

PUBLIC HEARING

before

ASSEMBLY LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

ASSEMBLY BILL 43

(Exempts social hosts from civil liability for injuries caused by
adult consumers of alcoholic beverages served by them)

and

ASSEMBLY BILL 347

(Limits the amount of liability damages for alcoholic beverages)

Held:
April 10, 1985
Room 348
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph L. Bocchini, Jr., Chairman
Assemblyman Nicholas LaRocca, Vice Chairman
Assemblyman Frank M. Pelly
Assemblyman Robert J. Martin

ALSO PRESENT:

Aggie Szilagyi
Office of Legislative Services
Aide, Assembly Law, Public Safety
and Defense Committee

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ASSEMBLY, No. 43

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen HOLLENBECK and SCHWARTZ

AN ACT concerning the service of alcoholic beverages and supplementing Title 33 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. No person, other than a person licensed according to the pro-
2 visions of Title 33 of the Revised Statutes to sell alcoholic bever-
3 ages, who furnishes any alcoholic beverage to a person at or over
4 the age at which a person is authorized to purchase and consume
5 alcoholic beverages shall be civilly liable to any person or the estate
6 of any person for personal injuries or property damage inflicted as
7 a result of intoxication by the consumer of the alcoholic beverages.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to exempt social hosts from civil liability for injuries caused by adult consumers of alcoholic beverages served by them.

This bill, if enacted, would distinguish between the responsibilities of an alcoholic beverage licensee and those of a social host. According to the New Jersey Administrative Code 13:2-23.1, which carries the full force of law, the holder of a liquor license shall not serve a person who is actually or apparently intoxicated. The courts have held that a licensee may be civilly liable for injuries caused by an intoxicated person whom he has served. Licensees hold their alcoholic beverages licenses not as a right but as a privilege. Their strict obligation not to serve intoxicated persons

stems from the responsibility to the public assumed when they take on such a license.

But to hold a social host liable for the actions of a drunken guest denies that the adult consumer of alcoholic beverages is primarily responsible for his actions. This bill is not intended to encourage hosts to serve liquor to intoxicated guests or allow intoxicated guests to drive. Rather, it is the purpose of this bill to recognize that an adult who becomes intoxicated is more responsible for his condition than the host who serves him at a party.

ASSEMBLY, No. 347

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblyman RILEY

AN ACT concerning civil actions against persons who sell or furnish alcoholic beverages, amending N. J. S. 2A:14-1 and N. J. S. 2A:31-5 and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) The Legislature finds and declares that:

2 a. As a direct consequence of the judicial imposition of civil
3 liability upon persons who sell or furnish alcoholic beverages in a
4 negligent manner, a person faces great difficulty in obtaining
5 insurance against the imposition of civil liability for negligently
6 selling or furnishing alcoholic beverages;

7 b. Where insurance coverage is available, exorbitant increases
8 in its costs have occurred and many persons who sell or furnish
9 alcoholic beverages do not, therefore, obtain this coverage;

10 c. This lack of insurance adversely affects those persons and
11 potential claimants;

12 d. In order to make it economically feasible for insurance
13 companies to provide coverage, the incidence of liability should be
14 more predictable; and

15 e. To encourage the development of risk reduction techniques,
16 the limits of the civil liability of those persons must be defined in
17 the law.

1 2. N. J. S. 2A:14-1 is amended to read as follows:

2 2A:14-1. Every action at law for trespass to real property, for
3 any tortious injury to real or personal property, for taking, detain-
4 ing, or converting personal property, for replevin of goods or

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics *thus* is new matter.

5 chattels, for any tortious injury to the rights of another not stated
6 in [sections] *N. J. S. 2A:14-2* and *N. J. S. 2A:14-3* [of this Title],
7 or for recovery upon a contractual claim or liability, express or
8 implied, not under seal, or upon an account other than one which
9 concerns the trade or merchandise between merchant and merchant,
10 their factors, agents and servants, shall be commenced within six
11 years next after the cause of any such action shall have accrued.

12 This section shall not apply to any action for breach of any
13 contract for sale governed by [section] *N. J. S. 12A:2-725* [of the
14 *New Jersey Statutes*] or to any action for tortious injury to real or
15 personal property governed by section 3 of *P. L., c.*
16 (*C.*) (now pending before the Legislature as Assembly
17 Bill No. 347 of 1984).

1 3. (New section) A civil action which alleges tortious injury to
2 real or personal property caused by a defendant who sold or
3 furnished alcoholic beverages in a negligent manner shall be com-
4 menced within two years after the cause of action accrued.

1 4. *N. J. S. 2A:31-5* is amended to read as follows:

2 2A:31-5. [In] *Except as otherwise provided in section 5 of*
3 *P. L., c. (C.) (now pending before the*
4 *Legislature as Assembly Bill No. 347 of 1984)*, in every action
5 brought under the provisions of this chapter the jury may give
6 such damages as they shall deem fair and just with reference to
7 the pecuniary injuries resulting from such death, together with
8 the hospital, medical and funeral expenses incurred for the de-
9 ceased, to the persons entitled to any intestate personal property
10 of the decedent.

1 5. (New section) Damages assessed against a defendant for
2 negligently selling or furnishing alcoholic beverages are limited to
3 the following amounts:

- 4 a. \$75,000.00 per person for death or personal injury;
- 5 b. \$150,000.00 for all deaths or personal injuries, regardless of
- 6 the number of persons; and
- 7 c. \$10,000.00 for injury to real or personal property.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to limit the amount of damages which may be assessed against a person for negligently selling or furnishing alcoholic beverages. The maximum amount recoverable for personal injury or death is \$75,000.00 per person to a total of \$150,000.00 for all deaths or personal injuries regardless of the

number of persons. The maximum amount recoverable for property damage is \$10,000.00.

The bill also establishes a statute of limitations of two years on civil actions for tortious injury to real or personal property in civil actions alleging the negligent sale or furnishing of alcoholic beverages. The existing statute of limitations on civil actions for tortious injury to real or personal property is six years.



ASSEMBLYMAN JOSEPH L. BOCCHINI (Chairman): This is a continuation of our hearing of last week relating to liquor law liability and social host liability. It appears that we should be able to finish this up this morning. Subsequent to these hearings, it is my intention to have the transcripts provided to the members of the Committee. Copies will also be available, I believe, to the people who desire them.

In addition, whatever portions of the transcripts that are needed will be forwarded to the Social Host Liability Commission, which will begin its work within the next couple of weeks.

The Committee will continue immediately in analyzing the liquor law liability problems and, hopefully, we will be able to do something in relation to that. I am not certain you will see something forthcoming in the very near future -- that is, not until we get suggestions from the Commission, which we will be cooperating with regarding this matter.

If I may, at this time, I would like to call on Lorraine Roy from RID. For purposes of the record, when you approach the witness table, will you kindly give your name and the organization you represent? In addition, please spell your name so that the record will be accurate.

LORRAINE ROY: Good morning. I didn't have to close my tavern at two o'clock this morning, but I'm still just as tired as anyone else who is here today.

My name is Lorraine Roy, and I am State Coordinator of Remove Intoxicated Drivers. Because of the many people who wish to be heard on this particular issue, I am giving you a very short statement. What I am going to say, I think you may have already anticipated.

Primarily, the bills under consideration by your Committee would do much, if, in fact, they pass, to demote the status of the victims of drunk drivers to a secondary status in our State. One of these bills states that the victims, unlike any other parties in a civil action, could not sue for and recover more than a certain amount. Those who would suffer the greatest catastrophic damage and pain and suffering would not be permitted the rights afforded to all

other plaintiffs in civil actions in our State. Indeed, yet another bill would absolve others from any liability, except for a certain standard of willful and wanton disregard for others. I would like to point out to you that this is a standard used for the charge of recklessness under criminal prosecution. I do not believe, if we are using that standard--

ASSEMBLYMAN BOCCHINI: (interrupting) Excuse me. When you say "recklessness under criminal prosecution," are you referring to a particular crime, or are you referring to what is commonly known as 39:4-96 under the Motor Vehicle statutes, which is reckless driving?

MS. ROY: I'm referring to reckless under 2-C.

ASSEMBLYMAN BOCCHINI: Under 2-C?

MS. ROY: Yes. That is the standard for reckless under 2-C also. I believe your attorneys can confirm that.

We feel that the civil rights of victims should not be abridged. Victims must have the same recourse of civil court to seek full damages as any other plaintiff in this State has. Once they have established their proof, no inequitable caps on judgments should be permitted.

If the liquor industry has expensive insurance costs, let them look to the user of their product for reimbursement. Do not take the money from the pockets of drunk driving victims. Proper safeguards taken by responsible establishments, such as training of personnel, will curtail civil suits resulting from traffic accidents. Let the small percentage of licensed establishments which pander to the alcoholic share the damages caused to innocent victims by their drunk patrons. Protect the rights of the citizens on our roads, rather than protect the purses of the irresponsible or the profit of pandering.

Because of my statement, I hope you will understand something that I think all of us in this room believe. Forgive me, though, if I am presumptive. There are, in fact, establishments -- and, I daresay from my point of view, a small percentage-- Nonetheless, there are establishments that have no concern for anything but the buck, and they will, in fact, pander to alcoholics. They will continue to serve them to put more money in their pockets, caring little for what happens once these people leave their establishments. It is that important point--

At the hearing last week before the Commission on Drunk Driving, a member of the Restaurant Association, I believe, said that as far as he was concerned, it was time to weed out the garbage in the industry. We do not wish to label all members of the alcohol industry as villains. The true villain in this whole issue is the drunk driver. But, do not take away the rights of the victim because you are thinking of other people who are involved, either for profit, or for other reasons are perpetuating the problem of drunk driving on our highways.

ASSEMBLYMAN BOCCHINI: I'm sorry to interrupt you, but I'm curious. I appreciate what you are saying, but imagine the scenario -- two different scenarios. One is where a person who is intoxicated has an accident and hits a tree. The other is where a person is intoxicated and hits a pedestrian or someone in another car. In the situation where the person hits another car -- Phil, correct me if I'm wrong -- the theory of contributory negligence arising out of the car accident itself, forgetting for the moment any extension back to the dram shop theory or the tavern owner, would allow for an offset. In other words, the person who hit the other car -- There may have been a certain amount of contributory negligence involved. That doesn't necessarily hold true for the person who is intoxicated when he leaves a retail establishment, has an accident, and hits a tree. Okay?

I'm trying to find out how you equate --

MS. ROY: (interrupting) I think --

ASSEMBLYMAN BOCCHINI: (interrupting) Do you understand what I am saying?

MS. ROY: What you are trying to say to me is, if there are two separate accidents -- one where the third party can sue both the driver and the establishment, and another accident where there is a single vehicle and the operator is intoxicated -- how do you separate the two? It seems to me that part of the problem with the high insurance costs is that we are permitting those drunk drivers to sue liquor establishments.

ASSEMBLYMAN BOCCHINI: That is the point.

MS. ROY: The point is that in all of these issues, the victim is getting lost. I think the greatest part of the insurance cost is coming from cases where you have the single accident and the estate of the deceased drunk driver in a one-car accident -- I'm not sure of this -- sues the establishment. I daresay that that might be the bulk of the suits.

What concerns the RID organization is the fact that in order to release some of the burden from the liquor industry, you are throwing out the rights of the other victims who did not, in fact, contribute to the happening of the accident, and often sustain absolutely catastrophic injuries.

I think the issue lies more in how these cases are decided in civil court rather than, must we put a cap on the amount of damages? I think you must separate the two, and I do not believe this legislation does that. That is what I am fearful of.

ASSEMBLYMAN BOCCHINI: First of all, there is no legislation -- I announced this at the last hearing -- that is being voted on today.

MS. ROY: But, there is pending legislation which you might consider.

ASSEMBLYMAN BOCCHINI: It has been pending for a year and a half.

MS. ROY: All right, but there are many people in this room who are here because they are promoting the passage of that legislation, and many of their comments will be in that direction. I hope to give you a clear view of our feeling. Anything of that nature which would cap would hurt those people who, in fact, should be deserving of a greater amount of damages as may be awarded by a jury.

ASSEMBLYMAN BOCCHINI: Okay. Let me ask you this, Lorraine. I'm inclined to agree in theory with what you are saying. I don't think the law at this juncture makes that distinction. Statutorily there is no distinction. What concerns me is the person who has the single-car accident, hitting some type of an object, not involving any other persons -- just himself -- and you end up with the tavern owner taking the heat. The question is, in that situation -- I'm not saying

a tavern owner can insulate himself, because if it was something that was apparent and obvious, etc., etc.-- We are not quite certain what those standards are, other than what the courts may have indicated at this juncture. But, in an instance like that, is it reasonable or rational to think that the action of the person who allowed himself to get into that situation should have some equal responsibility as far as contributing to what occurred?

MS. ROY: Mr.--

ASSEMBLYMAN BOCCHINI: (interrupting) You see, if you take this--

MS. ROY: (interrupting) Mr. Bocchini, I have to say something because it is important. For years our organization has been speaking out about the atrocities that have come to pass due to the actions of drunk drivers. I will not sit in this seat and tell you what we must do to protect the rights of the drunk driver. You are asking me to speak out for someone whom I choose not to speak out for.

ASSEMBLYMAN BOCCHINI: I'm not asking you. Maybe you misconstrued my question, so I'll repeat it. If you choose not to answer it, that is your prerogative. I am not asking you to protect the rights of the drunk driver. My question to you is, very simply, if a person is intoxicated, and there is no other vehicle or persons involved-- A person driving a car hits a tree after having left a tavern, and he turns around and sues the tavern. We are not protecting the drunk driver. The way the cases are at this juncture, that drunk driver, in all probability, can get a recovery against the tavern owner for his abusing alcoholic beverages. What happens is, he benefits from it. I'm not looking to do that. All right?

MS. ROY: Unfairly benefits. I agree.

ASSEMBLYMAN BOCCHINI: My question is, is it fair to request that that person be held accountable for his or her actions as well -- not just the tavern owner or the tavern owner's bartender who served the drinks, but the person who took the drinks and then got into his car? If you stop and analyze it from the standpoint of an exact decision where that person had a .287 Breathalyzer, or blood alcohol level, we're talking about--

MS. ROY: (interrupting) Yes, you are talking about the lower standards.

ASSEMBLYMAN BOCCHINI: We're talking about something where this person may have been a .15, a .14, or a .12 and still had this. All right? We can say, "Look you have to prove that it was apparent, etc., etc." My gut feeling is that I think that person has some accountability, and we shouldn't reward him in this type of case.

MS. ROY: I absolutely agree with you. That is the point I am making.

ASSEMBLYMAN BOCCHINI: So, we weren't at odds?

MS. ROY: No, we weren't at odds. I thought you were saying, "Well, what are we going to do with them? Should we eliminate them?" I think that is part of the problem. I think there is a tremendous inequity in that adults who become drunk are going back to the establishments. I am here to plead for the victims of drunk drivers. Do you understand what I am saying?

ASSEMBLYMAN BOCCHINI: Yes.

MS. ROY: So, therefore, I am certainly not going to plead any other person's point of view or any other organization's point of view.

ASSEMBLYMAN BOCCHINI: I can appreciate that, and I understand that.

MS. ROY: We see inequities, and I think that is why this hearing has brought so many people before you. There are many people who see the inequities.

But, what is so important is, we cannot lose the rights of the victims. We cannot say that victims cannot sue for more than a certain amount. At all times in my statement, my reference is to the villains involved, but the primary villains are the drunk drivers.

Our organization has worked hard in other areas, such as rehabilitation and hoping to get funding to address the issue of alcoholism. But, when we talk about a court of law in the State of New Jersey, we cannot abridge the rights of plaintiffs in civil actions who are the innocent victims of drunk drivers. That is so important.

As far as the issue of the social host is concerned, the Kelly versus Gwinnell decision was very clear. It was an extreme case of obvious and blatant liability and negligence on the part of the host. I think it is an issue where education of the public as to the conditions of that particular case is very important. I believe many people are unjustifiably frightened over that decision because they don't understand that it was an extreme case. I think that particular issue will ultimately be worked out because the vast majority of the public is not liable under normal circumstances in the social setting.

As I said, I am frightened. We are concerned about inequities, and because this Committee justifiably is looking to the rights of responsible tavern owners, we are going to lose the rights of the victims by putting a cap on this.

ASSEMBLYMAN BOCCHINI: Are there any questions from any of the members? (negative response)

MS. ROY: Although my statement was very short, I am leaving a copy of it with you. I took longer, and I thank you very much for your time.

ASSEMBLYMAN BOCCHINI: That is okay. Did our transcriber receive a copy of that?

MS. ROY: I'll give her a copy now. Thank you very much.

ASSEMBLYMAN BOCCHINI: Thank you very much, Ms. Roy. Our next witness will be Terry Corvino. Terry, are you and Donna going to testify together?

TERRY CORVINO: Yes.

ASSEMBLYMAN BOCCHINI: All right. We have Terry Corvino and Donna Ferrante from MADD. Will you both give your names and the organization you represent for the record?

MS. CORVINO: Hi. I am Terry Corvino from the Mercer County Chapter of Mothers Against Drunk Driving.

DONNA FERRANTE: I am Donna Ferrante from the Morris County Chapter of the same organization.

ASSEMBLYMAN BOCCHINI: Ladies, thank you for coming here this morning. I appreciate it.

MS. CORVINO: First of all, I would like to thank this prestigious Committee for allowing Mothers Against Drunk Driving to be a part of these public hearings.

I know we all realize that dram shop liability may result from either serving a minor alcoholic beverages or serving an adult who is obviously and apparently intoxicated, but I feel it is important to include this as part of these hearings for the general public who may not be aware of exactly what dram shop liability is.

To place a limit on dram shop liability places a financial burden on the victims and, henceforth, allows the system to re-victimize that victim.

Today, our dram shop liability fosters a policy that works to compensate the innocent victims of a violent crime -- the same victims who currently cannot receive any form of violent crime compensation. This policy allows the victim to seek recovery not only from the person who caused the injury, if that individual happens to have insurance coverage or assets, but also from the establishment that induced the intoxicant's impaired condition. What I think we are talking about here, gentlemen, is, in an effort to reduce the insurance rates for the tavern owners, we are looking to place a cap of \$75,000 per person and \$150,000 per crash on liability.

In cases where expenses far exceed \$75,000 or \$150,000, what would our legislators propose the victim and/or his family do to survive? For example, in a case where a family of four was involved in a head-on crash with a drunk driver -- the father was killed, the mother was seriously injured, one child was seriously and permanently injured resulting in confinement to a wheelchair, and the other child miraculously escaped uninjured -- what would our legislators do so that this family could survive? How could this family financially afford to bury the father, pay the hospital bills for the mother and the one child, and continue with medical bills for the remaining survivors? How does this family stay together? They, gentlemen, were innocent victims.

Or, what about a situation where a single parent, with no other relatives, is killed by a drunk driver who was visiting the

local tavern? Are you implying that \$75,000 will be adequate to ensure that the two young children who were left behind will be--

ASSEMBLYMAN BOCCHINI: (interrupting) If I may for a moment-- I don't want to interrupt your statement; however, at this juncture, the Committee is not implying anything, and we don't intend to imply anything. We are receiving information. I don't think it is meant, but when it appears that I am being scolded or told I am doing something wrong, if I haven't done anything wrong, I would just like to let people know it. My understanding is that you are speaking in reference to the legislation.

MS. CORVINO: That is correct; it is in reference to the legislation.

ASSEMBLYMAN BOCCHINI: Okay.

MS. CORVINO: Is this legislation implying that \$75,000 will be adequate to ensure that the two young children who were left behind will be appropriately cared for and not become financially dependent on the State of New Jersey? And what happens if, in both cases, the drunk driver has no insurance or assets? What do these victims do? What will you tell them when they come to your office for help or assistance because they have exhausted all resources? How can you explain to the taxpayers in this State that we have increased the need for welfare, food stamps, child shelters, etc. because the Legislature determined caps on dram shop liability were in the best interest of all concerned?

The current trend in this nation is towards substantial expansion of dram shop liability. For example, five of the seven state legislatures which have enacted dram shop legislation in the past five years have passed laws which create new liability. In addition, six state Supreme Courts have created dram shop liability by case decision during the last 25 years. Again, I respectfully ask why are we attempting to take a step backwards and burden the victim of a drunk driving crash in order to relieve the tavern owners' high insurance rates?

Surely, if the insurance rates are a burden -- and I don't dispute that information -- then the direction this investigation of information should take is in the area regarding insurance rates: the

availability of information from the insurance company; the verification and justification of such data and rate structure; and, the limited offering of such insurance. I must question why we are not looking for other alternatives like self insurance, assigned risk, and discounts or preferred rates for taverns that implement programs such as designated drivers, ride-home programs, or bartender training, which are currently being offered through organizations such as the Restaurant Association and the Division of Alcoholism, to name a few.

Finally, I would like to state that coherent dram shop liability encourages server intervention as a tool to avoid excessive drinking and the crashes that inevitably follow. Even the Federal government has come to view dram shop liability as a viable weapon in the battle with alcohol-related crashes. Both the Presidential Commission on Drunk Driving of 1983 and the National Highway Traffic Safety Administration have endorsed dram shop liability as a legislative strategy for reducing drunk driving.

Henceforth, Mothers Against Drunk Driving respectfully urges our legislators not to act on this piece of legislation, but to look for viable, long-term solutions to relieve the tavern owners without burdening the victim. We encourage you to continue to explore alternatives in an attempt to respond to the plight of the tavern owner, but not at the cost of the innocent victim. We ask you to look away from the victim for your answers and towards the insurance institute. We ask you not to react, gentlemen, but to calmly and diligently define the real problem here.

In other words, let's act, not react.

With regard to social hosts, I think the statements made here last week by the Chairman of this Committee and the attorney who represented Ms. Marie Kelly were thorough enough to give us a working understanding of the social host liability ruling. Therefore, I shall not burden anyone with further comment on the narrowness of this ruling. Additionally, I think we all agree that Mr. Gwinell was visibly drunk, and yet he was allowed to drive home with no attempt by the host to offer alternatives.

I believe the public concern regarding this ruling stems from ignorance. Many people do not realize that this ruling does not imply that a host automatically becomes liable if he serves a few drinks to a guest who then has a car crash. However, if a host plans to serve alcohol at his next party, there is one thing he should not do. If he knows his guests are going to be driving home, then he should not continue to serve alcoholic beverages to them after they become visibly intoxicated.

Additionally, the key point in this case is that at some point during that hour, the guest had to have become visibly intoxicated, but the host didn't stop serving him. With a BAC of .286, the guest was visibly intoxicated. We are talking about someone who is staggering and slurring his speech -- someone who cannot be mistaken for sober.

This ruling only gives the right to sue to the victim. A civil process must determine the outcome, and the victim must prove his or her case. Either way the drunk driver is still held responsible.

Since this ruling, we have seen only two cases come to our attention regarding social host liability -- the original case of Ms. Kelly, and the Sam Goody case, which was thrown out due to lack of evidence to prove the case and responsibility of the Sam Goody store. Where is the influx of cases that everyone was predicting?

I would also like to point out that we do not usually serve strangers in our homes. Under most circumstances, they are our friends, relatives, neighbors, or people we work with. A responsible host will take reasonable measures to ensure that these people do not drive drunk.

That, gentlemen, is the key point here. We are talking about acting in a responsible manner. We are not talking about legislating morals; we are really talking about negligence. In this society when we act in a negligent manner, we are held responsible. Basically, that is what this ruling addresses. By directing us to act responsibly as social hosts, our Supreme Court is not punishing the majority, but rather is forcing the minority to become educated about alcohol and its effects, or to accept their fair share of the accountability if they choose not to revise their cocktail party customs.

Furthermore, I think we can all agree that this ruling has had a great affect on saving lives, which was especially noted over this past holiday season.

It should not go unmentioned that the Presidential Commission on Drunk Driving supports social host liability.

It is for these reasons that Mothers Against Drunk Driving respectfully requests that our legislators do not attempt to diminish or eliminate this ruling, but implement a campaign to educate the people within this State about the ruling and what it really means. We request that another poll be taken, one which is not conducted directly prior to the holiday season when people are most concerned and probably most misinformed.

Additionally, one year after the education campaign has been implemented, we request a follow-up poll be conducted and, in addition to the question of whether or not they favor the ruling, questions be asked to determine if the public truly understands the ruling.

We also urge this Committee to defer any actions until after Senate President Orechio's Commission on Social Host Liability makes its recommendations.

To diminish or eliminate the ruling would allow too many opportunities to have victims like Ms. Marie Kelly, who was seriously injured due to this type of behavior.

ASSEMBLYMAN BOCCHINI: Donna, do you have anything to add?

MS. FERRANTE: No.

ASSEMBLYMAN BOCCHINI: Okay. Are there any questions from--

MS. FERRANTE: I'm just here to help Terry answer questions.

(laughter)

ASSEMBLYMAN BOCCHINI: Are there any questions from any members of the Committee?

ASSEMBLYMAN MARTIN: I have one question. With respect to the program of education, it is my understanding that in a recent poll, it showed that most people aren't even aware of what the penalties are for drunk driving in New Jersey. From my background as an educator, I would-- I'm not talking about your theories, but as far as the practicalities of education are concerned, do you really believe that

relying on the process of education is going to have a major impact on New Jersey? It strikes me that most of the time when the State attempts to provide education, its record is not successful in that regard. What is your thought on that?

MS. FERRANTE: I think the point Terry was trying to make was, some credibility and emphasis has to be placed on the fact that the general public does not approve of -- according to this poll -- the host liability ruling. Our point is, that may be true, but the reason the public doesn't approve of it is because they don't understand it. So, we either have to discount their feelings because they are not true feelings, or we have to educate them and then allow them to make their own decisions.

I was in a program last night, and a young mother stood up and asked me about that. When I explained what happened-- The ruling has very narrow guidelines. When you explain the horrendous amount of alcohol and the consequences of those actions, everyone looks at you and shake their heads. How could they do anything else?

ASSEMBLYMAN MARTIN: One of the problems I have with the case-- You explained the case on the basis of the facts, but my understanding of the case is that it leaves open a whole host of liability questions that the Supreme Court chooses not to decide. I think the public, even though they are uneducated, still have concern for the uncertainty.

Right now, as I read the case, there is a no-man's land in which the Court has chosen not act, and this creates liability, or at least the potential for liability. I think the public, either because they are not educated, or maybe they are educated -- at least to the extent that I read the case -- has a great deal of uncertainty. I don't think that just to refer to the case and explain it completely answers the question because the Court, specifically within the case, left open a whole series of questions about cases which haven't arisen yet. To that extent, I think the public needs to know once and for all to what extent they may be held liable.

In this case, you have one scenario, which by admission last week of the attorney who represented the suing party, was an extreme

case. As our Chairman has pointed out, what concerns us is, if you have less extreme examples, where does the liability end, and to what extent, if any, should there be limits?

MS. FERRANTE: I understand what you are saying in that regard, but I don't think that-- First of all, anyone in the State who feels like doing it can sue me for something. He may not win, but he can sue me.

I hate to see us totally do away with host liability because in extreme circumstances such as this one, how would the victim recover? You are talking about throwing the baby out with the bath water, yet there are things which need to be done to define that. Part of it may be narrowing the ruling and closing up the gaps through other cases. That is the way our system works.

ASSEMBLYMAN BOCCHINI: So, you are saying to leave it to the courts to decide.

MS. FERRANTE: Yes. I think an educated judge and an educated legal system -- judicial system -- are going to have to close those gaps as they occur, and not say that no one can ever sue a host, even in the most egregious circumstances.

ASSEMBLYMAN MARTIN: Just let me give you one example. I am not sure-- The Sam Goody case is close to it, but suppose, for example, an employer agrees to partially finance a party at a restaurant that has facilities for such a party. Maybe that is the extent of their contribution. One of the employees goes to the function, and let's determine that the restaurant knew, or should have known, through one of its employees that someone may have been visibly drunk. To what extent then should the employer, who simply made a financial contribution, be held liable, as well as the restaurant and the intoxicated driver, when the driver has an accident and sues?

MS. CORVINO: Excuse me. The company I work for just went through that twice. Okay? One celebration they had was for their 25th anniversary in business. There were almost 900 employees there, and they had it on company property. Okay? This is a little bit different. They took reasonable and responsible measures so that no one would drive drunk. They had champagne, an open bar, and everything

else. But, they notified every employee of the strict drunk driving laws. They had food there. They notified the bartenders, and everyone else was notified that when the bartender says, "No more," that means no more. They had limousine services available. They took reasonable, responsible measures.

Then, six months later, they had a Christmas party at a restaurant. It was basically the same as the other celebration. They took care of the financial end of it, and it was the restaurant's responsibility. But, again, every employee was notified of the stiff drunk driving laws. They were told, "If the bartender flags you, you can have no more." They said, "You will be carded, so don't come just as an employee expecting to get a drink if you are under 21."

They had alternatives to driving home if they were intoxicated.

MS. FERRANTE: And, I think if something should happen after you have done all of that -- I'm not a judge; I'm not even an attorney -- my personal opinion is, no, the employer should not be held responsible.

The court agreed in the case of Sam Goody that he was not responsible because he didn't actually provide the alcohol, and he didn't even know what they were going to do with the small amount of money he gave them. But, there again, I think what we have to do is allow judges to make those decisions. I don't think we can make them.

I think the most important point that Terry made is that education is the answer.

ASSEMBLYMAN BOCCHINI: If I may interrupt a second, Donna; the feeling I get from a lot of people whom I speak to is that their concern is -- notwithstanding if you do the right thing as you just described -- why should a person feel when he is going to host an affair that he is involved in a potential crap shoot? Should he have some type of reasonable expectations of the fact that this is his home, he wants to be able to entertain there, and that if certain things occur, he is not liable, and that if other things occur, he is liable? Right now, the host doesn't really know.

Do you think, regarding the average person, that there should be some type of guidelines established? You know, as an attorney, one case feeds off of another case. You take a line in a decision, and you stand in front of a jury and a judge. I'll take that scenario and work away at it. My partner will hammer away at it at a jury trial. I think you are aware of that.

MS. FERRANTE: Yes, but I think a lot of focus is being put on the fact that this is host liability for serving alcohol. You have host liability for a hundred million other things. It has been established and no one has ever screamed except the poor guy who gets sued.

ASSEMBLYMAN BOCCHINI: A classic is the backyard pool.

MS. FERRANTE: Right.

ASSEMBLYMAN BOCCHINI: There are probably more people who get hurt in backyard pools than get hurt as a result of parties.

MS. FERRANTE: Right. I have a pool in my backyard. I have a fence around the pool, and if my next door neighbor climbs over the fence and drowns in my pool, I am liable for that because I put the danger there. I have a million-dollar umbrella policy on my home because of that.

On the other hand, if it snows -- it is my property -- and I don't take every speck of ice off my front walk, and some dummy has a flat tire three blocks down the road, walks on my property, and slips, falls, and breaks his leg, I am liable.

So, why shouldn't I be just as liable if I am dispensing alcoholic beverages in my home and don't take the proper precautions? Just because it is a party--

ASSEMBLYMAN BOCCHINI: (interrupting) Do you think it is fair to request the Legislature to consider establishing a definition of what fair and proper precautions are?

MS. FERRANTE: That is a possibility.

ASSEMBLYMAN BOCCHINI: I don't know exactly--

MS. FERRANTE: (interrupting) To further define what was outlined in that case, such as to define visibly intoxicated -- to define appropriate precautions, so that people will understand what

they need to do in order to protect themselves. It is the same with the tavern owners.

ASSEMBLYMAN BOCCHINI: I think if you consider the possibility that if some type of definite issues for clarification could be compiled, in the same sense, you are protecting the victim as much as you are protecting the host.

MS. FERRANTE: Yes, absolutely. And, I think it works the same way with--

ASSEMBLYMAN BOCCHINI: (interrupting) As I said, at this point, I perceive it pretty much like a crap shoot. You know, you go into the casino, and if you get the three gold bars, you win the jackpot.

MS. FERRANTE: Yes, and most of our court rulings start out as crap shoots.

ASSEMBLYMAN BOCCHINI: Most cases start out as crap shoots.

MS. FERRANTE: Yes. It is like, "Sure, you take your third; I'll go for broke."

ASSEMBLYMAN BOCCHINI: I shouldn't really say that. A lot of times there is no question as to liability. We could have that dialogue.

There are a lot of people left who want to testify, so are there any other questions? Frank? (negative response) Nick? (negative response) Bob, is there anything else you would like to ask?

ASSEMBLYMAN MARTIN: No, but I have a comment. I know Ms. Ferrante has monitored a lot of courtrooms in Morris County, particularly the one I have been active with. I'm surprised that you would eventually rest your confidence with the judges and the judicial system as opposed to the Legislature. (laughter)

MS. FERRANTE: I didn't say I rested my confidence with them. I just said I think we have to give them a shot at it.

ASSEMBLYMAN BOCCHINI: Ladies, thank you very much. As I said last week, there is no intent, and, I don't think you'll find anything coming out of this. This goes to the heart of a lot of what you are involved with. There is no inference, nor is it intended, that any of the drunk driving laws in this State will be diminished. This

State has been in the forefront in establishing good DWI laws, and I -- I think the other members of this Committee feel the same way -- feel that nothing should be done to diminish those laws.

As a matter of fact, with regard to one other comment you made, I think that while the Kelly case may have had an effect on saving lives, I think more lives have been saved over the last two years as a result of our drunk driving laws. Okay?

MS. CORVINO: Right.

ASSEMBLYMAN BOCCHINI: Thank you. Phil Kirschmer from the New Jersey State Bar Association? Good morning, Phil.

PHILIP KIRSCHNER: Good morning. Thank you. I am Philip Kirschmer from the New Jersey State Bar Association. Diane Legreide from L.E.G.A.L. could not be here today, but she joins in these remarks. I'll try to be brief because I know you have a lot of people who want to testify. You'll find my remarks are about the legislation that is before you -- A-347.

We, at the State Bar Association, oppose the bill. We think if this bill were passed, it would diminish the efforts of the Legislature to do everything possible to deter alcohol-related deaths.

It is undeniable that one contributing factor to deaths on the highways is that a small portion of tavern owners, without regard to the public's safety, would continue to serve drinks to visibly intoxicated patrons. This legislation would insulate those irresponsible tavern owners, who are just a very small minority, from their utmost liability by putting a cap on their damages. In fact, it really lessens the deterrent impact if an irresponsible tavern owner knows that despite serving a visibly intoxicated patron and despite serving a minor, the most he is going to be on the hook for is \$75,000. That is something we think would be at odds with what the Legislature has tried to do.

We think the cap is arbitrary and unreasonable. There was testimony that if a person proves this--

ASSEMBLYMAN BOCCHINI: (interrupting) Are you talking about this particular cap or are you talking about any cap in general?

MR. KIRSCHNER: I would say any cap in general because a cap is arbitrary in the sense that after a person has proved his case and has met the standard of negligence in proving that the tavern owner has served a visibly intoxicated patron or a minor-- You go through all of that; you put your proofs in; you get a verdict that may be above the \$75,000, or whatever figure; and, you arbitrarily say, "Well, I'm sorry they came back with \$125,000. You are only going to get \$75,000." To us, that makes as much sense as the jury coming back with \$5,000, but you saying, "No, we'll have a minimum. That is not enough for your trouble, so you'll get \$10,000." It is arbitrary if there is no relation to the damages.

No matter what the cap, and no matter how high you put it, it hurts the most seriously injured. The most catastrophically injured persons are the ones who suffer from the cap. The families of those who have died, the brain injured, and the paralyzed will need a lifetime of care, and a cap would be arbitrary and unreasonable.

We think the standard is high. In terms of proving obvious manifestations of intoxication, the tavern owner who serves a visibly intoxicated patron should not have his liability lessened.

There are other situations. For instance, if this bill were to apply, it would also permit someone who serves a minor to escape much of his liability limited to \$75,000. In that case, the tavern owner has not only violated one ABC regulation in terms of serving intoxicated patrons, but he has violated the statute for serving a minor who shouldn't have been given a drink in the first place. By legislating this type of cap, it wouldn't matter. The liability is limited to \$75,000.

We think that instead of limiting the rights of victims, there are a number of other things that can be done. We view this mostly as an insurance problem. We heard testimony last week that liquor law liability insurance is going to be completely deregulated. We do not know what their rates are. We do not know whether or not their rates are justified. We do not know how many suits have been filed. We do not know how much in premiums they have taken in. We do not know how much in awards they have paid out. We do not know

anything, to tell you the truth, about what goes on with the pricing of liquor liability insurance. Before a legislative remedy is fashioned, particularly one to cap victims' rights, I think the answers to those questions must be had.

ASSEMBLYMAN BOCCHINI: I don't mean to interrupt you, but I can't help but think back to Hazel's testimony of last week when she indicated that they haven't been keeping any statistics -- I don't know for how many years -- since 1982, as a result of the deregulation under business exceptions to insurance. Where does that put us in relation to finding answers to those questions?

MR. KIRSCHNER: Well, I think there are a number of things we can do. Certainly, we can request information from the industry, and I think the Commissioner will do that. Certainly, I think the Legislature can try to do that in order to find out about the pricing policies.

If that is not successful, you always have the option of regulating it again, or the Commissioner has the option of pulling liquor liability out of the deregulation statute. I think there are ways to get answers, and I think that is in everyone's interest. It is certainly in the tavern owners' interest to find out whether the premiums they are paying are or are not justified for what is really happening out there.

Right now, we are really in the dark. No one knows. I can't tell you; I don't think the Legislature knows; and, I don't think the Department knows what is going on with the pricing of this insurance. It is important to find out.

Another alternative could be, if the Department of Insurance or the Division of Alcohol Beverage Control had a recording system, such as we have with other professionals, where the ABC could be notified of any judgment against a tavern. What we have found with other people, particularly professionals -- lawyers and doctors -- is that 1% or 2% of the taverns are probably responsible for 25% to 30% of the claims. There are repeat establishments that pay very, very little regard to the rules out there. That has been consistent in automobile accidents where about 1% of the people are responsible for about 15% of the accidents.

There is a segment of the industry that could be identified and targeted either for stricter enforcement or at least stricter watching in terms of their future conduct. That has really been borne out in other lines of insurance, and we suspect that you will find the same thing here.

ASSEMBLYMAN BOCCHINI: Excuse me. Is there anyone here from the ABC? (negative response) You know, as we have been discussing this, I've made notes. I know the ABC had a representative here last week, and we contacted them again on Monday. Director Vassallo said he had other appointments. Quite candidly, I don't know what could be more important to ABC than liquor law liability, which is something that has a very large impact on the industry. I don't understand why a representative of that Division is not here this morning. I find it reprehensible; I find it outrageous; I find it a slap in the face to the people who are sitting in this room; and, I find it a slap in the face as far as MADD, RID, the tavern owners, and the Legislature are concerned. I would like this Committee to send a letter to Mr. Vassallo subsequent to this hearing, with copies to the Attorney General and the Governor.

The Attorney General didn't see fit to be here because he thought this was a social problem. I still don't understand why ABC or a representative of the ABC wasn't here. They'll probably walk in after I finish saying this, but we were scheduled to start at nine o'clock, and it is now 10:30.

We had a litany of questions. Aggie, were you able to get those questions to the ABC? (nods affirmatively) It wasn't that we were looking to sandbag anyone here this morning. Our office called to tell them that we had some concerns and some particular areas of questions that we wanted some information on. Their not being here just does not make any sense. I don't know what your feelings are, Bob, or any of the other members of the Committee, but that is the way I, as Chairman, feel.

I'm sorry, Phil. Go ahead.

MR. KIRSCHNER: That is okay. In terms of information, we would like to know -- this could be gotten from the ABC -- how many

establishments have been cited, fined, or closed down? What is going on with enforcement in terms of those establishments that engage in this kind of conduct, because that is to the detriment of the entire industry? I think we can all see that that is a very, very small minority, and they should be isolated somehow.

Other things can be done within the industry, such as educational programs -- that has been talked about today -- designated driver programs, and ride programs. You can even tell a person who has had too much to drink, "Remember, this drink could cost you \$3,000 if you get stopped on the road." That might sober up a certain amount of people.

Again, this would have to be explored, but perhaps establishments that engage in these kinds of programs could get a discount on their insurance, just like a homeowner who installs dead bolts, smoke alarms, and things like that to take preventive action. All kinds of insureds are rewarded for such actions.

ASSEMBLYMAN BOCCHINI: What do you think about mandatory insurance? When some of the people involved in the industry -- the tavern owners -- come up to testify, I would like to ask them that same question. I would also like to have found out from the Director of the ABC about the possibility of mandatory insurance, you know, as far as minimums are concerned. Right now, we don't have every licensee necessarily carrying insurance. In some instances, it is understandable because they just can't afford it. But, assuming we can put together a package that is affordable, do you have any opinions about that?

MR. KIRSCHNER: Well, I think that is something which should be explored, and without having looked at a proposal, it is something I think we would be supportive of. That would spread the risk over the entire industry, not just over those who buy the insurance, which is what is happening now.

Again, we don't have the reporting system, but we would bet that a great proportion of those who are responsible for more than their share of accidents may, in fact, be some of the same establishments that don't have any insurance. They just don't care.

Again, that has yet to be established, but it may very well be, so we would have to explore that.

There are alternatives -- in the industry itself and in the insurance industry -- to the pricing problem as opposed to setting a cap on victims or making a standard that is much too high for victims to meet.

The other thing I must say is -- and, I don't want to diminish it -- I've heard a lot about the stability or the salvation of the industry being at stake. I think that is a little bit overstated, and I wanted to tell you that honestly.

In terms of how a business is run, I'm familiar with the business because of my family and others. The cost of insurance is certainly a cost that has gone higher than it should, but it is only one small part of an operation. It is the cost of your inventory, the liquor, and the food. It is the cost of your labor, your employees, the rent or mortgage you have to carry, the lights, the oil, gas, or whatever that make up the major part of your business -- all the expenses.

ASSEMBLYMAN BOCCHINI: Let me ask you this, Phil: I've read and I've heard statistics concerning liquor liability being as much, if not more, than medical malpractice for a neurosurgeon in some instances.

MR. KIRSCHNER: I would find that very, very hard to believe. But, again, we can find that out. Figures that just lay out what the gross insurance is, whether it is \$7,000, \$10,000, or \$12,000, really don't mean anything until you relate it to what the percentage of your expenses are. What percentage of your gross is that? If it is 5%, 6%, or 7%, that means that 95% of the cost goes to something else. At least a small part of the insurance is justified because insurance costs money. For a lot of people to say that the salvation of the industry is at stake, we think that is something that is a little bit overstated.

The fact of the matter is, a lot--

ASSEMBLYMAN BOCCHINI: (interrupting) But, aren't they paying out of the gross sales?

MR. KIRSCHNER: Yes.

ASSEMBLYMAN BOCCHINI: Do you know what the percentage is? It varies, doesn't it?

MR. KIRSCHNER: All I know is what last year was. Even if it went up two or three times last year, it was somewhere around 2% or 3% -- that is, even if it went up two or three times. We're talking about a one-cost item, and I'm not saying that the cost is justified. This Committee should do everything it can to make sure that the cost of insurance is what it should be. But, I also don't want the impression to linger that this is the major factor that is driving people out of business. While it may be driving people out of business, particularly because of surcharges -- the \$3,000 surcharge -- the cost of the drunk driving penalties, roadblocks, and things like that, a lot less people are drinking in the bars.

ASSEMBLYMAN BOCCHINI: You see, that is the heart of this particular problem as I see it. We've read accounts of tavern owners and licensees having a reduction of approximately 30% to 35% in the amount of drinking that is taking place now. I think that is directly and in part attributable to the standards under our drunk driving laws.

My feeling is, while there are some out there who don't like it, by far most of the tavern owners understand it, and to a certain extent, it may shield them from the actions of some people. But, in the same sense, they turn around and say to me: "Joe, how the heck can my receipts go down 30% and my insurance premiums go up 500%, 600%, 700%, or 800%? There is something that isn't right." That is something I think-- I'm sorry. Assemblyman Pelly?

ASSEMBLYMAN PELLY: With your permission, Mr. Chairman-- Mr. Kirschner, I think the alarming aspect of the entire situation as we see it is the fact that with no apparent justification, suddenly a liquor shop's or a bar's liability insurance goes from \$1,200 to \$11,000 in one year, or goes from \$800 to \$8,000 in one year, with no apparent justification -- no reason. They have no statistics to show that they, in fact, have had an increase in lawsuits brought against them. In fact, no lawsuits have been brought against many of them, as was developed by testimony last week. This is for no apparent reason. This Committee is alarmed, and the tavern owners are alarmed, about the

fact that insurance premiums have gone up such a substantial amount, and there is no reason for it.

In addition to that, as Commissioner Gluck pointed out, this aspect of the insurance industry is not regulated. They have no reason to show statistics. As a matter of fact, this deregulation promotes, if anything, abuses -- the opportunity to seize upon something sensational, such as the Kelly/Gwinnell case, which is completely, as I see it, unrelated to the tavern owners' problem, and to seize upon it as an opportunity to raise insurance premiums from \$1,200 to \$11,000 and get away with it.

Perhaps we should learn a lesson from that. Perhaps we need to impress upon the Department of Insurance to once again regulate that aspect. As a matter of fact, Assistant Commissioner Kenney testified to the fact that there is no reason for increasing these insurance premiums, other than the fact that the insurance industry has seized upon an opportunity to raise their premiums, not predicated upon any rational statement, but predicated upon this Kelly/Gwinnell case, which everyone became concerned about. They said, "Here's a reason to raise our insurance premiums." It is nothing other than that. They have done just that and, as a result, the tavern owners are ill-prepared to address an issue of this nature. That is the problem we are confronted with.

MR. KIRSCHNER: We tend to agree with that. There have been figures anywhere from 30% to 50% of businesses down regarding the amount of alcohol being served in bars and taverns. There has been a 30% decrease in alcohol-related accidents and fatalities over the past two years, so how can the cost of insurance go up?

That has very little to do with-- The remedy to that though is not to cap victims' rights or put in an impossible standard.

ASSEMBLYMAN PELLY: I agree.

MR. KIRSCHNER: It is to find out the answers to those questions, which don't seem to make much sense, and we would agree with that.

The only other thing I would like to say is, many, many questions have to be answered, and I think that is what the Committee

is trying to do. We just don't think that the remedy being proposed in A-347 is really going to help tavern owners get to the root of the problem. It seems to be an insurance problem, and it has an unfairness in that it sets back those who are most severely or catastrophically injured. We just don't think that is the correct remedy to the problem.

ASSEMBLYMAN LaROCCA: Are there any other questions from the members of the Committee?

ASSEMBLYMAN MARTIN: I have a couple, if you'll permit me. My understanding of your position is that you would view any cap as arbitrary. Is that basically your position? (witness nods affirmatively)

Isn't it true though that pain and suffering-- When you determine awards for pain and suffering as far as civil cases are concerned, isn't it true that whatever amount you place on that is, in some sense, arbitrary, because it is almost impossible to determine a fixed amount for such injuries?

MR. KIRSCHNER: Well, juries try to evaluate the nature of the injury. If you look at juries' awards when they come back, they are remarkably consistent. I'm not saying there are not extremes at the high end or the low end occasionally, but they are remarkably consistent.

ASSEMBLYMAN MARTIN: Suppose there was a cap on the pain and suffering aspect, as well as on the actual personal injury. What would be your feeling on that?

MR. KIRSCHNER: I think the feeling would be the same. It would be arbitrary and, again, what it would seek to do would be to reward someone who had been found to be negligent. It would not be helping the person who didn't do anything wrong -- the tavern owner who didn't do anything wrong. You are rewarding the person who caused the most damage.

What the cap does is, the more damage you cause, the better off you are because you are insulated from that much liability. It just doesn't seem to make much sense. As I indicated before, then let's have a minimum also. If you go through your case and prove that it was negligence, let's set a minimum too. That is the same theory.

ASSEMBLYMAN MARTIN: Well, suppose at the present time, we are in a situation where-- It strikes me to a certain extent that we may be in a self-defeating situation. In testimony last week, it was stated that perhaps as many as 40% of the tavern owners are uninsured. If, in fact, they can't get coverage, or let's put it this way: They are open to open-ended liability, and because of that and the fact that they have difficulty getting insurance -- more and more choose not to get coverage -- wouldn't we be in a situation where victims may reach a point of being less protected as more tavern owners choose not to become insured?

MR. KIRSCHNER: Well, we have looked at that, and we, frankly, don't believe that that has been a significant problem in the past. There may, in fact, be a number of establishments going without coverage. Most have it, but there are some cases that we have been told about where there is no coverage. But, most have it.

We cannot see though -- this was pointed out by one of the other speakers -- why you would be putting the negligent tavern owner in a preferred position over any other defendant, or, stated another way, that the victim of a dram shop violator would be put in a different category than the routine automobile accident victim where there was no alcohol involved. It just doesn't make any sense to do it that way.

ASSEMBLYMAN LaROCCA: Are there any other questions from any members of the Committee? (negative response) Thank you, Mr. Kirschner.

MR. KIRSCHNER: Thank you.

ASSEMBLYMAN LaROCCA: Who is next to appear before the Committee? I think it would be good at this time to hear from the other side of the fence, so I am going to call on Jack O'Connor. Will you please identify yourself and who you represent?

JACK O'CONNOR: I have submitted a copy of my testimony. I am Jack O'Connor, and I operate a family restaurant in Bridgewater, Somerset County, New Jersey. My restaurant is called Jack O'Connor's Quality Beef 'n Seafood. We employ 70 people. We have alcohol sales of about \$400,000 per year, and food sales of about \$950,000. Our restaurant

has a bar, entertainment, a lounge, and a dining room which seats 265 people. My parents were in the retail food and package liquor business, and I have been in the restaurant business in New Jersey for 16 years. I have been active for many years in restaurant trade associations, and presently I serve as restaurant/tavern committee chairperson of the Somerset County DWI Task Force.

I have serious concerns about social host and commercial liquor liability and insurance.

As do many restaurants and some tavern owners, I purchase a package public liability insurance policy which includes liquor law liability. My annual premium, effective January 1, was \$11,900. The carrier was Royal Indemnity. During the month of January, Royal Indemnity backed out, and the group was headed up -- restructured, if you will -- by Connecticut Indemnity. Aware of the problem with liquor liability insurance, the unavailability of carriers to quote insurance, policies being cancelled, and premiums increasing up to 400%, I solicited quotes from other carriers. I went to approximately 9 or 10 insurance carriers that I was told were writing liquor liability insurance. I was only able to get one carrier to agree to write liquor liability insurance for me, and that company was The Co-op Insurance Agency of Lebanon, Pennsylvania. They quoted a carrier named Transit Casualty Company, which charged me \$36,931. In addition, while they kept the same liquor law liability limit of \$500,000, they would not give me the umbrella of \$30 million that I had with my current policy.

In March of this year, my existing carrier increased my annual premium \$6,200 per year, effective immediately, which raised my annual liability premium from \$11,900 to \$18,100. The explanation from the carrier and the agent was that there was turmoil in the insurance industry, that there were a number of additional claims, that liability claims were increasing, and that many, if not most, of the insurance carriers were withdrawing from the market.

There are a number of concerns that this Committee should be aware of.

It is not the social host nor the commercial establishment that is the cause of injuries inflicted on them by a drunken driver or

an impaired driver. I believe it is the drunken or impaired driver who causes injury through his intoxication.

As professional law enforcement officers have testified before this Committee, and as research done by the Rutgers University's Center of Alcohol Studies has demonstrated, it is impossible with any clear-cut measure of success to observe if a person is obviously or apparently intoxicated or impaired by a .10 blood alcohol reading. Rutgers went so far as to take very professional people -- the Task Force people with the State Police, professional bartenders, and waiters -- and put them into a role-playing environment where some of the people consumed alcohol. Some went beyond the .10 reading; some were given placebos; and, some were below the .10 reading. The highest accuracy in determining when a person was obviously or apparently intoxicated was 25% accuracy, and that was with the State Police who were on the DWI Task Force that goes out on the highways and works with drunken drivers.

Another concern of mine is that only 25% of total alcohol consumption occurs in service establishments such as bars, taverns, cocktail lounges, restaurants, and hotels. Seventy-five percent of the alcohol consumed is dispensed privately.

I believe we have reached, and are reaching, the social drinker with the strongest DWI laws and penalties in the country. I do not believe we have reached the problem drinkers -- the alcoholics who drink and drive. We have to identify and treat these people. We must also educate everyone about alcohol and responsible behavior, but especially the young people.

I believe we are dealing with a social problem, an illness problem, and an attitude problem, but it is a problem for all of society to deal with today in New Jersey. One of the injustices I believe we have is that you are burdening the service establishment, which accounts for 25% of the sales, with the responsibility and the burden of the injuries caused by someone who is really a criminal. He is the one who drinks and drives and injures someone else. Why the host or the restaurant? Why not the distiller, the wholesaler, or the State of New Jersey which collects an enormous amount of liquor tax

revenues? Why not the advertising agencies that promote consumption? Why shouldn't all these people be responsible and have to carry insurance just like we do? The list is really endless, and you have to include each one of us who is aware of an alcoholic, and does and has done nothing about it.

Restaurants, bars, taverns, and now social hosts are being charged by the courts from an original position of not being responsible, to the current practice of being held responsible because we carry the most insurance -- more than the drunk driver should pay for the injury caused. Insurance carriers are getting out of this irrational situation or are limiting their coverage. Most will not qualify for the premiums, or they will be so high that they are unaffordable. The greatest injustice, as the tavern owners have testified, is that they estimate that 40% of the liquor-dispensing establishments do not have liquor law liability insurance. They estimate that there are 8,000 licenses in this category. With the first claim, they will go out of business. Just as serious will be the injured party who has no regress other than the automobile insurance policy.

I suggest that this Committee consider getting the insurance liquor liability off the backs of social hosts and commercial establishments and pass the same type of legislation which has proven to be effective in California. California does not have liquor law liability insurance. It is not required because, in essence -- I have given the exact wording of the statute in my testimony -- it says that the consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of injuries inflicted upon another by an intoxicated person. California created an exception to the legislation in the case where the service was to an obviously intoxicated minor. This deals with one aspect of liquor law liability insurance.

I also feel that we have to deal with the other aspect -- that is, the person who is injured by a drunk driver. I believe a fairer basis than singling out people like ourselves, who account for 25% of alcohol sales, would be to go after the people who drive.

For people who drive while intoxicated, I believe their auto insurance should cover the negligence involved. As far as the catastrophic injuries are concerned, perhaps that is an area where the State can come in, as they have come in on the Assigned Risk Program for uninsured motorists; I think there is a similar analogy there.

As a corollary to what I am recommending, I think there should be penalties for homeowners and commercial establishments who abuse their social responsibility. California made part of their landmark legislation that "every person who sells, furnishes, gives or causes to be given away or sold, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor." California gave specific penalties for the ABC to enforce regarding sales to minors or obviously intoxicated persons.

From what I have heard these past two days, I think that the insurance carriers should be required to file records with the State of New Jersey, not just in the area of liquor liability, but in the area of all liability, as to what their risks, their claims, and their premiums are, whether they are losing money, or if there is any disparity that exists in the rates they charge. Why do some people pay more than others? What was the rate? I believe I was paying somewhere around 2% of gross sales about a year ago. It is now 8% of my gross sales -- gross applicable sales.

Drunk drivers are a social problem and it is the responsibility of all of society to deal with them. I really think now is the time to deal with the problem drinker -- the alcoholic.

ASSEMBLYMAN BOCCHINI: Thank you. Your thoughts were very interesting. I have one question. Do you have an opinion concerning mandatory insurance, assuming there is no abolishment of liquor liability? How about the thought of mandatory insurance for all licensees?

MR. O'CONNOR: If there is no abolishment of liability, I believe there should be mandatory insurance to protect the injured party, but I think it should be at a reasonable rate, and I think it should be a spread over all of the people involved. You know, the State of New Jersey collects an awful lot of taxes from us, and that is

bottom-line profit. I think they ought to contribute something to the insurance aspects if insurance is going to be made mandatory.

ASSEMBLYMAN BOCCHINI: Are there any other questions? Frank?

ASSEMBLYMAN PELLY: I have one question, Mr. Chairman. Mr. O'Connor, you have made a number of recommendations. Your first recommendation was, "Get the insurance liquor liability off the backs of social hosts and commercial establishments." I guess you are suggesting that there be no liability on the part of social hosts and all commercial establishments.

MR. O'CONNOR: I am suggesting that the injury liability be put on the driver or the person who has auto insurance. For example, instead of it being a \$30,000 minimum, perhaps it should be higher. The State should step in the way they do with uninsured motorists and pick up the catastrophic situations -- for instance, when someone has a \$1 million case.

ASSEMBLYMAN PELLY: In the Supreme Court case of Kelly versus Gwinnell, are you suggesting that Gwinnell should have no liability, although-- Are you suggesting that the host should have no liability, although the person driving the car had a blood alcohol level of .286?

MR. O'CONNOR: As you mentioned, it was a narrowly defined case, and it was not to be used as a precedent. Again, I'm not as familiar with the issue in the Gwinnell case as I am with the expansion of the concept of host liability. It is a very similar situation to what we have with the restaurants and the tavern owners. You know, it hasn't been that long ago that a restaurant or a tavern owner in New Jersey was not held responsible for what someone who drank and drove did to someone else. The courts, gradually over the years, have changed that decision, so to speak.

ASSEMBLYMAN PELLY: I am trying to understand what your position is. You've written it, and you've said it; yet, I kind of get the impression that in the case of host liability, there is a line at which perhaps a host should be liable. What is your opinion? Should a bartender be liable?

MR. O'CONNOR: I am saying that he should not be liable.

ASSEMBLYMAN PELLY: Under any circumstances?

MR. O'CONNOR: Under any circumstances. I am not saying that someone should not be criminally liable for a criminal act. I'm saying that he should not be liable under negligence and injury.

Everyone seems to avoid the fact that the drunk gets drunk. No one puts a funnel in his mouth and pours down the alcohol. He is the guy who gets behind the wheel. Someone has to address the responsibility that the alcoholic has in all of this.

ASSEMBLYMAN PELLY: I'm trying to understand that, but, by the same token, Mr. O'Connor, I am also trying to understand your position that if a person comes into your establishment and is obviously drunk-- You wouldn't want any liability to be placed upon your establishment if you continued to serve that person, although he or she was obviously drunk? I'm trying to understand that.

MR. O'CONNOR: All right. The problem I addressed is that no one has been able to demonstrate to me with any reliability that there is any way of determining an obviously or apparently intoxicated person. In my establishment, I know I can't do it.

ASSEMBLYMAN PELLY: I'm not talking about the marginal situation.

ASSEMBLYMAN BOCCHINI: Let me ask you this.

MR. O'CONNOR: (interrupting) It is not a marginal situation.

ASSEMBLYMAN PELLY: I'm talking about the obviously drunk person who comes in, continues to be served, and then drives his car. That is the person I have the problem with when trying to understand your position that the bartender not be held liable.

MR. O'CONNOR: The problem is that when someone comes in and looks like he has had too much to drink-- He sits on a bar stool, and at that point, we don't know. He comes in and the bartender says, "Would you like a drink?" The bartender gives him a drink, and at that point the guy starts slurring his words. Then the bartender says, "Hey, you've had too much to drink. You can't have anymore." Now this guy can go out, and we are held liable. We should not have served him the first drink. That is the way most of the courts are holding this now. We don't have a way of telling if these persons are drunk.

I have 70 employees. On a Saturday night, we sometimes have 900 customers. If I could count the amount -- so much proof, so many ounces of alcohol, and the weight of every person -- I would be able to have some assurance that these people were obviously intoxicated, but I can't do that. I don't know how to do that. A host might have a little better chance of doing that.

ASSEMBLYMAN PELLY: But, your bartenders could determine or establish the fact that, "This guy is obviously drunk. He shouldn't be drinking anymore." If your bartender continues to serve him or her drinks, and that person goes out and injures someone, are you saying that you want no part of that liability?

MR. O'CONNOR: I think that is a criminal situation. The problem has been that the courts have interpreted-- What is an obviously intoxicated person? How do you tell? Can you tell? I can't tell the difference between a .1 and a .2; I really can't.

ASSEMBLYMAN BOCCHINI: Let me ask you this, if I may inject something.

ASSEMBLYMAN PELLY: (interrupting) A .1 and a .2?

MR. O'CONNOR: Excuse me?

ASSEMBLYMAN PELLY: Between .1 and .2?

MR. O'CONNOR: Yes, .1 and .2.

ASSEMBLYMAN PELLY: You can't tell the difference?

MR. O'CONNOR: No. Well, the Commission has been doing this for years, and they can't tell.

ASSEMBLYMAN PELLY: Well, I don't know. I have a chart here that says a person weighing 160 lbs., or clearly 180 lbs. -- a male weighing 180 lbs. -- who has five drinks is .1. I think that is over a period of an hour and a half. If that person drinks twice as much, can't you distinguish between--

MR. O'CONNOR: (interrupting) No.

ASSEMBLYMAN PELLY: (continuing) --a person having five and ten drinks?

MR. O'CONNOR: I presented five people before the Somerset County DWI Task Force. They were male and female. I fed them alcohol at twice the level that the chart says -- that is, the percentage of

alcohol and their weight. We had the Bridgewater Police there with a Breathalyzer. We waited the required amount of time, and we could not get a reading on the Breathalyzer.

ASSEMBLYMAN PELLY: I didn't address the issue of the Breathalyzer. I addressed the issue of your ability to distinguish a person who is 180 lbs. having five drinks in that period of time versus a person having 10 drinks during that period of time.

MR. O'CONNOR: No, I can't.

ASSEMBLYMAN PELLY: You can't tell the difference?

MR. O'CONNOR: No, because what we found out during this demonstration was that people who had eaten food had almost half the reading on the Breathalyzer. By the way, they didn't just give them the Breathalyzer test. They gave them the Romberg Test where you have to balance, walk, and count -- all those sorts of things. One person didn't do well on those things, but he wasn't even at the blood alcohol level. The other four people who exceeded the State-recommended things did not appear to be intoxicated, according to the Bridgewater Police who administered the Breathalyzer test and the balance test. Now, these guys are pros. I don't consider my people-- We have a high turnover rate in the restaurant industry. We probably turn over 300% a year.

ASSEMBLYMAN PELLY: Do you think this immunity from liability should only be in the liquor business, or should it be throughout all areas, such as the medical profession or the legal profession?

MR. O'CONNOR: I'm not qualified to address that. I think the issue I was trying to make was, you are singling out the service establishments that sell 25% of the alcohol, and you are leaving out the distillers, the State of New Jersey, and the wholesalers. None of these people have the responsibility of the drunk driver. You're putting the responsibility on the restaurants and tavern owners, and I think that is unfair.

ASSEMBLYMAN PELLY: I think recently there was a situation that we can all relate to. That is the case where they administered a DPT vaccine, which is a diphtheria, pertussis, and tetanus vaccine. It was on 60 Minutes and 20/20 recently. The cost of it shot up

substantially by virtue of the fact that the pertussis aspect of it -- the whooping cough aspect -- caused a lot of problems in young children. They sued the manufacturers, and the manufacturers, in fact, have diminished the use of it. They have sued the doctors. In a case like that, you are suggesting that there be no liability--

MR. O'CONNOR: (interrupting) That is not--

ASSEMBLYMAN PELLY: (continuing) --on either the part of the doctor or the pharmaceutical industry.

MR. O'CONNOR: I'm suggesting that the liability be fairly shared by all of the functional areas of society that contribute to the problem. It is not just the tavern owner or the restaurant owner. That is why I suggested going to the drivers through their auto insurance.

ASSEMBLYMAN PELLY: Thank you, Mr. O'Connor.

MR. O'CONNOR: Is there anything else?

ASSEMBLYMAN MARTIN: I have one question. You mentioned, as one possible means of relief, utilizing the State taxes from the liquor industry to provide some amount for catastrophic--

MR. O'CONNOR: (interrupting) I didn't recommend that. I questioned why we were carrying negligence on insurance when other people are participating in the profits of our industry -- that is, the State of New Jersey and the taxes. They don't participate in the solution to the drunken driving problem.

ASSEMBLYMAN MARTIN: If, in fact, that was one of the methods of the solution, and the State felt in its infinite wisdom that it had to increase the taxes in order to get enough revenues to cover the pool, you wouldn't be in favor of that, would you?

MR. O'CONNOR: Taxes are always relevant. You know, you have to be more specific than that. What are you getting for your dollar? My concern is not so much what I pay, but what I get back for it. If I am reducing the amount of money I am paying for insurance, and if I am dealing with the drunken driving problem in conjunction with the other people in society who are part and parcel to the problem, then I think that would be fair.

ASSEMBLYMAN MARTIN: Did you mention that you have a package store in addition to the restaurant?

MR. O'CONNOR: No, I said I operated a package store previously -- prior to the last 16 years.

ASSEMBLYMAN MARTIN: Okay.

ASSEMBLYMAN BOCCHINI: What do you think about the possibility of creating a rebuttable presumption of a certain blood alcohol level? If you'll notice, I said "rebuttable." The person, if he was involved in some type of an accident -- I know there are plenty of scenarios that can arise out of this, such as the time factor as to when he had his last drink after he left the establishment, etc. -- even though drunk driving, per se, is a .10, and this person had a .20, would it be fair to say that it can be presumed that someone should have recognized that this person was intoxicated? Obviously, you have to relate that back to the time that he had his last drink, or when he was drinking in your establishment. In just searching for ideas, I--

MR. O'CONNOR: There are a number of problems with that, Mr. Chairman. One is, people generally don't sit in one spot and consume the amount of alcohol needed to reach a .2 level. Some people in our industry and I have talked about the person who comes in for one or two drinks, and at that point, we figure he has too much to drink. Then something happens, and we are held liable because we served him the last drink. We were unable to tell his condition until after we served him the first drink in our establishment. That may have been the one drink which put him above the .1, the .2, or whatever.

The basic problem is, if a person is sitting at the bar or at a table, we can't tell if he is drunk until he has demonstrated some unusual behavior. You know, alcoholics are very, very good at drinking a lot and not demonstrating it at all. We deal with alcoholics. In our industry, we have some people who are alcoholics, and I have sent people to detox centers. The hardest person to detect when he has had too much to drink is the alcoholic; that is because his tolerance level is so much higher.

ASSEMBLYMAN BOCCHINI: I can appreciate that, and I'm sure Bob can appreciate that, as well. I have seen an instance -- I think I indicated this at the last hearing -- where we had someone involved in a DWI. I prosecuted, and he was at least above a .15. If you watched

him on the video tape, you would think he was ready to become one of the June Taylor dancers. His agility was there; he had other physical abilities about him. That doesn't necessarily mean that at the time he was driving he had them.

It becomes apparent that there are those who, while their blood alcohol levels may increase, don't necessarily diminish physically. But, in the same sense, I think they are the rare exceptions as opposed to what would be the most common.

I prosecute plenty of people who are .10, .11, .12, or .13, but they can't walk the line and they can't touch their noses. They can't do whatever they are supposed to do during the Romberg Test.

MR. O'CONNOR: Mr. Chairman, I read something that the State of New York's Director of Alcoholic Beverage Control indicated. I'll use him as my basis. He said that the average person convicted of drunk driving registers over a .20 blood alcohol level.

ASSEMBLYMAN BOCCHINI: Excuse me, will you repeat that?

MR. O'CONNOR: Over .20. In other words, the average person convicted of drunk driving is not--

ASSEMBLYMAN BOCCHINI: (interrupting) Not in this State.

MR. O'CONNOR: No, this is in New York. I'm referring to the Director of Alcoholic Beverage Control in New York. This is an article that was published about a month ago. He said that the people who cause the accidents are severely intoxicated.

What I am saying is, we can't tell in our establishment whether we did it, whether they did it to themselves, or whether someone else did it.

ASSEMBLYMAN BOCCHINI: Okay. Are there any other questions? (negative response) All right. Thank you very much. We appreciate your testimony.

At this time I would like to call on Daniel Murphy. Dan, are you also speaking on behalf of the New Jersey Restaurant Association?

DANIEL MURPHY: I am a member of the Board of Directors of the New Jersey Restaurant Association. Although they are backing some of the things I am going to say, I am also speaking as a member of the Morrmouth County Drunk Driving Task Force. I have been a member of the

Task Force for two and one-half years. I have worked with the State of New Jersey and task forces throughout the State. In fact, the New Jersey Restaurant Association is working in conjunction with the State Highway Department to develop training programs for bartenders and waitresses, which Nancy Kelly from the New Jersey Restaurant Association will be discussing with you a little bit later.

I have always been sort of the guy in the middle. Tavern owners don't quite believe I'm on their side; the Restaurant Association knows I'm on their side; and, the Task Force members I have been working with know why I'm involved with them. So, I get to at least project an overall view. I give a disclaimer to everyone, and I am just basically speaking as someone who has been in the middle looking at this problem for two and one-half years.

I have been in food service for 25 years, and I have had my restaurant in Red Bank for 15 years.

The overall problem of DWI eventually comes in direct relation to the insurance problem. The same statistics that seem to affect the DWI problem are also affecting insurance.

The percentages -- again, we are going to get into statistics, or at least I will -- are common knowledge. Some are common sense and some are speculative. If anyone wants to interrupt me at any point when I give a statistic, I will give you my source, or I will at least give you the reason why I have come to these opinions.

Mr. O'Connor was right about a lot of his statements. He said it was 25%. According to the ABC records-- I did an interview show with Director Vassallo and Senator Gagliano; I have also worked very closely with Alexander Lehrer and John Kaye of the Monmouth County Prosecutor's Office who formed the Task Force.

ASSEMBLYMAN BOCCHINI: It is nice to know that you have some ABC records which are available and that we can get that information from you. In view of the fact that there is no one else here from the ABC to give us anything-- (laughter)

MR. MURPHY: My industry's -- bars, taverns, and restaurants -- on-premise consumption used to be 21% of the total alcohol consumed. We are off 35%. We are now roughly serving 14% of the total

alcohol consumed. That other 7% has swung over to other areas, mainly to retail stores.

The amount of sales tax collected in 1983 was \$160 million. The sales tax collected in 1984 was \$163.5 million, which means consumption is up. Yet, we are off 35%. All right?

There are 12,000 liquor licenses in the State, of which 8,000 are restaurant licenses. Four thousand are private clubs, and there are 2,500 retail stores. That is why I said that Jack should have stayed in the retail trade business.

We have had a one-third drop-off in the volume of what we sell.

ASSEMBLYMAN BOCCHINI: Is it the restaurant business you are talking about?

MR. MURPHY: Restaurants, bars, and taverns. We have had a 14% to 30%--

ASSEMBLYMAN BOCCHINI: (interrupting) Excuse me. I have to interrupt you. When you say bars, taverns, and restaurants, is a person who simply has a tavern with no food associated with it included in that statistic?

MR. MURPHY: Yes.

ASSEMBLYMAN MARTIN: Are you distinguishing package stores separately?

MR. MURPHY: Separately, yes.

ASSEMBLYMAN MARTIN: Even though many of the taverns have package goods available?

MR. MURPHY: Yes, this is where we get into an area of, how many stores have package goods? You know, I have a Broad C license. If I sell 2% over the counter -- I don't have refrigeration for cases of beer, and I don't want to; I need to keep for my own premise's consumption -- according to DWI, we have worked our brains out. The only visible targets that the task force had were bars, taverns, restaurants, social drinkers, and the guys driving on the road. That was what was targeted. Everyone worked very hard on the task force because we don't want anyone dead. I don't. I have two children who drive.

The age group is something you have to look at. The average age of the people who work in the Bemmigan's and the fast-food chains is 25 or 26, and the managers are 27. In my industry -- the New Jersey Restaurant Association -- the average age is 35 to 45. The tavern owners are an older group. They have grandchildren on the roads, and I have my kids on the roads. I'm not knocking the fast-food chains; I'm just saying that we are as concerned as anyone else. That is why I became involved with the Task Force.

So, after two and one-half years of working with the Task Force, we have a 14% to 30% drop in DWI accidents. I don't know about deaths, because someone told me that there were more deaths last year. I really don't know. We don't get all the statistics when we need them.

Let's get into insurance because that is what we are dealing with. I sell \$250,000 worth of liquor a year. My insurance premium went from \$1,700 to \$7,700 just last month. They are telling us--

ASSEMBLYMAN BOCCHINI: (interrupting) Based on the same numbers?

MR. MURPHY: Pardon?

ASSEMBLYMAN BOCCHINI: Based on the same numbers?

MR. MURPHY: Based on the same numbers. I have to point out that that is based on dollar sales, not volume. My drinks are priced in the intermediate bracket.

ASSEMBLYMAN PELLY: Do you have any pending litigation against you?

MR. MURPHY: No, sir, I never have.

ASSEMBLYMAN BOCCHINI: No claims ever?

MR. MURPHY: No claims ever. Another thing that ticks me off is, I've been working with the Task Force; I'm overqualified for these insurance companies; yet, my rate is based on the same-- In the next town, there is a go-go bar with an absentee owner. I've gone into these kinds of places. I guess I'm taking a shot at them, but I've been in these places and I've seen them just throwing liquor down these guys to keep them in the place. There are no owners there, and if there are--

ASSEMBLYMAN BOCCHINI: (interrupting) So, you've checked out the place to see if the owner was there?

MR. MURPHY: Well, it's a bachelor bar. (laughter) It is strictly a bachelor bar.

Let's get into speculative projections. Mr. Strauss from the insurance company talked to me, and he said, "Where are you getting your statistics?" I said, "Well, I have to look at what we've got." If I increase seven grand, and Jack goes up \$14,000 -- another gentleman over there went up \$19,000 -- the average increase is \$10,000 per bar. Multiply that by 12,000 liquor licenses, and that comes out to \$120 million. All right? That is just hypothetical. Forty percent of those bars cannot afford to get it, do not have it, and are bad operators. You have bars in Trenton and Camden for which you can buy a liquor license for \$5,000 and open up shop for another \$5,000. If you were to get hit by a lawsuit, you would have to close up shop and walk away. That is what is happening according to Director Vassallo and some of the ABC agents.

You have guys like Jack, me, and some of the other people who have been here for years, and we are diligent. But, we are being killed with this one aspect.

Once again is the question of, where does this money come from? I have a salary. It is based on profit. All right? I can say, "Okay, I have a 40% food cost, a 30% liquor cost, and a 28% labor cost." Then when you say, "Well, we are going to increase your insurance costs from 2% to 8%," eventually my percent will be gone. At 41 years old, I'm looking into other industries in order to earn a living because I have to get out of the food service business, which I have been in for 25 years, and which I love.

The tavern owner who is a little bit older is sitting here saying, "Where am I going? How am I going to earn a living?"

I have been diligent; I have no claims against me. After the cost of operating expenses and everything else in this industry, on top of this, you are charging me \$7,000 more. Next year it is going to double to \$14,000.

ASSEMBLYMAN MARTIN: May I interrupt to ask you a question?

MR. MURPHY: Yes.

ASSEMBLYMAN MARTIN: Last week when I talked with the Commissioner of Insurance in other testimony, it was established that there may be one, possibly two, carriers who are presently writing insurance. Yet, the rates have gone up anywhere from 300%, 500%, and possibly 1,000% during the course of a year. The question I have is really an unanswerable question because I am just speculating. But, it strikes me that if it were so lucrative, and if there is so much gouging, why have the carriers chosen not to get into the business? Why are they all leaving it?

MR. MURPHY: It is because you don't-- I don't remember the name, but the California decision was the big one. That is what kicked us off some five or six years ago. An actor was hit while driving a motorcycle; he lost a leg; and, he had a \$3 million lawsuit against a restaurant. After that, California got rid of this third-party liability. They did away with it.

As a Task Force member, as a father, and as a restaurant owner, I think you have to be insured. I must be insured because if a guy who has had a number of drinks comes into my place, manages to get a beer, and I don't spot him -- this is where my industry has been negligent-- The restaurant owner has always been the one who really-- The bartender is pretty good at it, but, once again, you've heard about the 21-year-old waitress who might be reluctant to say anything to a 55-year-old guy. We now have the training programs for bartenders and waitresses.

I have always been on the lookout. If a guy walks in who I think is a little bit drunk, I take away his keys; I pull off his distributor cap; I call the police; and, I walk around the parking lot with him until he gets a ride home.

I'm sorry. I'm getting away from your question. I'll get back to that again.

ASSEMBLYMAN MARTIN: One of the questions that I can't seem to logically come to a conclusion is, the insurance companies seem to have moved away from writing insurance in this area. Yet, on the other hand, the rates have gone up so much that it would seem if they could, in fact, make a profit, they would be coming into it as opposed to getting out of it.

MR. MURPHY: The risk is high. In other words, as far as I know, insurance carriers work on the premise that if they write \$100,000 policies, 50 of them might file a claim, and they'll make a profit on the other 50. They think that, hopefully, they may come out ahead. I don't believe the insurance carriers at this point know what is going to happen over the next few years. They absolutely don't want to write policies. If they are forced to, or they want to, write for a very selective person, they are going to say, "Okay, if we have to write it, we are going to have to charge through the nose for it because God knows what is going to happen. Could one case possibly throw us out?"

ASSEMBLYMAN MARTIN: If that is true, then you're saying that the rates, given the risk, are not necessarily too high.

MR. MURPHY: I don't know. Sir, I don't know. Nobody knows. The Commissioner doesn't know. You don't know, and I don't know. That is where perhaps -- whether there is legislation, or whether there is a Committee who really looks into it -- we should spread it out a little bit. Jack said that. We don't want that drunk driver who kills a child or some other person to have an avenue to go after. In New Jersey, it has always been "deepest pocket." You see, that is where it is unfair. A guy has one or two drinks, and he has had drinks elsewhere. I have been in this business a long time. You can tell when someone is slurring his words and falling down.

The alcoholic -- the guy who is .15 all the time -- does not kill anyone until he gets into a critical situation and drives a car. He can walk out the door, get into his car, and drive in a straight line. But, the minute he gets to an intersection and has to hit the brake, his foot doesn't work, and he might kill someone. You can't always tell with the guy who drinks a lot because he becomes conditioned to functioning in that state.

Someone said to put a Breathalyzer at the front door. That doesn't work because you can throw a shot of Vodka in your mouth, spit it out, blow into the Breathalyzer, and you will blow it off the wall. You have to wait an hour, which means I would have to ask everyone in the place to wait an hour so I could use the Breathalyzer before they walked out the door.

The insurance companies don't have all the statistics, and if one or two insurance companies are the only ones writing it-- Is the price to write it fair? I don't know, but it sure doesn't seem fair to me. Maybe the insurance companies can say, "Well, look, we have 'x' amount of claims." That is why they are coming here to speak.

In the meantime, I have to present our side. Let me talk about homeowners. One attorney was quoted in the newspaper. He said, "Well, there is no problem. If you increase every homeowners' policy by \$100, they will be covered." That is a half a billion dollars, according to the number of homes in the State, which is going to the insurance companies. What is the amount of claims? That is a high price for the people in the State of New Jersey. Right now, I think the insurance companies almost have to go after us because we are the visible guys, and they sure as hell can't attack all the homeowners in the State because they are you guys.

ASSEMBLYMAN PELLY: And you are not regulated.

MR. MURPHY: What is that?

ASSEMBLYMAN PELLY: You are not regulated as a commercial establishment whereas homeowners are.

MR. MURPHY: Yes. Should we have mandatory insurance? I wouldn't mind. I have to carry it. There are a lot of bad operators or guys who can't afford. If you mandatorily say you must carry insurance, and a guy can't afford it, is he out of business? Is that fair?

I guess my objection is, I would like to see something set up where if you never had a lawsuit against you-- In my case, if my qualifications for training my people are good, and knowing this DWI problem is so high, my rates should be adjusted accordingly. We should be put on some type of a merit system.

The task forces are going to be going after-- This is one of the things I have been pushing for. I believe you can check with MADD, GLAD, SAD, and RID. (laughter) We have to go after the repeat offender who is responsible for 60% to 70% of the accidents.

I had a woman named Connie Zanit call me yesterday morning. She was hysterical. She said, "Danny, my son was hit by a drunk driver

last night. I don't know what to do." I said, "Tell me what happened." She said, "The guy was out fishing all day, and he was drinking all day. He was on his way home when he broadsided this car. My son's knees are (inaudible), he is dizzy, and he has a concussion." I said, "Get him back into the hospital right away." They had released him. I said, "The second thing you are going to do is call Monmouth County Prosecutor John Kaye and explain the situation." Then I gave her the name of three different attorneys whom I felt she should call.

ASSEMBLYMAN BOCCHINI: All right.

MR. MURPHY: I knew you'd like that, Joe. Once again, these are the repeat offenders. At some point, this DWI problem-- From the bottom of my heart, I have to say that the tavern owners, the bar owners, and the restaurant owners are going to go out of business. In five years, if things proceed at the rate they are going -- this is just my projection and my predictions -- your choices for going out to dinner will be McDonald's, Bennigan's, or the Pear Tree Formagerie where you are going to spend \$150 for dinner for two. All the intermediate guys -- the local taverns, the local guys who turn out good food at reasonable prices -- are not going to want to be there anymore, or they can't be there anymore. That is why I am pleading with you to really look into this. I know you are looking into this. From the general gist of what I've heard, there seems to be a leaning towards, at the very least-- I don't want to see the California decision come in here. I don't think it would be possible to get it through, and I don't want to see the injured people not have an avenue of recouping.

What I am saying is, if the party who gets drunk anywhere-- If I'm negligent, if I feed a guy enough alcohol, and he falls off the bar stool, then I deserve to be punished. If I feed alcohol to someone under 21 years old, and he goes out and has an accident, he should be able to sue me. If the adult who drinks in three or four places goes out and hits a tree, I would love to see his ability to sue me negated.

ASSEMBLYMAN BOCCHINI: What you are suggesting, Dan, is that there is some level between the California statutes--

MR. MURPHY: (interrupting) Right.

ASSEMBLYMAN BOCCHINI: (continuing) --and the open "nothing" that we have at this juncture.

MR. MURPHY: Absolutely. If you could eliminate-- Let's say that all of the insurance carriers are writing what they feel they have to, whether it is legitimate or not. Let's give them a reason to come back in. I've been working very hard with all of the restaurant owners in the New Jersey Restaurant Association. We've gone to seminars, and we are working hard. Shouldn't we be given some merit on that as far as our policies are concerned?

I have never had a lawsuit against me. Shouldn't that be taken into consideration?

If drunk driving is dropped by 50% -- that is, going after repeat offenders-- There are 300,000 people driving in New Jersey who are uninsured because they can't afford it or they have had accidents. John Kaye, the prosecutor, was hit by a repeat offender in 1970. His car was hit; he was thrown out of his car; his car exploded; the guy had no licensee at the time; and, he is still driving.

If the number of DWIs drop, if my volume drops, and if all of these things are being considered, shouldn't the insurance companies then be able to come in and say, "Okay, you guys are more responsible. You should be given a better rate." Something has to be done before my industry gets knocked out of the box.

The private-sector person, or the private-sector business, employs 51% of the working force of the United States. In New Jersey, I have to assume it runs parallel. In my industry, 40% of the people I employ are unemployable anywhere else. That is a lot of people. You know, there are just so many variables that are going to come back to haunt us unless this is really addressed carefully.

It is not just insurance; it is the whole aspect of the DWIs. That is about all I can say.

ASSEMBLYMAN BOCCHINI: I think you've said a lot. You mentioned some things, Dan, that are very thought-provoking. It is to your credit and, to a large extent, to the credit of many of the people involved in the industry, that you are not looking for a one-way street. I don't think anyone is necessarily looking for a one-way

street. You are looking for something that is equitable on both ends to protect not only victim, but also to protect your business interests and the vitality of an industry that is, I think, for the most part, an honorable and good one. There isn't anyone in this room, I don't believe, who doesn't enjoy going out for dinner and having a bottle of wine or a drink on occasion. There isn't anyone in this room who wouldn't enjoy just going out for a pizza and beer somewhere.

ASSEMBLYMAN MARTIN: Are you buying, Joe? (laughter)

ASSEMBLYMAN BOCCHINI: A pizza and a beer, yes. Dinner-- (laughter) I'm the Democrat.

MR. MURPHY: If you have time to hear from the people from the New Jersey Restaurant Association and the programs they have come up against--

ASSEMBLYMAN BOCCHINI: (interrupting) Yes. As a matter of fact, they are next, but before we go to them, are there any other questions for Mr. Murphy?

ASSEMBLYMAN LaROCCA: Mr. Chairman, I just want to make a comment. Most of the testimony this morning has been about insurance -- insurance, insurance, insurance. As you know, I am on the Insurance Committee, and I can see that a lot of the problems are going to spill over into our Committee. (laughter) That is all.

ASSEMBLYMAN BOCCHINI: I'm sure they will have a lot of fun with you and Michael Adubato. (laughter)

UNIDENTIFIED PERSON FROM AUDIENCE: You should have a dual session.

ASSEMBLYMAN BOCCHINI: Actually, we have spoken to Mike, and he indicated, quite candidly, that in view of the fact that Nick sat on this Committee, he would be able to report back as a representative of this Committee as to what Mike's Committee may need to do.

At this time, I would like to call Nancy Kelly from the New Jersey Restaurant Association.

NANCY KELLY: If I may, Assemblyman Bocchini, I would like to ask NJRA's insurance consultant, Mr. Joseph Voza, to testify with me.

ASSEMBLYMAN BOCCHINI: Sure.

MS. KELLY: My position is Executive Vice President of the New Jersey Restaurant Association. NJRA is a nonprofit trade association representing more than 3,000 food service establishments and their employees throughout the State. NJRA's membership runs the gamut, including white tablecloths--

ASSEMBLYMAN BOCCHINI: (interrupting) Excuse me, Nancy. I notice that we have about seven more people who are listed to testify, and we are going to hear everyone. If there is anything in your testimony that has already been given by someone else, please extract it and continue with other additional information. We would appreciate it. When we receive the transcript, we are going to attempt to read it. Also, some of the Committee members have indicated that they have to leave at 12:30 or 12:45. I don't want to stop you from saying what needs to be said, but I would appreciate it if you would keep the time frame in mind. I'll be here until everyone has testified, but I may lose some of the Committee members within the next hour.

MS. KELLY: I feel a little like an Egyptian mummy because I am pressed for time.

NJRA's membership involves a lot of different kinds of restaurants and bars. We have white tablecloth gourmet restaurants, diners, hotel/motel restaurants and lounges, casual family and ethnic operations, catering establishments, department store dining operations, and resort dining operations.

You should also know that NJRA represents chain operations such as Steak 'N Ale, Bennigans, Hoolihan's, and Red Lobster. We also represent family-owned restaurants and bars.

Approximately 85% of our members hold liquor licenses. I'm just going to get into this a little bit.

ASSEMBLYMAN BOCCHINI: How many members do you have?

MS. KELLY: We represent 3,000 food service establishments throughout the State. Approximately 85% are licensees, but because of the new social host ruling, I have some evidence I will present to you later on which will show you that there is now a question that perhaps our unlicensed restaurants may also find themselves liable and in need of liquor liability insurance.

On behalf of all of NJRA's members, I thank you and the Committee for providing my industry with an opportunity to publicly address what one trade magazine recently called "the most critical issue since prohibition to affect the nation's restaurants and bars." Of course, I realize that we in New Jersey can't take steps to solve all of the nation's insurance problems, but I want to stress that this is not a problem completely unique to New Jersey, certainly not in terms of the commercial host's costs for insurance. This is a liability insurance problem that is being evidenced in a number of states.

Since I am not an attorney, nor an insurance representative, I would like to address this issue just from a restaurant or a bar owner's standpoint. We feel that the issue is simple. Liquor liability insurance is neither available nor affordable. These are two issues which I know were addressed last week. I believe Insurance Commissioner Gluck discussed availability first; then she went on to affordability. I'll speak in that same order.

In terms of availability, the issue of surplus lines came up, and I would like to add the operator's viewpoint regarding that. First, an operator in today's market, in order to protect himself, needs at least \$1 million worth of insurance coverage. I have news articles that I can distribute to you later which indicate why. Experts in the field have shown that 80% of all the DWI cases settle out of court for an average of \$100,000. The average in-court settlement is \$500,000. These are averages that were unheard of only three to five years ago.

Additionally, as a member of our Board said at--

ASSEMBLYMAN MARTIN: (interrupting) When you say they settled for that amount, are you talking about the total award to the plaintiff from both the driver and the third party, or are you referring to just the third party?

MS. KELLY: I think perhaps I used the word "settlement" in terms of the in-court judgment. The average in-court judgment is \$500,000. All right? It is the out-of-court settlement which averages \$100,000.

ASSEMBLYMAN MARTIN: But, that includes the judgment from both--

JOSEPH VOZZA: (interrupting) I think that includes both.

MS. KELLY: That includes both, right. You know, we are going to get into the division of that a little bit later.

In addition to these averages, however, there is the cost to dispense. One Board member indicated at a Board of Directors' meeting only two weeks ago that although he was found completely innocent in terms of any kind of settlement, it never went to court. It cost him and his insurance company \$25,000 in order to arrive at that point. So, even the cost of defense is cumbersome for insurance firms.

We are looking at operators who need at least \$1 million worth of insurance to protect themselves, and we are looking at surplus lines companies, which seldom write coverages beyond the \$100,000 or \$300,000 limit. An operator has to look elsewhere for additional coverage. In order to get limited coverage of \$100,000 or \$300,000, a surplus lines company can charge basically anything it wants. You've heard a number of horror stories today, so I am not going to elaborate.

Our insurance consultant is going to go into the subject of surplus lines a little bit later in more detail. He has done some research on this.

When these surplus lines companies do write insurance, as I said, the coverage is often limited, and the rates are astronomical because, as Insurance Commissioner Gluck testified, the State does not have the right to regulate the rates that these companies are charging.

In today's market, oftentimes these companies are not A-rated companies. This means that the company will not have a strong financial resource to fall back on. If the company has a few extremely high claims against it, its financial resources are completely wiped out, and it leaves the operator holding the bag, again, in a market where it would be tough to purchase the insurance elsewhere.

Surplus lines can also pull out of the market anytime they want. I have some information that was sent to me by the Minnesota Restaurant Association, which I can give to you later. I believe one of the names that came up in terms of a new insurance company was

Allied Fidelity, which is now allowed to sell insurance in New Jersey. In fact, a news article from The Minnesota Dispatch indicates that Minnesota is down to two insurance companies, and Allied Fidelity is one of them. Allied Fidelity is writing only a limited amount of coverage in that particular market and is pulling out more every day.

That presents our situation regarding surplus lines, but it really doesn't present a solution for us. Another solution we heard suggested is the idea of caps -- establishing a maximum amount that an operator could be sued for. I believe the amount suggested was a \$500,000 cap with an assessment or a tax placed on either the insurance firm or the policy holder. Again, that depends upon what the Legislature might decide.

ASSEMBLYMAN BOCCHINI: Are you referring to Mrs. Gluck's testimony?

MS. KELLY: Yes. A \$500,000 cap, in a market where surplus lines companies are only writing coverage up to \$100,000 or \$300,000, still leaves an operator with an exposure of \$200,000 that he has to attempt to get protection for elsewhere. Again, this is a drawback to a \$500,000 cap.

ASSEMBLYMAN BOCCHINI: Excuse me a second. If that were to happen, it would be based on the premise that that must be available to you. It goes much further than simply saying that it would be a \$500,000 cap.

MS. KELLY: Exactly. I assume that was what Insurance Commissioner Gluck was implying -- that if it were available, a \$500,000 cap might be a solution. However, the Restaurant Association became aware of this problem last October. I think experts in the field have said that although this type of thing happened to a limited extent before insurance rates escalated, it has never happened so rapidly, and the rates have never escalated as much as they have within the last six to seven months.

In January, we did a survey of 250 insurance companies. We took a list of 250 insurance companies that were selling insurance in New Jersey, and we sent them a simple survey. One of the questions asked if they felt that New Jersey had a tough insurance market, and

another question asked if there was anything that could convince them to come back into the market, what would it be? We need to start at the beginning, go back and refine that survey, and ask insurance companies again what it would take to bring them back in the market. A number of the companies took the time to write and tell us that they did not feel that caps would be effective in persuading them to come back to the insurance market in New Jersey. They said this for two reasons: One, basically because they saw a cap as a goal that attorneys would shoot for in settling cases. In setting that goal, it would almost establish a maximum amount to shoot for as opposed to minimizing amounts that could be reached. Second, they pointed out that in this day and age attorneys advertise on television, "If you think you have a lawsuit, call us. We'll give you a free consultation and let you know." In an environment where people are much more conscious of their ability to sue, you are going to see such a proliferation of these cases that it will completely discount any kind of a positive that might have previously been achieved by establishing caps.

Joe, perhaps you would like to read just a couple of the responses we received from the firms that took the time to let us know how they felt.

MR. VOZZA: My name is Joe Vozza, and I am the insurance consultant for the NJRA. In the survey that Nancy is referring to, the specific question, which is number three, read, "Do you consider New Jersey a tough liquor law liability State, and if so, what do you think should be done to make the situation more equitable?" The answer we received -- I'm just going to summarize so as not to take too much time -- was, yes, they considered New Jersey a tough liquor law liability State.

The cap, as Nancy indicated, was not terribly exciting to them, and it was not a reason to bring them back into the field. They felt, however, that if there was some contributory negligence -- some legislation that would place contributory negligence on the part of the consumers of alcohol and possibly eliminate a suit-- I think this addresses itself a little bit to the discussion of the first witness you had from RID. They feel that the driver injured in the single-car

accident should not be allowed to sue the tavern owner or restaurant owner because of the contributory negligence on his part.

In talking to an attorney who handles a lot of these cases, it was sort of estimated that this probably would reduce the number of claims by maybe a third. So, this kind of action, where you are changing the atmosphere within the State, would probably be more meaningful to an insurance company to come back in, rather than just saying, "Well, we are going to put a cap on it."

MS. KELLY: That is why we say that the survey of the insurance companies needs to be refined. We need to go back and pursue this a little more than we did in our simple survey.

ASSEMBLYMAN BOCCHINI: May I ask you a question? In relation to your survey, would it be possible to allow us to become privy to whatever the results are?

MR. VOZZA: Yes. The only restriction we had when we sent out our original letter was, we said we would not identify insurance companies by name. Other than that, I would have no problem with that.

MS. KELLY: Of showing you the actual survey forms. I'm going to add to that in a little while, but I want to go on to another possible solution. We have talked about surplus lines, and we have explained what we feel the drawbacks are there.

The cap situation-- I would like to stress that when Assemblyman Riley's bill was introduced a number of years ago, at that time, we felt it might have presented a viable alternative. But, things have changed so quickly that in today's market, we don't feel that any kind of a cap level-- I should say that we don't feel a cap level will be effective in bringing insurance companies back into the market.

ASSEMBLYMAN BOCCHINI: Do you feel as though you can rely on what the industry is telling you thus far?

MR. VOZZA: That is a tough one because, you know, this liquor law liability situation is really part of a much broader market change in the insurance industry. It just doesn't affect liquor law liability. We are now in a sellers' market versus a buyers' market, so the whole industry has changed.

What happens when we go through these cycles is -- it seems we do this almost every decade in our business -- they take entire blocks of business and say, "Well, that is too hazardous. Let's get rid of it because there are plenty of other businesses around." Liquor law is not something they have on the front burner.

We had the same thing with municipalities. We just started a Bergen County self/joint insurance fund because there too, with anything that has a red light on it, they just say, "We don't want it." We were notified that 18 municipalities are going to be cancelled on January 1, so we started a self-insurance plan.

MS. KELLY: Let me--

ASSEMBLYMAN MARTIN: (interrupting) I have one related question. Are there any carriers who, in order to get the entire package of insurance that may be available for a restaurant, will add liquor law liability as part of the package?

MR. VOZZA: Yes. As a matter of fact, Commissioner Gluck mentioned that there are two license carriers and two surplus lines carriers who were writing. That is probably correct. There are maybe one or two others who may do it for agency reasons or what have you.

MS. KELLY: Surplus line.

MR. VOZZA: Surplus lines, yes. But, they may be doing it for agency accommodation purposes. You may have other carriers who do it, but no one is out except for those four.

MS. KELLY: Excuse me, Joe. That doesn't discount the fact that one of primary companies, one of the A-rated companies with a strong financial background, is probably doing exactly what you said -- asking for the entire package. But, that is only one company.

In reading Commissioner Gluck's testimony, I can't be quite sure, but I believe that the other company she was talking about was Occidental as still being in the market. But, they are going to be out, even if it is a gradual withdrawal, on April 15. So, we are looking at a situation where in one week, the other company, which is a C-rated company, will be out of the market. Then we are still left with one strong company offering insurance, taking the whole package, and writing rates at whatever they want to write them at. Secondly,

there will be two or three surplus lines companies that will only write coverage up to \$100,000 or \$300,000 and, then again, at whatever rates they want to charge.

MR. VOZZA: May I add one other qualification? Commissioner Gluck may have touched on this -- maybe not in detail, but she said there were some severe restrictions placed on the acceptance of new risk by these insurance companies. I think you ought to know just what they are.

As an example, one carrier will not write if the liquor sales exceed 50% of the total sales. When you get into bars and taverns, you have a problem, so they are excluded. That company will only write a \$300,000 limit.

Another company will only write if the liquor sales do not exceed 40%, and the other company is 25%. These figures are rather restrictive, and they are not at all helpful to any of the regular taverns and bars.

MS. KELLY: The one company -- Allied Fidelity -- that was approved recently to write insurance in New Jersey, we found that in Minnesota, that company is already beginning to pull out of that market. So, again, we have that problem.

Another suggestion that was not suggested by Commissioner Gluck, but I believe it was heard in other people's testimony, is self insurance. From an operator's standpoint, we don't feel that self insurance is a viable alternative because one, if you look at the physicians' malpractice insurance program, it is in trouble today. Why? Because of the high settlements. Second, it is not an industry-wide solution because any kind of self-insurance program, in order to protect itself, would take the better-risk restaurants. Again, that would leave an awful lot of people without coverage.

Then we say, what will work? What we would like to suggest, and what the industry would hope for, is a situation similar to that enacted in California in 1978. With the exception of service to a minor, the responsibility would rest with the consumer, not the server. At the same time, I would also like to add that the Commission may want to consider variations from the California law.

Again, I am not an attorney, but I would like to tell you how restaurant operators and bar operators feel. We have already said that we accept responsibility if an operator serves alcohol to a minor. We feel that is right. We do not feel that we should have to accept the total responsibility of an adult who walks into our establishments, and orders a drink from us when we have no idea how much that person has had to drink at home or down the road, or how much that person has taken in terms of drugs -- how much he has shot, how much he is potted, or any other way ingested into his body, which might, in turn, affect his body's tolerance to the one drink that we might serve him.

With regard to an adult, we feel that this person should have a degree of negligence at least equal to ours. In fact, we would also question the ability of an intoxicated person coming into our establishment, ordering a drink on his own, and suing our operation. In 70% of the DWI arrests -- you can see the statistics -- this person is a repeat offender, a person with no insurance, and a person who doesn't even have a driver's license. When this kind of irresponsible person comes in, orders a drink, and we serve him, he sues for injuries to himself. We end up being the responsible party, and we don't think that is a fair situation.

According to Donald Berlin, a Morristown attorney, who does 80% of his work in the liquor liability field -- I'm sure he is known to a number of licensees here -- he says, "If you could get rid of this lawsuit by the first party -- the drunk, the intoxicated driver -- you could knock out one-third of all the DWI cases that come to court today." In doing that, it would certainly have to have an impact on the insurance market.

I would like to address an issue that Assemblyman Pelly brought up in terms of a situation where an operator continues to serve a person when that person is obviously intoxicated. We are not talking about what the Breathalyzer says; we are talking about a person who is obviously, and confirmed by witnesses, intoxicated. I think that is a question that goes beyond my ability to answer as someone without legal background. Certainly, I think that we, as an industry -- an industry with a conscience -- have sympathy for the innocent third party who

might be injured by that intoxicated driver. But, we would only ask that a fair situation be established where at least we would have some kind of criteria by which we would prove our degree of negligence.

Finally, I would like to bring up a new issue regarding the social host and Assemblyman Hollenbeck's bill. This is an Associated Press article (witness holds up newspaper article), which addresses the social host issue. A host that was found partly liable in a \$1.7 million DWI case.

ASSEMBLYMAN BOCCHINI: In what jurisdiction?

MS. KELLY: Pardon?

ASSEMBLYMAN BOCCHINI: In what jurisdiction?

MS. KELLY: This was in Cherry Hill. All right? This was a bring-your-own-bottle party. The host did not purchase the liquor and he did not serve the liquor. In fact, the victim's attorney said, "The settlement was particularly important to the issue of host liability because it involved a party in which there was no direct service of alcohol by hosts." Does this mean that, in turn, an unlicensed restaurant where a customer brings in his own beer or wine is liable for that patron's consumption and perhaps irresponsible actions? Keep in mind that you would be asking us to take alcohol away from a person that was not ours to take away in the first place.

ASSEMBLYMAN BOCCHINI: May we have a copy of that article?

MS. KELLY: Yes. In fact, I have several copies that I will leave with you. This, by the way, was a question that came up at an alcohol training program, which the Restaurant Association has established with the help of other facets of the retail industry. We started to see unlicensed restaurants at our alcohol server training seminar, and the primary question was, "Do we now have liability when, in effect, we believe that the ABC law says that an unlicensed operator cannot uncork or even pour? The most he can do is set up the glasses and the ice for the drink."

Again, we have opened up another Pandora's box with regard to social host liability.

This is all we have to say. We are only asking for a fair situation for an industry that has a conscience.

ASSEMBLYMAN BOCCHINI: Are there any questions? (negative response) Thank you.

Peter Strauss from Alliance of American Insurers? Excuse me. Before you start, Peter, we have with us a former Assemblyman -- a very good member of our house -- John Markert, who is now the Deputy Director -- am I correct, John? -- with the Division of ABC. I would like you to know, John, that I made some very harsh comments a little earlier. Those comments were to the extent that our Committee -- through Mr. Guzzo, a staff aide from majority, and Aggie Szilagyi, our Committee Aide-- We had contacted Director Vassallo regarding this hearing today. Peter called twice yesterday, and Aggie called once yesterday. I don't believe we received a phone call back in either instance. Were either of you able to speak to Mr. Pinard?

MR. GUZZO: No.

MS. SZILAGYI: I spoke with him off and on in the morning.

ASSEMBLYMAN BOCCHINI: Off and on. What did he indicate to you?

MS. SZILAGYI: He indicated that someone would be here.

ASSEMBLYMAN BOCCHINI: He indicated that someone would be here. Now, John, in fairness to you, I know you arrived after the Director told you to come over here. Mr. Pinard evidently called off sick today.

DEPUTY DIRECTOR JOHN W. MARKERT: That is correct.

ASSEMBLYMAN BOCCHINI: Well, as far as I am concerned, I would appreciate it if you would take a message back to the Director. I think the Director, not John Markert, did a disservice today. I have a great deal of esteem for you, John. As a matter of fact, I think if you were the person we had dealt with originally at the outset of this, you would have been here or you would have made sure someone was here. I believe the Director showed total disregard for this Committee, and he showed total disregard for the people in this industry who testified -- people concerned about drunk driving, such as MADD and RID. We had several pertinent questions. As I indicated to you, I was prepared yesterday to advise Director Vassallo as to what some of those questions were. There was no intention to have any kind of a witch hunt.

This issue has received much coverage across this State, and possibly across the nation, from an industry -- the tavern owners and the Restaurant Association -- that is crying out and screaming for help with problems they have in staying in business. For Director Vassallo to tell people that he was going to be out of town, and that he didn't see fit to have someone here-- If Mr. Pinard is out sick, the ball still falls in the lap of Mr. Vassallo. I just don't think it was fair.

I have three other Assemblymen here. One drove from Hudson, one drove from Morris, and another drove from Middlesex. We have other people here from across the State. I don't mean to admonish you, John, because I have a great deal of respect and admiration for you, but, damn it, he sends you over here because he knows, in my estimation, that "Hey, John Markert was one of the guys in the Assembly, and they are just going to let it slide." Well, I am not going to let it slide. You are here, but I understand you don't have any testimony to give. You may have some of the answers to some of the questions, but you weren't involved in this process from its inception. I don't necessarily expect to be able to get the answers from you.

I understand Director Vassallo is back over in the Justice Complex now. Am I correct?

DEPUTY DIRECTOR MARKERT: That is correct.

ASSEMBLYMAN BOCCHINI: But, he still doesn't have time to be here, for whatever his reasons are?

DEPUTY DIRECTOR MARKERT: (from audience) If I may, Mr. Chairman? I'll certainly take your feelings back when I return later on today. I was asked to mention the fact that he apologizes for Mr. Pinard not being here. He didn't realize Mr. Pinard was sick until just a short while ago and that he was not able to appear. Also, Director Vassallo has a very heavy schedule, and it was impossible for him to be here himself.

ASSEMBLYMAN BOCCHINI: That is beautiful. John, I appreciate your being here.

DEPUTY DIRECTOR MARKERT: (from audience) I will try to retain as much as I can. I guarantee you I will read the testimony when the transcript comes out.

ASSEMBLYMAN BOCCHINI: All right. Does anyone care to say anything? (negative response) We'll finish with that at the end of the Committee hearing.

I'm sorry, Peter. Please continue.

PETER G. STRAUSS: Let me distribute my testimony. Good morning. My name is Peter Strauss, and I represent the Alliance of American Insurers, a property/casualty insurance trade association with over 175 members nationwide. I thank you for the opportunity to comment on the issues of social host and liquor license liability today.

ASSEMBLYMAN BOCCHINI: Peter, can you tell us who some of the 175 members are?

MR. STRAUSS: They are mostly the mutual companies -- all property, casualty.

ASSEMBLYMAN BOCCHINI: Such as?

MR. STRAUSS: Such as New Jersey Manufacturers, Prudential, Kemper, and Sentry.

ASSEMBLYMAN BOCCHINI: You have some biggies in there.

MR. STRAUSS: We've got some biggies, but most of our members are smaller companies -- a lot of the county mutuals. Most of our members are more concerned with Workers' Compensation Insurance. They started in that area, and it branched -- Jewelers' Mutual, Florists' Mutual, etc. We don't represent the real biggies in the insurance area.

Back to the issues now. While the two issues are linked, they pose very separate and distinct problems to society. Let me address the issues separately by evaluating the problems -- that is, the coverage, its availability, and its affordability -- and possible solutions, including the two bills under review, A-43 by Mr. Hollenbeck and A-347 by Mr. Riley.

With regard to the issue of social host liability, I am not aware of any availability or affordability problems of homeowners' insurance based on the Supreme Court decision in the Gwinnell case. In fact, one of our association's companies has said that it is not contemplating revising the homeowners policy form or the rates based on the Gwinnell decision. They are, however, advising their policyholders

that, based on that decision, they might want to review their liability coverage limits to make sure they adequately cover them. However, that being said, that is the situation at the present time. Should there be a rush to the courthouse steps and should the courts continue to expand social host liability, it would be likely that policies and rates would change accordingly.

ASSEMBLYMAN BOCCHINI: May I stop you just for a second? With regard to policies, no one has ever described to me the situation where the parent pays out so much, and then his rates have to go up. What is the determining factor -- if you are able to tell me -- as to what causes the increase in rates? I forget the gentleman's name from Allstate who testified the other day, but he just categorically said, "Well, you know, this is going to lead to an increase in rates."

People also have a certain fear of giving an insurance company a situation where they can hang their hats to justify an increase in the rate.

MR. STRAUSS: I would like to say that is not true, but I'm afraid that all of us are a little greedy -- lawyers, insurance companies, people in general. (laughter) I don't mean to say only insurance companies are greedy. Inflation has some play on this.

ASSEMBLYMAN BOCCHINI: That is mostly in real estate. (laughter)

MR. STRAUSS: Don't start me on that. I'm trying to buy a house in New Jersey.

ASSEMBLYMAN BOCCHINI: I'm sorry. I was just curious as to the rate factor.

MR. STRAUSS: Loss experience--

ASSEMBLYMAN BOCCHINI: (interrupting) When you say there is a rush to the courthouse, how much of a rush would precipitate an increase in rates?

MR. STRAUSS: I think each company has to answer that question individually. I can't provide an industry-wide answer. Every claim, whether it is a homeowner's claim, a commercial claim, or a tavern owner's claim, costs money to defend. As you said last week, there are a lot of cases that are brought to respected lawyers, and it

is said, "Well, I'm not going to handle this case." But, someone will. Even those frivolous cases are going to cost money to defend.

Some examples are loss experiences, actual claims paid out, things like kids falling off a fence in a back yard, pools, or the mailman slipping. Then there is the potential for losses.

ASSEMBLYMAN BOCCHINI: I'm sorry. I didn't mean to interrupt your thought.

MR. STRAUSS: That is quite all right. I hope that answers your question.

ASSEMBLYMAN BOCCHINI: Go on.

MR. STRAUSS: Essentially each company is going to have to make its own decision as to when to increase rates, and it will be based on their costs or their projected costs.

Homeowners' policies were never intended to cover anything other than injuries occurring to guests while on their premises. Those are the kinds of injuries I just mentioned -- the mail carrier slipping or the neighborhood kids falling off the fence in the back yard.

The courts have now decided that social hosts have a liability not only to their guests, but to any unknown people their guests may injure as a result of their activities as guests.

We feel the court has expanded the social host's liability too far. A social host should have a duty to his guests, but should not carry the broader responsibility of any negligence on the part of that guest after he or she has left the premises. Let me add that unless there is gross negligence involved -- this is something we would like to see as a result of these hearings -- there should be a standard of negligence in the statute.

To expand on the court's ruling, who would have responsibility for a guest who arrives at a party, has a drink, and then leaves without appearing to be intoxicated? He goes to another party, has another drink, and then leaves again without appearing to be intoxicated. Then he goes to yet another party where he has another drink, and leaves to go home, still without appearing to be intoxicated. Who has responsibility if this person has an accident and only he and his property are injured? What if he had an accident and

injured others? Finally, what if he had a drink at his home before going to the first party? What if a guest is an unknown invitee of another guest? As a stranger, how could the host know, except in obvious cases, if that person has had too much to drink? Essentially, you know what your friends' limits are, but do you know the limits of friends of your friends?

To that end, we support Assembly Bill No. 43. In essence, I think this bill boils down to a question of fairness. Unless negligence is involved, we all must be responsible for our own actions. Nobody forces someone else to get drunk; we make our own decisions in that regard. An adult who gets intoxicated should be held accountable for the damages he causes.

This brings me to the somewhat more complex issue of liquor licensee liability. All of the companies we represent, if they write any liquor licensee liability coverage at all, do so on an accommodation basis -- that is, as part of a larger package. Mostly they will write it for commercial accounts, such as restaurant or hotel chains.

As you have heard, and will hear again, there is an availability and an affordability problem in the State for liquor licensee liability insurance. Here again, at least part of the problem is caused by court interpretations of policies and common law which have gradually, since the Rappaport v. Nichols decision in 1959, expanded the liability tavern owners and operators have faced. The courts have also made it clear that New Jersey doesn't need a dram shop statute for injured or damaged persons to be entitled to a cause of action against liquor licensees.

Essentially, every person who is a patron -- maybe not even being served in a tavern -- is a potential claim. You have heard that part of the reason liquor licensee liability rates are high is because of deregulation. I can tell you that a larger reason for the increasing rates is the increasing number of claims that must be defended, the increasing number of awards, and the court's expansion of liability.

ASSEMBLYMAN BOCCHINI: Do you have statistics on that?

MR. STRAUSS: Unfortunately, I don't have hard and fast numbers.

ASSEMBLYMAN PELLY: How about just non-hard and non-fast numbers? (laughter) Is there any indication that there is a relationship?

MR. STRAUSS: Yes. You have heard from the tavern owners that their claims are rising. An article in The Journal of Commerce, dated March 27, quotes a lawyer from Philadelphia, Richard M. Smolens, who has represented both bar owners and people who have sued bars. He estimates that lawsuits have tripled in the last two or three years. I apologize if my figures were incorrect.

ASSEMBLYMAN PELLY: What are your estimates in New Jersey? We are not interested in Philadelphia at the present time.

MR. STRAUSS: I think that is a pretty reasonable statement for most of the states.

ASSEMBLYMAN BOCCHINI: That is one lawyer giving one statement.

MR. STRAUSS: I understand.

ASSEMBLYMAN BOCCHINI: All right.

MR. STRAUSS: You have also heard from the tavern owners that their claims are rising. Last week--

ASSEMBLYMAN PELLY: (interrupting) We heard from Mr. Murphy a few moments ago that he kind of estimated the number of liquor licensees in New Jersey, and if they were increased \$10,000 each, which he contemplates as being the average, the insurance industry has collected \$120 million more over the past year than it did the previous year. Assuming that is only half right, what happened to it? Do you have \$120 million worth? Have you given out \$100 million worth of additional claims or anything near that?

MR. STRAUSS: I don't know the answer to that question.

ASSEMBLYMAN PELLY: Have there been substantial additional claims that even come close to justifying that?

MR. STRAUSS: There have been additional claims. I can't give you numbers as to how many additional claims there are. I don't have those hard and fast numbers.

It takes money to defend even the frivolous claims, and then you get the more complex claims where there are new questions of law, and they are going to cost quite a bit. You heard from the New Jersey Restaurant Association that someone was found completely innocent, and yet it cost him \$25,000.

ASSEMBLYMAN PELLY: I understand that, but we still have no understanding and can't accept there being any relationship whatsoever between your \$120 million extra and the number of claims other than--

MR. STRAUSS: (interrupting) We don't know if that \$120 million is an accurate figure. Mr. Murphy told you it was speculative.

ASSEMBLYMAN PELLY: Even if it is half right, I think you have some responsibility to the people who you sell insurance to -- to explain to them why. Then again, you are not regulated. Commercial enterprises are not regulated, so you have no responsibility in that regard, do you?

MR. STRAUSS: That is not necessarily true. The Insurance Commissioner has the power to ask for the information. We have a responsibility to our insureds. As representatives of mutual companies, our policyholders own our companies.

I cannot tell you what happens in the surplus lines markets. That is primarily where most of the smaller taverns are being written. My companies write on an accommodation basis for the chains. I don't know what their increases have been. I would be surprised if their increases have been as substantial as some of the increases you have heard about.

ASSEMBLYMAN PELLY: By accommodation basis, do you mean because they are giving you their other insurance, you are doing them a favor?

MR. STRAUSS: To get their other insurance business, we are writing liquor licensee liability.

ASSEMBLYMAN PELLY: Also accepting the extra \$120 million from them?

MR. STRAUSS: I don't know where that \$120-million figure came from. I don't know if it is half or not, and I don't think anyone in the room knows either.

ASSEMBLYMAN PELLY: Well, it is a substantial increase, isn't it?

MR. STRAUSS: Some of the taverns are unquestionably getting substantial increases.

ASSEMBLYMAN PELLY: We are trying to establish a relationship between that, other than simply being ripped off.

MR. STRAUSS: I don't blame you. The expansion of liability by the courts is one reason. The number of claims is another reason. We base our rates on projected costs. As we look down the road, more and more claims are coming in. That means it is likely that more and more claims are going to continue to come in, which means we have to set aside more and more reserves for those claims. That means we have to get it from our insureds.

ASSEMBLYMAN MARTIN: But, if it is based on that--

MR. STRAUSS: (interrupting) We are not making any money in this market. We are not in the market. If the market were so great-- If we are gouging -- I can't really assure you -- but I would be surprised to learn that my company was raising its rates as theirs have been raised for them. I'm talking about the tavern owners that you've heard of. Then we would be in the market. If there is a profitability factor here, why aren't we writing the business?

ASSEMBLYMAN BOCCHINI: I don't know. That is always a big question because it seems as though every time I talk to insurance carriers and insurance people, they don't like to write auto insurance because they lose money. They don't like to write this kind of auto insurance because they lose money. I haven't seen too many damned insurance companies going down the tubes, other than the one that we've heard about recently. But, they are not--

MR. STRAUSS: (interrupting) That company was writing liquor licensee liability.

ASSEMBLYMAN BOCCHINI: (continuing) --making money. You know, I'm not looking--

MR. STRAUSS: (interrupting) In this particular market, there is no reason for us to get into it. The risks are too high at present. I'm sorry; go ahead.

ASSEMBLYMAN PELLY: When were you first aware of the fact that you were going to testify here today?

MR. STRAUSS: Last Monday.

ASSEMBLYMAN PELLY: Last Monday?

MR. STRAUSS: Yes. I was prepared to testify on Thursday.

ASSEMBLYMAN PELLY: You were aware that you were going to testify last Monday, so evidently you had some time to prepare yourself. Didn't you anticipate that with the substantial increase, which all of the tavern owners were complaining about, some question relative to justification for that substantial increase -- other than just very broad terms -- was going to be presented to you?

MR. STRAUSS: It was put to me that we would be discussing the two bills and the broader issue. So, in that instance, yes, I was aware of that.

ASSEMBLYMAN PELLY: You were here last week, weren't you?

MR. STRAUSS: Yes, I was.

ASSEMBLYMAN PELLY: Didn't you see the paper that was circulated by the tavern owners showing the substantial increase in insurance rates?

MR. STRAUSS: I didn't see the paper, but I heard the testimony. Certainly.

ASSEMBLYMAN PELLY: It was discussed. You heard the testimony regarding the numbers. Didn't it occur to you that that question might be directed to you, as a representative of the Alliance of American Insurers?

MR. STRAUSS: I suppose it did. Yes, sir.

ASSEMBLYMAN PELLY: Well, I would have hoped that maybe you would have had some facts and figures for us.

MR. STRAUSS: My companies aren't writing the business. We are not increasing the rates. If we write it, we write it on an accommodation basis. We don't go out to the taverns and say, "Would you like some coverage on this?" We don't want the business. Yes, the rates are going up. It is terrible for the restaurant owners and the taverns owners. There is no question about that. Why is it? It is because the risk is too great.

ASSEMBLYMAN PELLY: We are asking you to demonstrate that for us. Show us where the risk is too great. Substantiate it.

MR. STRAUSS: All right. Starting with Rappaport v. Nichols in 1959, the courts have expanded the liabilities. Every person who walks into a bar is a potential claim. What happens to the person who goes--

ASSEMBLYMAN PELLY: (interrupting) That doesn't tell me anything. I'm looking for your experience, I would assume.

MR. STRAUSS: Mr. Pelly, I'm sorry. I don't have the information with me at this time.

ASSEMBLYMAN BOCCHINI: All right. I think perhaps if we can proceed--

MR. STRAUSS: (interrupting) You know, throughout--

ASSEMBLYMAN BOCCHINI: (interrupting) Excuse me. Excuse me. I understand where you are going, Frank. It is obvious that Peter doesn't have that information.

MR. STRAUSS: I'll do my darneest to get it for you.

ASSEMBLYMAN PELLY: Would you provide it to this Committee so that we have some understanding of why the rates have gone up so much? Then it can be entered into the record.

ASSEMBLYMAN BOCCHINI: Notwithstanding that, will you please continue?

MR. STRAUSS: All right. The tavern owners have told you that their business hasn't changed, but their claims' situation has. This was told to you last Thursday.

Let's go back to our friend who doesn't appear intoxicated despite attending parties all night long. Let's have him go to taverns A, B, and C instead. What are the tavern owners' liabilities when our friend gets into an accident? What if he has been sneaking nips in the car before and after each tavern stop from a bottle he bought earlier in the evening from the liquor shop down the street? Who has responsibility for this person's actions?

Let's say that finally he gets visibly drunk, and tavern C refuses to serve him. Unfortunately, before he leaves, he falls on another patron and injures him. Who is responsible?

In Mt. Hope Inn v. Traveler's Indemnity Company, the Supreme Court held that tavern C could be held liable. In that light, how would the court hold if our friend walked out and got into an accident? At some point we must hold our friend, not someone else, responsible for his actions.

Don't misunderstand me. When someone is injured at the hand of another person, the injured person should be compensated. That does not mean that whoever has the greatest ability to pay and was a remote party to the incident should bear the burden of that compensation.

It is the charge of the courts to decide who is truly at fault. There is no law against purchasing liquor, nor is there a law against selling liquor. But, there are laws against being drunk. We think, generally, the courts have overreached their charge of finding who is truly at fault when they find that tavern owners should bear most of the liability based on their ability to pay.

To that end, we support Mr. Riley's bill. But, the bill only codifies what an insurance underwriter can do now, and it does nothing to reduce the number of claims. It is very easy to write a policy with limits of \$75,000 per person and \$150,000 per occurrence. What is not easy is to know how many claims will come from insuring taverns, and how much they will cost. Insurance is not a gamble, but providing coverage for liquor licensees in the present climate of case law, as we have in New Jersey where every patron is a potential claimant, is a gamble.

The problem is not only an insurance problem, but a societal problem. To propose only an insurance solution, like mandatory insurance or re-regulating the market, merely treats the symptoms, not the causes of the problem. Legislating those measures will not decrease rates and will not make the market any more attractive to insurers. The same measures adopted in other states should sufficiently prove that point.

To provide an acceptable risk to insurers, there must be more predictability than just the certainty of loss. There are ways to achieve that, and Mr. Riley's bill could be one of those vehicles. First, there should be a standard of care written into the bill. We

need to define what constitutes negligence on the part of the tavern owners. Second, the bill should be clear that it is aimed at liquor licensees and their employees, not social hosts. Third, the bill should make the limitation on liability an aggregate limit and apply it to pain and suffering damages as well.

Will these measures create an insurance market? I don't know, but they will certainly make it easier to write that kind of coverage. What will create a market is when society decides that the person who drinks is responsible for his actions.

Likewise, we agree with groups like RID, MADD, and SADD that drunk drivers should not be on the roads. However, we should not turn insurance, which was meant to protect against losses based on the insured's actions, not the actions of others, into a punishment device for serving drinks. We need to keep our objectives clear. It is the drunk driver who causes injury, who should be liable, and who under criminal law should be punished, not the drunk driver's friends and acquaintances. We must clearly answer the question of who is truly at fault for the damages caused by a drunk driver. In our view, the answer should be the drunk driver himself.

ASSEMBLYMAN BOCCHINI: Are there any questions?

ASSEMBLYMAN MARTIN: The only comment I have is the same as Mr. Pelly's. It seems that since so much of the problem, especially with the liquor industry, derives from the fact that rates have risen to the point that they can't get coverage, we would have to have and we would desperately look for information from the insurance industry. Even with a company that doesn't write insurance, I'm sure that companies such as Prudential and Kemper must, at one point in time, decide that, "This is the cost and, therefore, it becomes prohibitive." They must have some kind of a statistical analysis to show why it is that they choose not to get into this line of commercial insurance. That would be very helpful.

MR. STRAUSS: I'll do my best to get it to you, sir. I apologize for not having it. The comparison was made to medical malpractice. A drunk driver who gets behind the wheel of a car going 60 miles an hour can do a hell of a lot of damage, and we feel it is

unfair to look for the deepest pockets to cover the injury and the expenses he incurs.

ASSEMBLYMAN BOCCHINI: Anyone else? (no response) Okay, Peter, thank you. M. Cronin from the Stratford Insurance Corporation? (not present) Jeff Klein from the American Insurance Association?

JEFFREY KLEIN: Mr. Chairman, thanks for having us here. I am disturbed about some of the things said about insurance companies today, but I am more disturbed because it is Passover this week, and I wish the Committee hadn't mentioned anything about pizza and beer. It is going to be at least a week before I can have anything like that.

ASSEMBLYMAN BOCCHINI: I meant unleavened pizza. (laughter)

MR. KLEIN: That is right. I am Jeff Klein, and I am associate counsel for the American Insurance Association. We represent some of the biggies in the State, including three domestics, Chubb, Selected Risks in Branchville, and Crum and Forster.

I don't have any formal testimony. I just want to touch on a few points. I wasn't here last Thursday, but I was told about Commissioner Gluck's comments regarding the Commercial Lines Deregulation Act. To clarify that, I have handed out copies of those sections of the law, including N.J.S.A. 17:29AA-16 & 17, under which the Insurance Commissioner has the authority to request loss and expense information from insurance companies that are writing commercial insurance in the State.

I am not prepared to say what the Insurance Department is doing pursuant to the Act under that section, so perhaps you should address the Commissioner. The authority is there.

ASSEMBLYMAN BOCCHINI: They have acknowledged that they are not doing anything.

MR. KLEIN: Okay. The authority is there, and related to me were issues of repealing the Act outright. I am just suggesting to the Committee that there is adequate authority under the law now to get this information. It is not as deregulated as it may seem.

We write 37% of the homeowners' policies in the State, and about 33% of the total auto policies. As Mr. Strauss indicated, my

companies write a lot more homeowners' insurance than we do the liquor liability insurance for the tavern owners. Whatever I tell you will be based on my general knowledge of the industry, rather than the experience of particular companies.

I want you to know that I put in a request to Mr. Steve Necety, the New York/New Jersey manager of the Insurance Services Office. They are a statistical organization on behalf of the entire industry, not just my companies. I have requested any information he can give us involving total claims and losses. When we get that information and if it is available -- one way or the other -- I will contact every member of this Committee by letter to share that information with you.

ASSEMBLYMAN BOCCHINI: Do you have any idea when we might anticipate hearing from you?

MR. KLEIN: I would hope certainly before the end of this month -- two weeks, or something like that -- but, I won't make any promises. You may also get some of that information from the Insurance Department. Once again, they regulate all of the companies in the State, not just the AIA companies, of which we have 170 members. How much information they have, I don't know.

On the homeowners' side, I have been told by our underwriting people that right now, there is not a tremendous frequency of drunk driving claims which has impacted on our companies. At this point, it is not considered to be a high premium exposure and, as a result, they tell me there have not been huge rate increases in the homeowners' area. They have cautioned me, however, to tell you that cases like the Kelly case -- again, it is one of perception, but it is a problem we are having in other areas as well -- may, somewhere down the line, lead to an increase in claims, settlements, and court judgments. The money is coming from someplace.

An analogous situation is what is happening in pollution liability. With the interaction of the Federal and State Superfund statutes, liabilities of municipalities and other defendants are getting out of whack because of trial bar activity in this area. I just want to mention the old phrase, "There is no such thing as a free

lunch." The money is coming from someplace, and it has to be collected from someplace. If there is a huge expansion of liability in the State, either in medical malpractice, pollution, or in this area, the reason in the minds of underwriters is that they have to take a hard look at what the state of the art is as far as the court situation is concerned.

With all due respect to Mr. Kirschner, every time the trial bar gets an expansion of liability for its plaintiffs -- its clients -- the onus is to try to throw the issue on the insurance industry to draw the attention away from the problem. I object to it here just as much as I object to it in other instances.

Litigation in this area is the symptom of a much larger problem, as others have said here today. People have a much larger right to sue than they did years ago. That may be a benefit to the citizens of the State of New Jersey, but it is also abeyant to the people who have to pay it.

To that end, we support both bills before this Committee, and also Senator Cardinale's bill, which I believe is S-2122. I think that bill, to the extent that it has a standard of negligence -- something akin to gross negligence or recklessness on the part of a tavern owner having to be established -- would provide a type of guideline that would bring some certainty to this whole area. It would eliminate a certain percentage of the lawsuits and all the costs associated with them. When an insurance company has to defend a suit, there are attorney fees and court costs that have to be paid, even if the suit is settled. Even if a company wins, there is an out-of-pocket expense by the company. Of course, you are collecting a premium for it, but I'm just suggesting that because of the expansion of liability, in many instances, the payouts by the companies are exceeding in individual cases like those.

On the liquor liability side, as has been said here today, there aren't many of my companies -- probably not more than three or four -- that I know are writing this, even in connection with a broader policy covering other--

ASSEMBLYMAN BOCCHINI: (interrupting) Let me ask you something. If it was regulated and mandated, would it become more available?

MR. KLEIN: To the extent that the State of New Jersey mandated that insurance companies licensed to write business had to provide this coverage? By law, it would be because we have to comply with laws and regulations. The answer is yes. Whether that would be feasible from my clients' point of view, I say no, because what has happened is, companies may not have gone belly-up, but surpluses and financial situations in most of the property and casualty industry have deteriorated rapidly.

I have an old suit to prove this. The worst year for underwriting losses, with the previous 25 years combined, was 1984. What you are seeing now is a tightening up of the market where underwriters-- My companies were negligent in writing too many risks in past years so that they could get additional income for investment purposes. Now they are suddenly becoming smarter and, as a result of huge financial losses, they are starting to tighten up. This liquor liability issue was one symptom of that -- much more careful and cautious underwriting on behalf of companies.

ASSEMBLYMAN BOCCHINI: Were they underwriting four or five years ago?

MR. KLEIN: I'm told that liquor law liability-- Again, I don't have statistics on this, but they were underwriting more in the State of New Jersey across all lines than the property casualty side four or five years ago. I believe liquor law liability coverage was much more prevalent back then, but I can't give you a fine line of distinction.

We have been told by regulators such as the Insurance Department and others to be careful about the type of business we are writing -- that we are on the brink, in some instances, of hurting policyholders, as is happening in the banking area. Banks are going insolvent, and people are getting stuck.

ASSEMBLYMAN BOCCHINI: Wait a second.

MR. KLEIN: I'm just saying, as a good--

ASSEMBLYMAN BOCCHINI: (interrupting) Wait a second. That is a gross, gross overstatement. Are you talking about the savings and loans in Ohio?

MR. KLEIN: All I am saying is, as a good business practice, if you have institutions that are heavily regulated like banks and insurance companies, with responsibility to either depositors or policyholders, it is in the best interests of the company and the policyholders they represent to underwrite carefully. If you had one large pollution liability judgment under the Superfund, it could take one company with it.

We have seen figures or estimates in the industry whereby surpluses could be entirely eaten up on the Federal level because of Superfund actions, etc. I am not indicating to this Committee that liquor law liability is as extensive a problem as pollution liability, but it is a symptom of the same problem. To avoid that type of situation from happening, underwriters are being more careful now than they were several years ago. As a result, you are getting rate increases, not by my companies writing liquor law liability, but by insurance companies. They are having a heavy impact on tavern owners. I just wanted to draw the business side of it to the attention of this Committee so that you can see where it is coming from.

We support these three bills. We feel the Cardinale bill has a good negligence standard in it, and I would bring that to your attention for some model language.

Among the handouts I gave you--

ASSEMBLYMAN BOCCHINI: (interrupting) Excuse me. Are you aware of, I think it is N.J.S.A. 17:23-16? Joe, didn't you take that directly from the statutes?

UNIDENTIFIED PERSON IN AUDIENCE: Actually that bill was passed in 1983, Mr. Chairman.

ASSEMBLYMAN BOCCHINI: It became effective in 1984. It requires insurers--

UNIDENTIFIED PERSON IN AUDIENCE: (interrupting) It requires insurers to maintain separate statistics on liquor law liability losses. (Speaker not near microphone; transcriber unable to hear remainder of testimony.)

MR. KLEIN: Have you seen a copy of the bill?

UNIDENTIFIED PERSON IN AUDIENCE: Just for your information, I have one in my file.

MR. KLEIN: I am aware that that law was enacted, but the Insurance Department had authority under that law to promulgate regulations. Once again, I cannot speak for them -- where they are and how far down the line they are in requiring those statistics. There has been a rapid change over there. There have been three different Commissioners in a year and half, and we haven't seen anything regarding guidelines telling us how to break out the information on the statute. So, nothing has emanated from them. Again, I don't want to speak for them.

ASSEMBLYMAN MARTIN: The gross negligence standard -- I think that might be a fair characterization under Senator Cardinale's bill-- Do you see that with respect to social host legislation? I think you mentioned it in relation to the liquor industry.

MR. KLEIN: I think it would be helpful in social host liability to the extent that you might narrow the scope of suits that have yet to come. I also indicated before that we haven't seen a huge rise in cases on the social host side because of the Kelly case. But, admittedly, that was an act passed down by the State Supreme Court last summer, so it has been a relatively short period of time. There may have been claims already filed for which we have not seen the impact as yet. We would favor that. We think it is a reasonable thing for the State of New Jersey to do to require that a plaintiff show that a host or a tavern owner was either grossly negligent or reckless as far as serving a guest or a client.

Time is running out, but the last thing I would like to discuss is, I check with CIGNA Corporation, which is headquartered in Philadelphia. It is one of my members. They write a program called TIPS, which is a bartender school type of thing in Washington, DC. Professors teach bartenders, and individual establishments are required, as a condition of getting a certificate, to send 75% of their liquor servers to this particular school. The servers are taught how to recognize early signs of intoxication among tavern customers, and

they are taught how to diplomatically tell a customer that he has had too much to drink. In return for that, CIGNA -- this is the only company that I know is offering this -- provides a 10% reduction in the liability premium of the liquor liability portion of the larger policy to the tavern owner. They seem to be satisfied with it. They are underwriting people, and they feel it is a safety type of device. They are going to try to get me much more in writing, so I will be able to supply that to the Committee too as to how this system works.

Along those lines, I lobby in New York State, as well. There is a guy named Marty Yenawine -- I included something in the package for you -- from Syracuse, New York. He runs an ambulance service, and as a sideline to that, he runs an alternative drunk driver system whereby people can be picked up at taverns. You can purchase tickets in advance. A wife can purchase a ticket for her husband if she knows he will be out drinking heavily that night. The individual can be picked up by a van. As a result of participating in that, including posting of signs and helping to escort the customer to the van, the bar owner gets a discount on his insurance premium. It is a voluntary system. I have worked with the State Insurance Commissioner and the Superintendent in New York State and, last summer, based on Mr. Yenawine's program, a circular letter was issued by the Insurance Department permitting and encouraging all insurance companies to adopt this type of program.

What I am suggesting for this Committee, as a help to tavern owners in solving this problem, is that the State of New Jersey consider such a voluntary program, as well. Everyone in New York who has worked on it -- even the trial bar that has taken a look at it -- has had no objections to it. It seems to be in everyone's best interest, and it might be a voluntary type of thing that this State could enact or have issued by a proper regulatory authority. I worked for a long time on that with Mr. Yenawine and with the Governor's Traffic Safety Committee in New York State. It looks like a good program.

That is it, Mr. Chairman.

ASSEMBLYMAN BOCCHINI: Are there any questions? (negative response) Okay, thank you.

MR. KLEIN: Thank you.

ASSEMBLYMAN BOCCHINI: Paul, before I call on you to testify, I am going to call on Mr. Cronin since I called on him earlier, but he had stepped out. Mr. Cronin, I know you were here last week as well. Thank you for being so patient.

MAURICE J. CRONIN: My name is Maurice Cronin. I have a family restaurant in the Asbury Park area. I am deeply concerned about this insurance bill.

In 1983, my premium was \$9,500. In 1984, my premium was \$7,500. It was reduced because there were a lot of people in the market at the time -- a lot of insureds in the market.

ASSEMBLYMAN BOCCHINI: Which year was that?

MR. CRONIN: In 1983, it was \$9,500, and in 1984, it dropped to \$7,500. That includes a \$2 million umbrella. This year, 1985, it rose to \$15,569. With a projection to next year, if things stay the way they are, my premium will be \$26,200.

I have a small business, and I have never had a suit in the five years I've been in business. I have been in the industry for 30 years. For 25 of those years, I saved enough money to open my business, but now I am being wiped out to a certain extent by insurance, by road blocks, by taxes, which are coming up again in October -- another liquor tax -- and by anything the legislators or any regulatory body can throw at us.

Earlier someone testified that he is unable to tell the difference between a .8 and a .12. I can't tell a .20. I have lawyers, doctors, and bankers come into my place. If they have been down the street, have had three martinis, and then walk into my place and sit on a stool, they could be a .20. I've been in the business for 30 years, and I can't really tell, especially if a guy is a quiet, dignified guy. Yet, I am supposed to be able to tell.

If a State Trooper can't tell, how can I? If a guy is obviously drunk, he is not an asset to my business. I have children. I have eight highchairs in the building and twelve booths. So, he is no asset coming into my business. I will get rid of him. But, if I can't tell he is drunk by looking at him, there is no way I can refuse him.

I just don't know where the end of this is. Sometimes there are drugs involved. I have had kids come in, sit down, and then run a path to the car smoking. I've gotten rid of them.

But, there again, every time I pick up the paper, it talks about drunk driving. When is the last time any legislator here read in the paper about a drug-related accident? Have you? I don't read about any drug-related accidents in the paper. They are all drunk drivers. I submit that half of the people involved in these accidents are on both drugs and alcohol, and there ought to be something done about that.

I don't know what the answer is -- whether it should be a cap or whether it should be us not being responsible. I certainly think that anyone who is hit by a drunk driver should have some recourse to collect, just as anyone who is hit by anyone else. If it is an inequity of a \$15,000/\$30,000 policy by a sober person, if I'm ever hit, I hope I'm hit by a drunk.

The companies that underwrite this are shying away, and we all know it. I don't know what we have to do to bring them back into the market.

I can't be uninsured. If I had a tavern in Hoboken or Jersey City, which is where I am originally from, and I was renting a store for which my license could be attached, I would be in better shape than if I owned a property. All they can do is come in and take my bar. They couldn't take anything else from me because my money is hidden, or I don't have any money.

I think everyone should be insured, but I think it should be endurable and affordable. If you can't make it endurable, then make it affordable somehow. I think it should be mandatory if we are in the business, provided it is affordable. In that way, we will share the loss.

I have nothing else to say. I'm too tired.

ASSEMBLYMAN BOCCHINI: Thank you, Mr. Cronin.

MR. CRONIN: I will say, I stay in my place until two o'clock in the morning in order to watch the people from twelve o'clock until two o'clock. I think that is the time when you get your marginal

people. There again, I have had people tell me at noontime when they leave that the bankers and lawyers can be just as marginal. I see you are laughing.

ASSEMBLYMAN BOCCHINI: Thank you, Mr. Cronin. Paul Samperi?

PAUL SAMPERI: Mr. Chairman and members of the Committee, my name is Paul Samperi. I represent a statewide food and beverage organization which aids, counsels, and promotes restaurants, taverns, hotels, and motels in New Jersey.

The cancellation of liquor law liability insurance and the tremendous premium increase for those who are still able to obtain such insurance have reached alarming proportions. In our talks with the proprietors of these businesses, many are in a quandary as to whether they can afford the price for liquor law insurance.

In the last few years, operating expenses of taverns and restaurants have increased astronomically. Consider this minor listing: gas, oil, and electric utilities; property taxes; business taxes; wages; medical expenses; Social Security; liquor and food costs; and kitchen equipment. Maintenance is up, as well as the financial expense of borrowing to bridge the gap. It is obvious that this liquor law liability will be the proverbial straw that breaks the camel's back.

Many of our restaurants, including shore and recreational area clients, have informed us that last year they suffered a loss from 35% to 50% in liquor sales, and also a corresponding loss in food sales. Customers are hesitant to drink. Seldom now do people go to the bar for a cocktail, preferring only a drink at the table with their meal. Gone are the after-dinner cordials which were once a popular and profitable item on dinner tabs. Far too many cocktail lounges find it unnecessary to stay open until the legal hour, closing at 10 p.m. and 11 p.m. instead. People who normally have two or three drinks in the course of an evening without effect are only ordering one. They are afraid of having any more. As A.C.A.U.S.E. recently said, they have become paranoid and fearful of doing anything which might cause problems.

Last year, the shore area suffered from the "low profit syndrome." If people are afraid of drinking, they will eat out less, preferring their home or hotel efficiency to do their cooking and drinking. Last year, many restaurants and taverns merely broke even in the profit and loss column. This year, many feel they will finish in the red ink column, doing less in business and paying more for insurance with less coverage.

Now the big question -- the seasonal restaurants and taverns -- will they open for the summer knowing that all indicators point to a profitless summer season, or will they open minus insurance and chance it?

We are at a critical point. The restaurants and taverns must get relief if they are to survive. We ask you to take into consideration all of the recommendations of the hospitality industry and implement these before the start of the summer season. If not, tourism, which was number one in New Jersey two years ago, and number two last year, will drop to further lows, destroying our image as a fine place to visit. Our claim to fame will be Atlantic City, the gambling capital of the world, for the casinos will be the only ones who can afford insurance premiums. The slogan "New Jersey and You, Perfect Together" will become meaningless. In its place we can substitute, "New Jersey and Lawsuits, Perfect Together."

Thank you, Mr. Chairman. If you have any questions, I will be glad to answer them.

ASSEMBLYMAN BOCCHINI: Are there any questions? (negative response) Your points were very well taken, Mr. Samperi. Thank you. Next is Robert Baer, President of A.C.A.U.S.E., which is an acronym for--

ROBERT T. BAER: (interrupting) All citizens against unjust and severe enforcement. My name is Robert T. Baer, and the spelling is B-A-E-R.

A.C.A.U.S.E., as it enters its second year since its founding, represents some 5,000 members and/or petitioners. It grows daily in number and credibility in its only role of organized opposition to today's DWI legislation and its related manner of enforcement, including opposition to the social host decision.

Our objections to the social host ruling are based, in part, on the following:

1. We agree with Associate Justice Marie Garibaldi of our New Jersey Supreme Court that the ruling would place "an almost impossible burden on hosts who entertain in their homes."

2. We agreed with Monmouth County Prosecutor John Kaye when he said, "Even super-vigilance cannot always protect a host from being sued." The prosecutor went on to say, "The cost of a lawsuit could be devastating, and everything you own could be on the line."

3. We agree with the Legislative Study Commission which endorsed a bill that would exempt social hosts who serve alcohol from civil liability. The Commission concluded, "The measure puts the onus on the person doing the drinking, not the host."

4. We agree with Assemblymen Robert P. Hollenbeck of Bergen County and David Schwartz of Middlesex, the bill's cosponsors. Assemblyman Hollenbeck claims, "The Supreme Court decision unfairly forces people to act as their brother's keeper."

5. We agree with the editors and columnists of our leading newspapers in this State, best illustrated by The Asbury Park Press in their editorial of August 2, 1984, wherein they stated, "There is such a thing as overkill. No one condones the carnage drunks cause every year. However, it makes little sense to make hosts responsible. The litigation would be endless, and the only ones to profit from the ruling would be the lawyers. The average person does not drive drunk and can control his liquor intake."

ASSEMBLYMAN BOCCHINI: Excuse me. Is it your contention that the only people who profit from lawsuits are lawyers?

MR. BAER: I'm quoting an editorial, sir.

ASSEMBLYMAN BOCCHINI: Oh. Is that from The Asbury Park Press?

MR. BAER: I'm quoting from The Asbury Park Press of August 2, 1984 in an editorial.

6. Furthermore, we agree with the 418 persons of the 463 persons who responded to a press poll wherein they overwhelmingly expressed their opposition to the Court's ruling, and whose obvious

opposition is echoed by the majority of New Jersey's citizens. This is further borne by the Eagleton Poll, referred to at last Thursday's hearing, in which 70% of those polled opposed the social host decision.

7. Finally, we agree with Governor Kean who expressed, "I think the Legislature should have done it instead of the Court. The Court made law."

ASSEMBLYMAN BOCCHINI: Do you think the Governor and the Administration are in a position to be able to suggest certain types of legislation to the Legislature?

MR. BAER: Yes, I think they are.

ASSEMBLYMAN BOCCHINI: Do you think if the Legislature says, "At least we are willing to listen to any ideas that the Governor has," that if the Governor has any, he ought to let us know about them?

MR. BAER: Certainly.

ASSEMBLYMAN BOCCHINI: Okay, thank you.

ASSEMBLYMAN PELLY: Is he on the list to testify today?
(laughter)

MR. BAER: Chairman Bocchini and members of the Committee, we respectfully submit that the social host decision is merely another extension of the fear, hysteria, and paranoia which has been perpetrated on our society through a neo-prohibition movement some four years ago. No one wishes to see drunken drivers on our roadways, nor do I, nor do the thousands of supporters of A.C.A.U.S.E.

However, in attempting to legislate morality, as has been proven in the past, we can anticipate only failure. Those legislators responsible for the passage of no less than 40 alcohol beverage-related bills, in so brief a time frame, have even thrown their own hands up in despair. This is best summarized by Senator Caulfield who recently expressed, "Let's let the dust settle and see what we have done."

Furthermore, Assemblyman Walter J. Kavanaugh commented, "A lot of people think we are forcing things on them without getting their input." That says it all.

Additionally, Senator Frank X. Graves observed that, "Without such opportunity to permit telling who is right and who is wrong through carefully examining, the issue could make a sham out of the Commission." This seems quite correct.

Further evidence of the necessity to determine what, if any, beneficial results have been realized through such a plethora of legislation has prompted other committees to study the issue -- committees similar to the one at which we are now privileged to appear before. We commend all of those responsible for taking this very much required action.

It is a sad note, in spite of the severe and unjust DWI laws and their related manner of enforcement. In spite of the hundreds of thousands, if not millions, of taxpayers' dollars spent in this futile attempt to correct a social ill through political expediency, results remain, for the most part, unchanged or, in fact, have worsened.

Figures from our own New Jersey Office of Highway Safety indicate, "932 fatalities occurred on our roadways in 1983. In 1984, it appears that at least 929 persons shall have died on these same roads." This is in spite of the heretofore mentioned millions of taxpayers' dollars spent, and as importantly, despite the hype prompting our New Jersey citizens on both sides to become paranoid over this critical issue.

The pride currently being displayed by some in top-level offices of our State, as they espouse the merits and "success" resulting from what they proudly refer to as the toughest drunk driving laws in the country, is not only misleading and shameful, but is also erroneous. As recently as this past Friday, less than 24 hours after attending this very Committee's first hearing, we read that spokesman H. Arthur Smith, III, of the New Jersey Motor Vehicle Division, declared the highway fatality rate increased 42% in the first month since motorists have been required to wear seat belts. As an aside, I believe in them, but I don't think they should have been mandated.

Furthermore, John Dempster of the New Jersey Department of Transportation stated, "Eighty-one people were killed in traffic accidents in our State last month, compared to 57 during March of last year."

New Jersey State Police indicate a 15% rise in highway deaths for the first three months of this year, compared to the same period in 1984. Between January 1 and April 3 of this year, there have been 29

more deaths on our roadways reported, as compared to the same period one year ago.

In view of the above revelation, we respectfully submit that those offices responsible for propagandizing the efficacy of our tough drunk driving laws refrain from so doing. As our legislators have so wisely decided to study this most complex issue, and have self-imposed the moratorium on any future related legislation, so should those referred to offices adopt such a procedure. Should the evidence of this and other scheduled hearings reveal and substantiate that which A.C.A.U.S.E. has projected here today, then let this great State of ours -- its Governor and its representatives -- take the lead in declaring to the rest of our nation that this, indeed, is not the way to go. Rather, let us adopt measures more likely to offer the desired result -- that of reducing senseless loss of life on New Jersey streets and highways. Rather than continuing to attempt to cure this social ill through legislative expediency, obviously an impossible method, let us instead earmark DWI enforcement dollars, as well as a part of our State's surplus, to educate all of New Jersey's children -- and, I mean little ones; don't wait until they get to high school -- in an ongoing program as to the use and abuse of alcohol and in the elimination of drug use.

Let us upgrade our rehabilitation centers and attract qualified and talented personnel to this most worthy service. Let's insist that our courts penalize those deserving punishment -- the recidivists who are the repeat offenders on our roadways and who, in many cases, are driving on revoked or suspended licenses. They are the ones most responsible for the highway carnage, in spite of facing stringent penalties, including heavy fines, license suspension, and even incarceration, while the law-abiding citizens are paying the price.

There are some who would say, if we save one life, it is worth it. But, is it? Is this what our forefathers wished for us? Is this what men who have fought battles in the preservation of that which is now being threatened, and who spilled their own blood and lost their very own lives, wished for us? There is an element of risk from the very moment we are born.

In all candor and respect, it is our conclusion, and that of thousands of others, in and out of our organization, that it is about time the State stopped saying, "We know what is best for you. Let us save your life." Are the citizens of New Jersey intelligent enough to look out for their safety, or do they need coercing from the State? Our courts and our legislators truly seem to believe the latter.

Precious civil liberties are, at the very least, being diluted through legislation prompted by a handful of do-gooders, while an entire industry, with its work force of tens of thousand of employees in related industries and its revenue -- much of it used in benefiting our State citizenry -- is literally going down the drain as a neo-prohibition permeates our entire society.

It is our opinion that the issue here is not whether to limit liability for homeowners or licensees, but rather, that all citizens of New Jersey be exempt from any social liability and the obvious burden it carries. Surely, people must be responsible for their own actions. There is no way in this world that we can legislate morality.

The 5,000 petitioners of A.C.A.U.S.E. wish to go on record as being vehemently opposed to any form of social host law. They do not wish to see the citizens of our State continue to be buried under an avalanche of DWI legislation as it exists in New Jersey today. We seek to review, reform, and repeal much of such legislation, including the present unconstitutional utilization of roadblocks on our streets and highways, and we desire a repeal of penalizing our citizens twice for the same offense through the practice of imposing retroactive surcharges. Let such practices remain common and in fashion in communistic countries, not in our proud nation, and certainly not through any lead on the part of our own Garden State, whose boundaries would stand alone. In our nation, in its violation of its citizens' rights to be responsible for their own actions, this ludicrous social host court decision should not stand.

We thank you for offering A.C.A.U.S.E. the opportunity to address the issue. We wish you the very best in your deliberations and your ultimate decision, which, hopefully, will result in the repeal in its entirety of the social host ruling and the elimination of any third-party liability. Thank you very much.

ASSEMBLYMAN BOCCHINI: Thank you. Are there any questions of Mr. Baer? (negative response) Thank you very much.

MR. BAER: Thank you.

ASSEMBLYMAN BOCCHINI: Kay McGrath, Mercer County Council on Alcoholism?

KAY McGRATH: I am Kay McGrath. I am Director of the Mercer County Council on Alcoholism, which is located here in Trenton, but I am speaking today on behalf of the Alliance of Councils on Alcoholism, which is made up of 15 county-based councils providing services to the entire State of New Jersey.

I will be brief. I appreciate your willingness to carry this on as long as you have. I would like to bring a little bit different point of view to the discussion of this issue.

I come today to speak against both bills. That is the position that has been adopted by the Alliance of Councils. I'll tell you why. The Council on Alcoholism's mission is the prevention of alcohol abuse and alcoholism. Drunken driving is an issue that has gained a great deal of attention, and I would like to commend the members of the Legislature for putting New Jersey in the forefront in the fight against drunken driving.

Over 50% of the drunken drivers, in our view, are alcoholics. They suffer from the disease of alcoholism. We heard discussion in earlier testimony about legislating morality or calling the drunken driver a criminal. The drunken driver who is an alcoholic drives while drunk because he has lost the ability to control his drinking. That is the essence of alcoholism -- the loss of the ability to control drinking. Yes, indeed, it is true that the alcoholic needs to be responsible for his actions, but if you bear in mind that the essence of his alcoholism, or his disease, is the loss of that ability, surely, all of us bear some responsibility.

For a social host, a tavern owner, or a bar owner to continue to serve someone who is suffering from that disease is putting him in the position of being a pusher. We all have very definite opinions about those who push drugs, and alcohol is a drug. It is the drug that is the major public health problem in this country.

ASSEMBLYMAN BOCCHINI: Pardon me for one second, Kay. I don't mean to be cute by any stretch of the imagination, but how is one who owns a tavern supposed to be able to know that a person he is serving, other than finding out subsequently, is an alcoholic -- absent the scarlet letter, or something else?

MS. McGRATH: He doesn't need to know that, Assemblyman Bocchini. I have heard testimony here from restaurant owners that they cannot tell when someone is drunk. I do not believe that. I absolutely do not--

ASSEMBLYMAN BOCCHINI: (interrupting) I don't argue that point with you. My concern is, we are talking about a person who could be recognized as having a problem -- a disease -- with alcohol, and then comparing him to a pusher. Once I know a person is an alcoholic, if I were to proceed to continue to serve that person, then I think -- my own personal opinion -- you can infer, "Joe, you are not doing anything to help that person. You are only hurting that person."

MS. McGRATH: Right.

ASSEMBLYMAN BOCCHINI: Okay? You are--

MS. McGRATH: (interrupting) Well, I would contend that over-serving anyone-- Certainly, you don't know, and you can't determine -- no one can determine -- whether someone is an alcoholic or is simply abusing alcohol on a particular occasion. But, with a major social problem, which alcohol abuse and alcoholism is, the question has been raised, "Are we our brother's keeper?" My answer is yes, but we're certainly not his killer, which over-serving the person who is either abusing alcohol or is addicted to alcohol puts you in the position of doing.

I want to remind those present that the Kelly case assigned liability to the server -- to the host -- under very narrowly defined circumstances. It was clear to anyone that this person was drunk, and with a blood alcohol level to the point that it was, it was very obvious that this was the case.

I want to also say that the mission of the Council on Alcoholism is prevention. We carry this out through education and training programs. I have been doing this here in Mercer County for

about seven years, and nothing has raised the level of awareness on the part of the general public on the whole issue of alcohol abuse and drunken driving as much as the package of bills that were passed here last year, and the Supreme Court decision. You got the public's attention in a way that we could not. When you hit people in their pocketbooks, you certainly get their attention.

As you know, Senator Orechio has appointed a Commission to look into this whole issue of social host liability. I would urge the Legislature to wait until this Commission meets -- it has not done so yet -- and gets testimony to allow the Legislature to determine what the limits are. I believe there should be some limit. I certainly believe that a host who exercises fair and reasonable judgment should not be held liable for the actions of his guests.

By the same token, I believe that a tavern owner or a restaurant owner who demonstrates fair and reasonable caution or procedures should also not be held liable for the actions of his customers.

To put a limitation on insurance, as the second bill does-- Assemblyman Pelly raised an interesting question, and that is, why single out this one insurance problem? I happen to run an agency here in Trenton for drunken drivers. A colleague of mine was sued because someone in the program was discharged, went out and drank, and killed a child. So, I have a million dollars worth of liability; I have to protect myself. That is for malpractice. I have a million dollars worth of liability insurance in case anyone gets hurt on my grounds, or any of the employees get hurt by any of the drunks who come in to see us. This is a litigious society. There is no question about that.

I would suggest that you don't single out one segment of those who are being victimized by excessive suits, but that you look at the whole issue of insurance and excessive litigation, rather than just this one area.

That is about all I have to say.

ASSEMBLYMAN BOCCHINI: Are there any questions of Ms. McGrath? (negative response) Thank you, Kay. I appreciate your comments.

MS. McGRATH: Thank you.

ASSEMBLYMAN BOCCHINI: Dominic Bossone? We have three witnesses left after Mr. Bossone.

DOMINIC BOSSONE: My name is Dominic Bossone, and I am a Morrmouth County licensee representative to the New Jersey Licensed Beverage Association. The licensees in Morrmouth County are extremely concerned. The message from the licensees is brief and simple: We want to protect what we have worked for all our lives. We want to be able to afford the protection. We are pleading with this Committee for what could be a life-saving immediate action by this Committee. That is all I have to say.

ASSEMBLYMAN BOCCHINI: Thank you, Dominic. Jack Higgins?

JACK HIGGINS: Thank you, Mr. Chairman. If I may, I would like to give your Committee a copy of my insurance bill. (Hands copy of insurance bill to Chairman.)

Last year, for \$1 million worth of coverage, it cost me \$3,300. This year, for \$100,000 worth, it is costing me almost \$20,000. I can't afford it. I left a copy with each one of you, and you can see what my actual bill is.

By the way, I have never had an exposure under dram shop. In talking to some of the insurance companies -- I'm sure the gentleman who spoke before me will bear this out -- this is caused by the amount of ridiculous lawsuits. The lawyers today are filing suits faster than the insurance companies can respond. They know that it costs \$4,000 or \$5,000 just for the insurance company to hire an attorney to answer a lawsuit.

ASSEMBLYMAN BOCCHINI: Jack, wait a second. I hear that all the time. That is not so. It does not cost \$4,000 or \$5,000, and I'm not going to sit here and let someone say that it costs \$4,000 or \$5,000 to have an attorney answer a lawsuit.

MR. HIGGINS: Mr. Chairman, I was told that by the insurance company -- that their lawyers charge \$5,000 to--

ASSEMBLYMAN BOCCHINI: (interrupting) Prepare an answer?

MR. HIGGINS: No, in order to answer a suit in court. In other words, to go to court, plus costs. So, they settle out of court. Anyway, that isn't what I am here for.

ASSEMBLYMAN BOCCHINI: Well, I'm suggesting that at \$100 an hour, it would take 50 hours to get a \$5,000 legal fee. Fifty hours is a lot of time in litigation, and a lot of time in preparation for litigation. That is at \$100 per hour. If we are going after guys who are paying \$150 or \$175 per hour, then that is by their choice that they want to hire the high-priced spread.

MR. HIGGINS: I am only going by what I was told. Anyway, we just can't keep up the responsibility of protecting everyone. I propose this: A drunk comes in your establishment, and you refuse him service. Now, what do you do? Do you tell him to go out, get in his car, and drive home? No. You don't know what to do. So, we are in a bad position in a situation like that.

You have the same thing if a person goes out and has a couple of drinks. Most alcoholics have bottles in their cars. An alcoholic has one or two drinks in your establishment, downs the half a pint of Vodka he has in his car on the way home, and if he has an accident, we will get sued. It will be said, "He drank there." How are we going to defend ourselves? That is the position I am taking, Mr. Chairman. We really cannot protect ourselves. It is our word against the world.

ASSEMBLYMAN BOCCHINI: I have to acknowledge that that is really a tough, tough question. You have someone who comes into an establishment, and he is intoxicated. You may not even serve him a drink. Or, if he has one drink and then it becomes apparent he is intoxicated, at that juncture, you are stuck with everything he consumed prior to getting there, so to speak. I don't know. You know, I don't know the answer to that. It is something we will be looking into. That is the reason for this hearing. You are bringing to light something which we may have been aware of, but it has only become more clear in instances like these.

MR. HIGGINS: First of all, we don't want drunks. Nothing will empty a bar faster than a drunk. But, the problem is, what do you do when a person is drunk? We covered that one. If the person was held personally liable, he would be a little bit more conservative, number one, with his drinking, and number two, he would be a little bit more conservative about his attitude. If someone figures, "Well, what

the heck. You know, if I have an accident, I can always hit the tavern for it." If he figures he has to cover it himself, he might be a little bit more conservative.

One other thing I would like to mention, if I may, is, some of the "bring your own bottle" places. They have no supervision at all. There are 16-, 17-, and 18-year-old waitresses bringing out the glasses, the water, and whatever to go along with the drinks. No one cards anyone. There is no insurance; there are no policemen; there is nothing. They can do almost anything, but we can't. We are the most policed organization in the State of New Jersey.

With the liabilities we are exposed to, we just cannot afford the insurance. If there are any questions, Mr. Chairman, I will be glad to answer them. I have a lot of other things, but there is no sense in going into them.

ASSEMBLYMAN BOCCHINI: Thank you. William Jerlak? How are you today, Bill?

WILLIAM E. JERLAK: Pretty good, Joe. Mr. Chairman and Assemblymen, I appreciate this opportunity to speak to you because I think it is a very important issue, and we appreciate this legislative Committee listening to the plight of the licensee in the State of New Jersey.

We have heard some pretty tough stories from licensees. The other day, the Insurance Commissioner said that there is no control from the Insurance Department over commercial insurance in the State of New Jersey, and that there are only two companies writing liquor law liability insurance in the State at the present time. They are being very selective, and I understand that they will only write if a person is doing at least 75% food. Even then, they are being very selective.

We, the licensees, hear the horror stories from the industry itself. The rise in premiums is out of sight, and we just cannot pay for the insurance.

I spoke to an agent just the other day who has 28 clients. Of the 28 clients, two of them have just renewed their insurance at very exorbitant premiums. Eighteen did not renew. They have not come up for renewal as yet, so, he doesn't know what is going to happen with them.

I spoke to an underwriter. Premiums are going from \$500 to \$5,000. The greatest one I've heard yet is from a \$30,000 fee to a \$192,000 fee, which is absolutely out of sight. There is no one who can pay these types of insurance costs.

The insurance companies will always write insurance if they are making money. The problem is, if they write \$8 million worth of premiums in the State of New Jersey, and they have to pay out \$40 million, they are not going to stay in business very long. That is what is happening in the State. They are using a shotgun type of approach. If a suit comes up, it is sue everyone in the area, not just one particular place.

The patron stops in a bar or a restaurant to make a phone call; he leaves there and travels around to 10 or 12 more places; but, the first place he went to still winds up in a suit.

For example, I heard just this morning about a place in Pemberton, New Jersey where there is a suit that involves 17 places. A female patron left and hit a utility pole. She didn't drink in 17 places, but 17 places were named. They issued "John Doe" suits to the bartenders and the owners of all 17 places involved.

There is a place in Hackensack where a girl went in and was refused service. It is a very nice place, but she was refused service. She was too drunk, so they put her in a cab and sent her home. This happens to be a place that has a limousine service. They send people home in a limousine if they have been drinking too much. They put this girl in a cab and sent her home. She got home, got in her car, and went out and had an accident. She, in turn, has been advised to sue the place in Hackensack where she had not consumed any alcoholic beverages. These suits all have to be defended.

In Cedar Grove -- this is just another example of the types of suits that come under liquor law liability -- a young person, who was refused service in five different places because he was the type of person they didn't want on their premises, is suing all five places. He is suing them because he feels he was deprived of going into the places and spending time with his friends. Each one of these suits has to be defended.

There is another case in the City of Newark. The place has two bars -- one upstairs and one downstairs. A young fellow was refused service upstairs. He had been in the place several times, and there was no problem downstairs. He came in in a wheelchair, and they wouldn't let him go upstairs. Because they wouldn't let him go upstairs, he is suing the place.

These suits have to be defended. This is where the problem is.

The average licensee is very well-aware of what an intoxicated person is. There is no problem there. If the person is intoxicated, the licensee is not going to serve him. I'm talking about the responsible licensee. He has to fight constantly to keep out minors who come in with phony identification. That is another problem.

The responsible licensee is contributing to the employment market in the State of New Jersey. He is certainly taxed; the beverage industry is taxed higher than any industry in the State. He is usually a very solid citizen in his own community. I think it is time we took a direct approach regarding this. Perhaps what should be done is, the drunk should be responsible for his own problems -- his own actions. Perhaps it is time for the people who instigate a suit to become responsible for payment of their actions. Perhaps it is time for us to define what liability really is.

The industry needs help, and I believe the only way we are going to get help is through the Legislature. I certainly want to thank you for listening to us, because there is a great problem out there. We appeal to you for some direction and some help regarding this because by the end of this year, no one is going to get paid in the State of New Jersey because no one is going to have any insurance.

ASSEMBLYMAN BOCCHINI: Are there any questions of Bill?
(negative response) All right, Bill, thank you.

MR. JERLAK: Thank you.

ASSEMBLYMAN BOCCHINI: I have a thought. Do you remember that we used to have the public drunkenness statutes? They were amended out. (Chairman confers with Committee Aide)

William Kammarada?

WILLIAM KAMMARADA: Mr. Chairman, members of the Committee, and ladies and gentlemen, my name is William Kammarada. I am a management and computer consultant. My wife and I also operate the Regal Beagle in South Amboy.

The reason I am here is, basically, I want to tell you about a situation involving DWI, or the lawsuits that are involved in DWI. I have a summons here from an attorney for an accident that occurred on January 9, 1985. Four individuals are suing the Regal Beagle and "John Doe" from the Regal Beagle for serving an individual who flipped his van, which happened to be heading southbound on Route 1 in Woodbridge. The problem arises because the Regal Beagle was closed for renovation from January 5 to January 22. The Regal Beagle was not open, but I have to defend this lawsuit.

It is malicious, slanderous, and it is just a lot of garbage. It is going to cost my insurance company and me money, and it is going to cost time and a lot of aggravation.

I believe that most of the lawsuits that come under this DWI law are a "deepest pocket syndrome." Go to the guy who definitely has the insurance; go to the guy who has the most insurance; and, sue.

The Regal Beagle wasn't open. We couldn't have sold any liquor. Our bar was totally torn apart. That is one thing.

ASSEMBLYMAN BOCCHINI: I have to say this: You know, I have no reason not to believe you, especially in light of prior conversations with you, and it is absurd that an attorney-- I don't know what his or her reasoning might be in bringing about that type of litigation, but--

MR. KAMMARADA: (interrupting) If the Committee wants a copy of this, I can have--

ASSEMBLYMAN BOCCHINI: (interrupting) I don't think the State Bar or any attorney who is worth his weight in salt would want to handle something like that. It is an embarrassment, quite honestly, assuming the facts to be exactly the way you are portraying them. In the same sense, I would also think that your attorney or your insurance company's attorney would, hopefully--

Sometimes people don't make use of the additional processes they have under the law, such as coming back with an action for malicious abuse of civil process, which does exist.

MR. KAMMARADA: Mr. Chairman, I think I am going to make--

ASSEMBLYMAN BOCCHINI: (interrupting) If someone does that, I think that is exactly what he has coming to him. You know, if it is obvious that there was nothing there -- if it turns out that there was nothing there -- he should get it handed right back to him in spades, so to speak.

MR. KAMMARADA: Well, I intend to do that. I think it might set another precedent like the Kelly case. But, you know, dog bites man, and man bites dog.

ASSEMBLYMAN BOCCHINI: I'm sorry. Go on.

MR. KAMMARADA: Basically, my insurance premium increased from \$3,000 to \$3,900. That is really not so bad, but the exception is, they excluded liquor law liability totally. If I want to get liquor law liability -- if I could get it--

ASSEMBLYMAN BOCCHINI: (interrupting) Excuse me. It increased from what to what?

MR. KAMMARADA: From \$3,000 to \$3,900.

ASSEMBLYMAN MARTIN: You had it last year?

MR. KAMMARADA: I had it last year. They refused to give me liquor law liability this year.

ASSEMBLYMAN BOCCHINI: But, it is \$3,900 without liquor law liability?

MR. KAMMARADA: Correct.

ASSEMBLYMAN BOCCHINI: If you want liquor law liability, how much would it be?

MR. KAMMARADA: Over \$13,000, and I would have to go single-line coverage all the way down the line. From what I understand--

ASSEMBLYMAN BOCCHINI: (interrupting) Just because of claims?

MR. KAMMARADA: Excuse me?

ASSEMBLYMAN BOCCHINI: Just because of any claims? Do you have any claims?

MR. KAMMARADA: No, it is because the Regal Beagle is a go-go bar. However, in deference to Mr. Murphy, we are not absentee owners.

ASSEMBLYMAN BOCCHINI: So, it is not an absentee matter. That is, Mr. Murphy hasn't stopped in to check out your place. (laughter)

MR. KAMMARADA: He is coming down to check it out though. (laughter) You know, we have a \$35,000 sound system, and \$25,000 lighting system, so I don't really consider it a go-go bar. If you wanted to classify it, that is how you would classify it.

My insurance agent, William Foley, who is from a fairly large agency in Old Bridge, personally told me -- he said he would testify before this Committee or the Insurance Committee, if they asked him -- that they are not writing any liquor law liability insurance for any go-go bars, any discotheques, or any bars that have any entertainment whatsoever south of the Edison bridge. He said he would be very, very happy to supply the Committee with that information if you requested it or if you want to make a phone call to him. He said it is impossible to replace the coverage. He is the insurance agent, and he has gone to several insurance companies. They just refuse to write the policy for any amount.

ASSEMBLYMAN BOCCHINI: I would just hope-- I can't help it. It just draws my ire, so to speak, about that suit.

MR. KAMMARADA: In fact, we were also--

ASSEMBLYMAN BOCCHINI: (interrupting) Are any of the insurance guys still here? (not present) No? I would like to know when the insurance companies, if they do, go back against some people from time to time when they have the right-- Sometimes it is a lot easier.

You know, you talk about instances. I've heard it said, "Hey, it is cheaper for us to settle it."

MR. KAMMARADA: Yes. I am personally going to pursue it. I find it slanderous, malicious, and definitely defaming of character.

ASSEMBLYMAN BOCCHINI: I hope you do. I really hope you do.

MR. KAMMARADA: I hope I can find an attorney who will take the case.

ASSEMBLYMAN BOCCHINI: I'll talk to you after the hearing.
(laughter)

MR. KAMMARADA: That is a possibility. (laughter)

ASSEMBLYMAN BOCCHINI: I'm only kidding. For the record, I am only kidding.

MR. KAMMARADA: Basically, in the State of New Jersey, everyone is experiencing a decrease in sales. DWI is probably another synonym for prohibition. I mean, it is basically coming down to that. You can't sell a license today. The price of anything for sale is either out of sight, or they just want to give it away.

ASSEMBLYMAN BOCCHINI: Are there any questions? (negative response) Okay, thank you.

MR. KAMMARADA: Thank you.

ASSEMBLYMAN BOCCHINI: Is there anyone else who wishes to testify?

PATTI GALLAGHER (from audience): I wasn't aware that you had a new list for today. I was on the list for the last hearing.

ASSEMBLYMAN BOCCHINI: Oh, I apologize.

MS. GALLAGHER: I'll be brief. My name is Patti Gallagher, and I own Gallagher's Pub in Woodbury, New Jersey. I am also an officer for the Gloucester County Tavern Owners' Association and a trustee to the New Jersey State Licensed Beverage Association. I am here speaking on behalf of myself, not on behalf of them.

We have heard from a lot of professionals from outside agencies, insurance companies, and all kinds of people who have all of our answers. Unfortunately, they are very admirable, but they are not terribly realistic.

My insurance rate last year was \$2,100.

ASSEMBLYMAN BOCCHINI: For liquor liability?

MS. GALLAGHER: For liquor liability. Strictly liquor liability. It has been increased this year to \$11,505. I have never had a single claim in 15 years against my liquor liability.

After reading an article in Beverage Retailer Magazine-- My policy came up for renewal on March 12. The company I had last year refused to write the policy, and my insurance agent turned it over to

Occidental. Occidental, again, is a C-rated insurance company, and there isn't anyone in his right mind who has a choice, under most circumstances, who would write with a C-rated company. We had no choice at all.

I started the policy with a \$3,500 deposit, and proceeded to call the State Insurance Commission to find out just exactly what they expected us to do under the circumstances.

ASSEMBLYMAN BOCCHINI: When was that?

MS. GALLAGHER: That was within the last three weeks. My policy came up for renewal on March 12, so it has been since then. They put me in touch with a gentleman who is in charge of surplus lines for the State of New Jersey -- for the Commission. His answer to me at the time was, "Don't do anything right now because there is a possibility that we may be able to get another company to write insurance in New Jersey."

In the meantime, I contacted at least four different insurance agents from four different companies, even giving them the option of taking my entire package policy in order to get a policy written. Their answer to me was, "No way, Jose. If you gave me \$50,000, I could not get anyone to write a policy for you under any circumstances."

I told the State Insurance Commission, "I have an \$8,000-plus payment that is due by April 10. What do I do?" They told me not to pay it. Again, this is Occidental Insurance Company. Just about everyone who has insurance right now is written with Occidental Insurance Company. The Insurance Commission told me not to pay the insurance premium, and to wait and see what happened with this other company.

Well, last Thursday, when the new Insurance Commissioner, Mrs. Gluck, testified, she said, "Yes, they can't complain that they don't have anyone writing insurance because we okayed one this morning." It is now another company that we can get insurance from.

That is only the tip of the iceberg. I don't think anyone of you would like to be--

ASSEMBLYMAN BOCCHINI: (interrupting) Did you find out who the other insurance carrier was? Did you ever contact them?

MS. GALLAGHER: It is "something" of Indianapolis. I don't have it here, but it was mentioned that day. Apparently, they were approved that morning. They gave me the name and telephone number of an agent someplace in North Jersey to contact regarding the insurance. I don't think any one of you would like to be in a position of having no choice whatsoever of where to buy your insurance and the price you have to pay for the insurance, if you are in a position to get it at all.

In sitting and listening to some of the lawyers and the testimony we have had during the last two sessions, I find it rather amusing, in a sense, that everyone has this feeling that tavern owners are capable of accepting the tremendous amount of responsibility that everyone says we should have. If I have 500 people who come into my establishment on a Friday or Saturday night, it is very admirable to think that I am going to be able to keep tabs on each and every one of those individuals, and to watch everyone whipping out their cards to know the number of drinks they can have according to body weight or whatever. It may be admirable, but it is not realistic.

We are in a situation right now that-- Besides the fact that about 40% of the tavern owners do not have insurance, we are talking about mom and pop types of establishments. We are talking about family-owned businesses that have been around for years. We are not talking about the Winstons, the T.G.I. Fridays, and the big corporate restaurants and taverns that have the corporate structures to shield them in a sense, or to help them along. We are talking about mom working in the kitchen making sandwiches, dad out at the bar serving, and son Johnny out emptying the trash. These are basically corporate -- maybe partnership -- family-owned businesses. That is the basis for the 8,000 licensees in the State of New Jersey.

For us to be in a position to accept this responsibility that you have given us is awesome, to say the least. If we compare it to host liability, the host is at least in a situation where the chances are he knows the person who is in his home. There has to be a smaller number of people, and the limitations they have put on that have been such that if you are busy in the kitchen doing something else, if they

are serving themselves, or if your friend is serving them, that eliminates the amount of liability.

We, as tavern owners, don't even come close to having that kind of relief from the situation.

Mothers Against Drunk Driving are admirable in what they want to do. There is no one who wants the drunk driver off the road any more than I do. I am an emergency medical technician, and I volunteer over 100 hours a month to an ambulance squad. We run about 1,500 calls a year. I have seen everything there is to see. I've picked up pieces of bodies and tried to figure out which bag to put them in. There is no one who is any more aware than I am, but I am still in a position where it is impossible for me to accept the responsibility for every individual who comes into my establishment.

In New Jersey, from what I understand, over the last couple of years, intoxication is no longer a defense for crime. Is that correct under most circumstances? Intoxication is no longer considered to be a defense?

ASSEMBLYMAN MARTIN: It can be.

ASSEMBLYMAN BOCCHINI: It can be a defense in some instances. I think it is still-- It may be a defense for a certain crime, but it may not be a defense in another crime. I don't want to get into that because I'm not talking from safe ground at this point.

MS. GALLAGHER: But, basically, the idea is that a person is still responsible for his actions. For him to say, "I'm not responsible for doing what I did because I was drunk," is kind of wiped out. You know, "You were the one who was responsible for getting drunk in the first place." That is where we feel the liability should be.

Again, just like the California law. The California law places the responsibility, or the liability, on consumption, not on selling or serving. I think that if we place that responsibility on the individual, we are going to see a lot less problems with drunk driving than we do now because there is no one to fall back on. Each and every one of them are responsible for themselves.

I would never consider going into a restaurant, a bar, or any kind of establishment and holding the bartender who is serving me

responsible for my actions. I don't think most of you on the Committee would either. But, we are being hit with lawsuits.

If an individual comes into my establishment at four o'clock in the afternoon and has two bottles of beer, leaves, and gets into an accident at midnight, I'm being sued for it.

ASSEMBLYMAN BOCCHINI: But, you haven't had any claims against you.

MS. GALLAGHER: I'm talking about situations in the State of New Jersey -- lawsuits that already exist.

Another thing you have to understand is, we have talked sticktly today about liquor liability being involved in motor vehicle accidents and the DWI issue. Liquor liability goes a lot further than that. Liquor liability entails anything where they believe, "The consumption of alcohol was related in one form or another to what happened."

Again, in the State of New Jersey, we have lawsuits where a person will walk outside, fall in front of his car, and sue, saying that they were drunk. It is the individual coming back; it is the first party coming back and suing. For example, you could have someone who took her shoes off because her feet hurt from dancing all night long who then stepped on a piece of glass. She is coming back and she is suing.

These kinds of things on liquor liability or any type of negligence--

ASSEMBLYMAN BOCCHINI: (interrupting) A patron leaves a tavern and ends up in a fight in the parking lot, or a patron who was in the tavern had either just left or was barred from the tavern because he was drunk--

MS. GALLAGHER: Most of those suits are not against the dram shop liquor liability that we are talking about. Those are against the regular negligence, peril, and whatever.

I had one of those -- a similar circumstance to what you are talking about. At four o'clock in the morning, when our establishment was closed -- no one was there; no one had been around -- two gentlemen were going down the road. One made an obscene gesture to the other,

and they decided to pull into our parking lot and discuss the situation. One of them got hit over the head with a bottle and received 13 stitches. I am now being sued because it happened in my parking lot. I was closed. It had nothing to do with us. They had never entered our establishment, but because they pulled into our parking lot--

This is being taken to the insurance company. Again, this is another reason why the rates are going up. I find it kind of amusing that the Insurance Commissioner and all the people involved were not able to give you an answer as to why the insurance premiums are so high. The insurance premiums are so high because they are receiving these outlandish suits -- whether they win them or lose them. A lot of them are being settled out of court.

In our insurance policies, there is a clause that says they have the option to settle out of court, if they wish. If the insurance companies would, at one time or another, grab the bull by the horns and fight some of these suits that they are so willing to settle out of court, maybe we wouldn't be in as bad a situation as we are currently.

The other point I would like to make is, I think people are under the impression that if we do away with third-party liability, such as the California law did, the tavern owners or the restaurant owners will be in a position to just go crazy by doing whatever they want to do and serving anyone they want to serve. That is not true. The tavern owners, and anyone with a liquor license in the State of New Jersey, come under the ABC auspices. At this point in time, it is illegal for us to sell to an apparently intoxicated individual. It is also illegal for us to sell to a minor. Both of these are covered. There are very stiff and severe penalties that all of us observe. There is a loss of business; they can take our licenses; they can shut our doors; and, they can impose very heavy fines.

If the third-party liability is eliminated, it doesn't mean that it is giving us a license to open someone's mouth and funnel the alcohol down his throat. That is not the way it happens. The license owners in the State of New Jersey, for the most part -- and, I mean 99.9% -- are very responsible individuals.

I am encouraged by the fact that the Committee, over the past two days, has listened and paid attention. When I was ready to say, "Don't let them get away with that. They can't say that," you were the people who came back and asked the questions to stir interest and to make sure that certain things weren't said. I appreciate that.

We are in a crisis situation, and it is not going to go away without some type of legislation. Legislation is desperately needed.

Thank you.

ASSEMBLYMAN BOCCHINI: Thank you. I believe that concludes-- Does anyone else have anything he wishes to enter on the record? (no response)

Before we adjourn this hearing, do any of the members have anything they would like to say? (negative response) Okay.

John, if you can hang around, I've got a little letter that I dictated to Director Vassallo concerning the Division's lack of attention to this.

DEPUTY DIRECTOR MARKERT: Yes, I can stay.

ASSEMBLYMAN BOCCHINI: I will go through some of the questions with you.

DEPUTY DIRECTOR MARKERT: All right, fine. I can probably answer some of them.

ASSEMBLYMAN BOCCHINI: We will probably still want them, and he can send them to us. I'll deal with that with the Director himself.

Committee members, thank you. From what I could observe, you listened in a conscientious fashion. I know right now, I've got a splitting headache because we have taken in so much.

We will be getting the transcript back to us-- I don't know how long it is going to take before the transcript is put together.

Some people mentioned they hoped we wouldn't do anything in relation to the social host legislation until the Commission completes its hearings. It is our intention to turn over all of the information we have. I am a member of the Social Host Commission, as well. I'll probably see some of you at those hearings once they start. We will turn the information from this hearing over to them, and they, in turn, will put together whatever they come up with. I'm sure they will give that to us.

I don't foresee, at this juncture, anything coming up immediately by way of legislation. We would also prefer to see if there is any additional information coming from the Commission, which has some public members on it. Keep that in mind.

The primary concern from the Committee's standpoint is the problem as far as third-party liability is concerned with the tavern owners, their problems with the availability of insurance, and where they are going with it.

It has become apparent to me, from my personal standpoint, that there are a lot things left undone and unaccounted for in relation to the tavern owners, retail liquor distributors, and licensees here in New Jersey. We have laws we have passed. We don't have information concerning those laws. There are duties allowed to the Commissioner of Insurance for reasons we don't know. Hopefully, we will get the answers. They have never made a track record as to why or why not certain things are occurring. Statistics apparently are not available as to how many suits are being filed and who is doing what. You don't run businesses that way. At least you hear the politicians say, "You should run government like a business." Well, it doesn't sound like certain areas of government are being run the way a business should be run. Hopefully, we will get the answers to some of these questions.

Once again, to all of you, especially those of you who sat through this with us for the entire two days of hearings: Your time, your comments, and your concern are greatly appreciated by this Committee. I feel good about what we have done. No one heretofore has taken the time to sit down and take in this information. We've got the information now. Give us a chance to digest it, and I am sure you will be hearing more from us as the summer months come upon us. We'll keep you posted.

Thank you.

(HEARING CONCLUDED)

APPENDIX



NEW JERSEY STATE BAR ASSOCIATION

Headquarters 172 WEST STATE STREET, TRENTON, N. J. 08608
609-394-1101

POSITION STATEMENT - A-347 LIMITS LIABILITY OF PERSONS SELLING LIQUOR FOR INJURIES CAUSED BY SERVING VISIBLY INTOXICATED PATRONS

The New Jersey State Bar Association vigorously opposes A-347, which limits the liability of persons licensed to sell alcoholic beverages for injuries or property damage caused by "negligently" serving visibly or apparently intoxicated individuals.

Limiting the civil liability of an irresponsible alcoholic beverage seller who negligently serves a visibly intoxicated customer runs counter to everything the Legislature is trying to do to discourage and penalize drunk driving and the carnage that results from it. The State has increased the penalties for drunk driving and increased the drinking age. Another contributor to the problem are some sellers of alcoholic beverages who, without regard for the safety of the public, serve people who are intoxicated. This type of activity must be discouraged. This bill, however, instead of discouraging this type of activity, rewards it by putting a limit on the amount of damages a victim may recover from someone who negligently served a drunk patron.

This bill places the rights of the sellers of liquor and insurance companies over the rights of innocent victims. Under the terms of the bill, liability is limited to \$75,000 per person and \$150,000 per accident. This means that if the victim suffered \$150,000 in damages, the innocent victim can only recover \$75,000. Worse yet, if the drunk driver is involved in a multi-party crash which injures three people who each suffer \$100,000 in damages for a total of \$300,000, the liability of the insurance company or seller is arbitrarily limited to \$150,000. This is totally inequitable and unfair.

It is important to note that a judgment against the seller only comes after a judge or a jury has determined that the victim has proven that the seller of liquor negligently served someone who was visibly intoxicated. Only if the victim proves negligence can he or she recover. Serving an intoxicated patron is a violation of the Division of Alcoholic Beverage Control's regulations, N.J.A.C. 13:2-23.1, and therefore a violation of the law. These establishments should not be rewarded for violating the law, by limiting the amount a victim can recover.

The State Bar Association believes that once negligence is proven, the victim should be made as whole as possible. In many cases the innocent victim's life will never be the same. The victim may be brain injured or paralyzed. At least, however, he or she should be able to recover all the

damages that a judge or jury says is owed to the victim. Limiting that liability to \$75,000 is not just unjust, but cruel. This bill, then, hurts the most catastrophically injured victims.

Instead of limiting the rights of innocent victims to recover from negligent alcohol beverage sellers, those concerned with the cost of liquor liability insurance should ask the insurance industry pertinent questions as to why, in the face of vastly decreased drinking in taverns and decreases in fatal injuries, the cost of insurance is going up. Recently reported estimates from some segments of the tavern industry are that business is off 35% - 50%. Also, there has been a decrease of approximately 30% in the number of deaths attributed to drunk driving over the last two years. In the face of this data, it is hard to understand why the rates of insurance should be increasing.

Liquor liability insurance is not subject to regulation in New Jersey. Therefore, we do not know what the rates are, how much in premiums are collected and how much in claims paid out, or the number of suits. Answers to those questions must be found before a workable solution to this problem can be developed.

The events concerning the increased cost of liquor liability insurance is similar to events concerning other types of insurance, whereby insurance companies have put pressure on the premium payers by increasing insurance costs or threatening to pull out of the market, thereby artificially creating a crisis to get the Legislature to pass legislation which will increase their profits. We should not permit this to happen.

We also believe that claims by the licensed beverage industry that the stability of the industry is at stake is vastly overstated. The cost of inventory, liquor, food, bartenders and waitresses, rent, mortgage payments, taxes, fuel, and electricity are the major costs of a business. Insurance is but a small part of the overall expense. Revenues are down because people are not drinking in bars as much as they used to. This has nothing to do with insurance.

Instead of seeking to take away the rights of victims, we recommend that a concerted effort be made to encourage or mandate programs in bars which have proven effective in preventing service to intoxicated patrons. Instructional programs can be given to bartenders and waitresses and a certification program can be established whereby those that serve and sell alcoholic beverages will learn how to take steps to refuse service to drunk customers. Some bars are doing this already. A "Designated Driver" program can be established whereby the person designated by the group as a driver is served free non-alcoholic beverages. Taverns can also arrange transportation for intoxicated patrons, remind patrons of the surcharges and other penalties under law, and install coin operated breathalyzer machines. Taverns who institute such measures should be given a reduction on their insurance premium.

Therefore, the New Jersey State Bar Association strongly encourages you to oppose A-347. The policy of this State should be to continue to encourage the sellers of liquor to do everything possible to exercise great caution in serving people who are drunk. This bill limits the incentive of the establishment to opt for safety, by limiting the damages a victim can recover if a licensee goes ahead and serves a visibly intoxicated patron. Legislation to limit the rights of the victim is a totally inappropriate way to address any perceived problems in the liquor industry. We totally reject this notion and urge you to do so also.

4/2/85

2x

"BRING-YOUR-OWN-BOTTLE" BUT HOST STILL LIABLE

FEB 27 1984
Ans'd

-- DOES THIS EXTEND LIABILITY TO AN UNLICENSED RESTAURANT
WHERE PATRONS BRING THEIR OWN BEER/WINE?

Host partly liable in \$1.7M DWI case

Ques

The Associated Press

CHERRY HILL — A \$1.7-million settlement in the case of an 18-year-old woman involved in an accident after leaving a birthday party should serve as a warning to hosts who serve alcoholic beverages, attorneys in the case say.

The attorneys said the settlement for Elfriede Baj, 48, of Cherry Hill, included \$100,000 from the owners of the Vincentown house where the party attended by the other driver was held and \$100,000 from the Medford man who hosted the party.

"Obviously, it's more than a stop-sign case," said Craig Aronberg, attorney for Ms. Baj. "This is an indication of the substantial jeopardy a host incurs when he or she serves alcoholic beverages at a party."

The bulk of the settlement, \$1.5 million, would come from Ann C. Collins, the Willingboro woman accused in the lawsuit of causing the accident by running a stop sign, Aronberg said.

The attorney said Ms. Baj has been confined to a wheelchair since the accident.

Aronberg said the \$200,000 settlement with Walter and Judith Devine, the homeowners, and Joseph Callahan, host of the party for their 19-year-old daughter, Lisa, represented "the extent of their insurance liability."

Both Aronberg and an attorney for the Devines said the agreement was influenced by a 1984 New Jersey Supreme Court ruling that found hosts could be held responsible for the actions of their drinking guests.

Even so, William Lundgren, attorney for the Devines, said he believed the homeowners would have had the odds in their favor had the case gone to trial. But he said they could not take the chance of "financial disaster" an adverse verdict would cause.

The lawsuit, filed in March 1984, claimed that Ms. Collins had been drinking at the party thrown by Callahan at the Devines' house.

Aronberg said Ms. Collins, then 18, went to "pick up a few more friends for the party" when she drove past a stop sign at the intersection of U.S. Route 206 and Tuckerton Road in Tabernacle Township.

The young woman's car struck a vehicle driven by Ms. Baj, the lawsuit stated. Aronberg said the Cherry Hill woman was "partially paralyzed" from spinal injuries suffered in the accident.

The victim's attorney said the settlement was particularly important to the issue of host liability because it involved a party in which there was "no direct service" of alcohol by the hosts.

"It was one of those bring-your-own-type parties," Aronberg said, adding that Callahan supplied a small quantity of beer for the guests.

The attorney said hosts should take heed of an expanding interpretation of their liability for guests.

The landmark ruling by the state Supreme Court resulted from a lawsuit by Marie Kelly of Oceanport, who was injured in a Jan. 11, 1980 accident in Eatontown. She brought suit against Donald Guinnell, driver of the other car, who in turn filed suit against the hosts of a social event he attended, Joseph and Catherine Zak of Long Branch.

NO DIRECT SERVICE OF LIQUOR *

422 West Onondaga Street,

PO Box 671, Syracuse, NY 13201 (315) 471-4145

I'M SMART

June 27, 1984

Mr. Jeffrey M. Klein
American Insurance Association
85 John St.
New York, N.Y. 10038

1-800-
962-
5960;

Dear Jeff:

I wish to thank you for your participation in our meeting of last week regarding the I'M SMART program. I know how hectic your schedule is currently and appreciate your squeezing my agenda into your day.

I am very sincere about the contribution the I'M SMART program can make to the residents of the State of New York, and I deeply appreciate your assistance to see that this type of alternative will be made available. I look forward to working with you this summer to "nail down" our loose ends and make New York a safer and happier place to live.

In a recent phone call I received from John Gemma, he informed me that the Superintendent of Insurance intends to write a circular letter regarding the I'M SMART type of alternative and discounts on liquor liability premiums in the very near future. I am sure you join with me and greet this as great news.

Also this week I met with Bob Davis, Chief of Staff for Secretary of Transportation Elizabeth H. Dole, who coincidentally is a Cazenovia, New York, native. He assured me that my research proposal would get to the National Highway Safety Administration under his pen. Hopefully we will get some positive results on that.

I have included the research proposal in this letter because I don't recall handing it out to you.

I hope that the session is going to wind down and you will find time to do some well deserved R & R before I start bothering you again.

With warm personal regards,


Martin A. Yenawine
Program Coordinator

MAY/grn
Enclosure

4x

A Service of Eastern Ambulance

thereof, and no broker or agent shall knowingly charge, demand or receive a premium for a policy of commercial lines insurance except in accordance with the respective rates and supplementary rate information and all changes and amendments thereof effective pursuant to this act; (b) no insurer, or employee thereof, and no broker or agent shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insure, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium specified in the policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent that such rebate, discount, abatement, credit, reduction, favor, advantage or consideration may be provided for in such rates and supplementary rate information and all changes and amendments thereof effective pursuant to this act; and (c) no insured named in a policy of insurance, nor any employee of such insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to regularly appointed and licensed agents and to brokers duly licensed by this State, nor as prohibiting a discount, abatement, or reduction in premium on policies issued to or on behalf of the State.

L.1982, c. 114, § 14.

1 Section 17:29AA-5.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance § 11.2
C.J.S. Insurance § 60 et seq.

17:29AA-15. Rate in excess of rate filing; application; approval

Upon written application of an insurance company, broker or agent, which application shall include the signed consent of the applicant for insurance, the commissioner may approve, on any specific risk, a rate in excess of that provided by a rate filing which would otherwise be applicable.

L.1982, c. 114, § 15.

Effective date, see note under § 17:29AA-1.

17:29AA-16. Rating system; statistical plan; rules and regulations; reports of experience

a. The commissioner shall promulgate rules and regulations as to statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether such rating systems comply with the standards set forth in this act. Such rules and regulations shall provide for the recording and reporting of loss experience of this State and of any combination of states where such combined experience is used in any manner for rate-making, and may provide for the recording and reporting of expense experience of this State for items of expense which are specially applicable to this State. In promulgating such rules and regulations the commissioner shall give due consideration to the rating systems on file with him and in order that such rules and regulations may be as uniform as is practicable among the several states, to the rules and statistical plans used for such rating systems in other states. The commissioner shall designate the format in which such reports shall be prepared and he may require, in his discretion, that reports of experience be accompanied by punch cards or other means used for data processing, or such other source material as he deems appropriate.

b. The commissioner may designate one or more agencies to assist him in gathering such experience. The commissioner shall give preference in such designa-

Last additions in text indicated by underline.

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tion to entities organized by and functioning on behalf of the insurer, operating in this State for the kinds of insurance to which the commissioner, in his judgment, determines that one or more persons designated as statistical agent is unable or unwilling to perform the functions according to reasonable requirements established by the commissioner, he may, after consultation with such statistical agent, designate another person to perform such functions. The commissioner shall determine the fee to be paid to such designated person by the affected companies, designate another person to gather statistical experience. The commissioner shall determine the total cost of gathering and compiling such experience, and such compilations shall be made available, subject to regulations promulgated by the commissioner, to insurers, rating organizations, and any other interested parties.

L.1982, c. 114, § 16.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance § 11.2
C.J.S. Insurance § 60

17:29AA-17. Special risks; records; examination

The underwriting files, loss and expense statistics, financial statements, and other records in respect to special risks written by an insurer shall be maintained in accordance with rules and regulations promulgated by the commissioner and shall be subject to examination by the commissioner or his designee in this State as often as deemed necessary by the commissioner.

L.1982, c. 114, § 17.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance § 9
C.J.S. Insurance § 60

17:29AA-18. Rating organization; commercial lines insurers; suspensions of act

Any rating organization providing any service relating to commercial lines insurance, and any insurer utilizing the services of such organization for such purpose shall be subject to the provisions of sections 17:29A-21 of P.L.1944, c. 27 (C. 17:29A-2, 17:29A-3, 17:29A-12, 17:29A-20 and 17:29A-21) to the extent applicable, provided that if a rating organization is suspended under this act, such suspension shall have the same effect as a suspension under P.L.1944, c. 27 (C. 17:29A-21).

L.1982, c. 114, § 18.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance § 11.5
C.J.S. Insurance § 60

17:29AA-19. False or misleading information to rating organization

No insurer, and no officer, agent, or employee thereof, shall knowingly furnish false or misleading information to any rating organization of which he is a subscriber, or to the commissioner, which will in any manner affect the determination of compliance with the rating standards of this act.

L.1982, c. 114, § 19.

Effective date, see note under § 17:29AA-1.

Last deletions by ~~strikeouts~~

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CORPORATIONS

er or agent shall knowingly charge, demand or receive a of commercial lines insurance except in accordance with the supplementary rate information and all changes and amend- pursuant to this act; (b) no insurer, or employee thereof, and all pay, allow, or give, or offer to pay, allow, or give, directly or icement to insure, or after insurance has been effected, any tement, credit, or reduction of the premium specified in the or any special favor or advantage in the dividends or other ereon, or any valuable consideration or inducement whatever, policy of insurance, except to the extent that such rebate, credit, reduction, favor, advantage or consideration may be rates and supplementary rate information and all changes and effective pursuant to this act; and (c) no insured named in a nor any employee of such insured, shall knowingly receive or directly, any such rebate, discount, abatement, or reduction of ch special favor or advantage or valuable consideration or g herein contained shall be construed as prohibiting the pay- s or other compensation to regularly appointed and licensed rs duly licensed by this State, nor as prohibiting a discount, ion in premium on policies issued to or on behalf of the State.

e under § 17:29AA-1. **Library References**
Insurance ⇄11.2.
C.J.S. Insurance § 60 et seq.

n excess of rate filing; application; approval

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ner may designate one or more agencies to assist him in rience. The commissioner shall give preference in such designa-

Last additions in text indicated by underline

FINANCE AND INSURANCE

17:29AA-19

tion to entities organized by and functioning on behalf of the insurance companies operating in this State for the kinds of insurance to which this act applies. If the commissioner, in his judgment, determines that one or more or such organizations designated as statistical agent is unable or unwilling to perform its statistical functions according to reasonable requirements established from time to time by him, he may, after consultation with such statistical agent and upon 20 days' notice to any affected companies, designate another person to act on his behalf in the gathering of statistical experience. The commissioner shall in such case establish the fee to be paid to such designated person by the affected companies in order to pay the total cost of gathering and compiling such experience. Agencies designated by the commissioner shall assist him in making compilations of the reported data, and such compilations shall be made available, subject to reasonable rules and regulations promulgated by the commissioner, to insurers, rating organizations and any other interested parties.

L.1982, c. 114, § 16.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance ⇄11.3.
C.J.S. Insurance § 60 et seq.

17:29AA-17. Special risks; records; examination

The underwriting files, loss and expense statistics, financial and other records with respect to special risks written by an insurer shall be maintained in such detail as may be required by the commissioner and shall be subject to examination by the commissioner or his designee in this State as often as deemed necessary by the commissioner.

L.1982, c. 114, § 17.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance ⇄9.
C.J.S. Insurance § 73.

17:29AA-18. Rating organization; commercial lines insurance; applicable provisions of act

Any rating organization providing any service relating to the rates of any commercial lines insurance, and any insurer utilizing the service of such organization for such purpose shall be subject to the provisions of sections 2, 3, 12, 13, 19, 20, and 21 of P.L.1944, c. 27 (C. 17:29A-2, 17:29A-3, 17:29A-12, 17:29A-13, 17:29A-19, 17:29A-20 and 17:29A-21) to the extent applicable, provided that where the license of a rating organization is suspended under this act, such suspension shall have the same effect as a suspension under P.L.1944, c. 27 (C. 17:29A-1 et seq.).

L.1982, c. 114, § 18.

Effective date, see note under § 17:29AA-1. **Library References**
Insurance ⇄11.5.
C.J.S. Insurance § 60 et seq.

17:29AA-19. False or misleading information to rating organization or commissioner

No insurer, and no officer, agent, or employee thereof, shall knowingly give false or misleading information to any rating organization of which it is a member or subscriber, or to the commissioner, which will in any manner affect the proper determination of compliance with the rating standards of this act.

L.1982, c. 114, § 19.

Effective date, see note under § 17:29AA-1.

Last deletions by strikeouts

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immunity appears in many statutes which impose a whistle-blowing or quasi law enforcement obligation on insurers and others. The recently enacted North Carolina law has an immunity section.

Bibliography:

Dram Shop Laws (9/1/82), National Alcoholic Beverage Control Association, 109 Oronoco St., Alexandria, VA 22314

Liquor Liability, September, 1982, FC&S Bulletins, National Underwriter, 175 West Jackson St., Chicago IL 60604

How Dram Shop Liability Impacts Your Business, Beverage Media, February, 1983, 161 Avenue of the Americas, NY 10013

RNG:ad

Attachments

John J. ...
Editor

~~LETTER TO THE EDITOR:~~

~~Dear Editor:~~

This is a real case of "How Do You Spell Relief?"

The New Jersey Licensed Beverage Association says ROLAIDS -
Relieve Our Liability Against Indiscriminate Drinkers, Soon. Doctors
are not responsible for patients who prescribe their own medicine or
perform their own surgery. Pharmaceutical Houses are not responsible
for someone who takes a lethal overdose of legally prescribed drugs.
The person who legally sells a gun is not responsible for the murder
committed with that gun. Why then are there many more questions than
answers regarding the individual's responsibility when consuming beverage-
alcohol. The public is on a tear filing law-suits against licensed
beverage owners, most of which involve the tavern/restaurant as a
third party. What defense, if any, do we have when asked to recollect
who was served and how much they consumed when this is brought to our
attention as long as two years after the alleged incident took place.
It is virtually impossible. The old theory; "When you have the law on
your side you argue the facts, if you have the facts on your side you
argue the law"- licensed beverage owners have neither when these cases
are brought to court. The only thing we have had in the past is liquor-
law liability insurance. The recent wave of claims against taverns have
forced insurance carriers to stop writing this coverage. Now, we have
no insurance protection. If you can find an insurance carrier to cover
you, you probably can't afford it.

Mother's Against Drunk Drivers have raised the level of awareness to a
serious problem in our country. When Candy Lightner formed MADD, one
would be hard-pressed to imagine that her goal was to destroy the
distilled-spirits industry. There are good and bad in all facets of
life, including business and professional fields.

The Tavern and Restaurant industry performs the largest daily ongoing
social service in our country and also provides both Federal and State
Governments with enormous sums of worthwhile tax dollars. In our country,
only twenty-five percent (25%) of all beverage-alcohol consumed, is
consumed on a licensed-premise. Where then is the other seventy-five percent
(75%) being consumed? Why are we having to bear the brunt of all
criticism. It is time for the public to realize that licensed tavern
owners are not second class citizens, who make a living serving alcohol
to children and drunks. We are the only place where beverage-alcohol
is being distributed under supervision. Most alcohol abusers don't
come to taverns to drink. Why? Because they can't get served.

What we are asking for is some relief in New Jersey law relative to third
party liability. The time limit for filing suits against licensees
should be limited to one year from occurrence, a cap should be placed on
the amount of money that can be awarded in such cases, perhaps legal
fees should be paid by those filing the claim, and most importantly a
consumer should be responsible for his/her own actions. No one should
be free from negligence, we are not suggesting that. But we are asking
for relief for the thousands of conscientious business people who are
operating a clean legitimate business.

Smith-
Austermuhl
Co.



INSURANCE
BROKERS

TELEPHONES
N. J. 609-963-3210
PA. 215-925-1781

SMITH-AUSTERMUHL BUILDING
FIFTH AND MARKET STS.
CAMDEN, NEW JERSEY 08101

January 14, 1985

Still, Inc.
Berlin - Cross Keys Road and Sicklerville Road
Sicklerville, New Jersey 08081

ATTENTION: MR. JACK HIGGINS

RE: Renewal of Package and Liquor Law Liability Insurance

Dear Jack:

I am writing this letter to confirm the conversation which we had on Friday, January 11, 1985, wherein we discussed the various renewal prices I had obtained for you on the above mentioned renewal.

As you are aware, through your association the insurance market on taverns has become quite tight and the market for liquor law liability is almost non-existent. The company that we had your insurance with last year is no longer issuing policies with liquor law liability coverage, however, they did offer a quotation for covering the building and contents and premises liability and that quotation is \$5,568.00, which would cover the building for \$275,000 and the contents for \$40,000 with a \$1,000 deductible per claim.

We were able to obtain for you a quote including liquor law liability coverage from the Occidental Insurance company which I am afraid is only rated as a C in the Best Insurance Rating Guide. Occidental's price for the package and liquor law liability coverage is \$18,860.00, plus \$75.00 policy fee, plus tax of \$102.55.

I am very sorry I could not obtain a better quote for you, on this coverage, however, the reason for this was not lack of effort on my part, but rather the lack of markets available in the State of New Jersey for coverage on taverns.

Since the policy renews January 20, 1985, I would need to know which direction you would like me to take on your behalf prior to Friday, January 18, 1985, since the companies are, of course, not open on the weekend.

Very truly yours,

J. W. Peters
Account Executive

P.S. The renewal for your Workers Compensation coverage is \$1,025.00 and I was still able to obtain a dividend type program on this valuable coverage.

"IT'S BETTER TO HAVE INSURANCE AND NOT NEED IT, THAN TO NEED IT AND NOT HAVE IT"

9x

No 40149

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

SMITH-AUSTERMUHL-McCAY

5th & Market Sts.

F.O. Box 3498

Camden, N.J. 08101

(609) 963-3210



Established 1953

STILL INC.
P.O. BOX 297
Sicklerville, N.J.
08081

CUSTOMER NO.

INSURED'S NAME IF DIFFERENT FROM CUSTOMER FILE

DATE

STI 463

03-12-84

0-04-495

POLICY NUMBER

EFFECTIVE DATE
MO - DAY - YR

RENEWAL DATE
MO - DAY - YR

INVOICE NUMBER

CC 10-04-495

01-20-84

01-20-85

No 40149

New

is Inc.

BUSINESS CODE

COMPANY CODE

DESCRIPTION OF COVERAGE

PREMIUM

76 1

61

CATASTROPHE LIABILITY POLICY

300.00

08081

of the Named Insured

PREMIUMS ARE DUE ON EFFECTIVE DATE OF POLICY

BALANCE

300.00

1,000,000.

SMITH-AUSTERMUHL-McCAY

GU 7966a
(Ed. 5-59)

COUNTERSIGNATURE ENDORSEMENT

This endorsement, effective 1-20-84

(hour and date)

, forms a part of policy No. CC1004495

issued to Still Inc.

by Union Indemnity Insurance Company

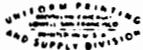
STATE

STATE PREMIUM

New Jersey

\$300.00

It is agreed that the signature appearing on this endorsement is the signature of a person duly authorized to countersign on behalf of the Company in the state designated above and which is appended hereto in conformity with the insurance laws of that state.



Countersigned by

Richard F. [Signature]
Authorized Signature

ents to be the above ce of issue.

Thomas G. O'Brien III Secretary

Monroe Bamberg President

COUNTERSIGNED BY

Agent: Smith Austermuhl & Mick

3/2/84 mrw

AUTHORIZED REPRESENTATIVE

DATE

SCHEDULE OF YOUR CURRENT INSURANCE



N. J. PHONE: 609 - 963-3210 — PA.: 215 - 925-1781

PREPARED FOR

STILL, INC.
BERLIN-CROSS KEYS ROAD & SICKLERVILLE RD.
SICKLERVILLE, N.J., 08081

PROPERTY LOCATION: (IF DIFFERENT FROM ABOVE)

DATE PREPARED: 03-12-84

COVERAGE	AMOUNT OR LIMITS	TERM IN YEARS	EXPIRES	COMPANY	POLICY NUMBER	PREMIUM	COMMENTS
WORKERS COMPENSATION INSURANCE Class: Retail NOC 8017 Payroll: \$56,473 @ 1.96	\$100,000.	1	1-20-85	Warwick	WC 14098	\$1104.00	
SPECIAL MULTI-PERIL POLICY *Section I - Property Building Personal Property Deductible Mercantile Robbery & Safe Burglary Section II - Liability Bodily Injury & Property Damage (CSL) Broad Form CGL Liquor Liability Employer's Non-Ownership Automobile	\$260,000. \$ 40,000. \$ 1,000. \$2,000. (inside) \$2,000. (outside) \$500,000. \$500,000. \$500,000.	3 yrs.	1-20-87	Transit Cas.	SMP155928	\$3,000.00	*General Personal Property Form
CATASTROPHE LIABILITY POLICY	\$1,000,000.	1	1-20-85	Union Indemnity	CC1004495	\$300.00	

DISCLAIMER: THIS FORM IS FOR ILLUSTRATION PURPOSES ONLY. PLEASE READ YOUR POLICY FOR SPECIFIC DETAILS.

We present this schedule so you may get an overall picture of your insurance protection. If you have policies from other insurance offices we suggest you add them to this list to present the complete picture.

Please examine this schedule with particular reference to the amount or limits of your insurance. Today's property values and liability judgments are higher and insurance should be adjusted to cover.

We will be glad to discuss this schedule with you at your convenience.

No. SMP 15 59 28

New
Renewal of Number

Item 1. Named Insured and Mailing Address (No., Street, Town, County, State, Zip)

Still Inc.
P.O. Box 297 Sicklerville, New Jersey 08081

Item 2. Policy Period: 3 Years
From 1-20-84 To 1-20-87 12:01 A.M. / noon, Standard Time at location of designated premises.

Item 3. The Named Insured is:
 Individual Partnership Corporation Joint Venture Other:

Item 4. Designated Premises (ENTER BELOW):
No. 1 Berlin Cross Keys Rd. & Sicklerville Rd. Sicklerville, NJ. 08081
No. 2 Tavern
No. 3
 Additional buildings or premises as designated on Supplemental Declarations attached.

Item 5. Insurance is provided with respect to the designated premises and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof.

SECTION I PROPERTY COVERAGE		Building(s)	Personal Property of the Insured	Personal Property of Others	DEDUCTIBLE		
Coinsurance Percentage Applicable		80 %	80%	%	each occurrence \$ 1000.	aggregate each occurrence \$ 1000.	
Limit of Liability	Loc. No. Bldg. No.				If no deductible stated above, the deductible shall be		
	1 1	\$ 260,000.	\$ 40,000.	\$	\$100	\$1,000	
		\$	\$	\$	each occurrence	aggregate each occurrence	
Additional Cov. (Specify) SD, PS							
SECTION II LIABILITY COVERAGE		SMP-LIABILITY INSURANCE			Bodily Injury Liability	Property Damage Liability	Premises Medical Payments
		Bodily Injury and Property Damage Liability Combined Single Limit		Premises Medical Payments		IF NO LIMIT SHOWN FOR SMP-LIABILITY INSURANCE REFER TO COVERAGE PART OR ENDORSEMENT	
Limit of Liability		each occurrence \$ 500,000.	aggregate \$ 500,000.	each person \$	each accident \$		
Additional Cov. (Specify)							
Audit Period: Non-Auditable Unless Indicated By <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Quarterly <input type="checkbox"/> Monthly <input type="checkbox"/> Other:							
<input type="checkbox"/> SECTION III—CRIME COVERAGE							
<input type="checkbox"/> SECTION IV—BOILER AND MACHINERY COVERAGE							
As stated in the endorsement, made part of this Policy, if indicated by <input checked="" type="checkbox"/>							

Item 6. Forms and Endorsements made part of this policy at time of issue in addition to Special Multi-Peril Policy Conditions and Definitions (INSERT NO. AND EDITION DATE)

- a. Section I—Forms and Endorsements Only: MP0101(ed-7-77) IL0208(ed10-77) MP0090(ed7-77)
- b. Section II—Forms and Endorsements Only: MP0010(ed1-83) MP0012(ed1-83) MP1230(ed12-79) MP0331(ed12-79)
- c. Section III—Forms and Endorsements Only: MP9994(ed12-79) L9494(ed1-73) L9260(ed1-73) L6111(ed5-81) L9194(ed7-66)
- d. Section IV—Forms and Endorsements Only: MP0458(ed7-77) MP9991(ed7-77)

Item 7. Mortgage Clause: Subject to the provisions of the mortgage clause, loss on building items shall be payable to: (Insert Name(s) of Mortgagee(s) and mailing address(es))
Continental Bank of New Jersey 1345 Chews Landing Rd., Gloucester, NJ. 08021

Item 8. The Total Advance Premium is: (ENTER BELOW) NJ Surcharge \$39.00
\$ 3,000.00, and is payable \$ 3,000.00 at inception, and \$ to be determined at each anniversary.
 NOT APPLICABLE Unless indicated by an X in the box as "NOT APPLICABLE", the premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date.

Countersignature Date March 2, 1984 mrw Agent: Smith Austermuhl & Mick
Insurance Enterprises Inc.
Agency at 139 Day Street, Newington, Ct.

Authorized Agent

In Consideration of the premium, Insurance is provided the named insured with respect to the designated premises shown in Item 4 above and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof.



INSURANCE BINDER

Binder No. _____

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

NAME AND ADDRESS OF AGENCY

SMITH-AUSTERMUHL-MICK COMPANY
 FIFTH & MARKET STREETS
 P.O. BOX 3498
 CAMDEN, NEW JERSEY 08101-3498

COMPANY

TRANSIT CASUALTY COMPANY

Effective 12:01 a m 1/20 ,19 84

Expires 12:01 am Noon ,19

This binder is issued to extend coverage in the above named company per expiring policy # _____ (except as noted below)

NAME AND MAILING ADDRESS OF INSURED

STILL, INC.
 BERLIN - CROSS KEYS & SICKLERVILLE ROADS
 SICKLERVILLE, NEW JERSEY 08081
629-3000

Description of Operation/Vehicles/Property

BAR & PACKAGE STORE

Type and Location of Property	Coverage/Perils/Forms	Amt of Insurance	Ded.	Coins. %
PROPERTY BUILDING CONTENTS PEAK SEASON 11/1/ to 1/1/	FIRE, EXTENDED COV, V&MM	260,000	1,000	80
	FIRE, EXTENDED COV, V&MM	40,000	1,000	80
	FIRE, EXTENDED COV, V&MM	10,000	1,000	80

LIABILITY	Type of Insurance	Coverage/Forms	Limits of Liability		
			Each Occurrence	Aggregate	
<input type="checkbox"/> Scheduled Form <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Premises/Operations <input checked="" type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Contractual <input checked="" type="checkbox"/> Other (specify below) BFCGL <input type="checkbox"/> Med. Pay. \$ Per Person \$ Per Accident <input type="checkbox"/> Personal Injury		<input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C	Bodily Injury	\$	\$
			Property Damage	\$	\$
			Bodily Injury & Property Damage Combined	\$300,000	\$ 300,000
			Personal Injury	\$	\$

AUTOMOBILE	Type of Insurance	Coverage/Forms	Limits of Liability	
			Bodily Injury (Each Person)	\$
			Bodily Injury (Each Accident)	\$
			Property Damage	\$
	<input type="checkbox"/> Liability <input checked="" type="checkbox"/> Non-owned <input type="checkbox"/> Hired <input type="checkbox"/> Comprehensive-Deductible \$ <input type="checkbox"/> Collision-Deductible \$ <input type="checkbox"/> Medical Payments \$ <input type="checkbox"/> Uninsured Motorist \$ <input type="checkbox"/> No Fault (specify): <input type="checkbox"/> Other (specify):		Bodily Injury & Property Damage Combined	\$ 300,000

WORKERS' COMPENSATION — Statutory Limits (specify states below) EMPLOYERS' LIABILITY — Limit \$

SPECIAL CONDITIONS/OTHER COVERAGES

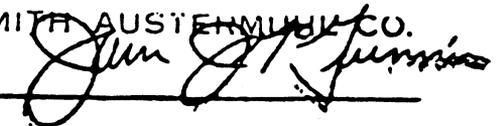
ROBBERY 2,000 IN , 2,000 OUT, 2,000 HOME OF MESSENGER
 UMBRELLA LIABILITY - 1,000,000 LIMIT

NAME AND ADDRESS OF MORTGAGEE LOSS PAYEE ADD'L INSURED

CONTINENTAL BANK OF NEW JERSEY
 1345 CHEWS LANDING ROAD
 GLOUCESTER, NEW JERSEY 08021

LOAN NUMBER _____

SMITH-AUSTERMUHL CO.

BY 

Signature of Authorized Representative

Date _____

No 40148

PLEASE RETURN
THIS PORTION WITH
YOUR PAYMENT

SMITH-AUSTERMUHL-McCAY

5th & Market St.
P.O. Box 3498
Camden, N.J. 08101
(609) 963-3210



Established 1953

alt

STILL INC.
P.O. BOX 297
SICKLERVILLE, N.J. 08081

ice: Saint Louis, Missouri

CUSTOMER NO. INSURED'S NAME IF DIFFERENT FROM CUSTOMER FILE DATE

POLICY NUMBER EFFECTIVE DATE RENEWAL DATE INVOICE NUMBER

BUSINESS CODE	T A N	COMPANY CODE	DESCRIPTION OF COVERAGE	PREMIUM
61	1	61	SPECIAL MULTI-PERIL POLICY	\$3,000.
220	1	61	NEW JERSEY SURCHARGE	39.00
			FIRST ANNUAL INSTALLMENT	
PREMIUMS ARE DUE ON EFFECTIVE DATE OF POLICY				BALANCE
				3,039.00

SMITH-AUSTERMUHL-McCAY

SPECIAL MULTI-PERIL POLICY

THIS INSURANCE PROGRAM
SPECIALLY DESIGNED FOR

Still Inc.
by

NORTH AMERICAN RESTAURANT
AND TAVERN ALLIANCE

THIS POLICY JACKET WITH THE DECLARATIONS PAGE, SPECIAL MULTI-PERIL POLICY CONDITIONS AND DEFINITIONS, AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THIS POLICY.

