1
2 NEW YORK STATE SENATE
3 STANDING COMMITTEE ON INSURANCE
4 --x
5 NO-FAULT AUTO INSURANCE FRAUD
6 RE: TO EXAMINE WAYS TO REDUCE THE INCIDENTS OF
7 NO-FAULT AUTO INSURANCE FRAUD IN NEW YORK
8 --x
9 Senate Hearing Room
10 250 Broadway
11 New York, New York
12
13 April 26, 2011
14 10:15 a.m.
15
16
17 B e f o r e:
18
19 SENATOR JAMES L. SEWARD, Chairman
20 SENATOR MARTIN J. GOLDEN,
21 SENATOR JACK M. MARTINS,
22 Members
23
24
25

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University of Pennsylvania

1
2 PROCEEDINGS
3 SENATOR SEWARD: Good morning,
4 everyone, and thank you all for being here today,
5 taking the time out of your busy schedules to
6 discuss a very serious issue. And that is a
7 no-fault auto insurance fraud and what we need to
8 do is to put an end to this fraud.
9 I certainly want to say a thank
10 you to my colleague, Senator Martin Golden, for
11 hosting and sponsoring this hearing on the Senate
12 Insurance Committee. I certainly appreciate his
13 active interest in this very, very important topic.
14 And we do expect other members to
15 be in and out throughout the day as well.
16 Overall, no-fault fraud cost New
17 Yorkers well in excess of $200 million every year.
18 I note that we have some folks here today with
19 "Stop the Fraud Tax." That's exactly what it is, a
20 fraud tax.
21 And because this expense is
22 absorbed by all of us who purchase auto insurance
23 policies, it's a tax on us because of increased
24 premiums to pay for this fraud.
25 In these difficult economic times,

1
2 these increased costs can be unsustainable for
3 many, many policyholders who are already struggling
4 financially.
5 This is not a victimless crime.
6 We are all victims because we are paying more than
7 we need to pay for our auto insurance, our no-fault
8 coverage. And while no-fault fraud continues to be
9 a problem statewide, it's particularly acute here,
10 in the Downstate area. That's one of the reasons
11 why we are here today, in this location.
12 In fact, studies have shown that
13 right here in New York City, one in every five
14 no-fault claims show evidence of fraud, and as many
15 as one in three claims appear to be inflated.
16 And studies have shown that
17 another 14 percent of claims in the New York City
18 area involve either overbilling or excessive
19 utilization of medical services. This is so-called
20 soft fraud. This type of activity is one of the
21 additional key elements contributing to the
22 increased cost of no-fault fraud and the no-fault
23 system.
24 Most concerning is the fact that,
25 as reported, organized crime rings have now become

1
2 involved in perpetuating this type of fraud. They
3 are staging auto accidents and then steering
4 so-called victims to fraudulent medical bills. And
5 everyone sharing the profits from that, these
6 criminals who engage in no-fault fraud, have proven
7 themselves to be quite innovative, and they
8 continue to find new ways to game the system.
9 This impacts the insurance market
10 in New York State in a big way. Uncontrolled
11 losses on the part of insurers very well drive
12 carriers out of the New York insurance market
13 because of these uncontrolled costs, and that
14 results in further bad news for the consumer.
15 There will be less choices, less competition for
16 their business, and even higher cost for consumers.
17 Comprehensive reforms are greatly
18 needed to eliminate the rampant fraud and abuse
19 that is plaguing the no-fault system. The purpose
20 of our hearing today is to identify some specific
21 actions that can be taken by the legislation in
22 order to crack down on fraud and reduce the cost to
23 both insurers and, most importantly, the
24 policyholders.
25 I should note that we are not

1
2 asking witnesses to comment on specific legislative
3 proposals, although we certainly hope that they do,
4 and they are free to do so. We've decided to leave
5 that open.
6 We are looking for some specific
7 suggestions that would help achieve the goal of
8 reducing the incidents of no-fault fraud and
9 lowering auto insurance premiums in New York State
10 and in New York City and the Downstate region.
11 I would ask our testifiers to keep
12 your remarks brief, five to ten minutes, and we'll
13 leave the time for questions and answers. And I
14 would ask everyone to provide a written testimony.
15 Obviously, that will become part of the record.
16 And I would ask you not to read the testimony but
17 to summarize your testimony so we can save time for
18 any questions and answers.
19 SENATOR GOLDEN: I am. And I
20 would. And it's going to be brief because we do
21 have a lot of speakers here today, and some of them
22 are on a time schedule.
23 But I want to thank you, Senator
24 Seward, for heading the Insurance Committee for
25 many years and you are a significant person in this

1
2 industry and are respected.
3 We need to get these changes
4 accomplished; we've passed these bills on a regular
5 basis. They never become law. And it's time for
6 these bills to become law. It's time for some of
7 these bills to, hopefully, here at this hearing,
8 give us the ability to drive some of this
9 legislation. And the Governor hopefully will hear
10 us today out here, and provide assistance in giving
11 us the impetus to get these bills passed in the
12 Assembly and to bring the most important aspect and
13 that is a relief to the ratepayer.
14 The ratepayer is getting killed in
15 the City and the State of New York. As per my
16 colleague Senator Seward -- and I'm joined by
17 Senator Martins here -- because of medical
18 providers and attorney-driven fraud, the New York
19 City driver is paying about 67 percent in Staten
20 Island, 272 percent in the Bronx, while drivers in
21 my district, in Brooklyn, are paying 185 percent
22 more than the state-wide average to no-fault
23 coverage.
24 It's time for change. This is the
25 vehicle to get that change. We are going to talk

1
2 about some of the possible remedies for that, some
3 possible approaches for rectifying these reported
4 problems, implying tougher penalties for
5 perpetrators and decertifying medical providers who
6 create insurance fraud, modifying the 30-day rule
7 to allow insurances the opportunity for longer
8 investigative time of suspicious crimes, requiring
9 disputed no-fault claims to be submitted to the
10 arbitrator.
11 Testimonies this morning will help
12 us to look at the pre-insurance inspection,
13 automobile insurance fraud, anti-runners, staged
14 crashes. It will give us an opportunity to look at
15 both sides of the issue.
16 The Medical Society has submitted
17 a paper that will be reviewed by our committee and
18 taken into full consideration.
19 And, again, this vehicle, this
20 meeting here today is to drive change here, in the
21 City and State of New York. We are the third
22 highest in the country. You can't afford to stay
23 at these rates. We can't afford to lose an
24 insurance company out of the City and State of New
25 York. That would only drive up rates even further.

Thank you all for attending. We'll try to be as informative as we can at this hearing and try to be as brief as we can and get our points across. I know that the Deputy Inspector is on a time schedule, but thank you very much.

SENATOR SEWARD: Thank you, Senator Golden.

As you've mentioned, we've been joined by Senator Martins, who is a new member, 2011, to the Senate and a new member to the Senate Insurance Committee but has proven to be a very active member. And we appreciate your involvement here to it.

Let's get right to it.

Our first witness is Inspector Brian O'Neil with the NYPD, Commanding Officer of `the Organized Crime Investigations Division.

Inspector O'Neil, looks like you brought the whole team here with you?

INSPECTOR O'NEIL: Yes.

SENATOR SEWARD: We feel very safe here.

SENATOR GOLDEN: So far. They are

1
2 leaving soon.
3 (Laughter.)
4 INSPECTOR O'NEIL: Good morning,
5 Senator Seward, Senator Golden, and members of the
6 Senate. I am Inspector O'Neil, Commanding Officer
7 of the New York City Police Department's Organized
8 Crime Investigations Division.
9 I am joined by Captain Donald
10 Boller of my staff, as well as Lieutenant Edwin
11 Martinez, Commanding Officer of the Fraudulent
12 Accident Investigation Squad, and Lieutenant John
13 Schroeder, Commanding Officer of the Health Care
14 Fraud Task Force.
15 We are pleased to be here today on
16 behalf of the Police Commissioner Raymond Kelly to
17 discuss with you the work of the NYPD in combating
18 no-fault and auto insurance fraud.
19 We would at the outset like to
20 commend you for bringing public attention to the
21 widespread and pervasive problem and, in essence,
22 an underground industry in which medical
23 professionals, lawyers, and garden-variety
24 criminals are able to reap millions of dollars each
25 year, based on fraudulent medical charges and

1
2 staged motor vehicle accidents.
3 While the reasoning behind
4 no-fault insurance coverage may be sound, the law
5 itself is exploited by unscrupulous criminal
6 enterprises.
7 They take advantage of the easy
8 availability of up to $50,000 in billing per
9 accident victim to the detriment of the honest
10 vehicle owners who must bear this cost of higher
11 insurance premiums.
12 In recent years, the explosion in
13 insurance fraud, and particularly in no-fault
14 fraud, prompted the NYPD to establish a unit which,
15 we believe, is unique among police departments, the
16 Fraudulent Accident Investigation Squad.
17 This unit specifically targets
18 staged accidents and no-fault fraud.
19 Because most of this fraud is
20 committed by extensive criminal enterprises, the
21 Squad was placed within the Police Department's
22 Organized Crime Control Bureau, which investigates
23 high-level organized conspiracies involving
24 narcotics, firearms, trafficking, auto crime, and
25 other serious crimes.

Through a combination of training and investigation, the Fraudulent Accident Investigation Squad attacks no-fault fraud in a variety of ways. One of its first initiatives was to review the Police Department response to vehicle accidents, yielding some significant changes. First, the Department tightened access to police accident reports which often serve as the gateway for fraudulent scheme. Only parties who are actually involved in an accident would now be able to obtain a copy of the report.

Second, police officers received additional training on how to complete the reports. Something as simple as drawing a line through the blank areas on an accident report could prevent a criminal from filling in the names of illusory accident victims.

Third and most important, the Squad conducted and continues to conduct training sessions for patrol personnel, which teach them to recognize the signs of a staged accident and to inform them of current schemes and trends.

Enhanced training and increased awareness among the patrol force has resulted in

2 solid referrals to the Fraudulent Accident
3 Investigation Squad, which also works closely with
4 our Auto Crime Division, our Auto Larceny Units,
5 the New York State Insurance Fraud Bureau, National
6 Insurance Crime Bureau, insurance companies, the
7 State Attorney General, and the local district
8 attorneys, in the investigation and prosecution of
9 these cases.
10 But, as you would imagine,
11 investigation and prosecution is often very
12 difficult as these cases involve complex financial
13 and medical transactions requiring extensive
14 documentation of fraudulent treatment and billing.
15 A case may start very simply.
16 Runners who produce accident victims for medical
17 clinics are typically paid between $1,200 and
18 $3,000 for each victim. Runners may be working for
19 the medical facility or may be working for a lawyer
20 seeking plaintiffs, who can wash the fee of the
21 runner through the medical clinic.
22 Victims may have been listed as
23 parties in a fictitious accident or may have been
24 participants in a staged accident. Or they may
25 have actually been in an auto accident, but were

encouraged by a runner to feign serious injuries and pursue fraudulent medical treatment at a particular medical clinic for a fee.

The medical facilities involved in these schemes depend upon licensed medical professionals who authorize the treatments and, thereby, confer apparent legitimacy on every transaction, making it very difficult to establish fraud.

These medical mills also tend to be multidisciplinary in order to boost their billing and include several practice areas; neurology, chiropractic, physical therapy, acupuncture, psychiatry, and dentistry, along with referrals to MRI facilities and the use of durable medical goods.

We use every investigative technique at our disposal; debriefing prisoners, obtaining information from confidential informants, undercover operations, wiretapping and search warrants; long-term surveillance, and scrupulous analysis of medical records.

Most of our work is done by building a case from the ground up, that is,

1
2 investigating what appears to be a staged accident
3 and then following the trail of medical referrals
4 and treatment.
5 You may have read about two of the Squad's more
6 recent cases, which were helped tremendously by
7 video recordings of the actual events.
8 Last month, the Fraudulent Accident Investigation
9 Squad arrested eight individuals after an
10 investigation into a staged vehicle accident in the
11 Bronx.
12 Three vehicles, each occupied
13 by three individuals, were captured on video
14 intentionally crashing their cars into one another.
15 Minutes later the vehicles circled the block and
16 came back to the same location, where they
17 proceeded to back their vehicles into each other
18 causing further damage and simulating an accidental
19 crash.
20 The occupants subsequently
21 called 911 and filled out an accident report. They
22 then sought medical treatment for their alleged
23 injuries at local Bronx medical clinics, which
24 billed insurance companies up to $39,000 within a
25 short period of time.

1
2 In another case with a
3 different twist, an individual was arrested two
4 weeks ago after claiming that he sustained injuries
5 and vehicle damage as a result of a tractor-trailer
6 accident that occurred on the approach to the
7 Queens-bound RFK Triborough Bridge.
8 After recovering over
9 $22,000 for medical and auto insurance
10 reimbursements, the story fell apart when
11 detectives from the Fraudulent Accident
12 Investigation Squad obtained and reviewed video
13 capturing the collision which clearly showed that
14 the individual was not involved in an accident.
15 In fact, he had stopped his vehicle in front of the
16 already overturned tractor-trailer and proceeded to
17 assist the occupants of the vehicle involved in the
18 accident.
19 When officers from the Triborough
20 Bridge and Tunnel Authority responded to the scene,
21 the defendant reported that he was involved in the
22 accident and was injured. The TBTA officers filled
23 out an accident report accordingly. Prior to his
24 arrest, the defendant had also retained an attorney
25 and initiated a lawsuit for bodily injury against

1
2 the insurer of the tractor-trailer.
3 These two cases illustrate the
4 ingenuity that can frustrate law enforcement in
5 trying to counteract the financial incentive to
6 fraud inherent to the no-fault system.
7 We appreciate your giving us this
8 opportunity to provide our input and would like to
9 make a few suggestions which would go a long way in
10 addressing this problem.
11 From a legislative perspective,
12 we strongly support Senator Seward's bill, Senate
13 Bill No. 1685, which would establish a new penal
14 law crime for staging a motor vehicle accident,
15 with 3-degrees ranging from a Class D felony to a
16 Class B felony.
17 The bill provides a strong
18 specific remedy targeted to this criminal activity,
19 and we hope that the Assembly quickly approves the
20 bill, as the Senate has already done.
21 We also suggest that the penal
22 law sections regarding commercial bribing and
23 commercial bribe receiving be expanded to include
24 bribery and kick-back schemes perpetrated in the
25 context of no-fault insurance fraud. The current

1
2 penal law provisions do not always cover this
3 conduct since they were intended to apply to
4 employees and agents, but not necessarily to the
5 owners of the businesses engaged in fraudulent
6 conduct.
7 In addition, we recommend that
8 the sentence for someone convicted of crimes
9 relating to staging accidents include revocation of
10 their driver's license and/or vehicle registration
11 as a means of curbing their ability to engage in
12 what is often repeated illegal conduct.
13 We have prepared a draft of this
14 legislative proposal which we would be pleased to
15 share with your staff.
16 Regarding administrative
17 sanctions, we recommend that medical and legal
18 professionals who participate in no-fault insurance
19 fraud lose their professional licenses as an
20 automatic consequence of this abuse of their
21 privilege to practice.
22 And finally, we would like to
23 propose a comprehensive new approach to the
24 investigation of no-fault insurance fraud.
25 As we have discussed, these investigations tend to

1
2 take place from the ground up, beginning with the
3 street level accident and tracing the medical and
4 legal trail upward.
5 Instead, as a State, we might
6 consider adopting a more top-down approach, modeled
7 on the work of the Medicare Fraud Strike Force,
8 which is a part of the Department of Justice Health
9 and Human Services Health Care Fraud Prevention and
10 Enforcement Action Team, known as HEAT.
11 The NYPD's Health Care Fraud Task
12 Force is one of the elements of this team working
13 with the FBI, HHS, HRA, and the FDA to analyze the
14 Medicare payouts themselves for operations and
15 patterns in order to identify potential fraud and
16 target the violators, translating this approach to
17 no-fault fraud into a similar state-based team
18 composed of stakeholders including law enforcement,
19 the NYS Insurance Fraud Bureau and the Health
20 Department's Office of Professional Medical Conduct
21 could analyze the universe of no-fault medical
22 payments to identify anomalies indicating
23 unexplained or fraudulent levels of billing.
24 We would be pleased to take part in such an
25 enterprise, which has been proven to be very

1
2 successful in parallel with Medicaid fraud
3 investigations.
4 Again, we thank you for the
5 opportunity to discuss our work on no-fault auto
6 insurance fraud and we will be pleased to answer
7 any questions.
8 SENATOR SEWARD: Thank you,
9 Inspector; you made some specific suggestions
10 there. I just had one question regarding the
11 runners' part of the operation.
12 You may be familiar with our
13 Majority Leader Senator Skelos who has what's
14 called a Runners Bill, which would actually make
15 this activity not only illegal, but make it a
16 felony.
17 I'd like your reaction to
18 this thought: We believe that by coming in with a
19 felony, possible felony conviction of a runner,
20 those, on the other side, are critical.
21 To the legislation, they are just the street
22 people. They are kind of low down on the totem
23 poll, so to speak, on this type of activity, but
24 the flip side is that if a runner is actually
25 looking at a felony conviction, their conviction,

1
2 they may be more willing to do a little talking to
3 finger people further up the ladder of the ring, so
4 to speak. What's your reaction to that approach in
5 terms of making Senator Skelos' runner's bill as
6 strong as possible? And not only expressing the
7 seriousness of the activity, but also helpful in
8 investigating and really getting at the heart of
9 some of these rings?
10 INSPECTOR O'NEIL: We definitely
11 have to do more to target the runners, absolutely.
12 The proposed bill that I mentioned
13 about the commercial bribing is intended to do
14 similar, but whatever bill gets passed that targets
15 the runners, it will help us to do our job better.
16 SENATOR SEWARD: Great.
17 I think you said you had some
18 proposed language. We would very much like to
19 receive that.
20 INSPECTOR O'NEIL: Absolutely. We
21 have copies with us of that.
22 SENATOR GOLDEN: Thank you, Deputy
23 Inspector O'Neil, for being here today. I know you
24 are on a time schedule, and we'll try to get you
25 out of here quickly.

1

2 Your testimony was very

3 impressive. Just how long does it take, if you

4 can, from the start of a case to the finish of a

5 case on a no-fault?

6 INSPECTOR O'NEIL: It can vary

7 greatly.

8 The cases I mentioned here were

9 pretty short-term. It took several months really.

10 But some of these cases, if we are very successful

11 and can work all the way up from the staged

12 accident into the medical clinic, it can honestly

13 take multiple years, two years.

14 SENATOR GOLDEN: Two years to get

15 a single case. How many --

16 INSPECTOR O'NEIL: We are talking

17 about multiple subjects of a case with a type of

18 case that gets everybody from a fraudulent

19 accident, multiple runners, multiple medical

20 clinics and the managers who run usually more than

21 one, several clinics.

22 SENATOR GOLDEN: The task force

23 that you've mentioned that already dealt, maybe you

24 can expand on a case recently that was here in New

25 York City and how that task force was helpful?

INSPECTOR O'NEIL: One of the cases that the Health Care Fraud Task worked on recently, obviously, it was not involving directly no-fault insurance fraud, it was a Medicaid fraud, but in the end, that case resulted in the indictment and arrest on federal charges of a high acting, high ranking member of an Eastern European organized crime known as a "Vor," based out of Los Angeles.

They ran operations out of New York, Los Angeles, and multiple states in between. If I recall, it was more than twenty clinics. The operations involved stealing patients' information from a hospital in White Plains to some doctors that were involved in doing fraudulent billing, and multiple levels in between.

SENATOR GOLDEN: And the recovery was the gentleman that was arrested here, in Brooklyn?

INSPECTOR O'NEIL: The "Vor" was arrested in Los Angeles, but we had multiple arrests of other members of --

SENATOR GOLDEN: What was the cost of that to the Medicare?

1
2 INSPECTOR O'NEIL: It's definitely
3 millions of dollars.
4 SENATOR GOLDEN: Looking at the
5 losses of the insurance company, it's well over
6 $200,000, and I'm sure we'll hear much more to that
7 from different insurance companies that are going
8 to come forward and testify. How many mills have
9 to be out there to be able to have these types of
10 losses? How much are we looking at out here?
11 INSPECTOR O'NEIL: We definitely
12 come across multiple medical mills. I don't know
13 exactly how many are out there, but we certainly
14 target them when we find them.
15 We found them virtually in every
16 borough here, in the City.
17 SENATOR GOLDEN: What we were able
18 to do in Medicaid, my colleagues, we looked at an
19 area in Upstate, New York. What they did is they
20 test in Upstate, couple of counties, and they
21 watched how people were buying Oxycodone from
22 different pharmaceuticals, and they were able to go
23 over there and do an overlay and check to see who
24 was purchasing it, who was writing the scripts, and
25 who was, you know, where were they, these scripts

1
2 filled.
3 Have we got any sense of an
4 overlay how we can check the different people that
5 are involved in these fraud systems?
6 The article 28th, the Health Care
7 Systems, the doctors, the criminals themselves, how
8 we can overlay crime or fraud statistics in a
9 borough being, of course, Brooklyn and Queens and
10 Staten Island being the worst, but it goes to
11 Westchester and Nassau Counties as being the five
12 counties that devastate the State of New York in
13 insurance.
14 Is there any technology overlay
15 practices here in the State of New York that we can
16 do here in the State of New York?
17 INSPECTOR O'NEIL: We have in the
18 past received fraud alerts from the National
19 Insurance Crime Bureau just where certain clinics
20 may have reason above level where they deem them to
21 be possible fraud-involved.
22 But in general, I believe that's
23 the idea that I'm trying to propose with creating
24 this state version of this HEAT Team, where we get
25 different agencies, including ourselves and

1
2 prosecutors, involved to try and create that kind
3 of a system where we can -- these things will be
4 able to be quickly identified and we can address
5 them.
6 SENATOR GOLDEN: That's a focus of
7 this hearing, to come up with some type of, I
8 believe, remedy or, at least, assistance in trying
9 to bring down fraud.
10 And I believe the task force does
11 work. And I was looking at the district attorneys
12 across the State and the City of New York in trying
13 to come up and working with the Attorney General's
14 office, if we could, and, of course, NYPD
15 specifically to make it a statewide issue but
16 definitely a much larger City issue for insurance
17 companies and, of course, the ratepayers here in
18 the City of New York.
19 How does it fit in with this task
20 force, how we'll be able to put that together?
21 INSPECTOR O'NEIL: Sounds like a
22 good start. If we can get different prosecutors to
23 get involved with us and the New York State
24 Insurance Bureau and NICB involved, we can work
25 together. That's a good start.

1
2 SENATOR GOLDEN: On the fraud
3 recoveries, I know that's obviously going to be an
4 issue with District Attorney A to District Attorney
5 B and District Attorney C and NYPD. Of course, it
6 has to be funded.
7 How do we fund this?
8 Are there federal funds available
9 for this and is there some kind of clawback on when
10 we make the recovery that can go into District
11 Attorneys' offices or into this task force for
12 impetus to get this started and keep it going?
13 INSPECTOR O'NEIL: I'm not aware
14 of that kind of funding. We have received state
15 grants to do investigations in the past. But for
16 this particular task force, I'm not aware that the
17 funding is readily available.
18 SENATOR GOLDEN: Could your people
19 put together, if it's possible, and I know it
20 wouldn't be a true bill of affairs, but what a cost
21 of a task force would be working with the District
22 Attorney's offices here in the City of New York?
23 What type of cost would be assigned to that to be
24 effective and how much manpower would have to be
25 assigned to that? I guess you have to have

1
2 undercovers working on the street and you've got
3 different gangs, Russian, Armenian, across the
4 board, Italian. I guess there's a lot of work that
5 has to go into this, right, I imagine?
6 INSPECTOR O'NEIL: Yes.
7 SENATOR GOLDEN: Being a former
8 cop, I should have figured that out myself.
9 I don't want to be long. You just
10 went into what the cost of the health care, health
11 issue was. You did not go into what the fraud was,
12 long-term losses for the insurance company, real
13 losses when they go in and file insurance cases.
14 When you say it takes two years on
15 average, you can go all the way up in the actual
16 lawsuit itself, I presume, right?
17 INSPECTOR O'NEIL: I'm sorry,
18 what?
19 SENATOR GOLDEN: Lawsuit for pain
20 and suffering as well as for --
21 INSPECTOR O'NEIL: Well, we have
22 not had a great deal of success in speaking about
23 getting the attorneys. We do have greater success
24 in getting the medical clinics, the managers, and
25 some of the medical professionals involved.

SENATOR GOLDEN: There's no aim on going into that direction?

INSPECTOR O'NEIL: It's certainly part of the investigation.

SENATOR GOLDEN: The commercial bribery part of the bill that you are proposing would obviously be a great assistance to the Runners Bill.

Do you believe that it's also necessary as part of the Runners Bill to be able to achieve your goals?

INSPECTOR O'NEIL: I don't know if one is better than the other, but I think the Commercial Bribing Bill or the Runners Bill or whatever legislation helps us target the runners is going to help to us.

SENATOR GOLDEN: Inspector, thank you very much.

There's a ton of questions I want to ask you, but I'm going to get kicked out of here by the Chairman because it's a long day for a lot of people here in the audience.

I want to thank you for your testimony, and tell Commissioner Kelly thank him

1
2 for allowing you to be here today. And give him my
3 regards.
4 SENATOR SEWARD: Senator Martins.
5 SENATOR MARTINS: Just one
6 question, Deputy Inspector.
7 When you are dealing with Medicaid
8 and Medicare, there are, I guess, central places of
9 information you can analyze in terms of whether or
10 not there are anomalies when it comes to billing
11 cycles or billing practices.
12 Is there a similar aggregation of
13 information when it comes to no-fault between the
14 insurers so that someone would have the ability or
15 a task force would have the ability to review it
16 similarly?
17 INSPECTOR O'NEIL: I believe that
18 the NICB would have that repository, or the New
19 York State Insurance Fraud Bureau.
20 SENATOR SEWARD: Thank you,
21 Inspector.
22 I was particularly intrigued with
23 your concept of using the Medicare Fraud Strike
24 Force as a model for pulling together different
25 units of state government that have a similar

1
2 strike force specifically directed at no-fault and
3 insurance fraud.
4 And this would be a particularly
5 good time for us to embark on something like this
6 because, as we may all know, the Insurance
7 Department is in for some reorganization as we
8 create this new Department of Financial Services
9 with the Banking Department. I know that this
10 fraud unit, there will be some reorganization going
11 on. So this may be a perfect time to discuss this
12 with the administration and whatever we need to do
13 legislatively in this area. I think that's an
14 excellent suggestion.
15 INSPECTOR O'NEIL: Thank you.
16 SENATOR GOLDEN: And I apologize
17 for calling you a Deputy Inspector. I should have
18 known that from being a police officer, Inspector.
19 SENATOR SEWARD: Thank you very
20 much.
21 The next witness is an Honorable
22 Daniel Donovan, who is a Richmond County District
23 Attorney.
24 MR. DONOVAN: Mr. Chairman, let me
25 begin by thanking Senator Golden for looking out

1
2 for our budget and trying to get us more money.
3 Thank you.
4 SENATOR GOLDEN: And also to get
5 you more work.
6 MR. DONOVAN: We have the work
7 already.
8 I'd like to thank Senator Golden
9 and Senator Seward and Senator Martins and other
10 members of the Insurance Committee for allowing me
11 to testify about our ways to help reduce the
12 insurance fraud and abuse that plagues our State.
13 I will keep my remarks brief
14 because I know there are many people waiting to
15 testify.
16 As a district attorney, myself and
17 my colleagues depend largely on the industry
18 watchdogs to bring us cases. That's why, I
19 believe, giving the insurance industry the tools
20 needed to detect, investigate, and prevent fraud
21 before it occurs would be the most efficient and
22 effective ways to reduce it.
23 Some of these changes are already
24 being proposed by legislators here today, and I'd
25 like to thank you for your efforts on our behalf

1
2 and to support two specific pieces of legislation.
3 On a common sense approach, I
4 support Senator Golden's bill, which allows a
5 retroactive cancellation of a policy in a case of
6 any fraudulent activity.
7 In auto insurance fraud, just as
8 in many cases of fraud, the policy is often
9 purchased with a stolen or fake credit card or by
10 using a phony identification.
11 And because the policy becomes
12 active before the payment goes through, there's
13 ample time for bad actors to submit fraudulent
14 claims before ever paying a dime of their insurance
15 premiums.
16 As Senator Golden points out, most
17 states that have no-fault insurance also allow for
18 retroactive policy cancellations to prevent this
19 type of activity.
20 New York is not one of them. And
21 it's no coincidence that we are consistently among
22 the leaders of insurance fraud, according to the
23 National Insurance Crime Bureau.
24 Senator Golden's proposal which
25 would allow retroactive cancellation of the

1
2 automotive insurance in the first 60 days where the
3 payment is made with insufficient funds or where
4 the identity used to procure the policy turns out
5 to be fraudulent could effectively nip some of this
6 fraud in the bud.
7 I also believe that it will
8 discourage people from fraudulent claims, knowing
9 that their policy will be canceled after an
10 extended period of time, which is not allowed now.
11 I believe Senator Golden's bill
12 will work hand in hand with another proposal, a
13 bill sponsored by Senator Seward allowing insurance
14 companies more time to look into claims.
15 Under current law, a person has 30
16 days after an accident to make an insurance claim.
17 Insurance companies then have 30 days to either pay
18 or deny that claim or to formally request more
19 information to investigate further.
20 By the time the insurance company
21 gets the claim, however, there's usually 30 days of
22 medical treatment and/or history that need to be
23 reviewed to fully understand what occurred at the
24 accident and the extent of the injuries.
25 That seems impossible when one

1
2 claiming agent is usually juggling dozens of claims
3 at a time.
4 Furthermore, the State applies a
5 penalty of two percent interest per month if an
6 insurance company does not meet the standards under
7 the 30-day rule.
8 And in lawsuits, judges have ruled
9 that insurance companies can't assert any defense
10 if they have not met that standard.
11 While the 30-day rule was created
12 to promote prompt resolution of injury claims,
13 alleviate the burden on the court system, and limit
14 cost to the consumer, it may help to do the
15 opposite by making it easier to get payouts from
16 scams.
17 Giving the insurance companies the
18 time to decide what questions they need to ask,
19 whether further information is warranted, and
20 whether they could notify law enforcement is a
21 prudent modification of current law that will help
22 uncover fraudulent activity. It will also, in the
23 end, help alleviate the burden on honest residents
24 for having to pay for fraudulent activities.
25 I would like to conclude by saying

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2 - and that's always everybody's favorite line in
3 anybody's testimony - I'd like to conclude by
4 saying that I also support the effort by some of
5 the lawmakers here today to create the felony for
6 staging an accident.
7 This would not only codify a
8 crime, but give us prosecutors another tool to
9 combat criminal activity.
10 I once again thank you,
11 Mr. Chairman, Senator Golden, Senator Martins, for
12 this opportunity. And I will be available for any
13 questions that you might have on my limited
14 testimony.
15 SENATOR SEWARD: Thank you. It's
16 very much appreciated to have a perspective of a
17 prosecutor here.
18 I just have one question for you
19 in a general sense.
20 Some of the bills that have been
21 introduced in this area, and many of which have
22 already passed the Senate, are directed either
23 towards creating a new crime, such as staging an
24 accident, or increasing penalties for illegal
25 activity and specifically the insurance fraud.

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2 We have legislation right across
3 the board to do that on all insurance fraud,
4 increasing penalties.
5 From a prosecutor's point of view,
6 what impact does a creation of new crimes and
7 increasing penalties for insurance fraud, in this
8 case, what impact does that have on investigation,
9 from a prosecutor's point of view?
10 MR. DONOVAN: They are great
11 tools, Senator. We have to keep up with the
12 criminal industry. They are creating new crimes
13 every day. They are coming up with innovative ways
14 to exploit industries such as we are talking about
15 today, the insurance industry.
16 So by creating new crimes, we are
17 keeping up with the bad guys; we are keeping up
18 with the criminals. A lot of times we are
19 responsive because we create a new legislation
20 based on incidents that happen that come to our
21 attention.
22 And since this has become
23 something that's been ramping in our communities,
24 in New York City particularly, I commend you for
25 coming up with solutions for us to give us the

1
2 tools to combat it.
3 As the Inspector was saying, as
4 many men and women are working on this on a daily
5 basis, you are allowing us new tools to combat it
6 and to be more effective at it.
7 SENATOR SEWARD: Thank you.
8 Any questions?
9 SENATOR GOLDEN: Thank you,
10 District Attorney Donovan, thank you for being here
11 today.
12 I know you have a busy schedule as
13 well. I won't keep you long.
14 You know, the cost of doing
15 business in the City of New York is just
16 ridiculous. And when you see things like Medicaid
17 fraud and you see no-fault fraud the way it's
18 going, it's just unnecessary. It's definitely a
19 tax on the people who live here, in the City and
20 the State of New York, and more so for the people
21 of the City of New York.
22 What's your feelings on a task force created here
23 in the City or a statewide task force being able to
24 contribute not only on Staten Island, but across
25 the five boroughs and maybe in Nassau and

1
2 Westchester as well? Because there seem to be
3 major issues there.
4 MR. DONOVAN: It's a wonderful
5 idea, Senator. We specialize in fighting crime, as
6 the Inspector was talking about. We have people
7 who specialize in different areas of fighting a
8 crime, and this is a specific area of crime where
9 we have to train investigators and we need
10 resources to combat it.
11 I think a task force is a
12 wonderful thing, particularly if it comes with
13 funding.
14 (Laughter.)
15 MR. DONOVAN: I mean, that's the
16 sad part of it.
17 I think you are right, I think a
18 lot of the things that we do sometimes, you know --
19 the forfeiture laws were great laws. There was
20 something that you guys created many years ago that
21 helped us use bad guys' moneys to fight other bad
22 guys.
23 SENATOR SEWARD: There's some
24 justice in there.
25 MR. DONOVAN: There's some great

1
2 justice. I once took $2 from a drug dealer. I
3 wouldn't let him keep $2 that he made.
4 SENATOR GOLDEN: God bless you.
5 MR. DONOVAN: Yes.
6 So coming up with creative ways to
7 fight crime and creative ways to fund them,
8 charging the bad guys for the expenses that they
9 have cost us in fighting these crimes is a great
10 idea.
11 SENATOR GOLDEN: I don't want
12 anybody leaving this room today to believe that
13 we've created a funding stream here. It's
14 obviously conversation. The crime, obviously,
15 itself has to be dealt with. And we have to make
16 sure even if there's no funding assigned to this
17 task force, we have to be able to get this task
18 force underway and hopefully to be able to deal
19 with this issue.
20 Funding is something that we want
21 to try to work in looking at the clawbacks in any
22 way we can. I know we've done it in the Medicaid.
23 We want to give the DAs the ability to work and to
24 want to go out there and investigate the Medicaid
25 fraud, you know. And you have so many

1
2 responsibilities across each one of these counties
3 and you only have limited manpower, but what's the
4 incentive for you to put men into the street to do
5 this type of investigation?
6 MR. DONOVAN: I think your
7 proposed legislation agrees to that. It's the
8 industry that brings it to our attention. Allowing
9 them some more time to just uncover fraud or at
10 least being sure that this claim does not involve
11 fraud before they make a payout, they are the
12 people that call us up and tell us, we believe that
13 this is a case that is worth looking into, that
14 this might be a fraudulent claim, someone may have
15 committed a crime here.
16 That happens in many industries.
17 It's the industry itself that brings it to our
18 attentions, so allowing them the tools to propose
19 legislation that you are proposing, Chairman,
20 allows them the tools to detect it. And then we'll
21 take over from there.
22 SENATOR GOLDEN: Thank you very
23 much.
24 MR. DONOVAN: Thank you.
25 SENATOR SEWARD: Thank you very

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2 much. We appreciate your time. I know you are
3 very, very busy. Thank you.
4 Next is Daniel Alonso, who is
5 Chief Assistant District Attorney of the New York
6 County.
7 MR. ALONSO: Good morning.
8 SENATOR GOLDEN: Good morning.
9 MR. ALONSO: Thank you very much
10 for the opportunity to present the views of the
11 Manhattan District Attorney's office and District
12 Attorney Cyrus Vance on combating no-fault fraud.
13 Just by the way of background, I
14 am, as you said, a Chief Assistant DA. I also
15 spent nine years as a federal prosecutor in the
16 Eastern District of New York, which is where
17 Brooklyn is located, which is kind of the capital
18 of the scams in New York.
19 And I was a Chief of the Criminal
20 Division for three years there and personally
21 handled what, when we announced in 2001, was the
22 largest staged accident case in New York's history.
23 So I have experience from the federal side.
24 My office just last year, under
25 the leadership of DA Vance, prosecuted and

1
2 convicted on enterprise corruption charges the
3 operators of a clinic in New York County called the
4 St. Nicholas Group on a state racketeering charges.
5 So we've been very aggressive in
6 this area and we have a lot of experience. So we
7 appreciate this opportunity to give you some of our
8 thoughts.
9 So in law enforcement, we are
10 keenly aware that whenever there's a pot of money,
11 there are criminals looking to steal it. And this
12 is a very big pot of money, the one that's mandated
13 by the New York law for no-fault. As you well
14 know, it has lent itself to fraud and abuse.
15 My boss, the DA, ran on the
16 platform of crime prevention. And we believe that
17 a crime prevented is worth more than the crime
18 prosecuted. It's true in violent crimes and it's
19 equally true with white collar crime and organized
20 crime.
21 With no-fault insurance fraud, we
22 believe that this translated into a need for a
23 strong, effective law criminalizing the
24 unscrupulous runners who pay and are paid to bring
25 patients into no-fault clinics.

The purpose is simple, to prevent fraudulent claims.

The body, the New York State Legislation and Congress, has known for decades that sometimes it's necessary to criminalize certain behavior in order to deter or prevent other more costly behaviors.

So for example, in New York, we criminalized the possession of guns as a way to prevent shooting, or the prevention of switchblade knives as a way to prevent stabbing.

Similarly, the federal Medicare-Medicaid Anti-Kickback Act makes it a crime to pay for patients' referrals, felony, by the way, because when you are getting paid for every patient you are sending over, you quickly run out of legitimate patients, and it becomes the source of Medicare and Medicaid fraud.

So with no-fault, we need to prevent fraud by attacking the root of the problem.

If I can stress only one point to you today, it would be the following: Without runners, the patient supply for fraudulent clinics would dry up, and New York's ratepayers would save

tens if not hundreds of millions of dollars.

The way the no-fault scam works, you've heard some of the descriptions, but let me go a little bit deeper into it. It's like a 21st century military industrial complex for the underworld. What we have is every participant makes sure that the other participant makes money.

The runner brings a patient to the clinic and gets paid; the patient visits the clinic and gets paid; the lawyer, who has been helpfully provided by the owners of the clinic signs up the patient and gets paid a one-third contingent fee for what is typically a nuisance-value pain and suffering claim.

And, of course, the clinic owners and other providers get paid for providing all those many kinds of treatments you heard about earlier.

Everyone wins except the insurance companies and ratepayers. Those of us who own cars in New York, we lose.

The ways runners operate are kind of diverse. Just very briefly, what we see is we see runners who go out and look for people who were

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2 in real accidents and refer them to the clinic
3 without any regard whether they were really
4 injured, really need treatment. The only point is
5 to bill the company. It's not to make these people
6 feel better.
7 Some are staged accidents, as you
8 heard; some are caused accident. We had cases of
9 people ramming into and stopping short in front of
10 expensive cars on a theory that they have better
11 insurance.
12 And the funny scam that I've seen,
13 I personally prosecuted, this is rare, a corrupt
14 police officer who was paid by a runner to write
15 phony accident reports for completely fictitious
16 accidents. And, in fact, the poor guy was bribed a
17 couple of hundred dollars for an accident while the
18 clinics, of course, were making $100,000, $200,000
19 per accident.
20 But that's the way runners
21 operate. Any way to get a body on the accident
22 report into the clinic, that's the name of the
23 game.
24 The common theme in all these
25 scenarios is the runner.

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2 So we've been successful both in
3 the Manhattan DA's Office, in the U.S. Attorney's
4 Office, and in our sister DA's Offices, we've been
5 successful, and in the Attorney's General Offices,
6 in prosecuting these clinics. But despite those
7 successes, we encountered common setbacks, which is
8 what I want to suggest a possible solution to you
9 today.
10 The entire enterprise of a staged
11 accident scheme is premised on the understanding
12 that the participants will stick to a simple plan
13 if they are questioned by the police.
14 The patients know to say that they
15 were really injured; the doctors say that they
16 merely treated the patient who complained of
17 injuries; the lawyers say they filed a claim for a
18 client who had an accident report and medical
19 records; and the runners run away.
20 So it's very difficult under
21 existing law without years of investigation to
22 prove that the various participants acted with
23 knowledge of actual particular fraudulent claims.
24 So instead, for state prosecutors to prevent
25 no-fault insurance fraud schemes effectively, we

need to be able to take runners off the streets, put them out of business, and put them in prison.

By the way, it's not just -- the runner law does not just attack the runner; it attacks those who pay or hire the runner.

So a good, strong runner law would criminalize the clinics paying the runners and the lawyers paying the runners. Sometimes lawyers pay the runners and sometimes they don't, but the fact is that whoever pays them would be criminalized.

And for certain thresholds, they can be monetary or they can be based on a number of patients, we can obviously talk about that with the Senators or staff, you can make hiring or acting as a runner a felony. That's subject to provisions to the New York State Organized Crime Control Act. That would go a long way towards preventing insurance fraud.

I do have one caution, which I offer very respectively. Our law that we propose criminalizes paying for patients or clients as a means to prevent fraud, but fraud itself is already a crime. And the concept of fraudulent intent or knowledge is better left to our anti-fraud laws,

1
2 which already exist.
3 The runner's law that we propose
4 is a prophylactic measure against fraud.
5 So we look forward to working with
6 Senate staff and interested groups to produce a
7 bill or to amend the existing proposals that truly
8 fulfill the purpose that we propose today.
9 Once you dry out the supply of
10 patients, you'll take away the incentive to defraud
11 insurance companies. This is simply being smart
12 about crime prevention.
13 We commend the leadership of the
14 Committee, especially Chair and Senator Golden as
15 well as Senator Skelos, and urge the Senate and
16 Assembly to pass an effective runner's law with all
17 due haste.
18 Thank you very much for inviting
19 us.
20 I'll take any questions you have.
21 SENATOR SEWARD: Just a brief
22 comment, Mr. Alonso.
23 I am very intrigued with your
24 focusing right on the runner as being very much a
25 key here to this type of activity. And certainly

1
2 we intend to zero in on that, on that runner, as a
3 key to where we go in going forward.
4 MR. ALONSO: Terrific to hear
5 that, Senator.
6 SENATOR GOLDEN: Thank you, Mr.
7 Chairman. Mr. Chairman is the head of this
8 Committee. I don't want to get myself in trouble
9 for this, for taking this, but I thank you for your
10 kind remarks and your appropriate remarks.
11 The cost of insurance here in 2005
12 was approximately $5,700. And the companies paid a
13 cost of $8,900 in 2010, representing a 54 percent
14 increase in just that number of years.
15 It's unsustainable.
16 Claim cost is 64 percent higher
17 than the nation's average, 52, 89, and there's
18 companies here today, they'll probably testify that
19 they pay $1.30 on every dollar.
20 You can't sustain those losses.
21 You just can't. You are not going to stay as
22 viable, and there's no reason to stay part of the
23 insurance company in the City and the State of New
24 York.
25 That's the last thing we want to

1
2 see is the companies leave the City and the State
3 of New York.
4 I do believe that some of the
5 stuff that you come up with here and the amendments
6 to the runner's law, I believe, will be appropriate
7 and good for us.
8 And that St. Nicholas Group, how
9 long did that take to close down? What were they
10 taking down, a year in their operations?
11 MR. ALONSO: That was a three
12 years' investigation and it involved a long-term
13 special grand jury, it involved all sorts of
14 investigative techniques.
15 The trial lasted two months. It
16 was an incredibly cumbersome process.
17 What we saw in that case, by the
18 way, is something that I hope we'll be focusing on
19 as well, that these clinics tend to be -- State law
20 requires them to be owned by doctors.
21 So they are on paper owned by
22 doctors, but in reality they are owned by lay
23 people that control the clinic.
24 And sometimes they are involved in
25 crime and sometimes they are not, but the important

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2 thing is that there's a reason why we have a state
3 law that says medical facilities have to be owned
4 by doctors because they are supposed to act in the
5 best interest of patients.
6 And what we saw, we had a really
7 shady clinic testify as a cooperating witness.
8 What we saw is that he owned the clinic, and all he
9 cared about was billing, billing, and billing. And
10 it had nothing to do with medical necessity,
11 medical need.
12 These are not, I stress, these are
13 not places with legitimate people walking off the
14 street and saying, I got hit in a car accident.
15 These are places that are paid by the patient for
16 the sole purpose of billing and billing and
17 billing.
18 Dry up the supply of the
19 patients, you'll dry up the fraud.
20 SENATOR GOLDEN: Thank you.
21 I've heard that in many cases.
22 Some of these doctors, it's not required, they are
23 not even living in the State of New York. Their
24 names are being used in these articles and they are
25 opening up a lot of these articles in Kings County.

And I've said it and you said it, anybody who wants to look at it, it's the capital of fraud in the nation when it comes to Medicare-Medicaid fraud. It's a shame what it's costing us.

The overlay that I spoke of wouldn't -- if we had an overlay, we could finally track the runners, the doctors, the process itself, the accident, people involved in an accident, the location of the accidents, the questioning, the same answers coming up, the same types of injuries coming up on these accidents.

Couldn't the task force or an overlay come up with the appropriate tool to be able to deal with this issue in the future?

MR. ALONSO: Let me start with a proposition that data mining, doing what you are suggesting which is looking at billing, is an excellent idea.

It's done, as Inspector O'Neil said, at the federal level. The Health Services have been doing it for years. And the way they target doctors for Medicaid and Medicare fraud is they see who is billing in disproportional amounts

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2 in a particular area and they send undercovers and
3 they look at their billing and they do a regular
4 old-fashioned investigation.
5 Your ideas are excellent. I leave
6 it to the industry experts to see what the cost of
7 benefits is worth. I don't know how much
8 infrastructure would be necessary or what the cost
9 would be to make it viable on the federal level,
10 you know, all claims are centralized in central
11 place for Medicare, for Medicare, at least;
12 Medicaid, I think, is done state by state.
13 SENATOR GOLDEN: What would you
14 say the St. Nicholas cost was between the courts,
15 the investigative, your end of it, the attorney's
16 end of it, how much do you think that cost the
17 State of New York?
18 MR. ALONSO: Millions and millions
19 of dollars, but not counting the cost to the
20 ratepayers. The charge of fraud in the
21 St. Nicholas case was between 6 or $7 million, but
22 in most cases, that's all we can prove beyond the
23 reasonable doubt. So we are talking about
24 multiples of that is highly likely.
25 SENATOR GOLDEN: You have some

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2 amendments that you -- to the law itself?

3 MR. ALONSO: We actually have

4 drafted what we think is a good runner's law. If

5 you'd like, I'll be happy to give it to your staff.

6 SENATOR GOLDEN: We would

7 appreciate that.

8 MR. ALONSO: And we most

9 respectfully are happy to work with anyone, and we

10 commend Senator Skelos' leadership in this

11 particular area.

12 SENATOR GOLDEN: And working at a

13 task force, do you think the task force could be

14 appropriately instituted here in the City of New

15 York, statewide or citywide?

16 MR. ALONSO: I think it's

17 possible. I think I agree with District Attorney

18 Donovan, of course, you know, everything is

19 possible when it's well funded.

20 I will note that an Attorney

21 General has had an accident fraud investigation

22 unit for a while now and has extended delegation

23 from the executive branch to investigate auto

24 insurance fraud, and they have criminal

25 jurisdiction. So they should be included in

1
2 whatever we do.
3 Yes, task force is a good idea. I
4 think you should include federal agencies as well
5 because they are active in this area.
6 And I nominate District
7 Attorney Donovan the chair.
8 (Laughter.)
9 SENATOR GOLDEN: I think he is a
10 great man, and if he'd like to step up to the
11 plate, we would greatly appreciate it, but I think
12 we've got some DAs across this; Hynes in Brooklyn
13 and Brown in Queens and Johnson in the Bronx. I'm
14 sure we've got some good people out there in
15 Westchester County and in Nassau as well.
16 But the focus is trying to come up
17 with how much it's going to cost and where the
18 funding is going to come from. And even if there's
19 no funding, what are we going to do about it?
20 MR. ALONSO: Well, on the
21 forfeiture point that you made before, I will say
22 that forfeiture in this area is unlikely to fund
23 these investigations because it tends not to cover
24 the loss amount. And with forfeiture, the money
25 that we seize has to initially go to the

1
2 restitution.
3 So when we seized money in the
4 St. Nicholas case and when we seize money in other
5 cases, it goes back to the insurance companies
6 first as restitutions for their debts. So it's not
7 money that can be used.
8 Let's say, drug forfeiture where
9 you seize millions of dollars from a drug dealer,
10 that can go into the General Treasury and go for
11 law enforcement purposes, but with fraud
12 forfeiture, it has to go to restitution first.
13 So I don't know that we can fund
14 the task force out of recoveries. You know,
15 perhaps pass a runner's law, if it saves the
16 industry money, and collect one percent of the
17 savings, maybe that will work.
18 SENATOR GOLDEN: Thank you.
19 That's an idea that's an
20 appropriate idea to head down, but I do believe
21 that we have to do something where the cost of
22 insurance -- it's not the insurance companies, it's
23 the cost to the ratepayer. The ratepayers just
24 can't continue to keep paying. I mean, in Brooklyn
25 and in New York it's a disaster. I live in

1
2 Brooklyn. And the cost of insurance is just
3 astronomical and it's unfortunate that the cost of
4 that insurance is two to three to four thousand
5 dollars because of the no-fault. And that's
6 something that we have to address.
7 The mills that exist and openly
8 and blatantly with no way of -- coming in with 2011
9 technology and coming in and being able to overlay
10 this and to be able to come up with an appropriate
11 response to this type of fraud, to me it's --
12 MR. ALONSO: It's an excellent
13 idea. And as Inspector O'Neil said, there's a
14 well-worn path. We have a road map to it. The
15 question is: Can you collect the data in a
16 centralized place in a way that it doesn't sort of
17 swallow the entire industry. That's the issue.
18 SENATOR GOLDEN: The AG did submit
19 his testimony. And he could not be here today, but
20 we do fully believe that we'd like to see the AG
21 involved in this all the way up to his armpit.
22 We want him because he does have
23 some funding, and he would be able to appropriately
24 deal with this issue here in New York.
25 Thank you very, very much.

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2 If you give us those amendments, we would
3 appreciate it.
4 SENATOR SEWARD: Senator Martins.
5 SENATOR MARTINS: Mr. Alonso,
6 thank you very much for your testimony. I truly
7 appreciate it.
8 I guess the question really is, or
9 the observation is, we probably have to take a
10 multidimensional approach to this, whether it's
11 data mining or the cooperation with the industry
12 itself in terms of making this information
13 available and being able to place it in a central
14 repository so it can be evaluated in a way that
15 Inspector O'Neil suggested.
16 But if I understand you correctly,
17 with the suggestion on the runner's law that it
18 would take a more mechanical purpose in that if
19 there are multiple referrals by a single runner,
20 that in itself will constitute a crime which will
21 trigger the appropriate sanction. That won't
22 involve a finding of a law for that.
23 The laws are already in place for
24 that, but this is more of a mechanical approach.
25 If we can prove that or show that there were

1
2 referrals that we can hold him accountable or her
3 accountable for, that is a crime.
4 MR. ALONSO: That's exactly right,
5 Senator. And if it's not multiple times, depending
6 on if there's a number of patients or amount of
7 money, it could be a felony and subject to the
8 provisions of Organized Crime Control. We could
9 bring the equivalent state racketeering charges on
10 that.
11 SENATOR MARTINS: And again, it's
12 just a counting game at that point. If we can
13 prove the referrals, it's a crime. And that is a
14 deterrent to the referral itself.
15 MR. ALONSO: Just as long as
16 there's a payment. In other words, if there's a
17 referral with no payment -- we'll work out the
18 details with the staff to make sure that the
19 legitimate referrals from doctors and others would
20 not be criminalized. That's obviously not the
21 intent that we propose.
22 Referrals, paying for patients by
23 itself is a powerful incentive for fraud 'cause you
24 run out of real patients really quick.
25 SENATOR GOLDEN: One last

1
2 question.
3 If you could submit to me who you
4 think should be on that task force, and if it
5 should be citywide or statewide.
6 MR. ALONSO: I'll leave it to the
7 industry to tell us the problem is worse Downstate
8 or Upstate. I've heard that some of the cities
9 Upstate start seeing this problem. I heard about
10 Rochester, but I'll leave that to the industry.
11 So if that's true, it should be
12 probably statewide, but that makes it more
13 unwieldy.
14 SENATOR GOLDEN: I think the
15 industry will tell you that Brooklyn, Queens, and
16 the Bronx are the leading counties in the country,
17 not in the State but in the country.
18 So their testimonies are about to
19 come up here, and I think it is going to be very
20 chilling. And it's not sustainable. And we can't
21 see one of these companies leave.
22 I don't want -- I'm actually
23 considering in working with the Chair and my
24 colleague Senator Martins and others. We can get a
25 task force started. We will put one on paper and

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2 we want to create this task force by law, and we
3 want to make sure that we do it correctly, with the
4 appropriate people on that task force that can get
5 the job done.
6 MR. ALONSO: Then in answer to
7 your question, in my opinion, you should have five
8 district attorneys and their delegates who are
9 experts in this area, some of them are here today,
10 and the NYPD, the FBI, perhaps. Certainly the
11 Attorney General. And you might want to consider
12 inviting the U.S. attorneys too, to join us so that
13 we have to sort out and work out protocols in
14 advance and to see where the cases go.
15 SENATOR GOLDEN: Thank you very
16 much.
17 MR. ALONSO: Thank you very much.
18 SENATOR GOLDEN: Thank you.
19 SENATOR SEWARD: Next is Jeffrey
20 Ferguson, who is the Bureau Chief in the Rackets
21 Division of the Kings County District Attorney's
22 Office.
23 We are taking the tour of the City
24 here, pretty much.
25 SENATOR GOLDEN: Do you want to

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2 chair that task force?
3 MR. FERGUSON: I'd love to.
4 (Laughter.)
5 MR. FERGUSON: Thank you,
6 gentlemen, and good morning.
7 I'd like to thank the Senate
8 Insurance Committee for inviting me to speak today,
9 and I also want to express the words of the
10 District Attorney Charles Hynes, who intended to be
11 here but unfortunately was unable to do so due to
12 unforeseen circumstances.
13 First, I'd like to congratulate
14 the Committee, the State Senate, and in particular
15 Senator Seward, Senator Golden, and Senator Martins
16 for the recent passage of a bill designed to stem
17 fraud and abuse in the no-fault insurance system.
18 We are all aware of the
19 statistics. Senator Seward, you referred to them,
20 they are staggering.
21 It's believed that 22 percent of
22 no-fault claims submitted in 2010 had elements of
23 fraud and 14 percent of no-fault claims submitted
24 were either inflated or for unnecessary treatment.
25 This is particularly true in New

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2 York City where, as it has been reported, that
3 40 percent of no-fault claimants receive
4 chiropractic care and 49 percent are treated by
5 acupuncturists.
6 Kings County has the dubious
7 distinction of being at the forefront of no-fault
8 insurance fraud.
9 As I said, the cost is staggering.
10 Senator Seward, you mentioned it, $241 million.
11 Accordingly, the Kings County District Attorney's
12 Office welcomes the reforms proposed by the bill
13 you've sponsored and the Senate passed last month,
14 and we encourage the State Assembly to adopt the
15 measures proposed and to consider additional
16 reforms.
17 From a law enforcement
18 perspective, perhaps, the most useful portion of
19 the bill is the provision that extends the period
20 of time for insurance companies to pay claims that
21 have been submitted by no-fault providers.
22 Under the current system,
23 insurance companies are mandated to pay the claim
24 submitted by no-fault providers within 30 days of
25 their submission. If this deadline is not met, not

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2 only is the no-fault provider entitled to interest
3 on the claim it submitted, but the claim can't be
4 denied.
5 The 30-day period simply does not
6 allow the insurance companies to adequately
7 investigate suspicious claims. Under the reform
8 bill, claims that are deemed suspect or raise red
9 flags indicative of a fraud can be more fully
10 scrutinized.
11 Disputed claims can eventually be
12 submitted for arbitration. No longer would an
13 insurance company be required to pay a claim simply
14 because it took more than 30 days to review a
15 no-fault provider's submission.
16 This extension of the period of
17 time to pay a no-fault claim will provide the
18 insurance companies Special Investigations Units,
19 or SIUs, and law enforcement what they need most;
20 the time necessary to investigate claims that on
21 their face appear to be fraudulent, time to locate
22 and interview the allegedly injured party, time to
23 talk to the no-fault provider, if that's the
24 appropriate investigative cost.
25 Honest providers won't be

prejudiced, as legitimate claims paid beyond 30
days will be subject to the imposition of the
interest, and those legitimately injured in
automobile accidents still receive treatment for
their injuries.

The extension of the time period
for insurance companies to pay for no-fault
providers allowing insurance companies and allowing
law enforcement to investigate suspect claims will
serve as a strong deterrent to those contemplating
the submission of bogus claims without affecting
the interests of the legitimate medical provider or
the health and welfare of the patients that they
treat.

Now, the provision of the bill
which would make it a felony to intentionally cause
an accident is equally important to law enforcement
and will provide a strong tool in not only
deterring one who would participate in a staged
accident, but it will also provide enormous
leverage to the police and other investigators in
their efforts to reach beyond the allegedly injured
participant in a staged accident to those who
profit even more from no-fault insurance fraud.

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2 I'm referring to the runners who
3 organize staged accidents, and I'm also referring
4 to the allegedly injured individuals as well as the
5 operators of medical clinics who pay the runners
6 for those referrals and submit fraudulent no-fault
7 claims for treatment of phony accident victims.
8 This leaves me to suggest an
9 additional reform that would be extraordinarily
10 helpful to Special Investigations Units associated
11 with insurance companies and law enforcement.
12 What I'm suggesting is a
13 requirement that providers seeking payment for
14 medical treatment must submit claims for treatment
15 in a much more timely fashion.
16 Under the current no-fault
17 regulations, claims must be submitted within 45
18 days. In practice, however, bills are often
19 submitted and paid for various reasons well after
20 the 45-day period has elapsed. The clinics and
21 doctors who engage in no-fault fraud start
22 generating bills for so-called treatment soon after
23 the supposed accident, but these claims are
24 frequently not submitted until close to or after
25 the 45-day deadline.

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2 That means that by the time
3 evidence of fraud are discovered by the insurance
4 companies' Special Investigations Unit and the case
5 is referred to the law enforcement, many of the
6 traditional methods of investigation are no longer
7 available.
8 This is because the patients have
9 discontinued treatment and are no longer in contact
10 with the no-fault providers. The problem is
11 compounded by the fact that those who participate
12 in no-fault fraud often provide false contact
13 information in an effort to thwart the
14 investigative efforts of the insurance companies
15 and the law enforcement.
16 The result is that the suspected
17 fraud can't be investigated at the time it's most
18 likely to be established and proven, while it's
19 ongoing.
20 How these delays impede law
21 enforcement efforts can be shown by making a
22 comparison between the insurance fraud
23 investigation and a narcotics investigation.
24 In narcotics cases, what often
25 happens is that the police first arrest drug users

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2 or buyers for possession. The user might give up
3 the street-level dealer and help arrange for an
4 undercover to buy drugs from the dealer.
5 Hopefully the dealer will sell to
6 the undercover, resulting in an arrest. The dealer
7 might cooperate, which ideally would lead to the
8 arrest of a higher level supplier. And so it goes.
9 An analogy could be drawn between
10 the low-level drug users in narcotics cases and the
11 individuals pretending to be injured in staged
12 automobile accidents. They are the ones who first
13 appear on the radar of law enforcement and they are
14 the ones in the no-fault insurance scheme who are
15 typically arrested first.
16 With the cooperation of the phony
17 accident victim, it is much more likely that the
18 evidence obtained from the next individual on the
19 higher rung of the insurance fraud letter, the
20 runners who orchestrate staged accidents and refer
21 non-injured to medical clinics for unnecessary and
22 fraudulent treatment.
23 The more timely submission of
24 claims is, therefore, crucial in the investigation
25 of no-fault insurance fraud.

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2 Continuing the no-fault analogy in
3 the narcotics case, the user is a repeated customer
4 and would, therefore, have a continuing
5 relationship with this dealer.
6 The relationship between the bogus
7 accident victim and a dishonest no-fault provider
8 is not as long-term. By the time the no-fault
9 provider has submitted his claims to the insurance
10 company and the company has an opportunity to
11 examine those claims, the patient is no longer
12 receiving the treatment.
13 Even if the patient is willing to
14 cooperate against the provider, the patient is not
15 in the position to do so effectively. The doctors
16 and the runner with whom the patients have been
17 dealing have no reason to speak with the patient
18 about the fraud. And, in fact, the patient would
19 raise suspicions where he is to try and
20 re-establish contact in an undercover capacity.
21 It would, therefore, greatly
22 assist law enforcement efforts if in addition to
23 allowing insurance companies greater time to
24 investigate claims, medical clinics and no-fault
25 providers were required to submit claims in a much

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2 timelier manner following treatment of the alleged
3 victim of an automobile accident.
4 This would enable the insurance
5 companies to investigate claims, at least
6 preliminarily, while the fraudulent treatment is
7 still ongoing and to refer suspicious claims to law
8 enforcement so that they can be investigated in a
9 more proactive manner.
10 Additionally, an immediate
11 reporting requirement would permit insurance
12 companies an opportunity to contact patients within
13 days of the supposed accident.
14 This would act as a deterrent to
15 those intending to defraud and abuse the no-fault
16 system, whether they are the bogus victims of the
17 staged accident or the provider of the fraudulent
18 treatment to the non-injured.
19 And finally, I would like to
20 emphasize the need for more equitable distribution
21 of the funds that are earmarked for the
22 investigation of vehicle theft and insurance fraud.
23 The insurance companies collect
24 through insurance premiums and forward to the State
25 $10 per motorist to fund these investigations.

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2 Of those funds, approximately
3 $120 million is distributed to the State Police
4 while less than $4 million is distributed to local
5 law enforcement entities through the Department of
6 Criminal Justice Services in the form of grants.
7 The type of investigations
8 required to properly address the problem of
9 insurance fraud are extremely labor intensive and
10 expensive to conduct. Frankly, local law
11 enforcement agencies, including District Attorneys'
12 Offices, need a greater piece of the pie in order
13 to attack the problem efficiently and productively.
14 I strongly urge the New York State
15 Assembly to get behind the bill passed by the
16 Senate and to consider additional no-fault reform.
17 Your efforts greatly enhance our
18 chances to succeed in stopping the increasing
19 incidents of no-fault insurance fraud by allowing
20 us a greater chance at getting to the individuals
21 who profit the most from this fraud, the runners as
22 well as the owners and operators of the clinics
23 submitting fraudulent no-fault claims.
24 Thank you for your time and
25 attention. And thank you for your continuing

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2 efforts.
3 And I'm happy to address any
4 questions.
5 SENATOR SEWARD: Thank you very
6 much, Mr. Ferguson.
7 I just have a couple of questions,
8 and then I'm going to turn over to my colleagues.
9 We've talked a lot this morning,
10 and I think it's an excellent direction that this
11 hearing is going in terms of looking at a possible
12 establishment of a task force and strike force and
13 really zeroing in, using some of what's going on in
14 the Medicaid and Medicare areas as a model,
15 obviously, using better data collection and
16 analysis for starters and pulling resources,
17 pulling people to attack this problem.
18 As it stands now, how would you
19 rate -- well, I'd like your reaction to this task
20 force, Strike Force concept.
21 MR. FERGUSON: Sure.
22 SENATOR SEWARD: And also, how
23 would you rate what's going on currently in terms
24 of sharing information from the, for example, SIU
25 units and the insurance carriers and the Insurance

Department and prosecutors and the police on the law enforcement side?

What's been your experience in your line there? Is there a need for improvement there? Is there any way and what do we need to do to improve that?

MR. FERGUSON: Senator, simply put, I think your suggestion is a very good one because while there are efforts to coordinate what we are doing in various District Attorneys' Offices in the Fraudulent Accident Investigation Squad of the New York City Police Department, I do personally believe that our records are still fragmented.

I think the creation of a task force to address these problems would correct that issue.

Our problems are common Downstate. They are common in the City, they are the greatest, as Senator Golden pointed out, in Queens, Brooklyn, and the Bronx, but we do have a common bond, we do have a common problem to address.

So I think the idea of a task force is a good one. I think if we can pool our

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2 resources, pool our manpower, pool our thinking and
3 our ideas, we are going to be much, much more
4 successful at attacking this problem.
5 SENATOR SEWARD: Yes, I am pleased
6 that you had mentioned the equitable distribution
7 of funds from that $10 fee that's attached to
8 the policy.
9 MR. FERGUSON: Yes.
10 SENATOR SEWARD: And clearly, for
11 those at the table here, this is a battle that we
12 fight on a regular basis, whether it be increased
13 assessments on insurance carriers that go to the
14 Insurance Department, and then they are funneled
15 out to other non-insurance related purposes just to
16 assist the state budget.
17 And in this case what's important
18 is, of course, funding of New York State Police
19 through this vehicle or, at least, a portion of
20 their budget rather than directing this funding to
21 what they were originally intended to do, and that
22 is to fight fraud and the vehicle theft.
23 So that's a potential source. If
24 we can redirect these monies, it could be a
25 potential source of funding for things such as a

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2 strike force and task force.
3 Just one final question on the
4 medical decertification. Are you familiar with
5 that?
6 MR. FERGUSON: Yes, I am.
7 SENATOR SEWARD: We talked a lot
8 about if we dry out the runners, we'll dry out the
9 patients.
10 What about the decertification, if
11 we really attack unscrupulous medical providers,
12 decertify them, in some cases even yank their
13 license out there, how important is that to our
14 overall efforts to fight this fraud?
15 MR. FERGUSON: I think it's very
16 important, Senator, but we have had those tools in
17 the past. If a doctor is found to have committed a
18 crime and he is convicted of a felony, he is going
19 to lose his license. I think what's important is
20 that we begin to more stringently and more
21 aggressively enforce what we have in place. And I
22 think the bill re-enforces the need for just that.
23 SENATOR SEWARD: Thank you.
24 SENATOR GOLDEN: Just going back
25 to that question, many of these doctors are retired

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2 in Florida. I mean, losing their licenses is no
3 big thing. They already made fortunes and they are
4 not living in the State of New York, and they are
5 opening up these articles all over the place, and
6 they are getting away with it.
7 So we definitely need some type of
8 legislation that will put these people in jail and
9 take money from them, if that's their part of their
10 scheme.
11 I want to applaud the District
12 Attorney, I know he had something of importance
13 today and a funeral, and my sympathy to the
14 individual that passed in that building.
15 MR. FERGUSON: Thank you very
16 much, sir.
17 SENATOR GOLDEN: The task force
18 itself, you know, I'm listening to $120 million
19 that the insurance companies give, so that's -- we
20 are going to have companies come up here today and
21 tell that they are losing $200 million today. And
22 that's on top of $120 million that they are giving.
23 So this is going to be an
24 astronomical loss to these insurance companies.
25 And I don't want anybody here to say, Golden is a

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2 great insurance guy here.
3 What Golden is, is a great guy for
4 is ratepayers. The ratepayer can't continue. You
5 take a look at the price of gasoline, the price of
6 Con Edison, the price of everything that's going on
7 in the City, you just can't live here. And it's a
8 low-hanging fruit. All we have to do is go after
9 it.
10 We have to assemble a task force,
11 put technology together, do the overlays, go in
12 there and make the arrests, and make these arrests
13 stick with convictions that are going to get them
14 felonies.
15 We need district attorneys to be
16 fully a part of it. We need the government to lead
17 this, obviously.
18 We passed some of this legislation
19 this year -- and if it doesn't become a law, I
20 think it's at a point here when one of these
21 companies come up here and say not only it's not
22 sustainable, but if we ever hear the word, "We are
23 out of here," then it's too late. And that's my
24 concern.
25 If you can also submit to me who

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2 do you think should be on the task force.
3 The only thing I'm concerned
4 about, and I really think the focus should be the
5 City of New York, but I don't want to squeeze the
6 toothpaste. You squeeze it and you go after New
7 York City, and all of a sudden Nassau and
8 Westchester's problems become that much worse.
9 I may point to Nassau and
10 Westchester. They are also leading counties when
11 it comes to no-fault. So we need to address that.
12 What percentage do you get from this $120 million,
13 which is now down to $4 million dollars, and which
14 is down to what for the County of Kings?
15 MR. FERGUSON: Senator, I believe
16 it's a little over $200,000.
17 SENATOR GOLDEN: $200,000.
18 How many salaries does that pay?
19 MR. FERGUSON: Oh, Senator, that
20 would pay approximately four starting salaries for
21 four ADAs.
22 I'm not even referring to
23 financial investigators who need to conduct these
24 investigations; I'm not referring to investigators
25 from our Special Investigations Unit. I'm simply

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2 referring to translate into what that would pay
3 four ADA's --
4 SENATOR GOLDEN: The only reason
5 I'm trying to point it out is that, let me see, we
6 have 2.5 million people living in the County of
7 Kings. Would that be the largest county in the
8 state? That's the fourth largest in the country?
9 MR. FERGUSON: I believe so,
10 Senator. I think you are correct.
11 SENATOR GOLDEN: So $200,000 to
12 combat the capital of fraud of no-fault, Medicare,
13 and Medicaid. Let's take Medicaid and Medicare out
14 of it. Let's point to no-fault. You have just two
15 hundred.
16 MR. FERGUSON: That's correct, a
17 little over $200,000.
18 SENATOR GOLDEN: How many people
19 in your office are working on -- do we have a
20 number of people working within your group that's
21 assessing these issues, going after the no-fault?
22 MR. FERGUSON: We have people
23 throughout the office and all of the trial zones as
24 well as in the Rackets Division. I would say that
25 we have approximately ten assistant district

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2 attorneys who are committed to spend a substantial
3 portion of their day, approximately half of their
4 day, just on insurance fraud.
5 That's not the only individuals
6 who are assigned to insurance fraud cases. Those
7 cases are spread throughout the office.
8 SENATOR GOLDEN: And I don't want
9 you to be defensive here. What I'm trying to focus
10 at is that, what is the incentive for you?
11 With all of the crime that's going
12 on across the City and State of New York, and we
13 are all going to read tomorrow how crime is down in
14 the City of New York and how we are really dealing
15 with the issue when we really know the crime with
16 the lack of New York City police officers, with
17 crime expanding -- we are not looking at this white
18 collar crime.
19 This white collar crime is going
20 on throughout the boroughs. And this is costing us
21 here, the taxpayers here, an exorbitant amount of
22 money to live here. And it doesn't have to.
23 What is your incentive?
24 MR. FERGUSON: Well, Senator,
25 frankly, our incentive is the same as it is with

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2 every other crime. We are still trying to protect
3 the citizens of Brooklyn, the citizens of Brooklyn
4 who are victimized not only by no-fault insurance
5 fraud, although it's a very dramatic effect, but
6 are also affected by identity theft, that are
7 affected by other schemes that are investigated by
8 the Rackets Division, whether it be embezzlement,
9 whether it be elder fraud.
10 It's our commitment to citizenry
11 in Brooklyn to sustain our efforts in combating
12 insurance fraud, whether or not we are funded to
13 the degree we would like to be.
14 But I would like to add, Senator,
15 that with greater funding, I think we would make a
16 much, much greater impact than we are trying to do
17 now, when we are trying to address some problems in
18 Brooklyn that are affecting the economic security
19 of its citizenry.
20 SENATOR GOLDEN: The task force
21 only works if, in fact, we get that legislation.
22 We need the legislation. Then the task force has
23 the teeth to go in and to do what we want to get
24 done here.
25 But I do believe there has to be a

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2 task force. If you had two and a half million
3 people, I don't know how many DAs we have working
4 in Brooklyn, but if you got murders and robberies
5 and burglaries, and you have all these different
6 seniors crimes and Medicare fraud and Medicaid
7 fraud and no-fault fraud, one only phantoms the
8 mind how you can be able to put -- and I have to
9 give you credit because I think he is not only one
10 of the greatest district attorneys in the state,
11 but in the country for the work that he's done in
12 the past and continues to do -- so one only
13 phantoms how you can put these efforts forward with
14 such a limited payroll and limited amount of money
15 going into the County of Kings for this type of
16 investigation.
17 MR. FERGUSON: Thank you, Senator,
18 and I agree with you about my boss.
19 And I'd like to point out that I
20 agree wholeheartedly with the idea of a task force.
21 I think that's a very economically efficient and
22 feasible way to address the problem.
23 And I'm also not trying to
24 ignore the problem as existing Upstate, New York
25 and on the Island. And, in fact, if we could

create a task force in the City, I believe that District Attorneys' Offices and other law enforcement agencies through the State and out on the island could go to school with what we learn and how we approach and the models we create in approaching this problem.

SENATOR GOLDEN: Last question.

MR. FERGUSON: Sure.

SENATOR GOLDEN: Does the state troopers assign any people or the state police assign any assistance to you on no-fault?

MR. FERGUSON: Senator, we have worked with the state police on cases Downstate, but honestly, we work much, much more with the Fraudulent Accident Investigation Squad of the City of New York and with local law enforcement as opposed to the state police.

SENATOR GOLDEN: I appreciate your testimony.

Thank you.

MR. FERGUSON: Thank you very much, gentlemen.

SENATOR SEWARD: Senator Martins.

MR. FERGUSON: Yes, Senator, I'm

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2 staying.
3 (Laughter.)
4 SENATOR MARTINS: I'm going to
5 break from my colleague and try to emphasize the
6 less City-centric approach and more, perhaps,
7 Downstate approach since, obviously, they impact
8 some of the suburbs immediately adjacent to New
9 York City.
10 And we should be cognizant about
11 that as well.
12 MR. FERGUSON: Absolutely.
13 SENATOR MARTINS: If we are going
14 to create a task force and we are going to put
15 these means and methods in place for the task force
16 to be successful, it is not credible that we also
17 focus on creating that database and sharing the
18 information so we can do the data mining necessary
19 to find those medical providers that are providing
20 the medical care, or non-care, or doing the billing
21 so that we can tie some of these different groups
22 together.
23 And I appreciate your analogy of
24 this particular issue to the narcotics crime. I
25 think we are going to find that time and again,

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2 there are going to be patients and victims and
3 accidents that are going to appear time and again,
4 but on different radar screens because those claims
5 are being handled separately by different insurance
6 companies with different dates of accidents, so
7 they are not necessarily correlated or easily
8 ascertainable.
9 So is it not critical to this task
10 force that we do provide a mechanism for the
11 insurers to provide in a consolidated place all of
12 their information having to do with no-fault
13 medical providers, victims, or accident victims so
14 that we can begin to look for those trends and
15 target those areas specifically?
16 MR. FERGUSON: Senator, I can't
17 agree with you more. I think this is critical.
18 NICB does a very good job in trying to attempt to
19 centralize this type of information, but we are
20 dealing with many, many different insurance
21 companies.
22 To create another analogy, I was
23 formally a prosecutor for the Medicaid Fraud
24 Control Unit of the Attorney General's Office. And
25 there, the type of information that you are

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2 describing and the type of centralization of
3 information that you are describing existed.
4 It was one Medicaid system
5 throughout the state. We could get the type of
6 information for investigative purposes that you are
7 describing.
8 As you know, while we are dealing
9 with many, many different insurance companies who
10 are the victims of no-fault insurance fraud, we are
11 dealing with individuals who we would see in
12 various parts of the city doing the same thing.
13 If we're all working separately
14 and we don't have that centralized database, we are
15 missing things.
16 So yes, I think a centralized
17 database would be extraordinarily helpful in
18 finding out who the players are, what the range of
19 their activities is, and would help us get to them.
20 SENATOR MARTINS: I appreciate
21 that. Thank you.
22 SENATOR GOLDEN: If I can, just to
23 compliment your testimony and compliment my
24 colleague's comments, it is appropriate, I think,
25 to be able to have a database that's done on

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2 universal -- and I hope that we do it in 2011.
3 I do believe that, the more I
4 listen to each of our district attorneys come up
5 here, the more we do need a task force.
6 I do believe it probably is,
7 unfortunately, a statewide task force, but it
8 should be a Downstate focus, and a Downstate focus
9 should be the five DAs.
10 And I am concerned about the
11 toothpaste, as I described it earlier, squeezing it
12 into Nassau and Westchester County, but I think if
13 you did the overlay, you had a task force working
14 with the Attorney General's Office, working with
15 the district attorney here, working with different
16 focuses, with different police agencies, I believe
17 that we can come up with an appropriate task force
18 that can deal with the issues and look at these
19 overlays to see if it's moving in any direction.
20 But I do believe that we can bring
21 that cost down for these insurance companies or we
22 are going to lose them. And it's not for the
23 insurance companies and it's not for one issue or
24 another, it's for the ratepayers.
25 That ratepayer, we want that

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2 ratepayer to stay here in the City of New York.
3 And the only way he stays in the City or State of
4 New York is if we bring his or her cost down.
5 Thank you very much.
6 SENATOR SEWARD: Thank you very
7 much.
8 Next is Gerard Brave who is a
9 Chief of Organized Crime and Rackets Bureau of
10 Queens County District Attorney's Office.
11 SENATOR GOLDEN: Mr. Chairman, I
12 want to make sure that I focus, even though I did
13 give a lot of kudos here to the district attorney
14 from Brooklyn because Brooklyn is my home county,
15 we will also note that this district attorney lives
16 in Queens in his summer home, but we do have a
17 great district attorney in Brown. And I want to
18 thank him for being here today.
19 Also I want to acknowledge Matt
20 Morones(phonetic), one of my former colleagues
21 sitting in the audience. Matt, thank you for being
22 here today.
23 MR. BRAVE: Good morning,
24 Senators.
25 Thank you for the opportunity to

1
2 be here today.
3 District Attorney Brown has
4 committed significant resources to deal with the
5 no-fault insurance fraud problem in Queens
6 County.
7 The Organized Crime and the
8 Rackets Bureau has twelve prosecutors and five
9 investigators which are being given the
10 responsibility for the investigation and
11 prosecution of all no-fault cases in the county.
12 We employ sophisticated investigative techniques
13 such as court-ordered electronic eavesdropping and
14 the use of undercover police detectives.
15 We've made use of the enterprise
16 corruption statutes to charge those no-fault rings
17 that are structured and have specialization with
18 racketeering and enhanced prison sentences as a
19 result.
20 In other no-fault investigations
21 where we've been able to penetrate just a single
22 layer of the enterprise, we've used the insurance
23 fraud in grand larceny statutes. We have uncovered
24 evidence of unlawful employment by attorneys of
25 persons to solicit clients. We used applicable

provisions of the judiciary law to charge both attorneys and the middlemen.

We've seen by investigating these clinics engaged in this large-scale no-fault insurance fraud that the medical mills that we often speak of are billing mills since there's very little medical treatment given at such places.

Upon analyzing thousands of treatment records generated at these clinics, we found boilerplate diagnoses in treatment records, repeated indication of identical blood pressure readings, for example, and unnecessary and inappropriate treating and testing designed solely to inflate billing.

The attorneys who participate in organized no-fault fraud rings are not providing legal representation, but are employing middlemen to solicit willing fraud accessories, having them sign blank documents and then negotiate settlements with insurance companies for, quote, unquote, clients that they've never met.

In December of 2001, my office working with the New York City Police Department, New York State Police, the Insurance Fraud Bureau,

2 the New York State Insurance Department concluded a
3 fourteen-month investigation that resulted in
4 charges of 112 individuals and four corporations in
5 connection with the operation of a multi-million
6 dollar insurance fraud ring including three medical
7 doctors, two medical clinics, two chiropractors, a
8 physical therapist and acupuncturist, two lawyers,
9 and an NYPD administrative aide.
10 The ring runners regularly
11 orchestrated fictitious accidents by steering
12 associates acting as victims to various medical
13 facilities in Queens and Kings Counties for
14 unnecessary treatment or billing for feigned
15 injuries.
16 Bogus accident reports were
17 generated by the corrupt police administrative aide
18 who received the fake accident details from the
19 runner. The jump-ins claimed to be drivers or
20 passengers in the fictitious accidents and were
21 brought to a local Brooklyn law office, which paid
22 the runners between $1,000 and $2,500 per person
23 for the referrals.
24 The law firm then sought
25 settlement proceeds from insurance companies on the

bogus bodily injury claims.

In January of 2004, working with the New York City Police Department and the Fraud's Bureau, we took down another major no-fault insurance fraud ring operating in Queens and Brooklyn after another two-year investigation.

We arrested eight doctors, two lawyers, two physical therapists, two chiropractors, a psychologist, a physician's assistant, a law office manager, six runners, ten jump-ins who sought to bill insurance companies of hundreds of thousands of dollars by staging accidents, filing false and exaggerated claims for property damage, medical expenses and bodily injury and ordering expensive and baseless diagnostic tests and equipment, providing unneeded medical treatment at two Queens medical clinics.

A week later we charged a Queens attorney with a $1 million no-fault fraud scheme, in which he submitted hundreds of bogus claims to eight major insurance companies under the guides of medical billing for two to five medical clinics using the names of actual automobile accident victims, whose personal information he had

1
2 purchased for $54 from a corrupt former medical
3 billing company worker and cashing the insurance
4 company checks sent to a Queens post office.
5 In April of 2004, we charged the
6 Bonanno crime family associate, five lawyers, three
7 medical doctors, a dentist, and other medical
8 professionals among 43 individuals in corporations
9 in another major no-fault case where the defendants
10 milked insurance companies out of millions of
11 dollars, staged sham accidents, filed false claims,
12 and provided unneeded medical treatment and
13 laundered over $1 million in proceeds through a
14 Manhattan check-cashing business.
15 In February of 2006, my office
16 convicted a man for engaging in a caused accident
17 scheme where he drove a vehicle filled with his
18 co-conspirators seeking no-fault payouts into a
19 vehicle driven by Alice Ross, the 71-year-old
20 Queens grandmother, whom then lost control over her
21 1985 Buick, slammed into a tree, and was killed.
22 My office charged the defendant in convicting of
23 manslaughter after trial and was sentenced to
24 fifteen years in prison.
25 In 2008, October of that year,

1
2 we charged 61 individuals with engaging in a
3 widespread multi-million dollar no-fault insurance
4 fraud scheme that defrauded insurance company
5 carriers in more than $1.6 million by intentionally
6 staging accidents, submitting false medical and
7 bodily injury claims, and arranging for unneeded
8 medical treatment and costly unwarranted medical
9 tests.
10 These results were the result
11 of a long-term investigation with the New York
12 Health Care Fraud Task Force, which is comprised of
13 agents and detectives of the FBI, the NYPD, and
14 other federal state and local law enforcement
15 entities as well as the investigators from the
16 insurance company industry, the investigation and
17 use of informants, search warrants, trap and chase
18 devices, sell-side orders, and eavesdropping
19 warrants.
20 Twelve of the defendants have been
21 charged with the enterprise corruption, and all of
22 the defendants have been charged with various
23 counts of insurance fraud, grand larceny,
24 falsifying business records.
25 The trial of those twelve

2 defendants begins on May 13th in Queens County
3 Supreme Court.
4 In the last eight years, in Queens
5 County, we convicted 322 individuals of
6 corporations on felony insurance fraud and sent 44
7 of those defendants to state prison for serving
8 terms for up to nine years in the state prison.
9 Those who engage in insurance
10 fraud drive up insurance rates for everyone else,
11 and we in law enforcement must continue to have
12 resources to attack the problem.
13 Insurance fraud investigations are
14 extremely labor-intensive; they are often the
15 result of multiyear investigations which employ
16 dozens of investigators, several prosecutors,
17 extensive surveillance, electronic eavesdropping,
18 search warrants, detailed document gathering and
19 analysis, and the use of undercover officers. Such
20 investigations are very costly. The eavesdropping
21 alone in these cases can cost over $100,000.
22 The Legislature has been very
23 helpful in providing funds to the New York Auto
24 Theft and Insurance Fraud Prevention Board. These
25 funds have been enabling law enforcement to

1
2 dedicate the resources to investigation of
3 prosecution of no-fault fraud during a time of
4 tight budgets. Your support of the Insurance Fraud
5 Bureau is particularly helpful to all of this in
6 law enforcement who is actively addressing this
7 problem.
8 We work very closely with the
9 Fraud's Bureau, which provides expertise and
10 funding on particular investigations as well as
11 experienced investigators. We in law enforcement
12 will continue our effort to deter the no-fault
13 insurance fraud by continuing to investigate and
14 prosecute those in organized fraud rings.
15 We appreciate the assistance that
16 the Legislature has given us and in moving forward,
17 we'll continue our efforts to reduce no-fault fraud
18 and its effects on insurance premiums for all of us
19 in New York State.
20 Thank you.
21 SENATOR SEWARD: Thank you, Mr.
22 Brave. I greatly appreciate your mentioning of
23 Alice Ross and that particular instance that you
24 were involved in prosecuting those that caused her
25 death.

1
2 MR. BRAVE: Yes. Ward Demolier
3 was the individual who was essentially a runner.
4 Some of us have spoken about the
5 level that the runners have in these schemes, but
6 in this instance, he was a runner, and he had some
7 of his cohorts in the vehicle that he was driving.
8 And he intentionally crashed into the woman's car
9 and caused her to hit the tree and die.
10 SENATOR SEWARD: In fact, when we
11 introduced and passed a bill that creates that
12 crime of staging the accident, we named that
13 Alice's Law in her memory and have attached a face
14 to that proposed new statute.
15 In fact, when the Senate passed
16 the bill earlier this year, it was on the
17 anniversary of her death.
18 MR. BRAVE: Very appropriate,
19 Senator.
20 SENATOR SEWARD: Very, very
21 impressive listing of successful prosecutions that
22 you've done in Queens County, that you and the
23 district attorney have been involved in and your
24 team, a very impressive list of successful
25 prosecutions.

1
2 What additional tools do you need
3 to -- obviously we are only scratching the surface
4 here. Otherwise, the rates that I've talked about
5 and Senator Golden, some of the statistics that he
6 mentioned in some of the boroughs in the City are
7 very, very startling in those numbers in terms of
8 people paying so much more than they need to, just
9 paying for these fraudulent claims, and needlessly
10 so.
11 What more needs to be done
12 specifically, if you can mention the specifics, to
13 make sure that you may have an even longer list of
14 successful prosecutions to eliminate this problem?
15 MR. BRAVE: Sure. We've already
16 discussed a number of additional tools that you
17 could provide us in attacking these fraud rings.
18 Creating a crime of staging an accident is a
19 wonderful tool that we can use because these people
20 are evolving.
21 Once we charge people in a case,
22 they evolve; they change their methods of
23 operating. They see what we are doing and they
24 react to it. So it would be helpful for us to have
25 that crime, a runner's bill, just to be a runner in

2 one of the schemes should be sufficient because
3 that person is engaged in no legitimate activity.
4 The runner is really the key to
5 investigating the schemes. In all of the cases
6 that I mentioned, we were listening to the runners'
7 cell phone conversations.
8 He would be in contact with the
9 medical clinic; he would be in contact with the
10 jump-ins or other people that were supposed to be
11 in these accidents. In some cases he was in
12 contact with the lawyer's office.
13 So it's critical to focus on a
14 runner because he will peel the layers off the
15 scheme and tell you where you need to focus your
16 resources.
17 It would be helpful for the
18 creation of a task force. As I said, in the most
19 recent case we did work with a task force that was
20 created and we partnered with our federal
21 colleagues. Principally, it would help in the
22 referrals of cases; it would also help with
23 educating and sharing information with other
24 prosecutors and other law enforcement agencies.
25 You might have some difficulty

1
2 with some interjurisdictional issues, but those
3 could be worked out, you know, through the task
4 force.
5 The creation of the data mining
6 technique is a phenomenal tool. I mean as you've
7 heard, our approach in Queens has been an
8 informant's approach. That's the classic way to
9 attack any organized crime group. But a data
10 mining approach where you have centralized
11 information throughout the state would be
12 tremendous in giving us referrals of doctors and
13 clinics that have abnormally high claims of
14 no-fault.
15 That would be a tremendous help to
16 us.
17 SENATOR SEWARD: Thank you, Mr.
18 Brave.
19 My colleagues.
20 SENATOR GOLDEN: Thank you, Mr.
21 Chairman.
22 Thank you, Gerard, for your
23 testimony today. If you can give a copy to us of
24 your testimony, we would appreciate it.
25 MR. BRAVE: Sure.

1
2 SENATOR GOLDEN: And if there's
3 any legislation that is being made or the
4 amendments that need to be made to some of the
5 bills that are presently being brought before the
6 Senate or presently a law, also please share that
7 with us.
8 You know, I look at the two and a
9 half million people in Brooklyn, you know what?
10 You are 2.2, 2.3 million people right there, as
11 well as looking at the two of them 2.4, 2.6,
12 2.7 million people, that's almost 5 million people
13 in the State of New York. That's pretty
14 remarkable.
15 And if we add Nassau and Suffolk
16 and Westchester Counties, you are talking about a
17 significant, significant number of people. And,
18 you know, crime has -- people are hurting. And one
19 of the easiest ways to make a dime today because of
20 the penalties being so low, the cases are taking so
21 long to materialize and to work and to have the
22 staff in the task force or the staff and people
23 from your offices that work on them. It's easy
24 money for these people. There's no reason for them
25 not to do that, right?

1
2 MR. BRAVE: We've just scratched
3 the surface. Those cases that I've mentioned,
4 there are hundreds of additional no-fault
5 defendants out there. There are people committing
6 these schemes on a daily basis, not just Queens,
7 but everywhere in the New York City and surrounding
8 suburbs.
9 So we've really just scratched the
10 surface. With additional resources, we would
11 devote additional prosecutors and investigators to
12 more cases.
13 SENATOR GOLDEN: Is there any
14 incentive for the informer? How does the informer
15 come to you?
16 MR. BRAVE: In the first case, the
17 informer was a disgruntled jump-in. She was away
18 at college, she needed to pay for her textbooks,
19 and the runner did not pay her the promised fee.
20 So she called us up and she said, hey, I know the
21 guy who might be of interest to you.
22 SENATOR GOLDEN: The informers -- I
23 have to think down that avenue for a second.
24 The other part of your testimony,
25 which I thought was very impressive, which also

1
2 adds to the task force theory here, is boilerplate.
3 You've set up boilerplate operations. Would you
4 expand on that?
5 MR. BRAVE: Sure.
6 The insurance companies are
7 inundated with so much claim information and they
8 must process it in such a short period of time that
9 they often don't look at what they get in the
10 details of these claims. And we found by
11 subpoenaing these records and having our
12 investigators look at them, they would have the
13 same information for twenty different patients.
14 Medically it's impossible to have
15 the same medical information and the exact same
16 blood pressure, the exact same heart rate across
17 the board. And we were able, through the use of
18 expert witness, to bring all that to a grand jury's
19 attention and show how ridiculously fraudulent that
20 was.
21 SENATOR GOLDEN: That is amazing.
22 The overlay would be able to show it; the task
23 would be able to figure that out; and proper people
24 would be able to make the arrests needed to bring
25 that down.

1
2 I thank you for your testimony and
3 thank District Attorney Brown for the good work
4 that he does and continues to do.
5 Thank you.
6 MR. BRAVE: Thank you.
7 SENATOR SEWARD: Thank you very
8 much, Mr. Brave.
9 Our next panel is made up of three
10 individuals: Kristina Baldwin, who is Assistance
11 Vice President of Property Casualty Insurance
12 Association of America;
13 Ellen Melchionni, President of New
14 York Insurance Association; and
15 Gary Henning, Vice President of
16 the American Insurance Company Association.
17 MS. BALDWIN: Thank you.
18 I'm Kristina Baldwin; I'm here on
19 behalf of the Property Casualty Insurance
20 Association.
21 PCI is a national trade
22 association representing over a thousand insurance
23 companies. We represent -- our companies write
24 over 46 percent of the auto insurance in New York
25 State.

1
2 You've heard the numbers, hundreds
3 of millions of dollars going -- being stolen by,
4 through no-fault fraud. We think these numbers
5 speak for themselves and that something must be
6 done to put a stop to no-fault fraud for the
7 benefit of the hard-working New Yorkers who are
8 struggling to pay their high auto insurance
9 premiums.
10 It was great to hear the interest
11 and the efforts and the commitment of the
12 prosecutors and law enforcement that testified
13 earlier this morning, but you also heard that these
14 investigations are very time and
15 resource-intensive. And I think Mr. Brave just
16 indicated that they just, just scratch the surface.
17 So this problem is so
18 pervasive that the insurance industry needs to have
19 the tools so that we can continue to fight this
20 problem and assist the efforts of prosecutors and
21 law enforcement.
22 Really, this is one of the last
23 systems for the payment of health care cost that
24 lacks many of the cost containment measures that
25 are in place for other systems such as health

1
2 insurance or Workers' Comp insurance.
3 And this, in conjunction with the
4 other loopholes in a law which these fraudsters
5 have taken advantage of, has led to New York's
6 chronic fraud problem.
7 And insurers are going to
8 continue to fight no-fault fraud and employ great
9 efforts. And many of my companies are stopping
10 settling cases. They are going to court on each
11 and every case and defending it whether it's $50 or
12 they are spending thousands of dollars of defense
13 costs because they really want to put an end to
14 this.
15 But we really need some changes
16 in the law to stump this growing problem. One of
17 the -- all of the measures that I'm going to talk
18 about are in the Senate Bill 2816. We think that's
19 a great piece of legislation. And thank you,
20 Senator Seward, for introducing it.
21 The first thing I'll talk about
22 because it irks me the most is the physicians'
23 decertification proposal. And it irks me because
24 you passed a law to decertify health care providers
25 who repeatedly engage in fraud from billing under

1
2 the no-fault system in 2005.
3 There's a law that directed
4 the Insurance Department and other agencies to work
5 together to promulgate regulations to establish a
6 system to do this. They were unable to implement
7 the law, so the law just has not been implemented.
8 So some technical changes need to be made to that
9 law.
10 I tell you, it really seems
11 like a no-brainer to get these technical changes in
12 place so that we can implement this law and close
13 down this incredible situation that we are hearing
14 about where everybody knows about these medical
15 mills, we close them down, and they open up again
16 in a month under a different name.
17 Another measure that we'd like
18 to see is having treatment guidelines in place for
19 no-fault. Last year treatment guidelines were
20 implemented for the Workers' Compensation system
21 and these guidelines set forth the best treatment
22 for a particular injury. In the Workers' Comp,
23 they were developed with health care providers to
24 really identify the state-of-the-art treatment that
25 would be undergone in the event of a particular

1
2 injury.
3 We would really like to see
4 the same thing for no-fault. There was an IRC
5 study done recently that showed greatly different
6 claiming patterns between New York City and
7 Upstate. The New York City claimants are seeking
8 far more treatments from all sorts of different
9 providers than Upstate. Acupuncture, New Yorkers
10 are getting -- 40 percent of New York claimants are
11 getting acupuncture versus six percent Upstate.
12 And we believe that there should not be such wide
13 swings in treatment.
14 And if we had guidelines
15 setting forth what the best treatment was for a
16 particular injury, then we wouldn't have that
17 situation. And, you know, that would prevent all
18 of the disputes regarding medical necessity and
19 that type of thing. It would really reduce cost in
20 the system.
21 Another thing, mandatory
22 arbitration. Right now some of these attorneys are
23 bringing a separate lawsuit for each bill. So each
24 time somebody goes to the doctor, there's a bill
25 and a separate lawsuit is filed. So for one

1
2 injured person, you can have fifty or a hundred
3 lawsuits.
4 They know that that's going to be
5 very difficult for insurance companies to defend
6 against because that's going to cost way more to go
7 to court, stand there all day with their medical
8 expert than to just pay the $50 claim.
9 As I mentioned before, we are not
10 paying them anymore in many cases but sometimes
11 because of the way they are filing such numbers,
12 it's difficult to fight against them. And they are
13 really flooding the New York City court system.
14 It's estimated, there are over two hundred thousand
15 no-fault lawsuits pending in the New York City
16 civil courts. It's taking 18 to 36 months to
17 adjudicate those cases whereas in mandatory -- in
18 arbitration, it's four to six months.
19 So we really think that this is more consistent
20 with the goals of the no-fault system, which is to
21 ensure the quick payment of necessary medical
22 expenses.
23 And the last item that I'll
24 mention, which has been mentioned before, is the
25 30-day limit, that we have to pay or deny within 30

1
2 days. And if we miss that for some reason -- and
3 as I mentioned before, we are inundated with these
4 claims. If we miss that for some reason, we have
5 to pay the claim no matter how ridiculous it is.
6 In many cases. This hasn't actually happened, but
7 we would have to pay for a third prosthetic leg if
8 we were billed for it and we missed the 30-day time
9 frame.
10 We just think that under no
11 circumstances should we pay non-meritorious claims
12 because we missed a 30-day deadline because that
13 ultimately gets passed along in premium.
14 Many of these solutions don't
15 really seem to be in question. We've been talking
16 about them for over ten years. But the adoption of
17 these solutions has always been thwarted by those
18 that make their money and their living off this
19 system. And I would just encourage you not to let
20 that happen again and to get some of these measures
21 in place.
22 And again, thank you for all your
23 efforts in this regard.
24 SENATOR SEWARD: Additional
25 comments?

1

2 MS. MELCHIONNI: Yes.

3 I'm Ellen Melchionni, President of

4 the New York Insurance Association, and we

5 represent property casualty industry for more than

6 125 years. Our members consist of stock companies,

7 mutual companies, and cooperative companies writing

8 in every district of New York State.

9 Our members write nearly half of

10 all the private auto in New York and nearly all of

11 the New York City livery carriers we represent.

12 I think you are absolutely right,

13 Senator Golden. We are in a crisis, and it is

14 absolutely unsustainable at the rate that it's

15 going. The cost of fraud is rising at a similar

16 rate as the price of gas. It's outrageous.

17 We have heard some of the

18 staggering statistics already from the district

19 attorneys, from the law enforcement, from my

20 colleagues here. More than 200,000 no-fault cases

21 in the City courts in 2009. It's doubled in ten

22 years. Nearly half of all no-fault claims result

23 in litigation. This is supposed to be a no-fault

24 system.

25 In the early 1980s, no-fault was

1
2 touted in New York as the best in the country.
3 There were only 2,500 arbitrations at that time and
4 less than a hundred lawsuits annually. This year
5 PIP arbitrations are up by 20,000 in the first
6 quarter alone.
7 New York no-fault per-claim cost
8 in 2005 was only $12. In 2010, it's estimated at
9 over $1,600. PIP claim payouts in the New York
10 City area were nearly twice than the rest of the
11 state.
12 The New York Insurance Department
13 Fraud Bureau has some interesting statistics. They
14 report fraud has risen by 33 percent from 2006 to
15 2009, more than 10 percent a year. More than half
16 of all fraud reports are related to no-fault, and
17 suspicious no-fault claims comprise 88 percent of
18 all health care fraud claims.
19 I want to share some examples and
20 some stories about some of my member companies'
21 experiences. I can't even count the number of news
22 stories that are being repealed over the last three
23 months. The most recent "Daily News" article talks
24 about auto insurance frauds that are driving up New
25 York rates, community groups are fighting back.

1
2 "The Wall Street Journal" reports that no-fault
3 claims top the New York insurance fraud list.
4 You've heard about the media
5 coverage from the previous presenters, with clips
6 of the good Samaritan who shows up at the scene and
7 then pretends he is involved in the accident and
8 the other staged accidents from the surveillance
9 cameras.
10 For our member companies, the
11 typical scenario is they'll have an accident where
12 the insured vehicle is struck from behind. The
13 claimant would go to the hospital the day of the
14 accident and get treated and released with no
15 injuries, and then over the next several weeks the
16 claimant then starts treatment with the Downstate
17 medical provider.
18 One case in particular, this
19 claimant receives treatment of acupuncture, massage
20 therapy, chiropractic treatment, physical therapy
21 four to six times per week. The claimant is then
22 referred to an orthopedic doctor along with other
23 general physicians. The claimant is receiving
24 injections, EMGs, NCV testing, and has undergone
25 seven MRIs. They are about 6, $7,000 a pop.

1

2 The claimant is also receiving
3 acupuncture, biofeedback, and injections from an
4 additional facility. That's very, very typical.
5 That's not uncommon.
6 The most recent trend is called
7 MUA. This is manipulation under anesthesia. It
8 sounds exactly like what it is. They give an
9 individual anesthesia and while they are out, they
10 manipulate whatever the injury is or the area is.
11 It's typically being done by orthopedics only maybe
12 for like a frozen shoulder. However, now
13 chiropractors are jumping in on this practice.
14 One or more chiropractors will
15 partner with an anesthesiologist, and they will
16 form a surgery center. This case right here shows
17 one patient receiving $27,000 worth of service in
18 three days under anesthesia from a chiropractor.
19 That's 50 percent of their entire
20 no-fault benefits available to them, which is --
21 and services it's hard to determine whether they
22 were even performed since they are under
23 anesthesia.
24 This is an EDX case, Electronic
25 Diagnostic Testing, which is neuron testing. These

1
2 procedures are historically fabricated with no
3 medical necessity to justify their need. This case
4 shows different patients, all receiving exactly the
5 same testing and all producing identical reports,
6 as it was mentioned earlier.
7 This particular doctor was sent to
8 jail for two years. The images are identical, and
9 that's medically impossible. However, the company
10 that investigated this had to hire a vendor to
11 review and scientifically compare these images to
12 find the fraud. It's very complex and it's very
13 costly.
14 These are DME or durable medical
15 equipment cases. This case demonstrates that this
16 area of fraud is really ramping and really growing
17 at a tremendous rate.
18 Since January of 2009, there have
19 been 739 new DME providers registered in the state.
20 Out of that 739, 340 new facilities were registered
21 in Brooklyn and only 10 in Buffalo.
22 Here is one particular case, a
23 picture of one patient's DME billing which include
24 16 different items totaling over $6,000 including a
25 luxury turbo bath spa. It's astounding. An

1
2 infrared heat wand, a wand massager, two different
3 post-op knee braces, a back support, and a TENS
4 belt and others.
5 The patients report that they
6 never use any of these items, and they were
7 unnecessarily billed -- billed the insurance
8 company. Often the DME wholesaler is involved in a
9 scam, and it's in cahoots with a medical supply
10 company.
11 Most of the items that you see are
12 subject to a fee schedule; however, some items are
13 not subject to a fee schedule. So what happens is,
14 for those items, the medical provider is allowed to
15 bill it at 50 percent over wholesale cost.
16 Now, TENS and EMS machines are
17 virtually the same. They emit electrical impulses
18 and they perform basically the same functions.
19 Until last year they were not on the fee schedule,
20 and the TENS machines were not subject to a fee
21 schedule, so the billings were relatively equal.
22 However, it's no coincidence that
23 fraudsters are now reducing, and the TENS billing
24 and the EMS billings have dramatically increased
25 because the scammers fabricate a price of the

1
2 wholesaler and then they add 50 percent profit on
3 top of that. Last year one DME scammer received
4 $15 million in cash.
5 Two things usually in the practice
6 of the insurance industry signal a degree of
7 crisis, and that's either availability or
8 affordability. And the cost of fraud is now making
9 insurance for many New Yorkers unaffordable. And
10 we urge the Legislature to take action before it
11 becomes unavailable.
12 Many of the livery companies have
13 already left the state or gone bankrupt; Reliance,
14 Merchants, Highlands, Wausau, several have
15 withdrawn from the market. The problem is very
16 large in a livery capacity.
17 I agree with my colleagues,
18 there's no silver bullet. I think the toothpaste
19 analogy is a great example. We've talked about
20 some reform. We applaud the Senator for
21 introducing his bill and, Senator Golden, for
22 introducing your bill which allows the insurer to
23 cancel a policy if it's purchased with a fraudulent
24 credit card or check.
25 It's estimated that more than

1
2 80 percent of the staged accidents in New York City
3 happened in the first 60 days of a newly issued
4 policy with a fraudulent check.
5 We asked the Governor to exercise
6 his leadership and we ask you to urge the governor
7 to exercise his leadership and take this seriously.
8 It's not one or two of these small items that can
9 be done, but substantial reform is needed to stop
10 the criminals, the fraudsters, and those abusing
11 the system.
12 SENATOR SEWARD: We'll hear from
13 Gary and then we'll ask questions of the whole
14 panel.
15 MR. HENNING: Chairman Seward,
16 Senator Golden, Senator Martins, my name is Gary
17 Henning. I'm a Regional Vice-President for the
18 American Insurance Association, a national trade
19 association of more than 300 property-casualty
20 insurance companies that cumulatively write about
21 $1.8 billion in auto premiums in New York State.
22 AIA thanks the Committee for convening
23 this hearing.
24 As I was sitting here listening to
25 all the previous presenters and listening to

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2 Kristina and Ellen, I realized there's not all a
3 lot new in my testimony. I'll hit a couple of
4 things that may not have been mentioned or give
5 some extra context and then very quickly go through
6 my list of things that I think would help the
7 no-fault market in New York.
8 I found a quote. I thought it was
9 very interesting. As you know, no-fault was
10 established -- Laws of 1973, started up on
11 February 1, 1974.
12 This is a quote from then New York
13 State Deputy Superintendent Richard Hsia to the
14 legislative assembly of the Province of Ontario,
15 Canada in January of 1990 regarding no-fault
16 legislation that the Ontario legislature was
17 considering.
18 And this is a quote:
19 "In New York after righting a few
20 early wrongs, no-fault's performance has fulfilled
21 its promise and continues to work in the public
22 interest over a sustained period of time."
23 He goes on to state:
24 "Most personal injury claims
25 today," that's 1990 in New York State, "settle

1
2 promptly on a non-adversarial basis, resulting in
3 reduced investigative costs, litigation expenses,
4 and while difficult to value, agita and anxiety."
5 Obviously twenty-one years later,
6 that's no longer the case. And something -- there
7 was a problem, similar problem back about ten years
8 ago. Then the insurance industry, working with the
9 department, made some changes to the no-fault
10 regulations, Regulation 68, because by the fourth
11 quarter of 2001, the average no-fault claim was up
12 to $9,235 per claim.
13 So after these Reg. 68 changes
14 took effect, it was so effective that by the fourth
15 quarter of 2004 the average no-fault claim had
16 dropped to $5,616, the decrease of 39 percent.
17 I just point this out to
18 illustrate that if affirmative action is taken, we
19 can make a difference. This is something, this
20 upward trend, we can change.
21 So right now, and I'm sure you'll
22 hear more statistics from presenters after me, but
23 average PIP claim costs rose almost 50 percent from
24 the end of 2004 to the third quarter of 2010,
25 rising to about just short of $9,000 per claim,

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2 8,776, making New York the third most expensive
3 state in medical liability payments in the country.
4 We've heard about all the no-fault
5 cases clogging the system. Again, I'd like to just
6 read quickly a part of the decision from the
7 Appellate Term, First Department, in the case of
8 Lennox Hill Radiology versus Tri-State Consumer
9 Insurance Company, 'cause, I think, it's
10 interesting:
11 "Before concluding, we would
12 remiss in failing to note that the facts and
13 circumstances of this action do much to illustrate
14 the disturbing reality that first party no-fault
15 benefits has become the antithesis of what was
16 supposed to be an expeditious and simplified
17 process for the payment of medical costs for
18 injuries sustained in motor vehicle accidents.
19 Too often lawsuits with the value
20 akin to a small claims action become bogged down by
21 an insistence by one party or another that mailing
22 of routine forms be established with scientific
23 precision asking judges already burdened to the
24 breaking point with the veritable legion of
25 no-fault cases overflowing from our court dockets,

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2 while very able arbitrators remain underutilized,
3 to require multiple witnesses to be summoned to the
4 courthouse merely to establish a presumption of
5 mailing, even in the absence of an express denial
6 of receipt of the disputed correspondence.
7 Unfortunately, this class of cases
8 has spawned a body of 'gotcha' jurisprudence,
9 marked by a near manic preoccupation with form over
10 substance.
11 How we reached the sorry state is
12 of little moment. Perhaps all branches of
13 government need to call the time out and, working
14 together, endeavor to construct a workable process
15 to achieve what the framers of the No-Fault statute
16 had in mind when they sought to establish a
17 simplified and expeditious process to reimburse
18 those of our citizenry injured in automobile
19 accidents.
20 For sure, the system now in place
21 is not achieving that laudable aim."
22 So just quickly, I won't go into
23 them because others have mentioned already, but I
24 think while the Department is working on changes to
25 Regulations 68, again, we don't believe that that

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2 would be enough to stem the slide of no-fault.
3 So we all give that legislative
4 changes are needed, and we think Senator Seward's
5 Omnibus bill or the separate bills including
6 Senator Golden's bill on the retroactive
7 cancellation of a policy would go a long way.
8 We have to address these 30-day
9 preclusion rules so we have time to investigate
10 fraud and aren't forced to pay fraudulent claims.
11 Again, as it was implied in the
12 decision that I just read:
13 "Claimant should be required to
14 prove medical necessity. The simple mailing of a
15 claim shouldn't establish compensability."
16 There should be limited
17 assignments of benefits. Right now, I think -- I
18 don't have the exact number in front of me, but I
19 believe it's half of the percent of the lawsuits
20 that are now in the courts are brought by the
21 actual claimants, the policyholders. The rest of
22 them are brought by providers who have supposedly
23 treated these claimants.
24 MS. BALDWIN: 99 percent are
25 brought by providers.

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2 MR. HENNING: If you made it so
3 that only the claimants would bring these suits,
4 you would automatically knock out of the box a lot
5 of the fraudulent suits brought by the providers.
6 And that's in your bill also, Senator Seward.
7 And I too am irked by the
8 decertification law that -- well, the fact that the
9 decertification law hasn't been enacted. I was
10 involved in trying to get the first bill passed.
11 We all thought it was a great
12 victory. Nothing ever happened because we couldn't
13 get the three state agencies to agree on a set of
14 regulations.
15 So I think the streamline process
16 outlined in your -- under this legislation would go
17 a long way towards fixing that.
18 AIA supports mandatory
19 arbitration. And, again, as I said, we applaud the
20 legislation to allow carriers to retroactively
21 cancel the auto policies for nonpayment of premium.
22 I have more, but it's in my
23 testimony, so I'll leave it at all.
24 SENATOR SEWARD: Thank you.
25 I have one specific question, more

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2 of a general question.
3 Ellen, you talked about the
4 medical equipment, the DME issue there, and those
5 are some very startling numbers there in terms
6 of --
7 MS. MELCHIONNI: It's very, very
8 common. This is one of the fastest growing areas
9 of the fraud. And one of the suggestions we would
10 have --
11 SENATOR SEWARD: That was my
12 question. In terms of -- I know that it's -- does
13 my legislation, the 2816, address that in any way
14 or --
15 MS. MELCHIONNI: I don't know if
16 your legislation has in it the --
17 SENATOR SEWARD: Or what is needed
18 there?
19 MS. MELCHIONNI: We need to
20 eliminate the assignment of benefits. Previously,
21 there used to be an assignment of benefits for
22 transportation services also, to and from
23 facilities. And there was tremendous amount of
24 fraud with that, you know, several years ago.
25 They've eliminated the assignment

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2 of benefits, meaning the individual who is being
3 treated or who is injured assigns their benefits to
4 the providers, and they can get compensation
5 directly from the insurer.
6 If you eliminate the assignment of
7 benefits, the person who supposedly needs all this
8 equipment, needs all this, needs this turbo spa,
9 needs this knee brace, they are going to see what
10 they actually are getting and they are going to
11 either determine whether it's fraud or necessary or
12 not, and they are going to coordinate with the
13 insurance company for reimbursement.
14 SENATOR SEWARD: You are
15 suggesting that the bills are going out, but the
16 equipment is not provided to the individual, or
17 it's unnecessary or it's never needed. It's not
18 used; it's not needed. Especially for those items
19 that are not subject to the fee schedule where the
20 wholesaler can set the amount.
21 If it's a $25 knee brace that you
22 can buy at Rite-Aid and the wholesaler says, you
23 know -- I mean, the knee brace is subject to a fee
24 schedule, I'm using it as an example, and the
25 wholesaler says, I'm going to charge $150 for that

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2 instead of $25.
3 In addition to that, the
4 wholesaler, when he sends it to the medical
5 provider, he adds another 50 percent profit on top
6 of that. So that's the fastest growing area of
7 scams right now.
8 SENATOR SEWARD: So the assignment
9 of benefits provisions would --
10 MS. MELCHIONNI: Eliminate that
11 for the durable medical equipment, yes.
12 SENATOR SEWARD: Thank you.
13 Now, more of a general question.
14 We've talked about this concept of setting up this
15 special task force, strike force, not only in the
16 City, but throughout the State, more of a
17 centralized data collection, being able to analyze
18 that data to go after, you know, some of the
19 patterns that you've underscored through some of
20 your members. Ellen, what's your reaction to that
21 discussion in terms of it being the tool to --
22 MS. MELCHIONNI: Well, I was --
23 SENATOR SEWARD: Sort of being a
24 tool to fight some of these frauds?
25 MS. MELCHIONNI: -- listening and

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2 we were talking in the back. I think it's a great
3 idea. However, I don't think you can limit it just
4 to New York State though because we have a
5 tremendous problem of people purchasing and getting
6 their insurance on their car in Pennsylvania
7 because it's cheaper there, or Connecticut, but
8 they actually live in the City and they drive in
9 the City and they come to the City when they stage
10 their accidents.
11 So it would have to be a national
12 database, which would be --
13 SENATOR SEWARD: We can't do.
14 SENATOR GOLDEN: No, but we can
15 set -- somebody has to start it.
16 And I believe if we've created
17 that base here, in the City of New York, in the
18 State of New York, you would see a comprehensive
19 further federal plan coming forward shortly
20 thereafter, I believe.
21 MS. MELCHIONNI: I think the idea
22 of a task force is tremendous. And with this, as
23 you've mentioned, the reorganization of the
24 Insurance Department is a great opportunity to
25 improve some of the practices and procedures and

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2 coordinate these efforts with the DAs, with law
3 enforcement, with the Fraud Bureau.
4 And I was very impressed with the
5 Queens County numbers and how aggressive they
6 really are on the fraud. And if we can get the
7 other DAs, I know they are doing the best they can
8 with the resources that they have, but I think they
9 have the model that the others should be following.
10 SENATOR SEWARD: I think, it's
11 just personal opinion, it would probably be best if
12 it focused on New York City, but if you could have
13 the rest of the State covered by the Insurance
14 Department, or something like that, but, obviously,
15 you want to put the resource where the biggest
16 problem is the most. We don't want Senator Golden
17 to send his problems --
18 (Laughter.)
19 MS. BALDWIN: He has to face it
20 himself.
21 SENATOR GOLDEN: Listen, Kings
22 County has its own distinction. We are trying to
23 get rid of that distinction, but there's already a
24 problem across the state. And a larger portion of
25 that problem is in the City and Nassau and

Westchester. Those are the areas that we have to concentrate on. Go ahead.

SENATOR SEWARD: I'm set.

SENATOR GOLDEN: Gary, I was impressed. The minute we started with this regulation in 2001, Regulation 68, we had somewhere around 9,200?

MR. HENNING: Yes, that was the cost, and then -- well, I think it went through a bunch of lawsuits. The proposed changes went through a bunch of lawsuits. I think it was started -- the process started around the end of 2001, beginning of 2002, and it was finally implemented in a couple of years.

SENATOR GOLDEN: And then it dropped down in 2004?

MR. HENNING: To 5,600.

SENATOR GOLDEN: Now we are more than it was in 2001?

MR. HENNING: Just short. It was at 9,235 in the fourth quarter of 2001, and later statistics I have, third quarter 2010, although the AAA, they may have more up-to-date, but third quarter 2010, 8,776. So just under it.

SENATOR GOLDEN: That's amazing. How long do you think the insurance company can last at this before we lose a company here, in the State of New York?

MS. MELCHIONNI: I don't think you want to gamble with that.

SENATOR GOLDEN: How far away are we from that? The question is, how far is the State of New York away from losing an insurance company because of these off-the-chart, ridiculous claims?

MS. MELCHIONNI: I think the companies are applying for rate increases, and they are accurately justified. And the Department is granting some rate increases, but it's not enough. And the combined loss ratio for some of these companies is 108, 110 percent. For every dollar they take in, they pay out $108, $110. So at some point, something has got to give.

SENATOR GOLDEN: One company is at 130 here, I see.

MR. HENNING: Just to clear it up, if a company starts telling me what they are doing in the marketplace, that company and I can go to

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2 jail, so we are trying not to talk about the
3 company's specific actions in the marketplace, but
4 to your point, if the company is constantly losing
5 money in the market, the incentive to stay there
6 obviously --
7 SENATOR GOLDEN: The Insurance
8 Department can't keep on passing the rate increases
9 because the rate increases go down to the
10 ratepayer, and the ratepayer then eventually does
11 what?
12 MS. MELCHIONNI: Well, if they are
13 actually justified, the Insurance Department can
14 grant rate increases. They don't want to, but --
15 SENATOR GOLDEN: What happens if
16 that does happen?
17 MS. MELCHIONNI: Then our
18 insurance becomes unaffordable.
19 SENATOR GOLDEN: And then we have
20 people driving around in the City of New York
21 without insurance, all leaving the State of New
22 York, which, it still falls under no-fault if they
23 are underinsured or they are unlicensed, or
24 whatever the story might be. So it's a vicious
25 cycle that ends up in the ratepayer that pays the

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2 bill, correct?
3 MR. HENNING: Yes.
4 SENATOR GOLDEN: The other
5 interesting number that I see here is the 200,000
6 cases, and I see a 20,000 case increase in just the
7 first quarter of 2011.
8 MS. MELCHIONNI: That's for PIP
9 arbitrations. In the early 1980s, there were 2,500
10 arbitrations annually.
11 SENATOR GOLDEN: I'm sorry, I
12 mixed that up.
13 MS. MELCHIONNI: There are 200,000
14 no-fault lawsuits annually, and the PIP
15 arbitrations were 2,500 in the early 1980s. PIP
16 arbitrations this year are up 20,000 in the first
17 quarter alone.
18 SENATOR GOLDEN: Why hasn't a
19 state like this done mandatory arbitration yet?
20 MS. MELCHIONNI: I don't think we
21 can get that passed in the other house currently.
22 SENATOR GOLDEN: I'm going to ask
23 the industry here.
24 MS. BALDWIN: We urge you to urge
25 the Governor to get the Assembly to pass mandatory

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2 arbitration.
3 SENATOR GOLDEN: Kristina, Ellen,
4 Gary, I'm going to ask you in the industry, we need
5 the Governor on this and we need the governor's
6 help.
7 This is a crisis, and nobody is
8 writing about this crisis. But this crisis, you
9 know, people just keep on passing the rate down,
10 the ratepayer just keeps on paying. The City of
11 New York, the rates are just off the chart, and
12 it's a shame and it cannot continue. We are going
13 to ask your help to go to the governor and ask him
14 to join us -- as a matter of fact, my shoulder
15 hurts. I need a good massage.
16 MS. BALDWIN: You want one of
17 these massagers?
18 SENATOR GOLDEN: I need some
19 acupuncture.
20 (Laughter.)
21 SENATOR GOLDEN: What I do need,
22 I'm not making fun of it, is an organized effort to
23 go after this fraud tax. That's what I call it,
24 fraud tax, as we see some shirts there.
25 And I think the State of New York

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2 needs a comprehensive task force. And the
3 Insurance Department should be a part of that as
4 well as the Attorney General, as well as the five
5 district attorneys and maybe more into the Nassau
6 and Westchester area.
7 We don't want to squeeze
8 that toothpaste and see it go someplace else. And
9 that's why the State needs the overlaying. If we
10 took every one of the cases you just talked about,
11 every one of them for boilerplate, every one of
12 them would be identified in a technology review and
13 a data review of these cases. And they would be
14 caught within hours.
15 MS. BALDWIN: With regard to an
16 organized effort, the industry as well as a number
17 of community groups have banded together to form
18 the "Fraud Cost New York" coalition. I believe
19 that you have heard of that.
20 SENATOR GOLDEN: Sure.
21 MS. BALDWIN: We have gotten a
22 number of newspaper articles about this, and it's
23 really trying to raise the profile to stop this
24 fraud tax. We have, I believe, it's almost fifty
25 community groups and business groups that have

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2 joined us so far, and we are continuing to grow.
3 SENATOR GOLDEN: I want also to
4 send -- I talked about a task force; I also talked
5 about funding for that task force. Now I'm going
6 to send some more shock into the audience on how to
7 pay for that task force.
8 What are your recoveries? Your
9 insurance companies are losing hundreds of millions
10 of dollars. On that $120 million, I don't know
11 what your return on the investment is, on that $120
12 million. It doesn't look like a whole lot. But I
13 do believe there should be some type of possible
14 investment on the return, on the recoup of these
15 lawsuits that have these lawsuits that -- or
16 institutions, these recoveries, and given to the
17 district attorneys or to the task force. What's
18 your comment on that.
19 MS. BALDWIN: Any money we recoup
20 is essentially policyholders' money, so to the
21 extent that any of that goes elsewhere, it, again,
22 increases cost.
23 SENATOR GOLDEN: But your cost is
24 already spiraling out of control. If you don't
25 invest -- I'm just --

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2 MS. BALDWIN: I agree.
3 SENATOR GOLDEN: What I'm asking
4 you to do is not to give me an answer. What I'm
5 asking you to do is to go back and let the minds,
6 better minds, prevail over yours and the industry
7 and see if there is something that's workable.
8 I think 120 million, if you guys
9 think it's working, God bless you, but we need to
10 do something. Maybe you can come back to the
11 chairman and to the Committee with some proposals.
12 MS. BALDWIN: Certainly.
13 MR. HENNING: If I can just add
14 one thing when we are talking about what needs to
15 be done. Last year there was a -- with both the
16 Senate and Senate majority, at that time in the
17 Assembly, we sat down. We sat down with the
18 various stakeholders to try to hammer out a bill.
19 Did the bill pass the Senate?
20 MS. BALDWIN: The Task Force Bill?
21 No.
22 MR. HENNING: No, it didn't make
23 it to the -- okay.
24 Anyway, on the negotiations, we
25 came to a bill that didn't reduce costs, gave us a

2 little something we wanted, but it changed
3 something with the personal injury threshold and
4 reduced cost. I just bring that up because we've
5 been trying to work and negotiate, and just the
6 dynamics haven't worked. Obviously, we need a
7 new -- obviously, there is a new dynamic in the
8 Senate, but we need a new dynamic to try to come up
9 with a bill that works because what we came up with
10 last year would have actually cost the
11 policyholders more money.
12 MS. BALDWIN: We had a Millerman
13 (phonetic) do a study on that bill and what kind of
14 premium impact it would have had, and the study
15 indicated that it would have increased premiums by
16 up to 11 percent.
17 So that was the result of those
18 negotiations in trying to come to a compromise.
19 SENATOR GOLDEN: I wonder how much
20 that cost us, that group that we put together that
21 came up with the 11 percent increase.
22 (Laughter.)
23 SENATOR GOLDEN: I'm not going to
24 criticize anybody here, but I'm going to tell you
25 than in any way you look at it, in any form you

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2 look at it, it's a tax.
3 If anything is going to get done
4 in the State of New York, it's in 2011, 'cause the
5 last thing people want to see in the State of New
6 York is a tax. And this fraud tax far exceeds any
7 other tax.
8 This fraud tax is equal to a
9 personal income tax, a state tax. That's the price
10 that this tax is. It's as equal to that dollar
11 figure across the State of New York, and that is a
12 pretty high number for the City.
13 And we can't afford to pay that.
14 $1,600, $2,000 just for fraud. Think about that.
15 Does anybody do -- personal income tax -- us poor
16 guys don't make that. That's why I can point that
17 out. But think about that.
18 People do not want taxes. This is
19 a tax. It is the most expensive tax that we have
20 here, next to the Medicaid tax fraud schemes.
21 Thank you.
22 SENATOR SEWARD: Thank you.
23 Senator Martins.
24 SENATOR MARTINS: First, I want to
25 ask you, there's some talk about mandatory ultimate

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2 dispute resolution arbitration. If that is put
3 into place rather than, perhaps, Ellen, the
4 scenario you spoke of earlier, the non-assignment
5 of benefits to providers, but if we had a mandatory
6 arbitration in place where the necessity would be
7 determined, and if it was not necessary, then the
8 provider would not be reimbursed, wouldn't that
9 achieve the same end?
10 MS. MELCHIONNI: It absolutely
11 would. And I think Kristina mentioned how quickly
12 the cases are resolved in mandatory arbitration,
13 which is the goal, to get the injured person back
14 to work and receiving treatment. So we would love
15 to have a mandatory arbitration but --
16 SENATOR MARTINS: I understand.
17 And along those same lines, to the
18 extent that there was a provider who provided a
19 service or piece of equipment that was not deemed
20 to be necessary, then they wouldn't be reimbursed.
21 MS. MELCHIONNI: Correct.
22 SENATOR MARTINS: They would have
23 to eat it. They would have to think twice as to
24 whether or not they would make that decision 'cause
25 the cost and the risk would be borne by the

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2 provider, not by the insurance company and not by
3 the recipient.
4 MS. MELCHIONNI: Correct.
5 SENATOR MARTINS: Second point,
6 we've talked a lot about creating this database
7 where we would be able to share information.
8 Is the industry in a position to
9 provide the data necessary to create the database?
10 Is there, at least, a willingness to be able to
11 cooperate and to provide information?
12 We are assuming that there is, but
13 frankly, I haven't heard from anyone in the
14 industry whether or not the carrier would make
15 their records available to centralize those records
16 so that they would be able to be reviewed.
17 MS. BALDWIN: It's a very
18 interesting concept and, I think, certainly we'll
19 be willing to look at. We are concerned as to what
20 kind of additional costs that might pose, but it's
21 a very interesting concept. Why don't you let us
22 take it back to our companies and see what their
23 thoughts are?
24 SENATOR MARTINS: I believe that
25 your companies have -- for the most part, they own

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2 the fraud unit individually. So each company has
3 its own investigation, has its own --
4 MS. BALDWIN: Required to by law.
5 SENATOR MARTINS: But they are
6 funding that as part of their anti-fraud efforts.
7 MR. HENNING: Yes.
8 SENATOR MARTINS: All we are
9 suggesting is, perhaps, you will be the best able
10 to provide us with that mindset. Can that be
11 centralized? You are already spending money. The
12 company already has that cost.
13 Can that be centralized in a way
14 that it allows that information to be -- not only
15 the cost to be shared, but the information to be
16 shared the way that allows these particular items
17 to be identified?
18 MS. MELCHIONNI: I think that
19 there are already several organizations that many
20 of these companies belong to. NICB is one of them.
21 One of them, you'll hear from them shortly. I
22 think different companies have different levels of
23 aggressiveness in tackling fraud, and different
24 companies have different policyholders. And
25 different behaviors within each company. So I think

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2 each company has their own expertise in what they
3 see within their own pool of policyholders.
4 SENATOR GOLDEN: Thank you.
5 I just have one more question. Do
6 you have any other answers on who the top four
7 companies are, what their losses are? Would you
8 know that?
9 MS. MELCHIONNI: Based on market
10 share?
11 SENATOR GOLDEN: Yes.
12 MS. BALDWIN: We know who the top
13 companies are based on market share. We do not
14 have their loss information. There are anti-trust
15 laws that prohibit us from getting --
16 SENATOR GOLDEN: I'm pretty sure
17 nobody is going to be afraid about putting out how
18 much they lost in fraud in the State of New York
19 because if you don't put it out there, it's not as
20 my screaming up here making it a crisis. You have
21 to be able to formulate why it is a crisis. And if
22 you can get that, if you want to keep it quiet and
23 get it to the Chairman so that the Chairman can
24 share that with us so that we understand it.
25 And if you could do what Senator

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2 Martins has asked, if you could do that in a timely
3 fashion, if you could do that in a 30-day period
4 and get it to us by, say, the end of May, June 1st,
5 somewhere in that category, so that we can
6 formulate something by the end of June session.
7 I will tell you, in putting a task
8 force together, we want to do it not only timely,
9 but we want to do it smartly. Whatever input you
10 can give us in putting that bill together and who
11 should be part of that bill and who should be part
12 of that task force, and what that task force's goal
13 should be, we'll greatly appreciate it.
14 MS. MELCHIONNI: Thank you.
15 MS. BALDWIN: Thank you, Senator.
16 SENATOR SEWARD: We have three
17 more panels to go, very insightful, interesting
18 panels, but before we move onto Panel 7, we will be
19 taking a ten-minute break, give our stenographer a
20 bit of a break as well as our panelists here. So
21 we will take a short break and we'll resume with
22 the Panel 7.
23 (Whereupon, at a luncheon recess
24 was taken.)
25 SENATOR SEWARD: Good afternoon,

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2 everyone, we took a short break.
3 We will now resume our hearing.
4 And our Panel 7 is another industry
5 panel of Floyd Holloway from State Farm Insurance;
6 Ram RP Singh, President and CEO of
7 Maya Assurance Company;
8 Neil Solters, a Chief Operating
9 Officer for ISG Recovery; and
10 Joseph Persaud, No-Fault Director
11 of American Transit Insurance Company.
12 And we may have some substitutions
13 here.
14 MR. HOLLOWAY: Good afternoon,
15 Chairman Seward, Senator Golden, Senator Martins.
16 I'd like to thank you for your
17 strong leadership and courage in addressing this
18 issue, which we know to be critically important to
19 the insurance industry.
20 I'm Floyd Holloway, New York State
21 Counsel for State Farm Insurance Companies.
22 I have with me today Barbara
23 Stalfi, who is a team leader in our SIU division.
24 So she comes with a lot of knowledge and expertise.
25 And I'd like to bifurcate my time

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2 this afternoon, and I'll make a couple of high
3 level comments and observations. And then I'd like
4 to turn it over to Barbara, who will share some
5 perspective about State Farm's SIU operation in New
6 York and in particular about the cost of running
7 that operation relative to one case we've
8 identified.
9 Let me begin by just simply
10 recognizing that New York's no-fault system or
11 system of regulating auto insurance is broken. And
12 that broken state, if you will, is primarily and
13 predominantly caused by the excessive levels of
14 fraud abuse that characterize its system.
15 It is our position and affirmative
16 statement that the state of no-fault in New York is
17 dire and unsustainable. New York is the fourth
18 most costly state for private passenger auto
19 insurance, and these costs are directly the result
20 of fraud and excessive abuse of the no-fault
21 system.
22 State Farm is a company that's
23 willing to tell you that for every dollar of
24 premium spent in 2010 for no-fault voluntary auto
25 insurance, if you will, that it paid out

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2 approximately $1.30.
3 That is an unsustainable set of
4 circumstances. It's only a matter of time before
5 that reaches the point where it implodes, and we
6 are here to tell you today that it's on the cusp of
7 imploding for the industry.
8 Between 2006 and 2010, the number
9 of open fraud investigations By State Farm
10 increased by 19 percent. Fraud is an enterprise
11 whose business model is thriving. And that's at a
12 time when states are struggling to close the gaps
13 in their budgets, at a time when consumers are
14 struggling to make ends meet and many are out of
15 work, at a time when a country is recovering from
16 the most dire and desperate economic circumstances
17 encountered, perhaps, rivaling at any time in this
18 country's history, and at a time when some
19 businesses are struggling to remain open and others
20 are paying losses that are unsustainable.
21 The outlook for no-fault, as far
22 as we are concerned, is bleak in New York. And
23 when we look at the numbers, the numbers tell us
24 that in 2006, State Farm filed 3,713 Insurance
25 Fraud Bureau reports. In 2010, there was 7,922.

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2 That's a 113 percent difference.
3 Responsible action is what this
4 problem demands, and steps must be taken
5 immediately to divest the empire of fraud that's
6 being built on the backs of the no-fault system.
7 I'd link it a scratch-off lottery, that what
8 $50,000 is. And we've got players out there
9 determining what amount of that $50,000 scratch-off
10 they want to win today. The time has effectively
11 run out. And if we do nothing, I think we'll have
12 a problem.
13 I'll ask Barbara to share with you
14 our perspective on what this no-fault fraud
15 enterprise looks like, what its business model is
16 built on, and how it thrives.
17 MS. STALFI: Thank you, Senator
18 Martins, Senator Golden, Senator Seward.
19 Is that okay with you?
20 SENATOR SEWARD: Just get to the
21 mike as close as possible.
22 MS. STALFI: I'm going to stand.
23 When we talk about $240 million in
24 no-fault fraudulent claims, it's almost too big for
25 me to get my head around it.

1
2 So what I'm trying to do is show
3 you what I see on a regular day-to-day basis. How
4 claim by claim, clinic by clinic these millions of
5 dollars add up.
6 The first thing that you need to
7 understand about these people is the people who
8 control them, the owners of the medical P.C., are
9 laypeople. They are businessmen, they are
10 businesswomen, they are entrepreneurs. They don't
11 have a medical background. And that's something
12 that we need to correct by law. We need to fix
13 that.
14 What these people also know is
15 each person who walks into their clinic after an
16 automobile accident is a $50,000 asset to their
17 fraudulent operation.
18 No matter what the alleged injury
19 is, most are soft tissue, and sometimes you don't
20 even have to be injured when you walk in, but there
21 is always a predetermined protocol of care. The
22 care is already set out. So if you go in with a
23 hurt neck or a hurt knee, you are going to have the
24 same treatment.
25 What these people realize is that

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2 they have access to you, they have access to the
3 bank accounts. So what you need, the prerequisite,
4 is a police report that has your name on it that
5 you were in that car accident, and you need a proof
6 of insurance. And once they have those two things,
7 bank account is being opened, and off we go.
8 This chart demonstrates for you a
9 typical clinic. The true owner at the top, they
10 hire the staff who run it day-to-day, they have the
11 front desk, physical therapist sometimes. They
12 also hire the medical provider who is actually the
13 nominal owner.
14 As an example, we spoke to a
15 doctor who told us that he answered an ad in "The
16 New York Times," "Doctor wanted." So he called
17 this person. I'll call him Joe. He met with Joe,
18 and Joe said, You know, you can run a medical
19 clinic. Here is the office that you are going to
20 be in. It's fully staffed. They said that there
21 is no capital outlay on his part. And they said
22 that they would pay him $100 per hour.
23 So we said, What did you do? He
24 said, Well, we went, filled out the paperwork, I
25 signed it so that the corporation was a medical

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2 corporation set up in my name so it was legal. We
3 opened a bank account, which this gentleman Joe was
4 also a signatory on, so he had access to all cash
5 coming in and out.
6 After he worked with them for
7 several months, this person Joe came up to him and
8 said, Doc, we don't need your services anymore --
9 you can go. So he said, Well, I just left. We
10 said, "Did you take your patient charts?"
11 "No.
12 "Did you tell your patients you
13 were leaving?
14 "No."
15 He just left. So we said:
16 "Did you have to return the key to
17 the front door?
18 "No, I never had a key to the
19 front door, but they ask me to return the key to
20 the man's room."
21 So actually you can see that this
22 person is controlled by these people. The owners
23 of the medical clinic also hire the billing and
24 collection people. So all of this is under their
25 control. Once the person walks into the clinic,

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2 the injured person, they meet with the staff who
3 tells them, you are going to have physical therapy
4 three times a week, you are going to have
5 chiropractic three times a week, you have massage
6 therapy, you are going to have MRIs, you might have
7 surgery. You are going to get your bag of DME or
8 durable medical equipment. And it comes in a pink
9 bag or a blue bag, depending on what day of the
10 week and what they want you to have,
11 electrodiagnostic testing, physical therapy, and
12 alike.
13 So once they are in the door, all
14 this starts happening, and the bills start coming
15 fast and furiously.
16 Here is the clinic, one medical
17 enterprise that had billed State Farm. I'm sorry
18 to tell you, it's also in Brooklyn, sorry.
19 (Laughter.)
20 But if you can see, this medical
21 portion of the MD billed State Farm $482,000.
22 That's a cost of a house in New York.
23 The chiropractor billed $78,000.
24 A family of four, a lot of times in New York,
25 that's what they are living on. If you take all

2 these numbers and you add them all up, it comes to
3 $1.7 million billed to State Farm Insurance. One
4 enterprise, one insurance carrier.
5 And the bills that came in for
6 this were from June 1, 2010 to December 31, 2010,
7 seven months. $1.7 million, seven months. On top
8 of it, it was 70 injured people. That comes out to
9 $24,300 per person billed in this one clinic.
10 That's a car. I mean it's a tremendous amount of
11 money.
12 So when we think about these
13 numbers we say, this is just State Farm. And we
14 are number three in New York State. Adding GEICO,
15 adding Allstate, adding 60 other carriers that
16 write business in New York, and in a six-month or
17 seven-month period, what did this clinic bill New
18 York State insurance? A tremendous amount of
19 money.
20 So the people that have talked to
21 you today, have all said the same story. I think I
22 tried to break it down a little bit so you see the
23 big dollars and the impact, but we are all paying
24 for it. I'm paying for it, you guys are paying for
25 it, all of your constituents are. We need to fix

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2 it because, indeed, it's broken.
3 MR. HOLLOWAY: If I may close that
4 commentary, Senator, by just simply saying that we
5 recognize that there's no silver bullet solution,
6 as, I believe, the trade has pointed out; however,
7 fraud is a problem that's endemic to the no-fault
8 system in New York State. And it's time that we
9 collectively figure out, and collaboratively, how
10 to address the challenge.
11 This has created an unsustainable
12 set of circumstances for State Farm in New York.
13 And though it doesn't mean we are leaving the
14 market, but what it does mean is that we are in
15 dire need of some quick solutions, solutions that
16 either tell us that we can make a no-fault system
17 that's outdated, outmoded, and just simply
18 unworkable either work for us or figure out what
19 the alternative is.
20 Because what we do know is that we
21 you look back to the changes that Gary referenced,
22 the regulatory changes back in 2001 and 2002, and
23 when we got through the litigation, we saw a rapid
24 decline in the cost, the average paid cost per
25 claim.

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2 But when the fraud enterprise
3 figured out how to resolve that challenge or get
4 over that, overcome the law, we wound up back in
5 the same situation. So we went from 9,200 down to
6 5,600, back up to 8,900. That's a problem that's,
7 again, a part of the infrastructure of no-fault
8 that we have to figure out how to get it. Because
9 it's not enough.
10 And we agree with all the changes.
11 We applaud Senator Seward for introducing Senate
12 Bill 2816A. Those are all the changes that we
13 think are necessary and essential to help and
14 repair some of the things that were wrong with our
15 no-fault system. But unless we can get underneath
16 the challenges that we face, we are never going to
17 stop this because it will just simply morph into
18 the next iteration of whatever that's going to look
19 like.
20 We've heard a number of people
21 testify today from law enforcement who referred to
22 a number of different things. And I'll save that
23 opportunity for a discussion afterwards, but we
24 believe that we are at a critical time in no-fault
25 history in New York. And if something doesn't

1
2 change soon, then the consequences will come to
3 bear.
4 Thank you.
5 MR. SINGH: Good afternoon,
6 Senators.
7 I would just like to express my
8 thanks to Senator Golden first. Last month, there
9 was a livery industry breakfast, and I got to know
10 that Insurance Committee Deputy Chair Senator was
11 there. So I went over there and I handed him one
12 page of letter asking him, suggesting him to take a
13 look at fraud in no-fault. So that's what brought
14 me here.
15 So Senator, thank you very much.
16 SENATOR SEWARD: Can you introduce
17 yourself?
18 MR. SINGH: Ram Singh. I will
19 come to that.
20 In 1992, Hurricane Andrew cost the
21 insurance industry over $26 billion. That is about
22 over $42 billion in today's money. Eleven
23 insurance companies went bankrupt; thirty others
24 lost 30 percent of their surplus. One personal
25 automobile carrier had one billion lost in that

Hurricane Andrew.

How is this relevant to us?

Within New York City no-fault, we have the equivalent of Hurricane Andrew every year. State Farm just said it. We have Hurricane Andrew in New York City every year.

According to a recently published ICB report, there has been a steady increase in questionable claims submitted by New York automobile policies. New York State Insurance Department reported that out of every ten fraudulent reports, nine belong to no-fault.

Of course, New York City has the dubious distinction of having the most questionable claims.

You may ask, who am I and who do I represent?

I am Ram Singh, Founder President and CEO of Maya Assurance Company. Maya is a small commercial company headquartered in Long Island City, New York, specializing in underwriting insurance coverage for the taxi/livery industry within five boroughs.

Maya began underwriting policies

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2 in 2006 with ten employees, and now we have 30
3 employees all living within New York. We are not a
4 multi-billion dollar insurance carrier writing
5 business across the nation.
6 Although we are a small company,
7 we are on the front lines of no-fault fraud, as
8 many individuals target taxi and livery vehicles in
9 New York City.
10 In order to emphasize the size and
11 scope of the fraudulent claim problems in New York,
12 not just us, but all insurance companies, 50, 60 of
13 those who write in New York, they have this
14 problem.
15 And I do have some few specific
16 examples, which I will skip because they are in the
17 report for you. I have a specific example which
18 can -- you mentioned the 30-day problem -- 60 days
19 before.
20 Even if there's no accident,
21 companies get $60,000 for no -- for a hunched-up
22 accident, no accident.
23 Altered police reports, fraudulent
24 police reports, all those things I have listed
25 specific examples we had. The cases of

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2 arbitration, I will mention that, but they are in
3 the list, in my testimony. But I will make some
4 very specific suggestion and recommendation. Those
5 suggestions and recommendations will not require
6 any funding; it will not require any additional
7 money. It will rather reduce and help the
8 consumers, State courts, and all of us. That's
9 what we are trying to find out, how we can prevent
10 fraud.
11 I just want you to understand, the
12 problem is throughout the State, and every carrier
13 tries to deal with overwhelming frauds. This is
14 like Hurricane Andrew every year for the insurance
15 industry in New York City and State.
16 Please note, as Senator Golden has
17 mentioned, he does not like carriers to go out.
18 During the past ten years, over half a dozen major
19 carriers have withdrawn from New York City to write
20 livery policies. Why? Because they just don't
21 want to have losses like Andrew or, perhaps,
22 Katrina. They just don't want to stay in New York
23 City for no-fault.
24 So what can be done to protect the
25 policyholders and allow legitimately injured

1
2 claimants to get proper medical treatment?
3 Without overwhelming the State
4 courts, I believe with minor modifications to the
5 current no-fault law and regulations, excessive and
6 abusive overtreatment can be curtailed, many of
7 which never actually take place.
8 Further, courts have recognized
9 that there is a substantial need to prevent fraud
10 in no-fault insurance claims with carriers
11 requiring the ability to identify and defend
12 against staged accidents and fraudulent medical
13 bills. We have talked about this since morning.
14 State courts are clogged up with
15 frivolous litigation costing the consumer, State,
16 and the court system millions of dollars that can
17 be saved and must be saved.
18 In order to rectify the system, we
19 suggest simple modification, an enhancement to the
20 existing no-fault system.
21 We believe that it will almost
22 eliminate frauds in the system. One drastic and
23 draconian way is to completely repeal the law.
24 Obviously, we do not recommend that.
25 Secondly, on a more serious note,

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2 we believe that seven days after the accident,
3 maybe five, the no-fault carrier must be informed
4 of a seriousness and of any emergency nature of an
5 injury, treatment, and supplies.
6 Once leaving the emergency room,
7 the carrier must direct the treatment, diagnostic
8 testing, and supply for the benefits of the injured
9 person.
10 Second, further, institute a
11 process in Regulation 68 of precertification or
12 pre-approval for all non-life threatening,
13 non-emergency testing, treatments, and medical
14 supplies, just as there is with workers'
15 compensation or private health insurance programs.
16 No-fault carriers will use the
17 services of licensed medical providers who are
18 approved for such testing and treatment by the
19 Workers' Compensation Board, a state-recognized and
20 authorized body for such matters.
21 This option must be made available
22 to auto liability carriers.
23 We also support the proposal to
24 prevent claimants assigning claims to their
25 doctors. This along with the other proposal would

1
2 be highly beneficial to making Regulation 68 to be
3 utilized for what it was intended for, protecting
4 the individuals who were injured in an automobile
5 accident.
6 As related to false medical
7 clinics, we fully support suspending all payments
8 for owners of those clinics, in which these fraud
9 investigations are underway.
10 Final suggestion, and equally as
11 important, is that for all cases that go before a
12 court for trial and/or arbitration, the prevailing
13 party must be compensated by the adverse party for
14 all legal costs including the cost of expert
15 witnesses.
16 At present, carriers have no
17 recourse of recovering any cost to defend
18 themselves for all those frivolous and unnecessary
19 arbitrations. Arbitration charges us $1,200 to
20 file.
21 We are very much aware of the fact
22 that health providers and the Trial Bar will
23 vehemently oppose this simple modification. And it
24 is up to you, our leaders, to amend the system that
25 is supposed to help the consumers.

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2 The public and the court system,
3 we believe, if medical treatment is controlled,
4 fraud will seize and claimants can get proper
5 medical care. Furthermore, the cost of no-fault
6 auto insurance will drop for the betterment of the
7 residents of the New York State.
8 Even though we are a small
9 insurance company, we are on the front lines of
10 this no-fault fraud. Also, we chose to start our
11 company in New York and we'll remain here as long
12 as we can.
13 However, we, like all insurance
14 companies, need help. The insurers have been
15 battling this war for the past thirty-five years,
16 and the help is urgently needed. You are now in a
17 position to provide that help for the great State
18 of New York.
19 Thank you very much.
20 SENATOR SEWARD: Thank you.
21 MR. SALTERS: Good afternoon, Neil
22 Salters, ISG Recoveries.
23 Thank you for inviting me here to
24 speak.
25 The fact of the matter is that the

1
2 no-fault problem for the insurance companies in the
3 State of New York is completely broken. They are
4 overwhelmed and overmatched.
5 You've heard a lot of ideas today
6 about different legislations, changes to the regs.
7 And I can't disagree with any of them.
8 I'm not going to go through my
9 entire plan here because a lot of it has already
10 been said. I think the SIU presentation that State
11 Farm showed you today is exactly on point. This is
12 an enterprise, and the only way you are going to be
13 able to defeat it is to give the insurance
14 companies the tools they need to fight it
15 effectively.
16 Really, the problem here is that
17 there's no way for them to fight a fraudulent case,
18 even when it is clearly identified. I can't tell
19 you how many times I've had conversations with
20 insurance company professionals and lawyers over
21 the past couple of years, and we talk about this
22 problem all the time.
23 And everybody says, Well, we know
24 it's fraud, but we can't fight it because once
25 we'll get into the judicial system, we are going to

1
2 lose or we are going to end up paying fines and
3 penalties, and there is just no way out.
4 The 30-day reg has to go. It has
5 to be more time. And the key element here is the
6 suspicion of fraud issue. Every claims
7 professional in this building today or out there
8 can identify a fraudulent case within moments of
9 looking at it. That's the truth. They see the
10 things that you've heard talked about today; they
11 can see the patients' signature duplicated a
12 hundred times over on the bills for the treatments
13 that they never got. And there's nothing they can
14 do about it because they have to act quickly.
15 My suggestion is that as soon as
16 there's a suspicious fraud, you take that claim.
17 You give the insurance company the ability to take
18 that claim and put it in another population. A
19 population of files where it's going to be assessed
20 fairly. And then, if there are -- if it is
21 inappropriately identified, that case gets thrown
22 back in and the insurance company is penalized for
23 improperly sending it there.
24 But if the claim is fraudulent or
25 is or was justifiably referred for fraudulent

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2 review, then that file is handled in a different
3 manner. Those files, the attorney that brings
4 them, the health care provider that brings them, is
5 handled in more of an administrative fashion than
6 criminal.
7 I know everybody is talking about
8 changing criminal laws to make them more stringent,
9 expanding them. The problem is, and you've heard
10 it here today, it's very, very expensive to
11 prosecute any of these files. It takes three years
12 sometimes to get somebody an actual conviction on
13 these claims. It just is not practical.
14 However, if you set up an
15 administrative process by which fraudulent claims
16 are handled by a professional board that doesn't
17 have a dog in a fight, it is not the insurance
18 company, it's not the attorneys, somebody else --
19 and I'm telling you, you can do this. You can have
20 people look at these claims very quickly, very
21 efficiently, very carefully, and make a decision.
22 Those health care providers, the
23 doctors, and the lawyers who are pushing fraudulent
24 claims through the system, their right to handle
25 no-fault claims has to be taken away. And that's

2 the only way you are going to solve this problem.
3 Because there's too much money to be made by the
4 attorneys and the health care providers.
5 The criminal element is fine. We
6 can target them. So you have to develop some way
7 where you attack, what I call, shifting the
8 economic burden.
9 Right now the entire economic
10 burden is on the insurance companies and their
11 insureds who are paying the higher costs. You have
12 to shift it to the attorneys who are making a
13 living off of these fraudulent claims.
14 One other item that hasn't been
15 discussed here today is black box technology.
16 There is technology today that will allow you to
17 recreate exactly what happened in a motor vehicle
18 accident immediately, web-based.
19 I think it probably should be a
20 law that every commercial vehicle in New York
21 should have black box technology in it. Most of
22 the fraudulent actors are targeting commercial
23 vehicles. They are easy. They are easy to rent,
24 easy to get a hold of. And if you want to stage an
25 accident, put four people in a taxicab and then hit

1
2 it in the rear. You've got your perfect no-fault
3 case.
4 The way to attack this is to try
5 and make those commercial vehicle accidents a
6 hostile environment for those fraudulent actors.
7 And you can do that by putting black box technology
8 in.
9 Senator Golden and Senator Seward,
10 you've made a couple of points, but can you set up
11 a task force that works, that uses a database that
12 can effectively fight fraud?
13 You can, and it has been done. I
14 did it about ten years ago. I was working with a
15 company that rents vehicles to people who like to
16 move belongings from one place to another. That's
17 all I say about them. And they were actively
18 considering no longer renting vehicles in the State
19 of New York because they were getting eaten alive
20 by fraud.
21 They brought me in and they gave
22 me carte blanche to do what I needed to do to fight
23 this problem. We set up our own -- and this is
24 just a tiny little office, we had maybe twelve
25 people, and not half of them were put on point to

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2 work on this issue.
3 I had one SIU person for the
4 entire State of New York. We set up our own
5 database with all the critical elements in it and
6 we fought every single case that we thought was
7 fraud using the Commissioner's opinion on suspicion
8 of fraud. It was a hard battle. We had to invest
9 in some legal costs up front.
10 But within 18 months of starting
11 that program, the number of claims, not just
12 fraudulent claims, the number of claims against
13 this company went down by over 90 percent. That's
14 how much fraud there was against this particular
15 company.
16 So instead of leaving New York and
17 bringing their business elsewhere, they stayed, and
18 they are still doing business in the State of New
19 York.
20 That's all I have for you right
21 now.
22 SENATOR SEWARD: Before you
23 conclude, could you just describe what ISG
24 Recoveries --
25 MR. SALTERS: We are a subrogation

1
2 operation. We also do loss transfer defense for
3 insurance companies. We really don't have a dog in
4 this fight, quite frankly.
5 If you succeed in bringing down
6 no-fault claims in the State of New York, it will
7 take business away from us.
8 SENATOR GOLDEN: Thanks for being
9 so honest.
10 (Laughter.)
11 MR. PERSAUD: To the Honorable
12 Chair and members of this senate committee, I'm Joe
13 Persaud and I work for American Transit Insurance
14 Company. We are the largest commercial auto
15 insurance carrier in New York State.
16 I have worked in the insurance
17 system for the past 24 years. And since that time
18 the industry has changed dramatically. It's now a
19 multi-billion dollar industry, obviously, but the
20 industry is in chaos. Fraud is rampant throughout
21 the system, and I can safely say like the famous
22 movie I've seen, "The Good, The Bad and The Ugly."
23 And one philosopher said about his
24 time. He said, "These times are so trying, it's
25 trying men's souls." And with this, I think we all

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2 have some type of stake in what's happening; it
3 affects every one of us.
4 When this body first enacted the
5 no-fault, it mandated the prompt handling of claims
6 and making the claim at hold as quick as possible.
7 With excessive billing, which we call an
8 opportunistic fraud, the environment has become
9 chaotic.
10 There is never-ending litigation
11 going on at different times in different venues.
12 And there's a six-year statute of limitation from
13 the time the bill is submitted. The system is
14 bursting at its seams and unable to deliver to the
15 public the intent that no-fault was created for.
16 I've heard notes and I've heard
17 numbers today regarding what's the average no-fault
18 claim. As a commercial insurance carrier, we are
19 seeing them beyond the 9 and the $10,000 threshold.
20 We are seeing claims running at 20, 25, $30,000 per
21 claimant, and these are all soft tissue injuries.
22 But I'd like to keep my comments
23 towards some suggestions specifically backing up
24 what Ellen Malchionni said earlier regarding the
25 medical supply issue.

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2 Medical supplies, the durable
3 medical equipment, has become one of the biggest
4 problems in the no-fault arena. And I know there
5 are plans afoot to fix or hopefully try to fix the
6 entire system. But it is my belief that this panel
7 and also the leaders of this Legislature could make
8 a move on a part that makes up about 25 percent of
9 the no-fault problem. And that is durable medical
10 equipment.
11 From a $20,000 claim for no-fault,
12 you easily would get billings for $5,000. The
13 $5,000 in billings comes in different ways, in
14 different forms, in different fashions.
15 Here are a few things I suggest:
16 Number one, the hard and the most
17 draconian remedy would be to eliminate the
18 assignment of benefits for all medical bills.
19 Obviously, that involves a lot.
20 If that's not possible, I think
21 the recommendation to totally eliminate the
22 assignment of benefits for durable medical
23 equipment is a very viable and powerful
24 recommendation.
25 Many years ago we had a similar

1
2 issue with transportation being billed. We would
3 get a transportation bill for $500, $1,000 for
4 every claimant. They would go back and forth, back
5 and forth. An assignment would be given, and the
6 medical provider would bill us for those
7 transportations.
8 Obviously, it was an increase in
9 the expense in the industry. The Insurance
10 Department together with the Legislature passed a
11 move. And when they did away with the assignment
12 of benefits for transportation, it dried up the
13 entire system for transportation.
14 We believe that if there's a total
15 elimination of medical supply assignment of
16 benefits, it will dry up this entire issue. This
17 issue is not only 25 percent of billings, but you
18 ask any litigator and any arbitrator, it is
19 actually 25 percent in the arbitration system and
20 in the court system.
21 Why should we make such a move?
22 Such a move is needed because if
23 we were just to fidget around the issue, we will
24 probably end up here again next year. Not only is
25 there a suggestion of doing away with the entire

1
2 assignment of benefits, but there's also another
3 possibility.
4 Ellen referred to overscores of
5 medical supply companies created in the New York
6 City area within the last couple of months.
7 Require them to have a Medicare certification
8 instead of just having an incorporation where you
9 can just incorporate the business and start billing
10 in the system.
11 One of the recommendations should
12 be to seriously look into -- Medicare has a
13 vigorous vetting system, and possibly use the
14 Medicare vetting certification system so that there
15 could be some form of review before they get into
16 the system.
17 The third thing I'd like to say is
18 regarding medical supplies and also general medical
19 billing. There's an uncertainty in the amount to
20 be paid on many things. Someone alluded to that
21 there's no set fee schedules, no set number when a
22 carrier wants to pay a bill. This has become a
23 very, very big problem.
24 For instance, if someone were to
25 bill $1,500 for a TENS unit, a TENS unit can cost

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2 from $30 right onto probably $500 to $700. A
3 carrier will not pay the $1,000 bill. What a
4 carrier will do is pay the reasonable and customary
5 charge, which is probably in a range of $100, $150,
6 even, say, $200.
7 The balance that's not paid
8 becomes a lawsuit or becomes an arbitration. This
9 is a major problem. I implore this panel to bring
10 certainty to payment when payments are due.
11 And so there's an Insurance Law
12 Section 5108 that allows the Superintendent of
13 Insurance Department authority to work with the
14 Workers' Compensation Board to set numbers when
15 there are issues like this.
16 I'd like this panel to put into
17 the legislature some type of teeth where the most
18 billed amount of durable medical supplies have an
19 exact number. When that check is sent out by the
20 carrier, $500 for the TENS unit, $100 for the TENS
21 unit, you do not see litigation anymore.
22 Finally, I would like to suggest
23 the ability for carriers to add outstanding bills
24 to an item that is in litigation.
25 The issue that we find before us,

1
2 every bill stands on its own. So if you have a
3 medical provider that has submitted 25 bills, it
4 translates into 25 different litigations.
5 What the provider would do is
6 start sending you, if there are twenty-five bills
7 and it totals $7,000, they will not put $7,000 in
8 litigation. That's hardly ever done. What the
9 $7,000 will start with is probably $500.
10 The carriers' hands are tied.
11 They would like to defend the bill, but $500,
12 there's no cost benefit to defend the $500. Of
13 course, we have great carriers defending every
14 single bill. But eventually, where is the money
15 going to come from to pay for all those expenses?
16 I suggest that this panel look
17 into giving the carrier the ability, not mandate,
18 the ability, if so desired, to add all the
19 outstanding bills for a provider who may be in
20 litigation.
21 Thank you very much for listening
22 to me.
23 SENATOR SEWARD: Thank you very
24 much, Mr. Persaud.
25 Based on your testimony -- and

1
2 earlier we had heard from Ellen Malchionni on that
3 DME issue. And even though my Legislation 2860
4 does address the assignment of benefits rules, I
5 think we -- as I sit here, I am going to look at
6 that DME issue, that pattern of what was done in
7 transportation a few years ago in terms of no
8 assignment of benefits in that area 'cause that
9 seems to be -- that's a real growth area at the
10 most, total of 25 percent of the problem is right
11 there.
12 So that's certainly one reaction
13 in addition to others that we've heard here today.
14 I want to get back to the State
15 Farm issue.
16 Now, we finally had the -- if you
17 would come over, Floyd, you have been outed in
18 terms of the -- you outed yourself in terms of the
19 $1 in premium, paying out $1.30.
20 SENATOR GOLDEN: And we thank you
21 for that.
22 SENATOR SEWARD: Because that does
23 demonstrate very, very clearly the problem here.
24 And that is an unsustainable number. I mean, it's
25 a -- anyone, even not the economist, realize that

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2 you can't conduct business very long with those
3 kinds of numbers.
4 And what the possible impact of
5 that would be, let's say, for State Farm or any
6 other company without any relief with those kind of
7 numbers, they are going to be out of the New York
8 market. You don't have to tell me what your
9 company's plans are, but it just adds a reason that
10 the market is in that condition here, in New York,
11 any company that's multi-state, national company,
12 they are going to be putting investments and
13 resources in other places other than New York City
14 because of that difficulty.
15 And that will only exacerbate our
16 problem for New York consumers because less
17 choices, less competition, that's going to drive up
18 the cost even further.
19 Did you want to comment at all on
20 that?
21 MR. HOLLOWAY: I do, Senator.
22 You are correct, our customers,
23 your constituents can nearly afford to pay the
24 price that's required to pay, if you will, in the
25 no-fault system in New York State. This is an

unsustainable set of circumstances, as far as State Farm is concerned.

SENATOR GOLDEN: Can you speak louder, please.

MR. HOLLOWAY: There are six no-fault states around the country --

SENATOR SEWARD: I just wanted to ask you about the other states because you do do business.

MR. HOLLOWAY: They are in the same or similar position, five other states, as far as State Farm is concerned.

There is a problem that is particular to the no-fault system throughout the states, but six states are driving significant losses for one company.

And we happen to be the largest writer of private passenger automobiles in the United States and the third largest in the State of New York. So State Farm has got a lot of experience in asking a lot of questions how to manage this challenge.

And one way to manage it is to understand the infrastructure of fraud that is

2 driving these challenges and to look at the
3 well-intentioned laws that were put in place under
4 Article 28 to allow thriving multiplexes, if you
5 will, to do business in rural areas.
6 But now we've seen the transition
7 of these multiplexes Downstate. And they are being
8 used as opportunities to, as mentioned earlier,
9 strike a bottomline number. This is about business
10 management, about bottomline issues for companies
11 that have no concern about the consumer and are
12 more concerned about how much money they are going
13 to make off of the system that has been set up to
14 allow to perpetuate in its current state, which is
15 to simply give money, give money if you can find
16 the way of doing it.
17 We have providers in New York who
18 are billing beyond the fee schedule, but what we
19 don't have is a law that says when you bill beyond
20 the fee schedule, you are done. It's illegal to do
21 that, you get to collect nothing.
22 Instead, we get gamesmanship,
23 gamesmanship from providers, gamesmanship from
24 lawyers who litigate these cases to argue about the
25 fact that we have chosen to pay the fee schedule,

which is what we are authorized to pay, what's required, what's mandated.

But instead, you have providers out there who are billing beyond the fee schedule with a hope that the gamesmanship that they introduced into the system allows them to collect exactly what they billed in the first instance.

So if we get it wrong on the timing, if we get it wrong on the payment, then we are ultimately obligated down the road to pay the entire bill.

It's highway robbery. We've been penalizing our customers. Your constituents are being penalized at all levels, and that's notwithstanding the fact that the law already allows for interest penalties to be assessed against companies that are late with their payments.

SENATOR SEWARD: What is happening in other states, no-fault states, where you've seen similar numbers?

MR. HOLLOWAY: And I can't speak with qualified expertise, but I will tell you that in New Jersey, for example, State Farm did withdraw

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2 from the State of New Jersey.
3 And that caused -- that had a
4 rippling effect and that caused the Legislature to
5 come back and collaborate with the Governor on what
6 it was going to take to stop the bleeding in New
7 Jersey.
8 Fortunately law was changed.
9 Unfortunately, however, those who were inclined to
10 leverage the system and take advantage of it did
11 so. And so we saw New Jersey costs drop back to
12 roughly in the $5,000 range only to currently be
13 back at the average paid cost approaching $17,000.
14 Again, unsustainable. We're
15 seeing the same reaction in Michigan. We pooled
16 all of our resources, if you will, and all our
17 expertise into trying to understand what's
18 happening in Michigan, what's happening outside the
19 United States, in Ontario, where the average pay
20 cost is off the charts.
21 So the criminals have understood
22 how to morph their enterprises in ways that allow
23 them to leverage this so-called "lottery system"
24 and take advantage, again, of our customers, your
25 constituents.

SENATOR SEWARD: Any questions from my colleagues?

SENATOR GOLDEN: I think he said it all.

You know, without significant penalties, including jail for these people that are committing this fraud, it's just going to continue to go on, even more so for this task force to be set up immediately, but the task force without the teeth is useless. So you need the task force that has the teeth to be able to go in and make the arrest, do the investigation, do the overlay, do the data research and be able to come up with a conclusive finding and then affect the arrest and the change in the direction of insurance cost here in the State of New York.

State Farm is just one that put its numbers on the table. There are other companies here, I dare to say, that are close, maybe even costing them more.

My question is - and some of these questions that I ask you, you may not want to answer and I would understand - your losses as a company, looking at the loss column in no-fault for

1
2 your company in the State of New York and you being
3 what, number three here, in this state?
4 MR. HOLLOWAY: Yes.
5 SENATOR GOLDEN: GEICO and
6 Allstate being above you and, I guess, Progressive
7 being below you?
8 MR. HOLLOWAY: Right.
9 SENATOR GOLDEN: What would you
10 estimate the cost of the losses for those four
11 companies, not the 50, 60 companies that are here,
12 but those four companies in the State of New York
13 looking and taking into consideration your loss
14 column?
15 MR. HOLLOWAY: Senator, I'd be
16 putting a blindfold on and throwing a dart. I
17 honestly don't know. But I can tell you that State
18 Farm has an underwriting loss for no-fault in 2010
19 of $72.5 million.
20 SENATOR GOLDEN: So your one
21 company will take a loss of $72 million. We had
22 how many companies here, in the State of New York?
23 MS. STALFI: 50, 60.
24 SENATOR GOLDEN: How many?
25 MR. HOLLOWAY: About 60 companies.

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2 SENATOR GOLDEN: 60 companies.
3 And the top, you are three, you are 72, which
4 means, I don't know, I could be wrong, but that
5 means the other two companies ahead of you are
6 above you, and Progressive would be somewhere
7 around the same number that you are. And I'm not
8 trying to put numbers out here, I don't want people
9 to attack me later, but I would say that we are
10 looking somewhere in the category of 300 million to
11 just in a top four.
12 You put the other companies in
13 too, we are probably looking at losses over
14 $700 million to a billion dollars here in the City
15 of New York.
16 MR. HOLLOWAY: It's certainly
17 entirely possible.
18 SENATOR GOLDEN: The lights just
19 went out, so somebody must be right. God is
20 speaking.
21 (Laughter.)
22 SENATOR GOLDEN: Think about those
23 losses here in the State of New York on an annual
24 basis. And does anybody really think that we are
25 not in a crisis? Does anybody really think that

1
2 one of these large companies are not going to go
3 out? Does anybody really believe that the smaller
4 companies, the other 46, 45 companies are not going
5 to go out, a number of them? They are.
6 And when they go out, what
7 happens? Insurance costs go up, insurance costs
8 goes up. What happens? We go to uninsured, we go
9 to unregistered, we go to people leaving the State
10 of New York because they can't afford to stay here.
11 It's another nail in the coffin. This is a crisis.
12 How long do you think now, let's
13 say -- it's not sustainable, let's put it that way.
14 Is that the best term I can use?
15 MR. HOLLOWAY: I think that's the
16 absolute best term. Because I think it means that
17 ultimately we will seek other solutions. And I
18 don't know what that looks like today, but I can
19 tell you that State Farm cannot continue down the
20 path of paying losses the way we are paying them
21 today when there's simply no opportunity to get
22 ahead of that animal.
23 We are in a situation that is dire
24 and it appears, from our perspective, that unless
25 and until we do some pretty substantial things to

change the substance of law, and I've addressed some points in my written paper, but we've chosen to allocate our time towards talking about fraud.

But if you look at things like burden of proof, if you look at some of the gamesmanship, if you will, that presented itself last year, Senator Seward, when you took interest in a Prima Facie bill, and we were stopping that in its tracks, those are the kinds of things that are designed to drive 18-wheelers through the no-fault operation system.

And we can't afford to let those things happen. But equally, we have to be in the position to stop what we see happening in today's life. Take the legs from underneath the runners.

We believe that the drug law model was a good one when you look at no-fault fraud. Because if you allow the prosecutors the opportunity to seize the assets of those who are part of this empire of fraud, then you strike it at the heart.

If the runners, the middlemen, the collectors, the attorneys, the providers, all of those who may be inclined to commit the crime, if

1
2 they do it, if they commit the crime, then let's
3 penalize them. Let's seize their assets and let
4 the DAs take a portion of those assets and use
5 those recoveries to fund the effort to go after
6 crime.
7 Let's make sure that the penalties
8 are much more stringent than they are today. A
9 misdemeanor for a runner does nothing. But if you
10 guarantee them jail time, if you guarantee them I'm
11 going to take your car, your bank account, your
12 house, and everything you own because it's a fruit
13 that poisons the tree, then we got a game changer
14 in effect.
15 You've now said, you've schemed
16 out a game and we are going to take everything you
17 have, and when we do, we are going to make sure
18 that we use those proceeds to fund the take-down of
19 this empire fraud that's created on the back of the
20 no-fault system in New York.
21 So incentivize DAs by allowing
22 those kind of things to happen. And then we get to
23 changing the substance of laws so that the lessons
24 that we learn today are not the ones that get
25 repeated tomorrow.

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2 SENATOR GOLDEN: You went up
3 113 percent in what number of years?
4 MR. HOLLOWAY: Five years.
5 SENATOR GOLDEN: So you can't
6 afford or any other insurance company can't afford
7 for us to play another dance at the Senate and the
8 Assembly and at the Governor's level. We need
9 immediate change and we need it today.
10 Is that the emphasis of your
11 testimony?
12 MR. HOLLOWAY: Yes.
13 SENATOR GOLDEN: And tethering
14 around the sides of it is not going to work. It
15 needs an actual dramatic change in its
16 appropriation and the way it's used and
17 administered.
18 MR. HOLLOWAY: The cost of
19 no-fault insurance has risen much more rapidly than
20 the price of a gallon of gasoline. That is a
21 national issue of national concern.
22 This ought to be of equal concern
23 to the Governor, to the Mayor, and to all
24 policymakers in New York who have a scintilla of
25 concern about what their constituents and our

2 policyholders are paying for insurance. This
3 shouldn't have happened. And it's unsustainable.
4 SENATOR GOLDEN: I just want to
5 focus on the black box. The black box is -- this
6 is mostly industry people, so I don't have to go
7 into it. The black box, if we put a proposal out
8 there, what does the black box cost? About $400?
9 About how much?
10 MR. SALTERS: Probably under $400.
11 SENATOR GOLDEN: But then it has
12 to be analyzed and everything, so you are going
13 into --
14 MR. SALTERS: There's ways you can
15 do it. What happens is if you do a Web-based
16 system, as soon as there is an impact on a vehicle,
17 the information and the pictures are immediately
18 downloaded and they can be looked at.
19 The analysis is actually pretty
20 easy because you preset the data feeds that come in
21 off of the car, so you'll get things like
22 direction, speed, you'll get actual pictures if you
23 have a black box and it's taking the pictures.
24 So, for example, most of the fraud
25 claims that anyone sees in the industry are what we

call missed claims; minor impacts, soft tissue injury. Those are the ones that are staged, but they are really not large impacts, they are just bumper hits, or they smash the car, somebody -- you gave an excellent example earlier when somebody drove the car into something and then staged a minor accident later and made it look like that was the actual accident.

If you have black box technology in commercial vehicles, those cases go away.

SENATOR GOLDEN: The reason I bring that up is, it took me three years to get a Convex Mirror Bill done here in the State of New York. I think I'm going to get it done this year. That's the $75 cost. So I'm sure the $400 cost for the black box in the commercial vehicles is going to be that much more of a fight, but I do believe that the black boxes do work.

We do have them in the industry, they are working on the buses, they are working in the livery systems, and we should look into them on the commercial level as well to assist in bringing down cost.

Getting back to Floyd and Barbara,

1
2 thank you very, very much for your testimony.
3 You did an excellent display here,
4 and I think you got the point across that you
5 wanted to get across.
6 Thank you all for being here.
7 I think my colleagues have some
8 more questions for you and your appropriate
9 testimony as well.
10 Hopefully, God willing, this will
11 be the driving force, this body here in this room
12 that's going to drive us, the legislators, to get
13 done what needs to be done in the industry. But
14 it's not just for the industry, it's for the
15 ratepayer, the ratepayer of the City and the State
16 of New York.
17 SENATOR SEWARD: Senator Martins.
18 SENATOR MARTINS: I appreciate
19 that, and I want to thank all of our speakers for
20 coming and sharing your insights today.
21 But, I guess, more a statement
22 than a question. When we think about what we are
23 talking about here, the underpinnings of no-fault
24 allow for someone who is injured in an accident to
25 be able to have their costs covered quickly,

1
2 cost-effectively, in a straightforward manner.
3 And by having the ability to game
4 the system through regulations, through
5 Legislature, well-meaning at a time, but what we
6 have allowed is for a small number of individual
7 companies to, in fact, disenfranchise not only the
8 ratepayer for the insurance companies, but for
9 every motorist in New York State who may have been
10 involved in an accident who now has to go through a
11 process that requires more scrutiny and, perhaps,
12 requires that their own claims, legitimate claims,
13 are now cast in a different light.
14 It's $240 million, maybe
15 $300 million depending on the number of carriers
16 that we take into consideration. But the reality
17 is, the system is supposed to work for a reason.
18 And to the extent that we can identify those
19 reasons where it does not work, I think it is
20 incumbent upon us to go out there, not necessarily
21 throw the baby out with the bath water, but
22 understand that since we are in a crisis, we need
23 to make sure that the system goes back to doing
24 what it was meant to do.
25 We have the means and the

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2 mechanisms in place to do that. We just have to
3 strengthen them. And I appreciate the context that
4 you brought to our discussion here today.
5 Thank you.
6 MR. PERSAUD: If I could just make
7 one comment. American Transit is the largest
8 commercial insurer for liveries. We do endorse the
9 black box technology. I think it will be very
10 helpful to the public.
11 And please, if you can move on the
12 medical supplies, you will be doing a lot of good
13 for the industry immediately.
14 SENATOR SEWARD: Well, thank you
15 all very, very much for your insights.
16 Our next panel, Panel 8, is
17 Nicholas Timko, who is a President of the New York
18 State Trial Lawyers Association;
19 Stuart Israel, who is a President
20 of New Yorkers for Fair Auto Reform, otherwise
21 known as NYFAIR; and.
22 Michael Kaplen, the Second Deputy
23 Vice President with New York State Academy of Trial
24 Lawyers.
25 Welcome.

1
2 MR. TIMKO: Good afternoon,
3 Senator Seward, Senator Golden, Senator Martins.
4 It's a pleasure to be here today. Thank you for
5 allowing us to participate in this very important
6 hearing to discuss this issue.
7 I want to just start because I
8 think we've heard a lot from the law enforcement
9 and we heard a lot from the industry. And now we
10 are hearing from a different perspective.
11 And I think it's important to have
12 this perspective because the members of my
13 organization and I represent consumers. So we have
14 a different perspective. We deal with insurance
15 companies on a daily basis. We recognize the
16 issues of concern here today, but we want to bring
17 a little bit of a different perspective to this.
18 The no-fault system, as Senator
19 Martins recently said, was a legislative bargain
20 with its citizens. And to make a point, this
21 bargain was one that was strongly urged by the
22 insurance industry at the time it was implemented
23 in an effort to solve what was perceived by the
24 industry as a problem at the time.
25 So this whole thing came about

1
2 because of the insurance industry. It was opposed
3 by many consumer groups, but it did work for quite
4 a bit of time; and it was a process where consumers
5 were actually treated fairly.
6 Now, from a consumer's point of
7 view, obviously, we are concerned about costs, but
8 I think it's important that everybody should note
9 that, you know, I live in the City, I drive in the
10 City, I have cars, I'm a constituent of Senator
11 Golden. As a matter of fact, he lives near me. Or
12 I live near him, I guess, is the better way to put
13 that. So I'm well aware of the high cost of
14 insurance in New York City.
15 But when I look at my insurance
16 policy, we've been focusing on no-fault, one of the
17 stark realities that I realize is my collision and
18 comprehensive coverage is the vast majority of my
19 cost. It's not no-fault. Collision and
20 comprehensive, even with a large deductible, is
21 very steep.
22 It's a product of living in the
23 City, I guess. I don't know what the answers are.
24 Where there's fraud in vehicle thefts and other
25 areas that don't involve no-fault, but that's the

1
2 biggest part of my coverage. Liability then is the
3 next biggest, and no-fault is the smallest except
4 for uninsured motorist coverage. So I think it's
5 important to keep into perspective in relation to a
6 policy premium, there are many different coverages
7 involved there, and no-fault is one of those
8 coverages.
9 And in my particular case, and
10 we've had a practice, we've collected a lot of desk
11 sheets from a lot of our clients to see, is this
12 really a big problem, is no-fault the biggest
13 component of policies, and by a large measure,
14 no-fault isn't.
15 It's collision and comprehensive
16 when those things exist. It's liability which, of
17 course, is the primary purpose of having the
18 coverage.
19 But one of the things that's been
20 mentioned by the carriers in terms of losing money
21 - and it was only State Farm who came forward with
22 these rates - we believe that it's important to
23 take a broad, comprehensive look at this problem,
24 but in order to do that, we need to have some
25 openness in terms of the books and the records of

1
2 the insurance companies.
3 It's very easy for anybody to come
4 in here and say we are losing money, it's costing
5 us this much, it's this much, but what about
6 opening up the books, what about a "sunshine law"
7 to let the Legislature and the public -- I mean, if
8 I am mandated by the Legislature to buy this
9 insurance, do I not have a right to know whether
10 the company that's charging me money is making a
11 profit, is, in fact, losing money or making money,
12 where they are losing it, how they are making it
13 and what they are doing?
14 So we believe that one of the
15 strongest components of this is, absolutely, if
16 there's a problem, and there seems to be a problem,
17 then we want to look for solutions. But to get
18 those solutions, we need to see the data; we don't
19 need to accept it from one side that says, well,
20 just trust us on the data.
21 And I'll address a little bit of
22 that issue a little bit later.
23 Going to the heart of why we are
24 here, let me just state on behalf of my
25 organization and its members, we hate fraud. I

1
2 think everybody does.
3 As residents of the City and the
4 State mandated to pay insurance, nobody wants to
5 see their costs higher than they have to be, so we
6 are always in favor of strong efforts to reduce
7 fraud and to reduce those costs.
8 As attorneys representing
9 legitimate members of the public consumers who have
10 been injured in these types of accidents, they
11 affect our clients too, because there's a tendency
12 to paint with a broad brush.
13 And we have a system of justice in
14 this country. We use the court system and we have
15 juries, and people have a due process and go in
16 front of that jury to present their case. And when
17 people walk in the room and they hear about fraud,
18 fraud, fraud, and they paint everybody with the
19 same brush, and I walk in with a legitimately
20 injured individual who's got a legitimate claim and
21 is entitled to justice under the law and is now
22 painted by having to overcome a presumption of
23 fraud, that affects my clients as well.
24 And so we are adamantly in favor
25 of trying to reduce fraud in any measure that it

1
2 can come from.
3 We've used this term "runners" and
4 we've heard a great deal about it, and our
5 organization strongly supports efforts to reduce
6 runners, but I think that there needs to be a
7 clarification in terms of runners.
8 We've heard it from a law
9 enforcement source in terms of fraudulent claims,
10 and there's much, much of that, as we've heard it
11 from various law enforcement people at the panels,
12 but it also affects attorneys who represent
13 regular, serious, honest injured clients, consumers
14 who have legitimate rights under the law because
15 what we are seeing is if a runner gets a hold of a
16 seriously injured patient through records somehow
17 in emergency rooms, whether it's a tow truck driver
18 or ambulance attendants or administrators in
19 hospitals, those consumers never have an
20 opportunity to consult an attorney who is going to
21 look out for their interest primarily and their
22 rights and make sure that they get their day in
23 court.
24 And I've had many stories. I've
25 had personal experience with family members who

1
2 have been involved in accidents and, Senators,
3 Lutheran Hospital is one of them, where they were
4 taken in an ambulance, that two days later they got
5 calls on their answering machines to -- whether
6 they wanted to know if they were hurt seriously and
7 they should be going to doctors and they have
8 lawyers to take care of them, that my own brother
9 calls me and says, did you do this? I said, of
10 course not, okay.
11 And I'll follow up on what I did
12 and how I think this problem can be solved in a
13 little while, but I think the effort affects all
14 consumers, it affects attorneys, the vast majority
15 of whom are legitimate and honest practitioners
16 looking to protect consumers' rights.
17 And I think we have to be careful,
18 as Senator Martins referred, that we don't throw
19 the baby out with the bath water when we make
20 changes.
21 I think that's one of the things,
22 you know, we are encouraged by the effort of the
23 law enforcement, but I think that we have to move
24 further because the purpose of our civil justice
25 system, of all these laws, is to hold accountable

people who hurt others, whether it's with their car or any other way.

And so we have in this bargain of no-fault taken away people's rights to go to court, to hold others accountable in exchange for the swift and certain payment. And we need to make sure that they get their swift and certain payment if they do it. And so we are strongly in favor of that.

Now, the question then is, what do we do?

I believe based on the testimony that we heard earlier from the various law enforcement entities, and it goes back to my own personal experience, the easiest and the most direct way to do this is better law enforcement efforts.

How does it happen? Well, they got to have the funding to do it. In my circumstance, I called a number of times to district attorneys to investigate, to do things. Unfortunately, and it's not a criticism, because when they do their job, they do it wonderfully, you got to have the resources in order to put the

1
2 manpower to investigate, to have somebody in an
3 emergency room, to have somebody keeping an eye on
4 the ambulance attendants or the tow truck drivers
5 or whoever else is going to get these clients
6 before they ever have a chance to rest and go home
7 and actually think, gee, I need a lawyer, let me
8 call somebody.
9 So I think that your target area
10 has to be in a direct aftermath of what happens
11 here, and I think there has to be resources. The
12 existing laws have been used. There was
13 recently -- the AG's office had something in
14 Lincoln Hospital in the Bronx where a number of
15 people were arrested on these charges.
16 They can get it done, but, again,
17 it's not cheap. It requires manpower and
18 resources, and I think that it has to be looked
19 into.
20 Going a step further, there are
21 many, many issues about the no-fault regulations
22 and the no-fault law, but I think it's important
23 that when we look at these areas that we make sure
24 we understand the position of the various
25 stakeholders in this.

1
2 We have government through law
3 enforcement and district attorneys, and I believe
4 that if you look at the -- in terms of what are
5 their interests, the most purer are sitting in the
6 DA's office and in the police department. They
7 have only one interest, enforce the law to the best
8 they can with the resources they are given.
9 You have the innocent public, the
10 consumers who are forced to pay for a coverage and
11 expect to get something in return. You have the
12 bad guys who are conking up the system, and on the
13 other side you have insurance companies.
14 Now, insurance companies have one
15 primary interest, to make a profit. That's not a
16 bad thing, nobody begrudges them that. They are
17 entitled, that's what business is about. But with
18 that primary goal comes an inherent conflict of
19 interest between what is in the best interest of
20 the insurance company, to make a profit; what is in
21 the best interest of the policyholders or the
22 people who are injured, who are covered by the
23 insurance.
24 And I think that it is that
25 inherent conflict of interest that has to be kept

1
2 in mind when we talk about how do we fix this
3 problem and what regulations and what rules do we
4 impose in terms of how we fix this.
5 So it's all well and good to look
6 at it from one perspective and say, if we had more
7 laws, if we had more rules, if the insurance
8 companies could take forever to pay a claim and
9 they didn't have to get a penalty, well then what's
10 their incentives if they have 90 days, a year, two
11 years, and there's not interest, there's no fine,
12 what's their incentive to pay legitimate claims?
13 They could theoretically, and we
14 all heard those stories, delay forever paying your
15 claim and have no downside risk, right?
16 Then there are instances here
17 where the law needs to be updated and needs to be
18 addressed. And one of those is in the area of this
19 Section 5102, serious injury.
20 When a person is injured in an
21 accident and engages an attorney and goes to court
22 to recover for non-economic damages, the law
23 defines categories of what is serious. It was made
24 back in the '70s when the only diagnostic tool we
25 had was an x-ray.

So part of the law says, well, you got a broken bone, that qualifies. Anything else, well, it's a very gray area and it breeds uncertainty. And from an insurer's point of view, as an actuarial concept, the more certainty there is, the better they can price their product, the cheaper it can be for everybody.

The problem is, medicine has changed in 30 years. We have MRIs; we have CAT Scans; we now have sonograms; we now can do surgeries on body parts like knees, meniscuses, ligaments, rotator cuffs, that we never would think of doing before 'cause it involved huge hospitalization; things that are serious, spinal surgeries that take place.

We have an uncertainty in the law that needs to be addressed and needs to be updated. As a consequence of that, there are claims practices that are engaged in by some companies -- and, again, people get painted with a broad brush, but there are instances here where some companies are on just about every claim that comes to court, they'll file a motion to dismiss, they have nothing to lose.

Why? Because they hire doctors, the same doctor who examines patients over and over again, who doesn't write his report, who is hired by a separate independent insurance medical exam company who engages doctors to see twenty, thirty people in a day.

The reports are virtually identical, they all come to the same conclusion. And some of them go so far as to deliberately and intentionally withhold medical records of the patient that they are supposed to see, so that the doctor has no prior medicals upon which to make an evaluation and decision. And some of them go so far as to actually write in the medical report that there are no legally authenticated medical records to review.

That's gaming the system. Because they are going to use that report to submit to a judge to say, Judge, my doctor looked at the patient one day, five minutes, had no medical records to review, because they don't want those records before the judge to make an honest review. And they'll say, dismiss the case.

What's the downside to the

2 carrier? Small cases that shouldn't be brought
3 will be dismissed. But serious cases, some with
4 surgeries to their back, some rotator cuff
5 surgeries, things like that will be dismissed
6 because the carriers in many instances are gaming
7 the system by using technicalities that never were
8 intended in this statute in order to gain dismissal
9 of legitimate claims.
10 Why? Because they are in a
11 business of making a profit. And if they can get
12 rid of a claim, that's what they do. It's not
13 necessarily good or bad, it's allowing them to do
14 something that benefits them, and that's what they
15 are in business for, which goes back to the
16 original model of what is everybody's intention and
17 where we are going with this stuff.
18 Another example is innocent
19 victims. We heard the stories from one of the
20 district attorneys about the poor elderly woman who
21 was the innocent victim of a staged accident. She
22 ended up dying; she hit a tree, right?
23 The carriers have coverage called
24 Uninsured Motorist or Supplemental Uninsured
25 Motorist, which is intended. People pay a premium

1
2 for this to cover you if a person who hits you has
3 no coverage.
4 Well, that poor woman, had she
5 lived and had a claim, would have been denied by
6 the carrier for the intentional actors because that
7 was an intentional act. The SUM coverage, the UM
8 coverage is denied routinely by carriers because
9 they say, well, this came from an intentional act.
10 It wasn't her intentional act; she is an innocent
11 victim, but she has to pay the price for what
12 happened to her.
13 Recently the Court of Appeals
14 addressed that issue in an interpretive ruling to
15 say that her coverage should cover her because she
16 was not proven to be in any way engaged in that.
17 And we believe that when you
18 address these things, you need to look at both
19 sides of the equation. You need to look at the
20 consumers' interest and innocent victims and make
21 sure that innocent parties are covered when you are
22 dealing with fraud.
23 Now, many of the carriers'
24 proposals, and I'll be brief in summarizing a few
25 issues that were raised here today, the carriers'

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2 proposals assume that everybody has a fraud. And
3 we've seen that because they cut off people's
4 benefits. You submit a claim within 90 days, you
5 used to do it, now it's 30.
6 As soon as they changed it to 30,
7 they get a report two weeks after an accident, a
8 week later, they put you in front of one of their
9 special insurance doctors who says, you are all
10 better, you don't need any more treatment, or
11 you've reached maximum benefits and we don't have
12 to pay anymore, which is why we have hundreds of
13 thousands of claims in court.
14 The mandatory arbitration issue.
15 Arbitration is a fine thing; it handles small
16 claims. The problem is, there is a rule of law and
17 there's a due process.
18 People voted with their feet.
19 When this process started and the arbitrators
20 arbitrated fairly, people went to arbitration all
21 the time. There was no flood of lawsuits.
22 What happened is certain
23 arbitrators decided to disregard the law, and they
24 became so much focused and so influenced by the
25 carriers' positions that they were denying claims.

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2 So everybody said, well, I have an
3 option to go to arbitration or to go to court where
4 the law will be applied fairly, and if it's not, I
5 can appeal to a higher court. People started
6 voting with their feet. They went to court.
7 And it's only because of the
8 actions of the carriers and the arbitrators in
9 failing to follow the law that people decided to go
10 to court.
11 So I know when somebody mentioned
12 last year the task force, there were proposals out
13 there about making the arbitration mandatory in the
14 first instance, but providing some recourse if the
15 arbitrator didn't follow the law or having an
16 appeals process or being able to file for a trial
17 de novo because that's what this country is founded
18 on, a due process, that there is a rule of law and
19 it has to be a way to enforce it.
20 In terms of guidelines, we fight
21 in this country every day about medical coverage
22 because people say, you should get to decide with
23 your doctor what is the right treatment for you.
24 Except now in no-fault cases, you are a
25 second-class citizen, and the carrier gets to tell

1
2 you how much you can go to the doctor and when and
3 where.
4 Why do we need a system like that
5 for?
6 The 30-day rule, again, there has
7 to be a balance between what's right for the
8 consumer and what's right for the carriers.
9 There are other Rule 68 changes,
10 Regulation 68, that govern the administration.
11 Again, they need to be fair, and we need to look at
12 all sides when we address these issues so that the
13 claimants can get their proper treatment and the
14 system can be made to work again.
15 So in summary, I think enforcement
16 is the number one way to address these issues in
17 the most immediate future.
18 We stand ready to work with the
19 Legislature and all parties involved to reach real
20 solutions to help solve these existing problems
21 while protecting the rights of the consumers in
22 this whole process and making sure that insurance
23 industry can't use a crisis, whether real or
24 inflamed, to cover up bad claims policies.
25 In the conclusion, that's what I

1
2 want to say, we don't have a bad faith policy in
3 the State with insurance. We have very weak laws
4 that govern that. And so insurance companies can
5 get away with lots of things in terms of bad faith
6 claims policies, not just in no-fault law, but in
7 every kind of insurance coverage.
8 And if you are a company that
9 treats its customers fairly, that treats the
10 claimants fairly, you have nothing to worry about.
11 You should be glad to have that kind of policy so
12 that companies that do engage in it would not
13 continue to work in the State.
14 And I think that if we are going
15 to address this global concern, we have to look at
16 the entire picture and we have to address all sides
17 of the issue.
18 Thank you.
19 SENATOR SEWARD: Thank you, Mr.
20 Timko.
21 MR. ISRAEL: Good afternoon,
22 Chairman Seward and Senators. I'm Stuart Israel,
23 President of New Yorkers for Fair Automobile
24 Insurance Reform, or NYFAIR. I am also a
25 practicing attorney who for more than two decades

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2 has represented medical providers seeking to
3 recover services rendered under New York's no-fault
4 insurance system.
5 My firm has been engaged in this
6 field since the advent of no-fault in the mid '70s.
7 My firm's mission is to ensure
8 that New Yorkers continue to have access to quality
9 medical care after automobile accidents. Members
10 of NYFAIR are affiliated with various doctors'
11 advocacy groups, hospitals, medical professional
12 corporations, trade groups, bar associations, and
13 concerned citizens.
14 All told, the members of NYFAIR
15 represent thousands of medical professionals
16 throughout the State of New York.
17 Last year, as a representative of
18 NYFAIR, I participated in the legislative hearing
19 and working group meetings concerning no-fault
20 fraud. These meetings included every major
21 stakeholder from the insurance industry and its
22 trade organizations to the Insurance Department,
23 the Medical Society and the Trial Lawyers.
24 After three long months of the
25 heated and contentious discussions, a bill

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2 addressing nearly every insurance industry concern
3 was forged. The Automobile Fraud Prevention Act of
4 2010 allowed for the decertification of
5 unscrupulous medical providers, allowed insurance
6 to raise new defenses of fraud and overbilling,
7 made changes to improve and incentivize the
8 arbitration forum, and increased the burden upon an
9 applicant seeking to establish its entitlement of
10 benefits.
11 While not perfect, the act was a
12 thoughtful compromise that addressed virtually all
13 of the insurer's complaints while preserving the
14 ability of honest medical professionals to get
15 reimbursed for necessary care.
16 In this context, NYFAIR is deeply
17 concerned that last year's efforts are being
18 abandoned by an insurance industry that seeks every
19 advantage at the expense of honest consumers.
20 It's unclear why we are back at
21 square one, or what has occurred since last year's
22 efforts that may have precipitated the introduction
23 of S.2816, a bill that, while well-intentioned,
24 will have detrimental consequences on the ability
25 of New Yorkers injured in auto accidents to find

and receive medical care.

Since last year's meeting, things have improved a little bit. According to the Insurance Department's own statistics, reports of no-fault fraud actually decreased by five percent.

Filings for arbitrations over litigations have literally doubled over the same period. Not because there are more arbitrations, but there are less litigations. And the Insurance Department is on the verge of promulgating the most sweeping changes to the no-fault regulations in a decade, addressing in large part fraud.

NYFAIR condemns any level of abuse in the system and has been dedicating considerable time and resources to work with policymakers to address this issue. However, the breadth of fraud, suggested by the industry, is simply exaggerated and untrue.

Industry-funded organizations casually report unverifiable statistics concerning the cost of fraud. Those statistics then become the basis for mainstream news stories that bombard the media wire and, in turn, the Legislature. However, there has been no independent verification

2 of the statistics claimed.
3 Indeed, even a cursory review of
4 the industry statistics lead them to be questioned.
5 For example, one industry-funded source claims that
6 no-fault fraud cost $240 million in 2009. That
7 figure has been cited time and time and again at
8 this hearing. However, a simple multiplication of
9 the total number of reported questionable claims to
10 the Insurance Department last year by the average
11 cost of the entire no-fault claim that is being
12 discussed today actually equals to $116 million,
13 literally half of what is being asserted by the
14 industry.
15 And yes, while $116 million in
16 suspective fraud sounds like and is a lot, it must
17 be put into context. Consider that in 2009,
18 according to the National Association of Insurance
19 Commissioners, NAIC, New York's auto insurance
20 collected $9.9 billion in premiums. Therefore,
21 suspected fraud accounts for roughly 1 percent of
22 all premium dollars collected. Not nearly the
23 crisis claimed by the industry.
24 Consequently, even if 100 percent
25 of the suspected fraud was eliminated and the

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2 carriers passed every cent saved onto the
3 policyholders, the average New Yorker's automobile
4 insurance policy would be reduced by about
5 one percent.
6 To be clear, this entire analysis
7 assumes that all reports of suspected fraud are
8 valid. In this regard, it's important to know that
9 the claim of fraud is a self-reporting,
10 self-fulfilling prophecy. Insurance Law requires
11 insurers to report suspected fraud to the Fraud
12 Bureau.
13 Statistics of fraud are based on
14 industry suspicion, not on any independent
15 determination that a fraud was, in fact,
16 perpetuated. Indeed, the Insurance Department's
17 own admission, many suspected cases are later
18 deemed unfounded or result from multiple referrals
19 about a single situation.
20 Such instances of misfilings do
21 not trigger the number of reported claims to be
22 adjusted downward and contribute to the reporting
23 of exaggerated claims.
24 Moreover, the Frauds Bureau has
25 opened only 170 new health fraud cases in 2010, or

just one percent of the total of all the suspected cases.

Admittedly, this law percentage may be due in part to a lack of resources, but one is still left to wonder what percentage of the remaining 99 percent is really not fraud at all.

Indeed, we have seen trial judges, panels of appellate judges, and arbitrators find that insurers' claims of fraud are often baseless.

For example, in Brooklyn, a father was wrongfully arrested and charged with insurance fraud at the request of an insurance company for seeking medical treatment for his ten-year-old son whose name was not on the police report because the son's teacher had actually come upon the accident scene and taken the boy to school.

After the charges were dismissed, 18 months later the insurance company still wanted to settle the medical bills at a discount.

An examination of the NAIC data that I mentioned puts this supposed crisis into further perspective. In 2007, a report from NAIC noted that the average loss ratio nationwide was about 82 percent, meaning that of every dollar

collected in premiums, insurers paid out about 82 cents.

However, that same year New York's auto insurers enjoyed the loss ratio of just 58 percent. That was the lowest of all the no-fault states. This report came on the heels of a New York City Comptroller report in 2006 that revealed that New York's auto insurers made 50 percent higher profits than auto insurers in the rest of the nation.

Although the State subsequently required that many insurers reduce its premiums, in 2009 New York's auto insurers' loss ratio was still 66 percent, better than the nationwide average.

In this regard, last year the Legislature required health insurers to maintain a loss ratio of 82 percent. We believe that if auto insurers were required to meet that same standard, premiums would drop by nearly 20 percent.

NYFAIR remains deeply concerned that this policy debate is being driven by incomplete and misleading statistics.

Indeed, if we simply look at the impartial statistics from the NAIC and the

1
2 Comptroller rather than those produced by the
3 industry, New York premiums are not driven by a
4 fraud epidemic and insurers are making a tidy
5 profit.
6 Yes, many claimants are gaming the
7 system, but targeted legislation such as that
8 proposed last year would address it without cutting
9 off access for health care for honest claimants.
10 Moreover, any discussion of
11 no-fault fraud must also include insurance company
12 fraud. We see virtually every single insurance
13 medical examiner and peer review result in a denial
14 of benefits. We see many insurers using the same
15 group of a dozen or so doctors to review claims.
16 We see reports from these different, allegedly
17 independent insurance company doctors contain the
18 same typos and citations to non-existent medical
19 authorities.
20 We also see insurers demanding
21 Examinations Under Oath solely to demand that a
22 doctor, as a condition to any and all future
23 payments, stop treating patients and attend these
24 interrogating sessions.
25 I recently represented a

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2 board-certified neurologist, whom, after giving
3 fourteen hours of testimony to verify a single day
4 of treatment, was asked to return for a third day
5 of testimony to address a single bill for a $49
6 follow-up visit, even though that bill had already
7 been paid. And the tragic part is that no one is
8 doing anything about this.
9 Perhaps, due to a lack of
10 resources, the Insurance Department has provided
11 little oversight of these abuses. The primary tool
12 of the Insurance Department, the Market Conduct
13 Examination, is insufficient to protect consumers
14 from insurers that treat consumers unfairly.
15 For example, in 2009 the
16 Department did not report imposing a single penny
17 in fines on any insurer for violating the no-fault
18 regulations.
19 One suggestion to help reduce
20 those abuses cited would be the appointment of the
21 Insurance Consumer Advocate. In short,
22 overreacting to insurers' demands risks causing
23 greater problems than the proposed legislation is
24 intended to resolve.
25 In a very real sense, this

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2 legislation will affect the availability of health
3 care benefits for tens of thousands of New Yorkers,
4 especially the poor and the middle class, many of
5 whom do not have the advantage of general medical
6 insurance. These New Yorkers wouldn't be able to
7 get treatment for their auto injuries.
8 Legislation such as 2816 is overly
9 broad and akin to throwing out the baby with the
10 bath water -- I thought I would be the first one to
11 use this metaphor.
12 Lifting the preclusion rule would
13 do nothing more than permit insurers to
14 indefinitely delay and deliberately deny claims
15 that have absolutely nothing to do with fraud. And
16 just to be clear, unlike what has been postulated
17 today, a claim that is denied for fraud, be it a
18 staged accident, that is not offered by the
19 insurance carriers within 30 days, is not precluded
20 from being raised later on.
21 Mandating arbitration will not
22 reduce fraud. Mandatory arbitration means no
23 discovery, no rules of evidence, without which
24 unreliable information cannot be challenged by
25 cross-examination.

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2 Limiting the right to assign
3 benefits to only instances where coverage and
4 compliance with the policy terms are not in dispute
5 is a very dangerous proposition. It will result in
6 doctors refusing to treat accident victims, since
7 it is impossible to know at the time of treatment
8 whether or not an insurer is going to claim any
9 coverage or policy defenses.
10 Without providing any funding,
11 this bill places the responsibility for policing
12 health care providers solely on the Insurance
13 Department, an agency charged with the regulation
14 of financial institutions and one with no
15 experience in regulating health care professionals.
16 Medical treatment guidelines,
17 limiting the treatment accident victims are
18 permitted to receive, trips to doctors for the
19 ability to determine the best course of care for
20 their patients, decisions regarding health care
21 should be made by health care professionals based
22 on the needs of the patient, not by the Insurance
23 Department based upon the desires of the insurance
24 industry.
25 In summary, I am not suggesting

2 that the Legislature can't make changes to reduce
3 real fraud and abuse within the no-fault system;
4 however, virtually all of the changes requested by
5 the insurance industry are designed to increase its
6 profits by denying legitimate claims from honest
7 doctors.
8 I just want to response also to
9 two things that have been mentioned today. The
10 first is, we talked about what the cost of an
11 average claim was about ten years ago. It was
12 about $10,000, and then it went down going to, I
13 think, $6,000, and now it's back up to, I think,
14 $8,700, and the rise is troubling. And I know we
15 are here to address some of that.
16 But it should still be noted that
17 ten years after that first statistic, the cost of
18 the average claim is less, almost 15 percent less
19 than it was ten years ago. And I think it will be
20 hard to find another area of care where the cost is
21 actually less ten years later.
22 Also, just to address the
23 suggestion about limiting the assignment for
24 durable medical supplies, just be careful. That
25 limiting of an assignment may result in a denial of

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2 health care, which means a doctor will not treat a
3 patient unless they get paid for the services up
4 front and unless they can take an assignment of the
5 claim afterwards.
6 I thank you for the opportunity to
7 testify here today. And I'd be happy to answer any
8 questions.
9 SENATOR SEWARD: We'll hear from
10 Mr. Kaplen and then we'll address questions.
11 MR. KAPLEN: Good afternoon,
12 everybody.
13 Thank you, Madame Reporter for
14 your time and your patience with this all today.
15 I am an attorney in New York State
16 who primarily represents individuals who have
17 sustained traumatic brain injuries. I served for
18 nine years as President of the Brain Injury
19 Association in New York State. I served as chair
20 for New York State Traumatic Brain Injury Services
21 Coordinating Counsel and I address you today as a
22 Vice President of the New York State Academy of
23 Trial Lawyers.
24 The Academy is a statewide
25 organization that represents approximately 2,000

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2 attorneys, plaintiff attorneys, defendant
3 attorneys, members of the judiciary, law
4 professors, and law clerks throughout the State of
5 New York.
6 The academy is resolute in its
7 commitment to preserve and protect the rights of
8 all litigants within the civil justice system in
9 the interest of a fair administration of justice.
10 We, as attorneys, represent the
11 overwhelming majority of New Yorkers who were
12 legitimately injured in auto accidents and seek to
13 obtain the necessary medical care and medical
14 benefits that they justly deserve.
15 Now, that, Senators, is not a
16 crime. Let's not make it a crime to legitimately
17 seek medical care that they pay for under your
18 policy of insurance. The crime is running,
19 chasing, false billing, but it is not a crime to
20 seek medical care when you are injured.
21 What I am fearful of in what is
22 being proposed today is that we lose sight of the
23 presumption of innocence that the legitimate
24 claimant has in the State to obtain medical care
25 and medical benefits.

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2 We lose sight of the fact that New
3 York State in its historical foundation, when it
4 comes to insurance company regulation, has chosen
5 to determine that there was a principle of good
6 faith and honest dealing that is inherent in every
7 insurance contract. And it is a responsibility of
8 every insurance carrier in the State to deal in
9 good faith with its insureds.
10 And when I hear regulations and
11 proposals that take away the right of an injured
12 person to chose who and how they are going to get
13 their medical care and to determine that within 30
14 days they could be denied needed medical care, and
15 I see day in and day out in my various hats that I
16 wear individuals who have sustained legitimate
17 traumatic brain injuries being denied care by
18 insurance carriers, automobile and no-fault
19 insurance carriers who just come out and say, you
20 know what, you made a recovery, we are denying
21 care; you want care, take me to mediation, going
22 out and getting, and I choose my words carefully
23 when I say this, the best doctors that money can
24 buy to deny claims.
25 That's what's happening in this

state. And that will continue to happen unless these issues are addressed with the equal ferment that you are addressing insurance company fraud.

Because make no mistake about it, what I'm talking about is just as much insurance company fraud as the fraud that's being perpetuated by runners and by those who are trying to game the system.

While legitimate claims are not being paid, that's insurance company fraud. And I will take it a step further. It is also Medicaid fraud that is being perpetuated by insurance companies upon the State of New York.

Let me explain why I say that.

When I have a client who has sustained a traumatic brain injury and is sent to a mill, an insurance company mill, to say that there's nothing wrong with this individual and that this person has made a recovery or does not legitimately need rehabilitation care, guess what? That person will still get care. But that care won't come from the insurance company who should be paying for it under their contract of insurance.

My clients will go now to the

1
2 Medicaid system and become Medicaid beneficiaries.
3 That care will be paid for by the State of New
4 York. That is Medicaid fraud being committed by
5 the insurance carrier in the State of New York who
6 are denying their contractual obligations. That is
7 a crime too.
8 SENATOR GOLDEN: You will point
9 that out to us and give us a couple of cases of
10 that, please?
11 MR. KAPLEN: I would be -- we have
12 this problem that we discuss quarterly before my
13 counsel in New York State, the Traumatic Brain
14 Injury Services Counsel.
15 SENATOR GOLDEN: No, I don't want
16 that. I just want how that got transferred to the
17 Medicaid system.
18 MR. KAPLEN: Yes, I will. All you
19 have to do is to speak to your own health
20 department. They have a Medicaid system for
21 treatment of people with traumatic brain injury.
22 Ask them how many individuals they are treating
23 under the system because their care has been turned
24 down by insurance carriers who refuse to pay that
25 care.

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2 Be it the no-fault carrier, be it
3 the medical insurance carrier who is not coming up
4 to the plate and paying for needed medical care,
5 but that is happening all the time. It is an
6 enormous amount of money.
7 SENATOR GOLDEN: Can you make
8 up --
9 MR. KAPLEN: I'll be happy to,
10 Senator.
11 So under the guise of reform, the
12 attempts to curtail abuse by a small minority of
13 individuals and unscrupulous providers who have
14 concurrently devastating effects of depriving the
15 vast majority of innocent, law abiding claimants
16 from accessing medical care in a timely and
17 efficient manner, that was not the intent of the
18 no-fault when it was first conceived, when it was
19 enacted, nor is it the intent of no-fault now.
20 No-fault insurance is not a
21 privilege. It is a right of every New Yorker who
22 has been injured in an accident to receive medical
23 care in a timely manner. No-fault laws and
24 no-fault regulations were never intended to limit,
25 restrict, ration, or impede an injured individual's

ability to obtain necessary medical care.

Unfortunately, this is precisely the impact that recent carrier proposals would have on innocent victims of automobile accidents. The Insurance Department has lost sight of and ignored the purpose of the no-fault system, which is to provide a just and efficient method for the ordinary New Yorker to obtain necessary medical care and treatment and help pay for lost wages due to the injury sustained in an automobile accident.

There now is a train being let out of the station that's trying to effectively create a presumption against policyholders who are assumed not to have been injured and, therefore, are in no need of treatment, rather than requiring insurance carriers to act in good faith and in equitable manner for the benefit of their policyholders, for the benefit of individual victims of accidents, and for the benefit of health care providers legitimately providing care to these people.

We are not acting to perpetuate a fraud; we are acting on behalf of our clients who obtain necessary and legitimate medical care. The insured's claimant is deemed to be presumptively

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2 fraudulent until he or she can prove otherwise to
3 the sole satisfaction of the insurance carrier, in
4 essence applying a guilt until proven innocent
5 standard which is abhorrent to our system of
6 justice.
7 Insurance carriers have used and
8 continue to use every trick in the book to
9 perpetuate the three Ds: Delay, deny, and
10 discourage innocent individuals from pursuing their
11 rights.
12 There has to be a balance in what
13 you do. In any reforms that you undertake, you
14 have to be careful to preserve the rights of
15 legitimate injured individuals. These individuals
16 have a right to access the civil justice system, to
17 obtain redress when their rights are being denied.
18 Insurance carriers, under their
19 proposals, will be at liberty to act in their own
20 corporate self-interest without penalties rather
21 than in the interest of their policyholders.
22 Under some proposals being
23 considered, the carrier's ability to conduct the
24 Examination Under Oath will be converted into an
25 inherently coercive device with the intent to

harass consumers and to harass medical providers.

The purportedly inviolable relationship between patients and doctors will be challenged by other legislative proposals that will allow the insurance carrier the sole and exclusive ability to ration care to independently determine what may be deemed reasonable care and to determine when that care should be terminated.

The insurance carriers, the automobile carriers in this state cannot act as both a judge and a jury to determine issues pertaining to medical care. A time constraint doesn't permit me to go into individual instances of abuse but I --

SENATOR GOLDEN: If I can interrupt you, I apologize, I have just been called to a meeting.

I want to just quickly state, nobody wants to see anybody get hurt. Everybody here is trying to come to a solution that works for the injured but also goes after the fraud in the state, the fraud scammer.

It's costing us unbelievable amounts of money, and it's got to be done correctly

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2 and we all agree on that.

3 You guys don't disagree with the

4 task force being organized, as far as the fraud is

5 concerned?

6 MR. ISRAEL: No.

7 SENATOR GOLDEN: Thank you very

8 much.

9 I'm sorry, I've been called to

10 another meeting that just popped up. Thank you

11 all.

12 MR. KAPLEN: As those of us in the

13 Academy can attest, the level of the consumer care,

14 consideration, and respect by insurance carriers is

15 at an unpardonable and unparalleled low at this

16 time.

17 New Yorkers who are legitimately

18 entitled to no-fault benefits arising from

19 contracts of insurance for which they have paid

20 significant sums in insurance premiums must be

21 provided with the contractual rights without unfair

22 regulatory barriers.

23 The policy of reducing insurance

24 company fraud is a laudable goal, but their actions

25 can't be that -- should not be directed against

1
2 legitimate people who are legitimately in need of
3 care.
4 The Academy welcomes sitting down
5 with your Committee in the future to discuss your
6 proposals and working out a fair and equitable way
7 to solve problems of insurance fraud.
8 Thank you very much for your time.
9 SENATOR SEWARD: Thank you, all
10 three of you.
11 I just had a couple of -- I know
12 you are speaking on behalf of the insureds, and we
13 have one more panel.
14 Certainly the bottomline is, as
15 Senator Golden said before he was called away,
16 obviously, this -- we certainly, as policymakers,
17 want to have balance. It's very, very important
18 that that occur. And no one wants to see
19 legitimately injured people going without medical
20 care or to create an environment that that will
21 occur.
22 But I have just a couple of
23 questions. You did answer one, which was we were
24 talking about a task force or a strike force to
25 better coordinate efforts to fight clever fraud in

1
2 the law enforcement/prosecution area.
3 And I presume you have no problem
4 with that approach?
5 MR. TIMKO: No.
6 SENATOR SEWARD: Another idea
7 that's been suggested is treatment guidelines. I
8 mean, that is not a new concept. That's something
9 that's been accepted in other areas such as
10 workers' compensation and other programs, just some
11 guidelines. Because these statistics -- not to
12 pick on acupuncture, you know, six percent of
13 Upstate cases in no-fault use acupuncture, and it's
14 49 percent in the Downstate area.
15 I know as an Upstater, we don't
16 like needles, but when you get into wide disparity
17 of, you know, the fact such as that, in treatment
18 regiments, it does cry out for some explanation
19 here and some response.
20 MR. KAPLEN: Senator, the devil is
21 in the details. And while the concept, broadly
22 speaking, of guidelines is not a bad concept, when
23 it starts spilling over to all areas of medicine --
24 and it's not saying that a person is entitled to
25 three or four acupuncture treatments, but then it

1
2 spills over into other areas of medicine where an
3 individual who is fully entitled to 30 or 60 days
4 of care for a fractured leg or a fractured hip or
5 traumatic brain injury, and is presumed to have
6 made a recovery after that time.
7 Or what I see in the area of
8 traumatic brain injury, there's a rule that comes
9 from nowhere except in the minds of the insurance
10 carriers. It says the following: If my client
11 hasn't made any substantial recovery in 30 days,
12 then they cut them off from further rehabilitation
13 care under the theory, well, if they haven't made
14 any recovery in the 30 days, they are not going to
15 make any recovery in the next 30 days or in the
16 next 60 days.
17 We see that's not the way
18 Congresswoman Giffords is being treated. There's a
19 presumption in her case that she is going to get
20 the treatment that she needs until she makes a
21 maximum recovery. And nobody is trying to limit
22 that to 30 days or 60 days.
23 My fear is with these guidelines
24 that the insurance companies want, it is intended
25 to do precisely that, limit care. Not provide good

1
2 care, not limit fraud, but limit their exposure to
3 providing all necessary and proper care.
4 So that's the problem that I
5 personally have with guidelines being taken too far
6 and letting insurance companies themselves come up
7 with these guidelines.
8 MR. ISRAEL: If I can try and
9 address that also?
10 SENATOR SEWARD: I'm not sure if
11 we will allow insurance companies to set the
12 guidelines. I agree with you there.
13 MR. ISRAEL: There's been a lot of
14 discussion about what's been called unnecessary
15 care. And there's a mechanism in which after a
16 carrier denies a claim, that the claimant can
17 challenge it. And there's been a lot of talk that
18 the carrier has to pay for this unnecessary care.
19 There is an independent trial affecting these
20 arbitrations and there's trials.
21 We are not talking about cases
22 that the insurance companies just settle out
23 because they don't think there's a value to it. We
24 are talking about cases that go forward.
25 The vast majority of the cases

1
2 that go forward, the insurance carrier's initial
3 decision to deny the claim is found to be invalid.
4 So if the acupuncture services that you are
5 referring to were unnecessary or found not to have
6 been to the benefit of the patient, the independent
7 trial would say so.
8 But what's been our experience is
9 that the arbitrators and the trial judges have
10 overwhelmingly rejected the insurance company
11 doctors' peer reviews and independent medical
12 examiners' decisions to deny benefits. There's, in
13 fact, some system of guidelines inherent within the
14 ability to challenge the denials.
15 SENATOR SEWARD: Two other
16 questions.
17 In terms of the medical equipment
18 issue, the DME issue, once again, no assignment of
19 benefits is not a new concept. It's an accepted
20 procedure.
21 What's wrong with having the
22 patient themselves to be able to be involved in
23 that process rather than opening it so that an
24 unscrupulous provider could just bill for equipment
25 that's just either unnecessary or unused?

1

2 MR. ISRAEL: Again, if that was
3 unnecessary, the insurance carrier's decision would
4 be upheld. But more to your point, when I go to
5 the doctor, my doctor refuses to see me until I
6 agree to give him my right to collect under private
7 insurance, under any insurance.
8 And when that contract is broken,
9 when the patient is essentially being asked to come
10 forward and be responsible in the event that the
11 insurance company decides not to pay, the result is
12 they are not going to get the service.
13 There was some reference to
14 transportation expenses. Under the no-fault law,
15 you are allowed $25 a day for necessary expenses
16 and it typically is transportation expenses. You
17 are injured, you cannot drive your car, and you can
18 hire a cab and take it to the medical office.
19 And in response to some abuse, the
20 Insurance Department removed the ability to assign
21 that right to the transportation company. While
22 that did reduce the payments that the carriers had
23 to pay, it didn't eliminate the problem. The
24 patient still needed to get to the office. Now
25 what happens is the patient has to pay that

1
2 out-of-pocket or the provider has to assist in just
3 paying someone to go and pick the patient up.
4 The reason why it's a bad idea to
5 put that responsibility in the patients' hands is
6 they don't have the resources to fight billion
7 dollar insurance companies. As it is, the medical
8 providers are really drowning against the ability
9 of the collective efforts, as we can see today, one
10 panel out of nine panels. Could you imagine if
11 there is really nobody here speaking just on behalf
12 of the claimants?
13 SENATOR SEWARD: Except for us.
14 MR. ISRAEL: If that were true,
15 then you would not restrict the ability of the
16 claimants to have the assignments, and I would ask
17 that you would not go in that direction.
18 SENATOR SEWARD: And one final
19 point I would make, the -- unfortunately, the
20 Insurance Department hasn't responded to our
21 invitation to be here today, but they ultimately --
22 they regulate this industry. It's not as if the
23 insurance industry is out there doing whatever they
24 choose to.
25 Did you -- is it your position

1
2 that the Insurance Department has failed to
3 regulate this industry properly?
4 I mean, there are limits on
5 profits, there are limits -- they need to seek rate
6 increases. I mean, their books are open; they
7 share all their information to the Insurance
8 Department so that they can make proper
9 determinations in terms of the premiums that they
10 charge so --
11 MR. ISRAEL: The Insurance
12 Department is certainly staffed with very well
13 intentioned individuals. I know many of them.
14 Unfortunately, there's a term
15 called "regulatory caption." And that is that the
16 regulatory agency that's in charge of regulating
17 that particular field gets captured because they
18 don't hear from that industry. They don't hear
19 from the individual sources.
20 And on the reserve side, I've met
21 with many individuals who were involved in drafting
22 the proposed Regulation 68, and we explained some
23 of these horror stories that we see on the
24 claimant's side, and they say, it's the first time
25 that we are hearing about this.

1
2 And then we ask for some changes,
3 and they say, well, we don't have the resources to
4 do that.
5 So it is not that they are
6 unwilling to accomplish some of the ideas that we
7 are talking about. I just think they are unable.
8 SENATOR SEWARD: One final
9 question.
10 I know senator Golden has a bill
11 in terms of retroactive pulling of coverage, you
12 know, if someone pays for their coverage with a
13 stolen credit card or a bad check, do you have a
14 problem with that?
15 MR. TIMKO: Certainly, if somebody
16 procured a policy through fraud, to force a company
17 to pay that coverage -- as long as what we referred
18 to before as the innocent victim's coverage, if
19 there's an innocent victim out there, there needs
20 to be a recourse. If someone gets a policy by
21 fraud, goes out and does something and an innocent
22 victim is not involved in that, there has to be
23 some recourse to that victim, either through their
24 uninsured motorist protection or some other method
25 that they can't be denied because they say, well,

2 it's an intentional act, we don't have to cover it.

3 I mean, the whole point is to

4 provide the coverage to everybody who is not

5 involved in some intentional wrong-doing.

6 MR. KAPLEN: In other words, if

7 you have a pedestrian who has been struck by a

8 vehicle and that pedestrian doesn't have their own

9 automobile insurance policy, and this offending

10 vehicle's insurance coverage was procured by fraud,

11 what happens under this proposal to the right of

12 this innocent victim who was struck, through no

13 fault of their own, by this car?

14 How can they then get treatment?

15 They can't go to their own carrier because they

16 don't have a carrier; they don't own a vehicle.

17 They are out of luck if they don't get this medical

18 care through the no-fault coverage of the vehicle

19 that struck them.

20 And, as I said earlier, they are

21 going to be getting that care, either through their

22 private health insurance policy, if they have that.

23 If they don't, they are also going to go under

24 Medicaid laws, and the State of New York is going

25 to be stuck paying that insurance cost too.

1
2 Because somebody with a fractured
3 leg is going to get treatment. The only question
4 is going to be, who is going to be paying for that
5 treatment.
6 And on balance, it should be, in
7 this set of circumstances, the carrier who provided
8 the coverage.
9 MR. TIMKO: If you could just
10 follow up. There's an entity known as the Motor
11 Vehicle Accident Indemnification Corporation, which
12 basically the State, the taxpayers who pick up the
13 tab if there's an ordinarily uninsured person,
14 whose coverage has elapsed or stolen vehicle or
15 things like that, if there's a retroactive
16 cancellation of a policy, so long as the innocent
17 party at least has the recourse to be able to go
18 under that coverage so they can provide some
19 protection.
20 But again, as he said, whether
21 it's Medicaid or the MV Act, it's still the
22 taxpayer who pay the bill on that, and the carriers
23 obviously have more ability than anybody to know
24 who is buying their insurance and to know whether
25 they are getting paid properly or to put the

1
2 safeguards. If I'm selling a product and I'm
3 giving it away to people, and their checks are
4 bouncing at me, I'm going to sooner or later wake
5 up and say, I'm not taking any more checks because
6 they are bouncing, you know.
7 They have greater ability than any
8 of us to control how they are getting paid or
9 whether or not there's fraud and how they regulate
10 the sale of their policies, in their interest,
11 which it would appear to be.
12 SENATOR SEWARD: I very much
13 appreciate your insights on that.
14 And I would note on the balance
15 issue, I mean, the first five panels were law
16 enforcement officials, not the industry people,
17 so --
18 MR. TIMKO: And as I said, I think
19 there's three different sections here; that's law
20 enforcement, and it goes into one section; there's
21 industry people in the other; and consumers in the
22 third, and I think that shows a different balance.
23 So I think that we did cover a lot
24 as long as we understand that the law enforcement
25 has a different agenda than the industry does by

definition of who they are.

SENATOR MARTINS: Just a quick question. Mr. Timko, you started by saying, we are all against fraud. We are. I think we all agree to that.

So to the extent that there are efforts made today through these bills or through this hearing to identify fraud and to avoid those costs being passed onto ratepayers, I think we are all agreeing that that's a positive step, correct?

MR. TIMKO: Yes.

SENATOR MARTINS: And in addition, to the extent that there are regulations to the abuses by the insurance industry where there are denials of claims without the necessary prerequisites for those denials, that's also something that needs to be addressed.

MR. TIMKO: Yes.

SENATOR MARTINS: I see.

So between everything else that we discussed today, I think we can at least agree on that, right?

MR. TIMKO: I think that we can. I think this is a good first step.

1
2 Last year, there were hearings and
3 it was a lot of groups, working groups, but the
4 devil is in the details and the language of
5 statutes, and we've reviewed many, and we continue
6 to do so to try and make sure that everyone's
7 interest is protected and due process is followed
8 in passing the laws.
9 SENATOR MARTINS: Every person who
10 takes advantage, who games the system for their own
11 personal benefit, everyone else that relies on that
12 system suffers as a result, including all of our
13 constituents and your clients and the ratepayers
14 and customers for these insurance companies.
15 And to the extent that we can work
16 together to come up with the alternative that
17 addresses that without dealing -- without
18 unnecessarily disenfranchising those people that
19 are entitled to coverage, I think we are better off
20 for having had these discussions. So thank you.
21 SENATOR SEWARD: Our final panel
22 of the day is Howard Goldblatt, who is the Director
23 of Government Affairs, Coalition Against Insurance
24 Fraud;
25 Thomas Lohmann, Director of

Operations, National Insurance Crime Bureau;

Robert Hartwig, a President of Insurance Information Institute; and

Dr. Lawrence Spitz of the University of Pennsylvania.

We are calling you our panel of experts.

MR. GOLDBLATT: It works for me.

SENATOR SEWARD: Definitely, we've set the bar high.

MR. HARTWIG: We've decided here that I will go first, Senator. Is that okay with you?

SENATOR SEWARD: Okay.

MR. HARTWIG: All right. Thank you.

SENATOR SEWARD: If you are going to change the order, you have to introduce yourself.

MR. HARTWIG: Thank you, Senator Seward, Senator Martins, and unfortunately Senator Golden is no longer here.

However, good afternoon. My name is Bob Hartwig, and I'm president and economist for

1
2 the Insurance Information Institute, a National
3 Property Casualty Trade association based here in
4 New York City.
5 And I appreciate the opportunity
6 to testify here, once again, before this Committee,
7 on a very important issue of New York's approaching
8 no-fault crisis.
9 As I said "again" because I was
10 before the Committee a little bit more than a year
11 ago in Albany, and I looked around the room and I
12 see it looks like I'm not the only one who was
13 before the Committee like this ten years ago, so
14 it's a little bit like a deja vu for some of us.
15 But in my testimony today, I'll
16 get right to the chase. I'll address the problem
17 of the rapidly escalating no-fault auto insurance
18 claim costs in New York State. And I'm going to
19 primarily do that through a rapid quantification of
20 the issues, as it stands today, on a system-wide
21 basis.
22 My fellow panelists who have come
23 before me have had much to say regarding the
24 precise nature of the fraud and abuse that is
25 occurring in the New York State's no-fault system

1
2 as well as what can be done and should be done
3 about it. So I will not repeat those suggestions
4 here, but the bottomline is no-fault fraud is the
5 major driver of cost in New York's private
6 passenger auto insurance system today.
7 Indeed, New York may once again be
8 on track to recapturing the dubious distinction as
9 the nation's auto insurance fraud capital. New
10 York State's auto insurance system, which is the
11 fourth largest in the United States, is currently
12 under siege. And as you've heard, that attack
13 originates with certain dishonest and unscrupulous
14 medical providers who file inflated and often bogus
15 medical claims with the State's auto insurers.
16 These medical providers partner
17 with equally unscrupulous lawyers who sue insurers
18 that dare to challenge the claims, choking New
19 York's court system in the process with hundreds of
20 thousands of claims that will take years to clear
21 through the docket.
22 But there's no better way to
23 describe the charge that the current epidemic of
24 fraud and abuse is causing than by letting the
25 numbers speak for themselves. The scale of fraud

abuse of the New York State no-fault auto insurance system is truly breathtaking, and consider the following -- and for those who have a copy of the testimony, you'll see there are Power Points, charts on the back. For those of you who don't have it, I know everyone out there has a Smartphone today, you can download it right now off of Triple "I" Web site at III.org/presentations, or when you get back to your office.

But the no-fault fraud and abuse in New York has cost consumers and insurers approximately $204 million in 2010. That is the second consecutive year in which costs exceed $200 million. You'll see that in Figure 1 associated with my testimony.

The accumulative cost of no-fault fraud and abuse in New York State since 2005 is at least $813 million. And you'll see that traced over time in Figure 2 in my testimony.

The cumulative no-fault fraud costs will almost certainly exceed one billion dollars by year-end 2011 in the absence of any meaningful reforms. New York no-fault fraud tax totaled an estimated $1,311, or approximately

2 15 percent of every no-fault claim filed throughout
3 the State in 2010. Were you to isolate it, of
4 course, to the greater New York Metropolitan area,
5 that number would be much larger indeed. And
6 you'll see that documented in Figure 3 in my
7 testimony.

8 The average cost of a no-fault
9 auto insurance claim in New York State was $8,664
10 in 2010. That is up $2,791, or 47.5 percent, from
11 5,873 in 2004. You will see that documented in
12 Figure 4. The average no-fault claim cost in 2010,
13 again, $8,664, was near the highest in New York's
14 history, just 0.3 percent short of its all-time
15 records annual high of $8,692 dollars in 2009,
16 again, referring to Figure 4.

17 Costs in 2010 were even above the
18 2001 peak of $8,578, set during the New York's last
19 no-fault crisis a decade ago.

20 Again, New York no-fault average
21 claim cost $8,664 per claim. They are not only
22 high, of course, here in New York, near the record
23 high, but they are the third highest in the United
24 States, as of the four-quarters average ending in
25 the fourth quarter of 2010, behind only two other

1
2 deeply, deeply troubled states, that being Michigan
3 and New Jersey. And you'll see that documented in
4 Figure 6.
5 The average no-fault claim in New
6 York is 57 percent higher than the U.S. median of
7 $5,529.
8 And then a rather new development,
9 which I don't think has been discussed very much,
10 if at all, during the hearing today, is the fact we
11 discussed a lot about the costs, the reality is
12 that recently we've seen a substantial jump in the
13 frequency of no-fault claims here in New York
14 State, which is up about 22 percent between the
15 third quarter of 2008 and the fourth quarter of
16 2010, potentially adding to overall system cost
17 pressure, as we move through 2011 and beyond.
18 So these sobering statistics leave
19 no doubt that the New York no-fault fraud and abuse
20 problem is a serious one. If you work out the
21 numbers that cost the policyholders and their
22 insurers, it's near $558,000 per day.
23 So in terms of what to do, again,
24 I won't discuss the details because you've heard
25 many other witnesses talk about that, so the

1
2 inescapable conclusion is this: If nothing is done
3 to stop runaway no-fault claim costs, it's a
4 virtual certainty that costs and premiums will
5 continue to rise indefinitely, and then some day
6 New York could hold a dubious distinction again as
7 the state with the most expensive auto insurance in
8 America.
9 And this is in part because New
10 York has the highest in the country, a $50,000
11 threshold. The absence of certain standard cost
12 controls, commonly used elsewhere, in other states
13 and other types of insurance, expose the State's
14 drivers to the full force and fury of a runaway
15 health care system.
16 Quite literally, New York's
17 no-fault system is one of the last and greatest
18 blank checks in the United States health care
19 system. When you look at what we've done with
20 health care reform in America today, there's no
21 such thing as a free lunch except in New York's
22 no-fault system.
23 And as we see in Figure 8, medical
24 costs have been rising much, much faster than the
25 overall pace of inflation in a quarter of a

1
2 century, and there's absolutely no end in sight.
3 So if you set a $50,000 target,
4 there are going to be individuals who are going to
5 try and get that.
6 And just to quickly give you a
7 sense of a decade ago. When there was some
8 progress made and, at least, temporarily, rooting
9 out fraud and abuse, what were the benefits to
10 consumers? Well, New York drivers benefited
11 tremendously a decade ago as perpetrators of fraud
12 and abuse were driven out of the system, the
13 average expenditure on auto insurance in the State
14 fell from $1,172 in 2004 to $1,044 in 2008.
15 That's a decline of about
16 11 percent, and that's much larger than the
17 6.4 percent decline that was experienced nationally
18 over the same period of time.
19 In conclusion, New York's large
20 and competitive auto insurance market is
21 threatened, as it was decades ago, by rampant fraud
22 and abuse. And today no-fault fraud and abuse has
23 cost New York's drivers and their insurers more
24 than $200 million a year over the past two years,
25 and more than $800 million since 2005.

1
2 So with those figures, I'll be
3 happy to take your questions later on, at the end
4 of the panel. Thank you very much.
5 MR. LOHMANN: Thank you, Senator
6 Seward, for awarding me the opportunity to speak
7 before you and the Committee today. My name is Tom
8 Lohmann, and I'm the New York Director of Field
9 Operations for the National Insurance Crime Bureau.
10 And I'm responsible for leading an NICB's
11 investigation in our major medical fraud task force
12 here, in New York State.
13 NICB is a property casualty and
14 national non-for-profit organization, whose sole
15 mission is to help maintain the integrity of the
16 insurance company system by combating fraud.
17 We were found in 1912. NICB has
18 1,000 members including essentially all automobile
19 insurers, including those whose premiums account
20 for 97 percent of the New York market.
21 Our main focus is multi-claim,
22 multi-carrier investigations and organized criminal
23 conspiracies that are targeting the no-fault
24 system.
25 Currently, I have sixteen special

1
2 agents assigned to work these cases. All of the
3 agents are former law enforcement officers, which
4 allow us to bridge the insurance industry and law
5 enforcement community.
6 In combating automobile insurance
7 fraud, NICB receives suspective claims from its
8 member insurance companies. We've created and
9 managed sophisticated analytical databases; we
10 monitor and track providers' billings, alerting
11 insurers of behavior that needs closer examination
12 through our recently created aggregated medical
13 database.
14 We focus special attention on
15 large-scale fraud rings that can be fronts for
16 organized crime. We've integrated anti-fraud
17 actions with claims and special investigations
18 units of individual insurers.
19 We've stationed analytical
20 investigative staff across the country, we work
21 closely with the insurance regulators to help
22 identify statutory and regulatory changes that can
23 enhance the fight against insurance fraud.
24 We closely coordinate with the law
25 enforcement at local, state, and national levels to

1
2 prevent and detect fraud and to punish those who
3 commit it. And we've developed state-by-state
4 fraud-related data for use by the insurers, law
5 enforcement, legislators, and regulators.
6 In our most recent data analytics
7 forecast report dated April 4, 2011, we analyze
8 questionable claims associated with New York State
9 and referred to NICD from January, 2008, through
10 December of 2010. I have appended a copy to my
11 testimony and I have more available, if you need
12 some.
13 The following are some of the
14 report's principle findings:
15 Over 7,000 questionable claims
16 were received by NICB in 2010, representing a
17 10 percent rise in New York suspicion claims since
18 2008. Over half of these claims, 57 percent, were
19 from New York City alone. The rest was scattered
20 around the state with the next highest originating
21 in Buffalo, New York.
22 The most frequent type of
23 questionable claim for automobile insurance was
24 fake or exaggerated injuries followed by excessive
25 treatments, staged and caused accidents.

83 percent of all the 2010 questionable claims were generated by personal line auto policies.

In addition to these general findings, our investigations are seeing patterns in no-fault fraud on a daily basis that fall into four principle categories:

Staged auto accidents where a vehicle is used to perpetrate no-fault fraud and runners recruiting these patients. We've seen this in active law enforcement investigations as well as from informants that we developed while conducting our own investigations.

Illegal corporate structures where laypersons are opening and operating these medical facilities, again, we've seen those with active law enforcement investigations and through our own ongoing investigations as well as being confirmed by medical providers in the most recent Manhattan case, St. Nicholas.

Scripted and regimented treatment and medical procedures were used on all patients irrespective of their individual injuries or the severity of these injuries and/or their age, and

1
2 purposeful misuse of the sale of durable medical
3 equipment where unscrupulous providers sell DME
4 devices at highly inflated prices and often without
5 regard to a patient's specific needs.
6 These types of medical fraud cause
7 huge dollar losses to the insurance industry and
8 eventually to the consumer.
9 In response to this type of
10 fraudulent behavior, in 2002 the National Insurance
11 Crime Bureau created a major medical task force
12 here in New York. This task force is staffed with
13 investigators from various member companies as well
14 as NIC special agents, and we work in partnerships
15 with the various law enforcement entities in New
16 York.
17 We work together to identify the
18 suspect medical facilities and to facilitate cases
19 for civil and/or criminal prosecution coordinating
20 closely with the law enforcement to successfully
21 dismantle these organized conspiracies.
22 What we can do to collectively
23 stop New York fraud, from NICB's perspective, we
24 recommend the following:
25 Support the passage of your bill,

2 Senator. This bill will deliver the comprehensive
3 reform to New York's no-fault system while
4 preventing moocher fraud we see conducted by
5 illegitimate clinics and their patients receiving
6 treatment on unexisting injuries sustained during
7 phony or caused accidents;
8 Adopt legislation that would make
9 staging an auto accident for purpose of insurance
10 fraud a felony. This statute alone would cut off
11 the blood supply to the illegal clinics and uncuff
12 the hands of law enforcement and give them the
13 necessary tools to attack the sophisticated
14 criminal enterprises.
15 Twenty-five states have some type
16 of runner anti-solicitation statute that governs
17 this egregious behavior, and New York would be
18 derelict if not affording this tool to law
19 enforcement.
20 In rooting out automobile
21 insurance fraud, New York has some specific
22 problems, the high vulnerability presented by the
23 no-fault system and the opportunities presented by
24 organized fraud rings of such a populous state with
25 its enormous opportunities for those who want to

1
2 corrupt the insurance marketplace and raise the
3 cost of insurance to law abiding citizens.
4 We are committed to doing our part
5 to stamp out this problem. We've seen energetic
6 enforcement of the laws by U.S. Attorneys' offices
7 in both the Southern and Eastern Districts of New
8 York, the State Attorney General's office as well
9 as the Queens County, Suffolk, Nassau, and
10 Westchester County District Attorneys' offices.
11 In the property casualty industry,
12 we also have a major responsibility, and we are
13 trying to carry them out.
14 We would be delighted to work with
15 the Committee on specific legislative approaches as
16 the Committee continues to examine New York's
17 no-fault automobile insurance.
18 I would also be happy to answer
19 any questions you may have.
20 MR. GOLDBLATT: Good afternoon,
21 Senator Seward.
22 I'm Howard Goldblatt, the Director
23 of Government Affairs with the Coalition Against
24 Insurance Fraud. I appreciate the opportunity to
25 testify today and will summarize my testimony.

1
2 The Coalition Against Insurance
3 Fraud is a national broad-based alliance of
4 insurers, consumer groups, and government,
5 dedicated to combating all forms of insurance fraud
6 through education and advocacy. We are recognized
7 as one of the leading anti-fraud organizations in
8 the nation.
9 And, similarly, we have testified
10 before this Committee on numerous occasions over
11 the last several years.
12 New York consumers clearly are
13 paying dearly for the increased auto fraud. It is
14 draining consumers and the state economy. It is
15 past time to tackle this tax fraud New York
16 consumers are paying, costs that are draining
17 family budgets, small businesses' ability to
18 compete, and the state from having a truly, vibrant
19 economy.
20 Let me get to some of the
21 recommendations.
22 For years, we have supported
23 efforts in New York to enact the anti-runner law.
24 It is a model law that we worked on at the
25 Coalition several years ago and we're pleased that

1
2 we see it in the Legislature. Unfortunately, we
3 think it's time to enact it now.
4 We applaud your efforts on
5 criminalizing the staging of automobile crashes. I
6 remember coming to your Committee several years ago
7 to testify and bringing Alice Ross's brother with
8 us to bring this issue to your attention. I think
9 it is time to enact it now.
10 Several years ago, you've heard it
11 before, you enacted the decertification of a
12 provider from a no-fault insurance system if he or
13 she is charged with insurance fraud. We heard last
14 year when we were before the Senate Committee and
15 the Assembly Round Table that there were efforts
16 and agreements amongst the State's departments to
17 fix the law and pass the stronger version. It's
18 time to do it.
19 The Coalition strongly believes
20 that a license to provide medical service is a
21 privilege bestowed by the State to a person. It's
22 not a right. If anyone uses their license to
23 commit a crime, why should they continue to receive
24 a payment from the system they are defrauding?
25 We believe there are enough honest

1
2 providers willing to supply service in New York so
3 that you don't need to have crooks providing
4 medical or chiropractic care to treat those people
5 injured in automobile crashes.
6 We believe that insurers should
7 have adequate time to investigate suspicious
8 claims, and we do not believe delaying paying a
9 suspicious claim will harm innocent consumers.
10 Claims will be paid in a timely manner, but those
11 suspicious ones should be fully investigated.
12 We believe that giving the
13 insurers the ability to rescind the policy to the
14 inception if the payment of the policy is not
15 accepted by a financial institution or if the
16 policy was given because of fraud will help stop
17 the fraud rings that get a policy solely to commit
18 a staged crash and to get into filing for
19 fraudulent claims.
20 Let's stop the fraud at the front
21 end of the system.
22 In conclusion, we have heard that
23 an anti-fraud agenda is pro-industry and
24 anti-consumer. The Coalition can't disagree more.
25 The anti-fraud is anti-crime and pro-consumer. The

1
2 strong anti-fraud effort targets the criminal gangs
3 that are preying on the honest insurance consumers
4 of the State.
5 We believe the time is right for
6 New York to seriously move on an anti-fraud agenda
7 targeting those individuals in groups that
8 systematically attack the no-fault system that
9 harms the State and its residents.
10 Fraud weakens the foundation on
11 which automobile insurance system is built, and
12 it's incumbent upon you, the lawmakers of New York,
13 to strengthen the foundation and the system itself
14 for the benefit of the residents of New York. It's
15 a sound policy and it's necessary.
16 Thank you for the opportunity to
17 testify, and we are willing to help in any way we
18 can as you move forward.
19 SENATOR SEWARD: Thank you very
20 much, Howard.
21 Next is Dr. Lawrence Spitz.
22 I think we need to turn the lights
23 off.
24 (Power Point presentation.)
25 DR. LAWRENCE SPITZ: That would be

1
2 helpful. Thank you, Senator Seward.
3 I'm Lawrence Spitz. I am a
4 practicing physician. I practice in Philadelphia.
5 I'm on faculty at the University of Pennsylvania.
6 And one of my areas of interest
7 has been medical provider fraud and, in particular,
8 fraudulent diagnostic testing.
9 What I'm going to be talking about
10 today is medical provider fraud. And I'm not
11 talking about overutilization; I'm not talking
12 about malpractice; I'm not talking about abuse.
13 I'm purely talking about medical provider fraud.
14 I'm talking about hard fraud,
15 either billing for services never rendered or
16 fabrication of what are actually counterfeit
17 medical records that totally misrepresent the
18 medical status of the patient in order to be able
19 to bill for unjustifiable medical services.
20 Most of these cases we are talking
21 about are so-called whiplash cases with people are
22 involved in a motor vehicle accident. The neck
23 supposedly whips forward, whips back, and damages
24 the discs and other structures in the spine.
25 And one of the questions that's an

1
2 important question is: How often do patients who
3 have motor vehicle accidents, whiplash-type
4 injuries actually develop serious medical problems
5 as a result of this?
6 The specific kind of problem we
7 are talking about is something called
8 radiculopathy, radiating pain down the arms, down
9 the legs, numbness, tingling, et cetera.
10 And having reviewed a large number
11 of no-fault records, what I was struck by is the
12 fact that almost every patient was -- had both
13 symptoms and findings that were actually diagnosed
14 by electro-diagnostic testing, by EMG and Nerve
15 Conduction Velocity as having radiculopathy, actual
16 nerve damage.
17 So one of the questions I was
18 interested in is: Is this actually true? It seems
19 unlikely knowing what I know about anatomy and
20 physiology, but here is what the spine looks like,
21 there's seven cervical vertebrae, thoracic
22 vertebrae of the ribs and then the lower back, the
23 lumbar vertebrae (indicating.)
24 And at each level, there's nerves
25 that come out to the left side and to the right

1
2 side. And these are the nerve roots splitting off
3 from the main body of the spinal cord. That is
4 called the radical. If you have a political group
5 and the group splits off of you, they are radicals.
6 So injury or damage or disfunction
7 where the nerve splits off from the main body of
8 the spinal cord nerves is called radiculopathy.
9 Here you can see a picture of a
10 cross-section through it, that central sort of pale
11 yellow structures is a spinal cord itself. And as
12 you can see, there is yellow structures going off
13 to the left and the right, which are these nerve
14 roots.
15 And these nerve roots serve to
16 both bring in sensation from my sensory organs, my
17 touch receptors and pressuring, temperature, et
18 cetera, but also tell my muscles how to move. And
19 those are the motor components, the motor nerve
20 roots.
21 Here is the illustration of the
22 spine with the main weight-supporting structures
23 that are stacked one on top of each other called
24 the vertebrae. There's structures around the back
25 to create a cage around the spinal cord itself so

1
2 it doesn't get damaged and also to make sure that
3 as you rotate, the back shares, each level shares
4 some of the motions so the cord doesn't get
5 twisted.
6 And then there's these hydraulic
7 shock absorbers in between, sort of jelly-doughnut
8 kind of a structure, called the intervertebral
9 disc, tough over-covering and a jello-like inside.
10 Here it is looking from the back.
11 And as you can see, there's a spinal cord and there
12 is a nerve root coming off to the left and the
13 right.
14 A herniated disc occurs when some
15 of that jelly-like material inside the
16 intervertebral disc, the hydraulic part of that
17 shock absorber, leaks out. The tear occurs, it
18 spurs out and presses on the nerve root.
19 And because this nucleus, this
20 central material is sequestered, is hidden from the
21 body within this tough outer-covering, it's not the
22 protein the body normally sees.
23 And so what happens is when it
24 gets out there, it sends out inflammatory
25 responses. It's sort of like when you get a

splinter and it feels like about the size of a walnut even you can barely see the little guy. Well, that's the same kind of inflammatory response which causes a lot of pain, a lot of spasms when this type of an injury does occur -- see a bigger picture of impressing and inflaming that disc -- and it causes inflammation (indicating.)

If it affects one of those roots, here is the motor root, the one that sends the impulses out to the muscles, the other is a sensory root, and if it causes inflammation and direct pressure there, it causes a disfunction that, you feel pain in the distribution of where those sensory organs would be even though there are occasions where it's actually hurting back by the spine.

And for the motor, it can cause weakness. You can't just grip as strongly or use those muscles as well. And if that pressure is severe enough, you can actually get atrophy or wasting away of that muscles 'cause it needs constant stimulus from those nerve roots for that muscle to remain healthy.

Some work was done at the Mayo

2 Clinic back in the early '90s, 1994. Mayo Clinic
3 is interesting because they are in Rochester, New
4 York, pretty much they are the only hospital in
5 town. So any, even minor injuries, but mostly
6 major injuries, all wind up in the Mayo Clinic.
7 So they were able to look back and
8 ask the question: How often does motor vehicle
9 accidents cause radiculopathy?
10 They reviewed retrospectively,
11 from 1996 to 1990, the charts of 561 patients.
12 And, in fact, out of those patients with
13 radiculopathy, only 14 -- only basically 15 percent
14 had any trauma which was the cause of those
15 radicular findings and symptoms, most are from
16 shoveling snow or playing golf in the summer.
17 Only 3.1 percent of radiculopathy
18 cases were due to motor vehicle accidents, and all
19 of those were serious, serious kinds of injuries
20 where there is actually spinal fracture. It was
21 not a minimal impact, soft-tissue type injury; it's
22 a spinal fracture of the nerve root avulsion, which
23 means "ripped off." The nerve root got ripped off
24 by the severity of the trauma.
25 Those were the radiculopathy that

1
2 were reported. Out of these 561, all patients had
3 radiculopathy over that period of time.
4 So I asked the similar kind of
5 question: How often do motor vehicle accidents
6 cause radiculopathy?
7 And working with two of the top
8 people in the field of electro-diagnostic medicine,
9 doctor by the name of Randall Braddom who I work
10 with quite a lot, who writes the text books on
11 physical medicine and rehabilitation, and also
12 Michael Rivner, who is from the EMG Lab at the
13 Medical College of Georgia for the last twenty-five
14 years.
15 And Dr. Rivner has collected the
16 results of all this electro-diagnostic testing of
17 over 26,000 patients, 36,000 studies were done
18 concerning upper and lower extremities, of whom
19 1300 by history, 'cause the medical history is
20 recorded in the database, also were in motor
21 vehicle accidents.
22 So the question is: How often do
23 these patients -- it was done in a first-rate
24 laboratory of Medical College of Georgia -- who all
25 have had by history motor vehicle accidents, you'd

1
2 except their experience would be similar to what I
3 saw in those no-fault charts, that almost all those
4 people would have radiculopathy; cervical, lumbar,
5 at least somewhere.
6 Dr. Braddom, myself, and Dr.
7 Rivner publishes in the top electro-diagnostic
8 medical journal couple of years ago.
9 And what we found was that motor
10 vehicle accident patients have almost the same
11 frequency of radiculopathy as the non-motor vehicle
12 accident patients in the laboratory of the Medical
13 College of Georgia.
14 We compared those 1300 patients
15 who had a history of motor vehicle accident to the
16 26,000, minus 1,300 who did not, and found that
17 except for cervical radiculopathy being slightly
18 increased, lumbar radiculopathy had exactly the
19 same frequency and cervical radiculopathy was just
20 up a percent or so. It wasn't a hundred percent;
21 it was around 8 percent for cervical and about
22 13 percent for lumbar.
23 And these were patients, again, of
24 Medical College of Georgia, facility care
25 institution where the helicopters come with

1
2 people with very serious injuries.
3 Electro-diagnostic testing really
4 comprises of two parts; the EMG and the Nerve
5 Conduction Velocity.
6 In EMG, you actually take a
7 needle, which is an electrode attached to an
8 amplifier, and pass it through the skin into the
9 muscle into an individual muscle fiber so you can
10 observe its firing. And that's how you would
11 diagnose radiculopathy.
12 On the other hand, Nerve
13 Conduction Velocity looks at the integrity of the
14 wires that go, for example, from my fingers all the
15 way up to my spine by stimulating the nerve at one
16 point and recording the impulse somewhere
17 downstream and looking at the electrical
18 characteristics of that nerve to make sure that it
19 is normal.
20 Here we see an image of carpal
21 tunnel syndrome stimulating the median nerve at the
22 wrist recording at the finger and a wave form
23 showing up on the oscilloscope screen, the computer
24 screen showing the arrival of the electricity
25 overtime. And it produces a wave form like you see

1
2 in the corner of this image before you
3 (indicating.)
4 And typically, these reports that
5 come out of the machine have a lot of tabular data
6 related to those wave forms and sheets of this wave
7 form images, each one corresponding to a different
8 nerve that has been tested by repositioning of the
9 stimulus electrode and the recording electrodes of
10 different parts of different nerves.
11 The fact is these wave forms are
12 absolutely identical. Not in a sense of a
13 fingerprint, which if I check my fingerprint today,
14 I can check it ten years from now, it's pretty much
15 the same. That's the basis of the whole concept of
16 fingerprints. I'm talking about unique as in snow
17 flakes.
18 If I was to test someone now and
19 take the electrodes off, put them back on and test
20 them five minutes later, it's going to be a
21 different wave form depicted. Little different
22 distance, little more resistance to the skin, the
23 wave forms would not be identical.
24 And yet, when we look at some of
25 these fraudulent electro-diagnostic tests that we

2 are talking about, they are actually identical. We
3 have two patients with absolutely identical wave
4 forms.
5 I mean, you take one, you print it
6 on white paper, you print the other on plastic, you
7 know, on a photocopy machine and you slide them
8 over, and they are absolutely superposed except for
9 the name at the top of the page.
10 Not only that, not only they were
11 just duplicating the page with just changing the
12 name on the top, the images were actually sliding
13 around on the page. What they were doing, what was
14 happening was someone was taking -- in their
15 machine, they put the report out as they Word
16 processible report, and then they would use the
17 Word processor to change the data and also slide
18 the images around or to borrow other people's
19 images and fabricate, create a different report.
20 So what we started seeing was what
21 we now term "Frankenstein reports" where one nerve,
22 from one patient and another nerve, from a
23 different patient, and even a third nerve, from a
24 different patient are all reassembled into reports
25 with a different name and a date and then are sent

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2 to the payor with the bill to pay for this
3 absolutely fabricated, false, bogus test.
4 This is a large case which we've
5 been working on quite recently. And just actually
6 in the upper left-hand corner, in that big blue
7 box, there's one patient's result, alleged result.
8 So what I did is I took that
9 tabular data, that numeric data, which corresponds
10 to those wave forms, put it in the center. And
11 then to the sides, next to each of these boxes, is
12 the wave form, which is being shared by each of the
13 people in that tabular list.
14 In other words, what you see
15 here -- let me pull it up again -- and here is one
16 of those tabular lists. The red circles around
17 those people's wave forms for specific nerves.
18 They can't get the same wave forms. Medically,
19 it's absolutely impossible. And yet each one of
20 them have it.
21 And out to the left are the
22 tabular data associated with that wave form.
23 A wave form is so precise that you
24 can only have one set of tabular data. But if you
25 look at that box that I have here -- I'm going to

1
2 make it larger -- you see these black lines through
3 the tabular data, those patients within each of
4 those subgroups have the same nerve data, numeric
5 data for that wave form.
6 On the left-hand side, you see
7 what those numbers are. And what that means is not
8 only did they reuse, re-purpose, re-gift the wave
9 form to each of these people, but they actually
10 have gone in and altered the tabular data as well
11 to make it harder for the insurance carrier to
12 detect the fact that this report has been altered.
13 It's hardly tracked 'cause now you
14 can't track it by the numbers. You actually have
15 to track it by the actual individual images as the
16 only way to detect this.
17 One of my interests has been how
18 does one develop the tools and techniques to track
19 what we call hard medical provider fraud. And this
20 is the product of what comes out.
21 The other point to make is when
22 some -- when these fraudulent medical providers -
23 it's the only way I can call them because,
24 obviously, there's a hundred percent proof of fraud
25 - it creates real risk because they are doing a

1
2 test on a patient who comes in and says, I have
3 numbness, I have tingling, I have problems.
4 And they do these tests and they
5 have no clue what they are doing. They are not
6 even interpreting the data. They are billing not
7 just only to do the test, but also supposedly to
8 interpret it at the standard of care.
9 Well, they look at that data.
10 There's data there, which, in fact, were a valid
11 data done at the standard of care, that would
12 indicate that this is a very sick patient. This
13 patient has some sort of a life threatening
14 neurologic disease process, which is what the test
15 is designed to pick out. And yet they typically
16 read that as normal and then go on and read
17 radiculopathy so the patient can then go on and
18 have additional testing or treatment or injections,
19 or whatever they have.
20 It does create real risk for
21 patients and that shouldn't be overlooked. Because
22 as I said, some of these indicate serious medical
23 injury.
24 And the Office of Professional
25 Medical Conduct has appropriately taken action in

2 some of these cases and has taken action against
3 their licenses, these medical providers' licenses,
4 based on failure to act on these potentially
5 important findings.
6 Just in conclusion, let me say,
7 This type of fraud that we are talking about is
8 highly evolved. It's very medically sophisticated.
9 You can't expect an adjustor, you
10 can't expect most people to even pick this up.
11 It's almost impossible to detect this kind of
12 sophisticated document fraud by reviewing the
13 individual records. You need to look at a series
14 of records to see the patterns, to see how these
15 patterns emerge, and only then can you hope to pick
16 these up. There's nothing that -- that you can
17 expect an individual adjustor seeing and adjusting
18 multiple records coming across to be able to pick
19 up or understand. It does take sophisticated
20 analysis and detail analysis in order to detect it.
21 This type of fraud also
22 successfully evades and blocks the usual fraud
23 prevention mechanisms. By way of illustration,
24 peer review is an important mechanism. You know,
25 the insurance carrier will send the records out to

1
2 their doctor saying, is this reasonable and
3 necessary? Is this medical treatment medically
4 necessary?
5 Well, first of all, most of those
6 peer reviews don't understand what an EMG and NCV
7 test is. They may look at the result, but they
8 don't look at the underlying data.
9 And also, going sort of larger
10 into the medical testing itself, when I look at
11 these records, everything from the initial visit
12 notes - and that's been alluded to already a couple
13 of times today - that all that's changed is the
14 name at the top of the page.
15 The physical examination, the
16 blood pressure, all those findings are very
17 stylized, very routinized, and they show up again
18 and again and again. And in many cases, they
19 didn't even bother to change that.
20 But what it does is when the peer
21 reviewer looks at individual records and answers
22 this question, is this medically necessary? The
23 answer is, Sure. Because the document fraud from
24 this get-go was designed to establish that false --
25 establish that medical necessity.

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2 And again, you can only determine
3 that by looking at the multiple medical records.
4 SENATOR SEWARD: Thank you very
5 much, Dr. Spitz.
6 Your presentation, I think, shows
7 us both some new challenges that are out there in
8 terms of fraudulent activity, but also, I think,
9 potentially a new tool for detection of fraud.
10 DR. LAWRENCE SPITZ: There are
11 tools emerging that are very promising in terms of
12 picking up this type of fraud and leveraging
13 electronic capabilities.
14 SENATOR SEWARD: Right. Well,
15 thank you very much.
16 I had -- for our final panel, I
17 just had really one question, which would be to Mr.
18 Lohmann.
19 MR. LOHMANN: Yes, sir.
20 SENATOR SEWARD: Now, you are
21 involved with working with a number of insurance
22 carriers in terms of their fraud detection,
23 fraud-fighting activity?
24 MR. SPITZ: Yes. There's over a
25 thousand property and casualty companies throughout

1
2 the country that --
3 SENATOR SEWARD: What is your view
4 of this concept that we've been talking about today
5 in terms of having a central data collection and
6 analyzing that data and including potentially some
7 of the information that Dr. Spitz has provided us
8 here today in terms of being able to look for, you
9 know, disturbing patterns that would lead to
10 evidence of fraud?
11 MR. LOHMANN: I think when you are
12 talking about data - and I'm going back to 9/11 -
13 sharing of information is critical and having the
14 ability to access that data.
15 National Insurance Crime Bureau,
16 we do have an intelligence database, we do receive
17 referrals from our member companies. As I
18 mentioned in my testimony, we had over 7,000
19 referrals last year. And I think it's critical.
20 In 46 states throughout the
21 country, the National Insurance Crime Bureau is the
22 reporting portal for mandatory reporting of suspect
23 claim activity to the Insurance Department. It
24 goes through the NICB, and then it gets routed to
25 that respective Insurance Department. Here in New

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2 York unfortunately we are not a reporting portal to
3 it.
4 That being said, they wound up
5 with over twenty thousand referrals, I believe, it
6 was last year, to the IFB. So they do have a
7 database.
8 Unfortunately, with resources
9 being limited and money is not being there for the
10 analytical software that the NICB currently has, if
11 we were able to find the way to do that -- and I
12 will go on the record and say that the National
13 Insurance Crime Bureau would welcome those
14 referrals to come through here.
15 We do provide the Insurance
16 Departments in those states as well as law
17 enforcement, we give them access to the NICB
18 database and we also provide to those law
19 enforcement entities and Insurance Departments in
20 those areas analytical research and support of our
21 own findings, and it's published in a way of a
22 forecast report that I've appended to my testimony.
23 So I think that's a great idea to
24 have a database like that. As we all know, the
25 information will drive investigations.

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2 SENATOR SEWARD: Thank you very
3 much.
4 This brings to a close of our
5 public hearing on no-fault auto insurance fraud.
6 I appreciate all of you for
7 participation. We had nine very exciting and
8 interesting panels, and there's been a lot of
9 information provided here today.
10 What we intend to do next, of
11 course, is to have some conversations with both our
12 counterparts in the Assembly and with the
13 Governor's office on next steps that will be taken
14 to deal with this issue.
15 And any way that any of you can
16 provide both the Assembly and the administration
17 with input in terms of what direction you would
18 like to see go on this issue, would be very, very
19 helpful to our moving forward not with one house
20 bill, but actually enacting some fair and balanced
21 legislation that will deal with this problem.
22 So with that, again, thank you for
23 your participation. It's been very, very helpful.
24 (At 3:25 p.m., the proceedings
25 were concluded.)