
Committee Meeting

of

JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

“Testimony of the outline of the no-fault system as it has developed in New Jersey since enactment of the ‘New Jersey Automobile Reparation Reform Act’ and an overview of the components of the current system”

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

DATE: January 5, 1998
10:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

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



ALSO PRESENT:

Thomas K. Musick
Office of Legislative Services
Committee Aide

Laurine Purola
Barbara S. Hutcheon
Majority Staff
Committee Aides

Tom Hastie
Tim Clark
Democratic Staff
Committee Aides

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TABLE OF CONTENTS

	<u>Page</u>
Walter R. Bliss Jr., Esq. New Jersey Counsel Alliance of American Insurers, and Former Deputy Commissioner New Jersey Department of Insurance	3
Leonard T. Guarini Vice President, Actuarial Consulting Prudential Property and Casualty Insurance Company	39
Anthony P. LoCastro National Director, Personal Injury Claims Prudential Property and Casualty Insurance Company, and Member Advisory Council for the American Arbitration Association	41
Thomas DeFalco Vice President Actuarial and Statistical Services New Jersey Manufacturers Insurance Companies	58
APPENDIX:	
Statement submitted by Walter R. Bliss Jr., Esq.	1x
List of exhibits submitted by Leonard T. Guarini and Thomas DeFalco	10x

TABLE OF CONTENTS (continued)

APPENDIX (continued)

Page

“Legislators can learn from history
of auto insurance reform”
plus attachments submitted by
John K. Tiene
Executive Director
New Jersey Insurance News Service

40x

“Legislative history of no-fault
automobile insurance in New Jersey”
submitted by Peter P. Guzzo, Ph.D.
Representing
Consumers for Civil Justice

53x

dmt:1-48
lmb:49-102

SENATE PRESIDENT DONALD T. DiFRANCESCO (Co-Chairman): Would everybody take their seats, we are going to start. We are going to start, so we start on time. Is everyone sitting that's going to sit? If that's the case, then let's have some quiet.

I'd like to thank everyone who is here, particularly the invited speakers. Certainly, I wish everybody a healthy and successful new year. I thank members of the Committee that are here who made an effort to get here to spend some extra time dealing with a very important topic that we all talked about many, many times.

The Speaker and I, through staff, have invited certain individuals to come and discuss the tort system and the development of no-fault over the last 25 years in a half of an hour. (laughter) We know that it will take longer than half of an hour.

Walter, I just want to say that it's good to see you again. I'm isolated now, so I don't get to see very many people.

I guess, Mr. Speaker, on our list Walter Bliss is the first witness. Walter is the former Governor's Counsel and Deputy Commissioner of Insurance during the Byrne administration. I know that seems like a 100 years ago, but it wasn't. He's still a young man.

Mr. Speaker, do you want to say anything?

ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman):
Thank you, Mr. President.

Walter, thank you very much for coming in and starting our new year on a very positive note. As you know, and when staff has been in communication with you, what we are attempting to do here is to try to

understand why we are where we are today, and then there will be a great deal of effort put forth from this point on as to what we should do in the future. We have had many suggestions, many by members of this Committee, many well thought out, etc. We feel very strongly, the Senate President and I and I know the Committee members, that this is a very important day for us. It will be the lynchpin to what we do from this point on.

As I have said it again, and I see a number of familiar faces out in the audience, we are going to do something, something of somewhat major proportions, and we want to have all the input -- all of us, not just some who are on this Committee who absolutely have more expertise than others -- as we go into our discussion. We thank all who will testify here today and in the future, particularly you, Mr. Bliss, for coming in.

Thank you, Mr. President.

PRESIDENT DiFRANCESCO: Walter, before you get into however you were going to start, I wanted to see if any members of the Committee had a question or anything that they want to say before we start.

John Adler -- Senator Adler.

SENATOR ADLER: Thank you, Mr. President.

Mr. Bliss and the other witnesses that are going to testify today, I am thrilled that you have provided us with written material, and it is going to be very useful to us as we review in our minds what you testify today. I guess I would ask that in the future -- it's not a criticism of these witnesses or of the Committee -- but I think it would be useful, at least for me, to have written material from future witnesses before meetings so that I can review

material and get up to speed where the rest of you all are, to ask the same sort of astute questions that I anticipate today.

So that's not a criticism of the process. It's-- We are looking at the process, and that's just my suggestion.

PRESIDENT DiFRANCESCO: Point well taken, and we'll blame that on Walter.

Joe, Gerry, John, anything? Paul, Scott, Clare? (negative responses)

Joe, welcome. What are we on, legislative time, Joe? Don't say it, I'm just joking.

Walter.

WALTER R. BLISS J.R., ESQ.: Thank you, Mr. President, very much. Obviously I am very complimented to have the privilege of appearing before you today, Mr. President, Mr. Speaker, and members of the Committee.

PRESIDENT DiFRANCESCO: Walter, see if the mike is on. (referring to PA mike) If it's on, speak a little closer to it. The red light should be on.

MR. BLISS: The red light is on, okay.

I'm the New Jersey counsel for the Alliance of American Insurers, which represents member companies of about 260 in number. In New Jersey, Alliance Companies write about 30 percent of the New Jersey market for automobile insurance. I've been a member of the bar in New Jersey for 27 years, and I am in the active practice of law. Yes, 20 years ago I had the good fortune, Mr. President, of working with you. When you were in the

Legislature, I was Deputy Commissioner of Insurance. Among other things no-fault and no-fault reform was on the agenda.

For the past 12 years a substantial part of my law practice has evolved, personal injury litigation virtually and entirely on the defense side. It is from that background that I'm honored to have the chance to discuss no-fault insurance and the tort system. I have with me, although I know they will merit separate introductions, on my right, your left, Tom DeFalco, actuary of New Jersey Manufacturers Insurance Company; on my left, your right, Len Guarini, actuary of Prudential Insurance Company, who will assist in any heavy lifting that's required in this discussion.

On the general topic of no-fault, I was asked, initially, to talk a little bit about the history of the no-fault. No-fault did not originate with the insurance industry. Academic articles on no-fault date back about 80 years. The whole idea was to adapt workers' compensation concepts that were developing early in the century to automobile insurance as roads became more congested, cars became more numerous.

A major study, for example, dates back to 1932 when a study committee at Columbia University came up with a compensation plan for automobile insurance that had a schedule of benefits that were payable without regard to fault and there was no recovery permitted for general pain and suffering allegations. A coalition of farmers and labor leaders in the Saskatchewan province of Canada in 1946 was the first group to actually give life to a no-fault plan. We associate no-fault with Professor O'Connell -- Jeffrey O'Connell -- in the late '60s, who popularized the concept of no-fault and also simplified its adoption by the distribution of model laws to state

legislatures around the country. It was the work of Keaton O'Connell really that began to bring no-fault to center stage.

By 1971 no-fault was-- By the 1970s no-fault was very much a mainstream concept. In 1971 the Department of Transportation, under John Volpe and the Nixon administration, recommended to Congress that some form of no-fault insurance should be provided to America's motorists and that all states should be required to begin experimenting to find out what form of no-fault was best. That was a recommendation by Volpe following a two-year, \$2 million study mandated by Congress at the conclusion of the Johnson administration.

The New Jersey law was enacted in 1972 under Governor Cahill, and the coverage that was mandated by that law became effective January 1, 1973. The point of the history -- looking at the history -- of no-fault -- especially its origins in the concepts of workers' compensation, its popularity with the farm and labor leaders of Saskatchewan -- is that in addition to cost considerations, central to no-fault has always been the social benefits of no-fault. As you examine no-fault, I urge that, true to that tradition, you consider both the benefits and the costs when making decisions as to no-fault's future.

A reason for reform had to do with the nature of the tort system. With apologies to the lawyers in the group and for those familiar with the tort system, let me start from square one. Under a pure tort system a claimant must prove negligence in order to recover medical bills, in order to recover lost income, in order to recover anything in the way of pain and suffering for injuries.

Accordingly, the tort system limits recovery to those situations in which the injured person can prove that somebody else was at fault for the accident. If, for example, that person under current law -- which will be called a comparative negligence law in New Jersey-- A plaintiff may maintain a pain and suffering suit as long as the plaintiff is not more than 50 percent at fault for the accident. If a plaintiff is more than 50 percent at fault for an accident -- or indeed if it's a one-car accident, for example, or for any set of reasons fault of another party cannot be proved -- under the tort system, no matter how serious the injury there is no recovery, there is no substantial payment of medical bills, and of course, there is no pain and suffering benefit.

The principle focus of a tort system, historically, has been the allocation of fault. Indeed tort has a very important role to play in our democracy. The courts are event for social outrage, and they are appropriately -- the tort system is appropriately addressed to major controversies between citizens. But in the context of automobile insurance it has become apparent over the years that allocation of more responsibility for accidents is not really the proper focus. If our intent is to make whole people who are injured in accidents, the focus of no-fault system is making people who are injured whole regardless of fault.

Now, think about that concept, about the appropriateness of moral accountability in the context of automobile accidents, especially the typical minor claim. First of all, on the issue of accountability, the insurance company pays the bill. Secondly, human error in a typical automobile accident is inevitable, and it's largely a product of circumstance combined with human error that produces an accident.

A simple innocent mistake, a split second misjudgement is by far the most common cause of accidents, not reckless behavior. With a high degree of frequency, both drivers are at fault for an accident to some degree and neither driver is to blame in any real sense in all sorts of other accidents.

The pressure for reform, having to do with the nature of a tort system, also involved the practical problems with resolving claims under a fault system. You know, of course, that there is expense involved in resolving matters in court, but there is also the more immediate concern of delay and uncertainty. Resolving fault questions injects delay and uncertainty in every aspect of the claim process under a pure tort system.

For example, a pure tort system complicates the delivery of medical care to those people most in need of immediate attention and immediate rehabilitation. I think you heard testimony at your December hearing about letters of protection. Well, letters of protection are what a doctor asks for if payment of his bill is contingent upon the outcome of a tort litigation or a tort claim. In that letter of protection, the attorney for the plaintiff assures the doctor that there is a liability claim, that liability looks good for the claimant, and that the doctor's bill will be protected.

In a no-fault system, by contrast, we know medical care is immediately guaranteed from day one regardless of any contingency or uncertainty as to fault. It has been said that there is a tendency of the fault system -- a pure tort system -- to overcompensate minor injuries and to undercompensate major injuries. The thinking behind that is that a small claim has an essential nuisance value, where in many cases the cost of defending the claim exceeds the value of the claim itself.

The small claimant, without the pressure to have major medical bills paid, is also much more tolerant typically of the uncertainty of the ultimate outcome. A small claimant is under relatively little pressure to settle, one of the factors why ultimately small claims are overcompensated relative to their inherent merit than the very serious claim. A very seriously injured claimant depends on a settlement for present and future medical care. It comes in a lump sum. You get one lump sum, and that has to pay all the past bills and carry the seriously injured person into the future.

This kind of claimant is especially sensitive to the risks and uncertainties associated with resolving who was at fault for the accident. As that uncertainty grows, the pressure on the doctor to curtail treatment and the pressure on the claimant to settle his case for what he can get grows. This is one of the anomalies of the tort system that no-fault was intended to address.

Litigation under a tort system that involves minor injuries involves, essentially, subjective proofs. This is another problematical aspect of tort systems. In a sprain or re-strain case -- sprain or strain of the neck or low back -- proof of continuing disability -- which is what is really required to get a substantial recovery -- depends largely on the subjective account of how the claimant says he is affected in his day-to-day activities. He experiences pain, and he has been limited in his family and other relationships. These are the kinds of facts that are not objectively verifiable. So in that category of minor injury you have a large subjective element that invites exaggeration, it invites uncertainty.

Another feature of the tort system, an inherent feature that no-fault was intended to address, was the valuation of damages. Valuation of pain and

suffering damages depend on myriad factors. There is no formula whatsoever. When a jury is sent out to contemplate what money to award the plaintiff, they are given absolutely no guidance as to how to compute any such amount. There is no formula used by claims adjusters; although, there are some rules of thumb that I am going to talk about.

The settlement practices and valuations vary by company, by county, by attorneys. This variation in recovery is one of the factors that prompted reforms which would ensure the certainty of specific recoveries, ensure at the least economic losses -- the recovery of economic losses and, in particular, the payment of medical bills.

The pain and suffering damages are also in a tort system and also tend to be disproportionately expensive. A rule of thumb in the industry and among attorneys in the practice is that pain and suffering damages are a multiple of medical bills. Let's say -- I believe that the conventional wisdom is still something like three to seven times medical bills. That kind of a number, that kind of a multiple is the settlement value of a typical minor soft-tissue claim. One of the choices that you will have as a legislator in considering the future of no-fault is your evaluation of the trade-off between spending, say, three times the medical bills of a person with a minor injury in the form of a tort award or using that same money to aid a seriously injured person, who otherwise has no recovery in tort.

Finally, a major consideration in no-fault is the amount of money that is consumed under a tort system by settling the claim, the cost of settling the claim, known as transaction costs. I think in your materials that you have

for today's hearing, in Exhibit 4 you will see an analysis of PIP premium. I believe it's 1995 data, but it's characteristic.

The exhibit shows that 90 -- slightly more than 90 -- percent of PIP premium went to pay the actual claim and only 9.5 percent was devoted to settling the claim. That PIP premium -- incidentally we are going to have a discussion in a minute about the nature of the coverages -- but that PIP premium is the no-fault benefit. That's the guaranteed payment of medical bills, waste, loss, and other first-party benefits provided for under PIP.

Exhibit 5 shows you where the BI premium, the bodily injury premium, was spent in 1995. That's the tort component of the system. You will see there that slightly more than 56 percent of the bodily injury premium went to the claimant, and the balance, about 44 percent, was needed to pay the costs of actually settling the claim. So the percentage of recovery to a-- The percentage of premium dollar that actually reaches the policyholder, the claimant, in a no-fault system is dramatically higher as reflected in those two exhibits.

No-fault, then, was designed to guarantee that medical bills will be paid from day one, that to some extent basic wage loss will be reimbursed all without proof of fault. In a tort system there must be proof of fault; in a no-fault no such proof is required. No-fault is designed to guarantee prompt payment of medical bills and lost wages. No-fault is designed to simplify the provision of medical care to the seriously injured, and it guarantees to the seriously injured the ready availability of treatment and rehabilitation. No-fault maximizes the percentage of the premium dollar actually spent on benefits to insurers.

Now with that said, sort of a general discussion of tort system verses first-party no-fault coverage, the New Jersey system was designed to strike a balance between the two. The system adopted in 1972 included both a no-fault benefit and a tort benefit. The concept was that everyone was to have guaranteed payment of their medical bills, and at that time, it was an unlimited medical payment without limitation, regardless of fault. In exchange, to pay for that benefit, to keep it all within the bounds of cost, within the bounds of reason, the policyholder had to give up his or her right to sue for nonserious injuries.

The right to sue for serious injuries with all the rules that apply to tort systems, absolute justice being assured in every case, that was preserved. The trade-off was simply the surrender of the right to sue for minor injuries in exchange for a very rich first-party benefit that guaranteed medical bills regardless of fault, which, under a fault system, would not be recoverable at all unless the person could prove fault of another party. This intended trade-off between giving up the right to sue for minor injuries and the financing of a generous first-party benefit has been the subject of legislative activity for 20 years, and we are still at it.

The experience we've had in trying to strike the proper balance -- and it's usually involved debates over what is known as the threshold. The threshold is the part of the no-fault law which attempts to draw a line between those cases for which the policyholder and the claimant reserve the right to sue and those claims that they give up the right to sue in. It is supposed to be the line between serious and nonserious injuries.

The thing that we have learned about no-fault is that if it is to work as we all want it to work in an optimal way, not simply by way of extended very rich benefits, but also within the bounds of reasonable cost, we have to eliminate lawsuits over minor injuries. That's rule one. Rule two is that we must make sure that the system that we devise does not permit the use of the no-fault benefits, which are designed to insure medical treatment, to simply magnify the value of litigated claims. We have to make sure that PIP is not used for treatment to sue rather than treatment to heal.

As we know, or as we might success -- we might infer we have not entirely succeeded in those objectives. There is data developed by the Alliance that there is still 26 bodily injury liability claims filed in New Jersey for every 100 property damage claims. In New York, compared to our 26, there are only 15 liability claims filed, and compared to our 26, in Pennsylvania there are only 19 bodily liability claims filed.

Also Alliance's research indicates that there are 66 bodily injury liability claims filed in New Jersey for every 100 medical and wage loss claims compared with only 33 in New York and 36 in Pennsylvania. There is a litigiousness in New Jersey over minor claims that still must be addressed, and the threshold, as I have said, is what does it.

In the 1972 law the threshold was \$200. Keep in mind that the threshold is supposed to define or draw the line between serious and nonserious injury. As a result of compromises during the penance of the no-fault law, the bill that came out had in it a \$200 tort threshold, meaning that anyone who had \$200 in medical bills could still sue for pain and suffering while also collecting unlimited guaranteed first-party medical payments under

no-fault. This threshold, incidentally, excluded hospital expenses, and it initially excluded diagnostic expenses, X rays and the like. But it effectively was no threshold at all.

For example, the courts took the diagnostic exclusion and interpreted to mean that diagnostic tests could be counted toward the threshold if they were part of an overall plan of treatment. So the diagnostic limitation was quickly eroded, and the \$200 threshold meant effectively that rather than adopt a no-fault system, which requires, at the very least, the elimination of minor claims litigation, we had simply superimposed a no-fault system, a very rich, unlimited medical benefit, on top of an old tort system, and both then coexisted from that time forward.

Under the Byrne administration, which I was honored to serve, we spent about four years trying to change the \$200 threshold to a verbal threshold. There was a no-fault study commission that addressed the issue. There were conferences at Drumthwacket. There were a variety of efforts.

PRESIDENT DiFRANCESCO: Were the conferences at Morven or Drumthwacket?

MR. BLISS: Actually--

PRESIDENT DiFRANCESCO: Were they at Drumthwacket?

MR. BLISS: The Drumthwacket was--

PRESIDENT DiFRANCESCO: You didn't tell me about those, Walter.

MR. BLISS: --the big confab. Remember that big confab?

The idea was that if we all reason together -- sat around a table and reason together we could solve this thing. That incidentally is a prevailing

sense that has survived 20 years, and I applaud it. I sometimes wonder whether it's doable. But every effort to upgrade the threshold to a verbal failed during those eight years.

During those same eight years, keep in mind that with the adoption of the threshold in New Jersey and no-fault insurance, there was also adopted mandatory insurance, compulsory insurance. Everyone had to buy insurance for the first time in New Jersey. The mandatory limits were bodily injury, that's your tort coverage, \$15,000 per person or per claim, \$30,000 per incident, and there was a \$5000 property damage liability coverage that everyone had to purchase -- still do -- and a mandatory PIP or no-fault coverage that everybody had to purchase.

At that time the uninsured motorist coverage -- we saw also one of the mandatory coverage -- I believe it was merged with BI, or it was such a small coverage that nobody paid much attention to it. With compulsory insurance there were major cost problems. The signed risk-planned group was about 25 percent of the market, it got a lot larger later. But it was a problem that had to be addressed. All of this coincided with a decision by the Legislature, in adopting the \$200 threshold, that there should be a mandatory rate reduction.

The rule adopted was that the new no-fault coverage, plus the bodily injury coverage for that portion of claims that a right to sue was preserved for, should be 15 percent less together than the old bodily injury coverage all by itself. That rate rollback combined with compulsory insurance, for the first time a growing secondary market, made the '70s a very unhappy place in New Jersey.

I've heard questions over the years as what ever happened to Geico. Geico made its departure during that period. I recall Safeco being another company that exited at that time. I was amused, somewhat, by their reasoning. They simply were tired of dealing with New Jersey. I was amused as only a regulator can be, I guess; partially I panicked.

In 1983 the Kean administration did finally succeed in changing the threshold by adopting a choice plan. In this choice plan, the policyholder had to choose between preserving and taking the same threshold that always existed, the \$200 threshold, or for a lower premium taking a \$1500 threshold indexed for inflation so that, as inflation increased the cost of medical care and the like, the threshold would increase. I think it ultimately got up to about \$2000.

In connection with that no-fault, in that threshold law there was a default rule that provided that if the policyholder failed to make a choice, then the \$200 monetary threshold applied; effectively then no threshold applied. Because of this default rule, most of the people in New Jersey still had a \$200 threshold, we believe, after the adoption of this reform in 1983.

Cost experience continued to decline, and in 1988 the Legislature and the Kean administration took another run at the issue of tightening up the threshold. The compromise that emerged was a new choice, one between a zero threshold, which would have no limitation on the right to sue whatsoever, and for a lower premium a verbal threshold. The default rule was changed so that, if a policyholder failed to make a choice, the verbal threshold would apply.

A verbal threshold is called a verbal threshold because it attempts to define in words those injuries for which a person retains his or her right to sue. Anything not serious enough to meet the tests of the verbal threshold would be considered a minor claim, a nonserious claim for which there is no right to sue, only the right to obtain no-fault benefits, guaranteed payment of medical bills and the like.

The no-fault threshold adopted in 1988, which still exists today, contains nine categories of injuries which qualify a person for the suit. There are nine categories. One: injuries resulting in death. Two: dismemberment. Three: significant disfigurement. Four: fracture. Five: loss of a fetus. Six: permanent loss of use of a body organ member, function, or system. Seven: permanent consequential limitation of use of a body organ or member. Eight or nine, which are the most controversial categories today-- Eight: significant limitation of use of a body function or system. Nine: an injury which disables a person sufficiently to cause them to refrain from substantially all the material acts which constitute their daily routine for at least 90 out of the 180 days following the accident. So say if a person stays out of work for 90 out of the first 180 days following the accident, the person would qualify under that category nine.

Under this verbal threshold, keep in mind that the claimant always has the right to sue for economic losses not payable by PIP. The purpose of the threshold is to limit the right to sue for pain and suffering, which has to do with physical injury and not economic loss.

Let me give you an example of category eight or nine. At this segment, I think and I appreciate the spirit of this enterprise, which is to try

to develop a low key, well-rounded discussion. Perhaps my opinions begin to enter or have to enter at some point. I imagine that you would find that they have already entered sufficiently. (laughter)

Let me give you an example of a kind of case that is covered by eight or nine, just drawn from experience in the courthouse. You begin with a fender bender, a minor impact accident. They lose on a left turn-- Somebody cut and made a left turn too soon, misjudged how fast the oncoming traffic was, maybe they left a yield sign too soon. Maybe it was a parking lot accident, somebody backing out. Damage to the vehicles is minimal. The ultimately injured person shows no sign of injury at the accident scene.

Typically, since I represent defendants, a client will say, "Wait a second, they weren't hurt at all, how could they be suing?" Or there is either no sign of injury at the scene or they were later treated in the emergency room and then released, having been x-rayed -- the principal treatment in the emergency room -- they are x-rayed and released.

I'm representing to you this is a standard category of claim. Days later the same person visits the chiropractor. He tells the chiropractor that he hurts. His neck hurts, low back hurts, or both. The chiropractor gives him range of motion tests. Bend this way, can you bend that way? The chiropractor observes how well the person moves in the various movements requested and makes an assessment of how much the person is limited in their range of motion. They then begin a series of chiropractic treatments. Typically three or four times per week at first over a month or so, scaling down

-- tapering down -- to two times a week, ultimately one time a week, then maybe a discharge.

This chiropractic treatment in this tapered down pattern can go on for maybe three months, maybe six months. Now, in the prethreshold days, perhaps the typical pattern was a little shorter, the chiropractors didn't treat quite as long.

PRESIDENT DiFRANCESCO: Walter, can I ask you a quick question?

MR. BLISS: How long am I going to be?

PRESIDENT DiFRANCESCO: In 1972, when they adopted the no-fault law, were chiropractor services reimbursable under PIP, or was that an amendment later on?

MR. BLISS: I believe they were reimbursable.

PRESIDENT DiFRANCESCO: I thought that we amended the law -- I shouldn't say we, I don't even know if I was there at the time -- but I thought that we amended the law later on to then include chiropractor services that originally was not included, perhaps, nor were-- I think it was pretty restrictive in the beginning. I defer to what your--

MR. BLISS: Well, again, Mr. President--

PRESIDENT DiFRANCESCO: In fact, I think Chris Jackman (phonetic spelling) sponsored that, if I remember.

MR. BLISS: I recall the amendment with respect to the health plans, the Blues.

PRESIDENT DiFRANCESCO: Walter, Laurine says it had to do with health insurance.

MR. BLISS: In any event, Mr. President, I just wanted to, perhaps taking liberties with history -- I wanted to characterize for today's purposes, under the present law, what a category eight or a category nine claimant would look like. But before there was a threshold, the treatment might not be as long. After there was a threshold, first there were dollar amounts that had to be reached, a \$200 target, then a \$1500 target. Somehow treatment tended to get extended, it tended to get more expensive, the target tended to get reached. Today there is much more substantial treatment in terms of time and expense.

PRESIDENT DiFRANCESCO: You mean that in talking about today's verbal, even though it's a verbal, because of the wording of eight and nine, as you refer to it, the amount of treatment is -- I'll use the word -- significant in terms of whether or not you qualify for that verbal. Is that what you're deriving at here?

MR. BLISS: Well, I think no because, frankly, all the accounts under categories eight and nine is the opinion of the chiropractor or the other medical provider that the underlying injury involves a significant limitation of use of a body organ function/system. That is, if a person has persistent pain -- reported to the chiropractor as consistent pain -- and that is the basis for the chiropractors opinion, that would be part of the effort on the part of the claimant to pierce the threshold.

The amount of treatment, except with respect to diagnostic testing, which I am going to talk about -- the amount of treatment really goes to the overall appearance of the case for presentation purposes.

PRESIDENT DiFRANCESCO: The value of the case.

MR. BLISS: The value of the case.

But I submit to you that -- a biased view, but I think a sensible one -- a key to making no-fault work and the threshold work is to eliminate this type of soft-tissue, nonserious injury as a trade-off for getting benefits to the more seriously injured in every case.

PRESIDENT DiFRANCESCO: So are you referring to what was eight and nine?

MR. BLISS: Eight or nine, yes.

PRESIDENT DiFRANCESCO: Read that again, if you could, Walter.

MR. BLISS: Eight or nine. Eight reads, using the language of the law, "significant limitation of use of a body function or system." Metaphysically continued complaints of pain amount to a significant limitation, and it is not even a requirement that it be a permanent limitation. It can be a transient limitation. If it is significant it is suable.

PRESIDENT DiFRANCESCO: Significant is not permanent.

MR. BLISS: Correct.

PRESIDENT DiFRANCESCO: Under the law.

MR. BLISS: Correct.

Category six and seven use the term permanent. Category nine is, using language of law, "Medically determined injury or impairment of a nonpermanent nature which prevents the injured person from performing substantially all of material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the injury."

PRESIDENT DiFRANCESCO: Okay, so laymen, 90 out of 180 days seems like, I think, a high amount of days out of work. Why do you suggest that that could be eliminated without jeopardizing--

MR. BLISS: Well, number one, the law doesn't say out of work that long. It says that you are unable to perform the material acts that constitute your daily activities, which could be a lot more than just your job. In fact, interpretations of the court greatly enlarge the scope of what constitutes a material act.

PRESIDENT DiFRANCESCO: To clarify it, then, that means that you still collect medical benefits -- you mean the ability to sue.

MR. BLISS: Correct. We're talking strictly about the ability to sue for pain and suffering, not even the ability to sue for economic losses. You always have this right to sue regardless of injury for economic losses, namely your medical benefits.

Thank you very much. I obviously look as if I am dehydrating up here in front of you, thank you. (referring to pitcher of water and glasses)

The question is often asked, is there any hope for no-fault? Can we realistically come up with a threshold or a device that will significantly limit the right to sue in order to finance first-party benefits? I commend your attention to a closed-claim study that was done in New York. Keep in mind that the verbal threshold that we have in New Jersey is modeled after the verbal threshold in New York. It's verbatim, the same.

There was a closed-claim study of the New York threshold relating to claims closed in October 1991, by seven of the largest carriers in the market and the Robert Plant, involving an examination of more than 2500 claims

which had pierced the threshold. One of the questions asked was, How did these cases pierce the threshold? The kind of case greatest in number was the category eight case, that case which claimed significant limitation of use of a body function or system. Thirty-one percent of the claims that pierced the threshold used this method. The average claim size was \$11,492, the median claim size, that is those claims that defines the middle point where half of the claims are smaller and half the claims are larger-- The median claim size of this category eight was \$7500. So we are talking about very small claims and a great many of it.

The next most common way to pierce the threshold in this closed-claim study was our category nine, the requirement that the person be unable to perform substantially all of the material acts that constitute daily activities for 90 out of 180 days following the accident. Twenty-six and a half of the cases pierced the threshold using this method. So under this claim, if you combine those two categories under this closed-claims study, more than 50 percent of the claims which pierced the threshold were the lowest in severity, the low-severity soft-tissue claims.

Now, in this same study, it was discovered that 69 percent of all bodily injury claims in the closed-claim study -- 69 percent of them -- had a dollar value of \$10,000 or less. So we are talking about a system in which small soft-tissue claims flood the tort aspect of the no-fault system. You can do the arithmetic. An elimination of that kind of claim -- an effective elimination once and for all -- has with it very large savings.

Another interesting aspect of the New York study was the third most common way to pierce a threshold was with a fracture. Now, a fracture,

in many cases, is a very serious injury, but in this case, although the average claim size for a fracture is \$27,800, the median claim size was only \$10,000. So half of those fracture cases we can infer were minor fracture cases, the broken finger case, which is another category of case that the Legislature may want to consider in including under any limitation on the right to sue in exchange for first-party no-fault benefits. I have a copy of that study which I would be happy to share with the Committee. Incidentally I was very kindly supplied it by Tom DeFalco at NJM.

The concern under the current law in New Jersey, the verbal threshold, is that the threshold -- even the verbal threshold has become a target. I think you have data in front of you that show that the verbal threshold has had an effect, there is a decline in frequencies. But there is not enough of a decline, and there is a corresponding growth in PIP which is identified with treatment to sue, not treatment to heal. That is of a concern. In particular they have developed -- and I know you are going to have testimony in future days by claims people -- a variety of very exotic tests which are now used by chiropractors and by other testers, testing services that they refer their patients to identify objective manifestations of injuries so that a claimant can qualify under the verbal threshold for the right to sue.

These tests are done at great expense, typically for the sole purpose of litigation, and there are policy areas that I think you have to look at in addressing the overall no-fault picture. The tests range from MIR exams overutilized to computerized muscle testing, an exotic type of test which frequently nearly translate subjective complaints into computerized data.

A strong verbal threshold is key to making no-fault work, and a strong verbal threshold must include language that can be applied by a court. This was the initial intent when no-fault was adopted in New Jersey -- excuse me, when the verbal threshold was adopted in New Jersey, that it would essentially be applied by the courts in knocking out certain kinds of claims without having to go to jury. The current language, however, has been sufficiently watered down so that it is increasingly difficult to obtain summary judgements dismissing minor claims and it is necessary to go to a jury to have the jury resolve the issue. As you know, jury trials create uncertainty which indeed affect settlement values, which tend to encourage the settlement rather than the trying of cases.

The courts now have two basic tests for application of the verbal threshold. The lawyers know it as the *Oswind B. Shaw* tests as subsequently interpreted. For that claimant who is in category eight and nine that we have read -- that soft-tissue claimant, the sprain or strain case -- that claimant, to beat the summary judgement on the threshold, must raise an issue of fact as to whether he has an objective manifestation of injury. There must be some kind of a test, some kind of a document, some kind of a film that confirms there was indeed an injury of some sort here and that we are not just dealing with subjective complaints.

Under current court interpretations effectively a muscle spasm that is felt by a chiropractor in examination is enough to defeat a motion for summary judgement on the issue of objective manifestation of injury. The second test, which also must be satisfied together with the first to meet the verbal threshold, is that the accident in question, the related injury has had a

serious impact on the claimant's life. That was in the beginning a very formidable test. It has been subsequently watered down such that the courts today -- many judges today simply take the view serious impact on life is largely a subjective issue and has to get resolved by the jury.

You've heard, perhaps, one of the first cases--

PRESIDENT DiFRANCESCO: Walter, if I could stop you, I think Senator Adler would like to speak.

Senator Adler.

SENATOR ADLER: You spoke about how New Jersey modeled its verbal threshold language after New York's statute, and then you talked about how New Jersey, through its court, *Oswind*, and its progeny, has set up this body of law about how to interpret our threshold. How is our interpretation through our courts different than the way New York has applied its verbal threshold statute, such that maybe that explains why these BI cases come into New Jersey that are being screened in New York?

MR. BLISS: As I read the cases, the connection to New York was largely severed with *Oswind B. Shaw*, once the Supreme Court got to rule on our threshold. Up until that time a motion for summary judgement of the threshold would cite New York law, and it was favorable law and typically--

SENATOR ADLER: To who?

MR. BLISS: To my client. (laughter)

It was typically favorable to the defendant, and cases would be dismissed on summary judgement. *Oswind B. Shaw* came along, and for a brief period, summary judgement motions continued to flow because *Oswind B. Shaw* really followed a lot of the New York cases. Over time, as New Jersey has

gone its own way -- and I haven't tracked the New York cases -- it's had the subsequent development.

The first one was on the issue of whether or not a given injury -- a sprain or a strain -- has had a serious impact on a person's life. A claimant alleged that dancing was a very important part of her life. Every Friday night she went out or every weekend she went out regularly dancing, and as a result of this injury, she could not dance. That, in the eyes of the court, raised a question of fact, which had to be resolved by a jury, as to whether or not dancing was a material part of the person's daily activity or daily life and whether limitation of the ability to dance was a significant limitation on a body function or system.

SENATOR ADLER: In light of *Oswind* and the following cases, is there language you could suggest to us that put us back on line with New York, or is it your suggestion that we eliminate categories eight and nine from New Jersey's verbal threshold statute?

MR. BLISS: Certainly a way to go would be for the Legislature to look at *Oswind B. Shaw* in terms of legislative history and whatever legislative directives it may amount to. I believe that eight and nine must go.

Obviously, one of the issues before you, then, is improvement of language in the verbal threshold. The other coverage, that's the bodily injury coverage, of the compulsory package of coverages that every motorist must buy -- the threshold affects the cost of that coverage. But also implicated in no-fault is, of course, personal injury protection, so-called PIP protection.

In 1972, when the law was adopted, this no-fault benefit, or PIP, guaranteed the payment of all medical bills related to an accident whether or

not the driver was at fault without limitation in an amount of any kind. In 1988, in response to cost pressures on the price of PIP, some deductibles were built in to the PIP coverage to attempt to control overutilization, and there was a \$250 medical deductible inserted and a so-called co-pay provision requiring, theoretically, the patient to pay 15 percent of the medical up to the first \$5000.

In 1990, because PIP costs still were not reigned in, the Florio administration and the Legislature imposed a \$250,000 cap on the PIP benefit as opposed to the former unlimited benefit. This \$250,000 cap is a cap only on the guaranteed medical benefit under no-fault. Anything above that cap, if not covered by health insurance or otherwise, is subject to the right to sue. Keeping in mind that no matter what your threshold, the right to sue for economic losses, i.e., medical bills, wage loss, is always there and is always preserved.

Again, this \$250,000 cap, the medical deductibles have not been enough to constrain costs. In recent years, PIP has become a major cost problem. Exhibit 9 in your materials shows the evolution of PIP claims -- average PIP claims -- from 1980 to 1995. Keep in mind that what you're seeing there is an average severity, or average size of PIP claim, and the data is not quite as dramatic as it appears. The emergence of deductibles after 1988 would eliminate all sorts of small claims that in turn heighten the average severity of a PIP claim. Nonetheless--

ASSEMBLYMAN DORIA: Could I just ask a question?

On this chart, have the figures been adjusted for inflation per year, or are these just the actual figures without any adjustment for the rate of inflation in the health care industry?

MR. BLISS: Those are just gross figures.

ASSEMBLYMAN DORIA: Those are gross figures so that this takes into consideration, as you go along, part of the increase as a result of the inflation in health care costs.

MR. BLISS: Absolutely. As a matter of fact, as I said, that's why I pointed out the significance in the deductible. The size of the increase is, to an extent, an artifact of the data. If very small claims are eliminated, then by definition your average claim grows substantially. Similarly, the overall cost of medical care -- and God knows we have had rapid expansion of medical care -- in most sectors in the medical industry managed care has emerged. PIP, the no-fault industry, is one of the few from which managed care has not yet taken a place. As a result, you have evermore inflation in the PIP premium.

ASSEMBLYMAN DORIA: What would be interesting, Mr. Chairman, is to take that \$1496 figure and then do the rate of inflation on health care during each of those years and see where it would be in 1995 just to see a valid comparison to see if it's gone up that significantly or it's just a result of the inflation of the health care area.

SPEAKER COLLINS: And couple with that, Mr. Leader, and correct me if I'm wrong, the comment that you made or the statement you made that the smaller claims have fallen out. So my question really would be, since this is not dealing with inflation and since, also, if I understand your statement correctly, smaller claims have dropped out, which means that claims

that are still going on are of a larger amount-- What really does this chart tell us?

MR. BLISS: Mr. Speaker, the reason I raise that is so that you would not misunderstand me.

SPEAKER COLLINS: I appreciate that.

MR. BLISS: I'm not trying to claim that the chart -- as a matter of fact I'm sure that these numbers vary by company. There are all sorts of variations and data. The chart is simply intended to depict the magnitude of the average increase, part of which can be explained by increase in inflation. No doubt part of which can be explained by increase in deductible, nonetheless leaving a residual of real increase in PIP. These numbers are consistent with our actual claim experience and the experience of our claims adjustors watching the average values of PIP claims. I know I see them. I've been doing personal injury litigation for 12 years. I have seen the average size of medical bills grow threefold.

SPEAKER COLLINS: Go ahead, Mr. Leader.

ASSEMBLYMAN DORIA: I was just going to say that it doesn't seem like a significant increase between 1990 and 1995 because the rate of inflation in health care would be, on the average during those years, about 6 percent or 7 percent. Yet the increases between 1990 and 1995 doesn't even equal 5 percent or 6 percent. So it's actually decreasing less than the rate of inflation if these numbers are correct.

In 1990, you have \$7198 as the average claim. In 1995, five years later, it's \$7527, but yet the increase in health care costs in the state, even with all of the various decreases that have taken place, run between 6 percent to 8

percent a year. This doesn't reflect that 6 percent to 8 percent increase at all. So actually the cost has gone down rather than up if you take the rate of inflation in here for that five-year period.

MR. BLISS: Mr. Leader, didn't that go up about 178 percent from 1990 to 1995?

ASSEMBLYMAN DORIA: No.

MR. BLISS: Excuse me, '85 to '90.

ASSEMBLYMAN DORIA: From '85 to '90, but I'm talking about now the last part, '90 to '95, with the passage of the FAIR Act. It would seem that the increase is just about 5 percent, but the rate of inflation during that period in the health care industry is easily 30 percent to 40 percent.

MR. BLISS: Well, there were two things that happened, Mr. Leader, simultaneously. One, under FARA, PIP went from an unlimited medical to a \$250,000 medical. By definition your average claim size is going to be substantially dampened by the phenomenon. When the claim goes up over the \$250,000, it's no longer part of the numbers.

ASSEMBLYMAN DORIA: Yes, but there can't be that many claims over \$250,000 anyway.

MR. BLISS: But the interesting jump-- Well, that's one of the things that you ought to look at. You'll notice on that exhibit the jump between 1985 and 1990. In 1988 there was adopted the verbal threshold. Our actual claims experience, and hands-on experience by claims adjustors, is that there has been a substantial increase in medical bills for small claims. I would say, subjectively, whereas a case used to come in at \$3000 to \$5000 in chiropractic bills, when you throw in the cost of testing--

ASSEMBLYMAN DORIA: Mr. Bliss, why do you just talk about chiropractic bills? What about osteopathic? What about physical therapy? What about any other medical bill? It seems like all you're talking about is chiropractic.

MR. BLISS: Well, I will amend--

ASSEMBLYMAN DORIA: Reflected, I'm not a chiropractor, by the way.

MR. BLISS: I will amend. Why don't I just refer to a neutral term provider. I'm trying to characterize the claims that are in categories eight and nine of the verbal threshold, the soft-tissue cases, which essentially involve palliative care, whether it's in the form of physical therapy or chiropractic care or some other modality.

ASSEMBLYMAN DORIA: Or ODs. Osteopathic doctors.

MR. BLISS: Osteopathic doctors, absolutely.

SPEAKER COLLINS: Senator Cardinale. I think we are ready to start jumping in now.

MR. BLISS: Please.

SPEAKER COLLINS: Please, we appreciate that.

Senator.

SENATOR CARDINALE: You have made a number of references to diagnostics that are becoming a significant portion of the cost of PIP. Has anyone done a study that compares auto insurance cases and the use of diagnostics in those cases with other types of personal injuries that are nonauto?

MR. BLISS: I don't know if there has been a formal study. No, I only have anecdotal evidence on that.

SENATOR CARDINALE: Would you tell me what your anecdotal evidence is then? Maybe we can ask someone to do such a study.

MR. BLISS: Well, for example, it is highly unusual for a typical patient with, say, a sore back to have an MRI performed costing \$500 to \$1000, depending on the provider, to have an MRI performed in the first month of treatment. An MRI would only be recommended if-- In a typical case, if the patient is treating to heal, the MRI would be administered only if, after a course of conservative treatment, palliative care, there hadn't been a resolution and there were persistent complaints of a type that would suggest an MRI diagnosis is necessary, given its expense.

That is not the case in many no-fault or verbal threshold cases. MRIs are routinely referred out. The initial provider will refer to a provider, a neurologist, or other person who can prescribe an MRI, and the MRI takes place very early in the process. This is a complicating factor, and in all of your deliberations, when you consider the costs of claims under either no-fault or tort system, you have to take into account factors which increase costs independent of the insurance system. MRIs are one. Magnetic Resonance Imaging tests pick up soft-tissue injuries that X rays can't. They have really come into prevalent use in the last 10 years.

It is said -- and I believe it's largely accepted -- that 30 percent of the adult population without any back pain whatsoever if they were to take an MRI would have positive results on the MRI indicating the generative change or some other abnormality in the spine. This fact has greatly complicated

typical soft tissue injury litigation. In the old days, somebody had three months of palliative care and a negative x-ray showing no injury. That claim may settle for \$5000, \$7000, \$8000.

Once the MRI is injected and that person has a positive showing on the MRI, even though there is no proof, that showing on the MRI (*a*) is real or (*b*) was caused by the accident. The settlement value of that case multiplies because there is now a film that shows an abnormality coupled with the patient's complaints. It greatly increases the settlement value of the claim.

SENATOR CARDINALE: I have a couple of other points that you covered, if you will. You mentioned the deductibles and co-pays that were introduced at some point. Is it your experience or do you have any information as to whether or not those are actually being effectuated, or are they, in some cases, being waived?

MR. BLISS: I hope that Mr. DeFalco or Mr. Guarini have something on that, and I might defer to them. The belief is that at least in certain percentages of claims the deductible is waived.

ASSEMBLYMAN DORIA: That happens all the time. That's common with most doctors.

SENATOR CARDINALE: It's illegal for me to waive a co-pay on an insured patient.

ASSEMBLYMAN DORIA: What do you mean by co-pay?

SENATOR CARDINALE: It's illegal. I could lose my license.

ASSEMBLYMAN DORIA: What do you mean by a co-pay?

SENATOR CARDINALE: If the insurance company pays 80 percent of a particular procedure in a dental office, and I say to the patient,

“I’ll take the 80 percent and forget about the rest,” I have committed an offense.

ASSEMBLYMAN DORIA: That’s illegal? I didn’t think that was illegal.

SENATOR CARDINALE: I believe--

ASSEMBLYMAN DORIA: Most doctors do it.

SENATOR CARDINALE: Joe, you better not give their names.
(laughter)

ASSEMBLYMAN DORIA: It is illegal?

SPEAKER COLLINS: Don’t ask me, Joe.

ASSEMBLYMAN DORIA: I’m not a doctor, so I don’t know.

SENATOR CARDINALE: The point we had in mind with the co-pays was to require some serious consideration on the part of the patient as to whether or not these procedures ought to be performed and to have the patient act as the policeman on the validity of the treatment. If they are being waived, then I think we’ve lost that, and I think it would be more than interesting-- I think it would be important for us to know if there is any body of information that could determine whether or not, in any substantial number of cases, the co-pays or deductibles are being waived.

You mention any number of times treatment to sue rather than treatment to heal. Do you have any thoughts on how that could be differentiated so that our PIP coverages would not trigger lawsuits?

Let me phrase that another way. If there is a trip and fall, the person who has tripped may have an injury very similar to an injury in an auto accident, but that person does not have automatic access to PIP coverage for

the diagnostics. That's the basis of my prior question on other kinds of cases.

Now, I think it would be very, very important for us to be able to siphon off from these cases what I would consider to be fraud in that people -- simply because coverage for the cost is available -- are doing tests which are not medically indicated tests. Now, as someone in a health field, I would say that there may be some protocols that could be used and could be applied. I would like your opinion from someone who is dealing with these things on a day-to-day basis of whether or not there are some kinds of protocols or that we might be able to refer to in the legislation that would provide an objective standard of whether or not an MRI or some other test ought to be done in a given injury.

MR. BLISS: Absolutely. I think one of the keys to resolving the testing issue and a lot of the PIP issue, the arbitration issue is having that protocol -- having those uniform protocols -- that could be used throughout the system to assess whether giving testing as indicated.

I believe there was a bill pending, or there has been a bill pending, that would authorize the Department of Health and the Department of Insurance together to promulgate such protocols. I think it would be a great step forward.

SENATOR CARDINALE: In line with the protocols, and this will be my last question to you-- I'm sorry if I offend anybody by talking about using the word chiropractor, but chiropractors seem to treat a great deal of auto industries. That's the impression I've gotten from various hearings and from who has testified at the hearing, that chiropractors do a great deal of this kind of treatment -- but I have also been exposed to a federal study which has

been brought up many times by the chiropractors that they are the best paid people to treat lower back pain. But the second half of that federal study said that if they haven't cured it within 60 days -- I believe that it's 60 days -- that you're in the wrong place for treatment. That chiropractors' treatment that goes on beyond 60 days is nonefficacious

Has that federal study ever been used to any great extent, and if so, what has been the result when you are before the courts where there have been extensive periods of time of chiropractic treatment?

MR. BLISS: I don't, Mr. Chairman, have personal experience with it. Generally the issue wouldn't come up in the typical bodily injury case. It would come up in a reasonable and necessary kind of determination that's part of the AAA arbitration system, PIP dispute system. I don't know if whether either Len or Tom have experience with that.

But I think the substance of that goes part of the way toward some kind of a uniform standard that everybody could agree to as to when a continued palliative care is no longer indicated.

SENATOR CARDINALE: Thank you.

MR. BLISS: I've gone on in great length, Mr. President and Mr. Speaker, and I am even regretting to observe that I have some little bit more to cover and I--

SPEAKER COLLINS: Well, let me just say this. We appreciate it and keep going, we're here for awhile. We also have the rest of the testimony, but we will -- and this is what we want to do -- we may well interject our thoughts and questions a little more from this point on. It has nothing to do with your presentation. Please go forward.

MR. BLISS: I welcome it, thank you.

The perception is that the diagnostic testing and targeting the verbal threshold, categories eight and nine, is a substantial part of the radical increases in PIP -- what are viewed as very substantial increase in PIP; perhaps radical is a pejorative term. You will have-- There are pending in the Legislature, and you will no doubt have before you and I urge you to consider them, various recommendations to address this problem granting that increases in the PIP are attributable in part to increases in medical costs and medical fees, generally. Keep in mind that there is substantial evidence and belief that overtreatment is a part of it, too.

You will consider, I hope, the issue of medical fee schedules governing the fees paid to PIP doctors. I hope you will consider the implications of standard protocols as Senator Cardinale indicated. I hope you will consider the remaining issues of managed care, as well take a look at the means that are now available to permit a carrier -- an insurance company -- to police how PIP dollars -- no-fault dollars -- are being spent.

The present system essentially is an after-the-fact system. A carrier providing no-fault benefits for medical treatment has the right to request that the patient be examined by an independent medical examiner for purposes of deciding whether or not treatment should be continued. There is a substantial time lag from the time of initial treatment to the time the carrier typically makes this request, and it is hoped that the PIP notification bill that was passed in '95 will move up the time when carriers can be clued in as to what is going on.

Nonetheless, in the current system, the carrier can cut off the PIP benefit after an independent medical examiner decides that further treatment is no longer indicated or no longer reasonable and necessary. The plaintiff, the claimant can then take the matter to court or to arbitration. We have in place AAA; that is an arbitration system run and really governed almost entirely by the American Arbitration Association. In this system, as currently constituted, the claimant and the carrier collide as to whether or not further treatment is indicated, whether or not certain bills should be paid. The matter is decided by an attorney arbitrator, and in the perception of the companies, and I believe universally, the claimant almost entirely wins all or some of the claimed medical bill that was denied by the carrier. For his or her efforts, the attorney inevitably gets a fee, and frequently the fees awarded in these arbitration proceedings over PIP are large, in the amount of controversy.

Typically, as well, there is no written opinion in these arbitration decisions as to why a decision was reached or by what standards the claim was judged.

SPEAKER COLLINS: Mr. Bliss, if I may.

MR. BLISS: Yes.

SPEAKER COLLINS: In our first session, I think I spoke for a number of Committee members -- in fact, all -- when I said this would be an educational process and for some of us more than others. I'm in that some-of-us-need-to-know-more -- that's me, I'm the leader of that group -- and it leads me to this question.

As you've just described the arbitration system and that most often I think you may have said that the claimants win, my question is one of

naiveté or stupidity, make your choice, but here it is. Why wouldn't the insurer, other than their professionalism, their commitment, their integrity, and so on, fight continually with the claimant? Because the worse you get is you lose and you have to pay anyhow, and how about all the times when your side wins. Why not do it continually?

MR. BLISS: I'm going to refer to Len Guarini on that.

LEONARD T. GUARINI: I spoke to our Claims Department about this issue. We lose 85 percent of the cases and you also incur the cost of both sides and it costs like \$460 a case, \$230 brought on both sides. So you have the extra cost of that.

We do fight it, and as evidence of that, the number of cases that were brought before the AAA in 1994 were 3400. In 1997--

ASSEMBLYMAN CHARLES: How many, I'm sorry?

MR. GUARINI: Thirty-four hundred.

In 1997 it was over 16,000.

SPEAKER COLLINS: Well, you have to stop right here.

Thirty-four hundred to--

MR. GUARINI: To 16,000.

SPEAKER COLLINS: --to 16,000. Why is that?

MR. GUARINI: Because of more and more cases where we believe that treatment is disputable. We are trying to fight it. There are other states like New York that the costs are much less. It's \$40 a case. The system is much more, from our perspective, fair. There is 40 paid administrators as opposed to, I think, 250.

PRESIDENT DiFRANCESCO: Is your microphone on?

MR. GUARINI: I'm sorry.

PRESIDENT DiFRANCESCO: Is this on?

MR. GUARINI: The red light is on.

SPEAKER COLLINS: Pull it a little closer to you.

MR. GUARINI: Every time I have testified in the past the attorneys who represented me always used to have a pool as to how long it would take before someone asked me to speak louder. My kids never had any problem hearing me. (laughter) In any event.

There was 450 volunteer arbitrators in New Jersey verses 20 full-time administrators in New York. The cases are \$650 a case in New Jersey verses \$40 a case. We win a much greater percentage of the cases in New York.

SPEAKER COLLINS: Why is that?

MR. GUARINI: Well, I think one reason is that you have to have-- There is a documented decision in New York where there isn't in New Jersey. If you want chapter and verse--

SPEAKER COLLINS: Chapter and verse.

MR. GUARINI: Chapter and verse, you can bring the claims people down and have some discussions on this.

SPEAKER COLLINS: We may well do that, too.

MR. GUARINI: But I mean it's definitely a difference, and two of the things that could help you would be either adoption of the New York approach or the PRO, which we have discussed in the past.

SENATOR CARDINALE: On this point can I ask you a question?

SPEAKER COLLINS: Senator.

SENATOR CARDINALE: It's been represented at some of the prior hearings that in those arbitration proceedings, cases have actually been decided in favor of the claimant and against the insurer, which cases have subsequently been the subject of other fraud investigations and have been, particularly in *V and K*, found to have been fraudulent. There have been cases -- and I'm sorry that it isn't before everyone, this transcript (indicating) was sent to my office; I thought it was given to everyone, but apparently it hasn't been, but it will be -- where the doctor has subsequently lost his license because he was billing for treatments that took place when he was in Florida. The arbitration parallel awarded those costs despite the objection. Can you give us, even if it's anecdotal, any kinds of cases like that which would serve to enlighten us, perhaps, on the efficacy of this present arbitration system?

MR. GUARINI: I can't personally. We do have someone here from our Claims Department who could probably speak to that a little bit. I understand that--

SPEAKER COLLINS: What we could do, if he could -- he or she -- did you say he?

MR. GUARINI: He.

SPEAKER COLLINS: If he could come forward just to respond to that particular question, we would appreciate it.

A N T H O N Y P. L o C A S T R O: Good morning, I am Tony LoCastro. I am from Prudential. I was formally with the Robert Plant, and I have been before many of you before on other panels and committees.

SPEAKER COLLINS: And you're from the Claims Department.

MR. LoCASTRO: Yes, I run the no-fault.

SPEAKER COLLINS: Interesting. As I have been watching the faces of the crowd, I sure didn't tie you to the Claims Department. I have been watching you and making some facial expressions, and so on. Once again I have learned I'll mind my judgements until I hear from people. Go right ahead.

MR. LoCASTRO: Well, just to answer Senator Cardinale, I am one of three company representatives that sit on the AAA Advisory Council. What Mr. Guarini was stating before is very true. We have seen an explosion in these arbitrations, and it corresponds with the diagnostics explosions that we have seen. We, as carriers, have tried to curve some of the exotic things that are going on, and when we often do, we are challenged in this forum, and our results are that we lose about 85 percent of the time.

What Len was talking about before, and I think is important, is New York has attorney-run arbitration, but it's 20 professional full-time arbitrators who don't have a built-in bias. They can only have about a 15 percent practice that would be an other than auto negligence type of work -- they do real estate, matrimonial, and that type of thing -- and you get what I would call a fairer shake simply because there is no built-in bias.

SPEAKER COLLINS: If I may, you said that twice. Expand a little on this built-in bias. What is it?

MR. LoCASTRO: Well, what you have right now is-- You have 480 attorneys who oversee the New Jersey process.

SPEAKER COLLINS: Are some of those the defense attorneys?

MR. LoCASTRO: It's been equaled over the last few years; that is, about 60 percent plaintiff, 40 percent defense. Even the defense people tell

me they have a hard time deciding these cases. The problem is they appear before each other, and if you were to basically rule against one of your adversaries, you are fearful that when it's your turn in the barrel you may get hit back. So you have a built-in problem, because you're always wary of who you are going to come up before.

If you have noticed over the past six months--

SPEAKER COLLINS: Could we not in the long run -- it could somewhat balance out. Don't the plaintiffs' attorneys have some concerns when they are going to make their judgements that eventually they are going to be in the barrel where the defense attorneys would control?

MR. LoCASTRO: Well, I think what Len mentioned before, and AAA is looking at this, is that no one has to justify their rationale today for deciding a case. To answer Senator Cardinale's question of before, we had very major experiences where the doctor that was in Florida is-- He basically had prevailed against many carriers even though he was later found to have committed fraud, and he lost his license as a result of that.

Basically, because you have so many different people deciding, there is not consistency. There is no written documentation, so there is never any -- you never set a precedent in the arbitration form because nothing is written.

SPEAKER COLLINS: Let me just ask a question, and others may jump in. We may have you back another day because I did ask you just to come forward to respond to the Senator. You just said that there is no consistency, but how can there be consistency when you have human beings, first, making judgement, but, secondarily, human beings on the other side

making the complaints? Your threshold of pain would be probably different than mine or your interest in, as we say, the usual and customary activities. Isn't it always going to be a judgmental thing, and isn't consistency something that is just a dream?

MR. LoCASTRO: Well, what's hard, for instance, is if you have a major fraud scenario like Senator Cardinale mentioned before. You have two chiropractors who orchestrated a system where they were basically creating accidents.

SPEAKER COLLINS: And we caught that.

MR. LoCASTRO: Yes, but in the arbitration forum you can't because it's hard to portray that picture in this limited setting. You really can't go and reeducate 480 arbitrators every time you present a case.

I'll give you a scenario. If you've noticed, you have major carriers for the first time in New Jersey suing people. You have this orchestrated fraud being ferreted out, and you have what is called the declaratory judgement actions being filed all over the State today simply to avoid the arbitration process. When you lose an arbitration in New Jersey, you have no recourse, you have no grounds of appealing unless you can prove collusion between the arbitrators.

SPEAKER COLLINS: In fairness to you and for the Senator who asked the question, and then, Senator Adler, you wanted to ask something, but maybe I'll let him respond to what I brought him up for.

I did have a question to Mr. Bliss. When no-fault went in, there was no arbitration system, is that not correct?

MR. BLISS: Yes, there was an arbitration.

SPEAKER COLLINS: Pardon me.

MR. BLISS: Yes.

SPEAKER COLLINS: It was created later on.

MR. LoCASTRO: No, simultaneously.

SPEAKER COLLINS: In '73?

MR. LoCASTRO: Yes.

MR. BLISS: It wasn't much of a system. The statute really delegated through AAA--

SPEAKER COLLINS: Oh, okay.

MR. BLISS: --the creation of this arbitration system.

SPEAKER COLLINS: But the peer review system that we are now using was not there in the beginning, is that not correct?

MR. LoCASTRO: There is no peer review system right now.

SPEAKER COLLINS: That's why I said I wanted to be educated. I'll be back.

Go ahead teach Senator Cardinale, if you may, and then--

SENATOR CARDINALE: I think he has answered the question, but just answered it a little more succinctly.

It's been represented before some of our other committees, and I think this Committee needs to hear this-- I'm not asking you because I am trying to set something up, but I think we need to have it on the record. It's been represented that in cases like *V and K* -- I think his name was Fiedler (phonetic spelling) the guy that was in Florida -- that cases involving those individuals were decided favorably to those individuals before the arbitration

panels, but subsequently, in another forum, those very same cases were found to have been fraudulent. Is that correct?

MR. LoCASTRO: It's correct and it's very common.

SENATOR CARDINALE: Thank you.

SPEAKER COLLINS: Senator Adler.

SENATOR ADLER: He can go next.

SPEAKER COLLINS: Assemblyman Charles.

ASSEMBLYMAN CHARLES: Just on that last question and last answer, was the issue of fraud litigated in arbitration?

MR. LoCASTRO: It's difficult to portray the big picture because you are given a limited--

ASSEMBLYMAN CHARLES: No, my question is a simple one. You give us a simple answer. My simple question is, was that issue of him being in Florida for fraud litigated in the arbitration hearing? Was that something that came up some time in a different forum?

MR. LoCASTRO: No, it was argued at the time of the hearing, but it did not come into play in the terms of these particular arbitrators.

ASSEMBLYMAN CHARLES: Just so that I'm clear, what was specifically argued in those hearings?

MR. LoCASTRO: The repetition, how several thousand claimants all got like treatment. The accidents were all questioned that you have five people in each vehicle and all ten end up treating at the same place, get the same treatments, start the same day.

ASSEMBLYMAN CHARLES: The issue of the doctor being in Florida, was that litigated in the arbitration hearing? Did anybody accuse him

when he came in and testified that “You didn’t do these things, nobody did these things, you were in Florida at the time”? Was that an issue--

MR. LoCASTRO: Yes.

ASSEMBLYMAN CHARLES: --that was heard by the arbitrator?

MR. LoCASTRO: Yes it was.

ASSEMBLYMAN CHARLES: And there was countervailing evidence that was put in by the other side.

MR. LoCASTRO: The problem with some of these cases is the assignment of benefits provision, too. So sometimes you don’t have the party there. For instance, the doctors don’t attend the arbitration so there is no-- The hearing isn’t expansive enough to allow for depositions or to allow for actual testimony at these hearings. They are meant to be conducted in a brief fashion, but the problem is they run a very fast-track system.

PRESIDENT DiFRANCESCO: Did they have other evidence?

MR. LoCASTRO: We had brought arguments that we had SIU. The typical investigation consisted of the special investigation, we had brought this testimony but--

PRESIDENT DiFRANCESCO: I’m trying to bring this to an end. His question was really, like he said, was there other evidence coming in from the other side that said otherwise? Yes, right?

MR. LoCASTRO: They brought proof that said I had backup. I had support people.

PRESIDENT DiFRANCESCO: That answers your question.

ASSEMBLYMAN CHARLES: Thank you.

SPEAKER COLLINS: Assembly Majority Leader DiGaetano.

ASSEMBLYMAN DiGAETANO: Thank you very much, Co-Chairs. Tony, it's good to see you again. I heard you testify prior on these issues, but other members of this Committee may not have. Is it still your testimony -- and it may not have been your's specifically, but is it still your testimony that about 2 percent or less than 2 percent of the claims in the State of New Jersey get taken to arbitration still, or has that number increased now?

MR. LoCASTRO: No, the 16,000 arbitrations for '97 is the all-time high in New Jersey. We haven't seen an increase in claims presented; in fact, the numbers show that frequencies are actually down, but severities are up. There are more claims going--

ASSEMBLYMAN DiGAETANO: So you're not taking more claims to arbitration this year as opposed to prior years.

MR. LoCASTRO: Well, more claims are being filed. Because what happens is, you have a phenomena where the providers now file 80 percent of these under the assignment of benefits provision. That's the difference. What you had previously is-- You know, arbitration was set up so that an innocent claimant could have a route to pursue their benefits without having to wait years for the courts. What's really happened is you have 80 percent now being filed by providers. That's what's driving this.

ASSEMBLYMAN DiGAETANO: Just a final point. You did say that your experience is you're losing 85 percent of the arbitration decisions. Is that correct?

MR. Lo CASTRO: Yes.

ASSEMBLYMAN DiGAETANO: Thank you.

Thank you, Chair.

PRESIDENT DiFRANCESCO: I just want to say, since we're getting a little bit off of the agenda -- and I know you're going to be coming back even if you're in Florida or something like that -- perhaps we should continue on our agenda with respect to--

You guys are actuaries? Is that the deal here?

SPEAKER COLLINS: Thank you, Tony.

As Mr. Guarini is taking his seat--

Mr. Bliss, if I may again-- Because when I was referring to peer review, I was talking about the current arbitration system. Is the current arbitration system-- Was that part of the original no-fault law of 1973 or was that-- Was the arbitration aspect of it with attorneys and retired judges, and so on, added later? That's my question.

MR. BLISS: I will have to check the statute for the effective date. I believe that it was part of the original law--

SPEAKER COLLINS: Of 1973?

MR. BLISS: --because it was necessary to resolve the disputes. Keep in mind, there was subsequent legislation that mandated nonbinding arbitration of bodily injury claims as part of the resolution of lawsuits over bodily injury claims. That's a separate arbitration process.

SPEAKER COLLINS: Okay. Thank you. Walter, I also assume that you will be available in the future to talk about some of these issues as we get into them later on. Correct?

MR. BLISS: Yes, sir. I just felt that--

PRESIDENT DiFRANCESCO: Senator Adler.

SENATOR ADLER: Is Mr. Bliss done? Because I have a couple of questions for him.

MR. BLISS: Can I conclude on just--

PRESIDENT DiFRANCESCO: He wants to ask you a couple of questions.

MR. BLISS: Thank you. Yes, sir. I mean, please.

SENATOR ADLER: I thought it was useful, your comparison of BI claims and PIP claims -- New Jersey versus New York and Pennsylvania. I guess it would be helpful to me and maybe other members of the Committee going forward, not for today, if you could prepare or if someone could prepare for us comparison state by state of the various coverages that insureds in New Jersey are required to have versus the coverages for PIP, for liability, for uninsured. The coverages in the states that we think will be useful for our comparative purposes given the demographics of New Jersey, maybe include Connecticut. I don't know what other comparable states there are. Not some of the rural states, but that would be very, very helpful, sort of comparing apples to apples and understanding that PIP's different in New Jersey than it is in New York or Pennsylvania.

MR. BLISS: Absolutely.

SENATOR ADLER: That's one of our requests.

MR. BLISS: If I had one message I wanted to leave the Committee with today, it is when getting into cost issues make sure you are comparing apples to apples. That's especially when looking at the comparative costs of tort systems. But on the New York data-- The New York data I talked

about earlier, I believe, didn't have to do with PIP. It was BI data. It was percentages--

SENATOR ADLER: Okay.

MR. BLISS: --of claims that pierced the threshold, and there already exists a published closed-claim study on that which I would love to be able to share with the Committee. The concluding word on the PIP-- Of course, you've all heard the term peer review and PRO legislation. That is an approach which would permit a before-the-fact instead of an after-the-fact review of the appropriateness of treatment and testing under the no-fault coverage. And, as well, it is a procedure that would be effectuated by doctors and not by lawyers. Again, that's obviously going to be a measure before you, and I would defer further comment on it.

Let me just conclude on the issue of fraud. There are-- Because fraud also is bandied about quite a bit. Our research indicates that there are two types of fraud. There is what you might call hard-core fraud, which is out-and-out preconceived criminal activity such as faking an accident or claiming injuries from an accident that never occurred or in the case of a doctor claiming to have provided treatment which never was provided. Then there is what you might call soft-core fraud, which is an opportunistic fraud. You begin with an accident -- albeit typically a minor one -- and that you exaggerate the injury and you pad the medical bills to build up the value of the claim.

Both hard-core and soft-core fraud are fraud, and they must be deterred by strong measures. And I know there is a bill pending in the -- administration bill pending -- Legislature which would define the offensive

claims fraud and make it a second-degree crime. I know that most of you are probably familiar with that bill, as certainly we would commend it to your attention.

But on the issue of hard-core fraud versus soft-core fraud, a closed-claim study involving some 15,000 bodily injury and PIP claims in 1992 -- in nine different states, 28 companies representing 68 percent of the auto market in those states concluded that about 36 percent of all bodily injury claims appear to involve either fraud -- hard-core fraud or buildup, exaggeration, adding, soft-core fraud. Of this 36 percent, 20 percent represents buildup only, exaggeration of injuries; 13 percent involves a combination of fraud and buildup; and 3 percent represents hard-core faked accidents, faked injuries, pure fraud.

The point of this is that measures designed to deter under the criminal law are essential but not enough to do the job in terms of addressing the overall fraud picture. The kinds of remedies you need are improved procedures for review of medical bills under PIP -- the kinds of things we've been talking about -- and the exclusion from the tort system of minor injuries, which we've also talked about.

In conclusion -- and I apologize not only to the Committee, but to my colleagues, Mr. DeFalco and Mr. Guarini, for hogging all this time -- I'd like to make three quick points. One, to reduce the premiums in New Jersey, you have to reduce costs. There is no magic solution to reduce premiums without reducing costs. And what we've been discussing today under the no-fault law include ways to reduce costs.

Secondly, New Jersey auto insurance problems -- and this is where the commercial comes in, in my opinion, I think you can infer from my testimony -- New Jersey auto insurance problems cannot be solved by eliminating the no-fault concept. Rather, we have to take steps to make the no-fault concept work by curbing excessive medical claims and curbing overtreatment and doing a better job in curtailing lawsuits from minor injuries.

And finally, as you no doubt have read in the press, there is talk about even repealing no-fault. I hope you would appreciate my opinion that such a step would be a backward step, respectfully, in that it would essentially mean that accident victims who were seriously injured now receiving no-fault benefits would not receive them under any such new law. And that you would effectively be deciding to deprive some of the most seriously injured accident victims benefits in favor in financing benefits to accident victims with minor injuries who are paid multiples of their medical bills in the form of pain and suffering awards.

In that cost-benefit equation, I hope that these very real benefits and the testimony of the people who were here in December involving serious brain injuries is especially poignant in this context. I hope, in addition to whatever costs analyses you do, you will keep centrally in mind these very important social benefits.

As you know, I'm here today, Mr. President and Mr. Speaker, with Tom DeFalco, who is the Vice-President of Actuarial and Statistical Services, who actually had a presentation prepared, as well as Mr. Guarini.

SPEAKER COLLINS: Well, thank you, Mr. Bliss, and before we get to the two gentlemen, let me just say that we very much appreciate you

coming. Don't feel at all, nor need you apologize for your presentation length of-- Personally, when we started these, I viewed them as building up to as much as eight hours -- these hearings-- We think we have a more realistic view and will react accordingly over in this meeting and others.

But I do have a question -- two questions -- and then Senator Adler has one and Leader DiGaetano. But let me just say that for clarification, you mentioned about reading in the press the repeal of no-fault. I read that, too, and then I read that it was my bill that repeals no-fault. Do I take it that you don't think-- You mentioned a lot of bills today you felt were pretty good. I just wanted to be clear on this. My bill to repeal no-fault, you don't think that's a real good idea?

MR. BLISS: I'm sure, Mr. Speaker, that--

SENATOR KYRILLOS: You said it respectively.

SPEAKER COLLINS: Well, let's hear his answer. I'm looking forward to this, Senator.

MR. BLISS: I'm sure that the idea in your bill is cast in the best possible form. But even in that form, I would think it, respectfully, would be a step backwards.

SPEAKER COLLINS: You don't have to show any respect for it. Just the way you presented it was understood.

I just have one question, and then we'll go to Senator Adler, and that is this. You were correct in your presentation of what, at least in my judgment, would happen with the repeal of no-fault. And then in mentioning what happened in our December meeting, that some people were somewhat surprised at in the sense that the discussion did not hone in so much on the

cost of what auto insurance is, even though we all know that you ask a person anywhere do you want to pay less for auto insurance, we all say yes-- But what we were covering, and so on. My question is this, and I was thinking of it that day and you've given me the opportunity. Prior to 1973 besides the no-fault system-- Let's go-- Let's pick an arbitrary year -- 1964. In 1964, these traumatic injuries that were described in December -- and that you say we have to keep in mind -- what would happen to someone in 1964 if they had these injuries prior to no-fault?

MR. BLISS: If they could not prove that somebody else was at fault for their accident, and then you had a contributory negligence, which is even more hard, they would have no protection whatsoever. They would become, unless they had health insurance, a public ward in a medical context.

SPEAKER COLLINS: Okay. Both of my colleagues have said charity care, which of course we have just done a great job with quite recently. That's my commercial.

MR. BLISS: One of the things, Mr. Speaker, that converted me to the no-fault system very early was the notion of the single-car accident. In a single-car accident, if you fall asleep at the wheel, you're a paraplegic. You have a family. You have dependants. You have nothing with the tort system. You have an accident in which you are more than 50 percent of fault-- And God knows we all drive and we all commit errors driving, and we know that in the right circumstances we can be more than 50 percent at fault. That person and dependents are entirely without remedy or recourse in a tort system. And all of that simply for the purpose of preserving the benefits for the least seriously injured.

SPEAKER COLLINS: Thank you.

Senator Adler.

SENATOR ADLER: Thank you, Mr. Speaker.

First, I don't think we should misconstrue the tenor of the previous meeting in which we had people who were seriously injured or had family members seriously injured. The reality was that we had it on a weekday when most people are working. The people who came to testify had a very traumatic experience, and so it's a foremost issue in their lives. Thank goodness they came and talked about the importance of the system. But I don't think we should lose sight of the fact that there are hundreds of thousands of people in New Jersey that do want rate reductions, and even though they couldn't be here during the business day, it's, while not the foremost issue in their lives, a critical issue in their lives, and I think probably a lot of them didn't come because it-- Frankly, they're cynical about our collective willingness to address the problem in a real way that brings those rate reductions. That wasn't what I wanted to ask Mr. Bliss, but I thought it was important to put at least from my perspective of that previous meeting into context.

On Page 6 of your written testimony, you talk about how New Jersey's treatment rate is 71 percent higher than New York state. And I wonder if you could really quickly summarize for me the various factors that you believe lead to such a much higher treatment rate, which you've characterized as excessive treatment for such things as sprains and strains. What are the factors? And I think maybe you've touched on most of them already -- professional arbitrators or *Oswind*-- But if you could really quickly

summarize for me, so I can understand how New Jersey is different from New York in ways that costs New Jersey insureds money.

MR. BLISS: I think the single biggest factor, and this in an intuitive judgment-- The single biggest factor is the targeting of the verbal threshold through exotic testing. And you ask, what is New York doing to curb it? Certainly New York has a different arbitration system than New Jersey does. Other ways that New York has curtailed it, I don't know, but I do know that building the case, padding the case for purposes of beating the threshold we believe is a substantial part of the higher percentage cost in New Jersey.

SENATOR ADLER: Maybe for a future meeting, if you could give us an actuarial estimate -- and maybe the gentlemen sitting beside you can give that to us today -- of the cost reduction that New Jersey would realize if we were to change from our current arbitration system to an arbitration system of professional arbitrators patterned after New York's example and history. If you have answers today, that would be great, but I understand you're coming to talk about things you knew you were going to talk about.

Thank you, Mr. Bliss.

SPEAKER COLLINS: Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: Thank you for that warmup, Senator Adler, because my question is along those same lines.

Walter, in that vein, we keep hearing in testimony from -- the viewpoint that New York's no-fault system is one that New Jersey's was originally modeled after and should be modeled after now because they apparently do it right, and everything you've said today continues in that vein. If I could refer to the charts that you've presented this Committee, specifically

Exhibit 1B, as in bravo-- With an engineering background, I love to look at numbers and charts, including Exhibit No. 9 on the average claims. But chart 1B or Exhibit 1B is really an exhibit that this Legislature and others before us have been living with, much to our chagrin, over the past number of years on this issue, and that is the comparison of states in the union and District of Columbia on auto insurance, premiums and expenditures.

Do I safely assume that the PIP payments and PIP coverage are reflected in Column 3, which is depicted here as liability average premium? Is that a correct assumption?

MR. BLISS: I don't see--

ASSEMBLYMAN DiGAETANO: Exhibit 1B--

MR. BLISS: I'm sorry, 1B.

ASSEMBLYMAN DiGAETANO: It's Table 1 -- Private Passenger Automobile Insurance Premiums.

MR. BLISS: Insurance premiums. Okay.

ASSEMBLYMAN DiGAETANO: State Average Expenditures and Average Premiums. This is dated '94.

MR. BLISS: Yes, I now see it.

ASSEMBLYMAN DiGAETANO: Am I correct in assuming that the PIP coverage is part of liability average, Column 3, Liability Average Premium?

THOMAS DeFALCO: I can speak to that one, sir.

ASSEMBLYMAN DiGAETANO: Can't be collision, and it can't be comprehensive--

MR. DeFALCO: Right.

ASSEMBLYMAN DiGAETANO: --and the three total up the average premiums.

MR. DeFALCO: One is called liability-- Yes, one is called liability-- This particular study is very broad, which includes liability, both bodily injury and property damage, PIP in those states that have PIP, and uninsured/underinsured motorists is also included. It's basically entire package of coverages which are generally required of anyone who buys insurance. So it does include PIP and also the uninsured and underinsured.

ASSEMBLYMAN DiGAETANO: Does include-- It does include?

MR. DeFALCO: Yes.

ASSEMBLYMAN DiGAETANO: Okay. I looked at this with great interest because the difference between New Jersey and New York as far as the total liability premium including PIP is \$61. I don't know how much of the total liability premium PIP is, but let's assume it's less than 100 percent for the total premium. Why would we have any reason to believe that New Jersey would experience a reduction of \$61, which is what is the difference in the liability average premium, if we adopted, say, the New York model of verbal threshold?

MR. BLISS: I'd like Tom to answer that if he could--

ASSEMBLYMAN DiGAETANO: Sure.

MR. BLISS: --but just on your premise, I haven't attempted to point to New York as--

ASSEMBLYMAN DiGAETANO: No, Walt. Others have, Walt. I'm not-- I'm not--

MR. BLISS: --a model.

ASSEMBLYMAN DiGAETANO: I'm not suggesting that you're the only one. As I said, in earlier testimony we had the same comment.

MR. BLISS: We have New York now. We have the New York verbal threshold now. If we have to point to a state, we would point to Michigan.

ASSEMBLYMAN DiGAETANO: Well, I didn't do that analogy yet, but I'll do it while you're speaking, if you like. What I'm trying to gather, for the Committee's benefit and anyone else who is interested, why would we in New Jersey expect even a \$61 reduction in premium, which is the total difference between New York and New Jersey-- This is the total liability premium. Why would we even expect that amount if we adopted the New York model in its entirety?

MR. BLISS: Well, we wouldn't, only because New York has the same threshold we do. The New York experience is especially useful to -- because there is a closed-claims study on the point to evaluate our threshold in light of their experience. The differential claims costs can just as well be a product of mix of business, demographically New York and New Jersey are different in terms of overall population density. Those factors have to be controlled for.

ASSEMBLYMAN DiGAETANO: Well, I don't know whether we're overall much different as far as density and demographics than New York, but obviously, we're being regularly being compared to New York, and certainly our insurance system is regularly compared to New York. What started this address in my review here of these charts is that New York is, at least in 1994, the fifth-rated state as far as total premiums. And we're about

\$77 higher -- \$77.12 to be exact -- than they are in total premium, and we're \$61 higher than them in liability. And if PIP is a function of -- or is a component of the total liability premium, and we adopted "the New York system" of dealing with the claims, which is a better system, would we be safe in assuming and realizing of \$61 in savings per policy? That's basically the question.

MR. DeFALCO: I would say most likely not. Probably the largest difference between the New York and the New Jersey liability costs is the fact that in New York everyone has the verbal threshold, while in New Jersey 11 percent, 12 percent have opted for no threshold. And those people, of course, are paying much more than the others in this State, and that tends to raise the average overall liability costs for everyone.

ASSEMBLYMAN DiGAETANO: So the difference -- the savings would be significantly less than \$60 per policy, \$61?

MR. DeFALCO: To move to New York system, I would say the savings would certainly be less than \$60 per car. I wouldn't say significantly necessarily.

ASSEMBLYMAN DiGAETANO: Thank you.

The second question I think is for you, Walter, but you may defer to someone else who may have a better response. As I understand it, again from prior testimony, there are about 40 states that have a fault-based system and 10 that have a no-fault system. You specifically addressed in your close of comments the one-vehicle accident and the person who was paralyzed as a result of that in a fault-based system not having coverage. To your knowledge or anyone else on the panel, in those 40-some-odd states -- and there may be

less -- but let's just say that the majority of states in the United States who have a fault-based system, is there coverage available to those drivers, optional coverage albeit, for those losses such as the one you described in a single-vehicle accident? Are they able to buy coverage somewhere for those losses?

MR. BLISS: Yes and no. It depends on the market, but in concept, yes. There are first-party coverages that are available. But keep in mind that once you start talking first-party medical, you're talking about a no-fault system.

ASSEMBLYMAN DiGAETANO: No, I understand that. But-- Here is where I'm going with it. This is the question to you. In light of that, is it your position that we should mandate every driver in the State of New Jersey has this first-party coverage through his or her automobile insurance? Is it your position that we should mandate they have that first-party coverage even in the one-vehicle accident? I'm not talking about passengers obviously, just the drivers because they're the only ones that would "not have the coverage," if we went to a fault-based system.

MR. BLISS: Or anybody over 50 percent of fault.

ASSEMBLYMAN DiGAETANO: Pardon me?

MR. BLISS: Or anybody over 50 percent of fault and--

ASSEMBLYMAN DiGAETANO: Well, assuming the passengers weren't at fault.

MR. BLISS: No. I'm not just confining my remarks to the one-vehicle accident, that's an example. Any two-vehicle or three-vehicle accident in which--

ASSEMBLYMAN DiGAETANO: No, here, my question is this. Is it your position that the Legislature in this State should mandate that every driver in the State of New Jersey carry this first-party coverage through his or her automobile insurance policy?

MR. BLISS: No. I actually commend to you the present law, which would permit the insured to have the option of substituting private health insurance. That's an affordability decision that the individual policyholder can make. But yes, my position is the preservation of this substantial no-fault benefit, which can only be financed by surrendering the right to sue over minor injuries.

ASSEMBLYMAN DiGAETANO: That really wasn't where I was going, but it's basic premise that I'm looking for your position on. I think you have stated that you believe we should mandate in the State that every driver have coverage for first-party coverage even if they are 100 percent at fault.

MR. BLISS: Correct.

ASSEMBLYMAN DiGAETANO: Okay. Thank you.

SPEAKER COLLINS: Thank you.

And thank you, Mr. Bliss, please stay.

And, gentlemen, either one.

MR. DeFALCO: All right. There was more overlap than I expected between what I had intended to say and what Mr. Bliss already said. So my comments -- my introductory comments and presentation may well be shorter than I had expected, but I will pick up the pieces from here and go forward from that point.

I did want to just very briefly review what is in an automobile policy -- what coverages are available and how they tend to fit together. You do have a handout which does this to some extent, so I will, I guess, fill in and expand somewhat on that. I believe it's the very first thing in the package that everyone on the Committee has.

We've been spending most of our time today with bodily injury and PIP, certainly the two coverages that are subject to the most discussion and two very costly coverages in the New Jersey system or in any system. Bodily injury of course is a third-party coverage. No individual recovers from his own insurance policy for bodily injury. If you are injured through someone else's fault, you recover from their bodily injury policy, not yours. Conversely, your bodily injury policy responds if you injure someone else through your fault as a driver.

Generally, this is done through a lawsuit; although, some claims are settled without the use of a suit. If the claim is settled through a lawsuit, an attorney generally gets approximately one-third of the settlement. In addition to that, the insurance company hires their own defense attorneys, and while they bill based on hours and such, rather than percent of settlement, on average the defense costs to the defense attorney add 20 percent to 25 percent to the total cost of settlement of all claims on average. So the attorneys get approximately one-third of the settlement as the plaintiff's counsel. Another 20 percent to 25 percent, in addition to settlement, to the defense attorney. So relatively small portion of the entire cost of the settlement actually goes to the plaintiff at all.

In a state like New Jersey with very high PIP benefits -- although, actual dollar losses, both excess medical, medical not covered, or wage loss in excess of what is covered under the PIP policy, is recovered under BI. This is a very small part of the total BI in this State. BI in this State is overwhelmingly pain and suffering or noneconomic loss.

The partner coverage to BI is probably the PIP. This is primary coverage. You recover from your own PIP policy, not someone else's, if you have a car and have it insured. It pays your medical bills, loss of income, essential services, and death. It also will modify your home, your car if you need it because of a serious injury, not normally part of health insurance in the traditional sense, but certainly related to the medical cost of the accident.

PIP is different from most medical insurance in that it has no internal limits, no manage care per se, that any medical bill that is related to the accident in any way is paid by the PIP carrier. And it's one of the few types of medical insurance that still operate on a total uncontrolled, unlimited, unstructured type of approach.

These are the two coverages that we've been talking about the most so far today and probably will as we go forward, but there are other important parts of the policy. One of these is the uninsured and underinsured motorist coverage. These pay what another driver who was at fault should have paid but could not if you are injured in an accident. Uninsured if the driver had no insurance at all or could not be identified. Underinsured if the driver had low limits of insurance and the value of your claim exceeded the value of the insurance policy.

Now, an uninsured or underinsured driver, technically their personal assets and future income are at risk if they are at fault, but as a practical matter, this is only a minor part of the total picture. Generally speaking, if a driver is uninsured, it is the uninsured motorists coverage of the injured person who pays the claim. Some years back, uninsured motorists was an extremely small cost, which is why it sometimes tended to get lost in the shuffle of looking into automobile policies. Now, however, it has become significant. Uninsured, underinsured motorists is the same order of magnitude of the other coverages in terms of annual costs.

Property damage and other third-party coverage, this pays for damage to your vehicle if you are in an accident and someone else is at fault. Although these claims sometimes go to suit also, property damage is much more often settled outside of the court system than the bodily injury is. Property damage is sometimes used as a proxy for the accident rate. Now this probably understates accidents for a couple of reasons. First of all, if it's a one-car accident, there's no one else at fault, so there's no property damage claim. In addition to that, very small claims tend to get paid outside the insurance system or very small accidents causing minor damage tend to get paid outside the insurance system with no filing of a claim per se. This is probably especially prevalent in New Jersey where the costs and future insurance surcharges of filing claims tends to exceed that in many other states.

All of these coverages with the exception of underinsured motorists are mandatory. Everybody who buys automobile insurance must buy all of these. In addition, there are two coverages that can be purchased to protect your own vehicle and your own vehicle only.

Collision insurance covers damage to your own vehicle when you are at fault in the accident. And, in many cases, someone will collect from their insurance first, and then the insurance carrier will subrogate -- recover from the insurance policy from the property damage of the other party who is at fault.

Comprehensive covers virtually any automobile damage. It is not related to an accident at all. When we think of comprehensive, the first thing that comes to most people's mind is probably theft and vandalism, and that is an important part of the coverage. But above and beyond that, comprehensive also covers weather-related types of things such as wind, water, hail, and ice. It also covers falling objects, damage to glass, and striking or being struck by an animal as a comprehensive claim rather than a collision claim.

So, briefly, these are the pieces that all go together that are parts of the policy. I know we are dealing primarily with BI and PIP, but we need to be aware that the two of them together are not the entire policy. The other pieces do need to get involved also.

As we started, we started speaking a little bit to the New Jersey premium comparisons to compare premiums state by state. As we are all probably too aware, we've been the highest-rated state for several years in a row in terms of total cost and unlikely to change in the near future.

One thing we should be aware of, though, that over at least the past four years, the New Jersey costs have actually been increasing slower than the countrywide average costs. It's not really that things are-- We're not facing a new problem here. It's not that costs have gotten out of control recently. The costs have been high for a long time, probably other than

through some major amendments to the law and coverage if we continue to do so.

There are a series of exhibits, that I'm not going to address in any detail, which breaks the cost down in detail by coverage. These were not compiled by-- I have received these quite recently, and I'm not familiar with the compilation. So, if anybody has any specific questions, I'll answer them the best I can, but I don't want to make any introductory comments about them.

I do want to make some introductory comments concerning the fast-track system, and I believe, Len Guarini is going to follow up with more details of the fast track when I am finished. The fast track is a voluntary compilation of basic insurance data by many, but not all, major insurance companies for the different lines of insurance business. The idea behind it, as the name fast track implies, is to get data out to the public as quickly as possible. While certainly insureds attempt to be reasonable and accurate in the data they submit, it is not subject to the kind of detailed checking and balancing verification that would be true in a statistical submission or a rate filing or in published financial statements.

The basic data contained in fast track are earned premium, earned exposures -- earned exposures mean the number of cars a company was dealing with at that point in time -- paid claim dollars, paid claim accounts. Now, since we're talking about paid claim dollars and paid claim accounts, they don't exactly match the exposures in the same report, because especially for bodily injury, it's usually two to three years between when an accident occurs and when the claim is paid. So we're talking about payments made today which

are related to cars that were insured two to three years ago rather than the ones that are insured at the same point in time.

The basic data here -- paid claim frequency tells us how many accidents occurred for a certain number of cars insured or, more specifically, how many claims were paid and closed for a specific number of cars insured. And again, as I mentioned, there is some lag problem here. We're talking about claims paid today. And especially for BI, these deal with cars that were insured in the past, not necessarily ones that are insured at the same point in time.

Severity is the average claim size. The number of dollars paid divided by the number of claims paid. Pure premium or loss cost, which are two terms that mean essentially the same thing, is the dollars of claims paid for each car insured. Now fast track is a handy thing to use despite the fact that it has some flaws along the way, but it's compiled for every state or at least almost every state by the same group of insurance companies. And it's been done essentially the same way for many years at this point in time.

Fast track is compiled for bodily injury, property damage, PIP in those states that have PIP, collision, and comprehensive. It is not compiled for uninsured, underinsured motorists. Again, primarily because some years ago, this coverage was very minor in cost and was not considered a substantial part of the system when this system was started. Another thing with fast-track data is it includes claim cost only and only those costs paid to claimants, which, of course, would include the claimants themselves, also body shops, doctors, etc. It does not include the cost of defending or settling claims, what the company itself pays to their attorneys and to other people who are involved in defending

and settling the claim. And these costs are generally viewed as being relatively high in New Jersey compared to a statewide average or a group of states in general.

So that's-- I just wanted to give you a little overview of the fast track and the coverages, and I know Len is going to expand more on fast track. Do you have any questions at this point, before he goes? I'll be glad to answer them now, or we'll both be around to answer questions later.

SPEAKER COLLINS: Thank you.

Are there any questions at this time? (no response)

Mr. Guarini, please.

MR. GUARINI: Okay. Thank you very much.

The charge that was given to Tom and myself by Ms. Purola was to walk you through the fast-track data despite the fact that actuaries usually have a lot of reservations about the data. But I'll try to give an explanation of the general trends, the impact of adopting the thresholds and contrast it to other states.

But before doing so, I almost feel compelled to tell you what the problem is with the fast-track data, and that is it's not rate-making data. For rate-making data, you need a one-to-one relationship between the exposures and premiums earned under a policy and the losses that are incurred under the policy. And that way, you're comparing one policy and its experience. Unfortunately with fast track, we don't have that one-to-one relationship. It is used to measure trends. It's usually used in filings to measure the trends in loss cost from one period of time to another and to trend losses into future periods.

However, to use it for trend, you have to have a stable environment. New Jersey can be called a lot of things, but it hasn't been in a stable environment in New Jersey for the last 10 years. We've had law changes, we've had a JUA depopulation, and you've had roll ons of higher deductibles -- all of which make the data for New Jersey very hard to review for trend purposes or even comparison to other states.

Regarding the differences from state to state, the fast-track data can give you some indication, but frankly, I thought long and hard about giving you comparisons because I'm sure people are going to draw the wrong conclusions from them. But I will share them with you and give you my input as to why there is differences.

You have differences from state to state because you have population density differences, the differences in surrounding states, the litigiousness, how law enforcement is, what the different speed limits are, what weather does. So it's very hard to look at two states and say, well, if I adopted this system in New Jersey, it's going to mean my costs are going to change. You can't make that comparison. To put it another way, you can take the best system known to man and put it in New Jersey and the least-efficient system known to man and put it in South Dakota, and you're not going to get a better rate in New Jersey than in South Dakota.

SPEAKER COLLINS: I didn't quite hear that. Would you say that one more time?

MR. GUARINI: Well, I'm saying you can take the best system known to man and put it in New Jersey and the worst system known to man in South Dakota, and you would not get a lower cost in New Jersey than South

Dakota because of the population density. Now, I don't mean that to mean that you should take the worst system and put it in New Jersey. I think you should put the most efficient system--

SPEAKER COLLINS: No, you don't have to explain. I just liked hearing it one more time. (laughter)

MR. GUARINI: I'm glad I made your day. (laughter)

I'm going to try and cut out some of the things that Tom mentioned.

It's important to note that the fast-track data is paid data. And again, that's very important. It's not this one-to-one relationship. Because when you look at the figures for 1997, you're looking at exposures or policies that we've written in 1997 and you're looking at losses that have paid in 1997, except that those losses weren't incurred in 1997. Some of them were incurred in '97, some in '96, and some as early as 10 years before. So it was under other policies. So it introduces biases in the data.

If you will, you can turn to Exhibit 1A in your package. I'd like to go through a little comparison of what's happening in New Jersey. And if you go to Page 2, it shows the physical damage coverages. Tom described them already. If you look at Collision, which is on the top of the page, and if you look at 1997, you'll note that the difference in the loss cost between New Jersey and countrywide are fairly close. And if you look at Comprehensive, you see that New Jersey is actually a little bit lower. The reason being is that we have much higher deductibles in the State of New Jersey.

About 10 years ago -- I believe it was about 10 years ago -- I guess, around the end of the '80s and beginning of the '90s, we rolled on \$500

deductible. Before then, most insureds had full coverage comp and \$100 deductible, and on collision they had \$100 and \$200 deductibles. Well, when you roll on higher deductibles, it dramatically reduces the cost. By the way, we also reduced our premiums in recognition of that. But the point is that you're not really comparing apples to apples when you look at New Jersey versus countrywide.

If you'll also look at the Change, on the right-hand side of the sheet, you'll see that over the 10-year period collision costs have gone up 13 percent in New Jersey where it has gone up 48 percent in the rest of the country. Well, that's sort of fallacious because of the fact that you're not comparing apples to apples. It's not that inflation has been less in New Jersey, it's because we've changed the product.

In addition, you had a vehicle inspection that came in, in the early '90s, which again helped. So this is the coverage where we have actually done something to help the situation. The same thing can be said for comprehensive as well.

ASSEMBLYMAN CHARLES: Mr. Chair?

SPEAKER COLLINS: Assemblyman Charles.

ASSEMBLYMAN CHARLES: Could you have the witness just take us through one line. Some of us didn't quite get the other--

MR. GUARINI: Sure.

ASSEMBLYMAN CHARLES: --explanation that was given by the previous witness of what this data represents. So if you would go--

MR. GUARINI: Start on the left side?

ASSEMBLYMAN CHARLES: Yes. Give us-- Go across one line and break it down, we might better understand the data.

MR. GUARINI: Surely.

ASSEMBLYMAN CHARLES: Thank you.

MR. GUARINI: Okay. Paid Claim Frequency -- that is a measure of involvement of accident frequency for the collision coverage in this particular case. And it's obtained by dividing the number of claims that are paid by the number of exposures and then multiplied by 100 to make the number--

ASSEMBLYMAN CHARLES: So in the case of, for example, if you're looking at collision in New Jersey, take one line and go across.

MR. GUARINI: Oh, okay. For New Jersey, the factor is 6.57. That means for every 100 cars, you would have 6.57 claims. I don't exactly know what 0.57 of a claim means, but it's on the average. The second--

SPEAKER COLLINS: If I may, let's round that off to 7.

MR. GUARINI: Okay.

SPEAKER COLLINS: Seven out of a 100.

MR. GUARINI: Correct.

SPEAKER COLLINS: So in New Jersey, 7 percent of the drivers have a claim on collision. Would that be a correct statement?

MR. GUARINI: Of \$500 or better.

SPEAKER COLLINS: Seven percent. Okay, thank you.

MR. GUARINI: There's a question on that, because you have salvage and subrogation. It's a question of whether or not the claim's been settled or not.

SPEAKER COLLINS: Well--

MR. GUARINI: Whether it goes into--

SPEAKER COLLINS: Let me just reserve my question until you go across the line, and then I'll ask the question I wanted to ask. Go ahead.

MR. GUARINI: The second column is Paid Claims Severity, and that's once you have a claim, how much does it cost on average. The third is a combination of both of the frequency and the severity, and it's what we call loss cost or pure premium. And basically it says that, you know, the cost for just the pure loss on the collision coverage \$153.

ASSEMBLYMAN CHARLES: That's a loss on premium versus payouts.

MR. GUARINI: That's the payouts versus exposure.

MR. DeFALCO: For every car that's insured for collision coverage in New Jersey, we pay-- The companies, on average, pay \$153 of collision losses for every car that's insured for collision.

ASSEMBLYMAN CHARLES: Thank you.

SPEAKER COLLINS: If I may again, so if the collision-- If you pay \$153 -- for every car, or just as in an accident?

MR. DeFALCO: That's every car.

SPEAKER COLLINS: Every car?

MR. DeFALCO: Yes.

SPEAKER COLLINS: So if you charge for every car in your company -- charged \$153 premium, you would break even?

MR. DeFALCO: No.

MR. GUARINI: No, you have expenses.

SPEAKER COLLINS: No, but just on that? Not to run your business, and so on--

MR. DeFALCO: Right.

SPEAKER COLLINS: --and you charge \$153?

MR. DeFALCO: Okay, right.

MR. GUARINI: You have the cost of settling the claims and the expenses of--

SPEAKER COLLINS: You don't even have to go into that. But I just wanted to clear-- So you're losing \$153 on collision, is what it's costing? Then of course you have to pay you guys and everyone else, but that's what that \$153 is.

ASSEMBLYMAN CHARLES: That's not loss, it's the cost.

SPEAKER COLLINS: It's the cost, right. So in order for them to make some money, they would have to charge them, say, \$253 and make \$100 a car, to be spent on other things. Correct, that's all. That's all I wanted, thank you.

MR. GUARINI: Okay. The Countrywide, the next set of columns, the same data only for the countrywide. Okay. And then, on the right side, it just shows an index to the first year. So in other words, when you look at New Jersey changing loss costs, it says plus 12.9 percent; that means the loss cost per car went up by 12.9 percent in the 10-year period.

SENATOR CODEY: Mr. Chairman?

SPEAKER COLLINS: Senator.

SENATOR CODEY: Yes. On the Countrywide, the numbers look pretty good for the State of New Jersey, yet we're number one for the cost of auto insurance. Understand my point?

MR. GUARINI: I'm sorry.

SENATOR CODEY: When you go across the countrywide figures--

MR. GUARINI: It looks about the same.

SENATOR CODEY: Yes. And that's comparing us to Montana, Idaho, you know, where there's no population. There's no densities.

MR. GUARINI: But you're comparing apples to oranges. I mean places like--

SENATOR CODEY: I understand.

MR. GUARINI: --Montana or such, they have full coverage comp versus a \$500 deductible. So it's-- This is actually something we've done to reduce the cost.

SENATOR CODEY: So within this category, Collision, we don't do-- We're decent in terms of containing costs?

MR. GUARINI: Correct. Yes. Because of the deductible that were put in.

SENATOR CODEY: But also the deductible now of \$500 that we put in, whatever, now is-- The rate of inflation really should be raised.

MR. GUARINI: Yes. There's no question that over time inflation eats away at deductibles. The higher your deductible, the greater the impact of inflation. Maybe the best way I can explain is, say for argument sake, you have two states that has a \$100 deductible and another had a \$500 deductible.

For argument sake, they both had a claim of \$1000. In the state with the \$100 deductible, the payment would be \$900. In the state with the \$500 deductible, it would be \$500. Well, say inflation pushes that loss from \$1000 up to \$1100. What the companies would pay would go, in the \$100 deductible state -- it would go from \$900 to \$1000. But in the state where you had the \$500, it would go from \$500 to \$600. Well, going from \$900 to \$1000 that's an 11 percent increase, but going from \$500 to \$600 is a 20 percent increase. So, yes, it eats away-- That's something that we roll away with time.

But, I mean, there's no question that this is something that's helped the profitability in this line and helped offset the tremendous losses we've had on our liability lines. Any other questions on that?

SPEAKER COLLINS: Assemblyman Charles?

ASSEMBLYMAN CHARLES: Yes. Just your last statement. It helps offset the losses, or it helps you in calculating rates? Is that what you meant? This type of data?

MR. GUARINI: It's-- There hasn't been a lot in the way of rate activity in the State of New Jersey, so companies haven't really had a chance to go in and true up the rates between the two coverages -- between the physical damages coverages and the liability coverages. But I think if most companies were to go in, they would offset one by the other.

ASSEMBLYMAN CHARLES: This data, then, it's helpful in one way. I didn't quite get what you meant. You said, this data is helpful to you in a particular way, and I didn't understand.

MR. GUARINI: Assessing trends. Okay. If we turn to the page in front of that--

SENATOR CARDINALE: Mr. Chairman?

SPEAKER COLLINS: Senator Cardinale.

SENATOR CARDINALE: It's often said that-- And I'd just like to get-- Because I think this is what Assemblyman Charles was asking, too. I'd just like to ask it a different way. That collision and comprehensive are actually used by the companies -- that your experience in those is used by the companies to subsidize PIP and bodily injury liability?

MR. GUARINI: Well, what I'm saying is, until you can go in and make a filing to true up your experience, you can have greater profitability of one line than another. There's no question that there has not been tremendous profitability in the State of New Jersey. In fact, I pulled the loss ratios for the last five years, New Jersey versus the countrywide, and the loss ratios in New Jersey have been 8 percent higher in New Jersey. It's running about 75.5 versus 67.5. So-- What I'm saying is, until companies can get in and start making filings under the expedited rate-filing process, where you'll see a shift of the premiums from the physical damage into the liability--

SENATOR CARDINALE: I understand that. But I think it's useful to understand, one, that there are many elements of an auto insurance policy, and I think you did that right at the beginning of the other gentleman's presentation, and that there is a certain cost to the company categorized into each one of these. And that if one of them loses money and another one makes money, that gets combined when you have a rate filing so that your average premium -- which is what we all talk about when we talk about a

\$1000 roughly average premium in New Jersey -- is a combination of all of these, but they can balance one another. The question will always get asked, and I think I'd like to ask it now is, how do the reserves that you set up affect these numbers?

MR. GUARINI: These numbers here?

SENATOR CARDINALE: Yes.

MR. GUARINI: There's absolutely no reserve in this at all. These are paid losses. But the numbers that are used in rate filings do include reserves.

SENATOR CARDINALE: I understand your answer and I know the answer to the question, but the money that you make on your reserve accounts--

MR. GUARINI: Investment income.

SENATOR CARDINALE: --does that count just like premium income?

MR. GUARINI: Yes, definitely. The so-called remapped formula says that companies are allowed to make 3.5 percent of every premium dollar including the impact of investment income. So it's all in there.

SENATOR CARDINALE: Now, if you took that reserve and you, let's say, reserved \$100,000 in a particular accident-- I know this is not in the collision, you're not going to reserve that, but let's say you reserved \$100,000, but you only paid out 70. What happens to the other 30?

MR. GUARINI: Well, it would show up in our development triangles, because the way we make our rates, we show historically what the reserve and the paid -- how the reserves and the paid losses play out. So if a

company traditionally overreserves in their filing, they have to put in a negative factor. In other words, if you're always overstating your reserves by 10 percent and, say, they're half the losses, you would have to reduce your losses in your filings by 5 percent. It's just the opposite though--

SENATOR CARDINALE: So the money comes back in?

MR. GUARINI: Oh, yes.

SENATOR CARDINALE: Just like the interest income would come back in?

MR. GUARINI: Yes, but--

SENATOR CARDINALE: Because that's going to be asked some where along the line, and I think it's good to get it on the record now that there is no way that a company, by overreserving, increases its profits--

MR. GUARINI: No.

SENATOR CARDINALE: --or, by having a good investment year, increases its profits.

MR. GUARINI: No, because that would go into the calculation. The rate-making process is a very self-correcting process. But traditionally, reserves are a develop-- The case outstanding reserves that are placed on claims traditionally go up quite substantially. And it's not that companies are just trying to put too low a reserve, it's sort of a development or, as the claims, as the reserves go up, it's because you get more knowledge. You know, you think somebody is just modestly injured, and you find out it's much more serious; then the reserves have to be increased.

SENATOR CARDINALE: Thank you.

MR. GUARINI: You're welcome.

Okay. Could we go to Page 1. Okay. If you look down at the bottom of the page, we have Property Damage. And again, if you compare it to New Jersey, you note that the New Jersey property damage pure premium or loss cost is 92 versus 78 for the countrywide. It's about 18 percent higher. But if you look over time, you'll see that New Jersey has gone up a little less than the countrywide. On the right-hand side of the column, you'll see that New Jersey is up 49 percent over the 10-year period, where the countrywide is up by 55 percent. I think one of the reasons for that could be the vehicle inspections that went in several years ago.

But the main reason that New Jersey's pure premium or loss cost is higher than the rest of the country is what you hear all the time -- population density. If you have a very populated state, more often than not you get a better chance of two cars meeting at an intersection or having an accident.

ASSEMBLYMAN GARRETT: Excuse me.

SPEAKER COLLINS: Assemblyman Garrett.

ASSEMBLYMAN GARRETT: Isn't it also that demographically driven as far as the type of vehicles and expense of repair of the vehicles in this State?

MR. GUARINI: Sure. If you have a more affluent state and people have more expensive cars, the severity is going to be affected.

ASSEMBLYMAN GARRETT: Are you then able to break down the distinction between the higher nature of the repair cost -- the fact that people are driving newer cars in New Jersey than maybe in some other states? First is the fact that our actual repair costs themselves-- The body shops in New Jersey, let's say, not to pick on any particular portion of it, but body

shops might be charging at a higher rate or doing more expensive labor costs or what have you.

MR. GUARINI: All those factors go into the losses that the companies incur. It's all taken into consideration. I mean, it also takes into consideration the fact that we're surrounded by very densely populated cities. Everybody talks about New Jersey's rates being very high, but those are people who never lived in New York City or Philadelphia. The rates are really high. I'm a New York City refugee. Believe me, New Jersey rates are high but not nearly as high as they are in New York City and I understand in Philadelphia as well.

I think if you turn to the next one, that's PIP, if you look at New Jersey versus countrywide, the main thing here you'll see that the New Jersey PIP is 111 versus a 77 for the countrywide. Now, that's 44 percent higher. But again, if you look at the right-hand side of this sheet, you'll see that the costs in New Jersey have gone up much less than the countrywide. New Jersey, over the 10-year period, has gone up 29 percent versus the countrywide of 96 percent. Why is that? There's a couple of reasons. First, you have co-pay and the \$250 deductible which have significantly reduced the costs in New Jersey. The third one is also-- We put the cap in at \$250,000. In the beginning, years ago, we had unlimited PIP. That went out in '88.

The disturbing part is the last couple of years. The trend has been--

ASSEMBLYMAN DORIA: Mr. Chairman?

SENATOR BENNETT: Yes, Assemblyman.

ASSEMBLYMAN DORIA: Can I have a clarification? So what you're basically saying there-- I just want-- When we talk about New Jersey having more problems, here's a case of where the reforms that have taken place in the past we've been able to slow the rate of increase significantly lower than the national average.

MR. GUARINI: Yes, it helped. But one of the problems that I see-- If you look at the last four years, where there hasn't been any reform, the costs are going up quite more rapidly. In the last four years, countrywide has been going up at a rate of 13 percent. It went up 13 percent in four years; whereas, in New Jersey it went up 35 percent. And I think we've gone through the reasons why New Jersey's costs are higher -- the Cadillac coverages. We've talked about the--

ASSEMBLYMAN DORIA: I don't see-- Did you show me where that is? I don't see it.

MR. GUARINI: No. It's not in here. But if you were to divide--

ASSEMBLYMAN DORIA: So that's not here, is what you're telling me?

MR. GUARINI: Yes. What I'm saying is, if you compared the '97 and the '93 results--

ASSEMBLYMAN DORIA: But here it shows that the increases, the percentage of loss cost, is running from '94, '93. It was minus 5.6 percent then 9.6 percent, then 9.0 percent, then 8.5 percent--

MR. GUARINI: Yes, that's an index back to 1987.

ASSEMBLYMAN DORIA: That's indexed back, right?

MR. GUARINI: Yes.

ASSEMBLYMAN DORIA: But nationally, it's running-- The loss costs are running somewhere in the 70 percent to 80 percent ranking. So based upon this--

MR. GUARINI: What happens--

ASSEMBLYMAN DORIA: --it's in a much better situation.

MR. GUARINI: Yes, it--

ASSEMBLYMAN DORIA: I'm going by what you have in front of me.

MR. GUARINI: Yes, okay.

ASSEMBLYMAN DORIA: If you have other statistics, I'd be happy to look at them, but this is what you gave to us.

MR. GUARINI: Yes. Let me try to explain them though. These changes -- the percent changes you have there-- These are the percent changed to 1987. So what happened is, the cost to the rest of the country went way up and is now sort of flattening out; whereas, New Jersey was down. I mean, the loss cost, if you look back in 1993, they were actually down from 1987. It's been only in the last couple of years that it's gone way up.

ASSEMBLYMAN DORIA: But not way up comparatively speaking to the rest of the nation?

MR. GUARINI: Yes, it has. Let me see if I can--

ASSEMBLYMAN DORIA: Well, 9.6-- Let's just take 1994. The percentage of loss costs in '94 in New Jersey was 9.6. The percentage of loss costs nationally, countrywide, was 7.9 percent. That to me seems to be a difference of 70 percent significant.

MR. GUARINI: No.

ASSEMBLYMAN DORIA: I would think that's statistically significant.

MR. GUARINI: Just-- Those are the changes back to 1987.

ASSEMBLYMAN DORIA: Yes, we understand that. And that's the base year that you're basing this on. So my question is, if you look at these statistics which you gave to us, using '87 as the base year, the increases in New Jersey are significantly less than the increases nationally based upon the '87 base year? And I understand it's '87 base year.

MR. GUARINI: Okay. And the point I was trying to make is, if you look at from 1993 to 1997, New Jersey went from \$82 to \$111. It's gone up almost \$30. The countrywide went from 68 to 77 for only \$10. I understand your point.

ASSEMBLYMAN DORIA: So what you're saying is absolute dollars we've gone up higher, but percentage-wise we've not gone up that much?

MR. GUARINI: No. Percentage-wise it's gone up higher in the last four years. If you divide 111 by 82, you'll get an increase of 35 percent. If you were to divide 77 by 68, you'd get an increase of 13 percent.

ASSEMBLYMAN DORIA: Okay. It just seems like the percentages don't equal the absolute numbers using the base, year of '87.

MR. GUARINI: Well, it's just the way these numbers are portrayed. They show you an index back to 1987, so it gets a little confusing.

ASSEMBLYMAN DORIA: You don't want me to use that old expression about figures?

MR. GUARINI: I'd appreciate it if you didn't.

ASSEMBLYMAN DORIA: Thank you.

SENATOR BENNETT: I just wish they were a little larger so someone my age could see them. (laughter)

ASSEMBLYMAN DORIA: That's why I use glasses.

SENATOR BENNETT: All right.

ASSEMBLYMAN DORIA: You're getting there, John.

SENATOR BENNETT: I'm there.

MR. GUARINI: Okay. Which brings us to the last coverage and that is--

ASSEMBLYMAN GARRETT: Mr. Chairman?

SENATOR BENNETT: Yes.

ASSEMBLYMAN GARRETT: Before you go on, I think I understand your point. Your point is, correct me if I'm wrong, that we've seen a significant change in New Jersey compared to the national average in the last four years, '93 to '97.

MR. GUARINI: And before that. It was because of the reform that was put in. The introduction of the \$250 deductible, the co-pay, and we bring the limit from unlimited down to \$250,000.

ASSEMBLYMAN GARRETT: So I can understand it to mean that we were-- Our rates were going up. We did some reform. The reforms kicked in that sort of leveled things off for a bit, but then at '93 now we see the-- From '93 onward, we see an increase again.

MR. GUARINI: Yes.

ASSEMBLYMAN GARRETT: Now, can we draw any conclusion as to why it is -- even though we still have the reforms in place -- we're seeing the dramatic increase still, even though we have the reforms in place?

MR. GUARINI: Well, there was a lot of testimony to this before. You see a tremendous increase in the number of cases where insurance companies feel compelled to go to arbitration. We went from 3400 cases before the AAA to 16,000. We see an influx of the exotic diagnostic treatments. One of the treatments was described to me as something that was reserved for MS and Lou Gehrig's disease, which is now being used to test our whiplash cases. So all these devices are being used and the costs are going up rather dramatically.

I guess you've summed up exactly what I was saying before, that the reform helped, but we still have a problem here.

ASSEMBLYMAN GARRETT: Great. Thanks a lot.

ASSEMBLYMAN DORIA: So the FAIR Act worked at the beginning from 1990 to '93?

MR. GUARINI: The--

ASSEMBLYMAN DORIA: Well, you said that the reform--

MR. GUARINI: There are portions of the FAIR Act-- The 250 deductible for the co-pay was very effective in reducing costs.

Yes, sir.

SENATOR KYRILLOS: Joe was agitated before, he's happy now.

ASSEMBLYMAN DORIA: No, I'm not.

MR. DeFALCO: Joe, one thing-- Assemblyman Doria--

ASSEMBLYMAN DORIA: It just gets confusing, and I'm not an expert, so that's why I'm trying to get a clarification.

MR. DeFALCO: Assemblyman Doria, one thing that I would comment that the 1988 Reform Act and the FAIR Act have only passed 16 months apart. Because of the time it takes to settle claims and such, it's virtually impossible to say how much of those two bills individually helped. The two of them together certainly helped, but to identify which of the two it was -- is virtually impossible. Because they passed-- It's only 16 months apart, which in insurance time is not much time at all.

MR. GUARINI: Again, the two drivers are the 250 deductible with co-pay and the limitation of the 250.

All right. If we turn to BI, and here's where you start seeing some of the problem.

SPEAKER COLLINS: Hold one second, please.

Assemblyman DiGaetano has a question.

ASSEMBLYMAN DiGAETANO: Mr. Guarini, you've been going over -- I was out of the room for a short period of time -- the chart, Exhibit 1A, Page 1, personal injury. Is that correct?

MR. GUARINI: Yes. Right.

ASSEMBLYMAN DiGAETANO: And you were discussing years '90 to '97. Well, tell me why I should not think it significant that for years '90, '91, and '94, '95, and '96, those are statistically identical loss costs? The year '94, '95, '97 -- dollars-- The two years that are the anomaly are '92 and '93, but the real increase -- the significant increase -- is from '96 to '97, from \$94 loss cost to \$111. Is that an incorrect review of that chart?

MR. GUARINI: Well, there was corrective action that was happening. It takes some time for the impact of deductibles and the 250 cap to go in. So that was spread over a long period of time. There was also another phenomena that's in here that helped reduce the cost -- or not really help reduce the cost, but make it look like the costs were going down. And I really didn't want to get into it, because it's a little confusing. But the JUA depopulation is something which actually had an adverse impact on the expense of the companies. However, because this is paid data, at first it has a positive impact. And I--

ASSEMBLYMAN DiGAETANO: So that would be reflected by the '92 and '93 data?

MR. GUARINI: To some extent. Basically what happens is this. Because there's a lag in claims coming in and losses being paid, when the JUA was depopulated, we got all the exposures right away. And they show up in the denominator of the equation. But the claims don't come in until a couple years later. So if you have-- Since you're talking about pure premium and its losses over exposures, if you double your exposures but only half the losses coming from those policies come in, you're going to have a dramatic decrease in your frequencies and lawsuits.

ASSEMBLYMAN DiGAETANO: But I understand that. I'm just addressing the column which is Average Loss Cost and observing that from '90 to '97, with the exception of those two years, '92 and '93-- I'll take your explanation for it. The average loss cost is statistically the same.

MR. GUARINI: It's the same, but it's because I think of the two phenomenon that we're talking about.

ASSEMBLYMAN DiGAETANO: I understand. But the significant difference is '96 to '97 where we went up \$17 based on \$94 average loss cost.

MR. GUARINI: The--

ASSEMBLYMAN DiGAETANO: What's that attributable to?

MR. GUARINI: I can't tell you that. I don't know.

ASSEMBLYMAN DiGAETANO: Okay.

SPEAKER COLLINS: Mr. Guarini, go ahead.

MR. GUARINI: Okay. The last coverage is BI. This is where you really start seeing a difference. The New Jersey loss cost are 66 percent higher than the countrywide. That's despite the fact that a very large percentage of the country has full tort, and there's absolutely no limitation on your right to sue. We spoke a lot before about the reasons why. But needless to say, some tightening of the verbal threshold would help tremendously in reducing those costs. This is really not the entire picture, because as we mentioned before, this does not include UM. And the UM costs in New Jersey are significantly higher than other states.

SENATOR KYRILLOS: What was that?

MR. GUARINI: UM. That's uninsured motorists. That takes-- If someone hits you and they're uninsured, it takes the place of BI coverage.

SENATOR KYRILLOS: Why is it higher here?

MR. GUARINI: There's a higher percentage of people who are uninsured in this State. That's the only reason I can come to.

SENATOR KYRILLOS: Excuse me. I'm sorry.

Mr. Chairman?

SPEAKER COLLINS: Senator Kyrillos.

SENATOR KYRILLOS: Is, on this same point, insurance mandatory in most states, in some states, and I suspect in some it's not mandatory?

MR. GUARINI: Yes. Very high.

SENATOR KYRILLOS: That notwithstanding, we still have a very high uninsured motorist coverage here?

MR. GUARINI: Yes. There's also another part of the picture that's not here is the fact that the PIP costs are really much higher than they're shown here because you have the UCJF. That's the amount of money that's pumped into the cost of insurance. It's tremendous just from the UCJF. And we're paying to some degree for a past problem which has been rectified. We had unlimited PIP and losses in excess of 7500. Don't go into the rate-making company-- I'm sorry, 75,000. Excuse me.

It's like dealing with my bills with my wife, but I'm making the mistakes as usual.

But the 75,000-- All the lawsuits in excess of 75,000 are paid through the UCJF, and it's paid on the pay-as-you-go basis. So we're paying for claims that happened well over 20 years ago. We'll continue to pay for them for quite some time, even though we had brought the cap down to \$250,000.

I mentioned before that everybody is talking about the rates being very high, and they are. But the loss ratio is significantly higher in New Jersey than the rest of the country. Our loss ratio-- This is taken from the best-- It's a compilation of 98 percent of all the companies, and the loss ratios for 1992

through 1996 in New Jersey were 75.7 versus 67.6. So it's some 8 points higher. Now there's two components of the loss ratio. It's losses divided by premium. So if a loss ratio is much higher than other states, either the losses are higher or the premiums are too low. So I guess we want to concentrate on the fact that the losses are too high, and hopefully we can do something to reduce them.

I have some exhibits which frankly I've flip-flopped about three or four times as to whether or not we should put them out because I'm afraid people are going to look at them and start drawing conclusions. It compares the pure loss--

SPEAKER COLLINS: Before you go on, why would you then give them to us unless we were going to draw conclusions? (laughter)

MR. GUARINI: I'll tell you what. Maybe I'll just pass. But needless to say, if you look at the loss cost comparison from state to state, you'll find that there's not a tremendous difference from New Jersey to other states when you're looking at property damage. The difference becomes more pronounced when you start looking at PIP, and it becomes very pronounced when you look at bodily injury coverage. And if I had it for you, it would really be off the charts.

SPEAKER COLLINS: Let me ask you a question. When we were talking earlier -- and this is not to push forward my bill to repeal no-fault, because that's just sitting there along with so many other bills that many on this Committee have. But you just mentioned that when you look at these numbers and see the rates, that most of the country has a tort system. And you just said that a few moments ago. Yet-- And I'll-- Mr. Bliss said this --

strongly believes that we should keep no-fault and go accordingly and, I'm sure, improve it, as we've heard the debate for more than the decade I've been here in Trenton. My question is this and maybe to Mr. Bliss, are we just ahead of the curve with no-fault, or are these other states that have the tort system are they just wrong?

MR. BLISS: I think historically-- I think the no-fault system is the direction the world is going much as workers' compensation from perhaps a lot of parallel reasons. Workers' compensation became the universal way to handle workplace injuries. Frankly, we could not conceive of a return to the tort system for workers' workplace injuries. Similarly, I see that trend. All of the metropolitan states, the congested-- Or most, excuse me-- Most of the metropolitan states, the congested states led the way in no-fault and have stuck with no-fault. In a highly congested, high-speed traffic state, it makes eminent sense to find some more efficient way and perhaps more universal in scope to address injuries and accidents.

SPEAKER COLLINS: I have a question to anyone. I'm more than willing, even though it will be on the record-- And this will come up, I'm sure at later meetings, but just in general opinion -- much more expertise than surely I have -- how many New Jersey citizens, insured citizens, those who have insurance, never utilize the "benefits of the system," because thank goodness they're never in an accident? What percentage of the New Jersey insured citizens do you think fall into that category?

MR. BLISS: I think it's an actuarial question. Although I recall the old rule of thumb, a good risk is a risk that has an accident every 20 years

and a bad risk is one that has an accident every 7. So I mean, accidents tend to be rare events for everybody. We buy insurance--

SPEAKER COLLINS: Exactly.

MR. BLISS: --for protection against the risk only.

SPEAKER COLLINS: I have no problems with that, and that's the point I continually try to make when people are calling my office.

Actuarials? Gentlemen, either Mr. DeFalco or Mr. Guarini?

MR. GUARINI: I'm just--

SPEAKER COLLINS: Just a general idea.

MR. GUARINI: Okay, I'm just looking quickly at these numbers for common collision. Now, these are independent type coverages. Comprehensive is no way related to collision. And if you add the frequency for those two pieces together, you're talking about a little over 10 percent.

SPEAKER COLLINS: But that's in any one year?

MR. GUARINI: In one year.

SPEAKER COLLINS: And then we don't now how many of them are repeat accident victims.

MR. GUARINI: Oh, sure. There's-- A lot are repeat, I mean--

SPEAKER COLLINS: Exactly. See, the reason for my question is one of the things that I think has put us into a difficult position here in New Jersey is that-- Yes, for all the reasons, whether it's right or wrong, we might have this great system of paying the medical bills, does this, does that -- does everything else -- but I don't think anyone would want anything less if they could have everything they wanted. But the issue is that people are upset with their rates, and one of the reasons, it seems to me, is that so many people never

get the benefits of this wonderful system. And therefore I, for one, think that what we have to look at is to cut back on that wonderful system, because people are obviously frustrated at the rates they're paying. That was the whole reason for my question.

MR. GUARINI: Well, when you're talking about the wonderful system, I was giving you numbers on the physical damaged side. The liability side-- The number of people who actually are involved with personal injuries -- it's much less than that.

SPEAKER COLLINS: Assemblyman DiGaetano.

ASSEMBLYMAN DIGAETANO: Thank you very much, Mr. Chair.

Gentlemen, I'm not sure which of you wants to take a stab at this one, but for a number of years we have been compared, as a state, on auto insurance premiums. And invariably, the retort comes -- whatever our standing is, one or two -- that we don't really compare with the North or South Dakotas or the Iowas. So here's the question. Without going to the actuarial data, what states do we compare to, as far as demographics?

MR. DeFALCO: Certainly it would have to be a relatively urban state. Rhode Island is the second most urbanized state in the union, so that would be a not bad starting point. Other relatively urban states, our two immediate neighbors, New York and Pennsylvania, less urban than New Jersey but still relatively urban. Connecticut, Maryland would be other possibilities. California, despite the fact that it has large rural areas, they are so rural that the vast majority of Californians live in or near the city. So they would be a few that come to my mind as places you might want to compare to.

Len, do you have anything to add or subtract?

MR. GUARINI: I would say we don't compare with anybody.

ASSEMBLYMAN DiGAETANO: We don't. Massachusetts? None of the other New England states?

MR. GUARINI: No. I mean-- Name one other state that has New York on one side and Philadelphia on the other side. I mean--

ASSEMBLYMAN DiGAETANO: Geographically impossible.

MR. GUARINI: --I've seen charts where New Jersey has more people per square mile than every country in the world except for Sri Lanka and Bangladesh. I mean, we have approximately 30 percent to 35 percent more cars per square mile than any other state in the union.

SPEAKER COLLINS: You don't have to go further. I liked your answer because I for one-- I come from Salem County, which is the least densely populated county in this State, and when I look at the traffic in Salem County, which has increased-- I recently had to wait 10 seconds to cross a major highway. (laughter) But I have watched it increase-- It was at rush hour, too. (laughter) Having said that, it still is-- That's Salem County where if you go 10 miles in any direction, towards Philadelphia at least, the whole world seems to be there-- Well, at least it was this morning coming up, so I agree totally.

And, in fact, that not to ever-- And I said this earlier, Mr. DeFalco, when you started to speak, your voice, your presentation-- I whispered to the Senate President. I said, I'm not going to question this guy, he absolutely knows what he's talking about. But I will say this, I wouldn't even compare us to Pennsylvania, because you have a couple major urban

communities, Philadelphia and Pittsburgh, but the rest of the state, at least the Pennsylvania I've traveled, makes Salem County look like a metropolis. So we are far different than all the others. I liked your answer in that sense.

Anyone else have a question?

MR. GUARINI: I guess that made your day twice, now.

SPEAKER COLLINS: Yes.

Senator Kyrillos.

SENATOR KYRILLOS: Thank you, Mr. Chairman.

In keeping with this apples and oranges theme, we kind of established that in terms of demography, we're kind of apart from all the rest, even our near neighbors of New York and Pennsylvania and almost any place else in the country. You've talked a little bit about it, but hammer it away for people the differences in coverage as well. I try to impart this to my constituents, and we've talked about this a little bit already today. When they see that ranking of New Jersey being No. 1, and I say, well, apples and oranges are different demographically -- we've talked about that, but we're different in terms of coverage as well. It's a very generous coverage. And somebody said earlier, we can only change things unless we take costs out of the system, i.e., change the kind of coverage. That's how I understand that. Can we amplify on that a little bit -- kind of a summary question -- if you will, for this hearing, I think, in some ways.

MR. BLISS: Well, you won't find many states with a richer first-party benefit, albeit Michigan has an unlimited medical still. The costs that you have to be attentive to are the PIP and the BI costs at the moment. Those costs can be reduced by eliminating claims from minor injuries.

SENATOR KYRILLOS: So what you're saying is that the personal injury protection for motorists in New Jersey is more generous than most states in the union. Is that correct?

MR. BLISS: Correct.

SENATOR KYRILLOS: And the combination of no-fault benefits coverage, regardless of who's at fault, along with a relatively easy opportunity to file lawsuit for not only economic loss, but also pain and suffering is a more generous combination than most states. Is there any other with as generous a combination of no-fault plus pain and suffering opportunity?

MR. BLISS: Michigan has an unlimited medical, but they have a much tighter threshold in terms of restrictions on suit. So--

SENATOR KYRILLOS: What about California, for example?

MR. BLISS: California, I believe, is a tort system.

SENATOR KYRILLOS: I had one other question. Should I go now or--

SPEAKER COLLINS: Go right ahead, Senator.

SENATOR KYRILLOS: Mr. Chairman, somebody talked about the personal injury protection and compared the constraints with access to PIP in the auto insurance sense with health insurance, and I believe it was the representative from New Jersey Manufacturers. Can you talk a little bit more about that? I don't think people fully realize that the reforms that have come to health insurance in this State and this country have not come to the health insurance component, if you will, of auto insurance, i.e., PIP, as it is called in the very same way. It's one of the drivers of that high PIP cost.

MR. DeFALCO: Right. PIP has no utilization, minimal utilization review, minimal second opinions. Although there is a fee schedule, it's relatively high compared to fee schedules at HMOs, and large health insurers can negotiate that. The questioning of how often one should be treated and by whom comes after the fact if at all. So it is very different from virtually all health insurance these days, which is a managed care type of situation, where the type and degree of treatment is determined before, rather than after, the fact.

There are heavily steeply negotiated fee treatments. The person receiving the treatment has almost total control over whom he sees to get the treatment as opposed to, again, much of the health insurance market where there are directives to whom you may and may not see. You need to get permission from a certain physician to see some one else and such.

So PIP is really as close to unmanaged care as any system is these days. And there are also no internal limits, like health insurance will frequently limit chiropractic, psychiatric, physical therapy, and such, none of which are limited on a per type of treatment, per type of provider benefit under PIP.

SENATOR KYRILLOS: For the same wisdom that's prevailed on the health insurance side to contain costs and, therefore, make health insurance more affordable for people have not come into the picture, vis-à-vis PIP and auto insurance.

MR. DeFALCO: And under current law, it can't.

SENATOR KYRILLOS: And under current law, it cannot. And other states, have they fit to make PIP auto insurance more akin to health insurance vis-à-vis cost containment and cost controls?

MR. DeFALCO: Maybe Mr. Guarini could speak--

MR. GUARINI: There's fee schedules-- There are much more extensive fee schedules in both Pennsylvania and New York. There's a lot of services that are not under the fee schedules in New Jersey.

SENATOR KYRILLOS: So then--

I'll stop after this, Mr. Chairman. If I could--

The cost of PIP really can be pinned to two factors. One, no cost control, no constraints. And perhaps, second, what Walter Bliss was talking about before, and that is, the scenario to bring about a more successful lawsuit overutilizing the health care system through tests and other means. Maybe you can't have one without the other, but they are both drivers of making PIP more expensive than it ought to be.

Okay, thank you.

SPEAKER COLLINS: Thank you, Senator.

Gentlemen, let me speak for Co-Chairman DeFrancesco and all the members of the Committee. To devote this much time to us voluntarily and, hopefully, to even be available if we need your assistance in the future, we thank you for what you've done and thank you in the anticipation of what we may ask you to do. This was very educational, laid a solid background to where we will be going from here.

And our plan at this time -- the Senate President and myself plan to call the next Committee meeting on the 15 of this month. We will make sure that that is a date available to all of us or most of us, but it will be on the 15. And for those who have interest of where this would be going, we anticipate possibly four meetings after that. Each of the next five will be

designiated to particular aspects of insurance here in New Jersey, including the possibility of the elimination of no-fault and all of the other areas that we have heard about today and many of you out there where thinking about.

So I thank you again, gentlemen, sincerely for your efforts.
Committee members, thank you all.

SENATOR CODEY: Mr. Chairman? Did you say we were meeting on the 15?

SPEAKER COLLINS: The 15.

SENATOR CODEY: That means we're going to have Monday, Tuesday, Thursday? I just-- Those of us who have to work for a living.

SPEAKER COLLINS: We-- As I said, that is our plan. We will-- I'm sure the Senate President will discuss that, and I heard you, Senator.

Thank you very much.

(MEETING CONCLUDED)