broad public interest.

I also know that my ideas are not the only ideas before the Legislature. So we will hear not just my bill, we will hear Senator Scott's bill which takes a very different approach. And as I've read Senator Scott's bill, I can see some very valid points that Senator Scott is making and is approaching and in an attempt to address the selfsame problem. I don't buy every concept in Senator Scott's bill, but maybe by the end of these hearings I will.

Senator Scott, having arrived, we will give him, rather than me, an opportunity to describe his bill himself.

Senator Scott.

SENATOR JOHN P. SCOTT: Thank you very much, Senator Cardinale, Mr. Chairman, and members of the Committee, for hearing this legislation today. I couldn't help but overhear, Senator, that your concerns, of

course, for the public, the cost, the affordability, and I couldn't agree more. I think we all agree that the problem is that it's broke, it needs to be fixed. The axiom if it ain't broke, don't fix it, applies. But this is broke and has been.

I don't have to tell you that there's broad considerable frustration to the members of the Legislature and the public. For too many years, the cost of automobile insurance has been climbing at a regular steady rate. The tinkering with the system over the past two decades has not really brought it under control in any shape, manner, or form. I'm sure the people developed the idea of no-fault had the best of intentions. But it's a system that works better in theory rather than in practice. Perhaps the best testimony of its failure is the fact that only nine other states have a no-fault system, and some have tried to abandon it.

What's wrong with no-fault in New Jersey? For one thing, no fault has not succeeded in its most basic goal. It has not substantially reduced the volume of lawsuits clogging the court system, and arbitration has not succeeded in reducing awards. Many times insurers settle suits for pain and suffering rather than fighting them in court because the expense of the trial far outweighs the possible benefit. Suits are filed because plaintiffs and their attorneys know they have a good chance of settlement.

No-fault medical benefits, which were intended to minimize the need for legislation, have, in fact, been overused in order to build a case to sue for pain and suffering. Most important, on the no-fault system, many more people are eligible to collect benefits than under a tort system including those people who were responsible for accidents. This drives up the costs of claims and therefore the cost of premiums. For many, this extra cost is unnecessary,

because no-fault duplicates the benefits they already have like health insurance and temporary disability insurance.

I believe that we should call no-fault a failed experiment and move on, or perhaps I should say, move back. Before no-fault, we had a tort system which functioned efficiently. Under the tort system, those who were injured and not at fault were compensated, and those who were at fault were not compensated. This principle alone, if you were at fault you cannot collect, would result in many fewer dollars being paid out in claims than insurers are paying out right now. If less money is paid out, less money needs to be paid in premiums. The plain fact is our experience has shown that we simply cannot afford to compensate everybody. The price is way too high, and that is what's helping make insurance unaffordable.

That is why I advocate the return of the principle contributory negligence and the elimination of comparative negligence which we now have. This would result in the compensation only of those people who are victims of the negligence of others and not at fault themselves. This is not only a fair principle, but it would also have a dramatic effect on premiums. Liability premiums could be reduced as much as 60 percent if contributory negligence was reestablished for automobile cases.

The first-party medical benefits of no-fault, PIP, are another example of too many people in the automobile insurance system being eligible for compensation. What will happen if we get rid of PIP? The same thing which happens in 40 other states without no-fault. Health insurance will pick up medical costs associated with automobile accidents. It's true, but the total cost will not be as great as it is now. For one thing, PIPs benefits are much

more comprehensive than most health insurance policies. Many people have health insurance features, managed care, preferred PPOs provide preferred provider organizations. They will only provide additional savings when you go through them. They tighten up the cause.

Another potential source of savings in auto-related medical costs is the fact that health insurance often pay a discounted rate to hospitals which automobile insurance cannot do because they don't have the volume of patients necessary to cut these deals.

Eliminating the PIP benefit will also eliminate all the cottage industries which have grown up and around it taking advantage of the system. While PIP was supposed to be a tradeoff for restricting the number of lawsuits for pain and suffering, it has, in fact, and uses a means of building a case for a lawsuit which completely defeats its purpose. That's why the average PIP claim has risen from \$1400, \$1500 in 1980 to almost \$9000 in 1993 and shows no sign of slowing down.

When no-fault insurance was introduced in this State, it was accompanied by the requirement that all drivers carry liability insurance. This has caused the State severe problems over the years in trying to maintain a residual market, a market of last resort for those drivers who were required to carry insurance but had difficulty buying it. Mandatory insurance brought us the first assigned risk plan with all its inequities, and then the notorious JUA, it's success to the MTF, and finally the take-all-comers plan which exists today and which shows signs of breaking down.

I strongly believe that it is time to eliminate mandatory liability insurance in New Jersey. Nineteen other states don't require it including

Florida and California. Under our present premium rating system, lower-income drivers in urban areas who have the fewest assets to protect pay the most to protect them, and the penalties are stiff if they cannot afford to carry it. Yet must have a car to drive to work.

Think of this. Nearly one of every four drivers, 23 percent of the market, have the lowest liability limits, 15, 30, and 5, which would be inadequate in the event of a serious accident. In addition to which, there's almost somewhere between 500,000 and 700,000 uninsured motorists, people who just don't have insurance in spite of it being mandatory and therefore against the law. Doesn't it make sense to have more people insured by lowering the premiums.

My bill reinstates the financial responsibility law which was used in this State before no-fault and which is used in many other states. If you are in an accident, you have to supply proof of financial responsibility before you can drive again. I think this makes sense. I know that this proposal is a major step, a turn away from the familiar. To me the most important goal is to make insurance affordable again, and I think this bill will do it.

I have a couple charts here. It is in your book. I think everyone has a copy of this, hopefully. It shows the rates. The first diagram happens to be two senior adults. They're not really that senior, but they're seniors. They are eligible for AARP. And that shows a two-car savings of \$537, 51.5 percent savings on your liability. This by the way, as we know, does not apply to your collision and comprehensive, which is not mandatory in the system today anyway. So there is your two-car total, that's 51.5. That's probably the lowest savings of all, and that's multicar.

The second diagram: the first is coverage in Newark, and that's a single male operator under 25, and that's the highest rated territory. That's a total savings of \$619, or 65.8 percent. Here you have someone down in Newark going from \$941 for liability down to \$322 for liability. They can perhaps afford the \$322. That's an affordable premium, perhaps the \$900 isn't. In Belleville, New Jersey, we have a single-female principle operator. She has a total savings of \$571, or almost a 56 percent savings in liability premium. And that goes on and on. Down in Hamilton, New Jersey, we have a single female saves almost 65 percent of premium. It holds true in Franklin Lakes. We have a single male under 25 with a savings of \$451, or 54 percent. We have a single male in Nutley where it saved 56.7 percent, close to \$382. And this is varying coverages by the way. We took an actual policy of someone in that area and applied their present rate. So some of the information here perhaps you may not be able to figure out because the Lyndhurst is 100 and 300,000 liability uninsured motorist matching, and so on.

So the savings are there. There are several other areas that you may want to consider. The verbal threshold in the State of New Jersey: There's something like 88 percent -- almost 88 percent of the people have chosen the verbal threshold, which simply means they're willing to take that chance on a verbal threshold but pay lower premiums. That's a very important -- 88 percent have said they'll take the lower premiums and give away their opportunity to "sue" as they would normally with no threshold. That's a very big item.

Another item is the fact that 85 percent of the people driving don't have a violation or a ticket or an accident. These are the good drivers; 85

percent are in that category. These are the people who drive every year, without fail don't do anything wrong, but they're helping to pay the increased rates. That's wrong. Let's worry about the people who are out there, the good drivers. The bad drivers should pay. The drunk drivers with accidents and violations, they should pay. But there are too many good drivers that are paying for the bad drivers, and we have tried to balance it. It's a social policy. It has not worked. We've got to stop now and go back. We've got to stop the social engineering and actually bring competition in, bring the marketplace into New Jersey.

We will have other carriers coming in to compete. When they come in to compete, at that point, we'll see rates going lower. Now, the big thing is, as we mentioned -- I'm sure I'll hear about it from the Committee -- is the fact that going from comparative to contributory negligence. That's fine. We already show with a verbal threshold that people don't -- they're more interested in lower insurance premium.

With the 500,000 to 700,000 people that are uninsured today, how many would be able to afford insurance if we do this? Perhaps in Newark and Jersey City, where they dropped down to \$300 or \$250, they'll be able to buy the minimum policy and cover themselves, highly recommended to do that, of course. So this, gentlemen, I think we've patchworked for 20-some years, and I think it's time to take drastic action.

I'll be at your mercy, at the Committee's pleasure, any questions that you may have.

SENATOR CARDINALE: We're going to, I think, because of time constraints -- in fact, we are going to have many hearings -- I don't think we are going to ask questions now.

SENATOR SCOTT: Okay.

SENATOR CARDINALE: We want to get everything out on the table, and then we will have lots of questions I'm sure that are going to be raised by the members of the Committee and by members of the public.

SENATOR LESNIAK: We're not taking any questions? I can just get the transcripts and read the transcripts, but I can't ask a question.

SENATOR CARDINALE: I'm sorry. The process is not going to be one of eliminating questions. But at this time, I wanted to get to hear from the witnesses who have signed up to testify, to get the facts out on the table. We can all ask questions of one another at a later point in time.

SENATOR LESNIAK: I need to ask Senator Scott some questions.

SENATOR CARDINALE: He'll be around. He'll be around and there will be many more hearings, Senator.

SENATOR LESNIAK: Senator, you'll be at the other hearings?

SENATOR SCOTT: Absolutely, I wouldn't miss them.

SENATOR CARDINALE: I think we are going to have at least three additional hearings. As I indicated at the beginning of this hearing, we have eight people signed up to testify today. None of these in my view qualify as the ordinary consumer of the State of New Jersey. They're all representatives of groups that I would consider organized interest groups of one or another type. Certainly, when we do this in Trenton, we would expect

that will be the case. But, as we go to other areas, as we perhaps hold these in the evening, and, Senator, if you want, I will guarantee you that one of these will be down in the shore area. I would guarantee you that one will be somewhere in Middlesex and Union County. I will guarantee you that one will be up around in the Bergen-Passaic area. We can have hearings where we will get people's input. And that's what I'm hoping to get is people's input, because I know we are going to hear from the industry. We've all heard it before, but it is our obligation to put it all out on the table and to hear it again. And this time I want to hear something from the public, too.

SENATOR LESNIAK: Senator, time out. If we're not going to ask any questions of people testifying, why don't we just have them submit their testimony.

SENATOR CARDINALE: We could do that, but it's not the format that I've chosen. I think we want to get it out into the public--

SENATOR LESNIAK: There's no purpose of me being here then, because I can read their testimony as well as hear it. Is that--

SENATOR CARDINALE: Well, Senator, if you want to absent yourself, I think, we all have the right to do that, to attend or not attend the hearings.

SENATOR LESNIAK: Okay.

SENATOR CARDINALE: Mr. Grayzel.

SENATOR KYRILLOS: Mr. Chairman, let me just interject while the next witness comes forward, if I may, and just say that I agree with you. That far too often, whether in this Committee sitting or others, we hear from a core of people that we tend to see meeting after meeting, issue after issue.

The broader public is often left out of the process because they're busy with their lives, they're busy with their jobs, their families. While we can't have endless hearings, I do think it's appropriate and I commend you for trying to widen the audience and widen the information flow that will come to us as we try to deal with a very difficult and weighty issue for us and all New Jerseyans.

Thank you.

SENATOR CARDINALE: Mr. Grayzel.

R O N A L D B. G R A Y Z E L, ESQ.: Good morning, Mr. Chairman, members of the Committee. Thank you for this opportunity to briefly address you. We welcome the opportunity to participate in this process. We share with you, Mr. Chairman, the basic idea that it is always healthy to look at a system and evaluate it and see whether or not you can improve it. At this particular point in time, we would just like to bring to your attention, the Committee's attention, certain statistics and data which, I think, will be helpful in evaluating the merits of the legislation that you propose.

In terms of looking at transactional costs, I think it's a fair question to ask to what extent do lawsuits for pain and suffering have an impact on premium dollars. It's a fair question. I think that the extent that legislation wants to address that issue, it's fair to debate. But, I think, in examining that issue, we would invite the Committee to look at a very real development that's occurred in the Superior Court since the last reform.

With the advent of the new verbal threshold, which was specifically passed to reduce lawsuits, we have seen a very real impact from that reform. Our Superior Court has recently reported that there has been a steady downward trend in civil action filings. In fact, the total downward trend is 26

percent. And those who have looked closely at the issue believe and have statistical support to demonstrate that a significant portion of the down trend is due to the reform in the automobile legislation which replaced the right to sue with a verbal threshold. That reduction is real. It's been measured. It's been happening over a number of court sessions.

The point that we had made, when we originally addressed this issue, is that we did not believe that even with a substantial reduction in filings for pain and suffering that there would be a favorable impact in premiums, and in fact, that's not occurred. We do not believe, based upon our experience, that elimination of a person's right to file against someone who's at fault for their pain and their suffering and their losses should be eliminated. However, if indeed the Committee would like to look at the issue of reform, we would respectfully submit that the civil justice system itself offers plenty of opportunity and resources for that. We have an arbitration system. Lawyers are willing to sit down with property casualty insurers and design arbitration systems and mediation systems that will bring about a vast delivery of service with a minimum of cost.

In the provocative ideas, the thoughtful ideas that have been presented in this legislation, in terms of looking at this, Senator Cardinale, I would respectfully suggest, and I emphasize that, that in a system where you design an ulterior dispute, a first-party system of benefits, as you propose -- while theoretically it's inviting, because when you look at that idea, and it is a bold idea, one assumes naturally that somehow that's going to supplant litigation, it will take the place of litigation -- I respectfully submit, Senator, that our experience in our legal system does not support that proposition for

the following reasons. We know from our own experience that in an automobile insurance no-fault system that medical dollars are supposed to be delivered fast, quick, and without reservation. Yet, lawyers who represent victims of accidents, whether they're in lawsuits or not, know from their own experience that lawsuits and litigation are frequently required in order to obtain those benefits, because some carriers resist paying them.

We know that in the workers' compensation system, which is a model for scheduled benefits and paying them quickly, that there are compensation courts busily at work throughout this State on a daily basis deluged with cases, because carriers resist the proposition of paying scheduled benefits. So while the idea is, indeed, a bold one, and we respectfully disagree with it, we would indicate to you that we think that what would happen with a system like that is that while it's designed to eliminate litigation, what it actually would do is create a different variety of litigation. And that litigation would be litigation by beneficiaries of insurance policies who felt they were entitled to scheduled benefits and were not receiving them -- who felt they were entitled to receive a certain level of scheduled benefits and were not receiving them. And it simply changes the focus of litigation from the one that presently exists.

While the New Jersey State Bar Association would welcome the opportunity to sit down with insurance companies and with legislators to work out solutions, we do not believe that the proposals in the bills would accomplish the results -- the salutary results -- that you seek. However, clearly, I think it's appropriate to examine these issues in these hearings. We certainly

stand ready to cooperate in any way that we can, and we appreciate the opportunity to address you here today.

SENATOR CARDINALE: Thank you very much.

David Snyder.

ELMER M. MATTHEWS, ESQ.: As one of the old familiar faces that you referred to, realizing that this was a public hearing, I thought it might be a good idea to bring a new face to comment on these two important pieces of legislation. So I have with me David Snyder, the Assistant General Counsel to the American Insurance Association, to present the views of the Association on the bills.

Thank you.

DAVID F. SNYDER, ESQ.: Thank you very much, Mr. Chairman and members of the Committee, for the opportunity to participate and, hopefully, work with you in the future to craft meaningful reforms that will really achieve what I understand, Mr. Chairman, your key objectives to be. One, preserving and, in fact, enhancing benefits to injured accident victims. Two, doing a better job of containing costs to consumers that we've been able to do so far in the State.

What we'd like to do is talk about both of the bills that are presently before you and very quickly make some additional recommendations for your consideration as you go forward in your review of the current system. But I think we need to keep in mind the two fundamental objectives to preserve and enhance, if possible, benefits to injured accident victims and at the same time reduce costs.

Unfortunately, Senate Bill 1358 would move New Jersey in exactly the wrong direction. This bill would repeal the no-fault system and rely on the tort litigation system with contributory negligence, at least at first. This is like the very system in New Jersey that failed and was replaced with no-fault, because it simply costs too much and it wasn't fair. The long-term result, we believe, from this bill will be not lower but higher costs, shifted expenses to employers, and less generous compensation for injured accident victims.

By repealing the threshold choice, consumers would also lose the ability to control their own destiny and force everyone into a tort litigation system where compensation is often not provided at all. And 33 percent or more of the benefits which should go to the injured victims and their families is siphoned off to lawyers and other tort-related costs.

Charity care costs for health care providers, the government, and taxpayers would increase while other health care costs would be shifted to New Jersey's businesses making them less competitive. While the contributory negligence feature of the proposal would at first help control the ballooning tort costs that would result from the repeal of no-fault, pressure to replace contributory negligence with comparative negligence would build almost immediately.

Compared to the average tort state, New Jersey has one-third fewer lawsuits. Unfortunately, Senate Bill 1358 assures that this number will climb, and upon repeal of contributory negligence, which is almost inevitable down the road, the lawsuit floodgates will open. The bill would therefore have accomplished little except increase in cost and reducing benefits to injured victims.

The experience in the neighboring state of Pennsylvania is extremely relevant. Pennsylvania had an unbalanced no-fault law with high benefits and a very low threshold. The people of the state, in essence, had two systems. They were paying for both. So the thought was, let's repeal the no-fault and go back to a tort system. That was done in 1984, and within five years, the state, facing an even greater cost problem than they had before, went back to a choice no-fault system with important health care cost containment measures.

It would be very important for New Jersey not to repeat that mistake and act consistent with what we think are the two prime objectives the Chairman set forth.

On the other hand, Senate Bill 1365 moves in the right direction but does raise some operational issues. As between the two, the direction of S-1365 to preserve the no-fault system but deal with some of its costs is much better public policy. In so doing, it preserves the benefits of automatic and prompt compensation under no-fault. There are some ambiguities in the bill and some operational issues. And so, while we can't confirm the 30 percent savings figure today, and it will depend on the compensation schedule and how rapidly it rises, nonetheless, we believe that that is more consistent with public policy than going back to the tort system.

Now, finally, with respect to S-1358, the Scott bill, we took a look at the potential costs to New Jersey, and what we found was that it would actually increase injury cost an estimated 30 percent. That is based upon the experience with tort systems in other states and the very high likelihood, considering an already litigious environment, considering an environment with

higher than average vehicle and population densities, that the effect will be to increase costs rather than reduce those costs.

Now, in this context, we have several recommendations which we'd just like to put quickly on the table for you today.

First, we recommend that the Michigan verbal threshold be substituted for current threshold language. Michigan bodily injury liability claims are filed two-thirds less frequently than currently in New Jersey.

Second, we believe in eliminating uninsured motorist coverage as a mandatory coverage. Twenty-nine states allow the rejection of uninsured motorist coverage.

Third, we urge the enactment of peer review language based on the very successful Pennsylvania reform. Under it, all medical bills paid not only under PIP, but BI and UM are subject to objective third-party review and a medicare-based fee schedule that has worked extremely well in containing costs.

Fourth, we recommend allowing optional managed care that in Colorado has shown the reduction in average claim costs of 30 percent and a 95 percent consumer renewal rate for at least one of the major manage care plans in that state.

Fifth, allow the purchase of lower amounts of personal injury protection, because even at \$25,000 or slightly lower, most of the auto accident claims would be fully compensated.

Combined, we believe these reforms would accomplish double-digit savings on injury coverages. In addition, this reform package would not throw out the window the many benefits of no-fault, including generous

compensation without the costs and delays of litigation. In other words, this kind of reform -- indeed, Mr. Chairman, your bill, instead of throwing the baby out and keeping the bathwater, we'd keep the baby and throw out the bathwater.

Thank you very much, Mr. Chairman.

SENATOR CARDINALE: Harrison Gordon.

HARRISON J. GORDON, ESQ.: Mr. Chairman and honorable members of the Committee, my name is Harrison Gordon. I'm President of The Association of Trial Lawyers of America, New Jersey Chapter. I'm here to testify and give our comments on the respective bills. I thank you, Mr. Chairman and members of the Committee, for having this opportunity to testify here today.

Regarding S-1365, pure no-fault bill, recently this year when taken to the public, California voters overwhelmingly voted down a similar bill. Similarly, Rhode Island rejected no-fault and remained a tort state. In the last few years, Connecticut, Georgia, Nevada, South Carolina, and the District of Columbia have repealed no-fault. No-fault is a 23-year-old experiment in New Jersey that has failed.

No state in the United States has a pure no-fault law. It's a radical departure from the common law. It's a loss of consumer and public rights. Any decrease in premium will be short-lived and will rise in subsequent years. Also, the 30 percent is of the bodily injury premium and, presumably, will not affect -- any reduction will not affect other parts of the premium such as collision, comprehensive, PIP, etc.

Senate Bill 1365 radically alters the rights of the driving public. Also, not mentioned today, which I believe is in the bill, is that there's a 30 percent reduction in benefits, as well as the potential 30 percent reduction in potential premium.

Regarding Senator Scott's bill, S-1358, we agree that no-fault is a 23-year-old experiment that has failed in the State of New Jersey and should be repealed. We disagree with certain provisions of Senator Scott's bill. We disagree with the return to the outdated concept of contributory negligence. Now, contributory negligence has been mentioned a few times today and comparative negligence, but no one has explained it. Simply stated, you can be at a stop sign and stop, and as you proceed or as you are sitting there, you can be hit by someone who basically blows the stop sign on the other side or makes a turn into you. In the lawsuit, they can allege and a jury could conceivably find that you are 1 percent negligent, even though you were sitting at the stop sign. Therefore, if you had injuries in that accident, under contributory negligence, you would not be entitled to any compensation. You would get nothing, even though the other party was found 99 percent negligent.

That is why virtually every state in the United States has done away with contributory negligence and has gone to what is known as comparative negligence where they compare the negligence of both parties. That's standard in New Jersey. It's, basically, currently 50 percent. If you are greater than 50 percent responsible for an accident, you will receive nothing. If you are 50 percent responsible and you meet all other requirements, such as verbal threshold, etc., you will receive 50 percent of what the jury awards.

Anything under 50 percent will be pro rata compared your fault with the other person's fault. That is the current system in New Jersey.

To our knowledge, not one state in the country still retains contributory negligence. We also disagree with the loss of compulsory insurance. We feel the responsible repeal of no-fault bill is one put forward by Speaker Collins of the Assembly, Senator Bubba, and Senator Adler.

Thirty-seven states have a tort system. They do not have no-fault. We feel there is only one plan that responsibly handles this problem. That plan retains the rights of the driving public and consumers, avoids duplicate medical coverage, covers 85 percent of persons injured in accidents with medical coverage, and lowers rates. That is the Collins-Bubba-Adler repeal of no-fault.

Thank you very much for this opportunity to testify here today.

SENATOR CARDINALE: Walter Bliss.

WALTER BLISS: (speaking from audience) Mr. Chairman, I defer, if I may. I have an assignment.

SENATOR CARDINALE: Surely.

Paula Hayes.

PAULA HAYES: Good morning. My name is Paula Hayes. I'm Director of Advocacy and Public Affairs for the New Jersey Head Injury Association. NJHIA is a statewide advocacy organization. On behalf of the Association, I am here to oppose S-1358 which would abolish no-fault auto insurance. Our Association opposes this legislation because we are committed to preserving personal injury protection benefits, benefits that are of critical importance to individuals injured in motor vehicle accidents.

In this country, every 15 seconds someone receives a brain injury. Nationwide, half of all brain injuries are due to motor vehicle related accidents. In New Jersey, 57 percent of injuries and deaths related to brain injuries involved motor vehicle accidents.

Many of the individuals with brain injuries who contact our Association, who serve on our boards and committees, and who have participated in our supported employment program were injured in car accidents. They accessed the rehabilitative services they needed through personal injury protection, PIP, coverage provided through their no-fault insurance. Working with a variety of specialists who provide rehabilitative care, such as physiatrists, speech therapists, physical therapists, neuropsychiatrists, psychologists, and others, people with brain injuries learn how to put their lives back together. They may learn how to walk and talk again. They may learn how to swallow and eat. They may learn how to get dressed. The therapies needed may be intensive and may be required for months or for years or for a lifetime. However, with therapy, people with brain injuries can learn strategies that enable them to cope with or compensate for the deficits caused by their injury, and they can achieve a higher quality of life.

People with brain injuries and their families understand the importance of this PIP coverage which provides the funding for rehabilitation. Brain injuries may be classified as mild or moderate or severe. Even a mild brain injury, however, is a life-changing event for a family. A severe injury is devastating.

I'd like to give an example of a young man who was an honors student at Villanova who was injured in a car accident. His father tells about

how he came home from the hospital for a weekend visit. He was sitting in his wheelchair. He's in diapers. His father had served him lunch, and he left the room. And the father said, "My little girl, who was nine, came running to me and said, 'Daddy, Daddy, he's eating the plate not the sandwich.'" The father had served his son a turkey sandwich on a plate, and the young man was so damaged -- he knew he was supposed to do something, but he didn't know that he was supposed to eat the sandwich not the plate. That young man received the therapy that he needed through his PIP coverage. He learned how to walk again. He learned how to talk. He was able to go back to school and complete college. Today he's in his 30s, and he's employed, because he got the therapy he needed when he needed it.

The costs of disabling injuries from auto accidents can be overwhelming and lifelong. They have an impact on the life of the individual who is injured, their family, and society. Without adequate insurance coverage for necessary care, these costs can strain or deplete the financial reserves of individuals and families. Delayed or lost medical and rehabilitative care have a devastating impact on quality of life. Finally, without adequate PIP coverage, costs will be shifted from the already overburdened public health system in New Jersey, and taxpayers will pick up the tab for these services previously funded by private auto insurance.

Private health insurance coverage limits spending and does not cover much of rehabilitative services. So shifting medical coverage from auto insurance to health insurance will leave many catastrophic costs, including rehabilitation, unpaid. Health insurance policies do not provide the same breadth or extent of coverage that the PIP benefit does.

Our Association is keenly aware of the importance of adequate personal injury protection. We've seen the benefits that PIP has provided to individuals with serious injuries and the benefits to society, because it returns people to a productive life. We ask that you oppose S-1358, legislation that would repeal no-fault insurance.

SENATOR CARDINALE: Thank you.

Peter Guzzo.

PETER GUZZO: (speaking from audience) Senator, I have signed up for both myself and, if I may, Donna Frandson.

SENATOR CARDINALE: Surely. I was going to take you separately, but it's all right.

MR. GUZZO: Good morning, Senator, members of the Committee.

Let me just say, as a starting point, it's an amazing thing, auto insurance in New Jersey. I started with Legislative Services in 1970, and the first assignment that I was given as a young researcher with the Legislative Services Office was a book written by the professor that Senator Cardinale referred to, Professor O'Connell and Professor Keaton, *Basic Protection*. And I served as secretary and researcher for the original No-fault Study Commission from 1970 to 1973. Over my years with the Legislature and my five years at the Department of Insurance before I retired from State service, I've been involved fortunately, or unfortunately, in many, many insurance studies, as with Dale Davis and Laurine Purola. It's probably the one staying issue in this Legislature, but much of what's been discussed is as Yogi Berra said, "Déjà vu all over again."

Let me just -- many things were passed out today and appreciate the Senator's comment that they'll be many other opportunities, because all of us really want to look very carefully at the proposals that are before us today before jumping into any conclusions. But there are some things that I think stand out or deserve some comment, too.

Senator, in your opening remark, you referred to the fact that premiums are high in New Jersey. They're high, but the question is, of course, why are they high? And you eluded to some of the circumstances. One of the things that I did when I was at the Department is -- I was involved, as Director of Policy, in conducting this study on compulsory liability insurance that was required under the Fair Act of 1990.

Without going through the details at this time, because I don't want to take that much time, I think there are factors that are unique to New Jersey that are -- maybe only a few other states really are exposed to, and one, of course, is the density. We are number one in many areas, density, high volume traffic, etc. We're a corridor State. We could on and on and on.

The frequency of claims in New Jersey can be attributed to the fact that because of the unique situation, it's probably easier to hit a cow in Idaho than it is to have an accident with another car. But, when you do bumper-to-bumper traffic on U.S. 1 and any roadway in New Jersey anymore, frequency is going to be there, and of course, with frequency, you have the possibility of high claims also depending on the nature of the accident.

You mentioned, Senator, also make auto insurance similar to life insurance, home owners policy, etc., lowering the transaction cost by making it a first-party system. Again, just my rudimentary knowledge of insurance, I

would say just one difference, of course, with auto insurance: You're talking about objects that are moving and have the chance to collide into each other. Home owners insurance, life insurance is first party -- don't have that exposure to someone else causing you the damage. And I don't mean to be facetious, but I always use this comparison: Homes don't collide with each other. And if you do have damage to a home, I would think that more suitably fits first party than two motor vehicles, because there is a possibility that one of those motorists driving the motor vehicle was negligent and responsible unlike the comparison with the home owners claim.

Briefly, I just want to touch on some of the points that -- not that they were necessarily said by you or Senator Scott, but some of the arguments that seems to be behind eliminating compulsory liability insurance. Well, there is this philosophy that many drivers are forced to purchase coverage to protect themselves and their own assets, and therefore, compulsory liability insurance is forcing one to purchase something he or she doesn't need. Well, the fact is the purpose of compulsory insurance is not to protect your assets, it's to protect the victim of a motor vehicle accident in which you're involved with. You're protecting and we're protected by that also. Someone has an accident with us, we are protected as victims because of the fault of someone else. So it's not necessarily a purchasing compulsory or liability insurance to protect your assets. You're protecting someone else's.

The argument is made that sometimes it is regressive in nature, since drivers with fewer assets and lower incomes are compelled to pay a higher portion of their income for this coverage. This argument I would contend is unconvincing, also, because you could use the same argument, if you want,

with all flat-fee, nonsubsidized, nonprogressively priced items whether they're postage stamps, food, shelter, clothing, or toys. The forces that drive the cost of the product are exterior to the system itself.

Again, I go back to my remark before. If we want to reduce the cost of auto insurance in New Jersey, I think we have to start with reducing the frequency. And the frequency is a product of exterior factors to the system.

If we had safer drivers, if we reduced drunk drivers -- and Donna Frandson who is here will address that -- you know, we could reduce claims that way -- safer driving courses.

The combined effects, it's often said -- the effective reducing/eliminating compulsory liability insurance, it is said, can reduce the cost of insurance to the drivers. Well, I would contend and based on the experience in Florida in the '70s, if you eliminate compulsory liability insurance, the responsible driver will continue to purchase collision. He will continue to purchase uninsured motorist coverage. The cost is going to be shifted to his coverage, and this is what happened in Florida with the short-lived experience. Liability insurance was eliminated, but the responsible drivers -- first-party collision and your uninsured motorist coverage has skyrocketed, because that cost has to be shifted somewhere. Someone has to pay for your damage, your bodily injury. Someone has to pay for your property damage. So it was shifted to the responsible drivers' coverage, which leads into the argument: Is eliminating compulsory insurance rewarding the irresponsible driver by allowing that driver to drive with that coverage or avoiding the system? And is it going to drive up the cost of the responsible drivers liability insurance?

I would contend, as the other speakers said, these are some of the issues that we should look at. You can always reduce the cost of something, but what is the price you're paying for it? What are you giving up? Are you shifting the cost to another system? I think the majority of law-abiding motorists will continue to maintain insurance coverage, but again with the

increase of the uninsured motorist, it is going to be reflected in that person's cost, his coverage.

With regard to Senate Bill 1365, with the first-party system, again I would like to examine it, and I'm speaking on behalf of Consumers for Civil Justice, Senator. Let me just say that. I'm negligent in introducing myself at the beginning in that sense. This is a coalition of citizen groups, health organizations, labor, senior citizens, environmental groups, etc., who are interested in maintaining access to the courts, as well as the government. Anything that is going to restrict the rights of the victims to have access to the courts, we feel is antivictim and anticonsumer. Consumers will be looking at these bills carefully, and we are examining them. We have raised concerns already with eliminating compulsory insurance, and we will be looking at your bill in terms of the cost shifting to the responsible motorist under a first-party system.

I would like to introduce Donna Frandson, who is new to the legislative process. She is one face, Senator -- as you said you wanted to see new consumers, etc. Donna is a volunteer with the New Jersey Mothers Against Drunk Driving association. She's the Policy Liaison, and it's an honor that she is part of the Consumers for Civil Justice Coalition. I would just like to have Donna make her presentation, if I may.

DONNA FRANDSON: Good morning, Mr. Chairman, members of the Committee.

I am Donna Frandson, Public Policy Liaison for New Jersey Mothers Against Drunk Driving. I speak on behalf of New Jersey's State Mothers Against Drunk Driving. It's 12 New Jersey MADD Chapters and the

thousands of Mothers Against Drunk Driving members throughout the State of New Jersey.

One of the missions of New Jersey Mothers Against Drunk Driving is to aid the victims and families of one of the most violent crimes committed every day of our lives, drunk driving. In 1995, 17,274 people were killed in drunk-driving crashes nationwide, up to 4.2 percent from 1994.

Alcohol continues to be a major factor in traffic crashes. There is an alcohol-related traffic fatality every 23 minutes in this country. Drunk driving causes extreme anguish and pain to the victims and the families of victims of drunk-driving crashes. It can result in tremendous medical bills and rehabilitation expenses.

While New Jersey Mothers Against Drunk Driving has not yet had a chance to formally take a position on Senate Bill 1358 and Senate Bill 1365, it does have real concerns with both of these bills. Senate Bill 1358 eliminates compulsory automobile insurance and no-fault coverage and, thus, jeopardizes the ability of DWI victims to recover for economic and noneconomic losses, including pain and suffering, from the irresponsible driver. Senate Bill 1365 shifts the responsibility of providing insurance protection against DWI crashes for both economic and noneconomic losses from the responsible driver to the victim.

Although we sincerely appreciate the DWI exception outlined in the bill, we ask, what is the difference between a victim of a crash who is injured by a drunk driver and one who is injured by a reckless driver? This appears to unfairly reward the irresponsible DWI driver and penalize the

victims of DWIs by shifting the costs of providing insurance coverage to DWI victims.

As an advocate for victims of impaired driving crashes, MADD needs to protect and support victims and guard against passage of laws which would diminish or restrict the rights of these victims to be compensated. MADD opposes any measures that would limit the amount of damages that a victim of an impaired driving crash could recover in cases resulting in death and injury.

New Jersey MADD is also a member of Consumers for Civil Justice. As such, it is also committed to preserving access to the courts in order to seek full and fair compensation for injuries wrongfully sustained against the at-fault driver.

We are concerned that these bills restrict access to one of our nation's most sacred institutions, the courts.

I thank you very sincerely for the opportunity to speak today. When these bills are heard in Committee again, I will be better prepared to address them both. Thank you.

MR. GUZZO: Senator, thank you on behalf of both of us. My final statement will be that the members of the Consumers for Civil Justice coalition, all the groups, are consumer-, are victim-oriented groups, and we stand ready to work with you and to review any information or provide you with any information you would like and members of the Committee.

SENATOR CARDINALE: Thank you.

Jim Tuite. (no response) Is Jim Tuite here?

SAMUEL G. DESTITO, ESQ.: (speaking from audience) I'm sorry, Senator, that's Jim Tuite. (corrects pronunciation; declines for Jim Tuite from audience)

SENATOR CARDINALE: Thank you very much.

We have one more. John Dyke.

JOHN DYKE: John Dyke on behalf of the National Auto Agents Alliance. We support Senator Cardinale's bill, return to true no-fault. Right now we have a dual system as we all know. We've heard many testimonies. I'm not going to reiterate that. We do agree with the AIA support of your bill. We are opposed to Senator Scott's bill. I think, if that bill does pass, we will see amendments to it -- comparative negligence changed. I think it's a problem waiting to happen. I think if that bill does pass, it is a disservice to the consumer.

We have heard that -- who are we rewarding under Senator Scott's bill? Are we rewarding the irresponsible party, the party that does not carry liability insurance? Right now we know that the system is not working properly.

Senator, Chairman, you addressed in the beginning the availability and distribution problem. Yes, we've seen thousands of agents terminated in New Jersey. Carriers say that they are losing money on PIP. We have a terrible system, as a result agents are terminated. Lack of availability in the City of Camden. I believe there are just two agents left selling car insurance for the entire city. I don't blame the carriers. The system is not working properly. We support Senator Cardinale's bill. I don't want to reiterate anything that has already been said, but we do give you our support.

SENATOR CARDINALE: Thank you.

That is it for this hearing. We will announce, after consultation with the members of the Committee and staff, when we are going to have the next hearing. As I announced at the beginning of this meeting, we will have several additional hearings. We will have them around the State. We will hope to hear from members of the general public at that time. Thank you.

(HEARING CONCLUDED)