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# *Committee Meeting*

of

## JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

*“Deliberations with regard to automobile insurance reform”*

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**LOCATION:** Committee Room 11  
State House Annex  
Trenton, New Jersey

**DATE:** March 26, 1998  
9:30 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 Jr.  
Senator Richard J. Codey  
Senator John H. Adler  
Assemblyman Paul DiGaetano  
Assemblyman E. Scott Garrett  
Assemblywoman Clare M. Farragher  
Assemblyman Joseph V. Doria Jr.  
Assemblyman Joseph Charles Jr.



**ALSO PRESENT:**

Thomas K. Musick  
*Office of Legislative Services*  
*Committee Aide*

Laurine Purola  
Jarrod C. Grasso  
*Majority Staff*  
*Committee Aides*

Thomas J. Hastie  
Tim Clark  
*Democratic Staff*  
*Committee Aides*

***Meeting Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATE PRESIDENT DONALD T. DiFRANCESCO (Co-Chairman):** Can we can take our seats please.

We saved the front row for the press. We made sure of that.

Would everybody take your seats please, we're going to start.

Where is everybody? I thought it was a lot more crowded the other day, wasn't it?

SENATOR CARDINALE: Well, now everybody thinks we are not doing anything.

PRESIDENT DiFRANCESCO: Was everybody meeting in rooms somewhere?

Good morning. Let's see, Joe Charles I know is here.

Joe Doria, is he around? (no response)

Senator Codey around? (no response)

Senator Adler is here.

Senator Bennett around?

ASSEMBLYWOMAN FARRAGHER: He's in the building, Mr. President.

PRESIDENT DiFRANCESCO: Who?

ASSEMBLYWOMAN FARRAGHER: Senator Bennett.

PRESIDENT DiFRANCESCO: Senator Bennett?

ASSEMBLYWOMAN FARRAGHER: Yes, he was here before I was.

PRESIDENT DiFRANCESCO: Do we have committee meetings today?

SENATOR KYRILLOS: There are committee meetings today.

PRESIDENT DiFRANCESCO: Okay, the Speaker is right in the back, so I would like to start the discussion. I would like to say a couple of things. Since I'm in a bad mood, I might as well let everybody else know I'm in a bad mood. (laughter)

I made the statement on Monday -- just for the benefit of the Committee -- that I thought we were moving along pretty well. We've done a lot of work on this, and I was still pretty optimistic. It was immediately followed by a statement that at this rate we won't get done until Christmas.

I'm a little disturbed by some of these statements. It's counterproductive. It's not members of the Committee, it's members of the public who are watching. It's people who represent various interests, in this case, the insurance industry. And then, again, reading this morning that the speculation that the Assembly session being canceled was to embarrass the Governor in some way or to make the Governor more humble, or something like that, it's another ridiculous statement, I thought.

I just want to say that to the members of the public it's not productive to do that. It's not good to make those statements and expect that we can work together on these issues, just like it's not good to have 300 lawyers calling my office in a couple of days. It doesn't work for me, I can tell you that. I know there is a lot of lawyers around the state. I know there are a lot people who are working in their offices.

It's not good for me to get, in my office, the phone ringing off the hook so that we can't really deal with the real constituents, and the fax machine never stopping -- you want to tear it out of the wall. Everybody is faxing you things about this that you already have, and the real people, the

people that you are trying to serve in your district, are unable to call you on the phone, fax you anything, really can't talk to you in any way, and I don't think that's a good thing.

I wish it would stop. I know it won't. I don't know if the Speaker is experiencing the same things in his office that I am. I don't like it. I don't like the statements because I thought we were all working together, and I don't like the fact that we are being deluged with all this material and these phone calls. I know there is a lot of chiropractors and a lot of lawyers involved in this and there are a lot of people who work for insurance companies. I know this, I've been here a long time. I've been through this before.

It just doesn't help me to have all of this happening -- have boxes of materials dropped off and postcards and all of this junk that I get. It's not good. That's why we have representatives of industry here and of associations so that you represent these people so that with your statement you're speaking for these people. They don't all have to call my office. Lawyers from Salem County don't have to call my office, and lawyers from Union County don't have to call his office. We know that they are there and they are represented very well. The same with the insurance industry. I would like it to stop.

The people in my office are trying to serve constituents with questions, and they can't do it because of things like this. This is not new to me. I always call-- If I know that somebody-- If the teachers are making 500 calls to me and I can identify the person who is organizing that effort, I call them up every time and every instance and basically say, if you don't stop making the calls, it's not going to work for you. It's making me mad.

I started off by saying that I'm in a bad mood, and I just thought everybody should know that, that's all.

**ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman):** May I speak, Mr. President?

**PRESIDENT DiFRANCESCO:** Do you want to say something, Mr. Speaker?

**SPEAKER COLLINS:** Yes. First off, Senator Bennett and I were just talking, too, and I guess I was right. I just said to Senator Bennett as we came in, "Senate President seems a little tense today." So I guess I was on target there. (laughter)

Let me just say with regard to what the Senate President just said -- and I didn't know when I walked out how he started. Let me just say, too, for interested citizens of this state, we have fax machines, too, in Salem County, and Assemblyman DiGaetano just asked me that. I said to my staff on the way in, as they were telling me, they were just going all through the night. I guess they are just regular citizens that have fax machines in their homes sending me messages all day long and all through the night.

I understand that people are very concerned about this issue and, as the Senate President said, many others. I surely strongly support input from citizens and their representatives, the so-called special interest groups, because I think that's just the most overrated term in government. Everyone is represented by some special interest group, but it is kind of silly. We have had more information from more people to make these decisions, and we will make one as I've said from the beginning. It is kind of silly, but feel free to do

whatever you think is good for the citizens of this state and your particular groups that you represent.

We're not castigating anyone. I don't have any problem with it at all. I just smile at it because it's really ridiculous and it's silly. To go forward is just something that is just a waste of time. My favorite is allegedly one group was just calling people and transferring their call to my office, and three people in a row announced -- somewhat confused in their wording, according to my staff -- they are opposed to automobile insurance reform. So if I listen to those three, we can all go home. Now, I really believe they were opposed to some part of it, but that's not what they said, because they didn't even know who they were talking to when the call was transferred to my office. If you think that moves anyone, it doesn't, but please continue to go forward.

Let me just say, since I read in the paper that we are not going to meet the deadline because the Assembly session on Monday was closed -- canceled-- We have a policy in the Assembly that we have to give so many days' notice -- more notice than the Senate. This is a committee meeting, and who knows what the Assembly may do at the end of today or even tomorrow or whenever. But we are committed to working, as I said we would from the beginning, to shoot towards a solution to this, and maybe it will even be by March 30.

With that, Mr. President, if anyone wants to comment on faxes or whatever--

Assemblywoman Farragher.

ASSEMBLYWOMAN FARRAGHER: Thank you, yes.

We had people calling my office -- both of you should know this -- opposed to the bill. My staff would say, "What bill?" "Well, the auto insurance reform bill. We are opposed to it." There is no bill. We got all of those. We turned off the fax machine, but more than that what upsets me is these people all here have been sitting here -- this is meeting No. 11. I know I've spent many hours looking over this, going over the transcripts when we get them, listening to everybody's testimony, making my own notes. For anyone to think that people calling up who don't even know what we've been talking about is going to move me, it's not.

We turned off the fax machine. My staff would not even tell me how many calls we had because I have other things to do. I was here all day yesterday for the Appropriations Committee. Every member of this Joint Committee has responsibilities like that. So just to think that by deluging us with paper and calls, it just doesn't work.

PRESIDENT DiFRANCESCO: Okay. We ready to start?

Territorial caps, can we start on that issue? We have distributed a document that has a description about it with various options. There are two options, actually. Well, after you get through the material -- and, of course, attached are the territories with the indications of the caps.

The first option is known as the Allstate Proposal, for lack of a better term, because they proposed it. They would permit insurers to establish their own territories by zip code, which would include creating territories within the present territorial boundaries. It would phase out the territorial rate caps for a period of five years -- up until five years. The phaseout would be a five-year phaseout.

The second alternative, again, provides for the redrawing of the districts allowing insurers the option to create their own territories. In that score, we have language that I would like to pass out. Is that all right with the Committee? (no response; Senate President distributes papers)

Look at the language of the second option. It requires insurers to collect lost data by zip code and creates an all-industry commission to review the data and to establish a territorial scheme to establish a statutory criteria for the creation of the territorial boundaries, and it gives final approval of all territories by the Commissioner of Banking and Insurance -- that's assuming we still have the Banking-Insurance Department at that time -- using criteria that territories must produce rates, which make the existing statutory standard of not resulting in rates which are unfairly discriminatory. That's our second option for which the language -- the proposed language -- is being distributed now.

Senator Adler, do you have any thoughts on this? (negative response)

I thought you were raising -- I'm sorry, I thought you were getting ready to speak.

SENATOR ADLER: I'm for No. 2.

ASSEMBLYMAN DiGAETANO: I have a question, Mr. President.

PRESIDENT DiFRANCESCO: On what issue?

ASSEMBLYMAN DiGAETANO: On this territory rate cap.

PRESIDENT DiFRANCESCO: On the stuff that we just passed out?

ASSEMBLYMAN DiGAETANO: Yes, really it's relevant to any of the options.

PRESIDENT DiFRANCESCO: Okay.

ASSEMBLYMAN DiGAETANO: The question I have is a technical one. There are many people around the state who have post office boxes, the mail is not delivered to their home. When they take out an insurance policy, of course, they give the address where the vehicle is kept or at least the community that the vehicle is kept. Do they give a zip code in addition to their postal zip code? I don't think you do, and that's why I'm asking the question.

LAURINE PUROLA (Majority Staff): They are supposed to give the zip code where the car is actually physically garaged -- where it's kept.

ASSEMBLYMAN DiGAETANO: My experience is they give the address and or the community in which it is garaged -- the street address -- but I don't believe the zip code is required. The reason why I ask that is because it seems that each one of these proposals requires that the data be collected by zip code, and it would seem to me that then the territories would be drawn by zip code, and that actually defeats the purpose, if you will.

PRESIDENT DiFRANCESCO: What's loss data, right, we're talking about.

ASSEMBLYMAN DiGAETANO: Pardon.

PRESIDENT DiFRANCESCO: What kind of data? We're talking about different kinds of data.

ASSEMBLYMAN DiGAETANO: Yes, loss data and would follow that the territory--

PRESIDENT DiFRANCESCO: Loss data. Losses are where accidents occur.

ASSEMBLYMAN DiGAETANO: Right.

PRESIDENT DiFRANCESCO: There are a lot of different kinds of information involved.

ASSEMBLYMAN DiGAETANO: That's my point. It would seem to me that each one of these proposals, Mr. President, predicates establishment of territories according to zip codes.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN DiGAETANO: And the reason why I raise that issue is because much like some of the school funding data that was collected from returns, etc., it is my belief that if we just do that on zip codes, at least in the areas where there are post office boxes and mailing addresses, there may be some confusion.

But the ultimate point I have is I would not support establishing territories based on zip codes. One of the statements in this preamble, or background, on territorial caps clearly states that within certain communities there are different driving experiences. I think that's true of many communities around the state that may have the same zip code.

PRESIDENT DiFRANCESCO: I agree with you. I don't think the second option, however, is based on zip codes. If you look at the criteria of the recommendation, it has to be based on a number of things. One through eight, and then, of course, in effect we have the final say on these territories. So while I know it's laid out in terms of the memo that the Allstate Proposal deals with zip codes, in fairness to them, even they suggested that

that is not necessarily, in their view-- That doesn't have to be that way. That's a proposal that they made.

But I think, I assume, most of the members of the Committee would agree with you that it shouldn't be so stringent as to just say zip codes.

Assemblyman Charles.

ASSEMBLYMAN CHARLES: Yes, comment. I'm reading through the background memo--

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN CHARLES: --and its contents and the history that it gives relative to territorial rate caps and also the defining of territories. It just seems to me that what's reported in this background information suggests that we should not eliminate caps. Just as a general matter, we should not be moving toward reducing territories, but rather to expanding territories, the size of territories.

Just generally, now, before I get into some particulars, the proposals also, as they relate to the composition of that committee, it is something that is troubling, too. It talks about the collection of data in establishing territories and things like that by a committee that's composed entirely of industry people. It makes no accommodations for other consumer-interested people.

PRESIDENT DiFRANCESCO: I mean it can be changed, but after all they are-- It is their business.

ASSEMBLYMAN CHARLES: Yes, I understand that. It is their business, of course. But we're talking about it as a part of this, the establishment of territories.

PRESIDENT DiFRANCESCO: Didn't they establish the territories?

ASSEMBLYMAN CHARLES: Well, they might have, but I'm suggesting that as a legislative body, we ought to think about how those territories are now established as to rereforming them and who should be involved in changing those territories and what the criteria ought to be. Part of the problem is that we just don't know what's going on in reference to all of that. The industry, just by definition and by its own interest, is going to be concerned about what is best for them. I mean, that's not bad for them to do that, but it doesn't include considerations for everyone.

I read in the background -- it says here that the smaller the territory -- I mean, if we are talking about zip codes, for example -- the smaller the territory, then generally, the larger the loss cause on each insured in that territory. So rather than going to zip codes and things like that, moving from 27 territories down to a possibility of -- I don't know how many. I guess under the proposal we could go to-- How many zip codes are there in the State of New Jersey? You could go to that theoretically.

I think that's not the direction, generally, that we ought to be moving in. This is a final conceptual matter. I think the territories ought to be established not by the individual companies, but by generally coming out of some commission and study process with everybody then working within the territories. It may not be 27, there may be more, there may be less, but those should be the territories across the state for all insurance companies and not allow insurance companies, individually, to decide what their territories are doing.

PRESIDENT DiFRANCESCO: Well, they don't make that final decision individually because territories have to be approved by the Commissioner.

ASSEMBLYMAN CHARLES: Well, my suggestion is this. That, sure, they should be approved by the commission. What we ought to have are general standards set of territories approved by the commission after a process has been gone through.

Understand what I'm saying? We have 27 now -- 27 territories now--

PRESIDENT DiFRANCESCO: Now, this commission--

ASSEMBLYMAN CHARLES: --they exist for everybody, for all insurance companies. Is that correct? All insurance companies those 27 territories exist.

MS. PUROLA: Right, there is one set of territories.

ASSEMBLYMAN CHARLES: One set of territories for all companies. I'm suggesting that we ought to continue that type of arrangement, that type of structure.

PRESIDENT DiFRANCESCO: We are.

ASSEMBLYMAN CHARLES: Well, that's not so. What I read in this thing--

PRESIDENT DiFRANCESCO: If you accept this proposal then that continues.

ASSEMBLYMAN CHARLES: No, it doesn't. It doesn't. This proposal says -- this proposal says -- that you can have any number of territories and there are two option. Some companies--

PRESIDENT DiFRANCESCO: You're talking about down the road.

ASSEMBLYMAN CHARLES: Yes.

PRESIDENT DiFRANCESCO: I'm talking about tomorrow.

What this says is no later than three months following the effective date there will be data collected and there will be a commission established who will then report to the Commissioner.

ASSEMBLYMAN CHARLES: All right. We are talking about reform now. Presumably we don't have to -- we do it right, we don't have to revisit this thing in six months or a year.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN CHARLES: So let's try to do it right.

What I'm saying is that what we do here should not be a situation which, down the road, will lead to a situation of where you have territory -- each company with the ability to establish its own territory. So there is no uniformity of territories now. Company A could have its territories, Company B could have its territories different than company A, and so on.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN CHARLES: I suggest that that's not the direction that we ought to be going in.

PRESIDENT DiFRANCESCO: And I would assume the Commissioner would probably agree with you.

ASSEMBLYMAN CHARLES: Well, my point is that's not what's contemplated here, though. What this proposal says is that the commission

may not have any control over that. The commission may have to allow Company A and Company B to have different territorial definitions.

PRESIDENT DiFRANCESCO: Is that a bad thing?

ASSEMBLYMAN CHARLES: Yes. I think we ought to have uniform -- that's the point I'm trying to make -- uniform territories throughout the State of New Jersey. Whether they are larger-- And further, they should be larger rather than smaller. The data here says that the smaller they are, it tends to result in greater disparities and maybe inequities in the premiums that the insured have to pay.

PRESIDENT DiFRANCESCO: Your point is that it ought to be common territories.

ASSEMBLYMAN CHARLES: Common across the board. It ought to be defined. There ought to be a process out of which those territories are defined, and that ought to be a standard across the industry.

Further, the body that undertakes defining those territories ought to be a body that consists not only of insurance companies, but ought to have members from other interested groups.

PRESIDENT DiFRANCESCO: For example.

ASSEMBLYMAN CHARLES: Well, some public advocate type of person, however you would define that.

PRESIDENT DiFRANCESCO: Well, you abolished the public advocate, didn't you?

ASSEMBLYMAN CHARLES: That's what you did, correct.  
(laughter) That's what you did.

PRESIDENT DiFRANCESCO: Well, all right, you believe someone or some group of people ought to be involved in that issue.

ASSEMBLYMAN CHARLES: Right. Someone along side of the industry.

PRESIDENT DiFRANCESCO: Besides the Commissioner?

ASSEMBLYMAN CHARLES: Well, no--

PRESIDENT DiFRANCESCO: This provides for a representative of the commission. Besides that person, there ought to be some person who is representing the public, so to speak. Correct?

ASSEMBLYMAN CHARLES: No, and more than that.

PRESIDENT DiFRANCESCO: More than that.

ASSEMBLYMAN CHARLES: Yes, but we have 11 commissioners, I think, 11 people on the committee. There ought to be-- If 11 of them are insurance industry people, we ought to at least have five members or six members, or whatever the number is, who represent the public.

PRESIDENT DiFRANCESCO: Six out of eleven?

ASSEMBLYMAN CHARLES: Whatever. I'm talking concept. I'm not talking particular numbers now. The concept is this--

PRESIDENT DiFRANCESCO: See, the problem is I'm talking particulars now, today, at this eleventh hour.

ASSEMBLYMAN CHARLES: That's new for you. (laughter)

PRESIDENT DiFRANCESCO: I know. Well, that's why we're coming down to the wire. So I understand what you're saying, and I don't necessarily disagree. I'm just trying to reach a conclusion.

ASSEMBLYMAN CHARLES: Well, you know, before-- I'll give you the same answer you've given me. We are talking about concepts. I haven't thought about the particulars at this point. I can come up with that.

PRESIDENT DiFRANCESCO: Okay, we'll come back to that.

Scott, did you have your hand up? (affirmative response)

Then Dick Codey.

ASSEMBLYMAN GARRETT: Let me start off. If I understand your plan correctly, I wholeheartedly support the plan as it is presented.

PRESIDENT DiFRANCESCO: It's an alternative. This is an alternative to--

ASSEMBLYMAN GARRETT: Okay.

PRESIDENT DiFRANCESCO: --Option 1, which is not off the table, by the way.

ASSEMBLYMAN GARRETT: No, but if I understand it correctly, I support the idea, and I promise not to send you a fax to that regard tomorrow. (laughter)

PRESIDENT DiFRANCESCO: A lot of other people will, though.

ASSEMBLYMAN GARRETT: But let me make sure, after your comment about the three months and what have you, as far as this plan is concerned, the three months is simply to set the commission up and running.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN GARRETT: So during that three months, the current system is taking place.

PRESIDENT DiFRANCESCO: The current system will be in place for quite awhile, like years.

ASSEMBLYMAN GARRETT: I got the impression that you were saying to Joe that--

PRESIDENT DiFRANCESCO: That the current system will continue--

ASSEMBLYMAN GARRETT: Right.

PRESIDENT DiFRANCESCO: --under this proposal for quite awhile.

ASSEMBLYMAN GARRETT: Until the commission sets up and studies it, and then once they come up with their ideas -- it can be, just as Joe said, that multiple plans--

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN GARRETT: --or single plans -- it be will up to the carriers. In my opinion that is the best scenario. In my opinion that gives the greatest flexibility.

Your opening comments on these hearings was to create competition within the industry to get more carriers back into the state, and this is one of the first things we've discussed so far that we are going to actually do that, where we create the competition for the industry so that they can be creative as far as how they want to handle it.

My second point, though, goes to Assemblyman Charles's comments about who should serve on the committee. My fear or my concern of broadening this committee to one or two or six other people that are outside the ambit of the industry and those who are experts in the field takes it from an appropriate approach to deal with it to perhaps fall back to a political approach to dealing with rates or territory setting. I could see, very possibly,

by opening it up in that manner that you can end up where we are today, with a situation where the industry would be locked into a situation where they don't find placing the business as they see the actuarial need to do it.

If we are able to come up with the exact particulars in this outline here that I think begins it -- and I think we should talk to industry about that and make sure that all the particulars are in here -- as long as we set out the exact criteria that has to be met by the industry, by this commission, there should be no concern by the public as to whether it's going to be actuarially sound basis that they are in this territory and that territory.

Finally, it will all in the end be approved or have to go through the Department for their final consideration. I put my faith in both the wording of the legislation, that we covered all the particulars that we need to worry about, and also in the Department to make sure that it is those particulars are then carried out.

Thank you.

PRESIDENT DiFRANCESCO: Thank you, Assemblyman.

Senator Codey.

SENATOR CODEY: I was wondering about the possibility of putting public members on -- giving each Leader one nominee to this committee be public members.

PRESIDENT DiFRANCESCO: That's, I guess, along the lines of what Joe was thinking.

SENATOR CODEY: In the way it's structured it's all industry. The industry has one focus, where public members hopefully would have the broader focus to bring to the committee.

PRESIDENT DiFRANCESCO: So your suggestion at this moment is add, let's say, four people.

SENATOR CODEY: Right, four public members each selected by one of the Leaders, the President, the Speaker, and Senate Minority Leader and the Assembly Minority Leader.

PRESIDENT DiFRANCESCO: Joe doesn't like that.

ASSEMBLYMAN CHARLES: Not--

PRESIDENT DiFRANCESCO: Okay, that's not exactly what you were driving at, Joe.

ASSEMBLYMAN CHARLES: Well, no, I had no particular--

PRESIDENT DiFRANCESCO: I know that.

ASSEMBLYMAN CHARLES: --criteria for doing that. But that meets or begins to address the concern that I have. We're having public members, that's all I'm concerned about. I don't care whether the Leaders pick them or somebody else, but a public member. That's my concern.

PRESIDENT DiFRANCESCO: Senator Adler, do you agree on this issue?

SENATOR ADLER: On this particular point I believe four members from the public would help. But I think the idea of having the carriers write the territories makes sense. It will get done if the carriers do it. If the Department does it, notwithstanding Assemblyman Garrett's endorsement of the Department, it won't get done.

ASSEMBLYMAN CHARLES: Oh, I agree. I have no problems with the carriers doing it. I'm just talking about whoever participates in that.

SENATOR ADLER: And I agree with some of your concerns -- all of your concerns, particularly a concern about the way the territories could be written to hurt urban areas and to narrow some urban areas.

Atlantic City is the most egregious example, this tiny little city that is surrounded by this huge territory. I think some of the language in the draft meets the concern -- a legitimate concern -- of having broad enough territories that insurance risks are spread over a number of people.

ASSEMBLYMAN CHARLES: Well, you know, I'm not sure about that. I know they talked about the -- Mr. Chair, through you -- they talked about the considerations for doing it. It would just seem to me that by that criteria-- I don't know how that criteria gets implemented. Do you then say-- Are you compelled to set up territories that are all within that, or can you break them up into just similar territories? I'm not sure that the way the criteria is written that it would require that there not be arbitrary differentiations of territories. I'm not sure that that criteria would ensure that.

SENATOR ADLER: My cosponsor, Mr. Hastie, has suggested that we have the math approved by the Commissioner under the Administrative Procedures Act. So you would have notice and a comment period by each of the parties. That would open it up to the public in a way that I think we've done -- we usually do in the regulatory process and might meet the legitimate concerns of individual territories that would feel disadvantaged by the mapmaking of the carriers. So maybe that gives us the public input at the back end, not just during the process, but when it really matters, when it comes down to crunch time to get it done.

ASSEMBLYMAN CHARLES: Well, see, I think that's an improvement. I think that's an improvement if we have public members developing these territories and then at the end some final review by the public or public comment. That begins to comfort me and my concerns about what's going to come out of this.

SENATOR ADLER: Could I make one other sort of philosophical comment about some of the comments you made earlier?

I heard you say that you think we should do it right the first time and get it done and not to have to revisit this.

ASSEMBLYMAN CHARLES: Well, not within six months. I know it will be back like everything. In some point in the future, we'll have to come back to it.

SENATOR ADLER: 'Cause I suspect we will get some of this wrong, and we'll only be able to change it two or three years down the line. We shouldn't be afraid to acknowledge now that we're not going to perfect this insurance system, but we're going to get it right every time.

ASSEMBLYMAN CHARLES: Well, you know what, I agree with that. Just philosophically, too, I think, where in some instances, we are rushing headlong into this knowing that we are doing something that should be better, but doing it nonetheless so that we can say that by March 30th we did something, or by whatever the date is, I don't agree with that approach.

SENATOR CODEY: I think we are unanimous in that. (laughter)

SENATOR ADLER: I would disagree with that. I think we are many years behind the curve on this one.

PRESIDENT DiFRANCESCO: Well, of course, I disagree with that. I don't think we are rushing headlong into this. I think this is the way we've dealt with this kind of legislation all the 23 years that I've been there. It's not a rush. It may appear that way, but we've spent a lot of time, a lot more time than we have on a lot of other initiatives. I'm pretty confident, as Senator Adler said, that we will revisit a lot of this, because until you have a statute in place, you don't know the impact, you don't know the gaps, the loopholes, and all of that, and that's what this process is all about.

ASSEMBLYMAN CHARLES: That's my point. I think there had been some loopholes that we have recognized as we've gone along. We've ignored them, though, and just continued to go forward. That's what I'm making-- Let's not, when we recognize a problem, just glance over it and keep going.

PRESIDENT DiFRANCESCO: But on some of your points I think staff can take what you've said and tighten up the language along the lines that you were talking about with respect to drawing the territories.

Assemblyman Doria is not here yet.

Gerry Cardinale.

SENATOR CARDINALE: I think you can solve many of the problems that are being discussed here by giving a charge, which we don't have here, that the territories be as homogeneous as possible with respect to loss of experience. They may have-- Some territories may be large and some may be small, but if the loss ratios in those particular territories are very similar, that's the criteria that would be nondiscriminatory, nonpolitical, and treat everyone fairly. Because our present system, and the reason we want to get rid of it, is

that it doesn't treat everyone fairly. It subsidies-- It causes some drivers to subsidize other good drivers because where the drivers are living in an area where you have heavy loss experience -- and primarily that's from things like with defective cars and stuff, accidents, and other losses -- then others from other parts of the state, where you have lesser experience, are finding themselves subsidizing those.

The one regret that I have in the Legislature, above all others -- perhaps have many, but over the years the one vote that I really regret is voting for the territorial cap. Because it has turned out to be a very unfair and very discriminatory piece of what we have done, and I think it's about time that we did undo some of that. I understand that there are going to be political implications through that, but to take and put public members into what is essentially a technical task to determine on the basis of loss ratios -- and I think that's really the only basis on which you can draw territories -- what it is that we should be doing.

Now, everyone lives somewhere and, darn it, you know the person who lives in one territory is going to say, "I want my territory to be the lowest," and the next one is going to want his territory to be the lowest. Before long you are going to have everyone at loggerhead. So public members, I don't think-- Have a public hearing afterwards, I think that would be great to give some accountability to whether or not they have done the task.

But the primary comment that I would make and the primary thing that I want to contribute are for two points. One is that this charge be homogeneity with respect to loss experience.

PRESIDENT DiFRANCESCO: I think it's in there, Gerry. I think that was covered, but we can tighten that up if you feel it's not.

SENATOR CARDINALE: And I don't know what you mean by unfairly discriminatory because I could interpret that language to mean so many things.

PRESIDENT DiFRANCESCO: As opposed to fairly discriminatory? As opposed to being fair in your discrimination? Is that what you mean? (laughter)

SENATOR CARDINALE: Well, I don't think-- I think that the standard of discrimination ought to be a standard of homogeneity, that where it is not homogeneous, it's discriminatory. That means where someone is producing less risk for the system and paying more, that's discrimination in this sense. But other people might take another determination as to what discriminatory means.

PRESIDENT DiFRANCESCO: But I think that's the way it is interpreted. I'm not positive. That was one of the things that Joe Charles was driving at. I think unfairly discriminatory is an appropriate term and does cover some of what was discussed. I think your points you've made are covered in here.

I agree with you about the public members, Gerry, in that we have to be very careful who we would appoint in those situations. Don't assume we wouldn't appoint the people with expertise as public members. We can do that. But there are public members, so to speak, which is what I think the Assemblyman was driving at, that we ought to have some voice, and Senator

Codey, for example, could appoint a person who has a tremendous amount of expertise in this area.

SENATOR CODEY: Yes, maybe a retired insurance person but who had no ax to grind anymore.

PRESIDENT DiFRANCESCO: So I don't want you to be disappointed in that proposal because I think it could work.

Gerry, do you want to make any other points about this issue?

SENATOR CARDINALE: Well, I would just like the definitions, perhaps, then, tightened up. If you think it's already in here-- I don't really see it, but if that's the intent, I would just like it more specific that that's what the intent is and that this discriminatory refers to rate differentials rather than other considerations in discriminatory.

PRESIDENT DiFRANCESCO: Okay.

Paul DiGaetano.

I'm sorry, Clare Farragher.

ASSEMBLYWOMAN FARRAGHER: Thank you, Mr. Chairman.

I want to get back to what the real goal of this Joint Committee was. That was to try to find ways to loosen up things in New Jersey so that we could attract more companies to the state. In every other state the companies set their territories. We are talking now about institutionalizing the rating territories with this commission. Well, okay, maybe we need to do that to get started, but I don't think that we need to put public members on it because it's a technical question.

I think that some of the information that was here as illustrations for us we can see the differences across the state. But within those differences

there may be, for instance, in what you might say that's a worst-case territory -- that's a bad territory. Within that territory there may be good sections. So rather than making the territories larger, it might be better in that instance to make the territories smaller. So, in other words, maybe center city Newark is a poorer territory, but maybe Irvington or some other part of the Newark area is a much better risk territory.

I think and feel that the companies and the information institutions like ISO probably are the best place to set their territories. I don't see a role for a public member in that. I think that the Commissioner, as the appointee of the Governor approved by the Senate, is that consumer protector. I believe that the expertise that's available to the Commissioner through the National Association of Insurance Commissioners-- Every company in the country has to file reports there.

PRESIDENT DiFRANCESCO: I understand what you're saying, but if you were in the minority, you would be asking for that, too.

ASSEMBLYWOMAN FARRAGHER: Okay, yes.

PRESIDENT DiFRANCESCO: For a very good reason.

ASSEMBLYWOMAN FARRAGHER: I understand that.

PRESIDENT DiFRANCESCO: When you say the Commissioner is the protector of the consumer, you know, we don't always necessarily feel that way about a particular Commissioner of Banking and Insurance. I've been through a lot of Commissioners. So you can't necessarily say that one person is the person that is going to protect the public.

ASSEMBLYMAN CHARLES: On that point, please, just what the Commissioner's responsibility is. I think the Commissioner's responsibility is

to protect the consumer, but the Commissioner's responsibility also is to look at what's in the industry's interest also. He has a broader perspective than just the consumer. It's also the business entities throughout the insurance companies, the banking companies, and what have you, throughout the State of New Jersey. That's why you need someone else in there whose specific interest it is to protect the consumer.

The Commissioner gets information from this side, that side. He or she then makes the decision based upon that information that's presented to him in a way that is balanced. It balances the interest of the public against the interest of the business, which are also important in the State of New Jersey. So when you say the Commissioner is there to -- in the interest of the ratepayer, that's true, but she is also there in the interest of the companies, too. We need to give the Commissioner all of the information the Commissioner needs so that the Commissioner can make a judgment that's helpful to all the parties that she or he is concerned about.

ASSEMBLYWOMAN FARRAGHER: That's correct that the Commissioner does have that responsibility, but the Commissioner also has the fiduciary responsibility to the companies. So if you've got a commission set up that's going to set rating territories, the Commissioner may be aware through other information and would be in a position where they may have to override or overrule requests. I think it's a mistake to bring in nonindustry or information of people, people who don't understand the process.

PRESIDENT DiFRANCESCO: You're assuming that these people won't understand or will be unable to understand. That's not going to be the case.

ASSEMBLYWOMAN FARRAGHER: But then--

PRESIDENT DiFRANCESCO: Clare, I don't want to cut her off. I don't want to cut the Assemblywoman off, though.

ASSEMBLYWOMAN FARRAGHER: Wouldn't they be, then, if you find people with that expertise, wouldn't they be in some way in the industry?

PRESIDENT DiFRANCESCO: No, not necessarily. No, not at all.

ASSEMBLYWOMAN FARRAGHER: Okay. How about agents?

PRESIDENT DiFRANCESCO: No, I don't know that you want to restrict it any way. I would not intend to put-- For example, if I were to make an appointment and someone on this commission who was not capable of understanding the situation, of having some background and experience in this area, whether it be in the insurance industry or in the Department of Insurance -- a former member of the Department of Insurance, somebody who has worked in these areas-- I think that's what the proposal basically was, but it is, so to speak -- they would be people that will have been appointed by us. It's not unusual for us to do this.

ASSEMBLYWOMAN FARRAGHER: Well, the reason I mention agents is they have the closest relationship to the public of anyone. They have contracts or directly work for a company, but they don't make money unless they sell the product. So they are going to want to look for a balance, something that's reasonable, something that they can take to their clients and market because that's the only way they make money. I think that, perhaps,

if we consider people like that from either the independent agents or the PIA might be a good addition. I just would be concerned--

PRESIDENT DiFRANCESCO: You're probably right, but that would be a consideration that the leadership can make.

ASSEMBLYWOMAN FARRAGHER: Okay.

PRESIDENT DiFRANCESCO: Senator Codey, did you want to address that point? Because I have other people that want to speak?

SENATOR CODEY: Yes, I just wanted to point out to the Assemblywoman that years ago, not that long ago, the Legislature in a bipartisan way added public members to all professional boards -- Board of Accountant, mortuary science, Medical Examiners -- and in many cases they have been the best board members. They didn't go in there, per se, with an expertise, but they become very, very, valuable members, and there is no conflict.

PRESIDENT DiFRANCESCO: In some cases, they are convinced by the other members of the board-- Sometimes it works very positively. I'm not-- I think it's a good thing. I don't suggest that there should be a controlling membership there, but there could be some representation.

Scott Garrett.

ASSEMBLYMAN GARRETT: A couple of more questions on how this would be run. There is no time frame spelled out in the proposal, right now, and it was suggested that after the three months -- it takes three months to get the thing up and rolling, and then it would take some time afterwards to get a recommendation, actually, out of the commission. I am reminded that the Department -- we're still waiting from the Department for regulations on

legislation that we passed last year, I guess, on the merit rating plan to be pulled out.

So whatever we come up with today, I believe that there should be a finite time limit as to when -- if we are going to go in route with a commission with or without the public members. As I said before, I disagree with the idea of public members on that commission. We should have a finite time limit as to when it has to come out and when it has to be implemented.

Do you have a comment on that?

MS. PUROLA: One of the issues here is that sufficient data has to be collected to be statistically credible, and that could take two to three years before you can actually tell what is going on in any given geographical area.

ASSEMBLYMAN GARRETT: I would-- I guess I'll have to ask the industry later on about that. I would assume that certain industries would already have data that they have been collecting by zip code or otherwise that they could-- Maybe I'm wrong. I would think that some certain industry would have information already that they could generate this information on. In any case, I think we have to put some limit on it since we know that the Department does not always comply with our requests for moving ahead.

The comment simply is, does not some of the industry already have this data? Doesn't some of the industry already collect information by zip code?

MS. PUROLA: Some do collect it by zip code. It is my understanding that the Insurance Services Office, which collects the broadest

base amount of data, has started collecting by zip code in certain other states, but have not yet done that in New Jersey.

PRESIDENT DiFRANCESCO: Maybe they can consult with the Education Department. (laughter) They collect a lot of data by zip code.

ASSEMBLYMAN DiGAETANO: They got all the zip codes.

PRESIDENT DiFRANCESCO: Yes.

ASSEMBLYMAN GARRETT: And the final point back to -- with the issue of public members or not. To a large extent isn't it moot as to whether there is public members on the commission or not or as to what the commission actually comes up, because you can have this commission and they will come up with their one recommendation, it is ultimately going to be that Commissioner that we may or may not have respect for.

PRESIDENT DiFRANCESCO: As Dick Codey says, "By then they will be in charge." (laughter)

ASSEMBLYMAN GARRETT: It will be ultimately that Commissioner that will--

SENATOR KYRILLOS: They won't want public members then. (laughter)

ASSEMBLYMAN DiGAETANO: I want a commission then.

ASSEMBLYMAN GARRETT: You won't need a commission.

It will all be in that commission in order to make that decision, and on Item No. 7 on Page 3 of your list here, it says that the Commissioner obviously can still approve any and all other plans regardless of whether this commission approves it, this commission that has or may not have public

members. So it still falls to the hands of the Commissioner, ultimately. So whether they have public or not is not going to make any--

PRESIDENT DiFRANCESCO: I guess it's a feel-good thing to some degree.

ASSEMBLYMAN GARRETT: Well, let's feel good.

PRESIDENT DiFRANCESCO: But I think it gives the Legislature some voice, some accountability, perhaps even some education in the area in terms of what the process is all about and how it's working, how long is it taking, what people are discussing. It gives them some information that they might not otherwise have, and I don't think it's a bad thing.

Joe Kyrillos.

SENATOR KYRILLOS: Thank you, Mr. President.

Just a couple of quick points. I just think we would have been very remiss if we didn't deal with this territorial cap issue, and there was some talk that we might not. I think this Option No. 2 is a good and balanced approach.

These territories are old. I'm looking at the towns in my district on the handout material, and I couldn't find the town of Old Bridge in Middlesex County, a town of 50,000 people, because the sheets -- when these things were originally crafted and written -- are so old that Old Bridge didn't exist at the time. It was called Madison Township. So I finally found Madison Township. Obviously, that kind of antiquated information which we are still relying on skews the kind of rates that people are paying in particular territories and for our constituents.

The rates in our part of Monmouth County are dramatically higher from the information that I've received, and if it's true, then they otherwise might be. So we need to deal with this issue, and we need to do it in a technical way, actually an honest way. That's why I've got to tell you, Mr. President and Mr. Speaker, that the public membership component to this is something that's a tad troubling to me, too. I understand where my friend Senator Codey is coming from and Joe Charles and others. We have had public members that have served on commissions and have done a good job and done it well.

But if these are going to be representatives that come from the Minority Leaders, whoever they happen to be at the time, protecting certain geographic interest, political interest, parochial interest, that's not helping to the process. This is not a public sector insurance system. We still want this to be a private sector system. The Commissioner should worry about the insurance industry, Assemblyman Charles, not for the industry per se, but so that we have companies here to provide policies to our people, to our constituents, and more of them. We need more competition.

I find that aspect of this a little troubling as I hope over time we can deal with this issue and that it will bring some savings to people. Maybe the public members ought not be appointed by the legislative leadership. Maybe by the Governor -- I don't know. But I think it's something we ought to be concerned about as we move forward on this component of auto insurance reform.

PRESIDENT DiFRANCESCO: I think what your pitch is that you're making -- your concern is about who may be appointed, particularly. Just what that person's agenda--

SENATOR KYRILLOS: My overall concern is that we can redraw the territories in a competent and honest way with not too much political overtone.

PRESIDENT DiFRANCESCO: We do this in a lot of different areas as Senator Codey has said. Our own Ethics Committee has four public members.

Paul DiGaetano, you wanted to speak before.

ASSEMBLYMAN DiGAETANO: Thank you, Mr. Chairman.

I'd like to ask the Committee to consider this issue in light of how we always get compared, and really it is that comparison that has driven this debate. We get compared to the other 49 states and the District of Columbia. Mr. Chairman, it is my understanding that New Jersey is the only state that establishes the territories. The other states permit the insurance industry to establish their own territories.

The reason why I bring that up is because, as we have heard in testimony, the territories were established some 25, 27 years ago or more than that, as Senator Codey just indicated, and they are established here by the Department. The Department has had for 27 or 30 years the ability to change them and hasn't done so.

I'm not convinced that what we should be doing is now expanding the Department of Insurance in order that they might bring in the expertise, whether it be through public members or industry members, to establish

territories in New Jersey, but rather allow the Department of Insurance to do what it's charged to do, to be a regulator. Allow the insurance industry to do what they are in business to do, establish their territories, do the underwriting of the policies, and have the Insurance Department with the regulatory ability and a public entity with the ability to challenge the territories, etc., to make sure that they are nondiscriminatory.

But it seems to me that if we really want to have better insurance rates, one of the components -- lower insurance rates -- one of the components is bringing in other industry, other competition, other industry representatives, other competition to go after business in this state. If you talk to companies that aren't currently writing in New Jersey, major companies who are writing in virtually every other state, they will tell you withdrawal notification of five years, they will tell you territories and territorial caps. That is what they will tell you.

I would ask this Committee to seriously consider not this proposal, but part of the proposal, the part of the proposal that allows the industry to file their territories and has the Insurance Department with whatever advice, whatever representation you want within the Insurance Department on territories review those territories to insure that they are in keeping with the intent of whatever law we pass and they're not in violation of any antidiscriminatory practices that we've established in the state.

It seems to me that we should allow the insurance industry to do what they are in business to do and do what they have the expertise to do rather than attempt to have our Insurance Department gear up by whatever committee or representation we establish to set its own territories. I think once

we allow the industry to do that, with the appropriate review and with the appropriate regulatory oversight, we are going to have a much better insurance system in this state. I dare say, if we address the territories, the caps, and the withdrawal notices for companies that aren't currently writing in the State of New Jersey, we may get some of those companies either back or some of those companies to write for the first time.

SPEAKER COLLINS: Anybody else want to comment on this at this time? (no response) Well, then let me take the prerogative of the Chair to make a comment or two about this.

First off, I think we all agree that there should be new territories drawn up. I personally can't think of anything that got my attention more through these hearings than the fact that the territories are 30 years old, or whatever the number was, because at the same time, we are talking about development in New Jersey and save open space and all of the other things that have happened within the last decade or so. Not to have done anything with auto insurance territories for 30 years is egregious, and I guess the Majority Leader touched on it. The Department, for whatever reason, hasn't done it. So, therefore, somebody has to do it.

As I've heard a number of people say, to me it should be the people in the business. The insurance companies should be able to put together their territories under the supervision or approval of the Commissioner, whomever is in control at the time, and make that decision. I'd like to see the Department of Insurance be the Department of Insurance and have their feet put to the fire continually.

With regard to public members and who should be on the Committee, I don't think we should go that way at all. As the Majority Leader said, we're here because people aren't happy, we're here because we are being compared politically by many in this room who are so happy to announce we are No. 1 in the country without any backup information as to why. Well, that's why we are here. We are compared with the rest of the states. I don't read in those articles that the great coverage that we have, and so on. So, therefore, we have to be able to respond to what other states are doing.

I heard and I've been hearing, long refuted, that we are the only state that determines the territories. I think we should just get out of the business. Let the businesspeople to do it-- We've already controlled them in some ways, we have take-all-comers, which most states don't have. We have restrictions to ever let them leave. So we sort of have them. They are going to put their business together in a way that helps them, but we have them because they have to take all comers.

I'd like us to agree, at least in principle, that we want to change the territories. To me, the changing of the territories is the elimination of the tax. Now, how we do that? I'm open to withdrawal ideas, I'm open to all kinds of things. But if we are going to have territories, we are going to have territories. The idea that we are the only state in the country that has caps is-- Once again, we're No. 1. Is that what we want to point to, that we have caps?

No, I think we should get rid of them, put the territories together, let businesses run their business. As Senator Cardinale said, everyone has to live somewhere, and where you live is determined by a lot of things, but what happens where you live is also determined by things. There is public

transportation in some areas, that there isn't in others. There is opportunities for something to -- whether it's entertainment or walking through a field of freshly grown clover in the southern part of the state, whatever it would be, you have to live somewhere. For us to say, if you live here, we are going to help you with this at the disadvantage to others in this state, I think it is totally wrong.

I just want to make sure that we are also including in this territory idea the elimination of caps.

Comments? (no response)

We all understand that when we're talking territories we are talking about the elimination of caps. Anyone disagree with that premise?

SENATOR CODEY: Yes, strongly.

SPEAKER COLLINS: Okay.

SENATOR CODEY: Nowhere, as John just said, in the language of this proposal, is there talk about the elimination of caps whatsoever, Jack. Even with this the way it is structured, there are many people it affects, if those territories are redrawn, who won't get a 15 percent reduction, but who may get a 15 percent increase. That may be in the City of Passaic or in West Orange, but you haven't given relief to them. By doing what you want to do, the reverse may in fact be true.

SPEAKER COLLINS: True.

SENATOR CODEY: So we understand?

SPEAKER COLLINS: There is no question about that. If we are going to let the business -- the company run their business, they should be allowed to run their business. To say to them, "Well, you draw up all the

territories you want; however, we are going to give special protection to these people” is wrong. It’s absolutely wrong and it should be eliminated.

SENATOR CODEY: Jack, under a bill that you voted for, for small insurers, for group say maybe 30, we have community rating. What that means, Jack, is if you own a company with five employees and one of your employees goes into a coma, next year your rates skyrocket and increase maybe 1000 percent. You say I can no longer afford insurance because of that. What we did was we pulled all those people together so that instead of having those spikes, it’s predictable next year. Instead of going up 1000, we’re saying that you go up 5 percent.

Some other people who have all young employees, who are all healthy you are to some degree subsidizing. But in the best interest of all that’s what we did. We put them all together under community rating. It’s really not much different in terms of caps. We’re trying to be fair and equitable for all people, so all of us can afford auto insurance and health insurance.

So, no, I strongly disagree with what you said. In some cases, it’s all right for you, but in others it isn’t, Jack.

SPEAKER COLLINS: Well, no, first off there is a big difference between the fact that as we are told continually that you must have an automobile to be able to move through the State of New Jersey, so everyone is impacted by that.

What you just suggested, Senator, is the spreading of particular cost and particular situations that are on a much smaller group of people. Let me tell you what the cap rating does right now. Roughly, a little more than 70

percent of the people in this state are paying more money so that roughly 30 percent can pay less. Arbitrarily decided in 1983 by this House to give special protections to certain people, that's what was done and that's wrong.

Let me tell you further, in rough numbers, 90 percent of-- I'll just pick one group -- senior citizens. Ninety percent of the senior citizens in this state live outside the cap areas. So, therefore, logically they are paying more money. You can go to group after group after group, it's wrong. We're the only state in the country that does it, and I don't want to go through any shock to these people. But we have to be able to allow businesses to run and stop 75 percent of the people, or 70 percent of the people, subsidizing 30 percent. Based on one criteria, where you live, the companies will decide who should pay more.

SENATOR CODEY: Jack, there is other criterias. There are youthful drivers, where you live, and seniors where you live as well that are capped.

MS. PUROLA: Right.

SENATOR CODEY: Thank you, Laurine, you just seconded my comments.

SPEAKER COLLINS: Well, I'll tell you this, I'm willing to release all of the caps. Are you?

SENATOR CODEY: I'm willing to do what's fair and equitable.

SPEAKER COLLINS: Fair is a word that can be debated forever. Is it fair, for example--

SENATOR CODEY: Is it fair that, my health insurance, I pay more than you do because you have a sick employee?

SPEAKER COLLINS: Is it fair that people in Voorhees pay \$140 more so someone in Newark can pay less? It is fair that in my district, in Mantua, someone pays \$160 more so someone can pay less? It's not fair.

Fair is a word that is often debated, but never determined.

Assemblyman Charles.

PRESIDENT DiFRANCESCO: Are we talking--

SPEAKER COLLINS: I'm sorry.

PRESIDENT DiFRANCESCO: --about the same point that has just been made? Because I know Senator Cardinale had his hand up before Assemblyman Charles. Then who else wants to speak? Paul, okay.

Gerry, on this point you--

SENATOR CARDINALE: Yes, on this point. I want to sort of explain to Senator Codey that you can't predict at any individual group of people with any degree of accuracy who is the one who is going to get sick. Therefore, you take a large group of people and you can predict that a certain number of them are going to get sick, but you can't predict that because they live in a certain area or because there are other characteristics other than a preexisting condition that they are going to be the people that are going to impact the system.

Insurance is meant to spread the risk. The difference in auto is that it is predictable by territory where the losses are going to occur. That cars garaged in a particular area we can demonstrate over many years of experience will have higher loss ratios than cars garaged in other areas. It's consistent from year to year, but it does change slowly with demographic changes. What we're talking about doing here are two things: accommodating the

demographic changes by reorganizing the territories and accommodating what we are correcting, the mistake that we made in 1983.

When we established an artificial cap, it was done for a particular legislator so that his particular constituents would be benefited, and we were all sold that by the elimination of the remic everyone else would be compensated. It didn't work that way. The elimination of the remic didn't compensate others in the amount that they, in fact, were charged. There is no comparison, whatsoever, that you can make with small group health insurance to this system. You can make the comparison, but it can't be made on a similar basis because they are so terribly different in terms of the whole experience in the insurance industry as it relates to auto.

PRESIDENT DiFRANCESCO: Okay, we are going to spend five more minutes on this issue.

ASSEMBLYMAN DORIA: Can I get a clarification, please?

PRESIDENT DiFRANCESCO: Mr. Speaker.

ASSEMBLYMAN DORIA: Senator Cardinale talked about taking off the remic and then spoke about 1983 and the creation of the cap at that point. The remic was 1990 when we took the remic off, not 1983. 1983 was the JUA.

SENATOR CARDINALE: It was the JUA, but there were differences--

ASSEMBLYMAN DORIA: There is no remic in '83. I just want to get that clarified.

SENATOR CARDINALE: There were differences with respect to how that maybe it wasn't the remic. But there were difference with how it was supposed to work so that no one would get hurt.

ASSEMBLYMAN DORIA: But in '83 there was no remic. In '90 was the remic. The remic was created as a result of the JUA.

SENATOR CARDINALE: No, there was a remic before the JUA.

PRESIDENT DiFRANCESCO: I don't want to argue this point. I want to get to Joe.

On the rate caps, Joe Charles and Paul DiGaetano, and then we are going to end this.

ASSEMBLYMAN CHARLES: All right, just to join in the comments of Senator Codey on the issue of rate caps and also to respond to the Speaker. To me it's fair, and I consider it fair, if there is some consideration for territories and how one area might be adversely or disparately impacted without rate caps. What do I mean by that?

It's to me, if there is some sort of -- if there is a subsidy of some form among payers, since it is a requirement of the State of New Jersey to carry insurance, that is not an unfair thing. It is not unfair inherently for support to be given in situations like this. And if not to do that is going to worsen a situation, which would happen here. If rates go up exponentially, go up really drastically in some areas, then instead of ameliorating the uninsured situation and that condition, we are going to make it even worse. If that's the counter consideration, then maybe we as a legislative body and as policy makers should arrive at a position that stops that, prevents that, if it means some subsidy by others.

I don't think that that's something that is so apparent. That's not something that the people of the State of New Jersey would necessarily find that disagreeable. I would imagine that if you polled a lot of people, they wouldn't feel as strongly about it as you do, Mr. Speaker.

PRESIDENT DiFRANCESCO: Okay.

Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: Mr. President, I think that the Speaker is right. I'll repeat again that I think we have to address these issues, if for no other reason than to get additional competition in. I'm very, very sensitive to the fact that we cannot complete a piece of legislation that has good drivers, in areas that are now currently capped under our territory rate caps, experience an increase in their premiums. I fully recognize that.

I firmly believe that phasing out of the caps, changing the territories, and maybe some other things that bring other insurance companies in are going to benefit all good drivers statewide. Dick mentioned West Orange. West Orange is a perfect case for elimination of the rate caps. One of the largest insurance companies in the State of New Jersey experiences a loss ratio of .54. That means they are taking in almost twice as much in premiums in that particular community as they are paying out.

Now, if you eliminate rate caps -- if you eliminated them -- just by this data for this company at least, one of the largest in New Jersey, the people in West Orange would experience maybe a 40 percent rate reduction. I don't think the people in West Orange want to pay that. Similarly--

SENATOR CODEY: We want to subsidize Passaic.

ASSEMBLYMAN DiGAETANO: --Dick is right about Passaic. I'm not ignoring that factor. Passaic has a loss ratio of 3.9, that's my hometown. Passaic is also the community -- I'm sorry to say -- where the most celebrated case by one of the largest insurance companies is being brought on insurance fraud.

It is my belief, once the data is collected -- and it should not be by zip code -- but once the data is collected and once territories are established and tiers are established, you are going to find that the bulk of the losses that make up a ratio of 3.9 in the City of Passaic are not the bulk of the drivers and, in fact, are subject of or the object of or the result of the experience with a particular mill that operated in the City of Passaic. I think what the measures we're incorporating, or about to incorporate, in this particular piece of legislation, the experience will be vastly different not only in the City of Passaic, but in other similar areas around the state.

So I'm fully cognizant of that. But I firmly believe that to have communities with such low loss ratios -- and, by the way, in that same district as Senator Codey's West Orange -- same territory -- is my Township of Nutley, and they have very similar loss experience to West Orange. It is something that the Committee cannot continue to ignore. I don't advocate removing the caps today, and I would never advocate removing the caps at all, unless some substantive change was made to the legislation in the state to remedy the problems that exist in so many areas of the state.

Mr. Chairman, that's exactly what we are here to do. That's exactly what this piece of legislation is destined to do unless we do it wrong. I think, if we simply ignore taking the caps off, we have left a major part out.

PRESIDENT DiFRANCESCO: Okay, that I think wraps it up for that issue.

SPEAKER COLLINS: No, I just have one more thing to say.  
(laughter)

PRESIDENT DiFRANCESCO: You do? I'm sorry.

SPEAKER COLLINS: I just don't have that same polling feeling that Assemblyman Charles has when he said, "I think if you ran a poll that people would say that's fair." According to the numbers I have it's not fair. It's not fair that some people are paying \$180 more. Even in your own district, you go door to door in some towns in your district and say, "Do you mind paying \$70 more for auto insurance to support someone else paying less somewhere else?"

I don't have the expertise of polling that you have suggested you may have, Assemblyman, but I don't think the people support on some basis that we just decided in 1983 -- excuse me -- someone else decided in 1983 that we will give these people extra money to pay for their automobile insurance and we'll take it from these people. I don't think that's good public policy at all. I strongly believe-- I'm open to discussion to how we do it fairly, but to eliminate these caps and let the companies run their business, not us. I can't even spell insurance. (laughter)

SENATOR CODEY: Let me just say, Donnie, that under Jack's proposal what's not fair is that someone in Collingwood who has bad experience would pay less than someone in East Orange who has good claim experience. That's what's not fair.

SPEAKER COLLINS: It's only fair if the insurance companies, the experts in this, say that. I don't think they're saying let's help Collingwood and not do this.

SENATOR CODEY: But that's the effect of what you want to do. It's plain and simple.

SPEAKER COLLINS: No, what the effect I want to do, Senator, is--

SENATOR CODEY: Everyone wants to be based on their own experience as opposed to where they live, Jack.

SPEAKER COLLINS: But that's not the way it can be done. You just already told me that on community rating.

SENATOR CODEY: But you want to talk about fairness.

PRESIDENT DiFRANCESCO: Okay, let's hold on here.

SPEAKER COLLINS: Fair.

PRESIDENT DiFRANCESCO: Let's stop.

One final comment. We have so many other issues to cover, and I don't want to wait until Christmas. (laughter)

SENATOR CODEY: Is that another deadline?

PRESIDENT DiFRANCESCO: That's what the insurance industry said.

ASSEMBLYMAN DORIA: Let me just say-- I think we have to, in the end, agree on a lot of these things. I think one of the things that we should look at-- The question of fairness is a priority to all of us. I think that all of us can agree that the territories that are presently drawn have to be reviewed and that there should be an attempt to then bring together, through

that process, what the new territories are and then begin to talk about the equity of a cap system or not having a cap system.

I was here in 1983, as was Senator Codey, as was our Senate President, and Senator Cardinale, and we voted for that legislation, and the Governor, who was a Republican at that time, signed it. A Democratic Legislature, Republican Governor. I think that there was a purpose for that. I think that there are questions -- legitimate questions -- of equity that should be reviewed. But I think all that has to be done within the context of understanding that the territories that were created are almost 50 years old.

First, we have to look at the territories and determine what we are going to do with them before we can then deal with the issue of whether or not the cap is fair or unfair, and to whom it's fair and to whom it's unfair. I think that's something that we need to spend some time on before we can make some kind of a decision.

PRESIDENT DiFRANCESCO: We'll we spent a lot of time on this issue, and I've come to a final decision, as far as I'm concerned. We've distributed a three-page memo with some language. The gist of what I got from the members of the Committee was that they're concerned about the immediate elimination and phaseout of territorial rate caps, albeit Speaker does not share that concern, perhaps not Paul either.

But the alternative proposal, I think, is with some minor changes that we've already discussed fits the bill. This is very complex, this is not a simple solution. There is no guarantee that rates will go down in one town because the cap was lifted in another, from my standpoint. I don't buy into

that theory; although it could happen, which is why I think we should move more slowly.

Both proposals are designed to revise the territories, Assemblyman, as you just asked, and also to provide for equity and fairness and to phase out the caps, so to speak, whatever that means. Because eventually there won't be a need for a cap if this were to work properly. I think it will. We won't be afraid, I assume, in the future to revisit that if it doesn't and to have some checks and balances. But I think we've got to move forward and make a decision to go in this direction now.

Now, I'd like to move on to other issues if it's all right with you.

SENATOR BENNETT: Can we do the amendments that we talked about doing with the public members--

PRESIDENT DiFRANCESCO: That's what I meant.

SENATOR BENNETT: And the APA being applicable to the ultimate decision on the Commissioner.

SPEAKER COLLINS: Well, I don't know, Mr. Leader, that there was agreement that we would have the committee, and so on. A lot of people questioned where we should have public members on one of them. So I'll tell you what I think we should do. We have a number of things hanging out there, Mr. President -- and, of course, we have other issues here -- maybe direct language could be put together by the four staffs based on this, and then we can go down and really get to it.

PRESIDENT DiFRANCESCO: Okay.

SPEAKER COLLINS: I mean, instead of-- And these are proposals and they are fine proposals, but I hadn't seen them, until we sat

down today. My staff hadn't seen them, and I would like to think about those and others.

PRESIDENT DiFRANCESCO: Staff saw the stuff. Basically, there are changes that were proposed. I thought we had a consensus.

SPEAKER COLLINS: My staff didn't see them.

PRESIDENT DiFRANCESCO: Sure they did.

SPEAKER COLLINS: They're telling me they didn't see it.

PRESIDENT DiFRANCESCO: We distributed stuff the other day.

SPEAKER COLLINS: No, on these proposals I'm talking about.

PRESIDENT DiFRANCESCO: Yes, this is as a result of the last discussion. We come up with a new draft. Now we have from further discussion-- I don't think there is much complicated in what we want to change. We're obviously going to have to review it again anyway after it is changed into bill form. But I'd like to start putting into bill form, that is, with this second alternative with the public members, with the other suggestions that were made, and take a look at it that way.

SPEAKER COLLINS: No problem.

PRESIDENT DiFRANCESCO: Some of you don't like public members. We can take a vote on that right now if we want to. Perhaps that's one vote maybe we should consider. I don't see the fear in that. I believe I can guess that Assemblyman Charles already spoke on that, I have, Senator Adler has, Senator Codey has.

Senator Bennet, do you have an opinion on adding public members?

SENATOR BENNETT: I don't have any problems with adding the four of them by the four Leaders.

PRESIDENT DiFRANCESCO: Senator Cardinale.

SENATOR CARDINALE: If they're experienced in the industry, I don't have a problem with it.

PRESIDENT DiFRANCESCO: My public member could be you, for example. It could be whoever I choose to have that has that experience. (laughter) I think that was the theory you were operating under.

ASSEMBLYMAN CHARLES: Senator, he's a legislator. He's not quite a public member. When he retires you can--

SENATOR KYRILLOS: Were you in the room when Jack talked about public members?

PRESIDENT DiFRANCESCO: What's that?

SENATOR KYRILLOS: Were you in the room when Jack talked about public members?

PRESIDENT DiFRANCESCO: Was I in the room when Jack talked about public members?

SENATOR KYRILLOS: Because I know--

PRESIDENT DiFRANCESCO: Did I leave the room?

SENATOR KYRILLOS: I don't know. The Speaker felt strongly about the public members.

SPEAKER COLLINS: I think he was in, he just wasn't listening, but that's besides the point. He was right here when we talked about it before.

PRESIDENT DiFRANCESCO: We've been doing this for years. We always add public members to these things. This is not a big deal compared to the rest of the stuff we're doing. Let's get on with it.

But if you don't want to do it-- I say there is five people that I've -- one, two, three, four, five--

ASSEMBLYMAN DORIA: Public.

PRESIDENT DiFRANCESCO: --six.

SPEAKER COLLINS: Looks like it's a tie.

But why don't we draft up the language there--

PRESIDENT DiFRANCESCO: Joe, you're against it? (no response)

Gerry, you're against it? (no response)

Paul, you're against it? (no response)

Let's make some decisions here.

SENATOR CARDINALE: No, I'm not against it.

MS. PUROLA: He said he's not against it. (referring to Senator Cardinale)

SENATOR CARDINALE: I'm not against it if you--

ASSEMBLYMAN DiGAETANO: Mr. Chair, I may not be the majority on this issue, but I think I adequately expressed my position before. I think it's the second part of this alternative that I would support, and you can have this Committee advise the Insurance Department in the review of that filing.

PRESIDENT DiFRANCESCO: We're talking about adding four public members. Are you against that? To this commission.

ASSEMBLYMAN DiGAETANO: My point is I'm not for the commission to set territories. If it's the commission to advise the Department-  
- If it's the commission to advise the Department on the review of territories, fine. You can make it 25 members, I don't care.

SENATOR KYRILLOS: But it's an industry-based commission, isn't it?

SENATOR ADLER: Don, that's seven let's go. He's with us.

PRESIDENT DiFRANCESCO: Okay.

ASSEMBLYMAN DiGAETANO: No, I don't think you have that correctly.

PRESIDENT DiFRANCESCO: I may be the only sponsor of this bill on Monday.

SPEAKER COLLINS: I'm sure it will be a good bill, Mr. President.

PRESIDENT DiFRANCESCO: Okay, we'll move forward.

Let's do some easy stuff. Let's see what we have here. Let's go to the ombudsman, that's easy.

Senator Cardinale, you want to discuss your Ombudsman theory?

SENATOR CARDINALE: The Ombudsman theory is really very simple. In fact--

PRESIDENT DiFRANCESCO: We're going to spend until 11:30 on this.

SENATOR CARDINALE: Okay, I can do it in three minutes.

The Ombudsman theory is really based on experience that many people have in dealing with an insurance company. The experience most

people have is that they don't understand their policy. The policy is written in sometimes what people think is a deliberately confusing manner. There is a present segment of the Department of Insurance which, I think, does not function very well in terms of defending the consumer against an insurance company that refuses to live up to its obligation. Therefore, in all areas of insurance, I believe we can have an ombudsman, a government agency, which would have the expertise to look at the policy and to advise the consumer and to stand up for the consumer when the company is just trying to beat them into the ground.

Now, the specific proposal you have in printed form, and I have a couple of comments about that, which I think I would like to make one or two changes or call a couple of things to the Committee's attention, at least. That on the bottom of Page 1 we talk about having seven years' experience in property-casualty alike and health insurance. However, if that experience is strictly experience as an insurance company executive, I think it defeats the purpose. Because in doing that work over a long period of time, one can easily develop a prejudice towards the policies of companies. I think it would be much better if that person had that experience as a broker or as an independent adjustor or some other way than having worked directly for an insurance company, perhaps even an ex-member of the Department.

Under 3c, on the next page, I think that I would like to see a little clarification, or maybe emphasis, that they deal with confusing, duplicative, and contradictory language contained in insurance form, which is very frequently the case. I think those are the only two. I think that I would add A-17 in place of the 17 and move the 17 down to 18.

We should have the power to review the conduct of arbitrators appointed by insurers or claimants, including the umpires, because many insurance contracts call for arbitration, and those individuals don't necessarily represent the most efficient way of doing things. I think that their conduct ought to be subject to review by the Ombudsman as well.

But with those three changes I think the draft, which is an eight-page draft-- I don't very frequently find an eight-page draft that I agree almost entirely with.

PRESIDENT DiFRANCESCO: Okay, now before we talk about this, does everybody want to read this first before we discuss it? Does staff want to take a look at it before we get into it? I don't want somebody to tell me somebody didn't see it. Do you want to take five minutes to read it, or do you want to talk about the concept? Is everybody for the concept? Are you against it? (tape recorder shut off until meeting continues)

All right, let's have our seats, please, or keep quiet or leave.

Sit down, please.

Quiet.

Attention. I don't have a gavel.

Please, we need quiet.

Joe, Pete. Save it for later, Pete.

Everybody quiet. Sit down.

Ombudsman. This is a proposal submitted by Senator Cardinale.

Assembly Majority Leader.

ASSEMBLYMAN DiGAETANO: Thank you, Mr. President.

While I wasn't in the room for most of the discussion, I did hear

a good part of it. The discussion was a little bit puzzling. It seems to me that we centered around an area that this does not appear to deal with. This Ombudsman, as I read this very quickly, is not a rate advocate. It's basically a consumer advocate for all purposes, if you will. I understand there may be some concern and some trepidation about it, but the whole idea behind it, I believe, is to give the consumer a little bit of leverage, create a little better balance, if you will.

I'm very comfortable with, given as you heard before, the insurers, the authorities, they need to do their business, but I'm very cognizant that there needs to be a balance as well. What I would like the Committee to consider in some form is a piece of legislation, which we've heard about in testimony, which I sponsored, and that is, the bad faith bill.

It may not be swallowed whole and incorporated here, but I think the concept of it does basically what this proposal does, that is, levels the playing field or gives a little better leverage, if you will, a little more clout to the policyholder. It would seem to me that we can accomplish the same result without establishing another office, another position, or slew of positions, etc. Giving the public the authority to go back at their insurance companies in the cases where those insurance companies have made unjust decisions not to pay a claim or to pay a small portion of the claim.

So I would like to have the Committee consider inserting in some form language from that bill that accomplishes the same and that might not necessitate an official Ombudsman of sorts.

SPEAKER COLLINS: Minority Leader Doria.

ASSEMBLYMAN DORIA: I would like to second the Majority Leader's comments. Being his coprime sponsor of the bill, I believe that we would probably save ourselves a lot of bureaucracy and solve the same problems that are presented in this draft on the Ombudsman.

Obviously everyone is concerned about the protections of the citizens as it relates to insurance claims and the problems they may have. The bad faith bill does deal with the Division of Consumer Affairs. There was criticism of putting the mechanisms through the Division of Consumer Affairs, but I do think that we probably could do it easier and quicker and with less bureaucracy and without creating another whole new office by implementing, in this legislation, the basic concepts of the bad faith bill. So I would support the Majority Leader's opinion on that and say that it is a good step forward. And at the same time, we would solve a lot of the problems that are presented and suggestions that are made here in the Ombudsman.

SPEAKER COLLINS: Thank you, Mr. Leader.

SENATOR CARDINALE: When you get around, if you could call on me.

SPEAKER COLLINS: Okay, Senator. Let me just say something, that we are dealing with the Ombudsman here.

I understand we've heard the discussion of the bad faith bill; I'm quite familiar with that. The two Leaders are the coprime sponsors of that. I think at times there is bad faith. I think that bill should sort of be evaluated on its own. Though, I think the Ombudsman surely would be able to take some of those major concerns and put them into a consumer advocacy position. I don't know how much bureaucracy this would create.

Again, I have two basic premises here: One, I think the insurance companies should be allowed to run their business, but their business is to respond to constituents, or their customers, when the time comes. Two is the Department of Insurance. I want them to be the Department of Insurance. Maybe this is an opportunity with particular focus on an Ombudsman to -- within the Department -- to deal with those agitated calls that I think we all get, and should get, from customers.

I have a whole lot of letters right with me today where they are not being responded to by the insurance companies. I want them doing their business, but part of their business is paying people when they deserve to be paid. Maybe the Ombudsman could help there without just sort of eviscerating the insurance companies.

Senator Cardinale.

SENATOR CARDINALE: Yes, I just want to recall to everyone the first hearing we had where a whole series of people came in and told us about how difficult it was to get the insurance companies to cover what they considered to be obligations, and, in fact, that was leading to lawsuits. Suits were being brought in order to have the insurance company pay legitimate bills.

We have established many things to try to deal with that kind of problem. This essentially moves the function. It doesn't change the theory from what we are doing today. It moves the function from the Department of Insurance to the Department of Consumer Affairs. I think that's wise because you have a Department that is not oriented strictly to the insurance business, but is oriented towards protecting consumers' rights.

One of the conflicts that may not be quite so obvious is that very frequently these disputes arise because of the form -- the insurance form -- the policy form. The Insurance Department has already approved language in a policy form, and they may have a sort of a little attachment to what they have previously done and may not be able to look at it as objectively as another Department would.

The alternative, while I certainly don't want to lose the support of those who favor that, would lead to more lawsuits. That's the only way that that would be envisioned in my mind. You would have more lawsuits if you introduced this additional cause of action. I think one of our charges here is to diminish, not increase, lawsuits. Obviously, the costs would be much higher if you have more lawsuits, and our second charge, of course, is to make the costs lower.

I think this is a cost-effective way of resolving disputes, not only in auto, but in health and in casualty and a lot of other things. So I think there is a very valid exercise, and I believe we ought to do it.

PRESIDENT DiFRANCESCO: Okay, I see there is no other discussion on it.

Senator Adler.

SENATOR ADLER: I support Senator Cardinale's language as it is. I would like to see some language that would implement what the Majority Leader has described as the bad faith bill to see how it would work in the context of the reform we are talking about.

I have some concerns of how the Ombudsman plays into the rate-making process or if it's just a consumer advocate in the individual cases.

Unless we have either a public advocate dealing with rate-increase applications or have a third-party intervention mechanism, like California does, we will have nobody speaking for the public with the possible exception -- as Assemblyman Garrett will remind me in a moment -- of the Commissioner herself speaking to the public, of course. We'll have no one speaking for the public in a consumer context with respect to rate making.

So I wonder how we can decide this issue without knowing where we're going on the rate-making issue as well.

PRESIDENT DiFRANCESCO: Okay, I understand that it is strictly limited to-- It has nothing to do with rate making.

SENATOR ADLER: I guess my suggestion is, if we don't have a public advocate and we're not going to have a third-party intervention mechanism -- and I personally favor the third-party intervention mechanism and you heard Blossom Peretz recommend that as a very viable approach to help protect consumer interest in rate making.

Then if we are not going to have one of those two things, then I think we would want to beef up some of the more general wide-ranging macro responsibilities of the Ombudsman. Have the Ombudsman have some powers, in addition to the Commissioner, with respect to holding public hearings and authorizing actuarial studies with respect to rate increases.

PRESIDENT DiFRANCESCO: We do have language on that -- what you just said, authorizing an actuarial study in an independent outside party -- that we could distribute.

SENATOR CODEY: Is this supposed to be in lieu of?

SENATOR KYRILLOS: Is that for this proposal?

SENATOR CARDINALE: No, it's a separate proposal.

PRESIDENT DiFRANCESCO: No, in addition to.

SENATOR ADLER: Because we haven't discussed where that proposal lies, and I don't want to say that I'm supportive of this and find out that this is all we do for consumers in the context of dealing with insurance companies.

PRESIDENT DiFRANCESCO: I don't know if Paul was going to get, or his staff was going to get, language for you on that issue. I assume they could look at that later.

SENATOR KYRILLOS: Mr. President.

PRESIDENT DiFRANCESCO: Senator Kyrillos.

SENATOR KYRILLOS: I just think that the language that Senator Adler requested, I guess language on the bad faith bill, is an item that we ought to look at in isolation another time and not in this context as the Speaker himself advised. I know it came up a little bit, I think vis-à-vis the testimony of Commissioner Randall. In reality, it's not a component that we really talked about here before and is not one that I think there is general consensus on. I think, on this proposal, I don't think we should make it more than it is. There are people that don't want this at all, and I don't think it serves to be a public advocate, so to speak. It's a consumer advocate à la the Consumer Affairs chief that we have today, and this would be a supplement to that office.

We all get a lot of phone calls and a lot of correspondence and a lot of complaints in our offices dealing with insurance policies and insurance companies. Sure would be nice to have a place to go to say, "Check this out,

look at this very carefully,” and not have some routine form letter response back. So I think Senator Cardinale’s proposal as it’s crafted is the right way to go.

PRESIDENT DiFRANCESCO: That was my view. Exactly what you said was my view that it’s strictly a complaint division, so to speak.

Assemblyman Charles.

ASSEMBLYMAN CHARLES: We are obviously concerned about the consumer and taking care of the consumers’ concerns and problems that they have. We should be trying to focus in on what the principal problems of that consumer is. To me having a consumer -- an Ombudsman like this addresses a problem that arises among policyholders, but it doesn’t get at the fundamental question which involves all policyholders, which is the fairness of the rates that they are paying.

So while this proposal does something for the consumer, I think we would do more for the consumer if we have involved in the rate-making process some sort of public advocate or some third-party intervention. If we really want to help the consumer that’s how we help them. I think if you really consider this, all things considered, you would be doing more for the public of New Jersey by having somebody in the process that has to do with the setting rates, than having this Ombudsman on the tail end of it.

So I think it’s hard to-- We don’t complete this process, we don’t give the consumer the kind of comfort that I think the consumer is looking for without having some sort of rate advocate involved in the process. To me that’s connected with having a fraud prosecutor. A fraud prosecutor is something that looks at what the consumer is doing. A rate advocate looks at

what the insurance company is doing also. So there is balance that comes with that.

In reference to this particular idea, the Ombudsman, I think that we address that idea a lot more effectively and with less bureaucracy with the kind of bill that the Majority Leader talked about and Minority Leader Doria, the Unfair Practices law. That cuts down the bureaucracy. For example, how many offices are we going to have all around the State of New Jersey? One in Salem, one in Newark, two in Salem, and so on.

PRESIDENT DiFRANCESCO: Offices of what?

ASSEMBLYMAN CHARLES: Ombudsman rather. How many are we going to have? Where is the bureaucracy going to be?

PRESIDENT DiFRANCESCO: I don't know. Wherever is appropriate.

ASSEMBLYMAN CHARLES: Who is going to pay for it? How does that get figured into rates? All those type of questions suggest themselves.

PRESIDENT DiFRANCESCO: The only thing I disagree with you on what the public is looking for. They certainly are looking for rate relief, but many of the complaints I've gotten deal with beyond that. They deal with problems with claims and with insurance carriers. So why shouldn't we have people with some expertise dealing with these consumer complaints? That's all we're talking about here.

ASSEMBLYMAN CHARLES: I don't disagree with you. This should be available-- Some sort of entity should be available for our consumers, but this is not of primary concern. I disagree with you. I think

that they're concerned that we should be more concerned about the fairness of the rates and handle this as an important matter also.

This is back end, this is not front end. This is not as important as the fairness of the rates. We're dealing with what percentage of the 5 million to whatever auto policyholders in the State of New Jersey will be talking about the claims that they may have or problems they would be having with the insurance company. That's a small percentage, but everybody is affected by the rates. Everybody pays premiums, so we ought to get involved on the consumer behalf upfront where it really impacts on them. That's where the advocate, if somebody standing in at that point addressing their concerns about rates, is involved.

The second point, as I said, let's do it. Everybody is talking about reducing bureaucracy, not adding to the Departments of State government, and so on. We can achieve this probably by having an independent cause of action for unfair settlement practices. That way the parties who are affected can take it on their own to do what happens.

And a lot of the other functions that are outlined in here should be done by the Department of Insurance to begin with. The policy language-- They should be making sure that the policy language is plain and whatever. Maybe they don't, maybe they should be reviewed. This is helpful. My feeling, bottom line, is this: that again we aren't doing the most that we can do, the best that we can do. We're putting forward some things that sound good, and it would be hard to vote against, but really aren't as much as we can do at this time.

PRESIDENT DiFRANCESCO: I didn't say this was a panacea here, Joe, but if you all don't want to have an Ombudsman, we'll come to that point and vote on it. If that's the drift of what I hear, that's great. But let's bring this to a conclusion because I don't think we need to hear much more on this.

Senator Adler and Senator Codey.

SENATOR ADLER: Senator Codey is the Leader.

PRESIDENT DiFRANCESCO: Senator Codey.

SENATOR CODEY: Mr. President, I don't have a problem with the Ombudsman at all. But our concern is the issue of the rate council be brought up, and we'd like to see it, obviously. One of my concerns is there is almost \$5 billion in auto insurance premiums that companies take in. I think we all know, and that includes the general public, that the companies then invest that.

If you look at the stock market over the last couple of years, they have literally made billions and billions of dollars on New Jersey residents. Yet the public sees a rate increase, and they say, "Senator, what happened to the billions of dollars they made in the stock market? Where did that go?" So there is no credibility. The rate council addresses that -- to go in there and say, "Where have the billions of dollars that you've made in the stock market gone? Why do you still want a rate increase?" We want that addressed and it should be. I have no problem with the Ombudsman, but the other issue is separate and distinct from this, Mr. Chairman.

PRESIDENT DiFRANCESCO: Senator Adler.

SENATOR ADLER: With your representation that we will revisit the rate-making issue in another part of the discussion--

PRESIDENT DiFRANCESCO: What Assembly Majority Leader suggested, is that what you mean?

SENATOR ADLER: No, the rate-making issue in another discussion.

Didn't you say a moment ago we will address rate making?

PRESIDENT DiFRANCESCO: I didn't think so.

SENATOR ADLER: So you want us to resolve rate making in this discussion, also?

PRESIDENT DiFRANCESCO: I thought that I said that if we got a proposal from Assemblyman DiGaetano, what he was referring to, that we would discuss that later. That's what I thought I said.

SENATOR ADLER: Let me clarify, are we planning to have a further discussion on rate making after this discussion on the Ombudsman?

PRESIDENT DiFRANCESCO: Yes, we are.

SENATOR ADLER: Okay. Then I support the Ombudsman. I salute Senator Cardinale.

PRESIDENT DiFRANCESCO: You don't have to salute him.  
(laughter)

SENATOR ADLER: I have to.

SENATOR CARDINALE: I didn't see the salute.

PRESIDENT DiFRANCESCO: Let's not get carried away. He'll want to start introducing more ideas then.

SENATOR KYRILLOS: He was never like that on the Commerce Committee, Senator Cardinale. (laughter)

SENATOR CODEY: Or Adler.

PRESIDENT DiFRANCESCO: How about fraud?

Everyone is against fraud.

The Attorney General is working hard in this area.

We've had this secret document that we are distributing right now called Fraud Section Version II. The proposal really is to establish in the Division of Criminal Justice, I guess -- well, actually Department of Law and Public Safety -- an Office of Insurance Fraud.

SENATOR CODEY: We're doing it again?

PRESIDENT DiFRANCESCO: What do you mean?

SENATOR CARDINALE: It's been revised.

PRESIDENT DiFRANCESCO: Oh, it's been changed.

SENATOR CODEY: Oh, by Verniero?

PRESIDENT DiFRANCESCO: Well, I'm not sure we need a fraud prosecutor as originally proposed. For example, it says the insurance fraud prosecutor appointed by and serves at the pleasure of the government by the advice of the Senate. That doesn't have to be--

A suggestion that I'm throwing out to the Committee is that we have an office of insurance fraud prosecution.

SENATOR KYRILLOS: Headed by a director, Mr. President, referred to as the insurance prosecutor, correct?

MS. PUROLA: This is the version you had in front of you the other day with a couple of changes Assemblyman Charles asked for.

SENATOR CODEY: This fraud version -- Fraud Section Version II is what we're looking at?

MS. PUROLA: Yes.

SENATOR CODEY: What exactly are the changes from what we adopted the other day?

MS. PUROLA: He took about-- I put in some additional language having to do with the -- I think it is Section 15, the county prosecutor. We want a stronger link to the county prosecutor. I also put in a little bit more language about the database.

SENATOR CODEY: What was that, Laurine?

MS. PUROLA: The database. There is section that requires him, which was in the other draft, Section 7, to maintain a database. At the last meeting we talked about the Massachusetts system, and so I put that in Subsection B where there is uniform reporting by insurers.

SENATOR CODEY: Okay.

ASSEMBLYMAN DiGAETANO: Mr. Chairman, point of information. Is there an extraneous set of brackets here, or is there an "in" that should not have been included inside the brackets?

PRESIDENT DiFRANCESCO: Well, you can-- I assume you interpret this: there is established.

ASSEMBLYMAN DiGAETANO: There is a word missing or the brackets shouldn't be there. Which one?

PRESIDENT DiFRANCESCO: I would say there is a word missing.

SENATOR BENNETT: It's either-or, you've got to make a choice.

MS. PUROLA: It's either-or.

PRESIDENT DiFRANCESCO: It's one or the other.

SENATOR ADLER: It's either-or further down on that paragraph, also? It's wrongly not bracketed later on?

MS. PUROLA: It's either-or. Probably there are other adjustments that have to be made later in the draft, but that's the decision that you need to make.

SENATOR CARDINALE: Can I ask a question about this process, Mr. President?

PRESIDENT DiFRANCESCO: Which process?

SENATOR CARDINALE: The process after this is established. There is currently some mechanism in both the Department of Insurance and in the Attorney General's Office which deals with issues like this. I think we are not happy with how it's been dealt with, and that's why we want to highlight it, but there are cases in the pipeline.

Now, would we envision that the personnel and the work that they currently have in progress would be moved over into this new entity? It would seem to be reasonable that that would be what would happen.

PRESIDENT DiFRANCESCO: That's practical and reasonable. Yes, I think that's not a decision you could concretely make today, but I assume that would happen.

MS. PUROLA: Third line down in Section 2.

PRESIDENT DiFRANCESCO: Personnel charged with investigatory work in the Division of Fraud and the Department of Banking and Insurance are transferred to the Office of Insurance Fraud.

SENATOR CARDINALE: One of the objections I've heard, and this is the reason I ask the question, is that it may take several months or some period of time to staff up, gear up, begin to develop data before anything would actually happen, and it would probably be a very substantial period of time before you would see the first indictment come down on fraud cases if we stopped all of the wheels and then started them again.

I think we can handle that by saying all of this work is going to continue somewhere, that we're not going to leave all the people from one area and hire all new people, etc. I think we need some kind of definitive language to approach that eventuality and--

PRESIDENT DiFRANCESCO: Well, we can do that. I wouldn't think we would need that in the legislation. I think that is something--

SENATOR CODEY: It says it right there you transfer them over.

SENATOR CARDINALE: You're transferring the people, but are you transferring the cases?

SENATOR CODEY: Sure you are.

PRESIDENT DiFRANCESCO: --that is in the ordinary course of business.

SENATOR CARDINALE: All right, if you don't think we need it. I mean, I don't know how these things work. I've never seen one of these things move before.

PRESIDENT DiFRANCESCO: Senator Bennett.

SENATOR BENNETT: Mr. Chairman, in dealing with the initial threshold issue that we talked about last time, my understanding was that, basically, the last time the concept was that we were leaning towards talking

about an “in” but not “of.” My understanding is that we have not-- Whenever we have done in an establishment of focused office such as environmental prosecutor that that was “in” and “of” the Department of Criminal Justice--

I would have a concern that if, in fact, by creating someone or some entity that is going to not be of the Department of Criminal Justice, we could have some fragmentation. Coordination between the prosecutors, I think, is an important one, and that’s now done through the existing system of Criminal Justice, and we may now have the prosecutors having to answer not only to the Attorney General, but they may be answering to an independent prosecutor that I’m not necessarily sure that that improves the coordination of fraudulent activities on a statewide basis.

We were talking about going between the two. Unless there is some precedent that I’m not aware of, of having something done independently, I believe that we should have the office established. I believe that we could go into most of the details. I’ve listened and I believe that the arguments of having it done separately fall short and that we, in fact, should have it within the Division of Criminal Justice.

PRESIDENT DiFRANCESCO: Mr. Speaker.

SPEAKER COLLINS: Well, Mr. President, just the other day when we were talking about this I said that I always felt it should, again, be in the Department of Insurance because Department of Insurance should oversee insurance. But, as was pointed out -- I don’t know whether it was Senator Cardinale or Senator Codey who once said -- now we’re going to make them criminal penalties. I said, “Well, that makes some sense.” Then I brought up the idea that where I also could get there would be with regard to county

prosecutors and all answering along the line and sort of let it sit until we were going to get to it again.

In the interim, I'm sure that wasn't to overlook the members of the Committee, but I have a letter here that was sent to the four Leaders from former Attorneys General Cary Edwards, Robert Del Tufo, James Sizale (phonetic spelling) and Peter Perretti -- all of them making the argument, somewhat similar to what you just said, Mr. Leader, to spread this all over the place is really not the way to go. I'll defer to those who have done it. But, I mean, we want to arrest some people here. (laughter) Somebody arrest somebody, even if it's the former Attorneys General coming back.

I don't have a problem. The bottom line is, I guess, I like it in the Attorney General's Office, it makes sense. But, come on, let's get these bad people.

PRESIDENT DiFRANCESCO: I thought you were going to say something else there for a moment.

Senator Adler, then former Speaker Doria.

SENATOR ADLER: I have a sense that there is some fraud out there in the automobile context in New Jersey, and it has not been successfully prosecuted over a number of years. This is not a criticism of any of the former Attorney Generals or the current Attorney General, but we have a dismal record of automobile insurance fraud prosecution over the course of several administrations.

I believe the appointment of a special prosecutor by nomination by the Governor and confirmation by the Senate will send a signal to the fraud perpetrators that we are serious, maybe for the first time ever, about catching,

prosecuting, and incarcerating those who commit fraud, taking away their licenses, imposing whatever civil penalties we're prepared to impose and deterring this sort of activity that is costing consumers hundreds of millions of dollars.

I don't have a whole lot of faith in the Department of Law and Public Safety given the past record. This is not a criticism of the current Attorney General, I want to make that very clear. He and I had a very productive conversation yesterday about this very issue. But I believe it would be much more fruitful as a signal to the community and as an actual law enforcement mechanism to have a certain individual whose sole responsibility is to go get these people, as the Speaker just said, and to put them away and deter this sort of conduct that's costing us so much money.

SENATOR KYRILLOS: Mr. President.

PRESIDENT DiFRANCESCO: Assemblyman Doria.

ASSEMBLYMAN DORIA: Thank you, Mr. President.

I just want to, basically, go along with Senator Bennett and Speaker Collins and Senator Adler. I believe that we need to send a message, and I believe that we need to deal with fraud. I do believe that it should be in the Department. I support that.

I think we were ordinarily talking about "in" but not "of," but I would support very much that it be part of the Department, as the Speaker and Senator Bennett said, and I do think that we need to make sure that there is adequate coordination as we are setting forth in this draft, specifically with the county prosecutors. I know Assemblyman Garrett and Assemblyman Charles had spoken about that at length at the last hearing.

I do think we should keep that individual for the reason that it creates the visibility. I don't think we're questioning that there is a Division on the part of the Attorney General's Office and Department of Law and Public Safety. But I think by having that person appointed and then having that person as part of the Department of Justice, we will have done a number of things. We will have created the visibility, we will have made it part of the Department of Law and Public Safety and the Department of Justice, and at the same time -- within the Attorney General's Office -- at the same time, we will have the coordination and we'll send a message. We have to do all those things. So I think that the movement here and making it a part of would, I think, be stronger, and I agree with Senator Bennett on that strongly.

PRESIDENT DiFRANCESCO: Senator Kyrillos.

SENATOR KYRILLOS: Thank you very much, Mr. President.

I guess I was going to say something very much like Joe Doria just said. I think we can have it both ways, and I think that's what the Minority Leader just said. We can have an insurance fraud prosecutor. He can be very visible. He can also send the kind of signal that John Adler talked about. He can also be part of the Law and Public Safety Department and work for the Attorney General and be part of this seamless apparatus that has been created of county prosecutors and law enforcement throughout this state that has seemed to be looked at as a model around the country.

We ought to give that person some distinction. It should be a person, we just shouldn't have a vague reference to an office. Perhaps, Mr. President and Mr. Speaker, to do that this could be a gubernatorial nominee appointed by the Governor, confirmed by the State Senate, and still be

answerable to the Attorney General, be part of the Law and Public Safety Department. We do that in other cases. There are gubernatorial nominations that we confirm now that then were reported to cabinet members, and so in that way I think we can have the best of both worlds.

PRESIDENT DiFRANCESCO: Scott Garrett, Assemblyman Garrett.

ASSEMBLYMAN GARRETT: Can we make this an Assembly confirmation? was my question. (laughter)

ASSEMBLYMAN DORIA: We on this side of the aisle agree.

SENATOR KYRILLOS: When I was in the Assembly, I always thought the same thing.

ASSEMBLYMAN GARRETT: I'm curious exactly how this works. The proposal that is out here, Version 2, talks of liaisons with the insurance fraud prosecutor over at the AG's Office with various other departments and agencies and what have you. I see there is no liaison with the Department of Insurance. Don't we want--

From a practical point of view the version here talks of the insurance prosecutor getting this information from various sources, the last being the insurance industry. What is the obligation of the insurance industry? Do they no longer have a direct relationship with the Department of Insurance with regard to insurance fraud, or do we have a duplication of effort now on that regard?

MS. PUROLA: No, there is. If you notice, in fact, I've changed this slightly. I say the personnel charged with investigatory work in the Division of Fraud and the Department of Banking and Insurance would be

transferred to the Department of Law and Public Safety. There would still, however, be people who now serve in that division and whose job is to oversee the fraud plans and fraud efforts of individual insurance companies. That would remain in the Department of Insurance.

ASSEMBLYMAN GARRETT: So if I'm a carrier and my claims department is submitting to me the fraudulent claims that we are seeing, who am I reporting to now, the Department of Insurance or the AG or am I now sending reports to both Departments?

MS. PUROLA: No, for the investigatory work of that nature, with regard to specific claims, it would go to the Department of Law and Public Safety to the prosecutor's office for the investigation.

ASSEMBLYMAN GARRETT: But wouldn't the Department of Insurance have a need to know what sort of claims are out there and what the nature of what is going on in order for their division, that is going to be looking over the plans -- the SIU units of the carriers, to know whether they are adequate or not? They wouldn't know whether they were adequate or not unless they know what the nature of the claims of fraud that they have been sending over to the AG's Office.

MS. PUROLA: Right, there is nothing there to preclude them from getting that information. What you're saying is you want me to add the liaison with the Department of Insurance.

ASSEMBLYMAN GARRETT: That would be a start. I go back to the Speaker's comment that this should be over-- That we are simply extending a bureaucracy here over to the AG's Office. I think that's where the problem falls down now. Where the claims come in and sent to the DOI, the

DOI handles it for awhile, they send it over to the AG, the AG handles it, and when we get the complaints from our constituents that nothing ever happened on it, both Departments are pointing the finger at each other saying, "Well, it's their fault, or it's the other Department's fault."

I'm wondering with this proposal what the bottom-line savings are going to be if we may end up with the exact same situation as we have right now with each Department saying, "Well, we got the information, but it's the Department's fault for not having adequate SIU units. The information is not getting to us, so it's their fault."

It's back and forth, and it just becomes an addition to the bureaucracy down there. Whether we are going to end up with the savings, which we haven't really discussed what this savings will allegedly produce-- Maybe we'll be costing more to the industry, and hence, the consumer, in the long run by going down this road by putting it into another department.

SENATOR CARDINALE: May I address that?

SPEAKER COLLINS: Senator Cardinale.

SENATOR CARDINALE: I share some of your worries, but I have them in a slightly different sense. I think they can be reminded by directing the activities of this group a little more specifically than we are directing. I think we have to be very specific in directing them to ferret out fraud that is being perpetrated essentially on the public, but really being perpetrated on the insurance company in a given instance. But that really is--

When people file claims that are specious, when people file and you discover that there has been fraudulent medical care, for instance, or overutilization, you've got to direct them to ferret that out in ways that are not

just looking at records -- in ways where they actually go in, in an investigatory capacity with people who are able to get the information so that they can give the fear of God to, let's say, the doctor who is going to want to do that, and you send somebody in who's, perhaps, healthy and who hasn't been involved in an automobile accident to go get medical care. When the doctor makes the evaluation that you're terribly ill, you have this TM joint problem, and you've got this back problem, and you've got all these other things and here is a lawyer's card. Go see this lawyer, and we're going to get this thing really going for you. That's the kind of thing that I think we need to catch.

I think that what our problem is, is that the existing structure reviews records, and they don't do much more than review records except once in a while they will do something else. That's my perception of what they have been doing over the years. I've seen one major sting operation that they've done.

If we do that, I don't think it makes any difference whether it's in/of this department, that department, or wherever it is. If we direct it properly, I think it can be almost anywhere.

PRESIDENT DiFRANCESCO: Okay. Looks like we have a consensus. (laughter)

ASSEMBLYMAN CHARLES: What is that consensus?

SENATOR CARDINALE: He's keeping record of all our consensuses.

SENATOR KYRILLOS: These open workshop meetings are just great.

PRESIDENT DiFRANCESCO: Let's talk about the threshold. We'll take about 15 minutes to talk about the verbal threshold, or no threshold. It doesn't have to be verbal. It can be dollar, it could be none.

ASSEMBLYMAN DORIA: Let me begin by asking the question that I think I've asked and Senator Adler has asked continuously from the beginning. That question is, do we have the numbers that show the reason why the verbal threshold is different than -- is cheaper than -- the traditional threshold?

You remember we went through this with a number of the insurance companies, we went through it with the Department. At the present time it is significantly higher for someone who makes the decision to maintain a traditional threshold rather than the verbal threshold.

PRESIDENT DiFRANCESCO: You mean the zero dollar threshold?

ASSEMBLYMAN DORIA: Zero dollar traditional verses the verbal threshold.

PRESIDENT DiFRANCESCO: That's traditional?

ASSEMBLYMAN DORIA: Well, I call it that, whatever. It was traditional.

PRESIDENT DiFRANCESCO: No, that's what you mean by traditional.

ASSEMBLYMAN DORIA: That's what I mean by traditional. Zero threshold verses verbal threshold. The question was at that point that Senator Adler began and I continued to ask is-- You pay \$350, \$375 more presently if you make the decision to have a zero threshold. The question that

I ask is, where do we actuarially develop that? Where are the claims experience, the payouts, to justify the difference in cost?

We've asked the insurance companies for their ability to present that information. We've asked the Department. We've seemed to ask everybody, and nobody seems yet to be able to give us actuarially the reason why there is such a difference in cost. What are the claims, what's the difference in claims that makes that cost so much higher?

PRESIDENT DiFRANCESCO: Well--

SENATOR CARDINALE: Didn't we get data on that?

PRESIDENT DiFRANCESCO: I'm told you had some data, Assemblyman.

ASSEMBLYMAN DORIA: I don't remember seeing it.

PRESIDENT DiFRANCESCO: It's not my view to discuss that aspect of the verbal today.

ASSEMBLYMAN DORIA: Well, no. The reason why I bring that up is because that helps us to make a decision of where we're going because obviously it deals with the cost factor, and we want to see how we can save the most money.

PRESIDENT DiFRANCESCO: That's true, but I'm prepared to talk about what kind of threshold we should have and piece of legislation enacted. I don't see the need for me to get into a discussion as to a dollar number on the zero verses the verbal that exists today, how they justify the premium that they charge. That's what you're asking. Why is it that it's so expensive to take a zero threshold, and what is the correlation between that expense and then the real losses or what have you in claims?

ASSEMBLYMAN DORIA: Well, the reason why I'm taking it to the next step is we're now talking about the verbal threshold and making changes to the present verbal threshold, either to broaden it or to tighten it. So my question relates specifically, if we can't figure out where the money differential is between one to the other, how can we then figure out if we make changes to the present verbal threshold what the actual savings are going to be?

That's my concern because we need to come up with some specific savings. I would like to be able, then, to know this is the reason why this amount of savings can be attributed to this change in the threshold.

PRESIDENT DiFRANCESCO: Well, we need to have guaranteed savings, we need to have a mandatory reduction in rates. I'm convinced that if we get some of this done and get a bill passed, we will without having to demonstrate to the exact dollar the kind of thing that you're talking about.

ASSEMBLYMAN DORIA: Well, I don't worry about the exact dollar, I just worry being in a ballpark someplace and not in left field.

PRESIDENT DiFRANCESCO: Senator Kyrillos. Senator Cardinale after that.

SENATOR KYRILLOS: Just a practical matter to answer Joe Doria's question. I think we all intuitively understand that if you have fewer lawsuits, you're going to have less cost. I guess Joe's question is how much less cost. All of our staffs, Laurine, I think partisans staff across the aisle in both Houses, have costed out these various threshold options, I believe based on data that's been submitted and testimony and privately and through discussions that our staffs have had with professionals in the field.

Laurine, maybe I'm wrong. Do we have those kind of numbers where we can put a percentage decrease next to the current verbal threshold or a New York style verbal threshold or a Michigan verbal threshold based on our best gathering of data from the Assembly Minority Staff to the Senate Majority Staff?

MS. PUROLA: A lot of this comes from actuarial estimates based on experience in other states on frequency and severity of claims. Of course, that may not be the same exactly as is the case in New Jersey. In one case, an estimate comes from a closed claims study that was conducted in New York.

PRESIDENT DiFRANCESCO: Senator Cardinale.

SENATOR CARDINALE: Yes, I think after we had the last discussions, my recollection we did get some material from the Department of Insurance. If you recall that also included a third option, an option that was neither the verbal threshold nor the zero threshold, but rather was scheduled to pay out depending on the nature of the injury without the necessity of filing suit.

I don't remember what they said on the first two, but I'm sort of close to the third one. I remember that they said it would be a 15 percent saving if that were adopted. That letter came from the Department of Insurance. It was consistent with what was being said by the Governor's Office earlier, and they based that on an actuarial estimate. Because it hasn't actually been done anywhere, that is an actuarial estimate.

But I can tell you as well that we had a hearing before the Congress committee sometime ago, last year, last session, and State Farm came up and said they could live with a 30 percent reduction on the mandatory

sides, which translates to 15 overall if that were adopted. So if an insurance company is willing to accept what amounts to 15 percent less on their overall insurance with just that one simple change, I think that's pretty good evidence to me, even though I don't have that experience from other states. I don't think they're here to want to lose money. I believe that ought to be on the table along with the verbal threshold as a third option that people might have.

PRESIDENT DiFRANCESCO: Okay.

We have a number of proposals that have been suggested with respect to the verbal threshold.

ASSEMBLYMAN GARRETT: Where are they?

ASSEMBLYWOMAN FARRAGHER: We're not allowed to see them?

PRESIDENT DiFRANCESCO: You're not allowed to see them.

Well, I actually have what was given to me the other day right in front of me now which we all got the other day.

Do you want to pass them out now. (staff complies)

ASSEMBLYWOMAN FARRAGHER: Does it count if I know where it is?

PRESIDENT DiFRANCESCO: Lawsuit threshold options?

ASSEMBLYWOMAN FARRAGHER: I know where it is. It's in my car.

PRESIDENT DiFRANCESCO: Oh no, now we have a new and revised one with different color paper. It's a little better to read, bolder print.

It looks like there are eight options; although, there could be 18 for all I know.

Okay, as you can see on the front, he has summarized the options into eight: the first one to eliminate the threshold entirely. the eighth one to follow Michigan.

I have a problem with that because, being a Penn State guy, we hated Michigan. (laughter) I hate this talk about Michigan. I don't like their colors, I don't like their song. (laughter) Although, the new coach is from Rutgers, the basketball coach. It's a good thing.

Rutgers is our State University, Joe.

ASSEMBLYMAN DORIA: I heard of them.

PRESIDENT DiFRANCESCO: I know you know.

ASSEMBLYMAN DORIA: I heard about it. I'm not too sure where it is, but I've heard of it.

PRESIDENT DiFRANCESCO: Joe, do you want to start the discussion?

ASSEMBLYMAN DORIA: I will start the discussion.

PRESIDENT DiFRANCESCO: Is that an unfair question?

ASSEMBLYMAN DORIA: No, it's not unfair. I think that all of us understand that we have to come up with some form of savings. Maybe I'll throw some other possibilities on the floor. We go from eliminating the verbal threshold to allow pain and suffering suits, which is obviously one end where it's going to increase cost, to the Michigan threshold, which, I think, we've only basically agreed in past discussions we weren't going to be moving to. I think that we--

SENATOR KYRILLOS: I'm not sure that's correct.

ASSEMBLYMAN DORIA: Well, at one of the meetings--

SENATOR KYRILLOS: We can talk about it now.

ASSEMBLYMAN DORIA: I am. But I mean one of the meetings it seemed like there was a general consensus. I do think we have to change some of the definitions as it relates to the Items 7, 8, and 9 which is something that we have discussed.

There is one possibility based upon some of the research that staff has done that relates to coming up with a threshold using seven, eight, and nine -- language that some other states are using. We've talked about New York, we've talked about Pennsylvania, and one of the other states is Florida. Florida has developed a definition over time which would deal with a lot of the questions that we have.

Florida's experience has been very positive as it relates to increasing rates. Their rates have increased over the last few years. While ours has gone up 44 percent, theirs has gone up approximately 4.4 percent, one-tenth of the increases that we have. Their definitional wording that could be considered that would change some of the categories under seven, eight, and nine. Now, I'm not an expert, I'm not a lawyer, so I can't tell you all of the intricacies of the process, but I do think it is worth us considering.

Looking at what Florida has done and compare that to what to talking about in New Jersey and what's going on in New York and determine how much of a savings could be envisioned from doing that. We're tidying the threshold. We're basically dealing with more of a reliance on the opinion of health professionals as it relates to establishing the concepts of permanent injury. So we are doing a number of things that we've talked about, while at

the same time not maybe going to the extreme of the Michigan threshold. That's where I would begin.

PRESIDENT DiFRANCESCO: Senator Kyrillos and then Senator Cardinale.

SENATOR KYRILLOS: Thank you, Mr. President.

You know I haven't really heard a lot about the Florida statute.

PRESIDENT DiFRANCESCO: They don't have mandatory liability insurance, according to Laurine. She just mentioned it.

SENATOR KYRILLOS: So of all the proposals that we've heard from people that were concerned about cost saving and having more affordable auto insurance for people, I never heard about Florida. We've got some percentage savings next to some of our various options, but I don't know about the Florida example. If we could find that out we could evaluate it.

Michigan isn't the most dramatic example, Joe, of potential savings that's on our option list here. We'd save about 13 percent, we estimate, on your bodily injury liability coverage, but Option 6, which would eliminate Categories 8 and 9 of the current verbal threshold, would save a lot more than that, 30 percent off of the current statewide average.

I know Senator Adler has a good proposal that we can take a look at and we ought to take a look at. There is one or two options out here I think, Mr. President, but most of all I think we have to all understand that if we're going to be taken seriously in this endeavor that's gone on for months now -- and I guess I ought to say years -- of trying to provide an affordable auto insurance product for people, we've got to do something serious about this threshold issue. We will be laughed at if we punt on this issue.

We heard the Speaker and others talk about reducing personal injury protection the other week. So what we are saying is we are willing, for cost savings, to reduce that, but on this side, we are not willing to give up what some of us consider frivolous lawsuits in order to get cost savings. So the lawsuit option, or the lawsuit privilege, is more important than having an abundance of medical coverage if you're hurt in a terrible auto accident. It doesn't make sense to me.

So we've got to pick a serious threshold for me to be happy. I offered one option, and I'm not wedded to it, but I said let everybody choose. Let everybody choose the Michigan threshold if they want that and want to have the cost savings associated with it. If they don't want that, they want more protection, they can keep the current verbal threshold or have no threshold at all, and you pay for what you get.

At the very least, if we can't agree on a serious threshold level, and it's possible that we can't, then at least give people the option. Let them choose what they want. If we can give them the option of a basic policy so they can save money, we sure can give them an option on not having that inordinate right to sue beyond recovering your economic loss and your medical damages. You can sue for that now, no matter what threshold we pass. You can still sue to recover your medical cost and your economic damages. These are just pain and suffering numbers we are talking about.

PRESIDENT DiFRANCESCO: Senator Cardinale.

SENATOR CARDINALE: I don't want to repeat everything that Senator Kyrillos said, but I could because I agree with all of it. I think we ought to take a very serious look at deleting, in their entirety, Categories 8 and

9. Because those Categories, 8 and 9, don't seem to me to be, in my own view, serious injuries in the context of what we have been talking about in serious injuries. Remember getting your medical bills paid without regard to fault-- There was supposed to be a trade-off -- you have to trade something off -- and eight and nine sort of brought back the trade-offs that people were making. That's one of the reasons -- it's not the only reason, but it's one of the reasons -- that insurance costs so much in New Jersey.

There have been changes going along as time has passed with our current verbal threshold so that more and more suits are piercing the verbal threshold every year. Those piercings take place because of the language of eight and nine. Therefore, if we eliminate eight and nine we have a very substantial saving. It's almost triple -- not quite, but it's almost triple -- what the Michigan would give us.

Now, there is no reason at all why we can't-- If we're going to give people an option -- and I agree with Senator Kyrillos -- we should give them as many options as possible. We can give them a Michigan option, give them a no eight and nine option. Give them the option of taking the present verbal if they want that, keeping their rates pretty much the same. But give them a fourth option or a fifth option or wherever it goes of letting them choose a scheduled benefit because we know that is going to save 15 percent off both PIP and bodily injury liability. It's the biggest saving of any of these options that we have been talking about. If they want to choose that for themselves, why not give them the option of choosing that for themselves and save some money?

PRESIDENT DiFRANCESCO: Assemblyman Garrett.

ASSEMBLYMAN GARRETT: I share the thoughts, I think, of just about everyone that has spoken so far on this, and the consensus is that we have to do something with verbal, and that something means to tighten it to some degree. Whether we go so far as the Michigan Plan, I guess, which is maybe the furthest, but for the scheduled benefits it's up in the air.

PRESIDENT DiFRANCESCO: Well, it appears that deleting Categories 8 and 9 is a little stronger.

SENATOR CARDINALE: It's much more than Michigan.

PRESIDENT DiFRANCESCO: Just for clarification purposes. You tell me.

ASSEMBLYMAN GARRETT: Right as far as-- No, you're right.

We had hearings on this a year ago or so in Assembly Insurance Committee, and at that time it was the same sort of debate. To be honest with you, we didn't have that proposal of having eight or nine there. We were either here, where we are today, or Michigan out there is the options.

So at that time, I don't know whether it was Prudential, but A-2554 was beginning to be crafted. We never really moved on it any further to try and come up with that feeling in the middle. I'll be candid with you that some of portions of that bill, after testimony in our committee and after hearing from the Trial Bar with some of their explanations to it, made sense to me that some of the language there probably should be changed.

One just comes to mind-- No. 4 we changed under the current law, which was a fracture, in the bill that I had. We changed it to a fracture of a weight-bearing bone. The example that sticks in my mind at the time by

testimony at that hearing was that means you can have a skull fracture and that would still not be -- under this definition would not come into it.

So I can see that for an initial start jumping off point this is a good place, I think, to start, but it could use some revision. Know that we're going to go all the way to the extreme, and I think Michigan may be too far for this state, but I think we have a middle ground that we can reach on this. Some of the rest of this language that's there we can look at. They call it the Prudential-Garrett bill, or 2554.

As from a consumer point of view, I would hesitate to support a plan that has too many options out there. Right now some of the testimony we hear says that the public doesn't understand the full ramifications of the verbal threshold, and I would fear, Senator, that if we had three or four, as the other Senator said, five proposals out there, I can imagine this being a nightmare for agents trying to explain to their insured when they come in exactly what options you have. But you might be able to have three or two, a zero option and a modified or slightly tighter verbal option. A middle-of-the-road one that I'm suggesting that we come up with and maybe a sub one as far as the scheduled benefits, just for fun. I think two is probably the appropriate number, though.

I think I may have missed the hearing when we heard testimony on verbal threshold. But my recollection from last year's testimony on this is that, as the Senator was saying, there has been an escalation, he calls it a piercing verbal threshold. If there wasn't testimony on that, I can at least speak from my own experience as a trial attorney of seeing the number of cases where the verbal threshold is satisfied by the courts.

I do remember testimony before the Assembly committee on that and literature, I think, presented by New Jersey Manufacturers at that time suggesting that the number of cases that are meeting that threshold are exceeding and that the courts are more willing to grant that exception than in the past. I know there were arguments on the other side, and I'll play the devil's advocate and say that the plaintiff bar has become more experienced on how to bring that case to court, and so now they are able to meet that definition than they were when it first came out.

I tend to believe it's the opposite, however, just that the courts have become more liberal with their interpretation of the language of the current law, and it is for that reason that we need to reset the direction for the courts, and you do that by tightening up the language.

Thank you.

SENATOR KYRILLOS: Mr. President.

SENATOR ADLER: Mr. President, on that point.

PRESIDENT DiFRANCESCO: Senator Adler.

SENATOR ADLER: Just on the narrow statistical issue. The numbers we've seen coming from the AOC indicate that we've roughly been in the range of 50,000 to 65,000 BI claims each of the years '88 through '96. In fact, in '96 there were 53,000 claims, and in '88 there were 50,000 claims, and it's fluctuated just within that range. I think it's contrary to what Senator Cardinale seemed to believe that there was this wild escalation of BI claims. I don't think that's been the case.

SENATOR CARDINALE: I didn't say there was one. I said there is a gradual increase that's quite apparent as the court decisions have pierced the verbal threshold.

ASSEMBLYMAN GARRETT: I don't think it was the nature of the number of claims that you were suggesting. It was the nature of the claims that are filed under motions for meeting verbal threshold, and those motions of those claims are being granted by the courts. I don't think you can simply say the total number of cases.

SENATOR CARDINALE: Right.

ASSEMBLYMAN GARRETT: The cases where the verbal threshold is asserted by the carrier, by the defendant, and the courts then say that the claimant has met the verbal threshold, that those number of cases have increased.

PRESIDENT DiFRANCESCO: Okay. Anyone further? I don't have anyone else on the list.

Do you see a problem with adding further options?

Assemblyman Garrett feels that it could be a problem.

Senator Adler, on that issue.

SENATOR ADLER: I'm troubled by the notion of consumers being confused by more options. I think two options is an efficient number to let people choose whether they want--

PRESIDENT DiFRANCESCO: Well, it's like color options and CDs -- options when you buy the car. Is that confusing too? That's very confusing to me.

SENATOR ADLER: For me it is, yes.

PRESIDENT DiFRANCESCO: Tires.

SENATOR ADLER: There is enough confusion with the dense language of an insurance policy that giving more options may sound very appealing to people, but I personally--

PRESIDENT DiFRANCESCO: You agree with him on that point that--

SENATOR ADLER: I'm shocked to say yes, I do agree with Assemblyman Garrett.

PRESIDENT DiFRANCESCO: Who just said they agree with Senator Cardinale? That's also a shock. Or he agreed with you? (speaking to Senator Kyrillos)

Did you want to make a further point on the threshold? I'm trying to get everybody to talk here.

SENATOR KYRILLOS: Oh, yes. I sense we are going to close out on this shortly.

PRESIDENT DiFRANCESCO: Close out?

SENATOR KYRILLOS: Maybe I'm wrong.

PRESIDENT DiFRANCESCO: We're not closing out.

SENATOR KYRILLOS: What's that?

PRESIDENT DiFRANCESCO: We're not closing out.

SENATOR KYRILLOS: Well, this meeting. Maybe not.

PRESIDENT DiFRANCESCO: We have 20 more minutes.

SENATOR KYRILLOS: Oh, okay.

Maybe on the options component to this thing, and I mentioned the option proposal that I put out there. I'm not sure it's a better way to go

than our Option No. 6 here, eliminating Categories 8 and 9 and save a lot more money.

PRESIDENT DiFRANCESCO: Joe, there are two options now.

SENATOR KYRILLOS: My option would be--

PRESIDENT DiFRANCESCO: Zero and the present verbal.

SENATOR KYRILLOS: The present verbal and the threshold would be--

PRESIDENT DiFRANCESCO: The Michigan verbal.

SENATOR KYRILLOS: --in my case, the Michigan standard or some tougher standard, whatever it is.

PRESIDENT DiFRANCESCO: And the fourth could be deleting Categories 8 and 9 of verbal threshold.

SENATOR KYRILLOS: Could do that.

PRESIDENT DiFRANCESCO: That's what Senator Cardinale suggested, to some degree. I'm not saying that's ultimate, but that's an idea that he threw out.

SENATOR CARDINALE: And I suggested a fifth.

SENATOR KYRILLOS: This whole--

PRESIDENT DiFRANCESCO: And the fifth could be killing all the lawyers. No. (laughter)

SENATOR CARDINALE: Well, essentially you're right, you're right on target because what that option does--

ASSEMBLYMAN DiGAETANO: But not lawyer-legislators.

SENATOR CARDINALE: No, because what it does is it gives the money to the people rather than to the lawyers because both parties get paid

under the scheduled benefit, and they get paid essentially what they get today after they go through a lawsuit, but if they get it without going through a lawsuit and you take those savings and give half of it to the public, in terms of a reduction in their premium, and you give the other half of it to the other part in the accident who is today entitled to nothing-- So you're give money to the people, but it is true you are killing the lawyers because they don't participate in the process.

PRESIDENT DiFRANCESCO: I didn't really mean that when I said it.

SENATOR KYRILLOS: Mr. President.

ASSEMBLYMAN DORIA: That's going in the minutes.

SENATOR KYRILLOS: Mr. President, in all seriousness.

PRESIDENT DiFRANCESCO: I'm being serious about this. Those are the four options that Senator Cardinale -- saying we could go further and say no right to sue.

SENATOR KYRILLOS: We all have varying degrees of intensity on this subject. I hope we can come up with a threshold that we can all feel comfortable with and that will be meaningful. But in the absence of that, why not give them some options out there? If Joe Doria's people want to pick no threshold, let them pick no threshold. I've got constituents that want to have less auto insurance costs.

PRESIDENT DiFRANCESCO: His concern is the premium that the company will place on the options. He pointed that out earlier.

SENATOR KYRILLOS: I can't believe that we think that people can go into the car dealership and pick from a huge array of options for their automobile-- Colors as you pointed out, CD, radio, this kind of model--

PRESIDENT DiFRANCESCO: It's hard for me. The color is very hard. (laughter)

SENATOR KYRILLOS: Colors are hard. But we're saying you can't have an option on this stuff. The agents can do a little explaining. People can think about it and choose. We can make sure we have concrete language in our statute that shows up on the policies so people can understand it. We shouldn't shy away from it. We don't think people can think this stuff through. I can't believe we are saying that. I know it's complicated stuff.

PRESIDENT DiFRANCESCO: Senator Adler, then Speaker-- Sorry, I keep calling him Speaker. (referring to Assemblyman Doria)

SPEAKER COLLINS: He is not the Speaker. He wants to be the Speaker. He is not the Speaker. (laughter)

PRESIDENT DiFRANCESCO: It's a mental block.

ASSEMBLYMAN DORIA: Wants and former.

ASSEMBLYMAN DiGAETANO: He wants to be that, too.

PRESIDENT DiFRANCESCO: Senator Adler.

SENATOR ADLER: With no disrespect to Senator Kyrillos, I think many, many consumers are confused by the language and policies. I think they are even confused by the words verbal threshold. I think many people when they go to a lawyer after an injury are shocked to learn for the first time that they are not entitled to access to the courts because their injury

doesn't satisfy one of these written criteria that we call verbal criteria, verbal threshold.

So I think one of the things we should talk about in so a mix of different options we provide people is to rename the verbal threshold.

SENATOR KYRILLOS: I like that idea.

SENATOR ADLER: I think we should call it a limited lawsuit threshold, and if we adopt more options, call it an extraordinarily cruel, limited lawsuit threshold. (laughter) But define things in real-world terms. Until I got on this Committee, I did not understand what the verbal threshold was. I suspect that there are people on this Committee who still don't understand what the verbal threshold is.

I think we should consider renaming it in a way that is public disclosure and in understandable words. Having said that, I don't want to have other options. For myself I think there should be two options. That's the sort of bill I would want to support.

PRESIDENT DiFRANCESCO: Maybe we can have the Cardinale option, the Kyrillos option, the Doria--

SENATOR CARDINALE: You could make my proposal the only option. Just one.

SENATOR KYRILLOS: Mr. President.

PRESIDENT DiFRANCESCO: Well, I think Assemblyman Doria wanted to speak.

ASSEMBLYMAN DORIA: Let me just, I think, follow up. I think the concern that have here is that in the end we provide the people with savings on their auto insurance policy. That's got to be a priority. I agree with

that. But in the same time I agree with what Senator Adler just said. We need to let people understand what it means. Most people don't understand when you say verbal threshold. They don't understand what--

PRESIDENT DiFRANCESCO: So, therefore, what do they do, Joe?

ASSEMBLYMAN DORIA: Most people just look for the cheapest product without realizing the implication. The only time they do realize the implication is when, God forbid, they are in an accident, they realize they can't do this and they can't do that. Then they either curse themselves or usually curse us, because we didn't do what was right by them.

Now the problem here is -- and I'm not being a lawyer. I'm not into the definition--

PRESIDENT DiFRANCESCO: Gerry has never hesitated, so you don't have to say that. (laughter)

ASSEMBLYMAN DORIA: Okay. But I'm not an expert. I would never want to claim to be an expert on how the legal suits go and how it's done. My colleague, Joe Charles, knows 10 times more than I do about this. But I do know, very strongly, that people want to be able to protect themselves. They are concerned about their well-being. When you read the definitions of eight and nine-- I mean, the question of whether somebody can continue to perform their job is a serious question, I think. If you get hurt, any of us, we wouldn't have as much problem performing our job, but we have to come sit here and talk -- at least that's what some people would say or think, hopefully.

But I do think that a lot of people have a very serious problem as it relates to their physical abilities to perform their profession. My concern here is that, No. 1, if we do give options that we clearly explain those options and don't use words--

PRESIDENT DiFRANCESCO: Well, the agents explain them don't they?

ASSEMBLYMAN DORIA: Yes. And I got a bridge in Brooklyn that I can sell quickly.

Most agents are there to get it done quickly. A lot of people don't even talk to their agents anymore. I just was talking to Allstate who informed me that some of their agents now are in Florida, and they have other people who sell the material because they have limited number of agents.

PRESIDENT DiFRANCESCO: Well, we have options now. We have two now.

ASSEMBLYMAN DORIA: The problem is that they don't explain it.

PRESIDENT DiFRANCESCO: What did you say, 80 percent of the people take the verbal?

ASSEMBLYMAN DORIA: Now, I have an agent who is my friend. I know him well. Even in that case he comes over and talks to me--

SPEAKER COLLINS: He might not be your friend after what you just said about agents.

PRESIDENT DiFRANCESCO: Exactly.

ASSEMBLYMAN DORIA: No, he's still my friend. He comes and he talks to me, but in the end, do we talk about the elements of the nitty-

gritty parts of the policy? No, we don't because it's boring. Most people don't want to talk about it.

PRESIDENT DiFRANCESCO: Nor do you talk about your health policy, your life policy, or any other insurance policies that we have that we can't understand either.

ASSEMBLYMAN DORIA: That's right. That's a problem.

PRESIDENT DiFRANCESCO: Until something happens.

ASSEMBLYMAN DORIA: Until something happens.

So what I'm saying is that whatever we do we need to guarantee them-- Protect the consumer, give them the understanding of what their rights are and we help them to understand that there is a trade-off. For decreasing your cost you're going to lose this right and you're going to have to make that trade-off. If we are going to go with the choices, we have to make sure that those trade-offs are carefully explained to the public so that they can't come back and say, "Well, we didn't know what we were deciding." I think a lot of them today say that and I think justifiably so.

PRESIDENT DiFRANCESCO: Let's see, Speaker Collins.

SPEAKER COLLINS: Let me just say a few thoughts that I have.

One, with regard to options. I think people should have a lot of choices. I said it about the PIP coverage and I'll say it again as the bill is literally before us quite soon. People should be allowed to make choices, and why we are here -- as many have said and maybe I said it more than others -- the people of this state are not happy with where it is, where we are today in auto insurance. Now, we can say it's because they don't understand; that we

should cut back the right to sue. We should cut back how much medical coverage we have.

We're making all of these assumptions for the people of this state, and we also know they want us do something. Why shouldn't they be allowed to do what they want to do? Why are we continuing to bring to us this great pressure -- not that I'm afraid of dealing with issues. But the pressure is we will tell the people this is what is best for you. I think we should look at as many options as are possible before we put this bill down into stone, so to speak. Now, what we have here is we're saying that this is one area, cut back on the right to sue. I have read a lot of material saying that we should stop the right to sue. I have never, that I can recollect, ever had a citizen walk up to me and say, "I don't want the right to sue." But we are assuming that they don't want this right. Let me just point to one thing.

The Governor had a plan. I thought the plan had a lot of real substance to it. In that plan -- and I could stand to be corrected -- the one part of her plan was a 25 percent savings. We're not talking about 25 percent. Twenty-five percent savings to give up all these rights to sue. The Governor's Plan never got public support. Many point out the Legislature buried it. That's not true at all. We would have looked at it. We've looked through some of the parts of it now. But the public never called me and said I want you to pass Governor Whitman's bill -- 25 percent savings.

Could we extrapolate from the lack of support for that bill that people want to sue? I don't know, but I sure can't go the other way that everybody in this state wants to give up their right to sue.

Now, we have certain standards right now. Twelve percent of the people say they want to sue, if we go by this statistical numbers we have. Why do they want to sue, and maybe why do more do? Well, obviously they feel their life has been altered and someone should at least try and help them out even though it's only monetarily. So I just don't-- I've never bought, even though I supported, the verbal threshold, came in on it in 1985, but as I got to learn more and more, I don't know that the public is screaming out that they don't want to sue. They definitely want to pay less, but they should be told you can pay a lot less if you want to do this, you can pay a lot less if you want to do this. Let them make the choice.

And if we decide not to, and I don't have a problem with contracting some of their choices, let's make sure that we understand what's going to happen with real numbers and that we let them know what's going to happen.

SENATOR CARDINALE: Jack, may I just--

PRESIDENT DiFRANCESCO: No, just a minute. I think Senator Bennett wanted to speak.

SENATOR BENNETT: With respect to-- I think one of our problems now is between the verbal and the zero comes into-- When we first made that differential, people said that they would have a \$50 a car impact, and so a lot of people chose to not go with the automatic one. Of course, now that's somewhere up to around \$600 or \$700 per car differential, and so people clearly make a difference.

I agree, though, with what was said, that I don't think that people are asking to have certain rights removed. I think that people are asking for

us to try to deal with costs. Perhaps no clear area can we deal with in costs until we get it to-- You know, we've kicked around of other facets, verbal and the ability -- how that impacts on our system to enter into the lawsuits is obviously a significant aspect and one that we have to deal with.

Clearly, we are talking about, on verbal, whether or not something should be a nonpermanent nature. I think that we understand that that can have an impact, if it's just simply temporarily, and allowing the suits to go through that. But isn't one of the issues that we've kicked around here and heard the testimony on is the cost of how much all of our diagnosing -- isn't that something that drives up our cost factor? Shouldn't we be dealing and looking at it towards how we resolve those aspects of this proposal that deal with our costs? Isn't that one of the reasons that whatever focus we should be towards.

I don't think you can deal with just verbal by itself. I think you have to look at those parameters -- the medical parameters -- and kind of deal with them both together because what parameters are going to be applied towards the determination as to what should be underneath the verbal threshold, if you will, or changing the name. I'm concerned as to how do we get to those bottom-line cost savings if we don't talk about some of those diagnostic testing?

PRESIDENT DiFRANCESCO: Assemblyman Charles.

ASSEMBLYMAN CHARLES: I should start by saying I have -- we have eight options, and there are some suggestions as to savings that are associated with each of the options. I'm not sure that I credit the projected savings associated or the increases associated with the different options that are

listed on this page. I don't know how we rejected the information, I guess concerning Connecticut and Georgia where they went from a verbal to a no threshold and they ended up with savings as opposed to increase.

I have had some experience in this area, too, and I just personally believe a no threshold sort of situation -- a pure tort system -- might result in savings in premiums. So the savings that are projected in these models or these options that are put before us I just have some questions about them, how they arrive that, and so on. I'm satisfied that the data we got support those.

Going beyond that, we are talking about savings in premium dollars for our constituents. I agree we should be doing that. I think like Senator Bennet that we've done that in terms of some of the things that we've already, I think, agreed upon. We've already agreed upon some protocol in theory. In theory, I guess, in concept there has been some discussion about some sort of -- the Commissioner or somebody establishing what types of diagnostic tests will be recognized for purposes of validating an injury.

We've already talked about reform of the PIP arbitration process. We've done that already and the suggestion with all those things that there are costs associated with those. Along with all of that is this, if those things are done, they will have significant impact on the ability to meet even the verbal threshold as we know it right now, as it exists in the statute that we have on the books today. It seems to me that there is no need to change the verbal threshold, as it now is described in our law, if we do all of those other things. We have achieved the reduction in lawsuits. We've made it more difficult to

achieve the verbal, and we've done our job. Let's see what happens then in terms of what happens to premiums.

I think that if we do the things that we are talking about, those three things that I mentioned, we then addressed in a very significant way cost, and we've also addressed it in a very significant way the number of lawsuits that are going to be possible under the verbal threshold. If you have to an option here, I guess I would pick one of the options that had to with-- Well, the first one.

PRESIDENT DiFRANCESCO: First one.

ASSEMBLYMAN CHARLES: First one, right.

PRESIDENT DiFRANCESCO: Okay. On my list I have Senator Kyrillos and then Senator Cardinale.

Senator Cardinale, did you want to speak?

SENATOR CARDINALE: Well, I wanted to first address the issue of are people really interested in the right to sue. Now, I know we get that impression that people are interested in the right to sue. I get lots of letters from people and I get a lot of conversation that people are interested. Don't take away my right to sue, that's the way they put it. Don't take it away. Whatever right I have now I want to keep.

When I question them, though, what I find out what they're really interested in is the right to recover, and there is a difference. The only people who like to sue are people who bring suits, and they are not even concerned about the right to recover, they are concerned about the right to sue. So I think we should really look it in terms of can people recover as opposed to can people sue.

I think Senator Bennet is very right. I'm sorry he just left.

SENATOR BENNETT: No, I didn't leave.

SPEAKER COLLINS: Particularly when you said he was right, he perked right up.

SENATOR BENNETT: I didn't miss that.

SENATOR CARDINALE: That the threshold and PIP work hand in hand. They absolutely do work hand in hand. Eight and nine cause PIP to rise, PIP costs to rise. So that if you enacted eight and nine, you're going to save money on PIP as well as save money on a bodily injury liability side. They are absolutely interrelated.

Joe Charles has left, but my recollection of Connecticut and Georgia, the examples that were presented to us by the trial lawyers, was that neither Connecticut nor Georgia had a verbal threshold. They went from a monetary threshold to no threshold, and the question there was the monetary threshold was no threshold at all because it was so low. So they had some minor changes, but it was also pointed out to us by staff that those costs in those states were beginning to go up again. So that while they may have had a slight saving from going from a monetary to a zero-- But that's not we have, we have a verbal. And that's what we're talking about, a verbal, not a monetary.

PRESIDENT DiFRANCESCO: Silence.

SENATOR ADLER: Are we debating the number, or are we debating the components?

PRESIDENT DiFRANCESCO: Were we debating?

SENATOR BENNETT: I'm just worried because Gerry Cardinale agrees with me, so I really have to go back and revisit my position here.

PRESIDENT DiFRANCESCO: Can we, perhaps, eliminate some of these options?

SENATOR ADLER: How many options are we talking about?

PRESIDENT DiFRANCESCO: No, I mean-- What I mean by eliminating-- There is eight options set forth. Can we perhaps eliminate some of these ideas to work toward one idea?

For example, No. 2, I know Assemblyman Charles indicated that he favors that. Anyone else favor eliminating the verbal threshold? Anyone else that's here, I guess I should say.

SENATOR KYRILLOS: We conceivably could have that option, Mr. President, as an option. We have it now, no threshold.

PRESIDENT DiFRANCESCO: We have a zero dollar threshold now, but eliminating the verbal option is I guess number one. Does anybody support that other than Joe Charles?

Clare, do you support that?

ASSEMBLYWOMAN FARRAGHER: No.

PRESIDENT DiFRANCESCO: I didn't think so.

So I think pretty much there is not a lot of support for that one, is there, correct?

SENATOR KYRILLOS: Right.

SPEAKER COLLINS: At this time--

PRESIDENT DiFRANCESCO: At this time rely upon--

SENATOR KYRILLOS: We can eliminate that one.

SENATOR BENNETT: I'm not so sure that we can eliminate that one. No, I'm not so sure we can eliminate that one. I mean, I'm talking about the objective medical testing, and I'm still trying to find out why we have to maintain the objective medical testing as opposed to having someone come forward and doing some certifications and then having a tracking done under the antifraud as to someone not being abusive to that system. So I think that the work we should leave it to come back to--

PRESIDENT DiFRANCESCO: What this language is that if the plaintiff, the plaintiff--

SENATOR BENNETT: The back up that goes with it I'm not necessarily supportive of, but the way it's listed as an option is not necessarily wrong, but when you say C-1--

PRESIDENT DiFRANCESCO: That's savings. C-1 has to do with savings.

SENATOR BENNETT: Okay.

PRESIDENT DiFRANCESCO: The explanation of what it is, is that the plaintiff submits a certification with a licensed health care professional that there is reasonable medical probability plaintiff has sustained the injury. That person's doctor--

SENATOR BENNETT: That is permanent in nature as opposed to diagnostic testing for it.

PRESIDENT DiFRANCESCO: I don't like that.

SENATOR CARDINALE: That's tantamount to zero threshold.

PRESIDENT DiFRANCESCO: We did discuss that--

SENATOR CARDINALE: It's the same as zero threshold.

PRESIDENT DiFRANCESCO: --at one time. I don't think that's a reasonable proposition. We could pass on that, but I don't see a lot of support for that one.

Amend the verbal threshold to allow for recovery of any permanent injuries based on medical certification.

SENATOR KYRILLOS: No support.

ASSEMBLYMAN CHARLES: I would support that. In light of one, obviously.

PRESIDENT DiFRANCESCO: No, I indicated that you would support No. 1, but I know No. 2 also you would support.

ASSEMBLYMAN CHARLES: Let me say why I support No. 1 because I-- It's been data given and we've had things all over the place. I think Assemblyman Doria began the discussion on this issue with a concern about data not being brought forward to substantiate the difference in premium between verbal and nonverbal.

I have the same situation. I don't remember that data being clearly set before us, and absent that data I think the rest of this stuff becomes suspect. And that 13 percent that's put there, in my view, it's not validated. I have some strong questions about whether eliminating the verbal would result in a 13 percent increase. I don't think it will.

ASSEMBLYMAN DORIA: Let me just say--

PRESIDENT DiFRANCESCO: Joe, wait.

You made that point. I also know that you say you support No. 1, but I think you also made the point that a ninth option would be to do

nothing in terms of change of the threshold in the present system. That's what you put on the table.

ASSEMBLYMAN CHARLES: We're talking about reduction because we have a fraud prosecutor and these other things which are going to reduce it 15 percent, that's \$150.

SPEAKER COLLINS: PIP saving.

ASSEMBLYMAN CHARLES: The other stuff we're saving, PIP saving. We've done a lot.

ASSEMBLYMAN DORIA: Mr. President.

PRESIDENT DiFRANCESCO: Mayor, yes. (laughter)

ASSEMBLYMAN DORIA: Thank you.

My concern here is that all of these numbers that we see here I always wonder where they are coming from. They are coming from-- One insurance company says one thing, another says another. We don't have, really -- we never had an actuary working for this Committee which would have probably have been a good idea, but it's too late at this point.

We're being told this going to cost 5 percent more, this is going to decrease 13 percent. We don't know really in the end if any of these things that we are saying will do what we just said they will do, especially in light of the whole question that I brought up in the beginning, at least in relation to the verbal threshold. Maybe in the other areas we have more definitive information. But nobody showed me definitive information, objective definitive information, and I use the word objective very specifically, but -- any of these things really will do what we say they are going to do.

I've seen this in the past having gone through the Fair Act and having seen the debates back in '83 over the JUA and having seen the verbal threshold debate of 1986 and 1987, and we went through all of these things. We had all these numbers, and we went through all these things. We had all these numbers, and then the numbers really didn't work anyway.

My question is, again, do we have some objective data that proves these savings really do exist?

PRESIDENT DiFRANCESCO: Joe, I'm not here to respond to your specific question.

ASSEMBLYMAN DORIA: And I don't expect you to answer it.

PRESIDENT DiFRANCESCO: I'm just here to moderate your statements.

ASSEMBLYMAN DORIA: I know that. I'm not asking you to because you're in the same situation I am.

PRESIDENT DiFRANCESCO: I know you're saying it rhetorically.

ASSEMBLYMAN DORIA: That's a rhetorical question. I know you can't answer it and I don't expect you to.

SENATOR CARDINALE: Can I answer the question?

PRESIDENT DiFRANCESCO: No. I thought we went through this before, Gerry. I thought you responded before.

SENATOR CARDINALE: Well, I can answer the question.

PRESIDENT DiFRANCESCO: But you already responded, didn't you?

SENATOR CARDINALE: Well, he has asked a slightly different question. (laughter) Because he has made a very good case for the fact that each time we have done this we have failed. The common denominator in each time we have done it has been that we modified what we started out to do based on the trial lawyers' recommendations. That's true even before I was in the Legislature. And each time it hasn't worked out. Each time it has ended up costing the people more. Why don't we break with that and say we're not going to pay attention to the trial lawyers' recommendations, and let's do something that someone else wants us to do, and then we can perhaps give the people what the people are asking for, which is real reduction in their auto insurance costs.

ASSEMBLYMAN DORIA: Again, Mr. Chairman, my question is, who has objective data? Whether it's trial lawyers, insurance companies, everybody has their own point of view. I don't believe any of the points of view. I believe that what you're saying, Senator, is correct up to a point, but it's not just one group, it's all the groups.

My problem here is that we don't have objective data from any noninterested party. That's the concern. The word is noninterested party.

SENATOR CARDINALE: But, Joe, there are no noninterested parties. We're all interested, each one of us.

ASSEMBLYMAN DORIA: An actuary that we hired would be a noninterested party.

SENATOR CARDINALE: No, that party has an interest too. Everyone has an interest.

ASSEMBLYMAN DORIA: To make a few bucks, I would think.

PRESIDENT DiFRANCESCO: Enough, enough, enough.

You want to say something?

SPEAKER COLLINS: Let me just say to the Leader what I was just saying to you, Mr. President.

The other day I mentioned this, and again I think the Department of Insurance could help us in some way, though it was stated that they had no actuaries. But we have to have, as we make this final green light or red light, some numbers that we are all confident. Maybe we should let everybody send their numbers to us, and then we'll hold them to this. But we have to come up -- and maybe the time to do it as we really bring this thing together, which I hope will be Monday, and say this is what we want to do here and this is a number.

Now, how we get that number, whether it's through staff, through OLS, through the Department of Insurance, or from all of the interested parties that you elude to. I've already gotten numbers on -- not to go into the PIP today, but the PIP numbers are at a far greater savings from so many different segments than numbers we've been playing with. Are they accurate? I don't know. But we do, do that, and maybe the Department of Insurance can help us in some way on this.

ASSEMBLYMAN DORIA: That would be nice.

PRESIDENT DiFRANCESCO: Well, that wraps it up for today. To be continued on Monday at 9:30, I guess. I guess that's a good time.

Thank you for all your patience and for your input.

See you then.

**(MEETING CONCLUDED)**