
Public Hearing

before

SENATE COMMERCE COMMITTEE

"Testimony to examine the underwriting factors and rating systems used by private passenger automobile insurers to determine driver eligibility and premiums for insurance coverage. This examination will include, but not be limited to, information concerning the use of occupation and education to determine driver eligibility and premiums"

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: June 12, 2006
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Nia H. Gill, Chair
Senator Nicholas P. Scutari, Vice Chair
Senator Raymond J. Lesniak
Senator Gerald Cardinale
Senator Robert W. Singer



ALSO PRESENT:

David J. Lorette
Office of Legislative Services
Committee Aide

Linda Schwimmer
Senate Majority
Committee Aide

Laurine Purolo
Senate Republican
Committee Aide

Hearing Recorded and Transcribed by
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SENATOR NIA H. GILL (Chair): Good afternoon.

The Senate Commerce Committee will come to order.

May we please have a roll call?

MR. LORETTE (Committee Aide): Senate Commerce Committee roll call: Senator Singer.

SENATOR SINGER: From the Minority, Senator Singer is here.

MR. LORETTE: Present.

Senator Cardinale.

SENATOR CARDINALE: Here.

MR. LORETTE: Senator Lesniak is not present at this time.

Senator Scutari is not present at this time.

Senator Singer. (laughter)

Senator Gill.

SENATOR GILL: From the Minority. (laughter)

MR. LORETTE: Senator Gill is here.

SENATOR GILL: My understanding is that Senator Scutari and Senator Lesniak are on their way.

MR. LORETTE: Madam Chair, you have a quorum.

SENATOR GILL: Thank you.

Today we're going to consider the bill that deals with using the use of education and occupation as part of underwriting factors. And we know that in order to further enhance the competition and maximize consumer choice in the automobile insurance marketplace, the Department of Banking and Insurance determined that permitting the use of insurance scoring by insurers would further this objective, provided that appropriate

protections of consumers' interests were established. In protecting consumers, there are two areas that are extremely important: transparency in the process of review by the Department of Banking and Insurance, and the statutory prohibitions against auto insurance companies from using scoring models that consider, among other things, race and income.

Consumer protection is the centerpiece of today's hearing. The issue before us is whether the use of education and occupation, as factors in underwriting insurance, circumvents the prohibition of using race and income in determining automobile insurance rates.

It has been asserted that the use of education and occupation has resulted in a discriminatory impact upon less educated, blue and gray collar workers, and a disparate racial impact against minorities. Statistically, we understand that, based on the 2000 census, 70.2 percent of our state's residents do not have a college degree. When we examine our individual districts, the percentages of our constituents without college degrees are as follows: District 20, Senator Lesniak--

SENATOR LESNIAK: No, I have my college degree.

SENATOR GILL: --83.1 percent of the people in his district do not have college degrees; District 22, Senator Scutari, 75.1 percent of the constituents in his district do not have college degrees; District 30, Senator Singer, 75 percent of the constituents in his district do not have college degrees--

SENATOR SINGER: I'm with the majority in that.

SENATOR GILL: Including the distinguished Senator.

District 34, Senator Gill, 71 percent of the constituents in my district do not have college degrees; District 39, Senator Cardinale, 53.9

percent of the constituents in his district do not have college degrees. The statistics for minorities in New Jersey are even higher. Eighty-two point nine percent of African-Americans and 87 percent of Latinos are without college degrees.

Given the state of today's economy, and the fact that New Jersey has one of the highest automobile insurance rates in the nation, the use of education and occupation as factors in underwriting poses a serious economic consequence to working families of New Jersey.

In response to this concern, I introduced legislation, Senate Bill 1714, which would prohibit any underwriting rule from operating in such a manner as to assign a risk to a rating plan on the basis of: one, an insured's educational background; or, two, his or her employment, trade, business, occupation, or profession.

Likewise, as to any application or selection of coverage for an automobile insurance policy issued or renewed in this state, under this bill an insurer would be prohibited from using those factors.

Today, we will hear testimony from insurers, pro and con; from the Department of Banking and Insurance; consumer protection advocates; and the industry trade associations. The purpose of this hearing is to make an objective inquiry into the use of these criteria in a fair and impartial public forum that allows all interested parties to express their concerns. This hearing will result with the presentation of adequate information that allows us, as a legislative body, to determine the best course of action that protects the consumer from discrimination, while still fostering a competitive marketplace for affordable insurance.

Thank you.

Are there any other Senators that have any preliminary comments before we start with the testimony? (no response)

Seeing no hands, we will start with the first witness, please.

MR. LORETTE: The first presenter today before the Senate Commerce Committee will be a consumer protection advocacy panel consisting of Phyllis Salowe-Kay, the Executive Director with New Jersey Citizen Action; and Abigail Caplovitz, with the New Jersey Public Interest Research Group.

SENATOR GILL: Good afternoon, and thank you for taking your time to come.

You can decide who would like to go first.

And identify yourself for the record, please.

PHYLLIS SALOWE - KAYE: My name is Phyllis Salowe-Kaye. I'm the Executive Director of New Jersey Citizen Action.

I'm going to begin by saying that we have nothing against doctors, dentists, and lawyers, especially those on the Committee. However, we don't think that you're any better drivers than welders, wait staff, and water filter salespeople.

So I will begin with that, and then also say that Senator Gill's testimony sort of took a lot of the information that is in my prepared testimony -- spoke to a lot of it. So I'm going to eliminate some of it.

Citizen Action is very concerned about the fact that insurance companies -- and in this case, particularly GEICO -- is using rating methods and underwriting guidelines that have a serious adverse affect on minority consumers and lower-income residents in the State of New Jersey. These practices may actually be discriminatory under Federal or State civil rights

laws. And we know that in several parts of the state, the Consumer Federation of America and other civil rights groups are actually moving forward with lawsuits concerning that.

We believe that the State-- We believe that, first of all, that State legislation is absolutely needed to rectify the harm that has been done by the regulation that was promulgated by the Department of Banking and Insurance. We realize that this was done in an effort to urge insurance companies to do business in New Jersey. And we want to see companies come to New Jersey. We think New Jersey is a good place to do business. But we don't think that it should be -- that the -- that it should be done at the expense of low-income and minority New Jersey residents.

We're here today to ask you to ban the use of rate-making methods that directly base eligibility and premiums upon educational background and occupation. The use of this information results in unjustified increases in insurance rates for many lower-income minority residents of New Jersey. We all know that, currently, insurance companies are not permitted to use race or income in the setting of rates.

GEICO, the nation's fourth largest insurer, has adopted rating methods and underwriting guidelines that directly base rates and eligibility on education and occupation in 44 of the 50 states. New Jersey is one of the states. GEICO's underwriting guidelines not only directly harm lower income Americans, but they also have an indirect effect on minority consumers.

Using the-- Under the criteria used by GEICO, a factory worker without a four-year college degree in New Orleans -- and I'm using New Orleans -- I will use New Jersey in a second -- and New Orleans is

probably the extreme -- would pay more than 90 percent more than an attorney with a graduate degree in the same place. Nationally, the average surcharge being applied by GEICO for being poor is over 40 percent. In Princeton, New Jersey, a blue collar worker would be paying 32 percent more than a white collar worker for the same exact coverage.

Now, GEICO would say that education and occupation are only two of the things that they -- of many factors that they use when setting rates. What we believe is that these two have a very high impact upon a class of people, that actually ends up being discriminatory.

We also keep hearing about actuarial data and studies that prove that teachers, and lawyers, and doctors, and dentists have better driving rates than other folks. We have never seen that. We think that if that information exists, it should be readily available to the public, and to consumer organizations, and others to look at and see if that actually -- what -- who's done the research, and what it shows.

If a student has the misfortune of having a parent who had their job outsourced to India, or they lost their job due to an event such as an employer's insolvency or a natural disaster, that student may actually have to quit high school to help out the family. Why does it make this former student a worse driver than someone with a higher education? It just doesn't seem fair.

The response to our concerns -- which have been raised publicly in the press -- has been, "Well, we have competition in New Jersey. If you don't like what the insurance company is using, or what factors they're using, just go to another insurance company." Well, insurance companies need to stay competitive. That's what they tell us. And right now, in New

Jersey, we have four companies-- We have Liberty Mutual, New Jersey Skylands, Electric, and AMEX Insurance that are currently using occupation and education, or both, in setting their rates. Allstate has also begun to do this in several other states. We believe that as time goes on, other insurance companies are going to be able to phase in these factors, and there won't be a choice for a consumer to go to a company who doesn't do this.

We saw this happen with credit scoring. And I know this is not about credit scoring, but we were very much opposed to credit scoring. We were able to get some protections put into credit scoring. We still are seeing credit scoring having adverse affect against minorities and low-income people. So it seems that each one of these things that we're giving -- that the State is giving to insurance companies to help them to stay here is something that has a negative effect on a particular segment of the community. That could be looked at as being discriminatory.

So we would want you to take a really strong look at this and begin to move legislation through your Committee that would ban this practice.

Thank you.

SENATOR GILL: Thank you.

Before you--

Any Senators have any questions of the witness?

Senator Cardinale.

SENATOR CARDINALE: You have made an assertion that doctors, dentists, and attorneys aren't better risks, essentially, than some others. I think you said welders. I forgot the other two categories.

MS. SALOWE-KAYE: Wait staff and water filter salespeople.

SENATOR CARDINALE: Okay.

Do you have any statistical data that would support that statement?

MS. SALOWE-KAYE: No, I don't. But I believe that the Consumer Federation of America has some information. But I don't think there is any information that shows otherwise, that's been done by an independent agency.

SENATOR CARDINALE: But you're making an assertion.

MS. SALOWE-KAYE: Yes.

SENATOR CARDINALE: And you don't have anything other than anecdotal.

MS. SALOWE-KAYE: That it's unfair.

SENATOR CARDINALE: And you just think it's unfair.

MS. SALOWE-KAYE: Absolutely.

SENATOR CARDINALE: The impact on some people creates an unfairness. The impact of using these criteria creates an unfair situation.

MS. SALOWE-KAYE: I am not an actuarial. I'm not an insurance actuarial expert. But in this instance, I don't believe that anything exists that has been done by an independent, outside -- not an insurance company -- that shows that a lawyer is a better driver than a wait staff person. And if it does, if there is something -- there is information that exists that shows -- and I'll quote this.

For example, race-based premiums-- It's illegal to use race and income for insurance. And yet there is actuarial information that shows that people of certain races have a lower life expectancy, which would then

make the issuance of life insurance -- using that factor -- as something you could do. And, yet, that has also been made illegal in the United States.

SENATOR CARDINALE: We're not talking this.

MS. SALOWE-KAYE: But it's--

SENATOR CARDINALE: This hearing doesn't deal with life insurance. We're dealing with automobile insurance.

MS. SALOWE-KAYE: I understand that. But if there was such actuarial information -- which either way-- Which I don't have. And I do not have proof that a lawyer is a better or worse driver than a worker -- wait staff person.

SENATOR CARDINALE: Not necessarily driver, but risk.

MS. SALOWE-KAYE: Risk. I do not have that information. But if information does exist that, for life insurance, an African-American is a poorer risk -- has a lower life expectancy than a Caucasian -- and we can't use -- not, we -- the insurance companies are prohibited from using that in setting rates. So one would be effective on the other.

But, no. To answer your question, I don't have that information.

SENATOR CARDINALE: But none of these criteria that you mentioned are race. They are not using race. You are not asserting that they're using race.

MS. SALOWE-KAYE: Well, if you look at the statistics of how it breaks down, in terms of education, you would know that 26 percent -- that the number of Caucasians, African-Americans, and Latinos-- If you look at those numbers and see what percentage of those have higher education, you would see that the impact ends up being race. And if you

look at their earning capacity, you would see that at the end of the day that -- that in those three categories, the African-American and Latino has a much -- who doesn't have a higher education -- has a lower income expectancy.

SENATOR CARDINALE: So your objection is not that they're using a criteria which they believe is risk-related. Your objection is that the bottom line on it is that people of certain backgrounds or educational levels will tend to suffer from that criteria being used.

MS. SALOWE-KAYE: It's both.

SENATOR CARDINALE: Then you went on to say that in order to remain competitive, the companies which are not now doing this will begin to do it. They will be forced to begin to do it in order to remain competitive. That's what you said. Did I understand that right?

MS. SALOWE-KAYE: In order to get higher income business, yes.

SENATOR CARDINALE: Well, you said in order to remain competitive.

MS. SALOWE-KAYE: Right, in the higher income market, because they will want the doctors and the lawyers to get their boat insurance or their other insurance through them. So, yes, I think we will begin to see that happen.

SENATOR CARDINALE: So if this is not risk-based, at least -- and I haven't seen the data either. We may get some data today, but you're the first witness.

In order to remain competitive, other companies will have to use similar criteria, according to your thought process. If it is not risk-based, how does that affect their competitive position?

MS. SALOWE-KAYE: You should ask the companies and not me that question. Because we have seen four companies now begin to use it. We have talked to other companies who tell us that they will have no choice but to do it. I think that some of those companies have been invited to testify. I'm not an insurance company. I don't want to speak for them.

SENATOR CARDINALE: Well, it's interesting.

SENATOR GILL: Senator Cardinale.

SENATOR CARDINALE: Yes.

SENATOR GILL: Just for your point of information, there will be people from the trade who will be able to address that. And I think there will be others who will be able to address the more specific points of the actuarial and the risk. I think that this testimony was from the consumer's standpoint, and the impact being we haven't seen the risk. But even if we haven't seen the risk, it violates constitutional prohibitions against a disparate impact that doesn't have to-- You don't need intent. It is the result of a policy that may--

And I think that's what your position is. And we can get to the more--

SENATOR CARDINALE: But one more observation, with respect to the testimony of this witness.

SENATOR GILL: Okay.

SENATOR CARDINALE: And that is occupation. I've been advised that occupation is used in life insurance in setting rates.

MS. SALOWE-KAYE: But income is not allowed.

SENATOR CARDINALE: Occupation is used in that. And what we have-- What you're objecting to are two criteria, one of which is occupation. And in life insurance -- just to turn the same example back on you -- it is permitted to use occupation.

MS. SALOWE-KAYE: And perhaps that's why there are still suits and settlements concerning life insurance going on right now.

SENATOR GILL: Well, we will--

MS. SALOWE-KAYE: This is not about life insurance.

SENATOR GILL: I don't normally interrupt. There are a lot of people to testify. This is specifically focused on auto insurance. And, of course, to the extent that any example can be clarified, to the extent that it gets off on another subject matter, I will have to step in. So we're not going to talk about life insurance. This is auto insurance, with respect to those criteria.

Do you have any other questions, Senator?

SENATOR CARDINALE: No, I don't. Thank you.

SENATOR GILL: Senator Lesniak, do you have any questions?

SENATOR LESNIAK: Thank you, Madam Chair.

I certainly don't purport to be a constitutional scholar. And I do agree with the Chair and Phyllis's testimony that if these criteria are not based on legitimate risks, they would be invalid.

However, on impact, I do know that-- For instance, we have rating caps in territories. And that is to spread the risk. The impact on that is beneficial, certainly to the minorities I represent in my community. So I am-- I don't-- I'm certain that-- As I said, I don't purport to be a

constitutional scholar. But the disproportionate impact, in and of itself-- I don't see how it can be a constitutional violation. I remain open to be convinced of that.

But as I said, we do have a very, very substantial impact -- beneficial to the folks I represent -- already in place, in terms of automobile insurance.

SENATOR GILL: The constitutional issue that's also -- we understand, in GEICO, is being-- You have a suit in the Federal district court in Minnesota, specifically on the issue of race and its impact on this. And we do know that in the constitutional law -- I don't mean to be a constitutional scholar, but I do do a lot of constitutional litigation -- it is the negative impact. It is the disparate impact that gives rise to what may be a constitutional issue. But we can discuss that later.

Do you have any further questions? (no response)

Senate Scutari.

SENATOR SCUTARI: Thank you, Madam Chair.

Why is it then that some of these companies utilize these two factors in order to set their rates?

SENATOR GILL: I think the companies can answer those more detailed questions.

SENATOR SCUTARI: I would like to know what she thinks, from a consumer standpoint, why they -- if they have a theory on why it is that they utilize that.

MS. SALOWE-KAYE: I would not even begin to answer why an insurance company does something. I just don't think I'm the right

person to do it. I just know that by doing this-- I believe it's going to have a very harmful affect on the people that we represent.

SENATOR SCUTARI: Fair enough. Thank you.

ABIGAIL CAPLOVITZ: Hi.

Abigail Caplovitz, New Jersey PIRG.

I appreciate this opportunity to testify. And I appreciate very much this Committee taking so seriously -- looking into this issue. Because auto insurance in New Jersey, as we all know, is awful at best, and hopefully getting better.

I stand side-by-side, though, with Phyllis, and also with the comments that the Chair was making at the beginning, that what's at stake here is a matter of fundamental principle and who is being affected by it.

Without a doubt, I bet an actuary could give me statistics that showed race and income had risk relationships. There's all sorts of things in life that you can find a risk relationship around. At some point you decide what are your fundamental values, and what are you going to allow to be measured as a risk basis. So the question to me isn't really, is there some potential correlation on risk?

I mean, the old joke is, you can ask an actuary what's one and one equal, and he'll say, "What do you want it to equal?" I mean, you can find risk correlations at the margins for a lot of things. The question is, is it an allowable thing to measure? And we've decided, as a State, that race and income are not allowable to measure.

So then the question is, occupation and education. And I would suggest that these two factors are proxies for income, and perhaps proxies for race, because of the statistics. So I think it's a less-direct

intention at getting at race, although it has that impact because of the statistics.

So the question is, why do you want this data? And you will have to ask the insurers that question, because I don't do their calculations. But it seems to be -- the only thing they very substantially correlate to-- The obvious thing -- if I were to ask you, what do you think correlates with educational attainment, and what do you think correlates with job status, you're going to say income. And I bet if I told a census person somebody's educational attainment and their job, they could ballpark their income for me. Could they ballpark their driving record? I doubt it.

Again, at the margins, could you establish a correlation? Sure. But then you get back to first principles. What is it that we allow each other to be judged by? And we happen to think that education and occupation are not appropriate. We think they are proxies for income. They are potentially proxies for race. And that's just not what you score people on when you give insurance.

Spreading risk is a purpose of insurance. If you allow every potential factor to be used in assigning risk to people, you can put out, to the sixth decimal point, what somebody's risk is going to be. But then that person can't afford insurance, and somebody else can get it dirt cheap.

And in terms of the question as to why do other companies need to copy this to be competitive-- Phyllis was getting at it. The higher income market that gets subsidized by the low income market -- think of the perverse inequity in that. The high income market that gets subsidized by the low income market, as a result of proxying income, has a lot of other business that you want. So maybe you even have a loss leader. Or if maybe

it's not a loss leader -- but maybe it's not your most profitable piece of business, because you want to sell these people all kinds of other pieces of business. And so the question is-- To stay competitive, you're going after that upper income market.

So we think that, just as a matter of first principles, what kind of society are we? What are the factors that you allow people to be judged on for risk or other things? We don't think you should be judging educational attainment. We don't think you should be judging job status. Although the Senator over here is a living example -- they don't always correlate. You didn't complete college, but you are a State Senator. I mean, their proxies are not great proxies. I mean, at the end of the day, proxies are not the real thing.

SENATOR LESNIAK: He married well. (laughter)

MS. CAPLOVITZ: So, all that said, New Jersey PIRG just stands on principle. This just isn't what it's about.

That said, we encourage you to move carefully. New Jersey consumers -- and we represent consumers -- are very grateful that insurance has gotten better. And we don't want to do anything to make it get worse.

So please be careful in how you do this. And thank you for bringing in all of this testimony today.

And I'm happy to take any questions you might have.

SENATOR GILL: Do we have any questions that are not of an actuarial nature?

You don't mind, Senator Vitale (*sic*), if I call Senator Singer first? We can keep balance--

SENATOR CARDINALE: I am Senator Cardinale. (laughter)

SENATOR GILL: I know Senator Cardinale, and you are Senator Cardinale. (laughter)

Senator Singer, please.

SENATOR SINGER: That's okay. He didn't marry well. (laughter)

Just one comment. I just take a little bit of exception.

I really think the Department and the members of this Committee have worked on automobile insurance in the last four or five years, and it is a far better market than I've ever seen before. It is not something I'm getting phone calls on constantly, "I can't place insurance." If you remember, for a while there, we had only very few companies operating in the State of New Jersey. You couldn't place your insurance. Today you can place that insurance.

Second of all, it's the first time I know in many, many years that now you see people be competitive about it, advertising lower rates. "I can beat these rates by a couple hundred dollars." And that's a positive fact.

I'm not saying that this criteria should be used or not. We're going to hear that today and make a decision. But let's not knock the marketplace. We've come an awful long way. And at least we've taken it off the radar screen in being the number one priority for a lot of people -- not being able to get automobile insurance. They can get it now. The question, is it fair or not, is a different issue. But let's not--

I think the Department, members of this Committee who have worked on issues, have gone a long way in making this a very positive market.

MS. CAPLOVITZ: Senator, we fully agree. And that's why we're glad you're doing this in the thorough way that you are, and not rushing forward. New Jersey consumers would not dispute that it is a much better market today than it used to be. And we appreciate the hard work this Committee has done in making it that way.

SENATOR GILL: Any further questions of the witness? (no response)

Thank you very much for your testimony.

SENATOR CARDINALE: I--

SENATOR GILL: Oh, my goodness.

Senator.

SENATOR CARDINALE: You had passed me over, in terms of getting--

SENATOR GILL: That is my mistake, Senator Cardinale.

SENATOR CARDINALE: I want to reemphasize everything that Senator Singer has said. I've been on this Committee for more than 20 years, and this is the best climate that I've seen in a long time.

But wherever we have gone with the regulations or the laws that we passed, I think we've been cognizant of the fact that however we make these criteria, there are always going to be some drivers who are going to be subsidizing other drivers. Because, either within a particular group or when you take all of the groups and compare them to one another, there are going to be a spread of folks who drive well, and a spread of folks who drive poorly, however you try to set up these criteria.

And I'd just like to clarify one point that you said, because I'm not quite sure. I think I know what you were saying. Do you have any

evidence, or any anecdotal notion, that a doctor who also happens to be a minority is treated differently than other doctors?

MS. CAPLOVITZ: I didn't make that suggestion, and I have no basis to make that. I think, first and foremost, these are proxies for income. And I think, because of the way income and educational attainment are distributed across races, it has a disparate race impact. But I have no indication that there is a purely racial component to this, whatsoever. And I would not suggest that you would expect two similarly situated doctors, one who happens to be black, to be treated differently.

SENATOR CARDINALE: Thank you very much.

MS. CAPLOVITZ: Yes, sure.

SENATOR CARDINALE: I have nothing further.

SENATOR GILL: Thank you for your testimony.

The next witness, please.

MR. LORETTE: The next presenter before the Committee today will be Eric Poe, Vice President of Operations with the insurer New Jersey Citizens United Reciprocal Exchange, commonly referred to as NJCURE.

ERIC S. POE, ESQ.: Good afternoon.

SENATOR GILL: Good afternoon. Thank you for appearing.

MR. POE: My name is Eric Poe. I'm actually now the Chief Operating Officer of New Jersey CURE auto insurance.

New Jersey CURE auto insurance was founded in 1990 by the former New Jersey Insurance Commissioner James J. Sheeran. And we insure close to 50,000 vehicles. And we are the fifth largest direct writer in the State of New Jersey.

I'm a licensed attorney, as well as a certified public accountant. I've been working in the private passenger automobile insurance industry for over 12 years.

What I hope to testify today is -- really narrowing and clarifying this topic down to three subjects and, hopefully, addressing each one. Number one, why we are here representing a competitor in the marketplace; number two, why we can prove that it should not be used as a writing criteria in the State of New Jersey; and, number three, we are going to prove how it will not affect the health and profitability in competition in the marketplace.

Addressing the first one, why we are here. The reason why we are here is because when we learned that GEICO, entering the state in 2004, used education and occupation as sole base factors to determine whether somebody was eligible for their preferred insurance company, we were appalled. We were forced to do one of two things: Make an action to try to let the public know that they are being judged in this fashion. Anybody who goes on GEICO.com that is a blue collar worker, or categorized in their non-preferable group, is being rejected by their preferred companies, and not even being notified that they're being rejected by those preferred companies, on their Web site, on the basis of their education and occupation alone.

So complaints to the Department of Insurance on this basis does not make any sense. Because if you are a blue collar worker, and you went to GEICO.com, and you put down that you are a minimally skilled U.S. Postal clerk, you're not going to be told that you're rejected based on the fact that you are a U.S. Postal clerk, or that you have a high school

diploma. You're just going to see a rate that's twice what you're paying. And you're going to say, "GEICO is not the place I want to go, because they're not going to save me any money."

Why we're here is because we don't want to adopt these practices, because we think that they are unfair. We think that they have discriminatory impacts on racial minorities. And we simply do not believe it's necessary in order to underrate risk.

The second subject of proving why it shouldn't be used: Number one, this classification of education and occupation is classifying people with the use of socio-economic factors, influences that we do not use in our current, valid classification system. If you ask insurance carriers what we are allowed to use to determine rates, we're allowed to use the person's age, the person's gender, the person's marital status, the person's territory, and the person's usage of that vehicle.

Out of all the factors that I just named, not one of them has a socio-economic impact. Everyone has the equal opportunity to use their car differently. Everyone has the equal opportunity to decide to move to a different, less densely populated area in the State of New Jersey. Everyone has the opportunity to improve their driving record. And, believe it or not, everybody has the opportunity to get older. And everybody has the equal opportunity to get married or divorced. I know some people don't believe that.

But this would be the first rating factor that would actually use a classification that does not give every single person in the State of New Jersey the equal opportunity to change. If someone is going to argue that

everyone has the equal opportunity to get a four-year college degree, I think you'd have a major, major debate in this room.

The second reason why it shouldn't be allowed -- and we can prove it -- is based on the interpretation of the regulations that are currently in place. According to the New Jersey Administrative Code 11:3-35.3c7, we currently have a regulation in place that states, and I quote, "No underwriting rule should be based on the lawful occupation or profession of an insured." To my knowledge, the only reason why no other carrier in the State of New Jersey does not use occupation as a rating factor is because we abide by this regulation. GEICO is the only carrier that I am aware of that does not abide by this regulation.

The second topic, based on education-- According to the same subchapter, the regulation states, "An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristic--" and that is the key, "the risk characteristic of the driver and the hazard for which the insurance is provided."

My best example I learned was about -- last week, to give to everybody -- and that is, that it is not sufficient for an insurance company to simply say, "I have actuarial loss data," and show a certain group has higher losses than others. That does not justify its use as a rating factor.

An example is, if everybody in this room -- we were to group the two groups into people with brown eyes and people with blue eyes. You would, without question, have-- If we took all the loss costs for everybody with brown eyes versus blue eyes, you'd have a group that has one higher loss number than the other. Does that give you the ability, as an auto

insurance carrier, to determine risk and rate, based upon the fact that one of those groups has higher losses? No.

That's why this regulation is in place. Because it requires that you show that the characteristic of that driver is correlated to the risk. You cannot show that because somebody has blue eyes or brown eyes that they're actually a higher risk, just because their loss has that data.

The best example I can give from an insurance standpoint is this. In 2006, the Quality Planning Corporation -- which is a subsidiary of ISO, which is the largest rating bureau in the world -- studied 15 million policyholders and 2 million claims. And they came up with a study that said if you live within a mile of a restaurant, a car dealership, a liquor store, or an elementary school-- They showed that there was 18 to 30 percent higher losses for those people that live within a mile of those establishments.

Now, from a layperson's standpoint, you would read that and say, "Well, that seems like a good reason for car insurance companies to ask me if I live within a mile of one of these establishments." But according to the regulation, you have to show reasonable and demonstrable correlation between the characteristic trait. There is no characteristic trait of somebody who lives within a mile to make them a higher risk. This is what we call a *redundant classification*. The reason why this would never pass muster, if you use this test, is that it is not the fact that you're living within a mile of these restaurants, or elementary schools, or liquor stores, or car dealerships that make you a higher risk. This is already accounted for in the classification of territory. The people that live in urban areas always live within a mile of a restaurant, car dealership, elementary school, and liquor store. So to

classify the person -- that you've already charged a higher rate in these urban areas -- an extra higher classification because they live within a mile of one of these establishments makes no logical sense.

The exact same reason is why you cannot use education. Because the reason why -- probably -- education has some small percentage of a correlation to losses is because when you make more money and you are a higher educated person in the State of New Jersey, you do not live in the urban areas of Newark, Camden, Trenton, and Jersey City. The people who live in the suburbs are the people that are more affluent, typically -- I'm not saying every single person -- but are typically more affluent and have higher educations. That is why this, categorically, should not be allowed.

Now, my third and last topic is to prove how and why this passage of this bill would have absolutely no impact on the competition and health of this marketplace, like I know our trade organizations are going to try to testify about.

The fact is this: There are 33 insurance carriers in the State of New Jersey. Four of those insurance carriers use education. One of those carriers uses education and occupation. Together, those four carriers only amount to 19 percent of the entire market share in the State of New Jersey. It would be impossible to say that if you pass a bill to prohibit the use of what only four out of 33 carriers use, you would actually threaten the entire profitability of the marketplace.

I'd like to commend the entire industry regulators and legislators for what they've done in their 2003 reform act. It made meaningful change to us. It allowed us to compete. But what we're here to

say now is that we are all for competition and health, but we're not for competing on these discriminatory grounds. And that's exactly what's going to happen if you do not pass a bill like this.

SENATOR GILL: Any questions from anyone?

Senator Lesniak, are you looking at me over your eyeglasses?

(laughter)

SENATOR LESNIAK: Did you drink any Red Bull before you gave this testimony? (laughter)

MR. POE: Unfortunately, that's just the way I am. I'm sorry. I actually don't drink caffeine, which is really sad.

SENATOR LESNIAK: I commend you for your passion.

MR. POE: Thank you.

SENATOR GILL: Was that a question?

SENATOR LESNIAK: No question.

SENATOR GILL: Senator Cardinale.

SENATOR CARDINALE: You can always rely on me, Madam Chairwoman.

SENATOR GILL: And it's always good to have a good, reliable Republican.

SENATOR CARDINALE: You indicated that-- I think the last words you said were that if we don't pass some sort of bill that prevents this, your company is going to be forced to use the same practice.

MR. POE: Correct.

SENATOR CARDINALE: Is that correct?

MR. POE: Yes.

SENATOR CARDINALE: Why?

MR. POE: Because if you look at, for example -- we've studied this -- the number of the largest population of our insureds that leave to a carrier like GEICO are ones that -- when we go and look at how long we've insured these people, how good of a driver they are-- We absolutely cannot compete unless we start realizing that when we look at their occupation or education -- that we either have to adopt those rates, or we're going to lose every single time to those particular drivers.

SENATOR CARDINALE: Now, if there's no rate advantage to keeping those drivers, why would you mind losing them?

MR. POE: Well, first, there is nothing to say that we wouldn't want to keep them. We would like those insureds. There's no question about it, which is why we want to actually lower our rates for those particular people.

Are you saying that -- why do we -- why would an insurance carrier care about losing what you would say is an underpriced policy? The reason why is because this, automatically, is now subsidizing carriers that have national presence with multiple lines of insurance to offer. You're giving them a competitive advantage, because they can go after the rich person, take as a loss leader their car insurance, sell them financial planning, yacht insurance, umbrella insurance, and choose to actually artificially charge those drivers less.

So, yes, we could apply for filing for insuring other lines of business in order to do that. But basically what you're doing is, you're doing the opposite of what most people think, and you're subsidizing the lower -- the higher income person with a lower income person which, typically, no one ever accuses auto insurance carriers of ever doing.

SENATOR CARDINALE: You've lost me. I have to tell you that. (laughter)

MR. POE: Sorry.

SENATOR CARDINALE: Because my question is-- You want to keep those folks. You said you want to keep those folks. You object--

SENATOR GILL: Senator, I'm sorry. So that we -- I understand -- who is those folks? Maybe we can--

SENATOR CARDINALE: The doctors, the people with greater education. You want to keep them.

MR. POE: Right.

SENATOR CARDINALE: The people that GEICO is stealing from you now.

MR. POE: Right.

SENATOR CARDINALE: And they're stealing because they're giving them a lower rate.

MR. POE: Right.

SENATOR CARDINALE: You say that you're going to have to-- If you want to keep them, you're going to have to start giving those folks a lower rate.

MR. POE: Correct.

SENATOR CARDINALE: Now, if there was no risk justification for that lower rate, why would you mind losing that?

MR. POE: I think--

SENATOR CARDINALE: Or why would you want to keep them by giving them a lower rate? Let's put it in the other direction.

MR. POE: Okay. Because we don't--

SENATOR CARDINALE: You're not in the business of losing money, or attempting to lose money.

MR. POE: Right.

SENATOR CARDINALE: You're not establishing your policies on a basis that you want to assure folks lower premiums at the expense of your stockholders, or however your company is arranged. So why do you want to prevent someone else from getting them if the premise is that there is no risk relationship there? Are you charging them too much and, therefore, you want to keep charging someone more than the risk entitles you to charge?

MR. POE: I think I'll relate back to what the representative from PIRG said. If you have-- If you want, you can actually go find, to the sixth decimal point, what every single risk is correlated to the amount of. And, yes, we would be artificially charging them-- Maybe we're charging them the exact amount by lowering-- Maybe there is a correlation, and maybe there is a reason for -- that you could show that-- If you actually prove that education was correlated to what losses we had, we would adopt them. But the fact is, insurance is pooling.

I don't know if I'm really answering your question. It's a zero sum game. We can't afford to lose. And no insurance carrier, whether it's State Farm, whether it's Allstate, whether it's any carrier that doesn't use these practices -- cannot sit by and watch all of their highly educated, suburban, high-income drivers that have an affluent background to simply leave their carrier.

Now, I don't know whether or not every-- I mean, every carrier makes profits or they wouldn't stay in business. I mean, obviously, in any

given year, we could lose money. But I guess what I'm trying to say is, no carrier wants to lose people that don't get into accidents, that are affluent drivers, to other carriers.

SENATOR CARDINALE: Okay. I think you've come around to my way of thinking -- at least in what you're saying.

MR. POE: Okay.

SENATOR CARDINALE: You seem to be supporting the notion that I have, that these folks are lower risk drivers.

Now, in case you don't agree with that, can you have -- can you produce any evidence -- I'm going to ask this of the other companies, too, I'm not singling you out--

MR. POE: Right.

SENATOR CARDINALE: --that would undercut the notion that these folks are actually lower risk drivers, the doctors, the highly educated people.

MR. POE: Well, I guess-- See, the difference between the way I terms things-- I think there's a correlation to losses. I don't believe there's a correlation to risk. And that's the basis of this entire thing. There is a big difference.

SENATOR CARDINALE: How do you determine risk except by doing--

MR. POE: Like I said, you can group any class in the world and say, that group of losses-- "We have this group of brown-eyed people. They have lower-- They have higher losses." Does that mean they're a higher risk because they have brown eyes? No.

So I'm saying, yes, there is a correlation to losses with education. But that does not mean that there is a correlation to risk. And there is--

SENATOR CARDINALE: What is the-- Can you quantify the correlation to losses?

MR. POE: I'm sorry.

SENATOR CARDINALE: Can you quantify? You say there is a correlation to losses.

MR. POE: I said there could be. I don't have that data. Just so you know, out of the majority of carriers in the United States of America, we never ask education and occupation. It's not required. So any data that's even purported today, by GEICO or any company, is their own data. When is the last time anybody in this room got auto insurance, and they made it a mandatory requirement that you tell them how far you got in college, or how far you got in high school, and what occupation you have, which can change in any given year? So whatever data they have, I can tell you that it's probably their own data. I don't think there's any data from an independent study. If there is-- The only data I know is of the Quality Planning Corporation, that showed the contrary of what they're saying -- which is, that out of all 40 occupations that they studied, out of 15 million policyholders, the two highest, outside of students, were attorneys and doctors -- with the highest accidents per thousand vehicles insured. And the lowest were homemakers and firefighters. So, yes, if you wanted stats, those are some stats I can give you.

SENATOR CARDINALE: You, I think, asked me a question. When did we see these kinds of things begin to happen? And I think when

we passed our last legislation, and we got some new companies in that began to cure some of the problems in New Jersey, is when we saw these things happening.

MR. POE: Well, actually--

SENATOR CARDINALE: And those things are happening. And it's a high correlation, with me, with the resolution of some of the problems that we have previously experienced in a long history in New Jersey.

And I don't want to belabor this.

SENATOR GILL: Right.

SENATOR CARDINALE: I know the Chairwoman wants to get on with the rest of the witnesses.

MR. POE: Thank you.

SENATOR CARDINALE: That's all that I have.

SENATOR GILL: And I would like to say, for the record, that I did an OPRA request, on behalf of this Committee. I did ask for the specific information. It was deemed to be proprietary. And although we sought to challenge it, we moved ahead with this Committee hearing. So I asked specifically for that information so that the Committee could have it in order to determine if there was a correlation of the characteristic trait being segmented to the risk of loss -- had a relationship. And I think that is crucial information. The Department of Banking invoked that segment on my OPRA request.

So I hope that we will be able to get to that in some way that does not violate the proprietary claim, but still allow some transparency so we could determine what happened with respect to DOBI, and what was

the information presented. Because on one segment, that is so vital to the assumptions that we're all making here, either pro or con.

So I just wanted that to be clear.

Any further questions? (no response)

Thank you very much.

MR. POE: Thank you.

MR. LORETTE: The next presenter today will be Hank Nayden, the Vice President and Legislative Counsel with the Government Employees Insurance Company, commonly referred to as GEICO.

HANK NAYDEN, ESQ.: Good afternoon.

SENATOR GILL: And I'd like to, before you testify, make it clear to you that this is not GEICO-bashing. You have-- We're open to any objective information. We understand that it is a business that you participate in, and this is your business model. And we further understand that it is a legislative body that determines if it is valid, based upon what our public policy determinations are.

So I want you to be comfortable. And, certainly, we welcome your testimony.

MR. NAYDEN: Thank you, Senator Gill.

Chairwoman Gill, ranking member Cardinale, members of the Committee, my name is Hank Nayden.

SENATOR LESNIAK: Whoa, ranking member.

SENATOR CARDINALE: Wow.

SENATOR GILL: He didn't say rank, so don't worry. He wasn't talking about you, because he said ranking.

MR. NAYDEN: I am Vice President and Legislative Counsel for the GEICO group of companies. I appreciate this opportunity to be here to talk about the benefits that competition and choice have brought to New Jersey drivers.

First, let me start by thanking the members of this Committee, and the entire Legislature, for the auto insurance reform legislation--

I'm sorry. Is that better? Have you heard anything that I've said to this point? (referring to PA microphone)

SENATOR SINGER: We heard the ranking member.
(laughter)

SENATOR GILL: I also heard my name, so you're on good stand. (laughter)

MR. NAYDEN: --for the auto insurance reform legislation of 2003.

I also want to credit former Governor Jim McGreevey. The newly competitive market that has brought more choices and lower rates to New Jersey auto insurance buyers is a result of Governor McGreevey's vision and leadership. Without his commitment to competitive reforms, GEICO and other companies would not be in New Jersey, and New Jersey drivers would be paying significantly more for their auto insurance.

GEICO is excited to be back in New Jersey. Since our return 21 months ago, GEICO has gone from zero vehicles insured to more than half a million. Even better, according to over 27,000 policyholder surveys, the average annual savings for New Jersey GEICO policyholders is over \$675. In total, based on our policyholders' reported savings, last year alone GEICO saved New Jersey drivers over \$200 million. These savings are

being enjoyed by our customers across all cities, and towns, and all demographic groups.

In this short period of time, GEICO has also become one of the largest insurers of urban drivers in New Jersey. GEICO's 2006 growth rate in urban areas is over 50 percent annually. We insure over 170,000 vehicles in these urban areas. And more than half of these vehicles are insured in GEICO's preferred companies.

In addition to saving drivers over \$200 million in premiums, I am proud to say that we have created 240 new jobs and opened a new office in New Jersey.

Over the past few months, there has been an orchestrated campaign of misinformation regarding GEICO's business practices. This misinformation has caused a great deal of confusion, and we are grateful to this Committee for an opportunity to set the record straight and to explain how our business practices benefit consumers with lower prices.

GEICO was founded in 1936 to serve only government employees, just as other companies were founded to serve only military officers, farmers, teachers, or lawyers. Over the years, GEICO has broadened its marketing and underwriting model to include all drivers, but the companies have used occupation as an underwriting criterion for over 50 years.

GEICO didn't get to be the fourth-largest auto insurance company in America and New Jersey, and one of the largest urban underwriters nationwide, by being unfair to anyone. GEICO is succeeding in the New Jersey marketplace because drivers in every demographic are saving money.

The overwhelming majority of GEICO's business is done over the phone or the Internet. We don't use brokers or agents in New Jersey. Any customer, anywhere in the state, can log onto GEICO's Web site or call our toll-free number 24 hours a day, seven days a week to purchase a policy. And just to clarify, GEICO only underwrites auto insurance, not other lines of business.

GEICO bases its pricing on decades of data collection and analysis, and our risk selection criteria have been actuarially validated. The New Jersey Department of Banking and Insurance has reviewed and approved all of GEICO's business practices, as have regulators across the country.

In a recent press release, one of our competitors in the state alleged that GEICO bases auto insurance rates and eligibility -- and I quote -- "solely upon education and occupation." This allegation is categorically false. The fact is that GEICO uses more than 20 factors, not just one or two, in determining rates for auto insurance. No single factor is ever used exclusively, or even primarily, to determine a rate.

The Insurance Commissioner of Maryland, our state of domicile, has dismissed this allegation against GEICO as being without foundation. And to address the comment earlier, regarding whether or not there was data available and had actuarial evidence been presented, the answer is yes.

In a recent in-depth analysis of GEICO's underwriting practices, the Maryland Insurance Department and an independent actuary stated that GEICO's use of education and occupation is predictive,

actuarially objective, and legally valid under Maryland's insurance and anti-discrimination laws.

The use of education and occupation is not a new concept in insurance pricing. Insurers, including GEICO, use these factors throughout the country, and have done so for many years, because these factors, along with the more than 18 other factors that GEICO uses, are accurate predictors of loss.

GEICO's occupational groupings are based on decades of data that show that people in some occupations, like teachers, are less likely to be in accidents than other occupations. Gender, marital status, age, driving history, and vehicle type are all other factors that GEICO uses in determining rates. A change in any factor may result in a change in risk and price.

In New Jersey and across the country, GEICO writes auto insurance through its preferred, standard, and nonstandard companies. Our competitor has alleged that the only coverage offered to individuals with a high school education or lower occupation is through one of the sub-standard companies. This is absolutely false. In New Jersey, in 2005, GEICO wrote 125,000 new policies in our preferred companies. More than one in three of these preferred GEICO policyholders falls into a so-called lower occupational group or has a high school education or less.

Conversely, over 25 percent of new policyholders in our standard and nonstandard companies are from so-called higher occupational categories or have more than a high school education. These statistics prove that having a particular occupation or educational attainment is no

guarantee of getting the best or worst rate. Education and occupation are merely two of many, many factors.

In conclusion, I'd just like to say Governor McGreevey and the Legislature created a very competitive marketplace that has benefited New Jersey drivers. However, the reforms are still in the early stages. Companies, not just in New Jersey but across the nation, are watching to see if these reforms stay in place or if changes are made to reverse them.

I hope that the information provided today will help the Committee and the Legislature continue the progress and protect the reforms that have resulted in more competition and saved New Jersey drivers millions of dollars in auto insurance costs.

I appreciate this opportunity to set the record straight, and I'd be happy to answer any questions.

SENATOR GILL: Any questions from any Senators?

Senator Scutari.

SENATOR SCUTARI: I'll defer to the ranking member.

(laughter)

SENATOR GILL: The ranking member has deferred to you.

SENATOR SCUTARI: Oh, thank you, Doctor.

What other companies in New Jersey use the criteria that we're discussing today, besides yourself?

MR. NAYDEN: I don't have the list with me, but I believe the representatives from the Department of Banking and Insurance do.

SENATOR SCUTARI: Do you have an estimate of how many companies utilize it?

MR. NAYDEN: I know there is at least a handful operating in New Jersey now.

SENATOR SCUTARI: And there's how many companies doing business in New Jersey in the auto market?

MR. NAYDEN: That I don't know. I know there are a lot more today than there were three years ago.

SENATOR SCUTARI: The criteria that we're discussing, which is essentially education and occupation -- correct? Those are the two criteria.

MR. NAYDEN: Yes.

SENATOR SCUTARI: Are they not covered by other criteria within your rating system? Is it redundant to utilize education and occupation?

MR. NAYDEN: According to our actuaries, and independent actuaries, absolutely not.

SENATOR SCUTARI: What is your company's position with respect to the correlation of education as it is to risk of loss?

MR. NAYDEN: What we found is that, over time, these criteria are predictive, as are many other criteria that we use.

SENATOR SCUTARI: They're predictive, based upon the statistics.

MR. NAYDEN: Yes.

SENATOR SCUTARI: But what would the reason be that someone with a four-year degree or a master's degree is less likely a loss or a better driver than someone who doesn't--

MR. NAYDEN: Senator Scutari, I'm a lawyer, not an actuary. I honestly cannot answer that question.

SENATOR SCUTARI: As Senator Lesniak pointed out, it may not matter, I guess. But my question is, why? Why is someone's employment determining their riskiness as a driver; or someone being more educated -- they're less risky than somebody who is more-- How would that -- other than-- I guess what you're saying is that data that's been collected over the years has shown that someone with a higher education is less likely to be involved in losses than somebody who has less education.

MR. NAYDEN: I know that companies over time -- and for GEICO that's been decades -- collect and analyze the data on their policyholders, and keep very close records on their losses.

SENATOR SCUTARI: So a person's occupation and person's level of education is helpful in determining how risky they are as an insured. Is that right?

MR. NAYDEN: Our data has shown that, in addition to the many other factors that we use to predict risk of loss.

SENATOR SCUTARI: So you can-- Two of the factors that you utilize to predict loss would be someone's occupation or someone's level of experience. And that's based upon historical data that you've collected.

MR. NAYDEN: That's correct.

SENATOR SCUTARI: But you can't tell me why that is.

MR. NAYDEN: Again, Senator, I'm not an actuary.

SENATOR SCUTARI: Do you think anybody could tell me why someone--

MR. NAYDEN: I don't know the answer to that question. What we do know is that the data are persuasive. And independent actuaries have looked at our data and have agreed they are predictive and actuarially justified.

SENATOR SCUTARI: I guess-- I'm not saying it's correct or not. I'm just trying to work this through. Someone who is a 17-year-old driver is generally now deemed to be a riskier driver than someone who is a 40-year-old driver. Would you agree with that?

MR. NAYDEN: I think those are the indications, yes.

SENATOR SCUTARI: And I guess-- I gather that we can determine that the 17-year-old driver is less experienced, or just engages in riskier driving habits. At least that's my thought on why that would be determined.

MR. NAYDEN: I think that would be accurate, yes.

SENATOR SCUTARI: But I'm grasping to figure why one occupation would be riskier than another, in terms of their driving habits. That I'm trying to figure out.

MR. NAYDEN: There is a very large number of personal characteristics, for example, gender, age, marital status. And I'm not sure that I could answer that question for any of those characteristics.

SENATOR SCUTARI: Fair enough.

So there may be a lot of criteria that may be difficult to get the causation between driving habits, besides the two that we're talking about.

MR. NAYDEN: There, more than likely, would be. But, of course, that's speculation as an attorney, not an actuary.

SENATOR SCUTARI: How many individual criteria is utilized in your rating particular drivers?

MR. NAYDEN: We use well over 20 criteria to underwrite and to rate risk.

SENATOR SCUTARI: Thank you very much.

Thank you.

SENATOR GILL: Senator Cardinale.

SENATOR CARDINALE: There was a time, not too long ago-- And, by the way, flattery is very welcome. (laughter)

But there was a time, not very long ago, that I used to get very frustrated by hearing GEICO's ads. I was a GEICO customer when I first came to New Jersey. And when I would hear how you can save all this money by going to GEICO, and then hear the tag, "Not available in New Jersey," it was a source of great frustration to me.

That changed not too long ago. And you came back to New Jersey. And, one, welcome back.

MR. NAYDEN: Thank you.

SENATOR CARDINALE: But was the ability to use these criteria a factor in the decision made by GEICO to come back to New Jersey?

MR. NAYDEN: It was one of the many, many factors that we took into consideration on return, yes.

SENATOR CARDINALE: Was there a prearrangement with the Department that you would be able to use these factors?

MR. NAYDEN: We simply came in and had initial discussions with the Department and, basically, showed them our entire business model, and asked them to review it and to approve it, which they did.

SENATOR CARDINALE: And they did approve it.

And so you haven't snuck this thing past anyone. You've done all of the things that were required in order to have your business model approved in New Jersey.

MR. NAYDEN: That's correct, Senator.

SENATOR CARDINALE: Thank you.

I don't have any other questions.

SENATOR GILL: I have a couple questions.

The data that you say the actuarials have provided-- Does that data show a correlation in the characteristic traits of a person who has less education -- and risk -- not the correlation, but simply between -- loss between groups -- but the characteristic of having less education directly relates to risk?

MR. NAYDEN: Senator, I'm not sure, again, as I'm not an actuary. I'm not sure I have the answer to that question.

SENATOR GILL: I understand what you are, but I do understand that you're here to--

MR. NAYDEN: What I can--

SENATOR GILL: Wait a minute.

I understand that you are here to represent GEICO. Now, we may have to ask this of others. But I know you're a lawyer. I'm a lawyer. We won't hold that against either one of us.

MR. NAYDEN: Thank you.

SENATOR GILL: You're welcome.

SENATOR CARDINALE: Speak for yourself now. (laughter)

SENATOR GILL: That's a non-lawyer.

Did GEICO provide the actuarial information to show two things: One, with respect to their underwriting, that there is a reasonable and demonstrable relationship between -- and I'm quoting from NJAC 11:3-35.3c2, Subchapter 35. "An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristic of the driver insured and the hazard insured against."

So did GEICO provide the correlation to show that the characteristic of being a high school graduate -- that characteristic, by itself, is a relationship to the loss that you are insuring against?

MR. NAYDEN: Senator, I do know that we provided our entire model and all of our data to the Department of Banking and Insurance for their review. I'm not familiar with the New Jersey gloss on the term of our reasonable and demonstrative relationship between risk and hazard -- under New Jersey law. But I believe that when the Maryland Insurance Administration hired their actuaries to review the correlation, this was precisely the kinds of things they reviewed.

SENATOR GILL: We're talking about New Jersey.

MR. NAYDEN: Yes, ma'am.

SENATOR GILL: And you know why I have that concern? Because we know that GEICO is being sued in Federal court, in a class action suit in Minnesota, based upon the use of occupation and education as a violation of the constitutional rights of minorities. And we also know that in several states, legislation is being introduced -- and has been

introduced -- where GEICO operated with education and occupation. Legislation is being introduced to prohibit that.

So what Maryland says is not disparate here. I would like to know-- And maybe I will also ask the Department of Banking. And that's a crux -- that's, I think, a serious issue for all of us on the Committee. At least for me. And if the actuarial information was simply part of the business model, or was it an independent assessment-- And I ask you that question, because we know there has been the study that's been done that says just the opposite, based on the actuarial determination -- I think you're aware of it -- that the drivers who are the people who are the worst drivers happen to be the doctors and the lawyers. And it's the blue collar workers that are the safest. So there seems to be, in the marketplace, a complete opposite. And I wanted to know if it was an independent actuarial, or was it simply your business model you submitted to the Department of Banking and Insurance, or you don't know.

MR. NAYDEN: Senator, we submitted all of our data for review.

SENATOR GILL: And that is-- That goes to another point. Why, under the -- my OPRA request, we asked for that information, or information that contained that information, to which the Department entered an objection -- and this is just for the record, not for you to answer -- entered an objection to that. And if the Legislature can't get that information to determine if there is a valid risk factor, that's a real issue.

But let me go on to another question, with respect to GEICO. GEICO, it's my understanding, is a holding company, correct? And it has four -- three or four GEICO subsidiaries.

MR. NAYDEN: We have two preferred companies with exactly the same coverages and rates. And then we have a nonstandard and a standard company.

SENATOR GILL: And does the nonstandard and the standard company have higher or lower rates than the preferred?

MR. NAYDEN: Generally, with GEICO -- and this is fairly standard in the industry -- the preferred company has, generally, lower rates. The standard company has slightly higher rates. And the nonstandard company has slightly higher rates.

SENATOR GILL: When a person makes an application to GEICO, and they are accepted, does GEICO tell the consumer which subsidiary they are being insured by?

MR. NAYDEN: That's correct.

SENATOR GILL: They do?

MR. NAYDEN: Yes, we do.

SENATOR GILL: Okay.

Now, if you had all factors being equal-- You had a 30-year-old who lived in the suburbs, a good driving record, and 18 of the 19 factors -- 20 factors you talked about -- a blue collar worker, lived in the suburbs, 18 of the 20 factors were exactly the same as the doctor or lawyer -- two factors are different: occupation and -- education and occupation. All factors being equal except those two, would the doctor pay a rate higher or lower than, or the same, as the blue collar worker?

MR. NAYDEN: Senator, I'm going to have to say maybe. And the reason I have to say maybe--

SENATOR GILL: Maybe as to which, *A*, *B*, *C*, or *D*?

MR. NAYDEN: It's possible that they might pay exactly the same rate. First of all, it's highly unlikely -- and there's a very, very small percentage of risk -- persons to be insured who would have all of the same characteristics with the single exception of education or occupation.

Secondly, even if that were the case -- and this is a very narrow hypothetical -- it could be that, under our model, they would get exactly the same rate. For example, driving characteristics -- a person's driving history: how long they've been driving, what their DMV and accident record are -- are weighted very heavily under our model.

SENATOR GILL: And I'm saying that those -- all of those factors are equal. Would the doctor pay less than the blue collar worker?

MR. NAYDEN: Depending on what all the factors were--

SENATOR GILL: All of them-- The 20 that you talked about--

MR. NAYDEN: Senator, I understand that.

SENATOR GILL: --18 of them are exactly the same.

MR. NAYDEN: What I'm-- I'm not communicating very clearly. What I'm trying to say is, depending on what the other 18 factors were--

SENATOR GILL: You said that there were 20 factors that come into consideration.

MR. NAYDEN: More than 20.

SENATOR GILL: More than 20. So if it's more than 20, what's the number of factors GEICO considers in underwriting insurance in the State of New Jersey?

MR. NAYDEN: More than 20.

SENATOR GILL: Okay. What is more than 20? Is it 30?

MR. NAYDEN: I believe it is less than 30.

SENATOR GILL: And where is the--

SENATOR LESNIAK: It's bigger than a breadbox.

SENATOR GILL: I don't know. I'm a lawyer, so those high school examples go right over my head. (laughter)

Now, what I'd like to know is, where are-- Where's the information that states exactly what criteria the 20 -- more than 20, and less than 30, and a little bit bigger than a breadbox -- where is that information memorialized?

MR. NAYDEN: The New Jersey Department has our entire underwriting and rating model.

SENATOR GILL: And do you consider that information proprietary?

MR. NAYDEN: Yes, we do, as would every insurance company in the country.

SENATOR GILL: So that at this point here (indiscernible) we have no information as to what criteria you use, in terms of from the one to 30. We don't have a complete listing, do we?

MR. NAYDEN: I don't believe you do have a complete list, Senator.

SENATOR GILL: Because what you do show, as to your underwriting, is certainly not 20 to 30 characteristics that you use, that the public is aware of, correct?

MR. NAYDEN: We have made entirely public our entire model, all of our data for both underwriting and rating, to the regulator.

SENATOR GILL: And so the regulator has it. And I'm not faulting you, so I don't want you to think my direct approach in my voice is that. The underwriter has these 20 characteristics that the public does not -- 20 to 30 characteristics that the public does not have, correct? The regulator has it.

MR. NAYDEN: That's correct.

SENATOR GILL: And the reason I ask you this is because we're going to the issue here of transparency.

The regulator has them. You say you utilize them. The public doesn't know what it is. And the regulator won't give it to this Committee. So, of the 20 or 30, if all were equal except two, would the blue collar worker pay more than the doctor?

MR. NAYDEN: Under some scenarios, absolutely not.

SENATOR GILL: And under some scenarios, absolutely?

MR. NAYDEN: Perhaps.

SENATOR GILL: Well, under what scenarios? Can you tell me what factors would outweigh occupation and education so that the blue collar worker and the doctor make (*sic*) the same?

MR. NAYDEN: The driver's driving history -- and that would be length of time driving, DMV record, accident history -- has a greater weight than either education or occupation in our model.

SENATOR GILL: In your model.

MR. NAYDEN: That's correct.

SENATOR GILL: In your model, is there a company where those people have left education-- Because in your-- And I would like to ask you that. You do, in your guidebook, talk about those professions. In

your index of filing, you talk about those professions that are-- You group them, correct?

MR. NAYDEN: Yes, we do.

SENATOR GILL: And you group them based upon education, and you group them based upon income.

MR. NAYDEN: No, we cannot group by income. That's not correct.

SENATOR GILL: You group by occupation and education, excuse me.

MR. NAYDEN: Yes, we do that.

SENATOR GILL: And in your filings, where you talk about -- and I would be referring to Page 4 of the GEICO -- education risk -- who have achieved at least a high school diploma or it's equivalent, are more favorable than those without a high school education. Bachelor's, master's, other advanced degrees are considered most favorable. Level of education is not a risk factor in occupation group 7 and 8. So in groups 7 and 8 -- and you know what group -- it is not a risk factor. But in all other groups, it is. And your group-- You know what groups 7 and 8 consist of, correct?

MR. NAYDEN: Yes.

SENATOR GILL: That's the undergraduate degree, graduate degree, and the professional class, more or less, correct?

MR. NAYDEN: I'm sorry.

SENATOR GILL: The professional class.

MR. NAYDEN: Groups 7 and 8?

SENATOR GILL: Yes.

MR. NAYDEN: No, that's not correct.

SENATOR GILL: Okay. Group 7 is college students, undergraduates, grad students, professional nurses, as well as those who have graduated within the last three months and they're continuing to look for occupation, or they're continuing to look-- And then it's the military, correct?

MR. NAYDEN: That is accurate, I believe.

SENATOR GILL: And in the military, the occupation determines -- because I think it is, what, E2? E2 is not a favorable group, correct?

MR. NAYDEN: Senator, our--

SENATOR GILL: No, I mean-- I'm just looking at your-- I'm simply looking at your guidelines.

MR. NAYDEN: Senator, first of all, I have no idea where you acquired that. And I don't know how old or recently issued it is.

SENATOR GILL: I will tell you where I acquired it, but that's of no moment, because I did it under the Open Public -- OPRA. And it's called "GEICO's Automobile Group to Company Placement (*sic*)," right? Are you aware of this? I don't want to question you on something--

MR. NAYDEN: Oh, absolutely. We do have underwriting guidelines, and they are filed with departments all across the country.

SENATOR GILL: I don't want to question you on anything you're not aware of, because I'm not doing ambush here. We understand where we are in this document, correct?

MR. NAYDEN: Yes.

SENATOR GILL: Okay. And in the issue with the groups and the education factors, a private in the Army is considered to be not favorable under GEICO's placement, correct?

MR. NAYDEN: If the data that we've collected over time showed that their loss experience is higher than other occupations, that would probably be true.

SENATOR GILL: And by defining it as an E2, you--

MR. NAYDEN: That would be the military's classification, not ours.

SENATOR GILL: That's the military's. But you use the military's classification. And I think it's E2. And you know, at E2, the poor private makes about \$24,000. So by classifying it in the military terms, and saying an E2 is not a favorable risk, you know what the income of the E2 is -- is \$24,000, correct?

MR. NAYDEN: I'm not aware of what the income of an E2 is.

SENATOR SINGER: Madam Chairwoman, when I was E2, we made \$120 a month, so I don't know when--

SENATOR LESNIAK: Me, too. That's what I got.

SENATOR SINGER: I don't know where you got \$24,000, but it isn't close. (laughter)

SENATOR GILL: Okay. Well, the E2--

I am a lawyer, so you will forgive me on arithmetic, but I'm quite sure the point has been made.

The E2-- It does not-- You know, by classification of his military status -- his or her military status -- what that person's income is, correct?

MR. NAYDEN: Yes, I suppose so, Senator.

SENATOR GILL: And in your placement, you say that those people -- somebody who may be a private in Iraq, fighting today -- in this placement, they are considered to not be favorable, correct?

MR. NAYDEN: Senator, you're reading from the guidelines. I don't have them in front of me.

SENATOR GILL: Well, let me summarize what the guidelines say. And for those who need to see them -- because I won't take you through them. It's the "GEICO Auto Group Guide to Company Placement," revised as of 07/05/04.

And GEICO talks about those groupings by occupation and education that are not considered favorable. One large group they talk about is blue collar and gray collar. Do you know what definition -- at least by example -- for the least favorable grouping or placement that a gray collar job would consist of?

MR. NAYDEN: For example, bartenders would be in that category.

SENATOR GILL: Would secretaries without college degrees--

MR. NAYDEN: They might be.

SENATOR GILL: Would construction workers without college degrees--

MR. NAYDEN: Yes, they could also be in that category.

SENATOR GILL: Would a home health aide without a college degree be in that category?

MR. NAYDEN: That's entirely possible.

SENATOR GILL: And would a Senator without a college degree be in that category?

MR. NAYDEN: No, they would not be.

SENATOR GILL: Why?

MR. NAYDEN: If--

SENATOR GILL: They didn't have a college degree.

MR. NAYDEN: If a legislator--

SENATOR CARDINALE: You get their other ones.

MR. NAYDEN: I said they wouldn't be. I should probably hold my thought on that and say it's entirely possible that a legislator -- legislative member would be in another category.

Senator, the important thing that I want to--

SENATOR GILL: I'm going to let you speak, but I do have some questions of definition that I would like to pursue. Because they are in the written placement for GEICO.

What would be an example of a blue collar job that is not favorable?

MR. NAYDEN: If, by not favorable, you mean has a higher indication of loss propensity--

SENATOR GILL: Well, it says *not favorable* in your--

MR. NAYDEN: And I think that's with-- And, again, that's an extract of the guidelines, which address not only occupation and education, but all of the other many, many factors that we use to underwrite.

SENATOR GILL: Oh, it does?

MR. NAYDEN: But I would say to you that--

SENATOR GILL: Just an example of a blue collar that would fit in that.

MR. NAYDEN: For example, an electrician might be an example of "blue collar."

SENATOR GILL: And does GEICO rate based upon -- or have in their least favorable-- If you have a job that only requires a college education -- only requires a high school degree. But let's say your job downsized, and you have a college degree. So now you're in a job that only requires a high school degree. Would the education aspect be determined by the level required for the job duty, which would only be a high school diploma, even though I have a college degree?

MR. NAYDEN: Senator, I don't have the answer to that question. But I can certainly forward that to your office. And I will get that answer.

SENATOR GILL: That would be extremely important, because I know that -- if I can use myself for an example. My legislative director has a law degree from Pepperdine. But since the job description does not call for an advanced degree -- although we can say that the work load does -- the job description does not call for an advanced degree. Would my legislative director be rated on the level of degree required by the job?

MR. NAYDEN: Senator, I can't give you a snap answer, but I will absolutely get that information and get it to your office.

May I--

SENATOR GILL: Because I would like to-- And you said that this document contains the characteristics of the 50 or so -- or your characteristics.

It says that the factors are grouped into three categories: driving record, drivers in vehicle -- and they talk about accident, theft, convictions, license suspension, age, occupation, number of drivers, driving experience, current insurance, current limits -- and years with your insurer. This document that gives the underwriting criteria does not contain the 20 or 30 criteria that you say is utilized. Is there a reason why?

MR. NAYDEN: Senator, again, I don't have that document in front of me. I believe that's an extract from our underwriting guidelines and our rating guidelines. And I will say that to price our insurance products, GEICO uses more than 20 underwriting factors.

SENATOR SINGER: Can I ask you one question, Madam Chairperson?

SENATOR GILL: I would like for you to--

Yes.

And I don't have-- I'll let somebody else question.

Can I have an attendant, please? I know you're guarding the door, but--

I'd like to make sure that you get an opportunity.

MR. NAYDEN: Senator, the other thing that I would like to just say is that every single occupation that you've mentioned -- in fact, every occupation -- has the preferred companies available upon underwriting. In other words, every single occupation, depending on the other factors, can be underwritten in our most preferred company.

SENATOR GILL: But we do know that when you start off, you start off saying these occupations are not favorable. And I had the attendant give you what I was reading from. So I just would like you -- just

so the record is clear and complete -- to take an opportunity to look at that. Is it what it says it is?

MR. NAYDEN: It appears to be, at least, an extract from our placement guide.

SENATOR GILL: Is it an extract or-- When you say extract-- That document is given to whom? Is it given to DOBI, is it given to the public? If you know--

MR. NAYDEN: Senator, I'm not sure. I'd have to sit down and go through every page in this document to try and determine--

SENATOR GILL: So you don't know if it's an extract or if it's the complete document, with respect to the underwriting characteristics.

MR. NAYDEN: I really cannot speak to this document.

SENATOR SINGER: Madam Chairwoman, can I just ask you one question?

SENATOR GILL: Yes.

And if you can return the document--

And I will let Senator Singer--

SENATOR SINGER: No, I have a question for you, Madam Chairperson.

SENATOR GILL: Oh, it's a question to me.

SENATOR SINGER: Yes. I'm glad I wore my white shirt day.

Let me just ask you one question. It is my understanding -- and I don't sit on Judiciary. I know that both yourself and the senior member here, Jerry Cardinale, do.

SENATOR LESNIAK: Ranking member.

SENATOR SINGER: Ranking. (laughter)

But it's my--

SENATOR CARDINALE: Senior has other connotation.

SENATOR SINGER: Well, ranking, senior, doctor.

It is my understanding, in the Judiciary, that in the case of looking at a judge's reappointment, you have the right to look at -- just follow me. Give me a little bit of leeway. You have the right to look at certain information that is not public information under -- and not available to other Senators or other people -- to look through in a special way, because you sit on Judiciary.

Would it be possible, as a Senator sitting on the Commerce Committee, that the Department would allow us to sit down with them and go over confidential information in their presence without the public, so that we would have a better understanding ourselves of what is going on, since we are not allowed to get information, publicly, since it's proprietary -- but yet to look at it, because we sit on this Committee? Could you not request that of the Department for us?

SENATOR GILL: I will certainly request that of the Department. And I think it goes to an even broader issue of the need for transparency. And it would be very good that we know about it. But then we would be restrained from discussing it in public, because we -- the proprietary objection would only be waived to the limited extent that we can look at it. But we can work that out. But I do think this goes to -- and your suggestion is well-taken. And we have the Commissioner here.

But it also goes to the heart of transparency, with respect to setting rates. And I think that your suggestion is excellent. I will proffer that. And I do think that that's something--

Anyone else have any other question?

SENATOR LESNIAK: Madam Chair, on that issue--

SENATOR GILL: Yes, please, Senator Lesniak.

SENATOR LESNIAK: It would appear to me that the rating criteria, in and of themselves, should not necessarily be proprietary. I mean, this is not-- I mean, everybody basically knows what the rating criteria are that insurance companies use.

Now, what they-- The factor that they-- And I may be wrong on that. But it seems to me, when you say something-- Look, every proprietary decision -- every decision as to whether something is proprietary or not is not a black and white thing. You have to weigh how much it is exclusive to that particular business.

Now, on the other side of that coin is what weight they give to each criteria. That's certainly proprietary. I mean, without a doubt. But the general classifications-- It would seem to me that that's something that we should know. And, quite frankly, I think it would be good for the insurer to quite frankly -- for us to know so that we can actually see the broad picture that's painted that allows many of the people who I represent, who don't have college degrees, who aren't doctors or lawyers -- are insured by preferred rates by GEICO. It would certainly paint a better picture, I think, for me to understand. And I think it would inure to the benefit of the -- of GEICO and other insurance companies, as well.

SENATOR GILL: I think it is crucial that we know what weight is given by GEICO to occupation and-- Not just that we use 20 to 30 different things, but what weight is given. Because if we, as a committee of legislators -- we don't have that information. And if you give 95 -- let's

just say -- 95 percent of the weight goes to occupation and education, then that cancels out, in terms of the determining factor, the other 20 or 30.

And the reason I say that, Senator Lesniak, is because we have a stated public policy, that this Legislature passed with the reform act, that says you cannot use race and income. And in order to understand -- and it may or may not be. If this is being circumvented by giving more weight to income and education, you have circumvented the very things we put in place to prohibit discrimination, both on income--

So we ask for that information. And I think that's vital, given the tenor.

You don't know, and you're not an actuarial. So I think it's important that we do know that very information.

SENATOR SINGER: Madam Chair, the only reason why I would like to look at--

SENATOR LESNIAK: Senator, if I may, because that was a response directly to my statement.

I just want to make this clear. I didn't suggest that it wasn't important. I suggested that it would be proprietary. I just want to make that clear.

SENATOR GILL: Okay. I get it.

SENATOR SINGER: Just to add one thing to that, Madam Chair, just to clarify is, my next door neighbor is a plumber, and his house is bigger than mine. So I'm not quite sure how you guide jobs sometimes.

SENATOR GILL: Are there any other questions of GEICO?
(no response)

Thank you very much.

MR. NAYDEN: Thank you, Madam Chair.

SENATOR GILL: Oh, I do have one question.

MR. NAYDEN: Yes, ma'am.

SENATOR GILL: If we prohibited the use of education and occupation, would New Jersey still be a competitive market? Or do you need those two things in order to be competitive?

MR. NAYDEN: Senator, I think that--

SENATOR GILL: Profitwise, we're talking about. Can you make a profit that makes you competitive without the use of education and occupation?

MR. NAYDEN: Senator, I think that anything that the Legislature does to roll back these reforms would move toward making the market less competitive than any-- If companies have fewer legitimate underwriting tools to use, yes, that would make the market less competitive.

SENATOR GILL: And I do like your qualifying factor of legitimate underwriting tools. Of course that's to be determined by us.

Thank you very much. Thank you for being in New Jersey.

And we understand that all of the reforms-- They have worked. Some of them haven't. And that's what we're getting here.

But thank you very much for your testimony.

MR. NAYDEN: Senator, thank you very much for allowing me to speak today.

SENATOR GILL: Thank you.

The next witness, please.

MR. LORETTE: The next presenters before the Committee will be a panel of representatives from the Department of Banking and

Insurance, including the Commissioner of the Department, Steven Goldman; the Director of the Division of Insurance for the Department, Donald Bryan; as well as the Assistant Commissioner of Property and Casualty within the Division of Insurance, Bill Rader.

SENATOR GILL: Thank you very much, Commissioner. I understood that you would be in D.C., but you made different arrangements so you could be here. So I'd like to say, in advance, that the Committee really appreciates that -- and to the rest of the members who will testify.

But thank you very much for changing your schedule.

COMMISSIONER STEVEN M. GOLDMAN: You're welcome.

Thank you, Madam Chair and members of the Committee.

I think they've already been introduced, but let me again introduce the Director of Insurance, Don Bryan, who is to my immediate right; and the Assistant Commissioner for Property and Casualty, Bill Rader, who is to his right, who will help to respond to the Committee's questions today.

The purchase of insurance transfers the risk of an uncertain, infrequent, and future event of significant consequence in exchange for a known premium payment. The nature of the insurance product thus requires a degree of regulation to protect purchasers.

This involves three separate but related goals. First, to promote sound financial practices in order that insurers remain solvent and able to pay claims. Second, to promote fair trade practices by oversight of insurers' marketing and claim practices. And, third, to promote a healthy market of

available and affordable insurance products that meet consumers' needs by prudent oversight of the products they offer. True consumer protection requires simultaneous consideration of all three goals. And this is the Department's aim as it carries out its regulatory responsibilities.

Auto insurance is only one of two lines of insurance where the purchase of the product is mandated by law. When the force of the law mandates that the general public purchase insurance, government establishes a captive market for the suppliers of the product. In this circumstance, government has a unique and special responsibility to assure that the product is both available and affordable.

Before I specifically address rating, I'd like to provide a brief background on auto insurance regulation in New Jersey.

From about 1972 through 2001, the focus of public policy was to try to make auto insurance affordable for the people that were required to buy it. This is a daunting task, as we found out.

New Jersey is the most densely populated state in the nation. The cost of auto insurance is high in New Jersey because of high traffic density, which promotes accidents; generous medical benefits that fund our excellent trauma care system and the health care associated with the aftermath of accidents; the relative wealth of our residents who purchase high limits of coverage; and newer, more expensive cars that cost more to fix or replace -- and for other similar reasons.

To try to maintain affordability, New Jersey enacted a series of laws that sought to control every important aspect of this business. Since the easiest way to keep insurance affordable is to control the price, New Jersey required prior approval of insurance rating systems. In doing so, it

established a rate-making formula that restricted return on invested capital. Laws were enacted that established internal subsidies. We developed data filing and review processes that prevented or delayed increases.

And on the other side of pricing, the Legislature enacted an excess profit law that tightly capped return on investment over a three-year look-back period, when the industry norm is to determine results over a longer period of time.

When this assigned risk plan resulted in high prices, the Legislature created a State supervised residual market mechanism known as the JUA. When that failed, New Jersey lawmakers mandated that all insurers provide coverage to all drivers except those with the very worst driving records. Finally, the law compelled insurance companies to remain in the market by restricting their withdrawal through a process that could take six years or more.

Although these restrictions were undertaken in good faith, and many were aimed at addressing a particular problem at a particular time, their accumulation over 30 years resulted in a steady erosion of insurance companies willing to make the capital investment necessary to meet the personal auto insurance needs of New Jersey's drivers. Some insurers withdrew from the market, and many insurers created New Jersey-only companies with limited capital. Companies that remained in the market sustained losses and became insolvent, or so financially stressed that they were forced to cease writing new business.

In 2001, the market was in crisis after two major insurers with more than 20 percent of the market -- over a million cars -- announced their intention to stop doing business in New Jersey. No new market entrants

were replacing them. Despite the take-all-comers law, the supply of auto insurance product was disappearing, and the public policy concern was availability.

That crisis created the will to address our market problems in a fundamental way, and resulted in the auto insurance regulatory reform laws, which were enacted with strong bipartisan support in 2003, and the complementary regulations adopted by this Department to implement those laws. The 2003 reforms did not repeal the regulatory structure, but they revised them so as to provide a framework for the development of a competitive market which held the promise of better availability and affordability.

Regarding pricing, the Legislature did not repeal the prior approval rating law, but revised the rate review process to make it quicker and more certain. Nor did it repeal the excess profits law, but it revised it to make it less likely to interfere with normal investment decisions. The reforms didn't repeal the take-all-comers statute, but phased out their effects over five years for insurers that met growth targets, and thereafter limited its reinstatement to times of severe market availability problems based on objective criteria. The law didn't repeal restrictions on withdrawal, but made the process shorter and more certain so that restrictions on market exit were not a significant deterrent to market entry.

The results have clearly benefited consumers as the Legislature intended. Companies planning to withdraw suspended these plans, and are now reinvesting in our state. Companies are competing for new business through advertising in all media forums. Companies have reduced rates or issued special policyholder dividends in excess of half a billion dollars.

Significantly, the reformed New Jersey market has attracted new entrants, including some of the largest, nationally recognized auto insurers in the country. And there are more, I might say, who are considering coming.

But we need to recognize that the reformed market is still in transition. Business practices that have developed over 30 years are still being adjusted to this new competitive environment. We need to ensure that recent entrants into the marketplace remain, and that the reformed market continues to attract new competitors, including small and niche market insurers. In doing so, we need to appropriately encourage the positive affects of free markets, such as price competition and incentive for investment, while preventing the unfair and imprudent behaviors that unregulated markets can produce.

A significant feature of the history of insurance regulation is the tension between the general goal of a highly efficient market, on the one hand, and the desire to accomplish specific societal objectives on the other. The desire to achieve specific societal objectives can result in rate setting based on factors other than actual loss costs.

While there can be compelling society reasons to force insurers to charge a given group of consumers less in premiums than that group costs in claim payments, doing so can create market distortions. At the least, that means charging one group of consumers more than is justified based on their claims and risk profile, and charging another group of consumers less than is justified based on that group's claims and risk profile.

Generally speaking, premiums need to cover claims payments, business expenses, and a reasonable return on the capital required to be invested in order to license the insurer. Since the main cost of providing

insurance is paying claims under the policies that are issued, it is in the business interests of the insurer to distinguish between, and charge the right amount of premium, to each and every group that it insures.

While it is theoretically possible to charge all insureds at the same rate, different insureds present different risks of loss. One can see why it's important to charge the right premium to each group when one realizes that charging a low risk group too much money sends members of that group to competing insurers, where the price is more appropriate. That leaves the insurer with a disproportionate number of high risk customers, a situation that can lead to insolvency. On the other hand, charging a high risk group too little money attracts more members of that group to the company, creating the same situation, a financially unhealthy balance of customers that can lead to insolvency.

Two simple examples illustrate the point. Take life insurance. Smokers have a different life expectancy than nonsmokers. And since they present a higher risk, they are charged more. In this example, a life insurer that charged both groups the same would be charging too much to the nonsmokers and too little to the smokers. Nonsmokers would tend to purchase coverage from other competitors who charged less, and the smokers would be attracted to the single-rate company. This scenario illustrates that in order to accomplish the three goals of insurance regulation I previously mentioned, it's important for the regulatory framework to allow insurers to charge an appropriate rate, given the probable frequency of the loss payment presented by the risk.

In auto insurance, a second stark example would be an insurer that charged the same amount for comprehensive coverage to the owners of

a Cadillac and a Chevrolet. While the risk of both cars being stolen might be the same, the payment to replace the more expensive car would be much higher, and so its owners pays a higher premium to reflect the potential claims cost. This scenario illustrates that in order to accomplish the regulator's goals that I mentioned, it's important for the regulatory framework to allow insurers to charge an appropriate rate for the severity of the potential claim, in addition to taking into account the frequency or likelihood of the loss payment that I illustrated with the smoking example.

Thus, in regulating rates, the Department's role is to evaluate the soundness of each insurer's proposed rating system in order to ensure that those systems reflect the frequency and severity of loss to the extent allowed by law. The essence of the regulatory responsibility is reflected in N.J.S.A. 17:29A-4. That statute requires that rates be neither unreasonably high nor inadequate for the safety and soundness of the insurer, nor unfairly discriminatory between customers presenting essentially the same level of risk and expense. This standard, which is used across the country, is important not only for assuring that companies remain financially strong enough to pay claims, but to assure that each class of customer is charged rates that are fair, with respect to the risk of loss that they present.

The degree to which a proposed rating factor seems intuitive or obvious is inconsequential. What is consequential is the degree to which a rating factor actually -- and by that I mean in a mathematically demonstrable way -- predicts the probability of losses.

It's important to understand that there is no single characteristic that causes accidents, or stolen cars, or other kinds of loss. Having a claim one year does not cause you to have a claim the next year.

Being 17 years old does not cause you to have an accident any more or less than having a college education, being single or married, male or female, or working as a lawyer or on an assembly line. It is the mathematically demonstrable correlation between one or more of these characteristics, and the frequency and severity of losses, that makes a particular factor worthy of consideration for purpose of insurance rating.

Causation is an unworkable concept for the purpose of insurance rate setting and regulation. In the end, there really is only correlation. No one correlation is more driving related than any other. What distinguishes one correlation from another, from an actuarial point of view, is its predictive power.

Finding the highest degree of predictive power is a perpetual goal of insurers, and methods for achieving that goal have evolved over the decades, along with technology and the sophistication of actuarial science. Some factors that seem commonplace today looked strange when they were introduced. Indeed, some factors that are well accepted today can be made to seem strange again, depending upon the perspective from which they are viewed.

For example, we all tend to accept that 17-year-olds should pay more, because they are riskier drivers. But couldn't one argue that they also have faster reflexes and that helps them to avoid accidents? As new drivers, couldn't one assume that they would be more reluctant to engage in risky behavior likely to cause an accident? And one might expect that they would be extra cautious, because their use of the family car -- their long-awaited privilege of driving -- is on the line.

The statistics demonstrate that young drivers, on average, generate three to four times the claims of all drivers. The point is that, depending on your perspective, we can argue that this or that group is more or less risky. In the end, only the statistics tell you for sure. So that is what insurers look to in analyzing the risk characteristics of certain drivers as a means of predicting the frequency and severity of their claims. To approve these rating factors, regulators require statistical support that demonstrates the correlation.

The goal of maximizing predictive power through statistics is why modern rating systems have evolved to use many, many factors, sometimes resulting in millions or billions of combinations or permutations in a single rating system. Indeed, so many factors can be in play that drivers with a couple of so-called *bad* characteristics still end up with some of the best prices, because a lot of good things are being measured, as well.

Basing rates on a few characteristics doesn't tend to work well for either insurers or consumers. Focusing on auto accidents is insufficient, because accident-producing claims are infrequent occurrences. Of 100 cars, on average, only seven will produce collision claims per year, and only one will produce a bodily injury claim.

As members of the Committee may recall, New Jersey tried, but then quickly abandoned, such a narrow approach more than a decade ago, when it legislated, and then replaced, a mandate that accidents and violations be the primary rating factors.

The eligibility point surcharge system that grew from this approach was unsuccessful, because it was perceived that the significant surcharges unfairly penalized drivers for minor infractions. You may also

recall that the eligibility point surcharge system was replaced by what was called *tier rating*. As initially implemented, tier rating grouped a number of rating characteristics together into a few tiers. Again, consumers were dissatisfied when a change of circumstances moved them to a higher tier, because the cost differential between tiers was often significant.

While New Jersey was dealing with eligibility point surcharges and tier rating, insurers in other parts of the country were developing more sophisticated rating systems that used technology to analyze the predictive power of a whole host of new rating factors. These modern rating systems have demonstrated their success in the marketplace through the growth and success of the companies who use them, and the satisfaction of the customers who pay fair and reasonable rates when buying their products. Insurers tend to succeed when they predict well, and run into trouble when they don't.

We, in New Jersey, didn't have much chance to see these examples of success firsthand before the auto reforms of 2003. Until then, our failure to progress along with the rest of the country had hurt not only insurance companies and their capital investment in New Jersey's auto insurance market, but the thousands upon thousands of New Jersey drivers who paid higher rates than they do today, when they were able to find coverage at all.

Members of the Committee may recall that the crisis that sparked reform was one of availability. But the regulatory changes that brought new insurers here to deal with that crisis have resulted in lower rates as well, and that is telling.

Insurers have put more than one-half billion dollars back into the pockets of our drivers. This has occurred broadly, with premium reductions or special dividends for about 75 percent of policyholders. The question of whether or not to prohibit this or that rating factor out of the multitude now in use, despite a mathematical correlation to losses, must be viewed in the context of modern rating systems in use across the country, and now in New Jersey, as well.

When, following the reforms, the Department was confronted with new entrants to our market that sought to use the rating systems by which they competed in other states throughout the country, it approved those elements of the systems that were actuarially supported and not prohibited by our statutes. Doing so was, and continues to be, consistent with the object of the reforms: to attract new carriers and new capital to our market so as to address the crisis in availability. Not only was that legislative purpose served, but the competition that it has spurred has measurably improved affordability, as well.

New Jersey drivers have more choice and availability in auto insurance today than ever before. In a competitive market, with different insurers using different rating factors, consumers are able to shop and compare prices. The fact that an individual insured finds that a particular insurer's rates, based on its combination of rating factors, yields the most competitive prices for that person does not mean that another individual insured pays more. The second consumer can purchase coverage from a different insurer that uses a different set of rating factors that result in a better price for them.

So, in trying to ascertain the costs of potential changes to the current approach, it's helpful to look to New Jersey's not-too-distant past, a time when auto insurance was far more problematic than it is today. The Department strongly urges the Committee and the Legislature to allow the reforms of 2003 to continue to their conclusion and to permit the newly competitive market to fully stabilize, rather than inadvertently returning to the piecemeal regulatory approach of the '70s, '80s, and '90s.

Thank you, again, for inviting the Department to testify. We'd be happy to take any questions.

SENATOR GILL: Thank you very much, Commissioner.

Are there any questions?

Senator Cardinale.

SENATOR CARDINALE: It's not really a question, Commissioner, but an observation. And you gave a very thorough history of my whole tenure on this Committee. I lived through all of those. And you were very right. And I would like to perhaps even paraphrase what you said and say it a little more succinctly.

When we try to manipulate, as legislators, factors -- probably in any business, but particularly in insurance -- that we really don't know an awful lot about-- We could be on this Committee forever, and we really don't know enough to effectively try to make the kinds of changes that perhaps the people in the Department, who deal with this on a much more in-depth basis -- they can't even do it very well. I think the companies are the best people to create those factors, because they have something to lose. And they're careful about whether they're going to win or lose in any given year, or over a period of time.

I want to thank you very much for your presentation to the Committee. And I think there's nothing -- and I listened very carefully -- there's nothing that I could find to improve in your presentation.

Thank you.

COMMISSIONER GOLDMAN: Thank you, Senator.

SENATOR GILL: Senator Lesniak.

SENATOR LESNIAK: Thank you, Madam Chair.

And I'm sure the Chair's going to follow up on this line of questioning that we kind of concluded with, with the representative from GEICO, with regard to what is proprietary and nonproprietary information.

It occurred to me that if I were a competitor of GEICO, it probably would be a simple thing to set up a computer program, hook it up to their Internet system, and quickly determine, just by running a series of permutations, what their criteria is, and get a pretty good idea even of what their weighting system is.

What's your view on how proprietary is the underwriting criteria that the Chair has asked for?

COMMISSIONER GOLDMAN: I think the general criteria, the rating factors, are not necessarily what I would consider to be absolutely proprietary. But, certainly, the methodologies each company designs and applies to their various criteria, I think, would be highly proprietary. I think they've developed a very sophisticated computer model, after a lot of expenditure, to determine how to weigh certain factors, and how they weigh them in certain markets. And that's pretty essential, I think, to their business model. So I think every company would find that sort of information to be very highly proprietary.

SENATOR LESNIAK: One other follow-up question that the Chair asked -- and that is-- And I don't necessarily disagree with your answers. Actually, it's the answer I gave. But the Chair raises a good point.

GEICO is stating that there are over 20 but less than 30 criteria that they use.

SENATOR GILL: Size of a bread basket.

SENATOR LESNIAK: And maybe one of its competitors that have made some charges -- that they have categorically denied, in terms of them being the sole -- education and occupation being the sole criteria that they use -- could allege that they're hiding behind these 20-plus, when really 98.9 percent are education and occupation.

Staying within those proprietary guidelines, could we receive some level of assurance, with regard to the relativeness of -- not even interrelated, but the overall weight of the two criteria that could be, if abused -- could be considered objectionable?

COMMISSIONER GOLDMAN: Well, Senator, I'm sure you know, and I'm sure the Chair knows, that the basis of the submission of the information to the Department is on a confidential basis. To what degree we would be permitted, by law, to release that is something that I couldn't answer without, frankly, getting a legal opinion on. The regulatory function requires a great deal of proprietary information to be submitted. It's submitted in order to allow the Department, as the regulator, to carry out its function. It's not generally intended for public dissemination. And so before that, we could consider to what degree that might be permitted. We'd have to understand what the legal limitations and the ramifications, obviously, for ongoing regulation are. I mean, it's necessary to continue to

perform the regulatory function. And if the submitters of the proprietary information felt, at some point, that in the future it's possible that information could become public, it would make the regulation function pretty much impossible.

SENATOR LESNIAK: Thank you.

I fully understand that answer.

And one last question, Madam Chair.

Obviously though, any information that was proprietary, based on the confidentiality agreement, could be made-- (interference from PA microphone)

You remember Morse Code? Were you in the Army with me?
(laughter) It goes back to World War I -- I don't go back that far.

Certainly anything can be made, under that agreement, on proprietary, based on the agreement with the Department and whoever the applicant was, correct?

COMMISSIONER GOLDMAN: We would-- Again, I would want to make sure we were complying with whatever legal obligations we had before I answer that question.

SENATOR GILL: Any other questions of the Commissioner?
(no response)

I just have a few.

A competitive market does not take -- does not trump a violation of underwriting if it's based upon race or income, does it?

COMMISSIONER GOLDMAN: A competitive market does not--

SENATOR GILL: Trump the consumer protections that you should not use in scoring. That you should not use, or cannot use, or consider race or income.

COMMISSIONER GOLDMAN: That's correct. But in approving the rating system, we obviously are very well aware of what the law permits and doesn't permit, in terms of the rating factors. And so we obviously take that into account when we look at the rating factor.

SENATOR GILL: And so when you looked at the rating factors, with respect to GEICO, did you analyze it to determine if those rating factors circumvented the prohibition against using income and race? Did they result in being able to use race and income by using occupation and education?

COMMISSIONER GOLDMAN: Well, I have two responses to that, Senator.

First of all, when the rate proposals were first presented to the Department, they were new to the Department. As I said in my testimony, these sorts of rating systems were new to New Jersey when they were presented. And so we had no history, then, of the potential -- I guess -- substitution or proxy of any of the factors for race or income. They were new. They hadn't been used in this state at all.

SENATOR GILL: Well, even though they had not been used in the state before, they had certainly been used in other parts of the country.

COMMISSIONER GOLDMAN: They had been approved widely across the country.

SENATOR GILL: And in other parts of the country, there had been challenges to the use, based upon the implication of race and income. Were you aware?

COMMISSIONER GOLDMAN: I don't know what the timing of that was, Senator. So I'm not-- I don't know.

SENATOR GILL: But even though the rating system may be new, don't you vet it to determine if that rating system would violate or circumvent the use of race, income, ethnicity, and the other prohibitions that are in the statute?

COMMISSIONER GOLDMAN: My understanding -- and I'm going to let Don Bryan address it.

SENATOR GILL: Okay.

COMMISSIONER GOLDMAN: My understanding was, and remains, that at the time that the rate system was presented, it was compared to the legal requirements that existed, including the preclusion of using race or income as a basis for rating. And it was found to be compliant. But I'll let Don address it further.

D O N A L D B R Y A N: Thank you.

Just briefly, Senator, the insurers have not, for many decades, captured data about race as part of insurance applications. As far as income, that is not something that they capture in order to develop a correlation with income, etc. We don't have any data that can compare those factors with rates. What we do get is income -- excuse me. What we do get is data that addresses the requirement, under our law, that the rating system -- the rating factors demonstrably show the correlation between the risk of loss and the rating factor. And that's what we get.

SENATOR GILL: Do you take it one step further, like you would -- assume to be required here -- to see if-- Even if it's a correlation-- Let's say, for the sake of argument, that you can show the correlation between the risk factor and the characteristic. But that rating factor has an impact on -- a disparate impact -- on a racial group, and that those rating factors, by asking occupation, circumvent the prohibition of income. Was that a basic inquiry made by the Department of Banking?

MR. BRYAN: No, it was not. We do not have the data or the capability to be able to do a disparate impact factor, assuming that it would be relevant to our decision whether to approve the rating system or not.

SENATOR GILL: I would think -- correct me if I'm wrong -- that it would be -- should be extremely valid to your decision -- if something is race-based or income-based, because that's what is directly prohibited by DOBI, in order to protect the consumer.

That kind of evaluation was not made. And you say you don't have the ability to do it.

COMMISSIONER GOLDMAN: The problem is, Senator, we would need race data in order to be able to compare the impact.

SENATOR GILL: Can you tell me--

COMMISSIONER GOLDMAN: And we're not permitted -- and we don't think we ought to be -- to collect that sort of data.

SENATOR GILL: No, not that you collect it. But do you see if it has a disparate impact?

For example, we know that -- and we read the statistics about the college degrees, and the income level, and how GEICO puts certain blue collar, gray collar workers as least favorable. Did you make an analysis--

What weight was given to income? What weight was given to occupation and education in the rating by GEICO? What weight do they give those characteristics?

COMMISSIONER GOLDMAN: That's the proprietary information, Senator, that we didn't turn over to you, pursuant to your OPRA request.

SENATOR GILL: And did you, with that information that you had -- knowing what weight is given to income -- not income -- knowing what weight is given to occupation and education by GEICO-- Did you vet that to see if it violated the race and income statute?

COMMISSIONER GOLDMAN: In order to make the analysis you're suggesting that we make, we would have to make assumptions about the steps from education and occupation to income, and then from education, and occupation, and income to race. And we did not do that analysis, because we can't work on those sorts of assumptions. We have to work with the data -- the statistical data that's presented to us. And so we're--

SENATOR GILL: If you took the census -- and assuming what weight is given that you say we can't know -- and you're not telling because of these restrictions-- No one here knows. But we do know that, with respect to education, we don't have-- Seventy-four percent of the people in New Jersey don't have a college degree. And we know that, with respect to minorities, it's 87 percent.

Given that factor, you could just look on the census to see if they're going to use -- if they're going to weight -- whatever weight is going to be given that you can't tell the public, but the public is going to have to

pay the price-- Whatever weight is given to this, let's look at the occupation, let's look at the education to see what -- because it's education as to degrees, it's not just one or two years. Let's see what potential impact, statistically, that could have. Because it is a factor that really the insured can't change. I mean, it is what it is.

So let's see if GEICO is giving it 10 points, those people who could be affected by it. And does it circumvent our public policy. You don't have to collect race data. All you have to do is go to the census, and you could go to the board of ed, or the board of higher education, or the Department of Education in New Jersey. They can tell you the racial breakdown, as well as the other breakdowns.

COMMISSIONER GOLDMAN: Let me respond a couple of a ways, if I might.

First of all, while we have not tracked the effect of the data as you suggested, we do keep track, by territory, of the results of rates, average premiums. What we have seen-- And we do that across the entire state. What we have seen is that in 12 of the 14 urban territories, rates have gone down. And we have seen that in the two urban territories where rates have not gone down, there have been very modest increases on average premiums in the range of \$6 or \$8. And we have seen that, on a statewide basis, premiums--

SENATOR GILL: Go ahead, I'm sorry, Commissioner.

COMMISSIONER GOLDMAN: That's all right.

And what we have seen, on a statewide basis, is that New Jersey consumers -- pretty much across the board, as I mentioned, 75 percent or so

-- have saved significant amounts of money as a result of the competitive market, which has grown directly out of the 2003 reforms.

SENATOR GILL: And how long has GEICO been using rate -- the criteria of education?

COMMISSIONER GOLDMAN: Since their entry into the market in 2004.

SENATOR GILL: In 2004.

COMMISSIONER GOLDMAN: Yes.

SENATOR GILL: So your data doesn't show the impact, yet, of what the policy may be, correct?

COMMISSIONER GOLDMAN: Well, I can't say that we have tracked the specific impact of those two rating factors, if that's your question.

SENATOR GILL: Yes, because--

COMMISSIONER GOLDMAN: No, we haven't. And we don't track the impact of any particular rating factors. But when we look at the market in whole, we see a very positive effect on the market, including, as I said, in the urban areas.

SENATOR GILL: Are you aware--

Are there any other questions?

I just have two more.

Are you aware of the class action suit filed against GEICO in Minnesota, based upon the effect of the occupation and education as a discriminatory factor, with respect to minorities?

COMMISSIONER GOLDMAN: I'm aware that it exists. I have not seen the complaint.

SENATOR GILL: Do you think that that would be an important item -- or at least to look at the complaint, to look at the documentation? Because it is, actually, a class action suit for all African-Americans in the United States, which would include New Jersey, and its impact.

So has the Department, as you know, made an investigation of that complaint?

COMMISSIONER GOLDMAN: We have not seen the complaint. No, Senator.

SENATOR GILL: Okay.

Senator Scutari-- Is that okay? You had a question.

Oh, he's going to defer to you, since you--

You have questions?

SENATOR SCUTARI: Just a couple, briefly.

Can you tell us what other companies utilize those factors, now, in New Jersey?

COMMISSIONER GOLDMAN: Education is used by eight companies in New Jersey.

SENATOR SCUTARI: Eight?

COMMISSIONER GOLDMAN: Eight.

Education and occupation, together, are used by two.

SENATOR SCUTARI: Can you tell me which companies those are?

COMMISSIONER GOLDMAN: GEICO, Electric Insurance, AMEX Insurance, Liberty Mutual, Liberty Insurance, New Jersey Skylands Insurance Association, New Jersey Skylands Insurance Company, Esurance

Insurance Company, and AmeriStar Insurance Company use education. GEICO and Electric Insurance use both education and occupation.

SENATOR SCUTARI: And how many companies do we have in New Jersey, currently, writing insurance?

COMMISSIONER GOLDMAN: Approximately 70.

SENATOR SCUTARI: There's 70 different companies now?

COMMISSIONER GOLDMAN: Yes.

SENATOR GILL: Are you two--

SENATOR LESNIAK: I'm sorry.

SENATOR GILL: Do you have any more questions?

SENATOR SCUTARI: I'm sorry.

Would education and occupation be covered in any of the other criteria that these companies utilize? Would it be-- Meaning, is that redundant? Is that a redundant factor, education and occupation, as opposed to some of the other factors?

MR. BRYAN: No, it's not. We have them do what's called a *multi-vari* analysis to show that each of the factors are -- stand alone, and are considered by themselves in being approved in their rating system.

SENATOR SCUTARI: Thank you very much.

SENATOR GILL: Senator Lesniak.

SENATOR LESNIAK: That does prompt -- thank you, Madam Chair -- this question, because I thought that in analyzing the rating criteria used to ensure that it's consistent with our statutory mandate, and particularly with regard to the prohibition against using race and income as criteria, that-- And I thought we were a little bit off base in focusing just on the occupation and education components -- that you really need to -- and I

may be wrong on this. You really need to look at the impact of all of the criteria together. Because there may be other criteria that have an impact, intentional or unintentional, in the opposite direction.

Is that a fair assumption, that really all the criteria combined result in an impact, in terms of the market that each company is seeking, and whether it may or may not be violating any prohibitions in an indirect way?

MR. BRYAN: It's a difficult question to respond to. When we review a rate filing, we look at the separate rating factors and the support for the use of each one of them.

SENATOR LESNIAK: I understand.

MR. BRYAN: As far as the ultimate results-- A very interesting question is, does this mean that at the end of the process, is there an overall disparate impact on the whole system? I don't know how we could get that, because as I said, the insurers themselves don't collect race or income data. So we can't get it from the insurers. Whether you could get it from some other source, I don't know.

SENATOR LESNIAK: Thank you.

SENATOR GILL: Are there--

Oh, I'm sorry, Senator Cardinale.

SENATOR CARDINALE: You keep looking over to the other side of the room. (laughter) We are here.

SENATOR GILL: Are they--

SENATOR LESNIAK: At the beginning of the hearing you got all the questions.

SENATOR GILL: Are they to my left?

SENATOR LESNIAK: And first, as the ranking member.

SENATOR CARDINALE: I like that title, you know. Will you continue using it?

SENATOR GILL: Senator Cardinale.

SENATOR CARDINALE: You said that you don't collect racial data. What is the reason for that?

MR. BRYAN: I think it has been not collected by insurers at least since the 1950s. A few years ago, an issue came up about -- that dealt with inappropriate rates charged, based on race, among certain life insurers that we looked at. We looked back through our archives, and the closest thing we could find that was relevant was a bulletin from the commissioner in 1962, which referenced that this data hasn't been collected in some years, but that there was apparently some continuing results of that in rating systems. And he was directing that insurers eliminate that. That was 1962. And so I would not think that the use of that -- use of racial data would be appropriate to be collected because of the possibility of it being misused.

SENATOR CARDINALE: If you were to issue a directive to all of the companies that report to you, and require them to provide racial data, would there be any law in New Jersey that we would be violating if you did that?

COMMISSIONER GOLDMAN: Well, since the law prohibits them from collecting it, I don't know how they could comply with such a demand in any case. So I don't know.

My answer to your prior question, I think, would be a simple one. It was in an effort to make sure that the relationship between a

potential insured and the company was not based on race. And so, therefore, you didn't want the data collected.

SENATOR CARDINALE: It's my impression of the law in New Jersey -- and not being a lawyer, sometimes I don't know all of the answers to the questions I ask.

But my impression is that it would be bordering on, if not an actual violation of the law -- if the Department worked backwards to try to create a racial component to their approval process. If we're not allowed to use race, and then we evaluate the various criteria with respect to the impact on racial groups, that would seem, to me, to violate if not the letter, certainly the spirit of the law. We don't want to make race a factor in the determinations of the Department. And it occurs to me -- and I don't think it's intentional. But I think what the Chair has asked you -- were you able to do it if you even had the data on which to do it -- would be an improper exercise under the law.

SENATOR GILL: That wasn't my question, but it would be-- That was not my question.

SENATOR CARDINALE: I misunderstood your question.

SENATOR GILL: That's okay.

But I do have this question. We're not asking to collect racial data, because you can't collect racial data the same way you can't use an underwriting technique to circumvent the prohibition against race. So that's why it is important. But you can look to other statistics, with respect to income level and education, to determine, based upon the weight given by the insurer, if this violates our policy, circumvents it, with respect to race and income.

So it is not the issue -- kind of like a red herring -- of collecting racial data. It is to look at the criteria and see if it has a racial impact -- disparate racial impact, which is very easy to do -- and to look at the income requirement -- or look at the occupation requirement and see if it violates the prohibition against income.

So I'm not asking that the insurers collect racial data. I'm saying that you -- since we have a public policy -- that you vet the criteria against that public policy to see if it violates it in any way. And that's the thrust of my position. I'm not asking you to collect, but certainly to be able to make some determination if it violates it in any way.

SENATOR SINGER: Madam Chairwoman, even though I sit on your right, just one--

What I'm trying to figure out is, if you took a look at the census, which is public information and something you have access to, and you take my district, which has the high percentage of noncollege graduates, which is probably -- statistically, probably 15 percent minority in my district -- my district-wide is only about 15 percent minority -- and took a look to see the percentage of people that are insured by one of the insurers, based on their criteria; and then you went to Senator Cardinale's district, who is probably--

What percentage of minorities are in your district?

SENATOR CARDINALE: About eight or nine.

SENATOR SINGER: --8 or 9 percent, with the highest percentage of college graduates. And then you went to the Chairwoman's district, and so forth, and so on. By just taking a look there, you could see if, by using those two criterias, there's disproportionate less people in, for

example, the Chairwoman's district being insured by that company than in my district, or vice versa. And taking a look at that, get some type of criteria to determine whether, based on just strictly the census, you're seeing that that criteria is used in an improper way to give people with less college degrees nonaccess to discount insurance, or people -- minorities less access to that. By not violating any laws, by not using any information that's not public information, but just using statistics of our five districts -- to have some portion, to see if there is any disparity based on that.

COMMISSIONER GOLDMAN: I'm neither a statistician or an actuary, so I don't know how broad a base you would have to sample in order to make a valid determination of those kinds of numbers; or what kind of formulation, in order to have a valid approach to it, you'd have to have in order to do it. I can tell you that we in the Department are not equipped to do it.

SENATOR GILL: But you are charged with doing it.

COMMISSIONER GOLDMAN: Well, we're charged--

SENATOR GILL: And you're charged-- You're charged with saying that you cannot discriminate.

COMMISSIONER GOLDMAN: We have not seen, Senator, in the information we've gotten, any sense that this sort of discrimination that you are expressing your deep concern about is happening out there. We have gotten nearly no complaints on either criteria.

SENATOR GILL: People don't realize. That's why you haven't gotten complaints, because people don't realize.

COMMISSIONER GOLDMAN: But they've also seen reductions in their rates.

SENATOR GILL: People don't realize that they're being charged with respect to education.

But I have one more question, and then we'll move on.

COMMISSIONER GOLDMAN: Sure.

SENATOR GILL: Did the Department simply accept the actuarial information provided by GEICO, or did the Department undertake an independent actuarial review, or did the Department use an independent actuarial review or information to compare the legitimacy or correctness of GEICO's business plan information?

COMMISSIONER GOLDMAN: We did not independently verify with GEICO; and we don't independently verify, with any submission, the information that we are given. And the reason for that is because that same information is what the company uses in order to make its determination on pricing decisions. That determination has ripple effects, in terms of what it reports in its financial statements to its -- in the case of a public company -- the Securities and Exchange Commission. It's what the management of the company relies on in formulating its business.

So if we're-- First of all, we're without the resources to undertake that depth of examination. And we feel we have a pretty good basis to accept the validity of the information, because it's the premise upon which the company is operating.

Now, I guess if they're fraudulent in submitting it to us, and the ramifications of that are fraudulent elsewhere in their model and throughout, they're going to run into trouble at some point in the not-too-distant future. And we'd see it then. But we certainly don't have the

resources to undertake the kind of independent verification you're suggesting.

SENATOR GILL: And I only have one more question.

The issue is not that it's fraudulent. But across the country, we understand and see that the use is having a disparate impact, in that the-- If you simply accept what any insurance company states, without any independent verification mechanism, then I would suspect that the Department of Insurance becomes a rubber stamp without being able to determine, in advance, if the insurance company is violating the public policy and the prohibitions as stated in the statutory scheme. Is that a correct statement?

COMMISSIONER GOLDMAN: I don't think so. There were-- And I'm going to let Don address it.

But we do ask for changes in what's filed. We don't just rubber-stamp it and send it out the door. We do have meetings, we do confer with the companies. We don't just accept the plans as filed. If I gave that impression, that's a misimpression.

SENATOR GILL: But you don't have any independent actuarial information in order to determine if the information given you, with respect to the risk of the characteristics of a particular group, is verified in a way that's appropriate? DOBI has no way of having an independent assessment?

MR. BRYAN: Just briefly, we do get premium, and loss, and other statistical data, from statistical agents, that are filed. We do get information from several different companies that file data with us in support of various rates. We do have a financial examination process that

we use. That's a periodic exam every three years or so. We occasionally, in response to specific kinds of issues or problems, do a market conduct examination, where we go in and seek more detailed verification of data that we get. If that's helpful in responding to your inquiry--

SENATOR GILL: It is, because it answers my question that you don't get independent verification. You have no idea as you sit here, I would assume, if the risk characteristic presented by GEICO as to the education level or occupation is, in fact, valid. The risk characteristic -- not the correlation, but the risk characteristic. As you sit here today, we don't have an independent assessment of that?

COMMISSIONER GOLDMAN: Well, when you say we don't have a validation of the risk characteristic, what's presented to us is an actuarial analysis -- a statistical analysis -- of that correlation between what the characteristic is and its reflection in lost costs.

SENATOR GILL: And you have no way to determine if that is, in fact, accurate.

COMMISSIONER GOLDMAN: We have no way to determine the veracity of it, is that what you're asking?

SENATOR GILL: Yes.

COMMISSIONER GOLDMAN: We do not independently, as I said, determine it.

SENATOR GILL: And are you aware that there is a statistical study that was completed that indicates just the opposite? That the people who -- the five professions that are the worst risk: doctors, lawyers, clergy, and two others. And the people who have the lowest risk factor, by characteristic, are housewives, blue collar workers, and others. So in the

marketplace, there are two completely different statistical, actuarial conclusions. And I would assume DOBI was aware of those.

COMMISSIONER GOLDMAN: That would not be correct. We are not aware of the second one that you referred to. We've never seen it. The first I heard of it was today.

SENATOR GILL: Well, you know, I would be more than happy to supply it to you.

COMMISSIONER GOLDMAN: That would be fine. We would like to see it.

SENATOR GILL: Good. And then perhaps we can have a further conversation on the validity of what was given in the beginning, what is out there now, and what DOBI may intend to do or not intend to do to actually vet it.

So I will have my staff supply it to you by Thursday. I think we're back again on Thursday.

COMMISSIONER GOLDMAN: Thank you. We would appreciate that.

SENATOR LESNIAK: Madam Chair, may I--

SENATOR GILL: Oh, yes.

SENATOR LESNIAK: One last point, because it all-- Now things are starting to become a little bit clearer here.

It makes a lot of sense to me that there would be two different studies on this. You testified earlier that only a handful of companies use education and occupation, or both of them. And many of them do not. Well, it makes sense to me that there would be two different studies out there. And if the study that GEICO is using is right, they're going to make

money. If the other study is right, they're going to lose money. And they'll adjust accordingly. And that's what the whole reforms are all about, in terms of bringing competition in. And people can choose what they think is best to service the populous. And that seems, to me, to be the best way that we get the results that you talked about, in terms of premiums going down, or certainly not increasing at the alarming rate that they have been over the previous decades. And I certainly see that in my district.

I just want to make a point, Madam Chair, that this gets to be a little dicey. Not as much with regard to the disparate impact on race, which I don't understand completely the constitutional law on that -- whether that alone, in and of itself, is unconstitutional. But on the income factor, which is statutory in nature, and not constitutional in nature, I'm just looking at-- What if a company wanted to, and they may, weigh against 17- to 25-year-olds, weigh very much in favor of 45- to 60-year-olds, and very much against 65-year-olds and up? That certainly would have a disparate impact on income. I could say that 17- to 25-year-olds aren't making that much money, and 45- to 60-year-olds are. The over 65 maybe aren't. Now, does that mean that because I do that, that I am violating the statutory prohibition against using income? No.

Statistics are very, very, very tricky, as we in politics know, in terms of polling and other things that we use in terms of elections. I just wanted to make that point.

COMMISSIONER GOLDMAN: There is one point that you make, Senator, that I think is worth keeping in mind. And that is that, if certain companies decide that a particular statistical model is going to be the basis for what they determine to price their products based upon, and

they're wrong, the market is going to tell them that they're wrong, because they're going to be losing money. And if the statistical model that you referenced is the correct model, and the result of the people who use that model is that they're right, then the market is going to tell them that they're right, because they, hopefully, will be making money.

So I think you have an objective measure of how well these models do or don't work, based upon whether or not their success in the marketplace-- And I think the point that I was trying to make in my testimony was that what we've seen since the reforms is that the marketplace is telling us that the reforms have been successful, because a very, very wide swath of the people who buy auto insurance in New Jersey have benefited greatly. And that's the principal point.

SENATOR GILL: And I think that if we use that analysis, and take it to its logical conclusion, red-lining a district with -- let's say in the mortgage industry -- was profitable, because the mortgage companies did not have to give mortgages in urban areas, because they said there was a risk factor. However, there was a public policy that said it is an act of discrimination, because it has a disparate racial impact on a group of people.

So it is not simply that they can make a profit. But a public policy here is, how do you make that profit? And you cannot make that profit off of the impact on race in the use of income. And that is where DOBI, I think, becomes crucial. Because it's not GEICO's fault. They're here to make it however they can make it, with respect to the regulatory powers and sanction.

And we do know that the other insurance company says, “If GEICO can do it, we are going to do it.” And so that is why DOBI is -- and that’s why transparency is so important. You are the only thing standing between the desire to make money -- this is why we’re not GEICO-bashing -- and protecting our public at the same time. And so that’s how I see it, and that’s how I see the position of DOBI. So it’s not the insurance companies, because they’re here to make a profit. It’s our obligation to say, “You can make a profit, but you can’t make it this way.”

COMMISSIONER GOLDMAN: Senator, we agree with you. We are keenly aware of our responsibility to protect the consuming public. And we do everything that we can to make sure that that happens. So I don’t have a single disagreement with you about the obligation of the Department to regulate, in a way.

And I think, as I mentioned early on in my testimony, there were three factors. And consumer protection was one of those three, and maybe the most important of those three. But all of them interrelate, and we can’t have-- (interference with PA microphone)

SENATOR LESNIAK: I didn’t do it. (laughter)

COMMISSIONER GOLDMAN: Part of consumer protection, as I said, is to make sure that the product, particularly where it’s mandated by law, is available and it’s affordable. But I don’t, for a moment, intend by anything I’ve said to minimize the responsibility of the Department to protect the consuming public. We’re keenly aware of it.

SENATOR LESNIAK: Madam Chair, if I may just-- Please.

I did not hear everything that you heard from the Commissioner. I heard him say-- I didn’t hear him say that profitability

was the key. He said that in our districts, in urban areas, that insurance has become more affordable and more available. So it's not exclusively the profitability of the insurance companies. I certainly wouldn't lend that as the criteria that we should make our decision on.

SENATOR SCUTARI: You told me earlier that there were 70 companies writing automobile insurance in New Jersey today?

COMMISSIONER GOLDMAN: Approximately. I think the actual number is 69, but I'm not sure.

SENATOR SCUTARI: Does that count GEICO more than one time, or is that--

COMMISSIONER GOLDMAN: Yes, that includes all of GEICO's companies.

SENATOR SCUTARI: What I'm saying is, in that figure of 70, is GEICO counted four or five times, or GEICO once?

COMMISSIONER GOLDMAN: They've got three, I believe.

SENATOR SCUTARI: Three.

COMMISSIONER GOLDMAN: They have three different companies -- GEICO does -- who are writing insurance in New Jersey.

SENATOR SCUTARI: Okay.

SENATOR GILL: I have no further questions, except I want to hope that we will get -- we will write you formally to ask for the weighting factor. And we will ask you formally, in writing, if at least this Committee can see what is determined to be the proprietary information, with respect to how much -- the weight given to education and occupation.

And we would also provide to you the new study and ask that you respond, in terms of the validity of the information that we're not

allowed to see, and you're not allowed to talk to us about, and the public doesn't know but for which they are rated and, ultimately, for which they will pay. So we will do that formally in writing.

I'd like to thank you. I'd like to thank you for your patience.

Thank you very much for appearing.

COMMISSIONER GOLDMAN: Thank you.

SENATOR GILL: Do you have any further questions? (no response)

Thank you very much.

COMMISSIONER GOLDMAN: Thank you.

SENATOR GILL: We have one last panel of witnesses, and we'll take them all at one time.

MR. LORETTE: For the last presenters, it's a panel of four representatives of insurance trade associations. The panel consists of Chuck Leitgeb, Vice President with the Insurance Council of New Jersey; Richard Stokes, Regional Manager and Counsel with the Property Casualty Insurers Association of America; Paul Tetrault, Northeast State Affairs Manager with the National Association of Mutual Insurance Companies; and, finally, Richard Van Wagner, for the American Insurance Association. And also present at the table is Magdalena Padilla, the President of ICNJ.

SENATOR GILL: Thank you.

You can identify yourself for the record.

MAGDALENA PADILLA, ESQ.: Good afternoon.

My name is Magdalena Padilla, and I'm the President of the Insurance Council of New Jersey.

I'll take this opportunity and note that to my right is our Vice President, Chuck Leitgeb, who is normally before your Committee. And out of courtesy to one of our fellow colleagues, who doesn't have a seat at the podium, Chuck has graciously agreed to let one of our other colleagues come up instead. The trades work very closely with each other.

R I C H A R D J. V A N W A G N E R: Thank you, Madam Chairwoman, members of the Committee.

I'm Richard Van Wagner, on behalf of the American Insurance Association. I appreciate, I think, the invitation to speak here today.

I'll be brief. I don't have a tremendous amount to add.

We certainly believe, and I think it's been stated many times here today, that this is a healthy, and healing, and competitive marketplace. I understand completely, and would never minimize, your desire as a body and as a Chairwoman of a very significant Committee, to look into issues that you think may not be all that adequate, or may not be addressed adequately in the marketplace.

I would suggest though-- We feel that something that's really increased in the several years in New Jersey is capacity in this marketplace. And I hesitate to sound glib when I say this, but four years ago, when we started to lobby this -- and I think Senator Singer put it best when he opened up earlier and said, "I don't get the calls anymore in my office." And as we pursued that reform act, if someone said then, "Hey, four years from now, here's where you're going to be at, though," I'd still take it. Because we've come that far in this market.

So I would just caution that while I understand, and certainly respect and appreciate, your inquiries and investigations into the market,

and hope they all work out satisfactorily-- Before we go jumping in and enacting more statutory restrictions on insurers ability in the marketplace, remember easing them several years ago. It's really helped. And today is pretty much, I think, a product of the successful reform you all passed several years back.

And with that, again, I don't really have any more specific comments. I'm certainly here to answer any questions.

SENATOR GILL: Thank you very much.

We're not here to actually turn back the reforms. But we are here to address the statutory requirements. And one of which is that no underwriting rule shall be based on the lawful occupation or profession of an insured. And that is a statutory responsibility that was part of the reform for the industry.

And so that is our inquiry at the Committee. It's not to create more regulations, but to understand if the regulations that are in place are being followed. And so when we have that regulation in the Banking administrative code that says no underwriting rule shall be based on the lawful occupation or profession of an insured, and we have information that it is being based on that, in whole or in part, what we are here doing is to find out if the regulations that we passed, in conjunction with the changes in the market, are being followed.

So it's not an addition, it's an enforcement. And that is the perspective that we are inquiring.

MR. VAN WAGNER: And just my last note on that--

Madam Chairwoman, I would agree. And also, I think that even before the reform act, there were statutory -- there is statutory

authority for the Commissioner to always look into individual issues -- rating, underwriting plans, whatever they may be -- and whether or not they amount to discriminatory, race-based underwriting, or whatever the case may be.

So I appreciate your comments. Thank you for the line.

SENATOR GILL: And so for all of you.

I assume that that will be the testimony for all.

MS. PADILLA: Yes.

Senator, we would also just like to add that the Insurance Council of New Jersey -- that the signals that New Jersey sends are very important, not only to the rest of the country, but the citizens here in New Jersey. And in 2003, the signal sent in June was that the State was ready for competition. And so while we certainly recognize that all of the questions raised today are very important, it's equally important to continue sending the right signal, continue sending the message that New Jersey is ripe for competition in New Jersey, and that we do want to encourage the kind of competition we have seen since 2003, and we don't want to go backwards.

SENATOR GILL: And we don't want to have competition based on race, and we don't have to have competition based upon violation of our own underwriting laws.

So there are messages that we are sending. And I think both are important. But I don't think, under our -- and I've worked closely on that insurance reform -- they're not mutually exclusive. We say, "You can have competition, but you can't discriminate in this way." They're not mutually exclusive, nor does it impact on the market. Because we already

analyzed that before we passed the reform. And we said, “You can have competition, but you can’t discriminate.” And that is the basis. If you look at all the insurance reform, that’s the basis of the competitive nature that we allow to exist.

So we’ll follow through. And we do thank you for your testimony.

MR. VAN WAGNER: Thank you, Madam Chairwoman, members.

MS. PADILLA: Thank you.

SENATOR GILL: Any other comments? Any other witnesses?

(no response)

Thank you very much.

You’re adjourned.

(HEARING CONCLUDED)