

Committee Meeting

of

SENATE LABOR COMMITTEE

"Examination of the workers' compensation system in New Jersey"

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: May 5, 2008
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Paul A. Sarlo, Chair
Senator Fred H. Madden Jr., Vice Chair
Senator Sandra B. Cunningham
Senator Sean T. Kean
Senator Joseph Pennacchio



ALSO PRESENT:

Gregory L. Williams
Office of Legislative Services
Committee Aide

Jonathan Boguchwal
Senate Majority
Committee Aide

John Hutchison
Senate Republican
Committee Aide

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

TABLE OF CONTENTS

	<u>Page</u>
David J. Socolow Commissioner New Jersey Department of Labor and Workforce Development	3
Steven M. Goldman Commissioner New Jersey Department of Banking and Insurance	10
Peter J. Calderone Director/Chief Judge Division of Workers' Compensation New Jersey Department of Labor and Workforce Development	17
Donald Bryan Director Division of Insurance New Jersey Department of Banking and Insurance	33
Senator Stephen M. Sweeney District 3	47
James H. Coleman Jr. Former Justice New Jersey Supreme Court, and Representing James H. Coleman Jr. New Jersey Workers' Compensation American Inn of Court	51
Richard E. Hickey III Administrative Supervising Judge Division of Workers' Compensation New Jersey Department of Labor and Workforce Development, and Representing Association of Workers' Compensation Judges	59

TABLE OF CONTENTS (continued)

	<u>Page</u>
Rose Mary Granados Administrative Supervising Judge Division of Workers' Compensation New Jersey Department of Labor and Workforce Development, and Representing Association of Workers' Compensation Judges	60
Michael J. Van Wagner Vice President Legislative Affairs New Jersey Manufacturers Insurance Group	67
John D. Rogers, Esq. Vice President Human Resources New Jersey Business and Industry Association	70
Charles Wowkanech President New Jersey State AFL-CIO	78
Amos Gern, Esq. President Association of Trial Lawyers of America-New Jersey	81
Marcia S. Freedman, Esq. Chair Workers' Compensation Section New Jersey State Bar Association	90
Arthur H. Kravitz, Esq. Chair-Elect Workers' Compensation Section New Jersey State Bar Association	91
Lynne P. Kramer, Esq. General Counsel New Jersey Advisory Council on Safety and Health	95

TABLE OF CONTENTS (continued)

	<u>Page</u>
Craig H. Livingston, Esq. President New Jersey Advisory Council on Safety and Health	96

APPENDIX

Testimony submitted by David J. Socolow	1x
Testimony and charts submitted by Steven M. Goldman	8x
Biography, plus attachments submitted by James H. Coleman Jr.	18x
Testimony submitted by Richard E. Hickey III	31x
Statement submitted by Michael J. Van Wagner	35x
Testimony submitted by Charles Wowkanech	37x
Testimony submitted by Amos Gern, Esq.	39x
Testimony submitted by Marcia S. Freedman, Esq. and Arthur H. Kravitz, Esq.	48x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

	<u>Page</u>
Testimony submitted by Lynne P. Kramer, Esq. and Craig H. Livingston, Esq.	51x
Letter addressed to Senate Labor Committee from David N. Grubb Executive Director Municipal Excess Liability Joint Insurance Fund	57x
Article, plus attachment submitted by Jay H. Bernstein, Esq. Attorney at Law Kirsch, Gelband & Stone	59x
Letter, plus attachments addressed to Gregory L. Williams, and Senate Labor Committee from Jon L. Gelman, Esq. Private Citizen	82x
Letter addressed to Senate Labor Committee from Robert Guzman Private Citizen	101x
Letter, plus attachments addressed to Senate Labor Committee from Peggy Mallen Legislative Advisor New Jersey State Police Survivors of the Triangle-COPS	106x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

Letter addressed to
Senate Labor Committee
from
James C. Knicos
Executive Secretary
New Jersey Self Insurers' Association

115x

rs:1-104

SENATOR PAUL A. SARLO (Chair): Good afternoon, everybody. Welcome to the Senate Labor Committee, May 5, 2008.

This is a small room. It's great to see so many people are interested in this program. We're going to ask everybody to be patient, be respectful of one another. We're going to ask everybody, if you do have any type of electronic devices just put them on vibrate, put them on silent. And if you need to make a phone call, please just step outside of the room. It is a small room. We'll try to be courteous.

I believe all the chairs are taken. And I'm assuming as we go through this, we'll be probably losing some people to other commitments. And once seats do open up, I ask everybody on the sides to just grab seats as people do move on.

This afternoon we are having a hearing on workers' compensation. Almost a hundred years ago, New Jersey became a pioneer when it established the State Workers' Compensation System. It was established with the goal of providing a quick resolution between employers and employees to ensure both sides do not get tangled up in years of litigation, which ultimately leaves the injured worker without income and medical benefits.

To date, New Jersey has been used as a model for all the states and is looked to as a leader in the workers' compensation system nationwide, a \$1.8 billion program here in New Jersey.

To that end, to be a nationwide leader means to be constantly asking ourselves: How is our system working? Where are we successful? And where can we improve? Answering those questions is why we're here

today. We should not jump to conclusions about published reports in any newspapers.

By and large, we have a well-functioning and successful system in place. However, we still have documented cases of individuals not receiving the compensation that they were promised and not having their case heard in court in a timely manner, as is their right.

Additionally, while the law requires every business in the state to obtain workers' compensation insurance, some still decide that violating this law is a better business practice than complying with it, which subsequently hurts not only the employees, but the business community as a whole.

We've invited representatives from a broad range of sectors to come and testify today, and discuss with them what they believe works with the system and where it can be improved.

I ask that each of you limit your testimony to five minutes and try not to duplicate previous testimony. If you're providing written testimony, I ask that you do the best you can to summarize it. The Committee has the written -- will be provided with the written testimony and can read it at a later time.

And please, I cannot stress enough that this is not a witch hunt here today. We're looking for a substantive discussion that will allow us to improve the workers' compensation system and allow New Jersey to remain at the forefront.

We're hoping in the coming weeks, from this meeting, we will be developing recommendations and legislation that could be put forward by this Committee and other committees, where applicable, and hopefully

close some of the potential loopholes that are in the system and hopefully make this an even better system than it is today.

So with that, we're going to try to invite people up in panels. The first panel will be our Commissioner of Labor, Commissioner David Socolow; and the Commissioner of Insurance, Steven Goldman. We're going to ask them to come up.

I believe Judge Calderone is here. And he should also join this panel as the Chief Judge of the workers' comp court here in New Jersey.

And you two gentlemen have more than five minutes, because we want to hear from you guys.

Everybody else has five minutes. (laughter)

COMMISSIONER DAVID J. SOCOLOW: Thank you, Chairman Sarlo.

I appreciate very much the opportunity to appear before you with -- between such distinguished colleagues: the Commissioner of Banking and Insurance, my friend, Steve Goldman; and our terrific Chief Judge and Director of Workers' Compensation in the Department of Labor, Peter Calderone. And I appreciate the opportunity to join you in a review of the issues concerning the New Jersey Workers' Compensation program.

Although New Jersey's private-sector workplaces are among the nation's safest, tied for fifth out of 50 states in terms of lost time, accident, and illness rates, injuries and illnesses are still an unfortunate reality in our workplaces.

For more than 95 years, as you said, Mr. Chairman, New Jersey's Workers' Compensation program has provided medical treatment, temporary partial wage replacement income, permanent disability benefits,

and dependency payments to New Jersey workers and their families for injuries caused by work-related accidents or occupational exposures. It has also ensured that New Jersey employers have a reliable and cost-effective mechanism to resolve workplace injury situations.

I would like to start by giving the Committee an overview of how our system works.

New Jersey employers are statutorily obligated to provide their employees with all reasonable and necessary medical treatment for work-related injuries. In addition, an injured employee is entitled to temporary disability benefits for up to 400 weeks, or until the worker reaches maximum medical improvement and/or returns to work. These wage replacement payments equal 70 percent of the worker's gross wages up to a statutory maximum, which is \$742 a week this year. And they are tax free for the employee. This system provides an injured employee with vital medical treatment and wage replacement benefits to sustain them until they can get back to work.

In 2007, New Jersey employers reported nearly 200,000 work-related accidents. And based on the consistent ratios in prior years, we expect approximately 85 percent of the injuries resulting from these accidents to be resolved between the employer and the employee without the worker ever filing a claim petition with workers' compensation court.

In 2007, about 36,000 new claim petitions were filed, of which an estimated 75 percent alleged a compensable work accident and 25 percent concerned an occupational exposure to hazardous materials or conditions.

In almost every case, the reason an injured employee files a claim petition with workers' comp court is to seek permanent disability benefits, either partial or total. In such cases, the worker is asserting that the injuries have resulted in a continuing functional loss that has significantly impaired his or her work ability and/or personal life activities. And it should be noted that, by statute, the workers' comp court cannot issue a determination as to the permanency of a disability until 26 weeks after the worker has reached maximum medical improvement, to ensure that the injury is fixed and measurable.

During this six-month time frame, the injured worker may be eligible to receive temporary disability benefits and/or Social Security disability benefits. If the injury involved a partial permanent disability and the worker has been cleared to return to work, he or she may in fact be able to return to work and earn wages.

A review of closed cases in '07 -- last year -- reveals that about 50 percent of the claims petitions were resolved within 18 months of the claim petition filing, 62 percent were resolved within two years, and over 80 percent within three years of filing. Again, while the worker's claim is pending, he or she will continue to receive medical benefits and either income replacement benefits or actual wages if he or she has been cleared to return to work.

Now, because we recognize the importance to the injured worker of quickly resolving any dispute involving their income or their medical care, these so-called *med and temp* motions are afforded priority status, and they are heard on an expedited basis. While some medical disputes may require trials with expert witnesses as to causation and

appropriate medical care, more than 99.8 percent of these matters are resolved within four months.

New Jersey's Workers' Compensation is different from systems in other states that are less supportive of injured workers. New Jersey's Workers' Compensation provides more comprehensive coverage than in most other states. For instance, New Jersey is one of the few states that recognize occupational illnesses such as carpal tunnel syndrome, silicosis and other pulmonary injuries as compensable work-related injuries.

Additionally, New Jersey restricts the ability of an employer to settle a workers' comp claim through a lump-sum payment. And accordingly, we see very few claims for serious permanent disability that are settled with lump sums. Most lump-sum payments in New Jersey are for minor injuries or contested cases where there is no permanent work disability medical finding by one or more of the medical experts. And this stands in stark contrast to the prevalent practice in many other states, where major permanent disability cases are settled with a large lump-sum payment, and workers are often enticed to forego continuing medical treatment or lifetime wage replacement benefits.

New Jersey's also one of a handful of states that continue to maintain a Second Injury Fund for totally disabled workers, whose total disability is a combination of work-related injuries and pre-existing disabilities.

In addition, we've been working very hard, under Governor Corzine's leadership, to address the issue of the underground economy in which employers frequently fail to obtain workers' compensation insurance coverage, because an employer has misclassified its workers as independent

contractors or is paying them cash wages under the table. Employers who operate outside the State's registration, tax, and workers' compensation coverage system are a drain on State resources and are shortchanging injured workers from receiving proper benefit payments timely.

In 2007, our Department identified more than 31,000 misclassified or nonreported workers with more than \$482 million in unreported wages. And so my Department and Steve's Department -- the Department of Banking and Insurance -- have cooperated to establish a cross-match program to verify workers' compensation coverage among employers. Where a workers' comp claim petition is filed and there is no employer of record, New Jersey is one of a very few states that provide, through an Uninsured Employers Fund, medical treatment and temporary disability benefits for the injured worker. When uninsured employers are identified, the employers are contacted. And in most such cases, we're successful in getting the employer to obtain workers' comp coverage.

Now, our system is constantly undergoing improvements. And over the past few years, the Division of Workers' Comp has significantly enhanced the administration of the program through automation, including a computerized case management system known as COURTS. And I put the details of that in my written statement.

But we are doing a number of things to provide the most cost-effective and fair process for the resolution of workers' comp claims. But we recognize that the program is not perfect, and so I have the following suggestions, which I submit to the Committee for discussion.

The first one is to amend the statute to provide additional statutory sanctions and enforcement powers for workers' compensation

judges, similar to the kinds of powers that Superior Court judges have. Currently, statutory sanctions are limited to simple interest for noncompliance with a court order for benefits after 60 days and a 25 percent penalty payable to the petitioner if temporary benefits are unreasonably delayed.

You should consider imposing -- or allowing judges to impose additional sanctions, including reasonable counsel fees and monetary penalties for delays in answering a claim petition that necessitates the filing of a default action, failing to provide temporary -- timely medical treatment and payment, and failing to comply with a court order. Monetary sanctions, compensatory damages, and/or fines against attorneys and other parties who delay court proceedings may also be appropriate.

Second, the Legislature should increase the penalties and sanctions in the Workers' Compensation Fraud Statute for employers who misclassify their employees as independent contractors or omit their employees from their workers' compensation policy.

Third, the Legislature should amend the State's insurance fraud statutes, including the Insurance Fraud Prevention Act, to include specific provisions establishing a violation for an employer's failure to obtain workers' comp insurance, and a violation for misclassifying workers with the effect of artificially reducing the number of workers covered under the employer's workers' compensation policy.

And fourth, regulated industries and business, including taxi companies, alcohol retail establishments, construction industry contractors, and others should be required to provide proof of workers' compensation insurance as part of their licensing approval process.

Finally, I recognize that our Division of Workers' Compensation only sees injured workers after they have hired an attorney and filed a claim petition. As I noted earlier, such cases account for fewer than 20 percent of all the reported workplace injuries and illnesses each year. However, in cases that never reach a workers' compensation judge, there can be significant problems between workers and insurance carriers related to scheduling of medical appointments and other administrative matters. And I look forward to working with the stakeholders and the Legislature on how we might streamline the process for workers at this initial phase in the process.

I stand ready to work with this Committee and others involved in the workers' comp system to make improvements that will ensure that New Jersey continues to have a balanced and efficient system to resolve disputes over workplace injuries.

Thank you for the opportunity to testify, Mr. Chairman.

SENATOR SARLO: Thank you, Commissioner.

We just want to-- Now that all the Senators are here, we want to do a quick roll call.

Could we have that for the record?

MR. WILLIAMS (Committee Aide): Sure.

Senator Pennacchio.

SENATOR PENNACCHIO: Here.

MR. WILLIAMS: Senator Kean.

SENATOR KEAN: Here.

MR. WILLIAMS: Senator Cunningham.

SENATOR CUNNINGHAM: Here.

MR. WILLIAMS: Vice Chairman Madden.

SENATOR MADDEN: Here.

MR. WILLIAMS: And Chairman Sarlo.

SENATOR SARLO: Thank you.

We'll continue with Commissioner Goldman, and then we'll do questions from the Committee to the entire panel.

COMMISSIONER STEVEN M. GOLDMAN: Good afternoon, Chairman Sarlo, members of the Senate Labor Committee. I appreciate the opportunity to address this Committee regarding issues on New Jersey's workers' compensation insurance market.

Let me first give some brief remarks on the general background of the market, the role of the Department of Banking and Insurance, the role of the Compensation Rating and Inspection Bureau -- affectionately known as *CRIB* -- and some suggestions for the future.

In addition, we've supplied the Committee with handouts regarding current and historical market conditions.

Let me begin by giving the general background on the marketplace in New Jersey. As the Chairman noted, the New Jersey's workers' compensation insurance system dates back to 1911 and is one of the oldest in the entire country. By law, as David noted, all employers are required to either carry workers' compensation insurance or demonstrate to the Department that they have the financial resources to be self insured.

There are about 217 insurers who are presently actively writing workers' compensation insurance in the State of New Jersey. The 10 largest of these cover 80 percent of the market. In New Jersey, we use what is known as an *administered pricing system*, which means that the rates are set by

the Department based on a filing by the rating bureau. All carriers doing business in New Jersey use the same rating system. New Jersey and six other states use this administered pricing system. Several other states use bureau-related *loss costs* to set the medical and indemnity portion of the rate. The benefit of New Jersey's system is that rates tend to be more predictable and stable, which is very important to current and future employers doing business in New Jersey. Indeed, the average cost for workers' compensation in New Jersey per \$100 of payroll was \$2.04 in 1997 and \$2.05 in 2007.

The Department's role in the workers' compensation insurance system is similar to its role in other lines of insurance, although there are significant differences based on applicable law that reflect the importance of workers' compensation in public policy.

First, and probably most importantly, we regulate the financial solvency of insurance companies through the initial licensing process, regular monitoring of their financial statements, and periodic examinations. We work with insurers who experience financial problems. And if those efforts turn out to be unsuccessful, we liquidate the companies. Fortunately, liquidation is a very rare occurrence for New Jersey domestic companies. There's been only one such insolvency in recent years, and it was a small and relatively new insurer unable to succeed in the market.

Secondly, workers' compensation insurers are, like all other insurers, subject to market regulation standards regarding their sales and distribution systems and practices, and their treatment of policyholders. A significant difference in workers' compensation from other lines is that the Division of Workers' Compensation in the Department of Labor, by statute, has original, exclusive jurisdiction over all benefit claims.

Thirdly, DOBI regulates the product through review and approval of the rating system, including policy forms. Rating rules, and the rates themselves, are all governed by the Department. The rating bureau develops a rate proposal, submits it to the Department each Fall for review by Department actuaries. Once the Department approves the rates, then the rates apply to all policies issued by all workers' comp carriers during the next calendar year. Upon approval, the rates are available to all insurers, producers, and employers by posting on the Bureau's Web site.

Since 1999, workers' compensation insurance carriers have, on average, actually spent more money on claims and expenses than they've received in premium. In 2007, for every premium dollar collected, \$1.02 was spent on these costs. This figure is lower than 2001, when carriers paid out \$1.24 for every premium dollar received. During these same years, 2001 through 2007, medical costs in New Jersey rose by over 30 percent. But because of New Jersey's Rating Bureau system, the changes in rates to address this imbalance, and cover increased medical and weekly benefit costs, have occurred gradually.

I've mentioned CRIB, or the Bureau, which plays a very important role in our system. The Compensation Rating and Inspection Bureau was created by statute in the early years of the last century as part of the original workers' compensation law. By statute, an insurer must be a member of CRIB in order to offer workers' compensation insurance in New Jersey. Although CRIB is made up of insurers, it performs many public or quasi-public functions that promote a stable and healthy market which require oversight by the Department.

CRIB is primarily responsible for collecting statistical data from all insurers and initially developing the workers' compensation rating system, which as mentioned earlier is subject to Department approval. The CRIB rating system is required to be utilized by all workers' compensation insurance carriers. Generally, New Jersey ranks in the middle of the 50 states in relative workers' compensation rates.

When a business purchases workers' compensation insurance, the premium is calculated according to a number of factors. These include the classification codes. These codes are based on the type of industry and the number of jobs within each classification at a particular company. For example, office workers are coded differently than roofers because of the difference in risk that the jobs present.

Payroll is a factor. To calculate the rate for an employer, the classification codes of employers are multiplied by the total payroll of each class of employees per \$100 of remuneration.

Experience modification is a factor, once a company has a three-year claims history, its rate may be adjusted based on its history of claims as compared to similarly situated businesses.

And then there is the CRIB rating system generally, which permits insurers to deviate, to some degree, from the standard rate and offer certain pricing incentives for businesses that have implemented loss management, safety, or other similar loss-reduction programs.

CRIB also administers the residual market program. If an employer cannot obtain insurance on the open market, CRIB will assign an insurer to cover the employer. Assignments are based on the insurer's market share. Over the past several years, the residual market has been

shrinking, which indicates that the private market is covering more and more businesses.

CRIB has many other functions that promote a healthy and efficient workers' compensation system. It tracks which insurers cover which employers, it receives the initial report of worker injuries, and it assesses and collects from each insurer moneys for the Security Fund, the Second Injury Fund, as well as its own operating costs.

Among its other functions, CRIB resolves disputes between insurers and employers over the rate charged and other related issues. If not satisfied with the result, either the employer or the insurer can appeal the decision to the Department. But I must report that such appeals are very rare.

While no system is perfect, New Jersey's Worker's Compensation insurance system is healthy and working well. It is an area where employers have predictable and stable costs. And this is one area where no one can say that New Jersey is not hospitable to business. This point cannot be emphasized enough at a time when we are working to maintain and attract as many employers as possible to our state.

Meanwhile, it is one of the country's most generous systems for employees. Workers can receive up to \$742 a week on account of their workers' compensation insurance. This puts us in the top one-third of the states in benefit levels. New Jersey ranks seventh in the nation in maximum statutory unscheduled benefit levels for permanent partial disability, and 18th in scheduled benefits for permanent partial disability.

I appreciate the opportunity to appear before you today. I think we should keep in mind that while our system is stable and successful,

it is approaching its 100th anniversary. In view of its age, I think that Assemblyman Cohen and others, who have suggested that a review is in order, may be correct.

For example, the relationship between the Department and CRIB can be clarified and the makeup of the CRIB governing board amended perhaps to include employer and public members, as is provided in other quasi-public insurance mechanisms. These kinds of adjustments would promote and implement a more modern governance structure without disturbing the effectiveness and efficiency of the current system.

We at the Department look forward to working with the Legislature on a review of the overall efficiency and effectiveness of the system, with an eye toward making appropriate changes. However, given that the system basically functions well, we should take care that any changes are carefully considered before they're made.

I'd be pleased to answer any questions.

SENATOR SARLO: Thank you, Commissioner.

Before I turn it over to our Committee here, I just have a few opening comments.

From listening to both of you, and looking at your written testimony, and hearing from both of you today, it is safe to say that both Departments feel that the workers' compensation system in New Jersey is in good shape. Is that safe to say?

COMMISSIONER SOCOLOW: Yes.

COMMISSIONER GOLDMAN: Yes.

SENATOR SARLO: Okay.

And there's always room for improvement, of course.

COMMISSIONER SOCOLOW: Right.

SENATOR SARLO: I see from the numbers that you have provided, 200,000 work-related incidents -- 85 percent of these are usually resolved right between the employer and the employee with no insurance company involvement at all?

COMMISSIONER SOCOLOW: No, with the insurance company, certainly -- but without the worker filing a claim petition that necessitates hiring an attorney.

SENATOR SARLO: Okay. So without the workers' compensation judges and that part.

COMMISSIONER SOCOLOW: Right, without coming before comp court, yes.

SENATOR SARLO: Okay.

COMMISSIONER SOCOLOW: Roughly 85 percent don't come before comp court.

SENATOR SARLO: So in '07, 36,000 new claims were filed -- and you add them to other outstanding ones -- so we have about 97,000--

COMMISSIONER SOCOLOW: Cases that are open, right. And so we're looking at 97,000 cases; the average case sort of moving through on a track, as I said in my testimony, somewhere between 18 months to three years to resolve. And again, that's the minority of all the cases. In most cases, the worker gets the medical attention they need, and the temporary benefits they need, and is able to return to work. These are the cases that we're talking about -- that come before comp court -- in which someone is making the allegation that there is a permanent disability involved. And that's what requires the court.

SENATOR SARLO: In your testimony you said, “By statute, the workers’ compensation court cannot issue a determination as to the permanency of a disability until 26 weeks after the worker has reached maximum medical improvement,” the MMI. That’s almost six months. Does that time frame work, or should we revisit that time frame? Do you believe six months is working?

COMMISSIONER SOCOLOW: Do you want to answer that?

JUDGE PETER J. CALDERONE: Senator, I think it does, because you need that period.

SENATOR SARLO: If you could just move the microphone.

JUDGE CALDERONE: There’s a period in the statute that was thought out to allow for the disability to reach the point that you really can evaluate it as a permanent disability. So that period after treatment is over, there’s no additional treatment required for those injuries -- you wait this period, and then you have permanency evaluations.

SENATOR SARLO: Okay.

In some research that we did internally through OLS, it talked about this three-week period -- every three weeks you can revisit the claim. And then if there’s a delay -- if there’s a scheduling delay, or if there’s a holiday, all of a sudden your out to six weeks, nine weeks. It sounds bureaucratic to me. Is that delaying these cases?

JUDGE CALDERONE: Senator, I think ever since 1911 they’ve tried every system imaginable. We’ve had continuous trials, we’ve had different types of scheduling, we’ve had cases by petitioner. This has worked out, with the volume, as the most effective way. I think we’re always willing to hear some other suggestions.

SENATOR SARLO: Because something that could be resolved is now potentially waiting six weeks, nine weeks.

JUDGE CALDERONE: Well, if it's resolved, you can always ask a judge in that vicinage to have the case put through. If it's settled, you can ask any time to have it moved forward.

SENATOR SARLO: Okay.

Commissioner Socolow, in your remarks you had mentioned -- and this is a complex issue -- workers' comp is a very complex issue. And probably many members of the Committee, for the first time these past two or three weeks, have been getting up to speed on this.

You mentioned case resolutions may be delayed due to Medicare repayment issues. Can you just kind of give the Committee the correlation between Medicare and workers' comp, and how they work?

COMMISSIONER SOCOLOW: Absolutely.

Obviously, many workers who are injured may someday in fact be -- have their health care paid by Medicare at some point in their life, especially, again, if you're talking about a permanent disability with continuing medical. At some point they're going to reach the age at which they'd be eligible for Medicare. So about 25 years ago, the Federal government passed a law -- the Medicare Secondary Payer act, or something like that. And what that does is say, "Let's not have the taxpayers -- the Federal taxpayers -- on the hook for medical costs that really should be paid by some other insurer." Medicare is the secondary payer. They want to make sure that Medicare does not pay for things which properly should be paid for by the workers' comp settlement -- by the insurance carrier.

And so that's a laudable goal. And all of us are in favor of saving Federal taxpayer dollars. And it's a good statute in theory. The problem has been the practice, where Medicare takes forever to make a decision about what its lien is going to be, how much money it wants to ensure it doesn't have to pay toward that medical care over time.

And there was, a few years ago, really a bureaucratic nightmare where there were 13 different Federal contractors. This was privatized by the Medicare agency in Washington -- to these agencies -- to try to resolve these cases. And so workers' comp petitioners and respondents were waiting around for years waiting for answers back from Medicare. Now, that's actually been lessened somewhat. We've also worked with them to get a more streamlined process, and so we've cut in half the number of cases that are delayed because of Medicare. But it does remain an ongoing issue.

SENATOR SARLO: And there's not much we can do though, as a State, with regard to that? It's a Federal--

COMMISSIONER SOCOLOW: I think we've worked with Federal Medicare to try to do this. I mean, I think that certainly continuing to let them know it's an issue is something we can continue to do.

SENATOR SARLO: Judge Calderone, you serve as the Chief Judge and as the--

JUDGE CALDERONE: Director.

SENATOR SARLO: --Director. Do you see any conflict in that -- serving as-- Do you hear cases as well?

JUDGE CALDERONE: Yes.

SENATOR SARLO: But you work under the Department of Labor under Commissioner Socolow.

JUDGE CALDERONE: Yes.

SENATOR SARLO: Do you see any -- as the administrator, and at the same time as somebody -- one of the players on the team?
(laughter)

JUDGE CALDERONE: Well, basically it's been about 10 years under this process. Before then, you had two separate offices. It led to a great deal of conflict. The Legislature, to also save money, merged the two offices and put both offices in one position under the Commissioner of Labor and Workforce Development. I think it's the most effective way to do it. You run the risk of differing policies, differing methods of handling cases or handling the administrative function.

SENATOR SARLO: Okay.

We're going to hear from -- probably some testimony later about adding employer discrimination to the jurisdiction of comp courts. I believe it's the position of the Department that that's not necessary. Is that correct?

COMMISSIONER SOCOLOW: Yes, that's correct.

SENATOR SARLO: Okay. I just wanted to confirm that.

Commissioner Goldman, tell us a little bit about this CRIB board. You had mentioned in your opening statement that it's time for us to take a look at this CRIB board. It seems like they get the ball rolling with setting the rates early on.

How are those members appointed? Should we be looking at a more diverse board? I would like to hear your comments on that.

COMMISSIONER GOLDMAN: I think looking at a more diverse board might be a good idea. (PA microphone malfunctions)

COMMISSIONER SOCOLOW: Do you just want to use this one? (referring to PA microphone)

COMMISSIONER GOLDMAN: Yes.

COMMISSIONER SOCOLOW: It seems to be broken.

COMMISSIONER GOLDMAN: Okay.

COMMISSIONER SOCOLOW: There you go.

COMMISSIONER GOLDMAN: I think using a more -- or appointing a more diverse board probably is a good idea. There are six members of the board presently serving, three are from -- by statute -- from mutual companies, three are from stock companies. That alone is probably an anachronism today. Most of the companies are stock companies today. So the way the membership is constituted probably could be expanded -- beneficially expanded. And even the mechanism by -- of who among the carriers serves probably could be amended to a good effect.

SENATOR SARLO: Do you appoint them? I'm sorry, do you--

COMMISSIONER GOLDMAN: No, I don't appoint them. They are elected by each of the respective groups, the stock companies and the mutual companies.

SENATOR SARLO: So they're elected by--

COMMISSIONER GOLDMAN: They're elected by the CRIB members, by the companies-- Remember I mentioned the insurance companies have to be a member of CRIB in order to participate in the workers' comp system? And the member companies elect their representatives.

SENATOR SARLO: What kind of jurisdiction does your Department have over CRIB?

COMMISSIONER GOLDMAN: It's a supervisory function of a limited type. What it does is-- We review their budget annually. We generally review very high-level requests for compensation of the most senior executives. We do not get involved in the day-to-day operation of CRIB. We review, as I said in my testimony, the proposed rate system and filing for a given year. And that's handled through the normal process within the Department. Our actuaries participate. We have a representative attend the board meetings of CRIB on a nonvoting basis. So that's the nature of the supervisory function that we perform.

SENATOR SARLO: The average rates for \$100 of payroll was \$2.04 in '97. It's only \$2.05 in 2007. Do you see that same trend in other parts of the country -- that the rates have been so stable?

COMMISSIONER GOLDMAN: Well, the difference in the systems-- When you have a more market-driven system, as opposed to the system I described, what you see is a lot more ups and downs as the market responds to different market conditions. We've had a period of years where rates have been going up. But they follow a period of years where rates steadily had decreased. The reason for the rate increases was that if you looked at a chart -- and I think we have one actually distributed to the members of the Committee.

SENATOR SARLO: Yes.

COMMISSIONER GOLDMAN: You'll see that in 1998, claims were being paid at the rate of \$0.85 for every dollar paid in premium. Starting in 1999, that reversed itself, and claims -- and

administrative costs, I should say -- went up to \$1.07 per \$1.00 of premium collected. You could see that that loss peaked in 2001 at \$1.24 for every dollar of premium collected. Rate increases started then. And we're now down, as of the year end 2007, to \$1.02 in loss and administrative cost for every dollar of premium collected.

But the reason that that reflects relative stability is because the rating system, and the rates that are proposed by the CRIB board and approved by the Department really don't generally suggest large ups and downs in the rates.

SENATOR SARLO: So, overall, we do have relative stability when it comes to rates here.

COMMISSIONER GOLDMAN: We have a very, very stable system. And as I said, workers' comp cost is an important component for businesses when they -- because it's a real expense for each of the employers. And to know you have a stable rate when you're contemplating where to locate your business or where to keep your business is a factor.

SENATOR SARLO: Your thoughts on higher-income earners who potentially have a very devastating injury at work, and then they're now finding themselves at this weekly average of about \$700 -- \$740 I believe it is -- maximum \$740. But if somebody is a high-income earner, I'm assuming they're receiving much more than that.

Your thoughts on that cap: Is that cap working? And how does it affect somebody who is hurt on the job who is a high-income earner?

COMMISSIONER GOLDMAN: Well, I think the generous benefits -- the benefits New Jersey presently provides are fairly generous, as I said. I think if there's any consideration that's going to be given to higher

benefits, then you're going to have to look at figuring in higher premiums, because the money has to come from somewhere.

So to the extent that you want to be more generous in the benefit program, you're going to have to -- then employers are going to bear a greater cost on the premium side. And I think there's a trade-off to be considered when you're going to consider that kind of change.

SENATOR SARLO: I mean, that would relate to perhaps a union carpenter who is doing 60 hours a week -- who is used to doing 60 hours a week -- bringing in close to \$100,000 a year, and now finds himself permanently disabled. He will be--

COMMISSIONER GOLDMAN: Yes, he's going to have that benefit capped. But the difficulty, as I say, is you're going to take what is really considered nationally a pretty generous system; and if you want to make it more generous, it's going to come from somewhere.

SENATOR SARLO: I understand.

COMMISSIONER GOLDMAN: So premiums are going to have to be collected to pay for that.

SENATOR SARLO: Open up questions from the Committee members.

Senator Cunningham, then Senator Pennacchio.

SENATOR CUNNINGHAM: Good afternoon.

Commissioner Socolow, in your comments you mentioned that you thought workers' compensation judges should be given more powers similar to those of Superior Court judges. And I might agree with you on what I've read so far.

But I was speaking with a former workers' comp judge recently, and his feeling was that workers' compensation judges -- the newer ones -- were not getting enough training. And he felt that that was contributing to some of the problems. What kind of training do we give new workers' comp judges?

COMMISSIONER SOCOLOW: Thank you, Senator, for the question.

I will actually ask Judge Calderone to answer specifically. We do give six weeks -- or is it eight weeks?

JUDGE CALDERONE: Six to eight weeks.

COMMISSIONER SOCOLOW: Six to eight weeks of training. And I'll let Judge Calderone detail it in particular.

But I just want to say that I think you're absolutely right. Training is essential. I think that our workers' comp judges take their jobs very seriously. But if what we're talking about is the concern about those cases which are delayed, there are just some things that no amount of training is going to help. They've got to have some powers and tools, that they don't have, to move those cases along. So I think that-- I don't think those two are mutually exclusive.

But let me ask Peter to detail the training.

JUDGE CALDERONE: In the workers' comp system, judges come in one at a time, generally. There are 46 judges altogether. We'll get one judge -- that we got earlier this year. We expect another judge at the end of May. So we don't have a pool of judges for a training class.

What we do is, we evaluate each judge's experience. If they've been a trial judge in personal injury, they have a lot of medical experience.

If they've done workers' compensation, they understand value of cases. And we actually gear the training to the individual. And it generally is six to eight weeks, depending on the experience they bring with them. Part of it is in Trenton with myself and other administrative judges, going over the general law, the general cases, the procedures. And during that training, they spend most of their time in our field offices. We have 15 field offices, where they are under the supervision of an experienced workers' comp judge to see how the cases are handled every day. That goes on until we reach a point that we feel that particular judge can handle cases on his or her own.

We also have two seminars every year for judges, one in the Spring and one in the Fall, that's a training session. We have a bench bar conference in December, which is a training session. We have a session coming up on the 23rd of May with the State Bar, in Atlantic City, as part of their annual meeting.

In addition, every new judge is assigned to an experienced supervising judge, which, on a daily basis, that supervising judge makes sure that the judge is equipped and able to do their job. Every nontenured judge is evaluated every year by practicing attorneys. Those evaluations come to us; we look through them. We then meet individually with the judge and go over the evaluations. Each supervising judge has to prepare an evaluation every year of the judge. And if there are deficiencies, those are the areas that we work on. But there is a great amount of oversight and training that goes on.

SENATOR CUNNINGHAM: Okay.

SENATOR SARLO: Senator Pennacchio.

SENATOR PENNACCHIO: Thank you, Chairman.

And it's nice to see that the sky is not falling. (laughter)

What we want to make sure that we do, as part of this legislative body, is make sure that we don't throw out the baby with the bath water. And I think, through the testimony that we've heard -- Commissioners and Judge -- I think we're well on our way to doing that -- or not doing that.

A question for the Judge: It would seem to me that any appeals that people have would be a good barometer of the judge, whether or not the system is working, and whether or not the people in that system are sort of happy with the way that it's working.

Do you have any statistics, within the last five or 10 years, whether the number of appeals have gone up, stayed the same, gone down?

JUDGE CALDERONE: Actually, the appeals to the Appellate Division-- Our cases are trial judge decisions. The route of appeal is the Superior Court Appellate Division. Those numbers have actually gone down -- the amount of cases that are appealed. And because of the standard of review, there are very few decisions of the workers' comp judges that are reversed by the Appellate Division. There may be a legal issue that the judge and the Appellate Division disagree on. The Appellate Division always has the final say. But on facts, credibility, the Appellate Division affirms, as a general rule, the decisions of the workers' compensation judges.

SENATOR PENNACCHIO: Is my premise, through the Chair-- Is that more or less correct that because of the amount of appeals -- either staying steady or going down -- that we're not in crisis mode with workmen's comp?

JUDGE CALDERONE: I don't feel we're in the crisis mode in that area.

SENATOR PENNACCHIO: Okay. And the system is working, obviously?

JUDGE CALDERONE: Yes, sir. (laughter)

SENATOR PENNACCHIO: Okay. It was suggested by Commissioner Goldman that perhaps we get some type of commission to look into-- Because CRIB, for instance occurred during the beginning of the century -- some type of advisory board maybe to look into some of the administrative issues. And we could always use some tweaking out.

But in my conversation with Commissioner Socolow earlier, he told us that we already have an advisory board. Could either one of you maybe tell us why that advisory board hasn't been asked to do exactly what the Commissioner asked before?

COMMISSIONER SOCOLOW: Thank you for the clarification, Senator.

The advisory commission on workers' compensation I think probably would not view CRIB governance as within its scope. That's within our Department. That deals with issues related to the court system and related to the administration of justice in workers' compensation. I think that Commissioner Goldman's testimony is a suggestion about looking at the way CRIB is governed. And that probably would require this Legislature, perhaps with a stakeholders group or whatever you all decide to do, to look at that issue.

I don't know, Steve, if you want to answer.

SENATOR PENNACCHIO: Through the Chair--

I'm sorry.

COMMISSIONER GOLDMAN: The distinction is between the claims processing and the court side of the system, and the insurance review side of the system. There's an advisory committee, I'm given to understand, on the claims payment and court side. There is no existing advisory committee with respect to CRIB governance -- the insurance side.

SENATOR PENNACCHIO: Okay. Where would-- Through the Chair, where would issues like misclassification, fraud-- Would they be under the purview of the existing advisory board to make recommendations, or do you think we should go with a new commission?

COMMISSIONER GOLDMAN: Those kinds of claims I think would fall under the present jurisdiction of the Department of Labor with respect to -- working in conjunction with the Department of Banking and Insurance.

SENATOR PENNACCHIO: And respectfully, why haven't they been challenged to do so? We always want to rule out fraud, respectfully, through the Chair.

COMMISSIONER SOCOLOW: Well, I think that the advisory commission, in fact, has brought up the issue of the underground economy, of misclassification of workers by employers to lower their workers' compensation premium costs, and other forms of fraud. And it's been a constant concern. We've talked about-- I mean, I think that a lot of the initiatives we've developed to ensure -- using data matching and other tools to try to catch these kinds of practices have come before the advisory commission and been hashed out there.

When it comes to providing legislative recommendations, I think that those, such as the ones we're discussing today, are certainly ones that get discussed there.

COMMISSIONER GOLDMAN: But in any case, I have to say that the two Departments have been working together to try to get a better handle on the mismatch between claims filed for particular employees and coverage under insurance policies. We have been doing that.

SENATOR PENNACCHIO: I guess my concern, through the Chair, is that it's like we're waiting for each other to do something.

COMMISSIONER SOCOLOW: No, we're--

SENATOR PENNACCHIO: We're waiting to hear from one of the Departments to tell us that you need legislative action. And you're waiting for us to have these meetings to tell you that we need legislative action, as opposed to having legislative action, if so warranted, especially when it comes to fraud and when it comes to some of the issues of misclassification and such. So we're on the same page with that, through the Chair.

Tax free: That's free from State, local, Federal taxes -- \$740?

COMMISSIONER SOCOLOW: All of it, yes.

SENATOR PENNACCHIO: All of it. So \$700 is \$1,500 before Uncle gets his fair share. (laughter)

Okay. So even though it's not a lot of money, Chairman, I think that when you factor in that it is tax free, it bumps it up a little bit.

SENATOR SARLO: Valid point, very valid point.

SENATOR PENNACCHIO: And the premium paid is entirely by the employer, not the employee.

COMMISSIONER SOCOLOW: Correct.

COMMISSIONER GOLDMAN: Correct.

SENATOR PENNACCHIO: Okay. And finally, I'm just curious as to how the -- because we're talking about underground economy, we're talking about money. A lot of this -- significant amount of this deals with illegal aliens. What are we doing, what can we do, in order to maybe see if we can-- What happens if an illegal alien -- excuse my ignorance -- gets hurt on the job? Can he receive workmen's' compensation?

COMMISSIONER SOCOLOW: Yes.

SENATOR PENNACCHIO: Legally he can?

COMMISSIONER SOCOLOW: Yes, Senator.

The purpose of all of our worker protection statutes is to protect all workers. I mean, we don't make a distinction within the documented status. But often times, what you're going to see there is an uninsured employer, an employer that -- if they're cheating on immigration law, they're presumably cheating on labor laws. They may well be harming that worker in a number of ways related to safety and health. And they're certainly cheating on their taxes.

So the way we address those issues is, again, to go after the employer who is failing to cover their worker for workers' compensation, failing to pay into the unemployment and other social insurance trust funds -- Medicare, Social Security, you name it -- and view that, essentially, as that kind of enforcement action. And what we've done is try to coordinate it so that when we find out about those, through any avenue -- whether it's a wage-an-hour complaint, whether it's an audit through our payroll tax side of the Labor Department, whether we find out about it from a workers'

comp claim, or some other form of claim -- we then share that information with all of the different agencies, each of which might have an enforcement role against that employer. So he doesn't hear just from one agency, he may hear from five.

SENATOR PENNACCHIO: And finally, through the Chair, do we have statistics, do we have actual cases where we've actually gone after these employers when they have hired undocumented -- or haven't paid for insurance with documented, undocumented American citizens -- and we've been able to recoup the moneys that we've paid through the State workers' comp -- medical issues and things like that?

COMMISSIONER SOCOLOW: Yes, Senator, I will get you examples of that, through the Chair, in response to this -- but dozens of cases a month in which we are able to encourage greater compliance by employers in the future.

SENATOR PENNACCHIO: On behalf of taxpayers, I thank you.

SENATOR SARLO: Thank you.

Senator Madden.

SENATOR MADDEN: Thank you.

Commissioner, when you spoke of the CRIB-- Can we just shift back to the CRIB for a minute?

COMMISSIONER GOLDMAN: Sure.

SENATOR MADDEN: There are six members in the Bureau?

COMMISSIONER GOLDMAN: Yes.

SENATOR MADDEN: And who appoints those members?

COMMISSIONER GOLDMAN: They're elected from among the insurance carriers who are members of CRIB.

SENATOR MADDEN: And how many members are in CRIB?

COMMISSIONER GOLDMAN: Two hundred-seventeen-- I don't remember the number exactly.

SENATOR MADDEN: And when they elect an individual to be a member of CRIB, who is the person that sits in that committee -- or in that Bureau? Is it the CEO of the individual company?

COMMISSIONER GOLDMAN: Generally not, no -- generally not the CEO.

D O N A L D B R Y A N: Just briefly, most of the companies who are members of the governing board have a representative that they designate to do that.

SENATOR SARLO: Commissioner, can I just have his name for the record?

COMMISSIONER GOLDMAN: Yes, that's Donald Bryan. He's the Director of the Division of Insurance within the Department of Banking and Insurance.

SENATOR MADDEN: Okay, Chairman? (affirmative response)

Thank you.

Would it suffice to say that the individual member that represents that insurance company is an employee of that insurance company--

COMMISSIONER GOLDMAN: Absolutely.

SENATOR MADDEN: --not just a representative that they hired to represent them?

COMMISSIONER GOLDMAN: That's correct.

SENATOR MADDEN: Do you know if those individuals are compensated for their service in the Bureau?

COMMISSIONER GOLDMAN: They are not.

SENATOR MADDEN: Do you know if those individuals are in any kind of a public pension system -- who serve on the -- at the Bureau?

COMMISSIONER GOLDMAN: They do not participate in the pension system.

SENATOR MADDEN: Do they reap any compensation from the taxpayers of New Jersey as a result of their role in that?

COMMISSIONER GOLDMAN: None that I'm aware of.

SENATOR MADDEN: I believe, Commissioner, you had testified saying that you, by Department, had little oversight over CRIB. However, one of the functions that the Department of Banking and Insurance had over CRIB had to do with setting salaries.

COMMISSIONER GOLDMAN: No, we don't set salaries. What we do is--

SENATOR MADDEN: Approving their salary?

COMMISSIONER GOLDMAN: Yes, for only the most senior people. We don't-- What we do is, we get a budget each year from CRIB. A line item in the budget is compensation for CRIB members. And when we approve the budget, that line item is approved along with it.

SENATOR MADDEN: And it's compensation for CRIB members. And that compensation comes from where?

COMMISSIONER GOLDMAN: CRIB employees, not members. It's compensation for the employees of CRIB. And that's raised through assessment of the industry. The money that pays them is a result of an assessment on the--

SENATOR MADDEN: And this is an advisory arm to the Department of Banking and Insurance -- CRIB is?

COMMISSIONER GOLDMAN: CRIB is not an advisory arm, no. CRIB is a separate-- It's similar to PAPE (phonetic spelling) or CAPE (phonetic spelling). It's a separate body. I think, statutorily, it's a local municipality--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Local board.

COMMISSIONER GOLDMAN: It's considered statutorily a local board. But it is not a part of the Department of Banking and Insurance, and it is not advisory to the Department of Banking and Insurance.

SENATOR MADDEN: Okay. Do you have anything to do with approving bonuses for any individuals that sit on that particular board?

COMMISSIONER GOLDMAN: Again, there's a line item in the budget we get that authorizes bonuses in a total sum. And when we approve the budget, we do approve that line item. We do not approve individual bonuses.

SENATOR MADDEN: If we may shift on the heels of Senator-- Let's talk about fraud for a few minutes, if we could.

What response has either Department contributed toward fraud? And I don't necessarily mean an employer's misclassification. I'm

speaking about an individual who is basically beating the system. Talk to me about personnel assigned to investigate fraud cases, statewide; the number of fraud cases you may generate; what you're case-closing rate is or clearance is.

COMMISSIONER GOLDMAN: Insurance fraud cases are generally handled through the Attorney General's Office of the Insurance Fraud Prosecutor. So the question of cases-- We refer those cases, whether it's my Department or Commissioner Socolow's Department. But we don't investigate the case, we don't prosecute the case. When we uncover evidence of fraud on either side, we refer the case.

SENATOR MADDEN: Is there a threshold before you send the case to the Attorney General? Is there a threshold before you send the case over?

COMMISSIONER GOLDMAN: If we -- no. Certainly not--

SENATOR MADDEN: No matter how small, in terms of--

COMMISSIONER GOLDMAN: We make a judgement as to whether or not we see a practice that, in our view, is deserving of investigation by the Office of the Insurance Fraud Prosecutor. And if we believe it is, we refer it. We don't have a minimum dollar amount involved or a maximum dollar amount.

SENATOR MADDEN: But you do have some internal entity that decides whether or not to pursue a criminal investigation.

COMMISSIONER GOLDMAN: As a general proposition, when we see fraud, we refer it. I don't think we have a particular set of standards. If we see something we believe is fraudulent in the -- in someone engaging in a practice in violation of the law, we refer it.

SENATOR MADDEN: When you refer your cases, I would imagine internally within your Department-- If you gave another Department a hundred cases last year, you would track to see what the results of those cases worked out to be, just so you know whether or not you were being efficient or it was worthwhile on your end to have an entity in place to do such practice?

COMMISSIONER GOLDMAN: We do not.

SENATOR MADDEN: Do you have any idea how many cases you send to the Attorney General or the Insurance Fraud Prosecutor's Office?

COMMISSIONER GOLDMAN: I don't have a number off the top of my head.

SENATOR SARLO: If you could get that number and get it to our Committee, after the fact, we'll get it to all the members.

COMMISSIONER GOLDMAN: I'd be happy to.

And they don't only come from the Departments. Oftentimes they come from other companies that see something wrong and refer it directly to the Office of the Insurance Fraud Prosecutor.

SENATOR MADDEN: Or they come to you and you channel it?

COMMISSIONER GOLDMAN: I'm sorry?

SENATOR MADDEN: They'll report it to yourself or your Department, and you'll channel it?

COMMISSIONER GOLDMAN: Sometimes. They'll often report it--

SENATOR MADDEN: I'm just looking for a number, in terms of the workload and so forth.

COMMISSIONER GOLDMAN: I appreciate that, Senator.

SENATOR MADDEN: I appreciate it.

COMMISSIONER GOLDMAN: We don't necessarily have our arms around the entire universe of them, as I say, because a number of them come from the companies themselves. And they don't go through our Department, they go directly to the Office of the Insurance Fraud Prosecutor.

SENATOR MADDEN: If I may shift, let's talk about the employer that misclassifies and plays games with getting over the system. Do you forward those cases to the Attorney General for prosecution or investigation?

COMMISSIONER SOCOLOW: Yes, Senator. And that was one of the recommendations that I made in my testimony -- is that that practice be now made -- considered to be insurance fraud, because it is, in fact, ripping off an insurance company out of premiums, as well as harming the worker and harming the insurance company.

What we do now, in terms of our existing statute -- those cases are fourth degree crimes or disorderly persons offenses. And so yes, we refer them. They don't have a very high track record of success. One of the things we're calling on you to think about in this Committee is whether there might be additional penalties, or frankly a different avenue to make that something that the Insurance Fraud Prosecutor would look at, as well as other parts of the Attorney General's Office.

SENATOR MADDEN: Commissioner, could you give the Committee an idea of the number of cases annually that your Department sends -- or forwards to the Attorney General? Do you have that today?

COMMISSIONER SOCOLOW: I don't have it today, but we will submit it to you.

Peter, do you have that number?

JUDGE CALDERONE: No, not today.

COMMISSIONER SOCOLOW: We'll get that to you, through the Chair.

SENATOR MADDEN: And this I would ask of either -- imagine the Commissioner from Banking and Insurance may respond.

What is the longest-- For workers' compensation, what is the longest length of time that someone could actually collect a workers' compensation check?

COMMISSIONER SOCOLOW: With permanent disability, for the rest of their life.

SENATOR MADDEN: Could you give me an example of what -- just anything, Commissioner? If I lose my arm, would that qualify for lifetime workers' compensation?

COMMISSIONER SOCOLOW: Yes, if it's a permanent disability, and there's a statutory schedule, absolutely.

SENATOR MADDEN: Okay. If I was a police officer, and I was killed in the line of duty, would my wife receive workers' compensation?

COMMISSIONER SOCOLOW: Yes, there's dependency benefits that are part of workers' compensation.

SENATOR MADDEN: And she would receive that compensation for how long?

JUDGE CALDERONE: Unless there's a remarriage, that would continue for her life.

SENATOR MADDEN: So my wife would receive workers' compensation for the rest of her life, as long as she did not remarry.

COMMISSIONER SOCOLOW: Right.

SENATOR MADDEN: So what we have is-- We have a scenario in a system whereby an individual worker could lose their arm and collect a workers' compensation check for the rest of their life. But a spouse could lose their husband, or a husband could lose their wife, and we don't give them a check as long as they don't remarry -- or we'll give them a check as long as they don't remarry.

SENATOR SARLO: Actually, Senator Madden, if I may, we just did legislation here in this Committee earlier in the year. It hasn't moved yet in full body but -- that would provide -- allow that benefit to continue if an individual is to remarry.

SENATOR MADDEN: That's correct. I'm actually the sponsor of the bill. (laughter)

SENATOR SARLO: Sorry about that.

SENATOR MADDEN: But I just-- Since I had the two of you sitting here, I wanted to save you a trip.

SENATOR SARLO: You wanted to see if they knew. (laughter)

SENATOR MADDEN: I wanted to kind of give you an idea of where I think we have some issues with our system -- at least I do, personally.

With that, I'd like to close by just saying it's been a pleasure speaking to you. It's been very informative today -- both Commissioners.

Chairman, thank you for your time.

COMMISSIONER SOCOLOW: Thank you, Senator.

COMMISSIONER GOLDMAN: Thank you, Senator.

SENATOR SARLO: Thank you, Senator Madden.

I wasn't checking up on you, Senator Madden. (laughter) I was just trying to expedite the hearing here. I wasn't following up -- checking up on you to see what you sponsored.

Senator Kean, for a few brief questions; and then we have to move it along then.

SENATOR KEAN: Thank you, Chairman.

Welcome Commissioners, and Judge Calderone. I really appreciate you coming out.

I'm just going to make some general observations, perhaps more than questions. But I want to start out by saying I've been in the Legislature about six years. And I can count on one hand the number of inquiries or complaints I've had about the workers' compensation system. So for me, that speaks volumes.

I believe, over all, the system works. As Joe Pennacchio said, don't throw out the baby with the bath water.

Can we do better? Of course, we absolutely can do better. And maybe that -- some of the ideas that we're talking about here today will come out of this Committee. And I believe, on a bipartisan basis, we can go forward and try to improve some of these things.

Just quickly on some of these major points. Cleaning up the fraud statute: absolutely. One of the things that creates large numbers of uninsured cases is not enforcing the fraud statute, because employers think they can get away with it. Therefore, somebody that works for them gets hurt, and then we get backlogged on the uninsured side. So if there was a little bit more of a hammer, perhaps we wouldn't have as big of a backlog on the uninsured side.

Some of the other criticisms have been along the lines of the length of time it takes to resolve a case.

And Judge Calderone, I just wanted to address you on this. And it's little bit of a rhetorical exercise. But would it be accurate to say that--

I should point out also, I practice law, and I'm a workers' comp attorney. So I'm also learning here today too -- learning from the Commissioner, especially about some of the CRIB issues, which I did not know about. So it's very valuable that you're all here.

Would it be accurate, Judge, if an attorney such as myself came forward with a case for a petitioner -- for an injured worker -- and appeared before you, and the injured worker was still treating; and you may have adjourned the matter for, let's say, six cycles, 24 weeks, six months, whatever it may be. That matter appears on the court listing. That's on the docket; there's a CP assigned to it. We come back in six months. The person is still treating. The attorneys come back into court; and the attorneys will agree, and Judge Calderone would say, "Yes, I agree. We need to adjourn this for another six months, because he's still treating." Under this hypothetical, after a year of treatment, after we've been to court

perhaps three or four times, we come into court, and we say, “The parties agree, Judge, that it’s now time to get medical exams.” So it takes several months to get medical exams. And as you said, the statute says it can be after 26 weeks. The insurance company can say, “Well, wait a minute. We’re not going to get medical exams for 26 weeks.” And the reason for that is so that the insurance company has an understanding of what the injuries really are. If you smash your finger with a hammer, it gets a lot better after 26 weeks. So you can more accurately figure out what the permanency is.

So now we’re talking about a year-and-a-half later, with the matter listed on the court calendar, and the injured worker has not had a chance yet to even go to the doctor to find out what the permanent injury could be. So by definition, we’re talking about probably two years, in this hypothetical, just to get before a judge for you to assess permanency. Is that outline about accurate in some cases?

JUDGE CALDERONE: Every case is different, as you know, Senator, since you’ve been in our court many times. But it’s the critical -- because we’re dealing mainly with permanent disability -- whether it be partial or total -- that we have an evaluation of the current status of the individual and what they’re entitled to in fair benefits. You don’t want to prematurely evaluate them. And also you don’t want the case to linger where they’re not getting rightful benefits.

The reason we schedule them -- and it may seem -- the three week cycle -- is to keep track of everything. We want to make sure, on a periodic basis -- and why they keep coming up -- that the parties are diligently moving the case, the status of the petitioner, whether there’s a

Medicare issue -- that everybody's doing what's essential to have that case closed in the most efficient way.

SENATOR KEAN: Thank you.

And then just a little bit -- and this for either the Commissioner or yourself. With respect to the Second Injury Fund and the Uninsured Fund -- because there have been some criticisms, justifiably so, that some of those cases take a long time -- can you think of any way we may be able to intervene, as a Legislature and as a State, to improve that system?

JUDGE CALDERONE: Well, in August last year I set a list of recommendations for the judges and the parties to move Second Injury Fund cases. It would take a lot more work on the petitioners' side, it would take a lot more work on the judges' side. We have seen some good results. We've seen, last year -- 2007 -- we had the most Second Injury Fund cases closed in the last 10 years. So I think with concerted efforts by the party to make sure the exams are done, to make sure that everybody goes into the hearing in the right frame of attention--

Also, from my experience -- and I have Second Injury Fund lists -- you've got to hear the petitioner's testimony in a lot of these cases. If you hear the individual-- And that's one thing I recommend to judges and the parties: Put the petitioner on the stand and hear from the individual. I would say that's the most efficient way to solve a Second Injury Fund case.

SENATOR KEAN: And perhaps there are ways we can address that with some of the things we're talking about here today.

Very briefly, Commissioner Goldman, you were talking about CRIB. Does CRIB have the oversight ability, like the Department has, with

regular property and casualty companies, to oversee the regular reasonable rate of return issues? In other words--

COMMISSIONER GOLDMAN: No, that's done at the Department.

SENATOR KEAN: Who is charged with that task?

COMMISSIONER GOLDMAN: Our Department.

SENATOR KEAN: The Department of Insurance?

COMMISSIONER GOLDMAN: Yes.

SENATOR KEAN: So just like you look at property and casualty companies?

COMMISSIONER GOLDMAN: That's correct.

SENATOR KEAN: Okay.

I'm just going to close with-- I know it's going to come up later, but some people are advocating for, I guess, a two-tiered system. For employees that make a lot of money, certainly a case can be made that somebody who is making \$1,500 a week should get a higher per weekly -- in his or her temp rate, which is now about \$760 a week, I believe.

My one fear -- and I find that there is an analogy here that can be made with health insurance. If we look at health insurance, and we take out, let's just say, 20-year-olds who don't smoke, and put those individuals in a pool over here, and take that particular company and assess a risk to the rest of those employees, we could look at a situation where we're cherry-picking people, creating an untenable situation for that company to pay for health insurance for those other employees.

I'm concerned that the same thing doesn't happen if we cherry-pick in workers' comp. It certainly can be unfair for somebody making

\$1,500 a week to get only \$750 in pay. It's a problem we have with workers' compensation. As an attorney, sometimes the hardest thing I have to do is -- when somebody comes into my office, and they've fallen off a roof or something serious of that nature, and you tell them, "Okay, you've had a back surgery now -- serious surgery. It's going to change your life probably forever. You're not going to be able to climb that ladder with heavy weight anymore, so you're going to have to find something else to do." And guess what? You're going to walk out of the workers' comp court with somewhere between \$20,000, \$30,000, maybe \$35,000 as an award for a serious back surgery. And that's a common occurrence. And the reason for that-- And as I said, it's very hard to explain to people. And the reason for that is so that there is a benefit there and that you don't bankrupt the system. And it's a very important point for everybody to take away from today.

And as I heard--

Folks, New Jersey is doing something right. New Jersey workers' comp is going pretty well in New Jersey right now. From what I've heard from the testimony, we're right in the middle -- even higher -- in the benefits that we pay out to injured workers. And as far as where we are on the other side of it -- on the premium side of it, we're right about in the middle. So, for me, that's a success. When you hear about New Jersey being number 48 and 49 in most categories, I just think that we need to look long and hard at this before we do anything rash.

Thank you.

SENATOR SARLO: Thank you, Senator Kean.

Thank you.

I think many of us -- you heard from many of us. I think we all believe the system is essential. It does not need any wholesale overhaul. But we are going to be coming up with some minor recommendations to improve it. We're going to look for the cooperation of both your Departments to work with us on that, moving forward.

COMMISSIONER SOCOLOW: We look forward to working with you.

COMMISSIONER GOLDMAN: Thank you, Senator. We look forward to it.

COMMISSIONER SOCOLOW: Thank you, Senator.

SENATOR SARLO: At this point in time, Senator Sweeney would like to address the Committee.

You can do it from there, Senator, if you would like.

And then he will be followed by Justice Coleman.

S E N A T O R S T E P H E N M . S W E E N E Y: Thank you, Chairman Sarlo.

And thank you for taking up a very important issue that I regret I didn't do when I was the Chairman of the Labor Committee.

We're proud of our workers' comp system, but it absolutely, positively can be better. And if the press didn't shine the light on this issue, I don't know if we would be talking about reforming the CRIB board right now, which I think is a positive. I think employers and employees need to serve on that board, beyond just insurance companies.

Improvements can absolutely be made to the system. There are too many cases that do fall between the cracks. If you're one of those cases in the 15 percent that go -- be on that end-- I've been on that end as an

iron worker with a bad back, struggling -- when you're trying to struggle to make ends meet for your family. One case is too many. I understand it is impossible to be perfect, but we can do better.

I agree we need to give workers' comp judges stronger enforcement tools, such as contempt powers to punish businesses that fail to maintain proper coverage. If a business is found to violate the requirement for coverage, the court should be allowed to issue stop work orders and have the ability to impose fines that have real teeth. Substantial fines should also be levied for workers that aren't getting payments that they're entitled to from insurers.

Along the same lines, there should be -- aggressively combating fraud, in making sure workers' comp is a fraud priority for the insurance company fraud prosecutor. And I was actually surprised that we didn't know those numbers, because I think that's something very important. I think that's something that we all should really know.

And when you get those numbers, Chairman, I would love to get a copy of them.

SENATOR SARLO: Absolutely.

SENATOR SWEENEY: Do we have enough workers' comp judges? Are there vacancies? I'm also told there are only five Deputy AGs assigned to represent the Second Injury Fund, which is where most of the complex cases are handled.

The attorneys involved in these report that more deputy attorneys are needed. I don't know if that's falling on deaf ears or not. It's not going to add to the price tag for the State, because that money for the Deputy AGs comes from the Second Injury Fund.

Again, Chairman -- and I'm not going to be long, because you just had a long testimony between the Commissioners. The system isn't broke, but it absolutely can work better. And we need to ensure that workers get treated quicker.

See, Senator Kean is a workers' comp attorney. I'm a union leader. I see people come into my union office day in and day out. Unfortunately, they got hurt on the job. And because of the process with the insurer, more often than when you get into the system-- And this needs to be looked at even -- this is, I guess, the most important thing. The worker gets such a runaround until he gets into the system, he has to go get the lawyer to get into the system to get things resolved, and it drives costs up.

So I would hope that as long as -- as far as the workers' comp piece is looked at, we look at the process before the worker enters the system itself. Because I think that's extremely important, because I think you could avoid a lot of cases where workers have to go get attorneys.

Chairman, thank you for your time in allowing me to address the Committee.

Thank you.

SENATOR SARLO: Thank you.

Any questions?

Senator, would you mind taking a question?

SENATOR SWEENEY: Absolutely not.

SENATOR SARLO: Okay.

SENATOR PENNACCHIO: No question.

I just want to thank you, Senator, for your testimony, and just to echo my agreement with most of what you said. It would be nice to-- One of the only concerns I had was that we had an advisory board that, quite frankly, is not advising us. So whether we have to look at that advisory board, or set up some other type of commission -- that way we don't need a State Senator to come in and tell us what the deficiencies of the system are afterward. I think that's part of the legislative process that we're looking at right now, besides tweaking out some of those fraud issues, and some of those misclassification issues, and some of the other very important issues that you had mentioned, Senator.

SENATOR SARLO: Thank you.

Senator Kean, comment?

SENATOR KEAN: Yes.

Thank you, Senator Sweeney. And I agree with you 100 percent. When there's somebody that is getting the runaround from the insurer, and their calls aren't being answered, and they need treatment -- absolutely there has to be some kind of a mechanism in place for those people to -- for those injuries to be addressed and for them to get relief.

SENATOR SWEENEY: And, Chairman, honestly, the system is a good system. We have problems with it. I actually feel that really the biggest problem is on the insurers end though. And that's why this CRIB board needs reform.

Thank you, Chairman.

SENATOR SARLO: Thank you, Senator Sweeney.

I'd like to bring up, now, Justice James Coleman, formerly of the Supreme Court, and now New Jersey Workers' Compensation American Inn of Court, an expert in workers' comp here in New Jersey.

And we're going to have him followed by the Association of Compensation Judges, Richard Hickey and Rose Mary Granados.

J U S T I C E J A M E S H. C O L E M A N J R.: Mr. Chairman, members of the Committee, I'd like to express my gratitude to each one of you for affording me the opportunity of appearing before this august body today.

I'm indeed privileged to be here, privileged in the first instance because I have lived long enough to have seen tremendous evolution occur within the workers' compensation system. I go back to my first appointment, which was in 1960, as the supervisor of the Second Injury Fund, and also served as a referee of informal hearings. And I can tell you that even at the early days, we started a movement to try to make the administration of workers' compensation, and the lawyers and judges working the system, develop a high level of professionalism.

We believe that we gradually or incrementally achieved that goal. Prior to the year 1963 or '64, no workers' compensation judge had ever been elevated from a judgeship in workers' compensation to the so-called *upper court* system. At that time, the upper court system looked slightly different than it looks now, but they're all constitutional courts. Judge Harold Ackerman was the first one, and I was the second one. Judge Ackerman went to Union County, as did I. And he moved from the Union County Superior Court to the Federal court; and the rest is history with me. All of you probably have some familiarity with it.

I say that because I'm very proud to say I've seen how the practice of workers' compensation has become very professional. And it became that way largely because the lawyers and the judges were devoted to trying to improve the system at every opportunity. Because of that, I was proud to allow my name to be used to be the name of the largest Inns of Court in America. The New Jersey Workers' Compensation Inn of Court is the only one in America that operates statewide, and it is the largest one. And we have a lot of judges participating. And we believe very firmly that that is another way, through the cooperative efforts of all of the masters in Workers' Compensation Inn of Court, to help improve the skills of the persons participating.

Along similar lines, while I was in the Supreme Court, the Supreme Court -- along with other action -- developed a program to permit workers' compensation attorneys to be certified as workers' compensation attorneys. That was a pretty arduous process. And many of the lawyers today belong to that.

I heard some recommendation with respect to how to improve the system. And I too think that, although I've seen many gains that have been made, many improvements perhaps can be made in the future. But as you go about that, I urge you never to lose sight of the fact that when the 1911 Workers' Compensation Act was enacted, it was done so with a spirit of compromise, that was a give and take that had to occur for the worker to give up a common-law tort right of action in the interest of trying to have a certain compromise right of benefits flowing from the Division of Workers' Compensation. And it is in that give and take that, if you begin to cherry-pick to try to focus too much on the income of one individual, you will

begin the process that, I think, may lead to the ultimate destruction of the system. That compromise has been made, and that compromise is what has to continue in the future with some tweaking here and there.

I would suggest that one of the issues, that continues, existed when I was a judge at workers' compensation. And that is: how to deal with the partial trial of the so-called *complex* cases; and there are very complex cases. Should they be on a continuous basis? Well, I can say to you that the partial trial concept is not relegated exclusively to the Division of Workers' Compensation. That same idea is currently operating, rather well too, in the upper Superior Court system in the Family Division, as well as in the general Chancery Division.

But one thing that may be -- one area in which an improvement may be made is to place a time limit on the beginning of a trial until the end, hypothetically. I suspect that it will be very difficult to justify trying a case for longer than a 12-month period from the inception of the trial. And I think it's also a little difficult not to have a decision rendered within some reasonable fixed period after the trial has ended. In the Superior Court system, for example, the judges are required to report to the Administrative Office of the Courts cases that have not been completed. In other words, you've reserved decision for a period of time. That report goes out every 30 days.

And finally, I suppose I may be guilty of something that once got me almost in trouble, and that is to make a recommendation. Because sometimes, when you make a recommendation, you are the person looked to the quickest to try to carry it out.

My recommendation is that maybe -- need to have a little tweaking with the vetting process. I say that to you only because I currently serve on the Governor's -- serve as Co-Chair of the Governor's Judicial Screening Panel, in which we look at all of the candidates and make a recommendation to the Governor, based on a number of factors, on whether or not we believe the individual is qualified to be a Superior Court judge.

There was a point, I believe, in which a similar system existed for workers' compensation. Be that as it may, I know that the process had waxed and waned over the years. For example, when I was appointed, I had a private audience with Governor Hughes. That may not happen all the time now. But I think you do need a vetting process that may need a little improving. And that can happen. For example, for the Superior Court judges, they have a county bar and State bar. But there is a workers' compensation section of the State bar. And I think that's one area that could become involved in the vetting process. Because most of the members of that section of the bar are active workers -- practitioners -- workers' comp practitioners on both the plaintiff and the respondent side.

With that in mind, I will entertain any question that you have.

And I have with me Frank Petro, who is an outgoing president of the Coleman Workers' Compensation Inn of Court, and he also serves on the National Board.

SENATOR SARLO: Thank you.

Thank you, Justice Coleman. And we know you've had a long, distinguished career both as a judge and also in the workers' comp field.

You've answered my question. My question was going to be dealing with vetting of workers' comp judges. And as a member of the Judiciary Committee -- serving in my seventh year on the Judiciary Committee, we finally now are bringing in workers' comp judges for interviews. It's something we haven't done in the past. And I believe we should be doing that.

And just to make it clear, you believe that nominees for workers' comp judges should go before the State bar and the county bars. Am I correct in that?

JUSTICE COLEMAN: Well, I said that if you wanted to-- The county bar may be a little more problematic, because not all of the counties have that many practitioners, perhaps. But at the State bar level -- and that may be sufficient -- they have a State bar section on workers' compensation. And I'm satisfied that the President of the Bar Association could form a committee to do the vetting in a similar fashion, yes. That's one of the recommendations.

SENATOR SARLO: There's been many individuals who have come before the Judiciary Committee that we have questioned how they got there, why they got there, and their ability to serve as workers' comp judges; and now have turned out to be excellent workers' comp judges. And I've heard it now, during my research on this issue for the past couple of weeks -- different names that have surfaced that have just turned out to be excellent workers' comp judges. So I believe more vetting with the State bar is a good thing and would be helpful.

Training: Do you think they're getting enough training?

JUSTICE COLEMAN: Well, I heard the Director explain the training. And that is part of the same policy that was established when I was a workers' compensation judge. We had training. We sat in bunk every month. And as part of that monthly meeting -- involved training -- training to the extent of having legal discussion, not so much hands-on training. But there was a training element of that. And the Director has pointed out that that is an ongoing process.

For the Superior Court judges, there is a baby judge school that will be convened in the Fall of each year and, if enough new judges are appointed, in the Spring also. And it works remarkably well.

When I was a workers' compensation judge, I took advantage of some of the schools -- or training -- educational training courses that were being offered on a national basis. For example, I spent two weeks, over several Summers, taking such courses. And I believe they may still be offered, much like the National Judicial College, that has its home base in Reno but conducts seminars pretty much all over the country. Judges can take advantage of that. Mind you, there is a cost factor that is connected with that. And there will, undoubtedly, be a cost factor connected with having more deputy attorney generals handling Second Injury Funds, as well as more deputy attorney generals working with the fraud section.

SENATOR SARLO: One final question for me: The system is working?

JUSTICE COLEMAN: I think it's working remarkably well.

SENATOR SARLO: Thank you.

Senator Kean, anything?

SENATOR KEAN: One question, Chairman.

Thank you, Justice. Welcome.

Along the lines that you're talking about, do you think there should be any changes in the tenure differential between Superior Court, for instance, and workers' comp judges?

JUSTICE COLEMAN: Well, as I recall, the workers' comp judge is appointed for five years, is it?

SENATOR SARLO: It's three years?

JUSTICE COLEMAN: Three years.

SENATOR SARLO: Just for the record, it's three years. Superior Court judges are seven years.

JUSTICE COLEMAN: Okay. After three years, what happens? Probation?

SENATOR SARLO: Renomination by the Governor, and get reconfirmed by the Senate Judiciary Committee.

JUSTICE COLEMAN: And do you -- at that point, you have tenure?

SENATOR SARLO: At that point in time you have lifetime tenure.

JUSTICE COLEMAN: As a matter of fact, I think the workers' compensation system may be the better of the two in that respect. If, for example, you serve in the court system for seven years and are not reappointed, that lawyer will have virtually no practice to which he or she can return. Three years, maybe you can pick up a few of your old clients. But I can't imagine the difficulty one will have trying to reestablish himself or herself after seven years.

But I do like the system that you eventually do get tenure for good behavior. And you can tweak it a little bit, but I prefer-- If I was going to be denied tenure, I would much rather have it at the end of three years than at the end of seven years.

SENATOR KEAN: Thank you.

SENATOR SARLO: Senator Pennacchio.

SENATOR PENNACCHIO: Thank you, Chairman.

Thank you, Your Honor, for gracing us with your presence today.

You had described the original statute as being a compromise. And you had shown some concern about us not overreaching our boundaries where we can hurt the system.

Can you specifically tell us some of those areas where we should tread very, very lightly where we actually could hurt the system?

JUSTICE COLEMAN: Well, someone mentioned the cherry-picking. As a workers' compensation judge, I was always empathizing with the individual who was a high earner, because I knew that individual was not going to receive, for temporary disability -- and that's where it really matters, because in New Jersey, we have the whole-man system, whole person system. But temporary disability is designed to replace lost wages. So the individual who is a high earner -- and for a temporary disability payment, that individual would get the maximum if the wages were high enough. And for some of those persons, the maximum will be somewhere in the 50 percent of the gross weekly income from the job.

If you begin to cherry-pick to the extent that you begin to try to compensate that individual more -- and I'm not suggesting there isn't a

substantial loss there -- you may very well begin to have a negative impact on people on the other end of the spectrum, because the cost has to come from some place, as was pointed out. And this was part of the compromise. It was known from 1911 until the present day that some individuals would have benefited better in the tort system in the Superior Court, suing the employer. But the risk was that if you sue the employer in the Superior Court, you may end up with zero. So this is all part of that continuing compromise. And this was repeated more recently in a couple of Supreme Court decisions, which I participated in too.

SENATOR PENNACCHIO: Thank you.

SENATOR SARLO: Thank you, Justice Coleman. Thank you for being here today. And we look forward to calling upon you to -- call upon your expertise in this field as we move forward.

JUSTICE COLEMAN: Thank you.

SENATOR SARLO: Thank you, Justice Coleman.

We're going to ask Richard Hickey III and Rose Mary Granados, Association of Compensation Judges, to come up. We're going to ask you to keep your remarks brief, talk about--

And moving forward, we're going to ask everybody-- I think we have a really good historical perspective of what the system is all about. We now want to hear from everybody involved about recommendations or where you think there's a potential problem in the system.

HONORABLE RICHARD E. HICKEY III: Mr. Chairman, members of the Committee, my name is Richard Hickey. I'm the Administrative Supervisory Judge for southern New Jersey.

I've submitted a written statement to you, and I'm not going to go into it in detail. But I just want to point out that I'm one of those individuals who had no background in workers' compensation. And I'm proud to say I'm the only one teaching it at the law school level in the state right now.

HONORABLE ROSE MARY GRANADOS: And I, on the other hand, have spent almost my entire career in the system. I was a Deputy Attorney General representing the Second Injury Fund for many years immediately before I went on the bench. And now I am also an Administrative Supervising Judge, and I supervise Bergen, Passaic, Hudson, Somerset, Hunterdon, and South Warren counties.

JUDGE HICKEY: We have submitted a writing to you, so we're going to be very brief.

Actually, having read the articles in the paper, we were here -- probably initially thinking we were here to defend ourselves. I'm happy to say from the testimony thus far, and the questions that I've heard, that probably isn't necessary.

But I would say to you that, as the Association of Workers' Compensation Judges, we really do welcome further review for the appointment of judges. We don't select our own, but we do try to educate our own. We do have not only the continuing formal training that was mentioned by the Director, but also the ongoing training that occurs within the vicinages. And most of the vicinages have anywhere from two, to four, to six judges sitting. And from time to time during the course of the week, there are discussions between the newer and more experienced judges. So that training does continue at all times.

The Inn of Court has been a marvelous addition to training, not only for the attorneys, but also for the judges. It also gives us a great forum to discuss changes and things we can do from an administrative standpoint to improve the system.

Rose Mary.

JUDGE GRANADOS: Several of the items that we suggested have already been mentioned: the Medicare issue, the Uninsured Employers Fund. We feel that that could be streamlined a bit because the procedures are very cumbersome at present. The more stringent enforcement of the compulsory insurance requirement has already been touched on.

We do agree about the schedule of permanent disabilities to be revised as it regards hand and foot injuries. Now, to lose your hands, particularly in this day and age with computers and so on, it knocks out a whole range of occupations for injured workers.

We also would urge the appointment of an additional Second Injury Fund Deputy. Their caseload is extremely heavy. I have to say that when I was with the Second Injury Fund, which is 16 years ago now, there were six deputies. Now there are only five. And the caseload is a bit heavier, and the complexity is way up. So I think that would be really helpful.

And enforcement of our orders and so on-- It's not really a huge problem in numbers of cases. But we certainly would welcome additional enforcement powers.

Anything else?

JUDGE HICKEY: The only other thing I'd like to add is that while we schedule cases every three weeks -- sometimes six weeks,

sometimes nine weeks -- those cases will go on for a multitude of reasons. Some of those reasons are based solely upon the case not being ready. But in some cases, it's because of multiple injuries. A person goes back to work, is injured again, a new claim is filed -- same part of the body. The first case doesn't move. So now we have two cases running through the system. I think we have to do a better job of at least tracking our cases based on when they're ready to be moved as opposed to when they're filed.

SENATOR SARLO: Thank you.

I'm pleased to hear that your Association is in support of the same type of peer reviews as the Superior Court. I am pleased to hear that -- whether it's through the State bar -- at the county level or the State level. So I am pleased to hear that.

Going into the contempt issue, giving more enforcement powers to workers' comp judges-- And I think that's-- When you read the articles published in the newspaper, they highlighted, of course, probably a half-dozen to a dozen of the worst potential cases that have been out there out of 200,000 of them.

I received a letter today from an individual -- I won't mention his name. But it just says, "I am one of the persons named in the *Star-Ledger* story. I am sending this to you in hopes that it will help you understand what is really happening. My comp insurance company, in defiance of the State law -- multiple judges' orders -- has again cut me off -- no payments now for three months. Judges Coons (phonetic spelling), Calderone, Dietrich have all previously ordered this nonsense to stop. And indeed, Judge Dietrich has fined Universal Underwriters in the past for this same problem."

So what I'm hearing is, you could fine these potential bad characters that are out there, but that is it. There's no penalty. You don't have the ability-- If you could just explain. You don't have the ability to take it to the next step. Explain it to the Committee.

JUDGE HICKEY: Well, we do not have contempt powers. That's first and foremost. The statute, however, does give us those powers. The Appellate Division, in a decision 20 years ago--

JUDGE GRANADOS: More than that.

JUDGE HICKEY: --more than 20 years ago, indicated that we did not have those powers, that they were judicial in nature and not associated with an administrative body. So we don't have contempt powers.

We have certain sanctions that we can impose. Most of those are monetary sanctions, most of them really do not impact most of the carriers. Delay means money. Monetary sanctions don't make up for the loss of time.

SENATOR SARLO: Senator Pennacchio.

SENATOR PENNACCHIO: Real quick: I'm a little concerned about that three-week cycle. Is it by statute that they have to come back within three weeks?

JUDGE HICKEY: No.

SENATOR PENNACCHIO: You don't have that discretion -- or you do have the discretion to say, "Well, we have a holiday coming up within three weeks, so I don't want you waiting six weeks. We'll take you back in two weeks."

JUDGE HICKEY: We can do that.

And I don't mean to jump in.

JUDGE GRANADOS: That's fine.

JUDGE HICKEY: We can do that. We have the authority to say-- You have a case that's resolved for example. We want to put the case through, and the case isn't coming up for another six weeks. "Judge, would you list the matter early?" And we'll take it the next time the respondent's attorney is in court. And of course we'll do that whenever possible.

The problem is that the three-week cycle -- and I'm going to really defer to Judge Granados, because in my understanding of how that developed was to -- as a cost-saving factor for the respondents. Those lists are scheduled around attorneys or insurance companies so that they have the same day every three weeks, or the same days every three weeks before a particular court. Thereby they -- not having to have maybe twice as many attorneys doing the defense work. So it's a cost-saving factor to allow them to come in on a particular day. But because of holidays, because of vacations, we try to work around that as best as possible.

Rose Mary.

JUDGE GRANADOS: We do have the authority, especially in a med temp motion, an emergent situation. We can have the attorneys come in more quickly and resolve things more quickly. And as Judge Hickey mentioned, any time a case is settled, it's pretty easy to get a judge to add it to his calendar -- his or her calendar at any time.

SENATOR PENNACCHIO: How big of an issue, is it an issue, with people having to wait three, six, nine weeks--

SENATOR SARLO: Is it bureaucratic, or is this kind of an understanding between the insurance companies and the petitioners? It sounds like it's an informal agreement.

JUDGE HICKEY: Well, I don't know if I could classify it as an agreement, but it is a procedure. And the procedure is one where it doesn't allow cases to fall off the earth. Eventually they're going to come back, whether it's in three weeks, six weeks, nine weeks. You're going to see them again. But you don't want a case coming back every three weeks when somebody is under medical treatment. There is no point in having an attorney show up in court every three weeks when the client is going to treat for the next six months. The petitioner is not required to be there, nonetheless, so the petitioner is only going to be there when the case is either going to be tried or settled.

SENATOR PENNACCHIO: The only concern I have is that -- not that there is an ongoing medical issue that has to be addressed, and that's why you're waiting -- but somebody who has an urgency or wants to see finality to the case -- that he doesn't have to wait three weeks, six weeks, nine weeks all because of the bureaucracy, or because of the holiday, or whatever. That is within your purview, your discretion. You can-- A judge can say, "No, we can get you in next week, and we can settle this. We can settle this now. You don't have to wait."

JUDGE HICKEY: I would say within a few expectations, that is going to happen 90 percent of the time.

SENATOR SARLO: Senator Kean.

SENATOR KEAN: Thank you.

Just to touch on that, Judge Hickey, you also have the right to mark a case *no adjournment*. So if the attorneys come in, and you think it's being delayed, delayed, delayed, you can mark it, "Three weeks from today, no adjournment," so there's no excuses, which helps move the case.

JUDGE HICKEY: That's true.

JUDGE GRANADOS: Yes.

SENATOR KEAN: Just the only other point: Do you believe that the -- and I wasn't familiar with this -- but that the Appellate Division case of 20 years ago or so -- do you believe that it should be restored to the original statutory intent to give you judges some more powers to issue contempt orders, things like that?

JUDGE HICKEY: I think the more authority we have, the better we can control the lists. But I'll leave that to the good discretion of the Legislature.

SENATOR KEAN: Thank you.

JUDGE GRANADOS: The only thing I would request from the Committee is that, whatever changes you do make -- we've lived with the system for a long time. We'd like to be a part of the discussion, just as we are today, not in the media but with the Committee itself.

SENATOR SARLO: Absolutely.

Thank you.

JUDGE GRANADOS: Thank you.

SENATOR SARLO: Thank you for being here.

At this point in time, we're going to invite up Mike Van Wagner and Bill Barrett, from New Jersey Manufacturers Insurance Group;

and along with them, John Rogers, from New Jersey Business and Industry -- and that panel.

Moving along, we have New Jersey Manufacturers here, as you are the largest provider of workers' compensation insurance. And from all our research, we know we're not referring to you when we refer to bad characters in the industry. So we know you take this seriously and do a very fine job of administering this program as an insurer. So we'd like to hear from you.

MICHAEL J. VAN WAGNER: Thank you, Mr. Chairman.

Chairman Sarlo, Vice Chair Madden, and members of the Committee, my name is Mike Van Wagner. I'm with NJM for 25 years, and currently serve as Vice President of Legislative Affairs.

I'm joined today by Bill Barrett, who has 27 years with NJM. Almost all of those are on the workers' comp side. And Bill heads up our workers' comp legal division, so he is very intimately familiar with the workers' comp legal system.

I do want to say thanks for inviting us to participate. It's an important discussion. And by way of brief background -- the day has gotten long, I appreciate that -- I want to remind you that NJM exists because of workers' comp. And by that I mean that in 1911, the workers' comp law was passed. In 1913 NJM was formed by business owners who saw a need for an efficient, effective approach to insurance. And the mission of the company then, and it's always been the mission of NJM, is to operate in the inclusive interest of our policyholders. Whether it's comp, auto, homeowners, or whatever line it is, it is our policyholders who we represent, and it's who we act on behalf of.

When it comes to comp, you cannot separate service to your policyholders with service to their injured employees. We will have failed our insureds if we fail their injured workers. So the service we provide there is prompt, effective, high-quality, caring medical attention. That means a lot to us. That's what we do. It also extends to loss control services. We have a large engineering department that is out with so many of our insureds on a regular basis to see about ways to improve workplace safety. It makes a difference. Even in an economy that has now shifted from manufacturing to service, there is a lot of good that is done by good loss-control engineering. We do that. It's in the way we handle the bills that come in, the review there. It's in our SIU, our fraud department. We don't have a lot of it at NJM, but it exists everywhere, and we're after it.

That's the service, that's the commitment we've made to our policyholders. And again, in comp, you can't separate service to policyholder with service to their injured worker. We wouldn't be doing anybody a service there. That's the NJM background.

Thank you for that.

To the system, you've heard so much about it today, and you've heard all about its strengths. I don't want to be repetitious. It's a system that works well. It reflects a delicate balance and a compromise between the need to take care of injured workers and to keep the cost to business at a manageable level.

You've also heard, with respect to the rating system today, that New Jersey, relative to a lot of other states, has a very stable workers' comp rating atmosphere. I think one of the key highlights of that is that it is reflective of the loss experience by the workers' comp insurers. Injuries

occur, payments are made. Those go into the data that is sent to CRIB. CRIB is the statistical agent that tabulates that. The rate then is promulgated based on actual experience. That's what an administered pricing system does, and that's what helps keep that rate stable even as health-care costs have continued to rise by double digits. Fortunately, we've seen some offset in the frequency of losses to help offset that a bit.

It's a stable system. The rates reflect the experience. Twenty-third out of 50 states is how we rank. Comp is one of the few areas, as you've heard already today, that this is not a competitive disadvantage for us when we try to attract business. It's a competitive advantage, relative to our near neighbors, Pennsylvania, Delaware, and New York. John Rogers, I'm sure, will emphasize that point a bit more.

Finally, I want to talk just a little -- I want to emphasize a point on the medical portion of workers' comp. So much of this has been focused on the disability, and that's important. Appreciate that New Jersey's workers' comp system provides unlimited medical benefits, whether it's one treatment to the doctor and you're okay, or whether it's a lifetime of acute care. There's no co-pay, there's no deductible, there's no contribution to the premium for that coverage. Employees have, in today's climate with the health-care crisis that we face -- comp is, by far, the most generous health-care coverage that you can have.

We have people, as I said, that can be acute care for a lifetime that have claims that are in excess of \$10 million. We've rebuilt homes for people to equip the home so that they can exist in that home. That's what comp does. It is remarkable in the current system, and maybe even more remarkable than is the stability, overall, of our rating system, when you

consider that unlimited medical. It's a critical part of the system, it's the promises we make to the injured worker. That's part of the compromise that the Judge just touched on -- trade off for giving up the tort option.

Finally, I would be remiss, and we would be remiss, if having 95-plus years experience in this system, and 18 attorneys who are certified by the U.S. Supreme Court as workers' comp specialists, if we didn't acknowledge what we believe to be a judiciary -- with respect to workers' comp -- that is fair, hard-working, conscientious, and balanced in the approach and, I think, always acts with the interest of the injured worker, first and foremost, in mind. They are a good system of judges.

SENATOR SARLO: Thank you.

MR. VAN WAGNER: Finally, I would say that we want -- we recognize that in all systems -- our own -- there's opportunity for improvement. And where there is, we're happy to be a part of that discussion. Some suggestions have been made today that we'd be happy to be a part of.

Thank you, Mr. Chairman and members.

SENATOR SARLO: Thank you, Mike.

John Rogers.

JOHN D. ROGERS, ESQ.: Thank you, Mr. Chairman, members of the Committee.

My name is John Rogers. I'm with the New Jersey Business and Industry Association. The Association has over 23,000 business members, and we employ over 1.2 million workers in the state.

We are the payer of the system. Of all the folks you're going to hear from today -- they can talk about the cost to the system -- my members

pay the freight. As Mike alluded to, there are no contributions from the employee in workers' comp. It's all done by employer premium, and my members are the folks who pay those premiums.

We have a very large stake, Mr. Chairman, in assuring that the system is effective for the worker so that they can return to the workplace as soon as possible, and also that the care is rendered as efficiently as possible.

I don't want to belabor the point about New Jersey's ranking as 23rd. But I can't think of any business climate indices where we are average. New Jersey is the bottom performer in virtually every other category, whether it be taxes, whether it be health care, whether it be regulation. It's good to be average. New Jersey should strive to be average in a lot of these costs and concerns.

And the remarkable thing about that is, as you've heard from Commissioner Goldman and Commissioner Socolow today, we have an average pricing system that delivers very good coverage. There's no question about the benefits that we pay. Mike just alluded to the fact that you have unlimited medical coverage. There's not too many things in today's marketplace -- especially in New Jersey -- where you can have this type of coverage.

The only other things, Mr. Chairman, I'd like to raise to your attention is, we've heard a lot of discussion today about benefit levels. We've heard about the adequacy of folks to hear cases on behalf of the Second Injury Fund. I'm extremely concerned about those as well. With respect to benefit levels, those moderate changes in the system have big consequences for premium dollars. We've seen over the past few years how

court decisions and other things have eroded the workers' comp system to some degree. My feeling is that most of the expense for premium is because of health-care costs. I don't think I need to tell this panel that health-care costs drive a lot of our costs in the State of New Jersey, whether it be at the State level or even for individual, private employers.

But just a couple of recommendations that I might have to the Committee, that I've heard from today-- One is the thought about anti-fraud measures. I do not condone misclassification of employees. That hurts the system, that hurts my members that pay in. But I think the Committee and I think New Jersey needs to really look at how we craft those tests, how well employers understand them, and also whether we're going to combat fraud from the worker point of view. I think I would be remiss in saying to the Committee, "Go after intentional fraud from the employer perspective," if I didn't also ask you to review cases where the employee may have been involved in workers' compensation fraud. The system is balanced. It needs to remain balanced. And attempts to criminalize certain behavior should be balanced just as they are now under the New Jersey Health Care Claims Fraud statute. That statute makes no distinction of whether you're an employer or an individual. If you're trying to beat the system, you're going to be in it. And I would submit to you that that is something I think would be critical for the Committee.

Second: We've talked about the cases in the Second Injury Fund. The State of New Jersey has diverted over \$90 million out of workers' compensation funds over the past nine years now. If you were serious about moving these cases along, you have to stop diverting revenue from these dedicated funds. It's not the State's money. Frankly, it's not

even the workers' money. It's my members' money. And if you want to move cases along in those areas, then you should refrain from taking those proceeds and using them for General Fund obligations. Not only does it hurt the workers' comp system, in the long run it hurts the State. Because we saw what happened with our UI Fund, Mr. Chairman. And I know this Committee is supportive of efforts to restore funding so that we don't automatically trigger a payroll tax. But the same thing will eventually happen with workers' comp. We simply do not have the funds, because of previous deductions, to pay the freight on those types of claims.

Finally, with respect to streamlining the workers' comp practice, I think we can all support a system that provides greater transparency or streamlines some of the practices. My only caution is that if we look at activities that would, for example, cherry-pick claims -- as Senator Kean talked about -- or have different procedures for different groups of workers, that is not necessarily going to be in the best interest of the system as a whole. New Jersey needs to keep the system that we have, from that perspective.

Senator Kean, I thought your analogy was right on. I mean, that is part of the problem with respect to health care. My guess, in New Jersey, it would be part of the problem for workers' comp -- to try and take certain workers out of the system. I think even Justice Coleman alluded to it. At some point, someone is going to have to pick up the tab for that. It's, frankly, going to be my members.

And finally, just one other recommendation, Mr. Chairman. For years now, the State of New Jersey has looked at workers' comp benefit bills. This Committee has looked at a few, both this session and last

session. One of the areas that the State, as an employer, can do themselves a world of good in is with respect to the Sick Leave Injury Program. Many of you have had experience with this during the property tax special session that was held about two years ago. This is a system that costs the State of New Jersey, as an employer, over \$2 million a year to administer. It is duplicitous of the existing workers' comp system.

And Mr. Chairman, for you and the rest of the Committee, as you continue to undertake your review of the budget for this year, I would submit to you that you should look at that system as well. New Jersey does not really do a very good job of recognizing its own claims among its own workers. And this is a system -- the Sick Leave Injury Program, I should say -- is a program that was recommended in 2003 by the State Auditor to be phased out. The State Legislature, again, was poised during the property tax thing to take a review of this system and to phase it out. And today it keeps hanging around.

I don't think a review of the workers' comp system, as a whole, would be fruitful without the State also looking internally at its own costs with respect to workers' compensation.

Thank you, Mr. Chairman. I'm available to answer any questions you or the Committee have.

SENATOR SARLO: Thank you, John.

And just to follow up: The Budget Committee -- the urging of the Budget Committee to the Governor -- the additional \$130 million that was needed to put into the unemployment fund will now be coming from the General Fund and not as an additional employer tax. So that's something that's just happened in the past month or two.

MR. ROGERS: Great.

SENATOR SARLO: That was an important measure that was recently put into effect.

Just one quick question: If 23,000 members -- all good-standing members with -- carry workers' comp insurance, is it increased penalties to stop bad characters from-- What will it take to require some of the bad characters or bad actors out there from not -- carrying workers' comp insurance?

MR. ROGERS: It's interesting. As I view it, there are two groups of employers that are probably deemed misclassifying their employees -- there are intentional and unintentional. And just as we see in other facets of criminal law, if you're going to break the law willfully, purposefully, intentionally, you can make the criminal penalty whatever you want. That employer is going to blow by the law. It's just the way it is. I mean, we know that now.

If, however, what you're trying to do is to get more employers that may unintentionally be misclassifying employees, then you need to do more education. I mean, you can think of this in terms of drunk driving in our state. Everyone in New Jersey knows what the blood alcohol content for drunk driving is. I mean, it's been widely publicized not only by police entities, but by the State itself through the Office of Highway Traffic Safety. You cannot find the test for misclassifying an employee in the State of New Jersey on any Web site. If you call the Department, you cannot get an answer about what would be deemed misclassifying. All they do is refer you to the State -- or to the statute.

If you really want employers to comply, you should do more outreach and help them. Since 2006, I've asked for a fact sheet prepared by the Department of Labor to help better educate my employees -- or employers I should say. And it just hasn't become available yet. So I think that is a huge component to whatever reforms you're looking at.

SENATOR SARLO: It's just not fair that not everybody is paying into the system.

MR. ROGERS: No question. And again, I don't--

SENATOR SARLO: It's not fair to the businesses that are complying.

MR. ROGERS: No. And again, I want to reiterate that I do not condone it. I think it is a practice that costs all of us money. But if you really want to combat it, you need to do more than just crank up the criminal penalties.

SENATOR SARLO: Nothing, Joe? (affirmative response)

Sean, anything?

SENATOR KEAN: Real quick.

Thank you, Chairman.

Just a challenge -- and you probably don't have an answer to this question, because I sure don't.

But Senator Sweeney, before, was alluding to those cases. And it's not NJM, believe me. But there are carriers out there who do give you the runaround. And you have somebody who is usually-- You get a -- represent an injured police officer, and you really get some response -- upstanding citizen and somebody that everybody cares about. And then

you get an unskilled labor member, somebody from an unskilled labor force, some company that the employer doesn't really care about.

Mike, you were talking about the partnership -- that you want to make your client happy, because then they continue to pay their premiums. And they care about their employees. But not every workplace environment is that way. Is there some kind of mechanism or safeguard that we could look at that would require those insurers to be responsive in cases where an attorney, for instance, is representing them, and calling them up, and the adjuster is just not calling you back, and you're not getting treatment? You're certainly not getting temporary benefits. So just something-- The way I read today's hearing, you're going to see legislation coming out. Just something to think about.

SENATOR SARLO: Okay.

And, Mike, from your standpoint -- from NJM -- we'll be looking for your input as we look at these -- the CRIB board and potentially -- if overall that is required.

Your opinion on the CRIB board.

MR. VAN WAGNER: Well, hey, to the extent that folks are uncomfortable, it would seem, with a certain lack of a perceived transparency-- If transparency can be improved, then that's certainly something we'd be willing to talk about.

I would just say that's not going to change the rate if it goes into CRIB. That's the important thing. It's not going to magically change rates.

SENATOR SARLO: It's not going to change rates, absolutely.

MR. VAN WAGNER: But transparency is a good thing for everybody.

SENATOR SARLO: We agree.

Thank you.

And I also just want to-- There are many other carriers who are here who wanted to testify. Just because we didn't have enough time-- I just want to thank those other carriers for being here today and offering some written testimony for input.

Thank you.

MR. ROGERS: Thank you, Mr. Chairman.

SENATOR SARLO: At this point in time, I'm going to bring up Charles Wowkanech, from New Jersey AFL-CIO. And we're going to also bring up, at the same time -- is the Association of Trial Lawyers. And I know there are like five or six people who wrote their name down. I don't know who is coming up and testifying or not, but--

C H A R L E S W O W K A N E C H: Good afternoon.

SENATOR SARLO: Go ahead, Mr. Wowkanech.

MR. WOWKANECH: Good afternoon, Mr. Chairman, Vice Chairman, and members of the Committee.

I'd like to thank you for the opportunity for me to testify here today on the workers' compensation system.

What I've heard since around 1:00 this afternoon is that New Jersey has a pretty good system, and we do agree with that. We also feel, I guess as many of you do in the room, as well as -- I know the Commissioner -- I spoke to him at great length about it last week -- that even though what we read in the paper, and maybe what's not in the paper -- that there are a

small percentage of these cases that, for whatever reason or another, sort of get tangled up. It's all of our jobs to work together with the industry, with the business community, to try and make sure that this does not happen.

I was glad to hear from some of the previous speakers that-- It was pointed out that New Jersey has many benefits that other states do not have. Several states cap or restrict certain medical benefits. New Jersey is one of only six states that have an Uninsured Employers Fund. And it also has a Second Injury Fund for total disabled workers that pay them for life. The majority of the states in this country do not have that.

I'm going to get right to the point. We basically, after checking with all of our affiliates -- and we represent roughly 1 million workers in this state. And it's just not industrial workers; we represent people who work in hospitals, construction workers, teachers, professors, airline captains, ship captains, all different types of trades, and casino workers. But basically, we have five recommendations for your consideration this afternoon.

The first one -- I'm not going to go through it all -- but it deals with what you just heard my colleague from BIA -- on the cheating. We also-- We recommend that the Office of the Insurance Fraud Prosecutor consider investigating these employers. We should also support legislation that allows inspectors to execute a stop work order on any employer found to be operating a business without a workers' compensation policy.

Two: Workers' compensation judges need to be given more powerful tools to force timely compliance with court orders for benefits. Included should be the ability to levy fines for failing to provide timely medical treatment or payment.

Three: In order to make the system more transparent, a performance report for workers' compensation systems should be issued annually. This is done approximately by 36 other states in this country. The report should include information about which insurance companies are performing well and which are not. And fines should be levied against insurers that are not meeting the performance standards of the state.

We also recommend Labor appointments to the Compensation Rating and Inspection -- CRIB -- Bureau, which is now exclusively, as has been stated here, made up exclusively of insurance industry representatives.

The workers' compensation system -- number four -- is a complex one and sometimes difficult to maneuver for workers, small businesses, and attorneys alike. We would like to recommend the creation of a workers' compensation ombudsman to help guide workers through the system and to make recommendations for administrative reforms.

And five, finally -- which I'm sure most of you are familiar with -- there are several dozen compensation bills pending in the Legislature right now, but two of which are bills that we have spent a great deal of time in supporting. And I would just ask for your consideration here today. The first one is 1581. It's a Cohen-Egan bill, which increases benefits for the loss of a hand or a foot, which you heard--

SENATOR SARLO: Actually, I'm the sponsor of that bill in the Senate. We actually moved it out of this Committee.

MR. WOWKANECH: Good.

SENATOR SARLO: Since you didn't list me on there, I guess you don't want it to move any further? (laughter)

MR. WOWKANECH: No, we want to do it right--

SENATOR SARLO: You forgot me off the-- You didn't give me any credit for it.

MR. WOWKANECH: Well, we're going to give you credit right now. (laughter) We appreciate you passing it through the Committee. But that is a bill that, as you know, Senator, we've supported for a long time.

And also, another Cohen bill -- and it's been debated about quite a bit -- but A-2499. This seeks to increase the compensation benefit for temporary disabled and permanently disabled from 75 percent to 100 percent of the State's average weekly wage. Several states have already gone to this 100 percent compensation. And we think it's something that should be considered.

I have no further recommendations, Mr. Chairman.

SENATOR SARLO: Thank you.

A M O S G E R N, ESQ.: Thank you.

Do I have to push a button here? (referring to PA microphone)

SENATOR SARLO: Yes, sir.

It wasn't working before.

MR. GERN: It's working now.

SENATOR SARLO: Trial lawyers have that magic touch.
(laughter)

MR. GERN: We do.

Actually, the AFL-CIO had the magic touch.

Chairman Sarlo and members of this honorable Committee, I appreciate the opportunity to speak to you today on behalf of approximately 2,000 members of the Association of Trial Lawyers of

America-New Jersey -- ATLA-New Jersey, to make it easier for the purpose of our discussion.

Just so you know, we just had our -- this past weekend we had our--

SENATOR SARLO: Can we just get your name, sir? I'm sorry.

MR. GERN: Oh, I'm sorry, Amos Gern. I apologize.

SENATOR SARLO: Thank you.

MR. GERN: I'm President of ATLA. And President-Elect Tommie Ann Gibney is here today, as well as three members of our workers' compensation committee, who helped put our draft together. And you have our formal presentation--

SENATOR SARLO: Yes, we do. Thank you.

MR. GERN: --with nine different items. And many of these have been discussed already.

What I was about to say is, my organization just had its Boardwalk Seminar. It's an annual meeting of our attorneys. We had over 1,130 members and nonmembers attend that for educational purposes, in Atlantic City on Thursday and Friday of this week. And among those courses and programs that we run is a program on workers' compensation, as well as many other areas of the law. We help train our attorneys, we help train the judges. In fact, Judge Calderone was a speaker for us, as he has been on numerous occasions before. Judge Mullen was there as well, and has spoken to us before. And it's a very worthwhile program.

I think one of the things I'd like to make a comment on, so as not to be duplicating the issue -- the things that have been said up to now-- I think it is important for this Committee to understand that the attorneys

in the system -- the petitioners' attorneys and the respondents' attorneys -- are the gatekeepers in this process when you really get down to it. Of course, there are judges, and judges make the ultimate decisions. But it's the petitioners' attorneys and the respondents' attorneys who work the case, go through discovery and make determination as to whether, for example, fraud has occurred. Judge Calderone told our organization just a few days ago there are very, very few cases where there is petitioner fraud. There's obviously a good deal more fraud on the employer side -- that is, the mischaracterization of employees, failure to get insurance, things of that nature. And that may require certain fraud prosecutions or other means to address that problem. But when you get right down to it, the attorneys on both sides are an integral part of the system in our situation.

One of the things that we need, and it's been referenced many times before, is the movement of difficult cases. The cases you read about in the *Star-Ledger* have absolutely -- are a very, very small percentage and are really a misrepresentation of the system. The system works virtually all the time. Occasionally, it doesn't work. And when it doesn't work, it's because the cases are heard on these three-week cycles you heard about already. And the three-week cycles do not lend themselves necessarily to moving cases where there's a motion for medical benefits and temporary disability benefits, which are emergent in nature. If someone needs an operation, he can't wait, or she can't wait, 10 weeks, 12 weeks, six months, whatever it may be. You need the determination from a fact-finder. And the workers' compensation judges who are at a very high level when it comes to these kinds of problems, these medical conditions, need to be able to make those

decisions quickly and have the ability -- regulatory ability to make those decisions within a limited time period, as Justice Coleman mentioned.

Decisions by the workers' compensation judges have to be made promptly. They can't take eight months, six months, or any long period of time. And the hearings have to be concluded in far less than a year. Justice Coleman said a year. That might make sense, because you have this cycle -- these three-week cycles. There's no reason that certain judges can't be designated by the Division to handle emergent matters and to expedite matters that require it.

There was much reference to the inadequate rate structure when it comes to temporary disability benefits. It's \$742 this year. There is a trade-off. The system does have a legitimate reason for trade-off. You avoid-- The roofer -- who is somebody, I think, Senator Kean mentioned before. If that roofer did something incorrect or negligent himself, he couldn't collect in a third-party case in our regular court system. However, in a workers' compensation, fault is irrelevant. It's simply: Are you on the job in the scope of your employment, and have you acted within your job description? And if that's the case, you do collect.

Medical benefits: While the insurance industry told you about those, and they're right about it -- that is, it's a very high-level system for the most part. The problem is that the employer and the insurance companies for the employer have the right to designate who the medical care is provided by. So if you have a choice of orthopedic surgeon *A* for your back surgery, and they say, "No, you have to go to *B* or *C*," you're stuck with *B* or *C*, no matter what that person's history is. There are certain benefits to that. It can expedite it. But that's why sometimes there

are hearings that are needed to address the issue of prompt medical care and what the appropriate medical care should be.

You heard about the Second Injury Fund, you heard about Medicare and the coordination of benefits. The only thing I can say on the Second Injury Fund, which was alluded to also with the Uninsured Employers Fund, UEF, is that it needs a more streamlined approach. Petitioners' attorneys, the attorneys who represent the worker, will not take, in our system, an Uninsured Employers Fund case. It is too cumbersome; there's no mechanism for securing permanent disability benefits because there's no funds, because they've been raided for other purposes. And as a result, the people who probably need the most representation -- that is, someone who has been cheated by an illegal-acting employer -- are not able to get proper representation. Lawyers do not want those cases, and the system has made those cases virtually impossible to handle in an expeditious way. That needs to be addressed.

And on the Second Injury Fund, the issue of more Deputy Attorney Generals is a legitimate issue. But beyond that, by the same token, those are the most complex cases with the most medical records, with the most medical testimony. They have to be expedited in some way to make them move through the system.

I just want to point one thing out to this Committee, which is very important. The attorneys who represent the injured workers in our system are paid on a contingent fee basis, a percentage. They get a mere 8 percent, under our system, of what the award is for the injured party. Eight percent of the permanent disability award -- and again, even less if there's been a voluntary award made by the employer during -- after that 26 weeks.

SENATOR SARLO: It doesn't go up to 20 percent?

MR. GERN: It's 20 percent altogether. Of that 20 percent, 8 percent comes from the petitioner, 12 percent comes from the respondent or insurance company. Now, that may not take into consideration motions for medical intent and other issues. But generally speaking, it's an 8 percent fee, and it is-- Given the fact that the petitioners' attorneys are the ones who have to make sure that the medical care is provided -- they're the go-between between the insurance company, who may be stonewalling the employer -- employee, rather -- or the employee who does not know how to fend for him or herself. It's the petitioner's attorney who is responsible for that and will help move the system. So I just point that out to you.

SENATOR SARLO: Just give those numbers again. It's 8 percent.

MR. GERN: It's 20 percent--

SENATOR SARLO: Total.

MR. GERN: --total. Of that, 8 percent is paid by the petitioner -- the worker -- and 12 percent by the insurance company, typically.

So on a relative basis, the way the system currently works, the attorneys offer a tremendous service at a relatively inexpensive means for the system.

That's all.

SENATOR SARLO: Just one-- We touched upon this earlier, this three-week provision. We understand the six-month provision, by statute -- especially in some of those more severe cases -- to see how the

medical treatment is working on that end. But this three-week period that we talked about--

MR. GERN: Cycles.

SENATOR SARLO: Does it create more-- Does it delay-- Is it delaying the process? Are we creating more bureaucracy by doing that?

MR. GERN: It works very well in routine cases. It does allow for a case to come back every three weeks, every six weeks, every nine weeks. It allows the system not to lose somebody who is a petitioner, an injured worker, in the system. It doesn't work as well in the contested cases and in those cases involving the motions for medical and temporary disability. And the reason is: Typically, the best the judge can do -- and it's not the judge's fault, usually. The best that judge can do is have one witness on week one; three weeks later, if they're lucky, another witness; three weeks later, another witness. Sometimes, of course, there are gaps, as you pointed out, with holidays and other scheduling issues. The doctors are just not automatically available when you want them. You can do your best, of course, and we should. But that's where the delay comes in.

And that's, frankly, where-- When you read articles about dissatisfied petitioners, injured workers who feel the system is too slow, it's typically in those kinds of complex cases where there have been adjournment after adjournment, usually for very good reasons. But never the less, it's dragged on in the system. The judge hasn't explained it to the worker, the attorney may not have explained it to the worker, the respondent may be -- the insurance company may be delaying for ulterior motives. So there's a host of reasons for that, none of which are good, of

course. You need the worker to be able to rely on a system that is going to move fast.

SENATOR SARLO: From the petitioner's standpoint, overall, the system is in stable shape?

MR. GERN: I think so, yes, overall.

SENATOR SARLO: And, of course, there are some bureaucracies there that we could improve upon to move these cases faster?

MR. GERN: Absolutely. And the enforcement power of the judges, as was mentioned.

SENATOR SARLO: Enforcement is, I think, something you're definitely going to see coming out of this Committee.

Questions?

Senator Kean, who we know is only making 8 percent -- 20 percent actually. (laughter)

We should feel sorry for him today. We have to feel sorry for Senator Kean today.

SENATOR KEAN: Thank you, Chairman.

Quick question: Any ideas-- Have you given any thought to how you might change the system for the motions in cases where you feel somebody deserves the treatment -- because I've been through it too -- deserves the treatment, they're not getting it, it's a contested case, the judges hands are tied, it's an adversarial case, and it's being adjudicated under the current system? How do you change the system to--

MR. GERN: The only thing I can think of is, if it's presented properly -- that is, by proper medical documentation affidavits and the like, there should be a presumption that the worker's entitled to that medical

care. After all, people are signing affidavits, providing medical reports under penalty of perjury. And if they present it that way, there should be at least, in the first instance, a presumption that it's appropriate. Of course, it's a rebuttal presumption, so the system can allow for testimony against that physician or against that petitioner if there's a basis for it. But it has to be expedited. It's really just a matter of moving it quicker.

SENATOR KEAN: Thank you.

SENATOR SARLO: Just to close it-- As members, as elected officials who have been elected to represent the public -- and I think you alluded to this -- the published reports in the newspaper of some of these more severe cases -- that's not the norm by all? That's just some extreme cases that either perhaps fell through the cracks or maybe did not fall through the cracks but are just too complex to be handled in a timely manner?

MR. GERN: Absolutely, Senator Sarlo. And, in fact, no different than in the Superior Court -- cases drag on. We all know that there is civil litigation that can take years and years, depending on the vicinage, and depending on the judge, and so forth.

But even Justice Coleman mentioned the point that our Superior Court also allows cases to be heard in a partial manner. And that's common in the Chancery Division, and family law, and other non-jury segments. Nevertheless, it's usually not as dragged out as it tends to be in the workers' compensation system.

SENATOR SARLO: Thank you.

MR. GERN: Thank you.

SENATOR SARLO: Thank you to ATLA.

And our final panel is Craig Livingston, from the New Jersey Advisory Council on Safety. I think he's going to be joined with Lynne Kramer. And we also have the New Jersey State Bar Association, represented by Marcia Freedman and Arthur Kravitz.

This is our final panel for today.

The New Jersey State Bar Association.

Hopefully, you'll have some-- We've heard a lot today. And we welcome your input on some of the recommendations that you've heard, and so on.

MARCIA S. FREEDMAN, ESQ.: Thank you.

Chairman Sarlo, members of the Committee, we would like to thank you for allowing us the opportunity to speak this afternoon on behalf of the New Jersey State Bar Association, specifically the Workers' Compensation Section.

My name is Marcy Freedman. This is Arthur Kravitz. I'm the current Chair of the Workers' Compensation Section of the New Jersey State Bar Association. And Arthur is the Chair-Elect of that Section.

And we have submitted a written position statement, and we'd respectfully refer you to that statement. And in order to shorten our statement today, we would refer you to that statement.

SENATOR SARLO: We thank you for that.

MS. FREEDMAN: As you may know, the Workers' Compensation Section is made of up attorneys representing both employers and employees. It is the overwhelming position of the Bar that our workers' compensation system is sound and effective. We do not believe a complete overhaul of the workers' compensation system is necessary. And, in fact, to

do so would serve an injustice and a disservice to both injured workers and employers.

The Bar Association believes that our current system is effective, efficient, and fair in providing benefits to injured workers in New Jersey while continuing to be cost-effective to employers.

Of course, that being said, no system is perfect. And the Bar Association can make some recommendations for improvements to that system.

A R T H U R H. K R A V I T Z, ESQ.: The New Jersey Bar Association has long had a system in place to review potential judicial candidates for the workers' compensation bench. The Workers' Compensation Section established a committee in 2000 that can confidentially screen judicial candidates and report directly to the President of the Bar Association regarding its conclusion. We again renew our position that as members of the Bar, we feel our opinions and recommendations should be heard. In this environment, where allegations have been made that our judges are politically tainted, we would welcome the opportunity to be involved in this process.

And I want to take a minute, because I've gone through the process, and I've talked to the people who were originally appointed to it. This was a committee set up separate from the Workers' Compensation Section. It was to meet in private, confidentially. It was to distribute questionnaires to judicial candidates. It would then interview, and meet with judicial candidates, and make its recommendations in confidence to the President of the New Jersey State Bar Association. The New Jersey State Bar Association -- two presidents in the past had agreed to make our

recommendations known to the Governor's Office or to the State Senate and the Senate Judiciary Committee. Unfortunately, that system has been dormant in the last seven years, although everything is in place to revive it, literally on our part, on a moment's notice.

The committee members are still around, the committee's files and work are still there. And the committee did a great deal of work to screen potential candidates who came to the committee and said, "I would seek your review." So here is something that is in place, that can be activated, that can help the issue of screening judicial candidates.

Now, we're not necessary talking about candidates who are workers' compensation experienced. There are many people who sit in the judiciary who actually have experience, even though they say they don't. I'm not making fun of Judge Hickey too much (laughter), but he had experience in a very judicial setting. He was a prosecutor. We have a very, very fine judge of compensation who was clerk of the Appellate Division. So these are people who we would look at their experience and say, "Yes, these are great candidates for the workers' compensation bench, even though they don't have specific workers' compensation experience."

We have a couple other proposals we've made. We've talked many times about the Second Injury Fund and the shortage of deputies. I know Judge Calderone today has made the comments that you want to take testimony in a Second Injury Fund case. But if there are 65 cases on a list, you're never going to get to those to give testimony unless you have an adequate number of deputies and, by the way, their support staff, which is also lacking, to handle those cases. The Bar Association has recently passed a resolution regarding that.

The New Jersey Bar Association has recognized the problems associated with the Uninsured Employers Fund. We believe the statute and regulations should be amended so that injured workers can receive the treatment and wage replacement benefits in a timely manner. We also believe there should be better enforcement.

This may not be an issue of new laws to create criminal sanctions, but rather enforcing the laws we have now. For example, an unscrupulous employer might purchase a workers' compensation policy in order to get a policy certificate and then not pay for it. Now, the workers' compensation carrier, when it knows that this has taken place, will file a notice with the Department of Insurance. Those notices are filed, and that's it. So perhaps an enforcement mechanism can be created within either the Department of Labor or the Department of Insurance to follow up on these phony insurance purchases to cut down on the number of UEF claims, which would then make it more efficient to handle the claims that we have now. So we believe that that's a step that should be taken.

We also believe that the regulations regarding temporary disability should be changed to give the workers' compensation judges the authority to determine whether someone is -- whether a lien filed by Temporary Disability should be paid back to Temporary Disability as a work-related condition or not. And we believe that the workers' compensation judges have the best expertise to do that.

We also know that the workers' compensation court has struggled over the last several years with modernization and improvement in its computer systems. If given the resources to continue to update and modernize its systems, the Division would be in a position to maintain

better recordkeeping. Tracking of cases, and recordkeeping in general, is vital so as to allocate better resources in the future.

SENATOR SARLO: Thank you, Arthur.

MR. KRAVITZ: Thank you.

SENATOR SARLO: I think you heard from the judges, and you've heard from this Committee. We are going to be recommending that judges go back before the Bar. But you know we need cooperation on that from the administration on that sense.

MR. KRAVITZ: We understand.

SENATOR SARLO: So we're going to need cooperation as part of that pact. But they're going to hear, loud and clear I think-- I can't speak for everybody here, but I think they're going to hear loud and clear, from members of both sides of the aisle, that we'd like to see that pact instituted again.

Just one quick question, because the hour is very late. Second Injury Fund: If I hear you correctly, the Second Injury Fund works, it's just that they're short with personnel?

MR. KRAVITZ: They're overwhelmed. They are clearly overwhelmed.

SENATOR SARLO: Right. But there are not that many cases. I was just having a conversation with Senator Kean. There are not that many cases in the Second Injury Fund. Is that correct?

MR. KRAVITZ: There is a large number of Second Injury Fund cases. I don't have the actual number.

SENATOR SARLO: Right.

MR. KRAVITZ: And I know the Division has taken steps to try to reduce the backlog. They've instituted, for example, a requirement--

SENATOR SARLO: So it's not that it's bureaucratic, it just doesn't have the resources.

MR. KRAVITZ: Yes, I think-- Well, yes, I think so. I think if you had more deputies, and the deputies had adequate staff, you could move these cases a lot faster. Yes.

SENATOR SARLO: Questions? (no response)

Thank you.

MR. KRAVITZ: Thank you.

MS. FREEDMAN: Thank you.

SENATOR SARLO: New Jersey Advisory Council on Safety and Health: Craig Livingston and Lynne Kramer.

L Y N N E P. K R A M E R, E S Q.: Good afternoon.

My name is Lynne Kramer. I'm General Counsel for the New Jersey Advisory Council. We're a coalition of attorneys, doctors, and unions that represent petitioners in workers' compensation court. Our only concern is workers' compensation court and how it affects petitioners.

We want to thank you for inviting us here today. Everybody has already said most of the -- made most of the comments, so I will make it short and sweet.

First of all, let us say that we think the workers' compensation court system in New Jersey is one of the best court systems for working people in New Jersey, of all the courts. We also want to say that we second, third -- or maybe fifth -- vetting the judges and reinitiating the compact. We also believe that there are -- we need more deputy attorneys for the

Second Injury Fund. And as you heard numerous times, there will be minimal cost, if no cost, to the State.

We have two pieces of legislation that we believe very strongly in. One is the legislation that you proposed, Senator Sarlo, for increasing the awards for hand and foot injury, and I think you've heard about that. The only other thing I can say about that is, I tried to get some actual numbers on what the costs were, and I was unable to do that. When I contacted CRIB, apparently they -- the numbers they come up with are based on national injury distribution tables. So there are no numbers about how many cases there are in New Jersey, how many are over 25 percent of hands and feet, or anything -- I guess any cases. I wasn't able to get any of those numbers. We think that this is a very important bill, and we urge you to pass it.

Thank you.

SENATOR SARLO: Craig, before you go, I found an editorial from you and Lynne dated April 15, 2004. It was signed by you, Kenneth Wind, Rich Marcolus, Arthur Kravitz, and Julius Feinson. "The system works fine. Thank you." (laughter) Hopefully you still feel the same way. I don't know.

CRAIG H. LIVINGSTON, ESQ.: I do.

SENATOR SARLO: That was in '04.

MR. LIVINGSTON: I do, Senator. I do, Mr. Chair.

Thank you very much.

We go even further than other people who have spoken today before you. And we suggest that this system works so well that we need to take other pieces of law, which are being handled by other judiciaries, and

bring it into the Division of Workers' Comp. In particular, Senator Ray Lesniak has proposed that work-related injuries, whether they be diseases or injuries, which result in allegations of discrimination because of those work-related cases -- and this is Senate Bill 1407 -- be brought within the jurisdiction of the Division of Workers' Compensation so that judges in workers' compensation, who are skilled in medicine and skilled in work -- far more so, with all due respect, than Federal judges or State judges -- can resolve these issues.

Now, why do we do that? Because it's a cost-savings for employers, it's a cost-savings for workers, and it's an expeditious resolution of the cases. Let me give you an example. Right now, discrimination cases, as you know, can be brought either directly in Superior Court, which generally takes between two to four years to be resolved; or to the Division of Civil Rights, and then maybe transferred to the Office of Administrative Law. And their number is that those cases take 1,898 days to be resolved. In stark contrast, the Division of Workers' Compensation resolves motion for temporary and medical in less than 55 days.

Now, what does that mean? If a worker is injured at work, completes his or her treatment, is told that she or he can go back to work, but the employer says -- and we get more calls from our unions. And we represent unions in more than 400 work locations in three states -- many more than 400 work locations -- on this issue. The employer sometimes says, "No, you can't come back to work, because you can't do all of the duties on that job," or, "you can't do sufficient duties on that job." Sometimes the employers are right, and sometimes the employers aren't

right -- are wrong. And therefore, that process now takes between three to five years to resolve.

In stark contrast, if we were to bring it within the Division of Workers' Compensation, we can resolve it within 55 days, because we have motions under two cases. One is called *Williams v. Topps*; and the other is called *Harbatuk*, which talks about light duty, which an employer is obligated to provide to his or her employee so long as the employer is under active medical treatment, or else the employer's insurance company has to pay temporary workers' compensation benefits to that employee. We can easily take, within the Division of Workers' Compensation, those same matters. That will save employers an enormous amount of money.

There was just a case where an employer had to pay over a million dollars in attorneys fees to the winning petitioner's -- plaintiff's lawyer -- a million dollars, plus punitive damages, plus back pay, plus benefits -- a million dollars. Why was that? Because in Superior Court there's a lot of discovery, and there are a lot of motions, and there's a lot of this, and a lot of that.

Similarly, that case took a very long time. So that employer is not only on the hook for the million dollars that it paid to the plaintiff's lawyer, it's also on the hook for back pay. And the worker's often out of work a long time during that period of time while this case is being litigated.

I had a worker who worked at the Exxon plant in Linden, a black Vietnam Veteran, skilled mechanic, who was injured as a result of a work-related injury. And Exxon said to him, "Oh, Mr. Johnson, we don't want to take you back to work because you can't drive a forklift truck. You're a skilled mechanic." He could fix helicopters for the United States

Army in Vietnam, but he couldn't drive a forklift truck. So Exxon said, "No, you're not going to come back to our mechanic's job." They put him out of work. They ultimately sent him to a clerk's job, and they laid him off because he didn't have seniority to stay in the plant.

It took us eight years to "win" that case -- *win* in parentheses. I think we did a terrible job -- eight years to win that case and to get this person back to work. It cost Exxon an enormous amount of money in attorney fees, it cost back pay, and it didn't fill the job that needed to be filled in that plant, which is the mechanic's job in the Exxon plant.

What we're suggesting is, you take that work into the Division of Workers' Compensation, as Senator Lesniak has so articulately argued, and you allow judges who are skilled in medical, who are skilled in the area of the workplace to resolve those cases.

The second whole area, if I may speak to, is something that we've been talking to Senator Sweeney about. You're not allowed to kiss Senators, I understand, but I would have kissed him before when he talked about the stop work orders. The reality of the industry is that, according to Commissioner Socolow's testimony before Congress-- In the year 2005, he -- the Department of Labor here estimated that there was \$644 million in illegally performed work in this state, meaning people who are misclassified -- \$644 million. That's almost three years ago. That number, I would respectfully suggest, on the basis of our experience, has probably not been adjusted for inflation today.

We're suggesting that the current mechanisms that exist, including the Senator's -- the bill that this Senate passed on independent contractors' misclassification -- is certainly a step forward. But there needs

to be some additional tools given, both procedural and remedial. The procedural tools have to be that-- We would respectfully suggest that stop work orders ought to be able to be issued by the supervising judges in workers' compensation, such as Judge Granados, who has spent her career doing this; such as Judge Hickey, who has spent his career doing this -- so that they can issue stop work orders.

Now, how would that work? It is often the case that these workers who are illegally classified -- whether they're legal immigrants, or illegal immigrants, or American citizens who are working off the books -- would rather fold the cash into their pocket, rather than actually pay Social Security, pay unemployment, pay into State disability. What we're suggesting is that if a motion is brought before a judge -- in workers' compensation -- a supervising judge in each county -- to ask them to order that an employer provide evidence that he or she -- the employer -- has workers' compensation insurance. Because we don't believe they can, and we can get it off the Internet immediately. Then that judge could issue a stop work order, which could be enforceable either in the Chancery Division or in the Appellate Division, depending on how this Committee sculpts it. That would mean that \$644 million worth of business that goes on in this state could be brought within the arena of lawful obedience to our statutes.

As we all know, these employers don't pay into unemployment, they don't pay into TDB, they don't pay State taxes, they don't pay workers' comp, they don't pay into FICA, they don't pay income taxes. It's all cash. We can do this quickly, we can do it effectively. The Division of Workers' Comp is perfectly structured to do this now. We have the people

in place, we have the skill in place, and these judges know how to do it. So we would urge you to amend your statutes and the statute of the State in both regards.

Thank you very much, Mr. Chair.

SENATOR SARLO: Thank you, Craig.

Senator Pennacchio, Senator Kean. (no response)

Senator Madden.

SENATOR MADDEN: Could you define *discrimination*? You were saying *discrimination*.

MR. LIVINGSTON: Sure. The law against discrimination -- the New Jersey law against discrimination says that it's a violation for an employer not to provide a reasonable-- No, let me put it affirmatively. An employee must be able to do the essential functions of his job or her job, so long as those functions can be done with a reasonable accommodation of that handicap. That's the current law. They have to be able to do the essential functions of their job, and the employer has to make a reasonable accommodation of the handicap. That's the law which is set down by the Supreme Court interpreting our statute. The-- I'm sorry.

SENATOR MADDEN: That's okay. No, you did good.
(laughter)

When it came from a discrimination factor, it could be a number of different elements.

MR. LIVINGSTON: No, it's only--

SENATOR MADDEN: But it's based on the talent--

MR. LIVINGSTON: --only the handicap.

SENATOR MADDEN: --being able to carry out the ability.

Thanks.

SENATOR SARLO: You're the first group that we've heard from today who had advocated for the discrimination being moved over to the workers' comp section. Would you be concerned-- Right now, it appears from everybody that the system is working well. We're going to recommend some minor improvements here and there. But overall, we have a pretty good system in place -- one of the good things State government is doing here in New Jersey.

Are you concerned that this would put an extra burden on workers' comp, and then it could begin to make workers' comp become more bureaucratic?

MR. LIVINGSTON: That's a nice, slow-pitched ball, Mr. Chair. Thank you very much.

I have a few thoughts on that. Number one is that we need more judges. Number two is that the need for Deputy Attorney Generals -- additional Deputy Attorney Generals is grossly understated by everyone else, I think. We need more.

These cases-- Maybe there aren't many more cases now, but I can tell you they're far more complex now because of Medicare liens and because of Taft-Hartley liens -- meaning -- and also Aetna liens, and other companies that are saying, "We're paying a million dollars for care, and we want to get our money back." So these cases are much more difficult.

They used to be able to be resolved by Section 20, a dismissal of the case. They can't be done anymore, because of Medicare and other parties paying for these benefits wanting their money back -- rightfully so. So I think we do-- I think our judges can handle it.

Do we need more judges? Absolutely. Do we need more DAGs? Absolutely. Does it cost the taxpayers in the State of New Jersey a penny? No. Does it cost employers money to continue to send in senior people in these law firms every three weeks -- into Second Injury Fund cases, when some cases can't be reached, through no fault of the judges -- including some of the judges in this room -- through no fault of the Deputy Attorney Generals, because there just aren't enough hours in the day to resolve these enormously complex issues? Although I don't look at it -- look like Senator Sarlo, in terms of appearance -- I've been doing this for 36 years. I can assure you that these cases are two to three times more complex now than they ever were when I began. And maybe I didn't understand much of it then, and now I understand more of it-- But it's just more complex now.

We need more judges, we need more DAGs. And they can handle it, and they should be handling it, because right now it's a burden on commerce. If an employer has to pay a plaintiff's lawyer a million dollars in addition to back pay, that's a burden on that employer, isn't it? Yes, it is. And doesn't that hurt that worker who is out of work for five, or six, or four years? Yes, it does. He can't or she can't pay their mortgage, they can't support their family. We should have an expeditious resolution, because it's good business. It's good for the commerce of this state. It's good for your company, and it's good for the workers.

SENATOR SARLO: Thank you.

MR. LIVINGSTON: Thank you very much, Mr. Chair, again.

SENATOR SARLO: Thank you.

As they move away from the table, this concludes our hearing.

I want to thank the members of this Committee for your indulgence and your patience. I want to thank everybody for being here today, and for your input, and your patience.

I believe we concluded that the system is in good shape. But we are going to be looking at some legislation and some slight reforms, working with the Commissioner of Banking and Insurance, including giving the judges contempt powers, potentially placing a time limit on trial lengths, looking at the CRIB board, looking at potentially putting a commission in place to look at the CRIB board and how it's operated, misclassification of employees and going after those bad characters -- bad employers -- who are not carrying workers' comp insurance, and of course working with the administration to vet comp judges through the Bar Association.

So those are just about a half-dozen areas that we are going to be looking at. And as we go through this, we're going to be asking for all of your input into making sure the legislation is done properly.

MR. LIVINGSTON: Thank you very much, Senator.

(MEETING CONCLUDED)