COUNCIL OF THE CITY OF PHILADELPHIA

PUBLIC HEARING

COMMITTEE ON LAW AND GOVERNMENT

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Room 696, City Hall
Philadelphia, Pennsylvania
Tuesday, April 22, 2003
1:15 p.m.

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BILL 030178 - An Ordinance providing for the submission to the qualified electors of the City of Philadelphia of an amendment to Section 5-300...
RESOLUTION 030189 - Resolution proposing an amendment to Section 5-300...

- - -

PRESENT:
COUNCILMAN DAVID COHEN
COUNCILMAN ANGEL ORTIZ
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN DARRELL CLARKE
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN MICHAEL NUTTER
COUNCILMAN FRANK RIZZO

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COUNCILMAN ORTIZ: Will the members of the Committee on Law and Government who are in their offices please come upstairs? We are ready to begin.

Good afternoon. Councilman Clarke will have a statement on his consumer advocate bill.

Darrell, why don't we get that out of the way?

This is the Committee on Law and Government. Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chairman. Mr. Chairman, I just want to make a brief statement on Bill No. 010101, a bill to establish the Office of Consumer Affairs, which we introduced approximately two years ago. I've been in conversation with the Mayor's Office over the last several days, and as a result of those conversations, I will not ask for the bill to be heard today. The Mayor has indicated that within the next several days he will be announcing an Executive Order that will essentially create an Office of Consumer Affairs that will deal with the myriad of issues as it relates to consumer rights. So hopefully within the day or two, I'll be able to

give the Committee an indication as to when that particular Executive Order will be forthcoming.

COUNCILMAN ORTIZ: And the Bill No. 030115 which is on procurement, that would be tomorrow at 1 o'clock.

COUNCILMAN CLARKE: Yes, Mr. Chairman. The Commissioner of Procurement has indicated that there are a number of amendments that he would like to have heard as it relates to this particular bill, so we're asking that that bill be heard tomorrow at 1 o'clock.

COUNCILMAN ORTIZ: Thank you, Councilman.

There is a court hearing going on in which City Council is actually the plaintiff in 426. So a lot of my colleagues are in that courtroom at this moment. But we will begin to hear testimony on the Committee of Law and Government on the Universal Health Care Bill and Resolution.

Will the Clerk read it into the record, please?

THE CLERK: Bill No. 030178, an ordinance providing for the submission to the qualified electors of the City of Philadelphia an

amendment to Section 5-300 of the Philadelphia Home Rule Charter, by adding a new subsection (f), as approved by resolution of the City Council, requiring the Health Department to prepare a plan for universal health coverage that permits everyone in the City of Philadelphia to obtain decent health care on a regular basis; fixing the date of a special election for such purpose; proscribing the form of the ballot question to be voted on; and authorizing the appropriate officers to publish notice and to make arrangements for the special election.

Resolution 030189, a resolution proposing an amendment to Section 5-300 of the City Charter relating to the functions of the Department of Health, by adding a new subsection (f) declaring that health care is an essential safeguard of human life and dignity, and that there is an obligation for the City of Philadelphia to ensure that every resident is able to realize this fundamental right, and requiring the Department to prepare a plan for universal health coverage that permits everyone in the City of Philadelphia to obtain decent health care on a regular basis.

COUNCILMAN ORTIZ: Mr. Nicholas, are you here to testify on that bill? Identify yourself for the record, please.

MR. NICHOLAS: Thank you, Mr. Chairperson. My name is Henry Nicholas and I'm the President of the National Union of Hospital and Health Care Employees and President of District 1199C in Philadelphia, nationally representing 375,000 health care workers and 17,000 health care workers here in Philadelphia.

Mr. Chairperson and Members of Council, I come in wholehearted support of this action to put on the ballot before the electorate the question of health care as a basic human right. I do so mindful of the opportunity that Council has by doing this, and that is to redeem itself for failing to put before the voters the questions of what happens to our public schools about this time two years ago. Clearly, health care is a big issue in this state. At any given hour, there are 1.3 million citizens of the Commonwealth without health care, many of them in the City of Philadelphia. We are one of the few major urban areas without a government-run and operated health care facility, and we've been such

since this Council gave the late former Mayor Rizzo the right to close PGH. It is important, as we look to introducing and preparing this document for the ballot, that we look further than that because here in Philadelphia we are confronted with a crisis. We are under a monopoly lockdown imposed on us by Blue Cross of Philadelphia and we need City Council to join with us in a suit against Blue Cross requiring them to return to the recipients their dollars now being held in the millions of dollars by Blue Cross, a non-profit, holding on to the subscribers' millions and millions of dollars that they so desperately need to pay for health care. Health care cost is out of reach.

But just passing this resolution and just putting this on the ballot will be for naught if we fail to recognize that we are in a monopoly lockdown here in Philadelphia. And City Council need not only to support the action of those of us pushing to bring a class action suit, City Council on behalf of the residents should be one of the moving partners in that action. It is essential because we are at a critical mass. Went from having some of the best single-operated hospitals to a

four-structure operated by, for the lack of a better word, four magnate chains, the Jefferson system, the Tenet system, and the Temple system being the largest of the group. But the question of what happens to ordinary citizens -- and I would urge you as I have on so many occasions, spent the night in the various emergency rooms, observing what happens to ordinary citizens coming to the emergency room without adequate health care. There's absolutely de-marketing taking place in those institutions where they'll keep you waiting all night if there is no visible means to pay the bill and then finally call a cab for you and send you to another institution suggesting that the waiting line is not so long up at the other institution; and when you get there, you find that the line is longer than the hospital you just left.

We are in an emergency situation. We need this legislation on the ballot in November. But more than that, we need to move as the first step to break up this health care monopoly that we labor under here in Philadelphia, because it won't get better. The cost of paying is whatever the Blues decide that you should pay, and then they have

these provisions that no one else can give you a better deal. If that's not a monopoly, I don't know what one looks like.

So I urge Council to consider joining the lawsuit to break up this monopoly in conjunction with moving this legislation for the ballot in November.

COUNCILMAN ORTIZ: Is there a lawsuit going on right now?

MR. NICHOLAS: We are putting it together, a number of us who are concerned about this issue, indeed formulating such a proposal. There is a half dozen unions that are prepared to break ranks and to start the movement against this monopoly.

COUNCILMAN ORTIZ: You're inviting us to become members of that grouping of people?

MR. NICHOLAS: Yes, I think City Council because you have an obligation to those you represent and you know by talking to them that they are suffering. The average cost of health care by the end of this year will be 31 percent of gross payroll. And that's a lot of dollars for health care.

COUNCILMAN ORTIZ: Thirty-one percent?

MR. NICHOLAS: Yes.

COUNCILMAN ORTIZ: Will you invite us to the next meeting?

MR. NICHOLAS: I will.

COUNCILMAN ORTIZ: You said 31 percent of --

MR. NICHOLAS: Gross payroll. My members work in the hospital. And we have to negotiate a sum of 31 percent of gross payroll to cover workers who work in the system. And if they have to pay that kind of money -- and the problem is when they lose their job and they have to go on COBRA, they have to pay as high as $600 a month to pay for COBRA. That's the length of the emergency.

COUNCILMAN ORTIZ: That's way beyond what the average citizen can afford and pay rent and put food on the table.

MR. NICHOLAS: Right.

COUNCILMAN ORTIZ: Do you have any numbers as to how many citizens of Philadelphia currently are either not insured or underinsured?

MR. NICHOLAS: It is a greater part of that 1.3 million that I described earlier. The

largest part of that population is in the Philadelphia region.

COUNCILMAN ORTIZ: Is in the City of Philadelphia?

MR. NICHOLAS: That's correct.

COUNCILMAN ORTIZ: And has there been a movement -- because I see it at the national level. Is that same movement taking place in the City of Philadelphia for employers to transfer the cost of health care to employees?

MR. NICHOLAS: There are those who are now rethinking their bad judgment when they moved away from the former proposal that was advanced by the Clinton Administration. Many of our allies on that legislation cut and run. And as a result of that, no health care reform got passed. There are those among the organized labor and our partners who are now rethinking that issue.

But one of the policies of it in those of us who wear the label of Democrat, at the last two Democratic Conventions, nothing in the platform was even mentioned about universal health care. The whole Democratic Party cut and ran on that issue. And it is there we have to keep the pressure on,

because in 2004 we cannot let that happen again. If those who profess that they speak for ordinary people are afraid to speak, that puts us in a bad light.

COUNCILMAN ORTIZ: As Howard Dean likes to say, you are part of the democratic wing of the Democratic Party.

(Laughter.)

MR. NICHOLAS: I was the only delegate to the convention out picketing when everybody dumped the idea. I didn't go into the convention; I stayed outside and picketed with Dr. Quinton Young because we knew that was a mistake.

COUNCILMAN ORTIZ: Well, we need to get it on the platform this time around and get somebody to run on it. And hopefully, our Governor in Harrisburg can start thinking about doing the same thing here in the Commonwealth of Pennsylvania.

MR. NICHOLAS: He understands there's a crisis because six days from now when most of the doctors take a leave from their assignment will virtually put the Commonwealth into a crisis. That's just one part of the issue we are facing. When doctors -- who would imagine in the

Commonwealth doctors by the thousands would refrain from going to their place of work because the issue is so acute?

COUNCILMAN ORTIZ: Thank you, Mr. Nicholas.

(Applause.)

COUNCILMAN ORTIZ: Any questions from Councilman Goode, Councilman Rizzo?

(Applause.)

COUNCILMAN ORTIZ: Thank you, Mr. Nicholas.

COUNCILMAN ORTIZ: I have here on this witness list Dr. Walter Tsou.

DR. TSOU: Councilman Ortiz, Members of the Law and Government Committee. I'm Dr. Walt Tsou, the former Health Commissioner of Philadelphia and a member of the Philadelphia Area Committee to Defend Health Care and Physicians for a National Health Program. The Philadelphia Area Committee to Defend Health Care represents over 400 concerned citizens interested in quality, affordable health care for all Philadelphians. I'm here today to urge your support of Bill 030178 and Resolution 030189, which would place the wording as already noted on

the City Charter in November.

The wording of this resolution was adopted from the ballot initiative introduced in Cook County, Illinois. It was based on the words of the late Cardinal Joseph Bernadin who was the head of the Archdiocese of Chicago. This advisory referendum in Illinois was passed by 83 percent of the voters of Cook County.

In Philadelphia, this resolution would direct the Department of Public Health to prepare a plan for access to care for all Philadelphians. The importance of access to care cannot be overestimated. In 2000, over 94,000 children and adults alone had no health insurance in Philadelphia. Thousands of families have been bankrupted by illness, and the uninsured are a major factor in the financial solvency of our hospitals and are our City's largest employer. Finally, bioterrorism preparedness depends on access to care for timely diagnosis and treatment for those with contagious diseases.

Other cities have spent a tremendous amount of money in order to maintain their public hospital safety net. New York has the Health and

Hospitals Corporation, which is a $4.7 billion program funded with $176 million of New York City dollars. Chicago has recently built a new $623 million hospital, the John Stroger Hospital. Los Angeles spends over $4 billion in health services of which $609 million are county funds.

This resolution offers a chance for Philadelphians to reaffirm our historical commitment to provide a health safety net for our residents. Philadelphia remains the largest City in the United States without a public hospital. However, we made a commitment to support the district health centers and Philadelphia Nursing Home. We've made this commitment since the closing of PGH in 1976.

The plan does not necessarily obligate additional funds by the City. We are fully aware of the fiscal constraints faced by the City. Lest there be any doubt, we would be willing to accept the removal of the words "and there is an obligation for City of Philadelphia to ensure that every resident is able to realize this fundamental right." Our goal is to elevate the importance of access to care as an essential function of the Department of Health. Changing the City Charter accomplishes this

goal.

This plan would be used to identify current city, state, and federal and private dollars that collectively can be used to ensure access for all Philadelphia residents. It also directs the department to examine ways health care providers and hospitals can work cooperatively together to ensure a safety net for those who are uninsured and sick. As our City becomes increasingly diverse, access to care for newly settled Philadelphians becomes a growing challenge and needs to be addressed.

Creating such a plan represents no less of a priority than how a City ensures childhood immunizations, reduces lead poisoning, or provides coordinated services for people with AIDS.

Our committee has worked for over three years to support this resolution. We have collected close to 10,000 signatures on a petition in support this ballot resolution. These signatures were obtained from all over the City, spanning from South Philadelphia, West Philadelphia, and Chestnut Hill. We urge your committee to approve this bill for a vote by the entire Council.

And I have enclosed as an addendum some

frequently asked questions for your consideration. Thank you for your time.

COUNCILMAN ORTIZ: You know, it's obvious we have a crisis in this country, in this city, in this state, as Henry Nicholas stated, and as you put it, over 94,000 people in the City of Philadelphia have no health insurance within the City?

DR. TSOU: Within the City. That was based on the Philadelphia Health Management Corporation's survey that they did in the year 2000. And it is likely since that time, given the recession, that the number is much higher.

COUNCILMAN ORTIZ: I always believed that politics begin at the local level; and change, in order to become a national issue, has to start at the local level. I believe if we're ever going to have national health insurance in this country, universal health insurance, it has to start with the cities. It has to begin with us. It cannot begin from the top down, as we saw during the Clinton era and we saw Hillary and Bill Clinton try to develop a plan. Unless there's a massive outgrowth of organizing and support from cities across the

country, the lobbies of the HMOs, insurance companies, all those individuals are so powerful that they control the media argument, they control the debate, and actually, they're able to shape the form that the debate is going to take place and how and under what ground rules. We saw that happen in the very early part of the Clinton years.

So I think that this debate, just like the debate on the Patriot Act and other issues that are being forced upon us by the right wing Administration from Washington, we have to begin those debates here in the City of Philadelphia. And I believe that city government has a purpose, has a duty, a duty really to organize the plan, to develop it, to bring it before the voters of this City and say, "We might not be able to institute this, but this is where this should go. This is where we should be." And this should be the platform of every Mayoral candidate that wants to be Mayor of this City or any other politician that wants to be elected in this City.

So I appreciate your testimony, Dr. Tsou, and your leadership on this issue. Thank you very much.

(Applause.)

COUNCILMAN ORTIZ: Kathy Black, please.

We've been joined by Councilwoman Jannie Blackwell and Frank Rizzo is here and Darrell Clarke and Councilman Goode.

MS. BLACK: Good afternoon, Councilman Ortiz and Members of the Committee. My name is Kathy Black. I am the Health and Safety Director for AFSCME District Council 47, and I also serve as the President of the Philadelphia Chapter of the Coalition of Labor Union Women. My testimony today is on behalf of both organizations. Together we represent almost 6,000 members and I am here today to voice our support for spirit and substance of the proposed health care for all amendment to the Philadelphia Home Rule Charter.

Both AFSCME and CLUW have long supported the idea of universal health care. Organizations have been active in local coalitions for more than 10 years that advocated for health care coverage for the uninsured. While we are both on record as supporting a national single payer health care plan as the best way to achieve this goal, we know that there well may be other viable programs which could

be implemented within the City which would also have our support.

Although President Bush is now promising universal health care to the Iraqi people, it seems highly unlikely that we can count on him to do so --

COUNCILMAN ORTIZ: He is promising a lot to the Iraqi people right now. I don't think the Iraqi people are buying a lot of the promises.

MS. BLACK: That's probably true, but these are words that he has never uttered in regard to the US citizens.

COUNCILMAN ORTIZ: They don't have an insurance lobby in Iraq.

MS. BLACK: Well, it seems unlikely we can count on him to do the same for our citizens now or at any time in the future. And yet in terms of sheer numbers, the need is even greater here than it is in Iraq. Most analysts put the number of uninsured Americans at 41 million and admit that that number does not include those who may be uninsured for significant stretches of time. In Philadelphia alone, as Dr. Tsou said, approximately 94,000 of our own residents are uninsured. Since the Congress and the Administration seem woefully

unable to rise to the challenge of providing health care for citizens, we believe we must start locally to care for our own.

While we believe that health care should be a right for all citizens and not just a privilege for the wealthy and lucky, we also know that promoting universal health coverage makes good financial sense. Every year, health care cost increases outstrip inflation several times over. A significant proportion of this increase is driven by the cost of uncompensated care. People who do not have access to routine preventive health care and who can't afford to go to the doctor when they are sick wind up in emergency rooms. Delayed care leads to more advanced, costly, and difficult-to-treat illnesses and to premature death. It means millions of dollars of lost work time and productivity. It means financial catastrophe for families and increasing reliance on public assistance. And it means our union members and millions of workers like us who have good health care coverage pay a higher percentage of their income for health care every year. More and more frequently, those costs outstrip any wage increases that have been

negotiated. All this adds up to massive losses for our local economy and staggering human costs for our City's own people.

We have complete confidence that the able employees of the Philadelphia Department of Public Health can design a comprehensive plan that will provide for the health needs of our City's uninsured. They already run a unique model system of clinics around the City staffed by the competent health care professionals of our union and they provide excellent outpatient medical services and free prescription drugs for Philadelphians.

Therefore, we call on City Council representatives to approve this amendment to our Home Rule Charter and submit the provision to the voters for approval. We have no doubt the voters will see the wisdom of this provision and will pass it overwhelmingly. Thank you.

COUNCILMAN ORTIZ: Yeah, but, you know, this is socialism we're talking about here. You're talking about taking competition out. I mean, it's competition that makes this country great and gives us the best health care in the world, after all.

MS. BLACK: I think the insurance lobby

got to you, too, Councilman Ortiz.

(Laughter.)

COUNCILMAN ORTIZ: You know, the Canadian system, come on.

MS. BLACK: The Canadian system is a great model that we ought to look at more carefully and not just listen to the occasional care scare stories that come out, probably planted by our own insurance lobby.

(Applause.)

MS. BLACK: Any more softballs you want to throw me?

COUNCILMAN ORTIZ: This guy O'Reilly on TV would say, "Well, all you guys want is to give people something that they don't pay for. The taxpayers and the working people of this country will be carrying forward." What do you say to that?

MS. BLACK: I would say listening to O'Reilly is a health hazard. It's very bad for people's blood pressure, and I advise against it.

(Laughter.)

COUNCILMAN ORTIZ: Well, what do you say to the arguments -- remember the commercials of Harry and Louise?

MS. BLACK: I'd say, look at the Social Security system which runs on an overhead of under 6 percent, I think, and provides benefits to millions and millions of Americans. A health care insurance system could do the same thing. We're not talking about socialized medicine, that is, the doctors and other health care providers would not work for the government, but the people would be insured and they would be paid at a much more efficient system.

COUNCILMAN ORTIZ: But Harry and Louise, they were representing the insurance --

MS. BLACK: They were paid by the insurance lobby.

COUNCILMAN ORTIZ: But they didn't represent mainstream America?

MS. BLACK: I think they fed fears of mainstream America. But I think mainstream America, when properly informed, would be supporting legislation like this.

COUNCILMAN ORTIZ: Thank you, Louise.

(Laughter.)

COUNCILMAN ORTIZ: Thank you, Kathy. Thank you.

(Applause.)

COUNCILMAN ORTIZ: Dr. Robert Reinecke. Identify yourself for the record, please.

DR. REINECKE: Mr. Chairman, my name is Robert D. Reinecke, R-E-I-N-E-C-K-E. I'm a physician and Professor of Ophthalmology at Jefferson Medical School. I practice at Wills Eye Hospital. And I have attached my curriculum vitae.

I am past President of the Philadelphia County Medical Society, and while in that position, enhanced the Block Captains Program to find ways of helping the citizens of our county find means of entering the health care system. The City health system facilitated this program greatly, and we're grateful to them. And I might add that we are thoroughly in support of the items under consideration today, and I appreciate the opportunity to speak towards this.

Several years ago, I was intrigued by the argument of the prosecutors of Noriega, the Panama dictator, who when arrested pointed out that it was a Constitutional right of every accused felon to have access to a lawyer. I pointed out to the then senatorial candidate Harris Wofford that if the Constitution guarantees a lawyer to a felon,

shouldn't a doctor be guaranteed when needed. He thought so and won that election handily on that plank and often credits the win to that issue.

More recently, Dr. Fred Davidoff, former editor one of the outstanding medical journals, and myself in an editorial to the Annals of Internal Medicine argued strongly for a 28th Amendment to our Constitution. We should be guaranteed access to health care. And response to that editorial, copies of which I have given you, were very positive and remain so.

The concept of access of health care to all the citizens of Philadelphia is a wonderful idea whose time has come. The facts that make it so attractive are the large health care resources we have, the excellent health care brain power, the community which is ready to trigger start of the economic boom without precedent.

We need to think of health care as an instrument to be played the way we would any other trump card for the development of Philadelphia. Consider offering health care to an incoming company. We can organize and finance such health care better. We can find the best nurses,

physicians, drug suppliers in the country. We can treat cancer, trauma, athletic injuries, heart disease, eye disease, bone injuries far better than anyone. Since we can do health care better here in Philadelphia, we should be able to do it cheaper as well.

What about some of the hangers-on who are benefiting from the intense health care industry here? I believe we should tax the malpractice lawyers, do bulk drug purchasing for the hospitals, have city health employment agencies, and it is time that the health care facilities access channels to the many opportunities, such as taxes on health care insurance. You mentioned that, Mr. Chairman, earlier today.

If we can make health care the touchstone it should be, we should be able to extend Philadelphia's county lines.

Finally, let me cite a social worker's comment when Hillary Clinton was conducting hearings on our needs here in Philadelphia. The Philadelphia social worker said, "Philadelphia and Pennsylvania have enough laws and benefits for health care, but they are such a jumbled morass that the redundancy

and poor coordination make them seem hopeless."

We have a health care opportunity in Philadelphia which we need to explore and implement. I and the medical community urge you in City Council to move ahead on this attainable issue, and we stand ready to help you in every possible way that we can.

COUNCILMAN ORTIZ: Dr. Reinecke, is it your belief and as past president of the Philadelphia County Medical Society that Philadelphia as a city government, that we could begin a process in which -- because of our purchasing power, our ability to bring resources together, that the City can develop a plan, at least for the citizens of Philadelphia, to give health care insurance to at least the citizens within the County of Philadelphia?

DR. REINECKE: I certainly do, Mr. Chairman. I think we're standing on an unique opportunity. I don't know of any City in America that has more health care resources and the personnel. I think we would be the only City in the country to take the idea of offering health care as part of an attracting bidding unit, so to speak, to new industries coming to our City which we need so

desperately. So the answer to your query is, from my point of view, I think the doctors are ready to help you in every possible way. The doctors do face an emergency that you cited earlier. And we need a lot of help get by that. But I think putting this thing together is one of the important things we have an opportunity to do. And we can solve some of these issues that are so burning by so doing.

COUNCILMAN ORTIZ: While you were president of the society -- and I haven't looked into it, but you obviously have given a lot of thought to this process. Did you find that there were any restrictions and/or encumbrances or jurisdictional questions that we could not overcome because we're a county and the State of Pennsylvania -- like you say, Philadelphia and Pennsylvania have enough laws and benefits for health care, but there's such a jumbled morass that the redundancy and poor coordination make them seem hopeless. Is that morass of legislation statewide, and is the Commonwealth an impediment to our establishing our own system of health insurance?

DR. REINECKE: It is, and it makes our responsibility that much greater. Because I don't

think we can change a lot of the insurance problems the state has. They have a lot of reasons for that, and I'm not anexpert on that. But I do think we have the opportunity to straighten out all these rules and regulations that are largely state rules, some are City. But we should go ahead, put them together. We have done so with the Block Captains Unit to quite an extent, trying to identify every single advantage we can find to help people get health care. But we can't do it. We don't have the citywide authority you have.

COUNCILMAN ORTIZ: What is the insurance company -- it is the insurance system statewide that would probably prevent the City of Philadelphia from moving forward with a plan such as this.

DR. REINECKE: I don't think it will prevent it. I tried to say, and didn't do so very effectively, I think that we cannot rely on the state system to solve our problems. I think we should go ahead with this as the first step and see what we can do here and come together with problems we can help you identify and solutions that at least deserve a critical examination and a trial.

COUNCILMAN ORTIZ: Thank you. Any

questions?

(No response.)

COUNCILMAN ORTIZ: Thank you.

(Applause.)

COUNCILMAN ORTIZ: Ms. Sylvia Metzler. Please identify yourself for the record.

MS. METZLER: Good afternoon. I'm Sylvia Metzler. I'm a nurse practitioner. I've been a registered nurse for 45 years and a nurse practitioner for 19 years. Good afternoon, Councilman Ortiz and Members of Law and Government Committee and members of the audience and the media. I work part-time at the APM Community Health Center in North Philadelphia. And I volunteer one evening a week at the Catholic Worker Free Clinic in Kensington. And I'm speaking for the free clinic tonight.

This free clinic is a small but important part of the safety net for the many Philadelphians who have no health insurance. All of the 40 nurses, doctors, and other helpers who work there are volunteers and it's supported totally by donations. We have at least 3,000 patients on our records and see about 100 patients a week in five

two-hour sessions.

Even though our patients are some of the poorest of the poor in the City with multiple physical and mental health problems, only about half of them have any health insurance. About 10 to 20 percent of our patients are employed, none of whom have health insurance. We also see many refugees from all over the world, all with no health care.

We are able to care for minor problems there such as respiratory and urinary tract infections, rashes and other skin disorders, gastric and intestinal disorders, minor injuries, et cetera. But most of our patients also have more serious chronic and acute illnesses. They present with hypertension, diabetes, coronary artery disease, schizophrenia, clinical depressions, drug and alcohol addictions, HIV/AIDS, hepatitis, cancer, et cetera. For these patients, we try, sometimes successfully, sometimes not, to get them on medical assistance or refer to the City health centers. Many of our patients fall through the cracks. For example, a middle-aged man I'll Chuck has poor circumstances and stasis ulcer on his leg which we treat, but he cut his leg on a wire at a chicken

packing farm where he works in New Jersey. He takes the bus to work 5 a.m., returns to Philadelphia at 8:00 p.m. six days a week. His wound became infected, but he has no insurance and he cannot afford to take time off from work to get it properly, as Sunday is his only day off. We can give him limited care, but he could easily lose his leg. Think of the tragedy of this potential outcome for Chuck and also for all of us as many tax dollars will eventually be needed for his very expensive medical care.

As more and more employers hire only part-time workers and reduce or eliminate health care benefits, as more and more people are laid off, as more and more people retire early, often nonvoluntarily, the uninsured are rapidly becoming us, not them.

I hope this committee and the Philadelphia City Council will allow the citizens of Philadelphia to vote in November that our present health non-system has failed and that we need to create a new system that will provide quality, affordable, and universal health care for everyone.

In closing, we want to thank Committee

Chair David Cohen and Angel Ortiz very much for their humanity and fiscal responsibility in introducing this bill and resolution. We want to thank the City Councilpersons who have cosponsored this bill for universal health care. Councilman Wilson Goode, Jr., Michael Nutter, Frank DiCicco, and any others that we have not yet heard about. Thank you to all the Members of the Law and Government Committee and all the Members of City Council who will support and vote for this ballot question. In the name of all the uninsured and underinsured people of this City, we're very grateful for you. Thank you.

COUNCILMAN ORTIZ: Thank you.

(Applause.)

COUNCILMAN ORTIZ: Commissioner, are you going to testify on the referendum bill?

MR. DOMZALSKI: Councilman Ortiz, Members of the Law and Government Committee, I'm John Domzalski, Health Commissioner, and I'm here to testify and present comments on Resolution No. 030189.

Mr. Chairman, if you will permit me, this is my first appearance in Council since the

passing of Councilman Longstreth. And I just wanted to extend my condolences to the Council in the loss of such a longstanding member as Councilman Longstreth.

COUNCILMAN ORTIZ: We appreciate that, sir.

MR. DOMZALSKI: As Health Commissioner, I fully support access to health care and especially for those in the most vulnerable segments of our City population. This policy is given effect in the government by providing a full range of ambulatory health care in each of our eight health centers located in the neighborhoods throughout the City.

Annually, approximately 100,000 Philadelphians make over 340,000 visits to our health centers where they can receive a full range of services, including adult and pediatric care, prenatal and family planning services, immunizations, laboratory pharmacy services. Nearly 64 percent of the residents of these services are persons without insurance of any kind.

As Health Commissioner, I am committed to, and as a department we will provide these services regardless of a person's ability to pay.

We are insisting that those who are insurance eligible participate in the insurance application process which we make available on site in each of our health centers. We do this so that our primary care services, which for the uninsured are fully supported by local tax dollars, can continue to be available to those who do not qualify for insurance.

Make no mistake about it, lack of health care access for the uninsured is and has been a national crisis. For example, a recent report by the Robert Wood Johnson Foundation described that for the two-year period, 2001 to 2002, a full 30 percent of US residents were without insurance for all or part of that period. The implications of being uninsured are more than mere statistics. We know that those who are uninsured fare worse in health status indicators than any other group. Tragically, as the Institute of Medicine has pointed out, there are over 18,000 deaths each year in this country attributable to lack of health insurance coverage.

The City of Philadelphia is unique among US cities in providing comprehensive medical care including prescription medications, regardless of

insurance status or ability to pay. In addition, there are 16 non-governmental, federally-qualified health care centers that also operate across our City that also serve the very vulnerable segments of our population. The hospital community is also serving this population, and as calculated by the Delaware Valley Health Care Council, is delivering uncompensated hospital-based care at a level of $500 million annually in Southeastern Pennsylvania residents, almost all of whom are residents who live in the City of Philadelphia.

What is very clear to everyone who thinks about this issue is that the factors that influence existing or expanded access to health care are overwhelmingly influenced by policies on a number of levels: National policies, both health and economic policy; state policies, health, economic and insurance; business decisions of employers when deciding to expand or contract coverage; insurance industry policies; and the hospital and health care industry. These are only the larger or macro influences. I point this out in such detail so that there's clarity with regard to how few of these influences can be controlled or

directed from the local level, especially by a solely local government plan.

Thank you for the opportunity to present testimony on this resolution.

COUNCILMAN COHEN: Thank you very much.

Any questions from Members of the Committee?

The Chair expresses his regret at being detained this morning, but there was a matter even more important than this that came up, and that is the Navy in its great wisdom -- as we've learned, the armed forces generally act with great wisdom -- decided to press charges giving a seaman an overnight notice that he's going to be charged with disobeying a lawful order in that he dated his current wife and mother of his three-week child about a year ago, he'd have a hearing this morning on it and would be subject to dismissal from the Navy after six distinguished years of service. So with important issues like that to deal with, the family was, of course, panicked and that was the reason for the delay.

And that kind of senseless action pervades, I think, the whole health area where we

live with the situation of 42 million, at least, uninsured people, treating them as if they were unimportant and we don't care whether they live or die. I thought those days were gone many, many decades ago, if not a century or more ago.

So we appreciate the attendance here on this matter. I think it very important that we raise the issue of universal health care every day and constantly until the United States acts like a civilized nation and takes the steps.

(Applause.)

COUNCILMAN COHEN: In the meantime, we'd like Philadelphia to come up with a plan as to how do we provide for the proper medical care for Philadelphians, and that's the reason for this action today. We think the people of Philadelphia will want to discuss it or they'll want to show by their votes when this goes on the ballot as a Home Rule, change requiring that the Health Department come up with a plan to take care of all Philadelphians.

Philadelphia led the way, when following a bad decision of closing the Philadelphia General Hospital -- we atoned in part for it by establishing

health centers which, of course, we've pretty much starved to death so that people have to wait two weeks for prescriptions and sometimes three or four weeks for care for a sick child. But at least it was a beginning and we're working hard to make that work.

So I think all of you certainly ought to be commended for your efforts here and in support of this resolution and bill to provide Philadelphians with an opportunity to express their feelings.

One thing we can do on national problems, and that is City Council can play the role of the bully pulpit. We've got to -- you know, these things are too important to just permit federally elected officials to deal with them. We've got to instruct them from the local areas how people feel because the government really belongs to the people, and that's this process that's ongoing today.

So thank you all for your attention. Is there any other witness?

COUNCILMAN ORTIZ: Yes. Commissioner, I'm interesting in going further than just passing the referendum. Dr. Reinecke says we can start

putting a plan together to begin either challenging those state restrictions that are imposed upon us, and if we have over 94,000 uninsured, and probably the number is bigger, I think that constitutes a statewide, Commonwealth-wide health crisis. And I'd be very much interested in seeing something come about from your department in which we start looking as to how we can, as a City, as a county, begin putting together something that goes along these ideas. And challenging.

Henry Nicholas said that there's a lawsuit trying to challenge the monopoly aspect of the health insurance industry. We have that problem, not only in health, but it seems the health insurance industry holds us in a stranglehold in other areas. So I would be very much interested to see how we over the next week or so can start a process where we can put together something. I'd like to have this Committee work with your office to put together this plan as we go about.

MR. DOMZALSKI: We'd be pleased to do that. There's absolutely no question that we need to plan. And by "we," I mean everyone needs to plan.

I mentioned in my testimony, our health centers, I mentioned the 16 federally qualified health centers. That doesn't mean everything is arrayed the way it ought to be or the way in which we can get the most service out of the resources that are being expended. I imagine -- and I know Dr. Reinecke from his past leadership of the County Medical Society, and to hear him repeat the offer of the cooperation of organized medicine; this is incredibly important. And of course, my colleagues, former Health Commissioner Tsou and everyone else who is in this, in this room and is interested in taking care of folks who just have no other place to turn, this is incredibly good work. It's important work. It's work that we need to get on with. And I'm convinced that some of the things we've already begun we can expand in terms of doing planning.

COUNCILMAN ORTIZ: Thank you.

COUNCILMAN COHEN: Thank you. Are there any other witnesses to be heard on the bill and resolution involving universal health care?

Will you step forward and identify yourself for the record?

Thank you, Commissioner, for your

testimony and your support.

MS. SIPP: Good afternoon, Councilmembers, staff and guests. My name is Kati Sipp and I'm the Political Director of the Service Employees International Union Local 36.

SEIU Local 36 represents over 5,000 building service workers in the Greater Philadelphia area. Our membership is a diverse one. We are men and women; African American, Latino, Asian and white; gay and straight; native-born citizens and immigrants. But one thing that binds us all together is the need for quality, affordable medical care when we are sick or injured.

Currently, our union is bargaining a master agreement that covers over two-thirds of the members of our union. These members clean and maintain Center City office buildings. We represent workers at over 80 percent of the Class A and B commercial real estate in the City, including Liberty 1 and 2, the Independence Blue Cross Building, Centre Square, 2000 Market Street, and other buildings too numerous to name. The master agreement that we bargain is with the Building Owners Labor Relations Association, commonly

referred to BOLRA. This agreement sets the standards for wages, benefits, and working conditions for all janitors and engineers in our local and for those in non-union real estate as well.

Tomorrow, we will enter our fourth week of bargaining with the BOLRA Association. At this point, the entirety of our bargaining with management has focused on health insurance contributions. We have not been able to have any substantive conversations about other economic issues, like raises or adding Martin Luther King's birthday as a holiday, or creating for the first time sick days for our members; nor have we been able to talk about non-economic issues like increasing job security or making our members safer on the job due to the overwhelming nature of our health care crisis.

To give you a sense of the problem's scale, we have estimated that just to protect family benefits in our contract, each employer will need to increase their contribution by $200 per member per month.

I bring this to your attention today

because I think our union's experience is not atypical in this or any other city in the United States at this time. Across the country, both unionized and non-union workers are being forced by their employers to accept cutbacks in their standards of health care, to pay more money out of their own pockets, to make difficult choices between fighting for raises and fighting to keep their health benefits secure. We and other working people are right now being asked to cover the uninsured out of our pockets, and not just once, but several times. We pay taxes, which help to support Medicaid, Medicare, and other government-sponsored health care programs. And we pay again when we are asked to increase our out-of-pocket costs to pay the skyrocketing cost charged by our insurance companies who are passing through the cost of providing emergency room and hospital services to uninsured patients.

I should say that none of us blame uninsureds for being without health insurance. We believe that all people deserve access to quality health care when they need it, regardless of whether they are employed or unemployed. We believe that

everyone should have access to preventive care, not just treatment for illnesses and injuries. But we cannot continue to have a nation where access to health care is predicated upon employment or we will end up in a situation where only the very wealthiest people will have any health care at all. We must do something to stop this growing crisis in the United States. And we are asking you, the City Council, to take the first step by supporting this referendum.

I am sure that as you move through this process, you will hear the argument that the health care crisis is a national one, that it requires a national solution as opposed to a local fix. And it's true that the crisis is national, with over 73 million people who have been uninsured in the last two years, 41 million of whom were without health care coverage for over a year. But we've waited over 10 years for a national fix to this problem. And with the federal government's attention focused on the war and providing a tax cut to the wealthiest in the country, I don't think they're going to be moving too quickly to provide universal health care in this Congressional Session.

Our City and other state and local

governments must press our federal government to focus on this problem. Putting this referendum on the City's ballot will be a step in the direction of getting Congress' attention.

In addition, I should say that SEIU, as the largest international union within the AFL-CIO, representing hundreds of thousands of health care workers across the country, is making access to universal health care the defining issue of 2004 presidential politics in the labor movement. We believe, as well, that there need to be reforms within the health care industry, especially the need for greater corporation responsibility in health care. But above all, we need to take the issue of access to health care off the bargaining table, both for unionized and non-union workers. It is the only way that we, the low and moderate income workers of the country, will ever be in a position to focus on other kinds of improvements in our work sites. We need to be able to talk about workplace safety, about respecting the diversity in our Local, about fighting sexual harassment, and, yes, making economic improvements like raises and new holidays. But we can't do that while we must spend all of our

time fighting to protect the health benefits that we enjoy.

Thank you for allowing me to testify today. We look forward to working with council to resolve the City's health care crisis this year and in the future.

COUNCILMAN COHEN: Thank you very much.

(Applause.)

COUNCILMAN COHEN: We certainly agree it's a national problem and it needs a national solution. And I think your organization is in a position to help lead the national fight because you now have the President of the AFL-CIO who is an alumnus of your union. And he, when he was with your union, was one of the great labor leaders. And your Justice for Janitors Campaign in the Philadelphia area has made many people cognizant of the needs of low-income workers. And so we appreciate your leadership, but we've got to get the labor movement as a whole to take the same unselfish attitude and to fight for everybody's rights, as your statement indicated, not just for the rights of the union members. Otherwise this problem will remain with us.

MS. SIPP: The labor movement was responsible in this country 50, 60 years ago for ensuring that access to health care was something that working Americans had. And I think that we have come to the point, at least within SEIU and AFSCME, some of the other large unions that we know that just limiting health care to people that are employed is not enough, that we have to ensure that all Americans, all residents of this country, have access to health care.

COUNCILMAN COHEN: And even in Philadelphia, some of the Administrators who employ Philadelphia labor are trying to reduce the health benefit plans and increasing co-pays. The group of unions representing housing employees at Philadelphia Housing Authority are currently being confronted with that. A number of them have apparently capitulated to all kinds of pressure; pitting worker against worker, saying we'll grandfather in certain rights of current workers provided you let us cut the rights of incoming workers later on. And that's a terrible thing to do by employers and it's particularly terrible and awful when it's done by someone representing

government which ought to in every way be a model employer rather than a follower of the worst anti-labor practices that exists.

So there's a lot of work for everybody in this area.

Are there any comments by members of the Committee?

(No response.)

COUNCILMAN COHEN: Thank you for your testimony.

(Applause.)

COUNCILMAN COHEN: Is there any other witness to be heard?

Come forward. Identify yourself for the record, please. Spell your last name for the reporter.

MR. EMERY: Sure. My name is Randall Emery, E-M-E-R-Y. I appreciate the opportunity to speak here today. I come to wholeheartedly support this initiative, not from the perspective of a labor group, but as someone who has started a business in Philadelphia and, incidentally, who has experienced living in a society that has public health care. It's too bad that Councilman Ortiz is not here

because I could speak to his questions about Canada directly.

COUNCILMAN COHEN: He'll be here.

MR. EMERY: I would just like to say that in starting a small business -- this is just my own experience. There is no greater risk that you face than becoming sick or disabled. And when you start a business, you quickly find that there really are not many options. Last year, it cost me personally, without any dependents, without a spouse, about 6 1/2 thousand dollars to get insurance that would cover a catastrophic loss in the City. Now, on top of that, you have to actually pay tax, as someone who is self-employed on that coverage, bringing it to about $7,000.

Now, when you're starting a business, cash flow is a big issue. It is difficult to have money coming in and to also meet all your expenses, especially if they're fixed. I saw a statistic in US Today about a month ago that said that for the first time large businesses employ more people than small businesses do. I personally believe, knowing that health care costs are the No. 1 reason that small businesses go out of business, that this is

the primary reason, and I would like to echo the words of the good doctor from Wills Eye hospital who said that this could be a tremendous competitive advantage for the City of Philadelphia, for the residents of Philadelphia, from a business standpoint. And I would also just like to say from personal experience that public health care does work. I grew up with it. It is no exaggeration to say that I owe my life to public health care. It works. It works wonderfully, and that is why I'm here day. I would just like to thank you all for your work in putting this initiative on the ballot, and I hope that it gets there and that people can give it a chance. Thank you.

COUNCILMAN COHEN: Thank you very much.

(Applause.)

COUNCILMAN COHEN: Any other people to testify?

Please identify yourself for the record and spell your last name for the reporter.

MR. SHERROUSE: I'm Charles Sherrouse; it's S-H-E-R-R-O-U-S-E. I just wanted to briefly thank ya'll for hearing us and to let you know that we have over 10,000 Philadelphia residents that have

signed petitions endorsing just this proposition be on the ballot in the fall, and I want you to take that into consideration. And as somebody without insurance, I think that this is a very important issue and that we can't let it slip by. Thanks.

COUNCILMAN COHEN: Thank you very much.

Seeing no other witnesses, this will conclude the hearing on this matter of universal health care. At the end of the meeting today, there will be -- as soon as a quorum comes, if you'll be patient we'll interrupt the public hearing for the purpose of holding a special public meeting on this issue. But in the meantime, we'll go on to the next public hearing.

Will the Clerk read the next item before this Committee?

We'll here a bill and resolution also on a proposed Charter change. We cannot take a vote on the last one heard until a quorum appears, and that's why we're delaying the vote.

THE CLERK: Bill 030220, an Ordinance providing for the submission to the qualified electors of the City of Philadelphia of an amendment to the Philadelphia Home Rule Charter creating the

Office of the Insurance Public Advocate, as approved by the Resolution of the City Council: Fixing the date of a special election for such purpose; prescribing the form of the ballot questions to be voted on; and authorizing the appropriate officers to publish notice and to make arrangements for the special election.

Also, Resolution 030231, a Resolution proposing an amendment to the Philadelphia Home Rule Charter to create the Office of the Insurance Public Advocate, and providing for the submission of the amendment to the electors of Philadelphia.

COUNCILMAN COHEN: Thank you very much.

The first witness is Susan Schulman.

COUNCILMAN DICICCO: Mr. Chair, I'd like to make a brief statement.

COUNCILMAN COHEN: Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Mr. Chair. I believe the all the Committee members have a copy of a letter that was sent to me from the Insurance Commissioner, Ms. Diane Koken.

We had invited the Insurance Commissioner to attend today's public hearing. She writes back that, "Unfortunately, I am unable to

attend the hearing. However, I understand the importance of this matter and wish to submit my comments for the benefit of the committee."

She goes on to speak a lot about the role of the Insurance Commissioner, the number of people who it employs, the number of consumers in the Commonwealth of Pennsylvania that access the Commissioner's Office either through the Website or phone calls or written correspondence. And it does add up to a significant number of people.

She also sites in some instances a number of cases that have been settled on behalf of consumers. Also, a number of -- I guess it appears, the way she's writing this, that a number of businesses that may have been basically shut down as a result of improprieties that were being conducted.

And I thank them for that. I admire the fact that they have been doing something in those areas. But I'm still disappointed, obviously, that they are not here today. This is the second hearing we've had, and in both instances they were not able to attend.

Further in her letter, she addresses the issue before us. In my letter to her, my request to

the Commissioner, what was their position on the creation of an insurance public advocate in Philadelphia. I will read her remark.

"Therefore, in addressing the Committee's request for Insurance Department's position on the creation of an insurance public advocate in Philadelphia, we believe that we have the expertise and the resources to perform this important function and that a Public Advocate would be duplicative and not add value. The Insurance Department is here to protect the interest of all consumers and that includes Philadelphians. We believe that we have the expertise and the resources to perform this important function. We actively consider the consumer in everything we do at the Department."

With all due respect, I believe that they do have the expertise and the resources, but I do take exception when they suggest that they're doing everything possible to help the consumers in Philadelphia, in particular, in bringing down the rates for our policyholders in the City of Philadelphia.

COUNCILMAN COHEN: Councilman, is she

the holdover superintendent?

COUNCILMAN DICICCO: I don't know if she is the holdover or the new -- she is the holdover?

COUNCILMAN COHEN: That does not sound like a policy that Governor Rendell would be supportive of.

COUNCILMAN DICICCO: Well, I think that Mr. Denenberg testified on this at the last hearing we had and will testify again that it's our understanding that this Commissioner will also be held over during the Rendell Administration as well.

Again, with all of the expertise and all of the resources and all the budget that they have, insurance rates in the City of Philadelphia have not gone down, irrespective of the chart that she supplies saying that although rates may not have gone down, rates have not gone up in comparison to the consumer price index and the rate of inflation. Those are things we've been hearing for years and years and years. And obviously, if they were doing the job and, I think, protecting us in the way that we expected them to do, that we would not be here today. You really need to take a look at the letter because I won't read it in its entirety. But it

just talks about the review process.

And again, I don't see any real effort, if you will, that speaks to the issue of high automobile insurance rates in the City of Philadelphia today.

I also understand earlier in this hearing, our colleague Councilman Clarke made a statement that he was withdrawing his bill that would create the Office of a Consumer Advocate because we are told that the Mayor in the next couple of days by way of Executive Order will be creating the Office of Consumer Affairs. What that means, I have no knowledge of. I was just told that by my legislative assistant and a reporter while I was down in Room 426. And I believe that my colleague Mr. Clarke also suggested that this bill, this resolution, is moot. I respectfully disagree with him on that matter as well. So I wanted that to be part of the record as well.

COUNCILMAN COHEN: Your comments are noted, and I think they're all well taken.

I thought I was going to be sharply contradicted when I talked in terms like the holdover superintendent. I think we all hope for

better from a new Administration than a holdover who believes that the Insurance Department is fair and equitable in its decisions because, certainly, that's not the way the people of Philadelphia or, as I read them, the people of Pennsylvania feel. But let's see what transpires at this hearing, what action can be taken.

COUNCILMAN DICICCO: Mr. Chairman, just one more brief comment. A week or so ago when we had our first hearing, there were some comments that were made by either people in the media or other folks who were suggesting that the only reason that we were doing this was because it was an election year. I'd like to remind everyone for the record that Mayor Street has had the report that was supplied to him by Ms. Schulman, the Mayor's Insurance Rate Reduction Task Force, and nothing has been done for two years. And all of a sudden everybody's getting anxious around here and deciding to create a Consumer Affairs Office or another task force that's going to take their job seriously all of sudden. This was not done by me because of any political reason. I don't even have an opponent in the primary. I think this is something that's long

overdue. And the fact that the Administration has sat on this report and the task force that the Mayor assigned has not done anything with it, in my opinion, led me to want to do this because I think it's about time we get something done rather than just let this sit on the shelf and collect dust for two years.

COUNCILMAN COHEN: Thank you, Councilman, for your comments. And even if everything were politically motivated, I don't want to send the message that there'd be anything wrong with that. Isn't that the purpose of elections, to produce discussion among citizens, to create an opportunity which almost compels citizens to take account of where things are and where they ought to be, and to take action to see that what exists ought to be changed into the state of what ought to be. So that if something is motivated by the election process, that's all to the good of the election process.

But I know this thing has been sitting around the desk of the Mayor in Philadelphia for a long time. I know that complaints have existed for many years about insurance rates. And always we get

from departments, usually those that are co-opted by the industry they're supposed to regulate that they are in the finest position and best able to protect the interest of consumers. The facts tend to indicate otherwise, but that's the purpose of these hearings and the reason that legislatures exists: In order to bring about change.

So this hearing will begin with Ms. Schulman. We're glad to see you back here again on the question of insurance rates.

MS. SCHULMAN: Thank you Councilman Cohen. And good afternoon, Councilman Ortiz and Mariano, Councilman Goode. My name is Susan Schulman. And as you know, I was appointed by Mayor Ed Rendell to serve as the Executive Director of the Mayor's Automobile Insurance Rate Reduction Task Force in November 1999, and continued in that position until December 2001.

Competent analysis of auto insurance rates is a difficult and complex task that requires ongoing actuarial and economic expertise. The task force was created as a temporary investigatory vehicle to identify problems and propose solutions. What we learned very quickly was that this would be

a process encumbered by obstruction from the insurance industry and insurance regulators and that access to basic data would require ongoing legal action.

I believe that the Committee has copies of the task force report of July 2000 that summarizes our findings after six months of work. Our findings, summarized on page 3 of that report, showed that rates in Philadelphia were among the highest among 10 major cities, including New York, Los Angeles, Miami, Chicago, and Detroit. We determined that the personal injury loss experience, however, had significantly declined in Philadelphia but that we were not realizing any comparable reduction in our premiums.

We also found that Philadelphians were not benefiting from the tort reforms enacted in 1990 through Act 6.

Finally, we concluded that Philadelphians are suffering from over-inflated auto insurance premiums that are choking off the City's population base.

We made a variety of recommendations that are listed in Section 5 of the report, page 15.

First and foremost, we recommended creation of an independent office to pursue the broad range of initiatives needed to reap any meaningful, long-term success at lowering insurance rates for the drivers of this City. We recommended the creation of the Office of Public Insurance Council for Philadelphia. The goals of this office would include: Ongoing review of rate filings; intervention and rate approval; investigation into unlawful insurance practices; litigation where necessary on behalf of insurance consumers; consumer education; stimulation of the private market competition; and lobbying for consumer interests.

The list of tasks that I enumerated can only be done through a dedicated office charged with this task that has the required legal, actuarial, and economic expertise. This office would clearly advocate on behalf of consumer interests; however, it would also become a meaningful resource to the Insurance Department which is charged with the dual role of protecting consumer rights at the same time that it serves the interest of the insurers doing business in the state.

We made a number of proposals for action

in our report. We did not present these as alternative methods to proceed, but as a comprehensive plan for action. I continue to believe that fractured efforts at insurance reform are doomed to failure and frustration, and that ensuring fair premiums for Philadelphia drivers warrants dedication of funds and expertise before we can expect long-term rate reduction within a healthy insurance market.

Thank you, and I'd be happy to answer any questions that you may have.

COUNCILMAN COHEN: Thank you.

Are there any questions from Members of the Committee?

Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Mr. Chairman.

Good afternoon, Ms. Schulman, and thank you again for coming and taking the time out of your busy schedule to be with us.

MS. SCHULMAN: Thank you for having me.

COUNCILMAN DICICCO: You heard my comments earlier and you're aware of my colleague's remarks earlier that he was withdrawing his bill to

create an Office Consumer Advocate and that the Mayor is allegedly, will be in the next couple days, by way of Executive Order creating an Office of Consumer Affairs. What do you think about that in terms of how that would impact or what impact it may or may not have on insurance rates? We understand the role of the consumer advocate or the consumer affairs can have a broad range of issues. But your expertise and your preparing these reports and knowing the amount of time it takes just in this one area of automobile insurance rates, how do you feel about that?

MS. SCHULMAN: Well, without knowing the details of what's being proposed for this office, in general it seems that a consumer advocate is a good idea, certainly for the City of Philadelphia. However, insurance issues are unlike almost any other consumer issue. Insurance issues are more complex, require more expertise, require more ongoing concerted effort than I think it does to handle other types of consumer complaints.

I did some work at the United States Consumer Protection Office, and I know that consumer complaints are plentiful and can often be ongoing,

but none, I don't think, are as complex as insurance complaints. And if there is a dedicated office within the Consumer Advocacy Office for insurance, then I think that would be great. But that office clearly needs funds for insurance research, it needs funds for attorneys who understand insurance issues, it needs funds for actuarial staff. If this is an Office where there's one advocate and secretary, I don't think that the insurance consumers' needs are going to go very far.

COUNCILMAN DICICCO: So we should actually follow the lead of the Commonwealth of Pennsylvania, I guess, and other states where they created an Insurance Commission to deal strictly with the issue of insurance. I mean, it's kind of one in the same --

COUNCILMAN ORTIZ: Didn't we used to have an Insurance Commissioner?

MS. SCHULMAN: We do have an Insurance Commissioner.

MR. DENENBERG: Yeah, about 30 years ago.

COUNCILMAN DICICCO: A guy by the name of Herb Denenberg.

(Laughter.)

MS. SCHULMAN: I think what you're referring to is there are other states that have an Office of Public Insurance Council, such as Texas, where we modeled our office from. That office of Insurance Council has such a staff and such expertise. All they do are insurance issues, and they advise the Insurance Commissioner in Texas as to certain rate filings where that Office reviews rate filings and finds actuarial discrepancies. They have access to the Commissioner. They can point those discrepancies out to the Commissioner rather than leaving it to some consumer who's annoyed about their auto rates.

COUNCILMAN DICICCO: Thank you.

MS. SCHULMAN: Thank you very much.

COUNCILMAN COHEN: Thank you very much, Ms. Schulman.

COUNCILMAN ORTIZ: You did great work.

MS. SCHULMAN: Thank you. I appreciate it. Thank you.

COUNCILMAN COHEN: The next witness will be the one Insurance Commissioner that made Philadelphians relax and felt a little bit more

secure, Herb Denenberg.

MR. DENENBERG: Thank you. Actually, I didn't know I made anyone relax.

COUNCILMAN ORTIZ: I thought Herb was retired.

MR. DENENBERG: Let me say first of all that you've already had your most powerful witness in the form of the witness who did not show up. As I understand, you invited her on April 9 and she wasn't here. You her invited her again, and she wrote that PR letter. There's nothing in it that's worth even repeating, and I'm embarrassed that you would even read it to Committee. And thank God, you didn't read the whole letter. It's just a PR piece. I think the fact that she doesn't show up tells you all you have to know about the need for an Insurance Consumer Advocate. The Commissioner is not protecting the public. If she had any decency at all, she would have at least sent someone else. You notice, she didn't say "I can send someone else." She just said, "I can't make it." She offered no excuse and she acts like this is some little village. This is the largest City in Pennsylvania. It has the most severe insurance problems in the

state and probably the country, and the Insurance Commissioner can't find time to be here. So in my view, that makes the case for an Insurance Consumer Advocate.

COUNCILMAN COHEN: Before you go on, let me just refresh everybody's mind that the Members of the Committee that are now present, to the far right is Councilman Nutter standing in the second row, Councilman Rizzo, Councilman Ortiz, Councilman DiCicco, myself Councilman Cohen, and Tim Kearney, the Legislative Director of the Committee, and Councilman W. Wilson Goode, Jr. Councilman DiCicco is, for the purpose of this hearing today, I'm informed, he was appointed by the President of City Council.

Go ahead, Mr. Denenberg. I think she's been reappointed and I'm wondering why she's being considered by the Governor for retention.

MR. DENENBERG: I can't say who the Governor is considering. All I said was I heard rumors that they're going keep her. And I think it's a disgrace that she's been kept this long. When I was appointed Insurance Commissioner, by this time I had already started having hearings in

Philadelphia on the way the Blue Cross was ripping off the public. I mean, someone should have been on the job immediately. And she certainly should not be retained. As I pointed out in my statement, she's been a failure under three different governors. Someone ought to get the message. He ought to appoint a good commissioner.

COUNCILMAN ORTIZ: Susan Schulman.

MR. DENENBERG: That's all right with me. I'll second the motion.

COUNCILMAN ORTIZ: I'd go with Susan. She's already done the work.

MR. DENENBERG: We have three or four candidates in this room, so I don't think that's a problem if you really want to appoint someone that's good. If he's going to run it by the insurance industry, that's another issue.

Now, I prepared -- you put me under undue hardship because I was here April 9th, and I'm compulsive enough to prepare a fresh new, brand-new statement for you, so this is something you haven't heard before. I didn't want to come in and repeat what I said before. But I think this is such an important issue, I wanted to do the work and really

lay it out for you because I think there's an air-tight case and I think the public is sick and tired of excuses. They want some action.

And also just one minor introductory note. I don't think creating this Office of Consumer Affairs is going to solve the problem. First of all, they're going to be swamped by all kinds of complaints. I used to have student interns handle most complaints. The typical complaint you get in a Consumer Affairs Office, you can have almost anyone handle. But as Susan pointed out, insurance has a lot of complexities. And certainly, if you want to go to bat against the insurance industry and the Insurance Commissioner, you need more than just one little office. So until you see an office with adequate resources, that's not going to do the job at all that we're talking about.

Now for my statement: Proving the need for a Philadelphia Office of an Insurance Consumer Advocate is somewhat akin to proving the need for air, water, and food. Rip-offs, fraudulent schemes and other abuses of the marketplace are rampant. The late great Senator Phillip Hart of Michigan, a great champion of consumer protection used to say

that 30 to 40 percent of the consumer dollar buys no value because of abuses of the marketplace.

I've been monitoring consumer complaints for about 30 years, and I can assure you the public is now and has always been underserved by government and private consumer protection agencies, and that the public is not getting the kind of help a consumer protection agency should provide. Every one of the suburban counties has its own consumer protection agency, but not Philadelphia. And I should add that they're not going to be adequate to handle these insurance problems at all. They don't do any of the lobbying that you're talking about or any of the litigation or any of the serious negotiation with the Commissioner. The public is crying out for help, and that cry should be answered.

I support bills to establish an Office of Consumer Affairs and an Office of an Insurance Consumer Advocate. If you establish the former, you can include the latter as a unit within the Office of Consumer Affairs. But if you want the insurance problem solved in the fashion suggested by your prior hearings and the Mayor's Automobile Insurance

Rate Reduction Task Force, you will have to give it carefully defined responsibilities and adequate personnel budget.

Now, as I try to make the case for one or both of these offices, I'll illustrate in terms of insurance, but the same case could be made for any other area of consumer abuse, from home repair and home improvement to landlord and tenant, from credit problems to Internet scams.

Now, here's the way I start to prove the case in the area of insurance. If members of this Committee believe that the insurance industry is treating Philadelphia policyholders fairly and is not overcharging them for auto insurance and other coverage, then you don't need an Insurance Consumer Advocate.

If you believe that your constituents don't need a voice in Harrisburg, if you believe that Philadelphia policyholders will get fair treatment before the Commissioner when she listens to hundreds of company representatives, but no policyholder advocates, then you don't need a consumer advocate.

If you believe that all is well in the

insurance market for auto insurance, for homeowners insurance, for health insurance and all the rest and if you're not concerned about Philadelphia being overcharged for auto insurance, if you're not concerned about red lining, if you're not concerned about insurance companies that don't pay their claims, if you're not concerned with other insurance company abuses, then you don't need an insurance consumer advocate. If you believe the Insurance Commissioner can be trusted to protect the policyholders of Philadelphia, you don't need an insurance consumer advocate. But this is the same Insurance Commissioner who would not meet with the Mayor's Auto Insurance Rate Reduction Task Force. She would not meet with then Police Commissioner Timoney and City Solicitor Joe Dworetsky representing the Task Force. In my opinion, that's like kicking the City of Philadelphia in the teeth, and she's done it again today by not showing up at this hearing. That alone proves the need for an advocate, when the office that is supposed to protect the public is so arrogantly disregarding the public.

I served as Insurance Commissioner and I

met with anyone and everyone and would give testimony on insurance matters when requested. Incidentally, this Commissioner would not even come before City Council, as I pointed out before, when asked for the April 9th hearing, and she's a no-show again today.

If you believe the insurance companies will protect the public, you don't need an Insurance Consumer Advocate. But the insurance companies would not even give the Task Force the time of day. They refused to provide information that should be in the public domain. That shows you how much many of the companies are concerned with Philadelphia policyholders.

I know you are concerned about all that, and that's why you are proceeding in this and other committees to establish the Office of Insurance Consumer Advocate. I'd recommend favorable action on that bill immediately.

It's easiest to illustrate this whole scene in terms of the insurance marketplace. The Mayor's Automobile Insurance Rate Reduction Task Force found Philadelphians are being overcharged for auto insurance on a grand scale, about $443 per

policy on average and a 15 percent overcharge on limited tort policies. The Task Force also found that getting information and data out of the Insurance Commissioner and insurance companies is more difficult than pulling alligator teeth. For example, the Insurance Commissioner claims that data on the rating differential between full and limited tort was confidential and would, therefore, not be provided it to the Task Force. Philadelphians are forced to buy auto insurance and pay inflated premiums, yet they can't even get the information needed to asses the fairness of those rates. So in effect, we not only have taxation without representation, but taxation without information. The City has had to go to court to try to stop auto insurance rate increases. But a lawsuit here and there is not going to solve this problem.

This little review suggests what has been obvious to any observer who asks. Who speaks for the consumer? The answer is no one. The Commissioner is either asleep at the switch or is busy doing the industry's bidding. I've described recent Commissioners as lap dogs, rubber stamps, and puppets of the industry. You may want a kinder

term.

COUNCILMAN ORTIZ: Lap dogs are quite good. Very nice. Very graphic.

MR. DENENBERG: But recent Commissioners have not been protecting policyholders in general and Philadelphians in particular. They not only have had no solutions, but also won't even provide the public with information that should be public.

During a whole cascade of insurance crises, I haven't heard a peep out of Harrisburg or the Office of Commissioner. We've had a malpractice crisis, a health insurance crisis with the Blues monopoly creating problems for its members and the doctors while sitting on billions in surplus, an automobile insurance crisis in Philadelphia, a solvency crisis with Reliance going belly-up and malpractice insurers doing the same, skyrocketing premiums on property insurance since 9/11, and failure to make refunds after Congress gave the industry special protection, and other problems and issues that should be addressed by the Commissioner.

Even a perfect commissioner, if she should be named -- and we can't expect the Commissioner to protect the public even in that

circumstance. She has to serve as judge, jury, and prosecutor in making decisions involving the insurance industry over which she has almost complete control. In this process, she is guided by the lobbyists and representatives of hundreds of companies, their associations, rating agencies and all their agents and brokers. Consumers and their representatives are almost nowhere to be found in that decision process. The field is left to the industry which by and large guides the regulatory process, writes the insurance laws, and among other things, participates in the selection of the Commissioner.

Take the last two Commissioners. Both came out of the ranks of the industry, and one has already returned to its ranks. This has been a great revolving door of insurance regulation. The top regulators come from the ranks of industry and return to them when their tenure is over. Even if she would like to protect policyholders and public, there is almost a total imbalance of advocacy on rates and other matters. Even the best intention Commissioners should get the benefit of policyholder advocates as well as insurance industry advocates.

Now, I can prove the need for an Insurance Consumer Advocate in another way. This Committee and others in City Council can try to sort out the facts. You will hear different stories from the Mayor's Task Force, from consumer organizations, and from the insurance industry. You will be subjected to a blizzard of claims of numbers, of statistics, of rates, and of interpretations of the complexities of the insurance marketplace. You will find insurance is complicated merchandise with complicated policies, underwriting procedures, rating practices, and regulatory controls. The industry likes to keep things complicated, and that helps insulate them from media scrutiny, from legislative controls, and from policyholder and public pressures.

My own experience as Commissioner was unique in history. The insurance industry objected to making policies more readable that were found to be less readable than Einstein's theory of relativity. They objected to giving the public shopper's guides so they could find the lowest cost companies. They objected to disclosure of information that would make transactions more

understandable. They make it difficult for others who want information so they can figure out what is going on in the insurance marketplace. I get complaints from consumers all the time who have trouble getting something as simple as a copy of a specimen policy they're going to buy or a premium quotation they might want. The industry almost automatically objects even to obvious and long overdue reforms such as an Office of Insurance Consumer Advocate. Industry spokesmen keep chanting, "Let's work together," but ask them for information, for documentation, or reforms, and see how much of that working together really happens.

What all this points to is that City Council is not going to be able to resolve the meaning of hundreds of thousands of pages of rate filings that the Task Force obtained and confidently draw conclusions as to the exact amount of the Philadelphia overcharge. You will have difficulty monitoring solutions that might be implemented, and this is all just one piece of a much larger series of insurance problems that Philadelphians face. Auto insurance is just the tip of one iceberg. Just think of the ordeal of trying to handle auto

insurance rates alone. What if you wanted to work all the other insurance problems that Philadelphia faces. What you need is an office that has the know-how, the resources, and the time and the authority to clearly define and document the problems, come forth with solutions, and get them implemented by publicity, education, negotiation, legal representation, or whatever it takes. That means an Office of Insurance Consumer Advocate. That is the logical solution of the problem from your point of view. Otherwise, you will be getting endless complaints from your constituents and will be bounding from hearing to hearing in an never-ending attempt to identify problems in different segments of the insurance marketplace, but always finding yourself lacking in the expertise, resources, and authority to really come up with the facts and solution and get necessary action.

City Council has to ask itself, in view of all the special problems of Philadelphians, with auto insurance, homeowners insurance, and health insurance, and all the rest, one simple question: Isn't it about time the voice of the premium-paying and taxpaying public is heard and necessary action

is taken to protect their interests? They want more than hearings, studies, and press releases. They want some protection in the insurance marketplace which now poses more difficulties for this City than any other in the state and perhaps any other in the nation.

The answer is an insurance advocate.

Now, I'll skip this section about other consumer problems, it's the same thing, only it's not as complex. And I'll offer one more piece of evidence that you need the Consumer Advocate.

In my testimony last week, I noted that one way to prove the need for an Insurance Consumer Advocate is to take a look at the arguments used to oppose it by the Insurance Federation of Pennsylvania. I said all of their arguments were weak and some were positively ridiculous.

Since then, I've had a few conversations with the Federation's lobbyist, Sam Marshall who was a witness last week and is here again today. He said he would prefer if I did not call the arguments against the Insurance Consumer Advocate ridiculous, so this time around I'll just describe them, borrowing from Abe Lincoln's famous expression,

"their arguments are weaker than watered-down soup made out of a shadow of an anemic pigeon that starved to death." Thank you, Abe Lincoln.

You can see them all in my statement from last week which is attached to this statement. But to give you the flavor of these arguments, I will briefly repeat a few of them, and I apologize for Mr. Marshall if the quality of his arguments are embarrassing to him.

The Federation says, "The insurance department and the Commissioner are the best regulator." I'm sure the insurance companies think so, but do your constituents? Even if the Commissioner is the best regulator, that doesn't mean Philadelphians don't need an advocate. The office we're talking about is not another regulator, but an advocate. A function clearly distinct from that of regulation.

The Federation also says, "The cost of the proposed office would eventually come out of the pockets of policyholders." So what. Paying a small fee for the Office of Insurance Consumer Advocate certainly beats overpaying hundreds of dollars for each policy every year, not to mention a train of

other insurance abuses.

I will not embarrass Mr. Marshall further, but only hope he comes up with some new arguments today. And I understand Mr. Marshall has some new arguments, but they're as weak as his other attempts to sink this much-needed office. He says an Insurance Consumer Advocate would not have standing to sue on behalf of Philadelphia policyholders. First, that may be the view of an insurance lawyer, but not the courts. Second, I think competent lawyers will find a way to litigate the issues and properly assert standing in one way or another. Finally, even if true, that does not change the need for the other activities proposed for the Office of Insurance Commissioner.

Needless to say, the incumbent Insurance Commissioner, in the letter which Councilman DiCicco read, merely parrots the arguments of the industry and says she is policyholders' consumer advocate.

I would also like to comment on a few other reforms. We need an Insurance Commissioner that will stop hibernating in Harrisburg and start investigating and acting on the insurance problems of the state. It doesn't look like that's going to

happen, as thus far Governor Rendell has kept a do-nothing commissioner that has been a failure under three different governors.

We also need a State Office of the Consumer Advocate. That's probably not going to happen either, as the insurance industry has too much power in Harrisburg and will not let it happen. For the same reason, we won't get a decent Insurance Commissioner, we won't get decent insurance laws or decent insurance regulation. That's all the more reason for you to act here in Philadelphia and give your constituents at least a fighting chance in the insurance marketplace.

I'd suggest one more reform. After my testimony last week, I talked for several hours with Mr. Marshall of the Insurance Federation. We agreed on a couple things. I told him that I was going to include a recommendation in my testimony last time here that would open up a third option available under the no-fault law, but I didn't have it the last time, but I'll do it this time. He agreed on this third option, and that was one happy note of agreement with the insurance industry.

The third option, in addition to a full

tort and limited tort option, would be one with no pain and suffering recovery. It would be an option similar to limited tort, but in addition there would be no pain and suffering recovery, even in the case of the most serious injuries. Of course, victims would still be able to collect out-of-pocket costs, medical costs, and the like, lost wages. The option, instead of merely providing a 15 percent across-the-board discount, might provide a discount of 30 to 50 percent or even more. The trial lawyers would object, of course, just as they are highly critical of the limited tort option. But I think consumers should have that choice. They could take the savings and spend it on something else or buy their own disability, health, and life insurance and provide a more efficient, speedier, more certain and less aggravating form of protection.

Mr. Marshall and I agreed on one other matter. It would be productive to bring different interest groups together to come up with ideas for improving the insurance market. This body could have representatives from the insurance industry, trial lawyers, health care providers, business and consumer groups. This could be done under the

PhiladelphiaCity Council or some other group.

Finally, I'd like to make my final argument. I'm sure you get many insurance and other consumer complaints. I'm sure that when you do, you would want to be able to refer these complaints to a consumer protection agency you can count on. So that's one more reason to establish an Office of Insurance Consumer Advocate. Thank you very much.

COUNCILMAN ORTIZ: Thank you, Mr. Denenberg. I'm going to recommend to the author of the legislation Frank DiCicco and the Chairman that we put forward a resolution asking Governor Rendell to replace the current Commissioner of Insurance. And I think that's sort of a sentiment of City Council. And if she served through three governors, I don't believe she should have the opportunity to keep serving the insurance companies through a fourth Governor and a four-year term.

MR. DENENBERG: I think she should be returned to the insurance industry from whence she came.

COUNCILMAN ORTIZ: I think that's the sentiment that I get from at least my one instinct, and I would recommend that we let our feelings be

known. And actually, I recommended Susan Schulman. I think she did a great job as the Executive Director, and I know her. So I would not have any problems seeing her be appointed to be Commissioner.

Mr. Denenberg, I'm glad to see you back in action; not that you have been out of action. But I'm glad to see you back traipsing around in the areas where we need some strong advocacy. Because it seems like the insurance industry has a stranglehold, not just on the State of Pennsylvania, but across the United States. It's throughout. It's car insurance, the medical, the whole kit and kaboodle of daily living that seems to be regulated by -- we don't regulate. The Commissioners don't regulate the industry. It seems the industry tells the Commissioners what it is that they need and those Commissioners seem to do exactly that. They are no longer a representative of the public's interest.

Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Mr. Chairman.

Mr. Denenberg, I'd like to thank you for coming out again today. It's the second time in

about as many weeks. You're a busy man, and I understand that. I wanted to personally thank you for the opportunity to hear from you today as well as on April 9th. You've always been there for the consumers of this City. And from all of us here, thank you again. I appreciate it.

MR. DENENBERG: I'm ready to come back anytime. I'm just getting warmed up.

COUNCILMAN RIZZO: Again, I think I said it last visit, and I'll say it visit. You're a great Pennsylvanian. You've made people's lives a lot better. And I hope that resolution doesn't turn out to get you out of retirement as the Insurance Commissioner.

MR. DENENBERG: Don't worry about that. When I left the office the first time, Ralph Nader said, "You will never again be appointed to a public office. Once you do the job the way it's supposed to be done, you are automatically disqualified forever." Which is all right with me because I can make more money on the outside.

(Laughter.)

COUNCILMAN ORTIZ: Ralph Nader was right, wasn't he?

Thank you. Steve P. Hershey, former Community Legal Services Public Advocate. Former colleague of mine, how are you doing, sir?

MR. HERSHEY: I'm doing fine.

COUNCILMAN ORTIZ: Identify yourself for the record.

MR. HERSHEY: My name is Steven Hershey.

Council President Verna, Chairman Cohen, Councilman DiCicco and Committee Members, thank you for this opportunity to testify before you today concerning the proposed Office of the Insurance Public Advocate.

I served as the public advocate on matters related to Philadelphia Gas Works and the Philadelphia Water Department for more than 15 years while I worked at Community Legal Services. In calculating the impact of our advocacy, we saw that many of our recommendations were accepted by the Gas Commission or by the Water Commissioner in rate cases, saving consumers literally hundreds of millions of dollars during that period.

Before the creation of a Public Advocate for water and gas, utility customers in Philadelphia faced many of the same kinds of problems now facing

those who need insurance but who cannot afford the rates. With no one to represent them, utility customers were paying rates that were not only higher than they needed to be, and in many case unaffordable, but rates that were also unfair in that some of the poorest customers were forced to subsidize customers with substantial resources. Our work was successful in eliminating some of the those inequities.

While at Community Legal Services, I also had occasion to represent clients in automobile rate cases before the Pennsylvania Insurance Department. In several cases in which I was supported by an expert whom we had retained, we were able to eliminate the entire rate increase proposed for Philadelphia drivers. And I'll come back to that experience at the end of my testimony, if I may.

My testimony today is based primarily on those experiences. I fully support the purpose of this bill because I believe that if passed and implemented appropriately, it will benefit Philadelphia and its citizens. A few additional comments are appropriate, however.

The credibility and effectiveness of any office of public advocate depends on several factors. And one of the most important of them is its independence from political or financial pressures that might influence the advocacy decisions of the office.

City Council should amend the proposed legislation to protect the independence of the office in two ways:

First, the advocate should be appointed for a specific term of office and that term should not coincide with the mayoral term of office. Council should further provide that the advocate could be removed from office only for good cause.

Second, Council should create for the office a dedicated and predictable source of funding that could be supplemented by City funding, but is otherwise independent of the City Operating Budget. This provision will be particularly important during periods like the current one in which the City faces a serious fiscal challenge. In dedicating a source of funding, it is essential to recognize that an effective advocacy effort on insurance issues will not be cheap. Keep in mind that in order to

accomplish its mission, this office will have to challenge one of the best organized and best funded industries in the country.

In the long-term, it is likely that an Office of Insurance Public Advocate will have a beneficial effect on the Philadelphia economy. Generally, for all but the wealthiest in our population, insurance premiums paid by policyholders reduce the ability of those individuals to spend money on discretionary items. The money paid for insurance premiums is normally exported from the Philadelphia economy. To the extent that rates can be reduced or held steady, some funds will be spent for goods and services in Philadelphia and will not be exported from the local economy. I'm not an economist, but I've worked with economists enough to understand that they normally calculate that as residents have additional discretionary resources, they spend some predictable amount of those additional resources within the local economy. In the case of a rate decrease or avoided rate increase, that spending means additional expenditures in the Philadelphia economy and a predictable increase in jobs and tax revenues as

measured by what economists call a multiplier effect.

I recommend that an Office of Insurance Public Advocate have responsibility which is broader than merely fighting rate increases. While rates and affordability are the most acute aspects of the problem for most people in Philadelphia, availability of insurance and customer service issues are also very important.

The ability of an Advocate to address availability of insurance and customer service issues would accomplish two important goals: First, the Advocate would provide an important service to individual citizens of Philadelphia who need help. Second, the more contact that any Public Advocate has with real people experiencing real problems, the more likely it is that the Advocate will stay out of the ivory tower, understand real issues for real people, and craft strategies and solutions that benefit those people. That knowledge of problems experienced by real people can have direct impact on strategy for rate cases, even when the problems do not arise directly from rate issues.

Now, I'd like to address one paragraph

that Councilman DiCicco read from the Insurance Commissioner's letter, and that is the paragraph where the Insurance Commissioner indicates that an insurance advocate is not needed because they have the expertise and the resources to do that in Harrisburg.

I respectfully disagree for a number of reasons: One, an advocacy effort from within the very department that has to rule on the regulation of matters raised by insurance company does not provide the same independence that is absolutely essential to the integrity and effectiveness of the kind of office that we're talking about.

I remember in 1986, there was no public advocate for gas in Philadelphia. At that time PGW proposed to the Gas Commission a substantial rate increase. At the time I worked at Community Legal Services, and I appeared before the Gas Commission on behalf of numerous clients; CEPA, Action Alliance of Senior Citizens, Tenant Action Group, and others. We asked for something very simple. PGW was mounting an advocacy effort for a rate increase, and they were using customer revenues to promote their own cause. We asked for a little bit of that money

back to present the other side of the story. Now, one Councilman John Street, who was then a member of the Gas Commission, took the lead in agreeing with us and making sure that it happened.

As I said earlier, the effectiveness of the efforts of the Public Advocate on gas and also on water can't be disputed. The efforts of that office have saved customers hundreds of millions of dollars, have made PGW and the Water Department leaner, in many ways more effective. And I don't think either of those utilities would dispute that fact.

There's no way that an organization can both regulate and advocate on behalf of the consumers who are served by the companies proposing rate increases or other changes in the way they deal with customers. That has been precisely the experience at the Public Utility Commission where it was deemed necessary and appropriate to have an independent Office of Consumer Advocate on utility issues. I submit that the same thing is appropriate here. Thank you very much.

COUNCILMAN DICICCO: Thank you. And, Mr. Hershey, for your information, I do have

proposed amendments to the resolution that will address the issue of the term that the Advocate would serve and the cause for removal as well. Thank you.

MR. HERSHEY: Very good. Thank you.

COUNCILMAN DICICCO: Thank you for your testimony.

Mr. Haver.

MR. HAVER: Good afternoon. My name is Lance Haver. I'm the President of the Board of CEPA, the Consumers Education and Protective Association.

I testified earlier and a lot of people have already said what I thought was important. I don't want to waste the Committee's time. I do want to make one point again about the Insurance Commissioner being wrong.

As it stands now, the Insurance Commissioner holds public meetings, not public hearings. The information at a public meeting can be asked for. You can ask for whatever information you want. But because it's a meeting and not a hearing, the information does not have to be provided. That's why, as you heard earlier from Mr.

Denenberg, a lot of the information that was requested simply isn't received.

Second, the Insurance Commissioner sits in two roles right now, which is impossible. It would be as if a judge was the lawyer for one side and also the judge in the case. That's how the Insurance Commissioner sees herself right now. And, of course, that lends for absolutely no belief in any decision that any Insurance Commissioner can make, whether you recommend a new Insurance Commissioner be appointed or not, the problem is the role that the Insurance Commissioner is being asked to play and not the person. It is an impossible role, and there needs to be a public advocate.

And the third point is, the way that we have competition in regulated marketplaces is through fair, equal hearings; it is not through opening the doors and letting one side have everything. We have to regulate insurance because it is required to drive. The only way to have real regulation, to have real adversarial hearings, is to have an equal playing field, and that's what this bill does and that's why I support it and that's why I'm thankful for the time to be here.

COUNCILMAN DICICCO: Thank you, Mr. Haver.

Mr. Stein.

MR. STEIN: Yes, thank you, Councilman. I'm Jonathan Stein, General Counsel at Community Legal Services.

I think when you look at the bill before you and Councilman Clarke's bill that has been withdrawn or that proposed office, the three principles to keep in mind in evaluating what works, what's effective are: 1, independence; 2 professionalism and expertise of an advocate; and 3, funding and staffing.

And independence is obviously important because an Advocate will step on some toes, and toes of some pretty powerful interests. And unless there is independence protected, you're not going to have effective advocacy.

Second, professionalism, this is an area of great expertise. Really, a very technical area, these areas of insurance and other consumer areas, and you have to build in professionalism in your staff.

And funding and staffing is crucial

because unless you have the wherewithal to both be able to litigate, propose policy changes, advise on legislation, deal with very difficult, ethical, and policy issues, you're really going to have a symbolic office and not a real office.

So we're here to support your bill, Councilman DiCicco. We would support amendments to the bill because I think in the area of independence, the first principle we mentioned, I think it's important to have a Public Advocate who can only be dismissed for good cause and we would also urge dismissed for good cause by, not only the Mayor, but also Council. We think there should be a Councilmatic vote that approves a dismissal, as there would be a Councilmatic vote to vote that Advocate in, as well as the term of office idea that my former colleague Steve Hershey proposed a few minutes ago.

We've heard from Mr. Marshall. I know he's here waiting to give his testimony again that one of the reasons why an Advocate, in his view, is not needed is that, well, the City of Philadelphia can be there to represent the interests of policyholders. And in fact, the City is in or

trying to beat a couple of auto insurance rate cases right now. What his testimony fails to say today, as it failed to say the other day, is that the insurance companies that his Federation includes is actively trying to stop the City of Philadelphia from being in these rate cases. How are they doing it? They're filing objections on what's called standing or the right of a party to actually be heard at the hearing or in court later to speak for policyholders. So that with one breath as he's saying, "Well, the City of Philadelphia is in these proceedings, that you don't need an advocate," in the other forum are the companies he's speaking for are actively filing papers and they filed the papers already in the Insurance Department, ongoing cases before a hearing examiner saying, "We don't think the City of Philadelphia has a right to say one word on behalf of policyholders because the City is not technically a policyholder and they have no standing.

So we suggest that it's fairly hypocritical for the industry to stand up before you or sit down at this table before you say an advocate is not needed on those grounds.

We also take serious objection to the current acting Commissioner -- I guess she's not acting. She's the holder of a Commission, Commissioner Koken, saying that they have enough resources and expertise in the Department already. What she doesn't tell you is that the budget for the Insurance Department in Pennsylvania is one of the lowest in the entire country. It's less than a half of, apparently, what Missouri is, with far many more policyholders and insurance assets in Pennsylvania. It's a greatly underfunded department that cannot even do its own job, much less do an advocacy job for customers.

And the Blue Cross situation is a good example. She held a hearing last September. She was forced to hold a hearing on the billions of dollars of excess reserves that the Blues are sitting on while over one million Philadelphians have no health insurance. And what has happened since that hearing in September? Not one word from her, not one report issued as to the results of that hearing.

So all this stuff about she's there to protect us is really a lot of malarky. And we don't

need her as a Commissioner. We need a really fine Governor in place right now, Ed Rendell, to appoint a public interest oriented Insurance Commissioner to support a Public Advocate. Although this City Council can't make that happen, we urge this Council and this Committee for the next Council meeting to consider a resolution that could be adopted by City Council and directed to the leadership in the General Assembly and to the Governor urging the immediate appointment of a public interest oriented commissioner and a public advocate.

COUNCILMAN COHEN: Excuse me, Mr. Stein. Would there have to be legislative action, or could the Governor do it without legislative action?

I raise it because if it's possible not having to deal with the Governor and the Assembly but just deal with the Governor, I think that would be much easier to accomplish.

MR. STEIN: For the Insurance Commissioner, the cabinet appointment does need the consent of the State Senate.

COUNCILMAN COHEN: Of the Senate, not the whole Assembly?

MR. STEIN: Right. Although, he need

not continue the current commission one day. He could have an acting person tomorrow if he wishes.

For the Public Advocate, you raised an interesting question, Councilman Cohen. It is probably preferable to have legislative action, but I would venture to guess that probably there is power within the executive branch of the Governor's office to establish a Public Advocate to perform advocacy functions through his own Council office or by Executive Order. I think it probably would be preferable for the long-term to have that done as a statutory body, but there may well be leeway for him to do that at present. And I think that would be a step forward.

But on the other hand, Councilman, there has been legislation in the General Assembly for many years now for a Public Advocate for insurance. In fact, it passed the State House more than once, but, unfortunately, has been killed in the State Senate. And perhaps Mr. Marshall behind me was one of the forces that urged the State Senate not to adopt a State Advocate, and his friends followed his bidding.

But I think if this issue becomes

public, as it has become public, I think the time is right today where no one of either party can say no in Harrisburg to a State Public Advocate. So that's why we urge this City Council to help that issue become public in a resolution aimed at Harrisburg, saying, a State Insurance Advocate is long overdue, as is a good Insurance Commissioner.

COUNCILMAN COHEN: I'll urge Councilman DiCicco to prepare such a resolution. And if not, maybe Councilman Goode and I will cosponsor one. It sounds to me like a very good idea. I don't think we ought to let the new Governor off the hook. On that he was elected, on a platform that promised change in the way in which matters are dealt with in Pennsylvania, and I think the people are entitled to get that change. That ought to be a change in which actions are taken for the benefit of the people.

COUNCILMAN DICICCO: Mr. Chair, for your information, we actually have something prepared that we will be introducing on Friday with the help of Mr. Stein. We'll circulate that to everyone prior to Friday for your review.

COUNCILMAN COHEN: Include me as a chief cosponsor.

COUNCILMAN DICICCO: Absolutely.

MR. STEIN: Thank you.

COUNCILMAN DICICCO: Thank all of you gentlemen for the time that you've put into these hearings. We really appreciate it. Thank you very much.

COUNCILMAN COHEN: Mr. Marshall. And now we'll hear the industry explain to us why everything else we heard today on this matter is really unimportant and not relevant to the issues. Right?

MR. MARSHALL: Well, don't steal my testimony from me yet, Councilman. That may not be exactly what I'm going to say. You don't want to prejudge.

COUNCILMAN COHEN: All right. Prove me wrong. Come strong and say, "The way to keep everything nice and clean is to create an opposing force as powerful as we are and then the Insurance Commission will hear an even keeled set of messages."

MR. MARSHALL: Tell you what. How about you hear me out and then you can ask me all the questions.

COUNCILMAN COHEN: We'll do that. Please identify yourself and spell for the elucidation and edification of the reporter your last name.

MR. MARSHALL: Good afternoon. Thanks for the chance to be here again. I'm still Sam Marshall. I'm still President of the Insurance Federation of Pennsylvania. And I'm still joined by John Doubman from our office.

COUNCILMAN COHEN: Would you spell your last name?

MR. MARSHALL: M-A-R-S-H-A-L-L.

COUNCILMAN COHEN: Very good. Thank you.

MR. MARSHALL: The Federation is a non-profit trade association. We represent insurers of all shapes and sizes doing business in Pennsylvania including the insurers who insure the lives, the health, the homes, the cars, and businesses of the City and its residents.

Two weeks ago, I closed my remarks talking about our commitment to this City as insurers, employers, and investors. Today, I'd like to start with that point because it shows we have

more in common than either the press or political forces or frankly the previous witnesses want to acknowledge.

I suspect we want the same things you want, a competitive marketplace for insurance, fairly-priced and honestly marketed coverage, and knowledgeable consumers who understand the insurance they buy and understand the impact their own actions have on the insurance they buy. We may differ, at least at the outset, about how to achieve these goals. But I've always believed that reasonable minds end up in agreement, at least when they share a common goal, and I hope that's the case here.

As to the proposal that the City establish and fund an Insurance Public Advocate through the Mayor's Office; we recommend against doing this, but we do so with mixed feelings.

First, I recognize that the insurance industry opposing a City Insurance Advocate is going to be seen by some as the best reason to have one.

Second, there's much in the proposal that's good, at least on paper. It calls for more consumer education in Philadelphia-specific shopping guidelines. It calls for increased competition in

the Philadelphia market. And it calls for the City to get more involved at the state level in promoting measures that will lower premiums and, presumably, in opposing measures that will raise premiums.

Those are things we have recommended to City Officials in the past, with less-than-mixed results. In the early stages of the Auto Task Force, we made several recommendations about ways to lower rates and we asked that the Task Force get involved in some administrative and legislative matters in Harrisburg that we knew would and are increasing auto rates in Philadelphia.

But nothing came of that. In fact, our ideas and requests didn't even get a footnote in the first Task Force's report. And there was scarcely any mention of the progress that has been made on Philadelphia auto rates and the availability of coverage. Rates here have been flat or gone down over the past eight years for most insurers. And insurance far more available. Pointing out that progress may have taken some of the theatrics out of the issue for the first Task Force, but it deserved mention because it deserved to be built upon.

That highlights my concern with creating

a separate office within the Mayor's office to look at insurance issues. In itself, it simply doesn't add anything. The fact is, there's nothing stopping the Mayor or the City Council from doing these things now, just as there was nothing stopping the Auto Task Force from doing these things. You don't need separate offices, new titles, and unlimited budgets to draft and distribute shopping guides or lobby in Harrisburg. You just need to decide to do these things and make them a part of existing community outreach programs or lobbying efforts.

The Mayor's Task Force is doing some of the other things called for in the proposed Insurance Advocate Bill. It's examining auto rate filings and it's suing insurers over those filings.

I'll go off of my remarks for a second. The previous witness said we're challenging those filings, those lawsuits on a matter of standing. With due respect among lawyers, frankly, I think that that was a filing problem that the City had. All they had to do, as they did in one action, was identify one policyholder. That's standard standing rules that have been in place in Pennsylvania and throughout the country for literally hundreds of

years. All the City had to do is identify one City resident as an agreed party and then they can assert standing. For whatever reason, they didn't do it. In two of the actions they did it. And a third and I believe that's a legal dispute.

Now, we can differ on whether a litigation-only strategy is going to lead to lower rates, a better marketplace and more savvy consumers in Philadelphia. And I hope the Mayor's Office and the new version of the Auto Task Force consider actions beyond litigation, actions that include working with, not just suing, insurers.

But the City's suits at least show that you don't need a separate office and, therefore, an added layer of bureaucracy and cost to take action at the City level on insurance matters.

What's missing from the City's efforts to date and what's missing from this proposal is any focus on what Philadelphians are doing to make rates here so high what they could be doing to bring those rates down.

Let's take auto rates as a case study. There are 67 counties and about 2400 municipalities in this Commonwealth, and Philadelphia is the only

one with auto rates so high that they're seen as a reason not to live here, much less offer insurance here. Philadelphia is the only one with auto rates so high that it's considering a separate office just to deal with insurance.

Now, insurers do business about the same throughout the Commonwealth. We don't have one set of rules for setting rates or underwriting risks or paying claims in 66 other counties and another set of rules when we cross over City Line and come here to Philadelphia. And we have a good track record of passing on savings to consumers, which is why rates have gone down and competition has gone up for many Philadelphians and throughout the state. But we still have dramatically higher rates here than everywhere else in Pennsylvania, including other urban areas.

Given that, it makes sense that the City examine itself, not just insurers. It doesn't make sense that insurers are pretty good everywhere else but bad here anymore than it makes sense to conclude that we want to avoid the largest and certainly the most publicized marketplace in the Commonwealth.

But everybody seems to want to look the

other way when it comes to addressing this. Certainly, the first version of the Auto Task Force did. Philadelphia medical claim patterns were mentioned as the main reason auto rates are high here, but no solutions to that problem were offered. Instead, the only solution was to sue insurers.

Maybe the proposed Insurance Advocate wouldn't ignore that problem. Maybe that's what's meant by the proposal's call for greater consumer education. But that level of self-critical examination isn't really the thrust of the proposal, and none of the proposed Insurance Advocate's powers go in this direction. The investigatory and litigation powers are pretty much limited to going after insurers. And in any event, you don't need a separate office to do this, just a willingness.

Please understand that our opposition to the proposed Philadelphia insurance advocate isn't because we want to avoid public scrutiny or accountability, although I know some will try to portray it that way.

We accept that insurers are generally held to a higher standard of scrutiny and accountability than most other businesses, that the

regulatory, legislative, and judicial oversight of our industry is greater than that of business generally. In fact, the powers that you want just for Philadelphia already exist at the state level and are being used for all Pennsylvanians, including those in the City. We accept that. All we ask is that this oversight be done in a consistent, effective, and efficient way.

In Pennsylvania and throughout the rest of the country, that consistency and oversight has been determined to be a responsibility of the states. The laws that apply to insurers are enacted by the State General Assembly and the Governor. The regulator that supervises the industry is the Governor, acting through the State Insurance Department. And the courts that rule on judicial disputes are the state courts. The exceptions to this are found at the federal level, not the local level. They are largely limited to instances dealing with multi-state operations and multi-state insurance issues.

The fact is, the City has always had input at the state level. It has the largest delegation in the General Assembly with some pretty

powerful members in both chambers and on both sides of the aisle. It has its own lobbyists -- I won't call them a swarm. But their numbers seem about equal or, actually, in excess of ours. And, of course, it now has the former Mayor as the Governor.

A separate office, new titles and an unlimited budget won't add to that input. Again, it comes down to willingness. Not just the willingness to attack insurers, but to attack the underlying problems that lead to high rates and to work with insurers and others on those problems. Maybe we're part of the problem, but you already have an extensive state administrative and judicial system to go after us, and you're already using it.

But any objective observer would conclude there are other parts of the problem, too. And those parts aren't even mentioned in the proposal, certainly not in terms of investigatory powers or the ability to sue. If you set up an office whose only real power is to sue the messenger, you'll continue to ignore the message, and that will mean continued high rates and a relatively weak marketplace for Philadelphia consumers.

Our concern with the primacy of state regulation is a legal one as well as one of public policy. I don't believe the City can pass an ordinance that gives it standing in state courts and administrative proceedings. I don't believe the City can pass an ordinance that gives it investigatory powers over matters, including the setting of rates, that are already subject to state investigation and autonomy. Lawyers can and do argue these issues for billable hours on end, but the laws establishing state control of the insurance industry and the laws establishing standing to sue insurers are pretty firm.

So is the public policy behind those laws. I guess every municipality could set up an Insurance Advocate, and we could be subject to investigations and litigation from each of those municipalities. But that would make comprehensive, statewide regulation of insurers, their rates, their marketing practices, and their solvency veritably impossible.

It would also make doing business in this state cost-prohibitive. I appreciate the consumer value in the regulatory scrutiny of

insurers, but consumers need that scrutiny to be cost-effective, not cost-prohibitive. Otherwise, you risk setting up a regulatory labyrinth that adds costs and weakens the marketplace.

I brought up the concern about every other locality getting involved in insurance regulation with some City officials and it was with the understandable response that only Philadelphia has the problem of out-of-whack rates. But that highlights the flaw in creating an office that will inevitably focus mainly on insurers' rates. Yes, Philadelphia's rates are out of whack, but maybe, as easy and tempting as it is to blame insurers, it highlights that the real need is to focus on the underlying problems.

Part of the reason for the proposal may be a disconnect between the City and the State, at least in terms of the City understanding just what the State does in terms of regulating the rates and practices of insurers here and understanding what the State does or can do in terms of consumer education. I'm not sure why that's happened or why it doesn't seem to be a problem in other parts of the Commonwealth.

I do think -- obviously, I'm disappointed that the Insurance Commissioner isn't here. It would certainly have made my -- a lot of people have testified, "Gee, we only have a Commissioner up in Harrisburg that does the insurance industry's bidding." Trust me, given the abuse that our industry tends to take in this forum, I sure as heck would have liked to have had Insurance Commissioner up here today. So much for our power and ability to have people do our bidding, because if it were up to me, the Commissioner would have been here and would have been working with the City long before.

But going to what state regulators do, I do think it's a matter of understanding. Because I think if the City realize the attention its insurance concerns get at the state level, it would focus more on working with the State than on setting up a competing office. But at the least, you ought to learn more about how insurers are regulated at the state level before creating what will amount to a Philadelphia regulator. If nothing else, it may help you figure out better ways to ensure that Philadelphia's concerns are heard at the state

level.

I also understand the main reason for this proposal is your continued frustration with high auto rates in this City. If I thought a separate office within the Mayor's Office was the answer, I'd be here supporting the proposal, too, because we want lower rates here, too.

But I've been around enough to tell you that a separate office won't lower rates or attract more insurers into the City. It will lead to more litigation, and it will lead to another layer of regulation, this time a Philadelphia-only layer. It will be expensive for the City. Unlimited budgets tend to mushroom, especially when they allow for as many lawyers that somebody wants, but it won't lower the expense of insurance in the City.

In the end, the only way to lower auto insurance costs in Philadelphia won't be to set up a new layer of bureaucratic wrangling and litigation unique to the City. Frankly, that isn't a welcome mat; it's an exit sign. I think the way to lower rates is three-fold.

First, get involved in state matters. Not just in examining rate filings, which you

already are doing, but in examining what the State is or could be doing about reducing the costs that drive rates.

Second, get involved in City matters and try to address the things that make Philadelphia an exception to the rule. That means going after what we have continuously pointed out over the years, the inordinately high number of medical claims here.

Third, give us a chance to work together. As I said at the outset, we're here and we want to be here, not just in this immediate forum, but in this marketplace. But adding to the regulatory wrinkles and suing us doesn't help. Maybe listening to each other and working together will. Heck, over the past two weeks, I've had several talks with Herb Denenberg. He characterized, I thought, in part honestly -- maybe we both learned a few things. I might have learned a little bit more than Herb did because I sort of came to like him, stuck around for his testimony. Sorry the same courtesy wasn't afforded. But we actually both do have an idea about getting a low-cost policy into the market. But that only happens when you work together.

For all the efforts that have taken place so far, working together is about the only thing that hasn't been tried. Maybe it's time to do it.

I would like to comment on a couple things that have been said beforehand. That's one luxury, you go last, most of the people leave, but at least you have the chance to comment to the few remaining, and I appreciate it, on some of the points that were made.

Herb Denenberg spoke loudly and colorfully. A large part of his testimony was to criticize the current Insurance Commissioner. Frankly, it seemed that Herb criticized every Commissioner since Herb. And it shows a guy that takes pride in his office, but there have been commissioners appointed since Herb Denenberg under governors of all different shapes, sizes, political affiliations, geographic backgrounds ranging from Milton Schapp to Dick Thornberg to Bob Casey, Sr., to Tom Ridge, to Mark Schweiker and now Governor Rendell. I'd suggest that Herb may want to replace the current Commissioner and all of you may, too. If you want to replace the Commissioner, knock

yourselves out. But what you're proposing here is to replicate that function. I don't think that leads to a better Commissioner. There's nothing in this office -- I mean, frankly, the functions that are in the Commissioner's Office, I suspect everybody will agree are good functions. You may not like the person doing it. In the end, the function is only as good as the person doing it. And I'd suggest that what you're trying to do here is replicate. What some of you seem to really want to do is replace. We could argue the merits.

The other thing you said, somehow the current Commissioner is seen as a flop because she is serving under three different governors. Maybe that's actually -- if we get away a little bit from the politics of it all, maybe that's a testimony to the honesty and to the ability of her as a regulator. Frankly, it's easy to criticize her, but somehow three very different governors in three very different times from three very different parts of the state have all found her to be an honest, competent, and fair regulator. Those are three governors -- frankly, not governors who are necessarily particularly close with the insurance

industry.

I'd also note Herb seemed to suggest that all former commissioners go back to the industry from whence they came. If I can offer -- I'm old enough now to have a little bit of history, certainly since Herb Denenberg's time. No former Commissioner, to my knowledge, is currently employed in the insurance industry. One Commissioner was for a period of time. That's one out of about eight or nine. Previous commissioners, their jobs ranged from being a federal judge to a local judge out in Pittsburgh to being partners in law firms who spent an awful lot of time suing insurance companies or don't even deal in that area. Frankly, all the talk about revolving door, I think you could line up all the former commissioners and ask them whether their experience as commissioner was rewarding, and they'd all say in terms of public service, yes; financially no. I think Herb Denenberg is the only one who said he's making too much money now to possibly go back.

There was a lot of talk about how the Insurance Commissioner is both the judge and the jury up in Harrisburg. It's ironic when I hear that complaint because I'd offer the same complaint. I

am an example of the revolving door. As a young boy, I was an assistant counsel at the Insurance Department before political changes and health reasons brought me down here. When I was at the Department and we spent all of our time suing the insurance industry. I was a litigator for the department. Didn't do anything but sue insurance companies, and that remains the record there. I sort of joke about it, but when I was at the Department I was 100 and 0. Since I've come to the industry I'm 0 and 100 in regulatory proceedings. I don't know that I was that smart then or that dumb now, but, frankly, yes, the Commissioner is both the judge and the jury. That's a stacked deck that, frankly, works against our industry one heck of a lot more than it works in favor of us.

There was some talk about the Insurance Department being underfunded. We've always supported adequate funding for the Insurance Department. All those insolvencies, somebody mentioned the insolvencies, we pay for it. In truth, we pay for ineffective and incomplete regulation just as much as we pay for misdirected regulation.

And I believe I addressed Mr. Stein's concern about isn't it hypocritical for us to on the one hand say the City can get involved; and on the other hand object on standing grounds. As I mentioned, I think that was a clerical mistake on the part of the City to not identify a policyholder. But any lawyer would have to point that out in any judicial proceedings or risk his own disbarment.

Thanks for the chance to be here. Happy to answer questions.

COUNCILMAN COHEN: Thank you, Mr. Marshall.

Councilman Goode.

COUNCILMAN GOODE: Thank you, Mr. Chairman.

Good afternoon, Mr. Marshall. I certainly see how you have endeared yourself to Members of this Council and other people in this audience because that's actually possible the most arrogant testimony I've heard since I've been here. I think the only people that are bigger crooks than the banking industry which take deposits out of neighborhoods and then won't lend to them are people who actually charge people higher insurance rates

because of the same time geographic discrimination. You've come before this Council and tried to limit the purpose of what we're trying to do here by assuming that it is just to lobby, to sue, or to change your underwriting criteria. You've made recommendations to this Council about how we should structure local government. You have suggested that we have a lack of understanding about the State's authority and role and function in terms of the insurance industry. Yet, my question will be very direct to you about -- you've mentioned the fact that we should be dealing with the unique nature of the Philadelphia market. Who do you think has the best understanding of that Philadelphia market and how is that information shared?

MR. MARSHALL: Councilman, let me answer the first thing first. Frankly, you may not agree with the remarks in my testimony, but we have been here at the Council's bidding and we have made ourselves available to Councilmembers throughout the process and to the Mayor's Office. And we can disagree at the outset, but --

COUNCILMAN GOODE: You may enjoy being arrogant publically.

MR. MARSHALL: We try to work with the Council throughout --

COUNCILMAN GOODE: My question is actually about how unique is the Philadelphia market and how is that information shared in terms of Philadelphia's uniqueness? Who does that type of market education? Who's educating consumers about the market? Who has the best understanding of the market? Who's responsible for the uniqueness of the Philadelphia market and how we change it?

MR. MARSHALL: I think City government, obviously, has a role in that. That's one of the reasons why I said that there are things that can be done on that that the City can now do in terms of shopping guidelines, in terms of looking at some of the City problems. In fact, we made those recommendations to the City Auto Task Force.

I think the City can also play and does play a role at the state level. That's why the City has lobbyists. That's why the City has involvement there.

COUNCILMAN GOODE: Once again, you're limiting us to lobbying and suing. We're talking, I believe, also about consumer education about the

Philadelphia market. Who is responsible for that?

MR. MARSHALL: Obviously, I wasn't clear in my testimony because I said the City -- we hope the City gets involved in educating the consumers and in studying consumer behavior patterns.

COUNCILMAN GOODE: So that would not automatically create another layer of bureaucracy within government? Another necessary layer of bureaucracy with the government.

MR. MARSHALL: I don't know that you have to formally institutionalize it in an office, Councilman. And I don't know that it goes into having the City involved in every state rate filing. That's the layer that I'm talking about. Do I think that the City, as any locality should, should be involved in studying the cost of living in its area and addressing that? Yes, I do. Do I think that having -- I think it's possible to do it through the current state system.

COUNCILMAN GOODE: What sort of educational outreach does your organization do in terms of consumer education in terms of the market here?

MR. MARSHALL: We speak and we always

make ourselves available for any public education program, things of is that nature. We do a fair amount --

COUNCILMAN GOODE: What are you doing to educate consumers in order to change the market here, having described its uniqueness?

MR. MARSHALL: One of the things, for instance, we've done, we are the outfit that funds, by state law -- we don't control it, but for instance we fund -- it is through taxes on insurance companies that the Insurance Fraud Prevention Authority is funded. That does a lot of consumer education. You've probably seen the billboards or seen the commercials. The Auto Theft Prevention Authority, again, that is funded through taxes on insurance companies. That does a lot of education in things of that nature. Different companies --

COUNCILMAN GOODE: Explain to me your vision of how this market is going to change.

MR. MARSHALL: How I think the Philadelphia insurance market is going change? I think one way the insurance market will change and what I hope will change here is that we'll have our medical claims become consistent with the medical

claims patterns in 66 other counties. I think one way to do that, and we recommended it to the Task Force, is to embark -- and if it's just the insurance industry embarking on it, it's not going to work. But I think the City ought to embark on a public relations campaign similar to that done on the insurance fraud prevention authority to let people know that their claims patterns affect theirs and their neighbors' rates. We made that recommendation to the Task Force on several occasions.

COUNCILMAN GOODE: That's something you're willing to invest in?

MR. MARSHALL: Yes.

COUNCILMAN GOODE: To what extent?

MR. MARSHALL: We made that recommendation over three years ago, Councilman.

COUNCILMAN GOODE: To what extent are you willing to invest?

MR. MARSHALL: Obviously, I can't be here today and say "Here, there's X amount of dollars." I can tell you --

COUNCILMAN GOODE: This is your vision for how the Philadelphia market is going to change.

I'm here right now to listen your vision on how the Philadelphia market is going to change.

MR. MARSHALL: I think that in terms of consumer education -- I think that the best way to change claims patterns is through consumer education. And I think that that is a cornerstone that has been missing in the City to date. And, yes, we share part of the blame in that. We probably haven't done a great job of educating the Philadelphia consumers. I don't know that we've done anything different here than we've done elsewhere. That's really the responsibility of individual companies in their marketing practices. And maybe the Insurance Department hasn't been Philadelphia specific enough in terms of its outreach program. That's a matter for the Department to take up. I know it's done a fair amount about it. It has one of its offices here. But to give you an example in terms of funding for public awareness campaigns, I think the budget for the Insurance Fraud Prevention Authority is $8 million a year. Some of that goes to law enforcement, but some of that goes to public education. I think the budget for the auto theft

prevention authority is $4 million a year. Again, much of that goes to law enforcement, but some of it goes to public education.

COUNCILMAN GOODE: But you're not willing to concede yet that it's the failure of your industry in its efforts toward consumer education to change this market that local government has to step in?

MR. MARSHALL: I think local government and the insurance industry and the world of consumer education here have to work together.

COUNCILMAN GOODE: And what again do you think is inappropriate about this legislation?

MR. MARSHALL: I think that the problem with this legislation, as I mentioned, we support it to the extent -- as I said at the outset, we support it to the extent that it addresses consumer education, things of that nature. Maybe I misread it or it just didn't come across to me --

COUNCILMAN GOODE: You essentially suggested that it should happen in the private sector or a different level of government because local government didn't know how to organize around its effort, didn't understand the role and function

of state government, and all we wanted to do was sue and change underwriting criteria and we were setting up for lobbying purposes. That's pretty much what you said.

MR. MARSHALL: Let me go to my remarks. I said, for instance in the proposal in calling for consumer education in Philadelphia-specific guidelines, I thought that was a good thing. I'd also say I don't know that you need a separate office to do that. I think you can do that right now. I think the Mayor's Office can do that right now. We certainly felt that because we made that recommendation to the Mayor's Auto Task Force, the first version of it, three years ago. And I'm happy to share that document --

COUNCILMAN GOODE: Are you suggesting that it can be through Executive Order rather than through legislation?

MR. MARSHALL: I actually think some of the consumer education plans -- we had thought that that would have been part of the Task Force's efforts to date. But I think that certainly a consumer education plan -- and we'll work with the City on it.

COUNCILMAN GOODE: But there's no particular problem with it being done through legislation versus Executive Order?

MR. MARSHALL: If the City wants to do legislation on consumer education, the City can do it by legislation.

COUNCILMAN GOODE: Thank you, Mr. Marshall.

Thank you, Mr. Chair.

COUNCILMAN DICICCO: Point of order.

COUNCILMAN COHEN: Yes, point of order first.

COUNCILMAN DICICCO: Thank you, Mr. Marshall, for coming here. And I will admit that unlike the Insurance Commissioner who has received two invitations and chose to ignore these hearings, you have been both of them, and I do appreciate that.

Councilman Goode's questions about your suggestions that we spoke about at the last hearing as well, that one of the reasons the insurance rates are as high as they are in Philadelphia is because of the claims and all. But we did get into testimony to last hearing, and I'm trying to

hurriedly go through this report when this report was done that insurance claims have actually gone down significantly in Philadelphia while in the suburban counties they have gone up. Auto theft has gone down dramatically in the City of Philadelphia. We're a national model, I understand, for the way we're able to recover automobiles that have been stolen. Claims are down. The tort insurance that the industry suggests that we look at, and many people have opted for it in the City of Philadelphia. It was supposed to bring rates down by somewhere in the vicinity of 15 percent. And as my legislative assistant points out over, two-thirds of insurance careers, automobile carriers have opted for tort insurance.

The Live Stop program, well over 20,000 vehicles have been removed from the streets that were formerly being driven by uninsured motorist as a result of the Live Stop program. In addition to taking those cars off the street, thousands and thousands of more people in Philadelphia are now legally licensed drivers. We have done, I think, an outstanding job in the City over the last several years to address some of those things. Albeit,

there may be some folks out there who think if they get tapped in the bumper they hit the lottery. But I don't think that's just unique to Philadelphia. And again, if the claims numbers that are in this report are accurate, even enclose to being accurate, I think that those arguments are no longer as valid as they were maybe five, seven years ago.

MR. MARSHALL: Councilman, as I tried to say to Councilman Goode, probably on the PR -- and I don't mean PR in a puff way, I mean it in a public education way. Probably in that end, we're not as good as we should be because the points that you make about the things that have been done in Philadelphia to reduce costs are true. By the same token, rate reduction in Philadelphia has occurred. I know last time we talked about your own individual auto rates, and I'm still going to find out who your insurer is and I want to take a look at it.

COUNCILMAN DICICCO: The good hands guys.

MR. MARSHALL: Well, okay, then I'll take a look at that. We did a survey of our eight biggest writers. And while there are deviations in it -- and we shared the information with Council or

with the Auto Task Force on several occasions. Comparing 1995 to 2002, rates in Philadelphia have gone down for a number of the carriers. Not all carriers because not all carriers are going to be the same. And now that I hear what company you're with, just for you I'll identify where your company is on that list because Macy's doesn't like Gimbles to know everything. We just did it by letters. But I'll identify which letter stand for the good hands people. And I know their rates have gone up in the City. Other carriers, their rates have gone down, and it's become a competitive marketplace. If you go back to 10 years ago, it was very hard to find a voluntary market in Philadelphia. Now, people advertise insurance on the side of a bus. So it is a better market. I think one of the things that the -- the difficulty is, somebody says here in the last seven years our rates have dropped 10 percent so they've gone from 2,000 to 1800. When you compare it with Pittsburgh and the rate is $800, you still say, "That's too much. How can we get to be like Pittsburgh?"

Yes, the number of medical claims have gone down in Philadelphia from where they were in 10

years ago. They are still double or four times as much as they are in other parts of the Commonwealth. And that's why the rates are so much higher.

COUNCILMAN DICICCO: How does that compare to what the settlements are? If the claims have gone down but you said they are still higher than other parts of the Commonwealth, is it not also in this report, if I recall correctly, that the value of the settlements have done down as well?

MR. MARSHALL: Individual settlements, no. As a matter of fact, one of the things you find, property damage, how much property damage in a given accident. That's actually pretty consistent, Philadelphia through the rest of the state. A little higher in Philadelphia, but it's actually relatively consistent. It's the number of medical claims you get per hundred rather than the amount of the individual claims that is more the cost driver. We do see severity going up. Some carriers have noted in their own books of business the medical severity in each claim has gone up a bit in the recent last couple of years. But overall, the driving force is the number of medical claims in Philadelphia compared with the rest of the state.

The amount paid out on those medical claims, are there differences? Yes. And it's going to vary carrier to carrier. But it's not the amount that's paid out on each claim that is the driving force, it's the total amount of medical claims that is the real problem.

COUNCILMAN COHEN: Councilman DiCicco, since you've got the floor on a point of order, I'm going to return to Councilman Rizzo first and then Councilman Nutter and then yourself, all right?

COUNCILMAN DICICCO: Absolutely, Mr. Chairman. Thank you.

COUNCILMAN COHEN: Councilman Rizzo.

COUNCILMAN RIZZO: Mr. Marshall, again, thanks for your time here.

Are there some things that consumers need to learn? Is there any disadvantage in switching companies?

I've been with the same company since I've started to drive. And I haven't switched ever because I feel as though I'm going to give something up for all the good driving record that I've had throughout the years. Are there things that your industry can do to kind of -- is there flyers or

whatever we can learn some things not to do. Can you answer the question? I've been locked in with a company for a lot of years. Is there any advantage?

You just taught me some that maybe my company's higher than some others. Should I go out and shop? And do I give anything up when I switch?

MR. MARSHALL: Individual companies may not always encourage you to shop any more than Wawa tells you the hoagies are great over at the AM Mini-Mart. But we always encourage consumers to shop around. We, as an industry encourage that. The one thing I would -- I'll give you one piece of advise and give it to anybody in terms of shopping around. Don't drop what you now have until you're sure pf what you're going to get. Sometimes somebody will say, "Well, I'm insured by Company A and I just got a flyer from Company B that suggests that I might be able to get auto rates that are 15 percent less." You might be. Make sure that you have a guarantee that Company B is going to take you on before you abandon Company A.

COUNCILMAN RIZZO: In other words, don't cancel until you're already signed up. But what about my point about having a relationship with a

company for a long time and these credits they give you for good driving; that counts.

MR. MARSHALL: And that's why shopping around doesn't mean leaving; it means shopping around. It means being a savvy consumer on an annual basis. Certainly, if you're satisfied with the rate you're paying and you're satisfied with the service you're paying, and you may have other lines of coverage. You may have your homeowner, your life, it could be any number of things, some sort of an umbrella policy. Those are all reasons to stay right where you are. Again, that goes to consumer education.

I may not think ot has to be institutionalized because I think that -- it's a same that the Commissioner isn't here because I think there's a lot about state regulation that maybe people in Philadelphia don't know. Frankly, some of us who come down from Harrisburg don't necessarily know that goes on in Philadelphia City government. So I'm here to learn. I don't mean to be an arrogant student because I am here as a student as much as I am somebody to share our views.

COUNCILMAN COHEN: Excuse me, Councilman

Rizzo, for a minute, just to clarify on thing in my own point of order. Is there anything that makes you do this by counties? Couldn't you adopt a statewide program on rates?

MR. MARSHALL: Yes. You know what, you could have statewide rates. And I think --

COUNCILMAN COHEN: Then why do adopt the county rate? Because you think Philadelphia could be more easily pummeled? They'd be more eager to accept something and not question it? Why do you have a county rate?

MR. MARSHALL: Actually, you make an interesting point. In fact, if you look at it that way, is Philadelphia more easily pummeled and are they more accepting? Frankly, no other municipality in Pennsylvania has as a aggressive a local City Council or municipal council as Philadelphia does. No other county in the Commonwealth of Pennsylvania has as aggressive and well-healed and well-connected a plaintiff's bar as Philadelphia does. No other county in Pennsylvania has as aggressive a media center as Philadelphia does. And no other county in Pennsylvania has as large a delegation in the General Assembly as Philadelphia does. So we don't

support county rates because "Gee whiz, out in Philadelphia they won't even be aware of it." This is probably the most aware county in all of Pennsylvania.

The reason you have geographic differences -- and it isn't by county. In fact, I think for most insurers, you'll even have within Philadelphia different territories. It's generally two or three territories. You don't have the same rate in Montgomery County that you do in Allegheny County, for instance.

COUNCILMAN COHEN: Well, why don't you?

MR. MARSHALL: And the reason you don't is because what insurance -- everybody says insurance about grouping risks. Insurance is about grouping similar risks. The person who lives in Warren County way out in western Pennsylvania presence a different risk and a different cost than does the person who lives in Philadelphia. The person who drives on some country road presents a far different risk that the guy who drives down Roosevelt Boulevard every morning. We can talk about that, but territorial variations are very common in rates. It's the same reason that housing

doesn't cost the same in Philadelphia as it does out in Punxsutawney. Housing cost more here. Your house is worth more if Philadelphia than it is in Punxsutawney.

COUNCILMAN COHEN: But it usually is not. Houses are usually not worth more in Philadelphia.

MR. MARSHALL: You might be comparing Philadelphia with, say the Main Line or some of the immediate suburbs.

COUNCILMAN COHEN: But isn't that an arbitrary selection? You can always pick certain factors to say why you're choosing a particular method. But it seems to me insurance is aimed at evening out differences that exists, and that's the reason you have insurance, because you know this person may be a high risk, that person may be a never risk. Now, you don't say that a person whose never had an accident and no member of his family ever had an accident, therefore, will get a very low rate. If you give the safe drivers insurance, it's a tiny little fraction, nothing very significant. So you don't, in fact, just go -- what you seem to do here is use a different method than the whole

basis of insurance, which is to average out costs. I realize some people will be more expensive than others.

COUNCILMAN GOODE: Point of order, Mr. Chairman.

COUNCILMAN COHEN: Yes.

COUNCILMAN GOODE: I actually have to leave. I wanted to leave my vote in favor of all bills and resolutions, any amendments proposed by the sponsors.

COUNCILMAN COHEN: Okay, thank you.

I'm just wondering why you picked this method, why you don't use the basic insurance method of averaging out differences that exists over as wide a territory as is possible? You seem to pick narrow territories.

MR. MARSHALL: Actually, Councilman Cohen, in the world of insurance, insurance is about grouping similar risks. It's not about having a low risk subsidize a high risk.

You mention that you thought somebody with an unblemished record doesn't get a large enough discount. Frankly, I'll tell you, you talk to somebody who gets in an accident or has a couple

of speeding tickets and he says, "God almighty, I got hit with a 25 percent surcharge." We are about the grouping of risks and it is shown county level makes some source because the Courts of Common Please where you bring lawsuits are county based. And Philadelphia County Court of Common Pleas produce significantly different results in, say, Allegheny County Court of Common Pleas.

We can argue about territorial rating. Certainly, in Philadelphia Philadelphians would be big winners if you had just one statewide territory. But people who live everywhere else in Pennsylvania would be big losers, and what they would say is that they are subsidizing dramatically different claims behavior on the part of people if Philadelphia.

COUNCILMAN COHEN: Well, insurance is a method of subsidizing by some people -- isn't it a method of spreading risk?

MR. MARSHALL: Insurance is a method of grouping similar risks. It is not a method of having high-risk people getting subsidized by low-risk people. That is not what it's for. That's why if you smoke, you don't get the same rate on a life insurance policy as if you don't smoke.

COUNCILMAN COHEN: Seems to me that insurance companies selectively pick that form of calculation which yields the great profit, and that's what I'm concerned about.

But we're not going to settle it right now, so I'm going to go back to Councilman Rizzo. But I just leave you my observation, and along the way if you have some evidence to the contrary, I'd hear it.

MR. MARSHALL: Let me leave you with one as well, Councilman. Some of what you say, if it was a monopoly, if there was only one insurer, I'd almost be inclined to agree with you. But where you have a competitive market, yes insurers are motivated by profit. If they don't make a profit, they're called insolvent,and that's a real problem. But, yes, insurance companies have to make a profit. If you have a competitive marketplace, which we do in the auto market in Philadelphia and we have it even more competitive in other parts of the state. But if you have a competitive marketplace, I think that market competition is probably the best way -- and it's regulated market competition. But I think that's the best way of getting savings to consumers.

The education aspect, market competition helps.

But again, as I hope Councilman Goode understood by the end, I'm in favor of the City getting involved in form of consumer education, and I think we have something to add to its efforts. I welcome the chance to do that.

COUNCILMAN COHEN: Councilman Rizzo.

COUNCILMAN RIZZO: Thank you.

You led me to something I read recently. I think the insurance industry has a responsibility to manage insurance. I'll give you an example. I read this article where many people list their vehicles as pleasure only, maximum 7500 miles a year. People put 35, 45, 50,000 miles on that vehicle. You would think that you could get sophisticated enough -- the vehicle is inspected every year. So why should I have to subsidize a person that says they're using their vehicle for pleasure only and the policy limits it to 7500 miles, they put 30,000 miles on the car, have an accident. The insurance industry does nothing about it. The car could have 80,000 miles on it and no ramification. So my point being you would think the information they provide better match. I read an

article that that's a common practice. Do you have a comment why the insurance companies don't do a better job at managing their business?

MR. MARSHALL: My comment in the first place would be I represent the insurance industry. In the first of place, I've got to say, look, I think insurers do a better job of managing their business than a lot of people realize. One of the things they find is that particularly long-time policyholders are pretty honest. What you point out the person who says, I only drive -- and we all know, we've all probably been there at some point in our lives. "Yeah, I don't drive to work; I take the train to work." And all of sudden at the end of the year you realize, you know what, I haven't been on the train in eight months. They try to verify that. You spoke about your own insurer. I can speak about mine. I received a form trying to verify some information as to how I and my wife are using our cars. I didn't get it in. They actually called our house and spoke to my wife and did the checking on it. Can you send somebody out every time; that gets a little bit dicey. Can you have the state auto inspection places check it; that also gets a little

dicey. But they're doing more and more to verify the information that their policyholders give them. Some of it's a business question. How much do you really want to accuse your own policyholder of potentially --

COUNCILMAN RIZZO: But you're rating a customer based on the information that they provide. If they're saying their exposure is limited to 7500 miles a year --

COUNCILMAN ORTIZ: May I interrupt for second please. Mr. Chairman, I have to leave for a few --

COUNCILMAN COHEN: Councilman Rizzo, could we recess the public hearing and have a public meeting and then go back to questions? Because I think there's been enough testimony on subjects that the Council, I gather, has formed a judgment and I would like to have that judgement expressed here by personal votes so there's no question as to what the vote is. And then go back to this dialog, which I'm sure is going to continue over time, because we've got to solve it one way or the other. Either Mr. Marshall is right or he's wrong, or we're right or we're wrong, but ultimately the one thing I take

from what Mr. Marshall says and we agree is is there's got to be enough discourse so we come to some general agreement. And the proposals here, I think, are steps to that general agreement even if somebody doesn't agree on them.

So if it's agreeable I would like to recess the public hearing and go into a public meeting. We have a quorum here for public meeting.

(Council recessed.)

COUNCIL OF THE CITY OF PHILADELPHIA

PUBLIC MEETING

COMMITTEE ON LAW AND GOVERNMENT

- - -

Tuesday, April 22, 2003

- - -

Public Meeting conducted by the Committee on Law and Government, held in Room 696, City Hall, Philadelphia, Pennsylvania, on the above date, to consider action on the following:
BILLS 030115, 030178;
RESOLUTIONS 030119, 030189.

- - -

PRESENT:
COUNCILMAN DAVID COHEN
COUNCILMAN ANGEL ORTIZ
COUNCILMAN DARRELL CLARKE
COUNCILMAN MICHAEL NUTTER
COUNCILMAN FRANK RIZZO

- - -

COUNCILMAN COHEN: Mr. Kearny, on the first bill and resolution, is there an amendment?

THE CLERK: There's two amendments.

COUNCILMAN COHEN: Mr. Gordon who is here is on my witness list will be able to testify today on this matter.

Councilman Ortiz has to leave and I'd rather have a personal quorum here rather than have quorums based upon people leaving their votes. Councilman Goode has left his vote. We'll count that one, but while we have a full life quorum, let's do the voting.

Now, is there an amendment to be offered on THE bill and resolution, Mr. Kearney?

THE CLERK: Mr. Chairman, yes, there is. There is a proposed amendment to Bill 030189 and there's also a proposed amendment to the corresponding Resolution 030 -- they're both numbered the same and they shouldn't be. It's going to be corrected in just a second.

COUNCILMAN COHEN: Let's move to the second bill. Is an amendment going to be offered? We're now dealing with Bill No. -- Councilman DiCicco.

COUNCILMAN DICICCO: I have a proposed amendment to Resolution No. 030231. All members of this Committee have received a copy. I would move for the adoption of that amendment.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion on the amendment?

(No response.)

COUNCILMAN COHEN: Will you state briefly the nature of the amendment?

COUNCILMAN DICICCO: The amendment is to Section 3-405, Insurance Public Advocate. It reads as follows: "The Insurance Public Advocate shall serve for a term of five years and may be removed by the Mayor prior to the expiration of a term only for cause. Before the Insurance Policy Advocate is removed, the Insurance Public Advocate must be provided with a written statement of the reasons for removal and shall be given the opportunity for a hearing before the Mayor."

And on Page 2 under Chapter 6, insert in Section 4-900, Paragraph C, insert after the sentence "notwithstanding any other provision of this Charter to the contrary, the Insurance Public

Advocate may at his or her discretion" insert "and subject to the availability of appropriations."

COUNCILMAN COHEN: Is there a second to that amendment.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion?

(No response.)

COUNCILMAN COHEN: If not, those in favor of the amendment, please say aye.

(Aye.)

COUNCILMAN COHEN: Any opposed?

(No response.)

COUNCILMAN COHEN: The ayes have it and the amendment is adopted.

Councilman DiCicco, will you present your motion with respect to amended bill.

COUNCILMAN DICICCO: Thank you, Mr. Chair. I move that Resolution No. 030231, as amended, be reported out of this Committee with a favorable recommendation, and a further recommendation that the Rules of Council be suspended.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion?

(No response.)

COUNCILMAN COHEN: If not, all those in favor say aye.

(Aye.)

COUNCILMAN COHEN: Any opposed?

(No response.)

COUNCILMAN COHEN: The ayes have it, it's so ordered.

Do you have a motion with respect to the bill?

COUNCILMAN DICICCO: I move that Bill No. 030220 be reported out of this Committee with a favorable recommendation, and a further recommendation that the Rules of Council be suspended.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion?

(No response.)

COUNCILMAN COHEN: If not, all those in favor, please say aye.

(Aye.)

COUNCILMAN COHEN: Any opposed?

(No response.)

COUNCILMAN COHEN: The ayes have it and

the bill is adopted.

Now, we're going to revert back to the first bill that was heard today. Are we dealing with the bill or the resolution?

THE CLERK: Mr. Chairman, we're dealing with a proposed amendment to Bill 030178. It revises Section 2 to read as follows: In Section 2 where it says "shall Section 5-300 of the Philadelphia Home Rule Charter be amended to declare that" and it adds the word "because health care is an essential safeguard of human life and dignity" and then it strikes "and that" the City of Philadelphia and then it strikes "is obliged to ensure that every resident is able to realize this fundal right and to require the." And then it continues with "Health Department" strikes the word "to," adds the word "shall," and then finishes with "prepare a final for universal health care that permits everyone in the City of Philadelphia to obtain decent health care."

COUNCILMAN COHEN: Is there a motion to adopt that?

COUNCILMAN DICICCO: I make a motion that to support the amendment to Bill No. 030178.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion?

(No response.)

COUNCILMAN COHEN: If not, those in favor, please say aye.

(Aye.)

COUNCILMAN COHEN: Any opposed?

(No response.)

COUNCILMAN COHEN: The ayes have it, the bill is so amended.

Now, with respect to a motion for the amended bill.

COUNCILMAN DICICCO: I move that Bill No. 030178, as amended, be reported out of this Committee with a favorable recommendation, and a further recommendation that the Rules of Council be suspended.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion?

(No response.)

COUNCILMAN COHEN: If not, all in favor, please say aye.

(Aye.)

COUNCILMAN COHEN: Any opposition?

(No response.)

COUNCILMAN COHEN: The ayes have it, and the bill, as amended, is reported out and with the suspension of the rules.

Now with respect to the accompanying resolution.

THE CLERK: Mr. Chairman, there's a proposed amendment to Resolution 030189. The text of the Charter change amendment shall read as follows: Article 5, Chapter 3, Department of Public Health and its departmental boards, Section 5-300, functions. Add Subsection F to read as follows: F Health Care Plan. Add the word "because" health care is an essential safeguard of the human life and dignity, and then strike everything to the end of that sentence, from "and there" all the way to "fundamental right." And then start with a capital T, "The department" and it reads the same all the way to the end of that paragraph.

COUNCILMAN COHEN: Is there a motion with respect the amendment to the resolution?

COUNCILMAN DICICCO: I move for the adoption of the amendments to Resolution No. 030189.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion on the amendment?

(No response.)

COUNCILMAN COHEN: If not, those in favor of the amendment will say aye.

(Aye.)

COUNCILMAN COHEN: Any opposition?

(No response.)

COUNCILMAN COHEN: The ayes have it, and the resolution is so amended.

Councilman DiCicco is recognized for the purpose of a motion on the amended resolution.

COUNCILMAN DICICCO: Thank you, Mr. Chair. I move that Resolution No. 030189, as amended, be reported out of this Committee with a favorable recommendation, and a further recommendation that the Rules of Council be suspended.

(Duly seconded.)

COUNCILMAN COHEN: Any discussion?

(No response.)

COUNCILMAN COHEN: Hearing no call for discussion, all those in favor of the amended resolution please say aye.

(Aye.)

COUNCILMAN COHEN: Any opposed?

(No response.)

COUNCILMAN COHEN: The ayes have, and the resolution, as amended, will be reported out with a favorable recommendation with a suspension of the rules.

The public meeting is now concluded and we're going back to the hearing.

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(Public hearing on resumed.)

COUNCILMAN COHEN: Councilman Rizzo.

COUNCILMAN RIZZO: Thank you. I'm just going to finish up.

I honestly, Mr. Marshall, don't believe that that is really tricky. I'm sure that if the insurance industry wanted to know, that an arrangement with PennDOT could gather the information with a computer disc on VIN numbers that they provide to PennDOT, if they really wanted to know. So I'm not convinced that that's meddling or that's going beyond what the company should know.

If you're charging me for certain amount of exposure and I'm exposing the company beyond what I'm paying for, I don't think that's proper.

MR. MARSHALL: And understand, companies do verify some of the those things. And you made reference to some of the PennDOT data. Companies do verify that. They will periodically check and pull your driving record and the information on PennDOT. And as you know, every year when you get your annual renewal from PennDOT, you have to say what your speedometer reads and says you don't need tell them the tenths, and they check on that. They do more

than somebody thinks. It's got to be publicly available information and all that. They do do more of that verification, I suspect, than you might be aware of.

COUNCILMAN RIZZO: When Councilman Cohen talked about countywide, the you mentioned something that I just received a mailing into my community indicating that because I live in the northwest that my insurance rates are less than in other places. And this one particular company was hitting that as sales pitch that because I lived in a particular Zip code that my insurance would be less possibly with that company. I think that people should be able to get insurance. And I understand that they're exposing the company even before the first accident. But some of the numbers that I hear some of the my friends that have younger drivers -- it's just incredible what they're paying and they've had no accidents at that point, just based on the potential exposure. Even if that could be addressed going forward, the issue of what people have to pay before they've even had the first fender bender. But I understand that that first one could be very expensive to the insurance based on the liability

that the company has.

Just to finish up, I had a friend of mine jus recently retire and he thought he was doing a smart thing, he moved all of his insurance to his vacation home. And when he got his first insurance bill, on a barrier island, it was more than here and he was shocked that his insurance in New Jersey at the same company went up instead of coming down.

MR. MARSHALL: Well, I'm never sure why somebody thinks living on a barrier island is exactly -- why that would be for certain forms of insurance low cost. But it does point to -- yes, is there more to be done in Philadelphia versus the rest of Pennsylvania; yes. It's one cautionary tale that we have whenever I say -- I'm not saying don't regulate. I'm saying regulate efficiently and effectively because you need only go a few miles to the east and see a really bad insurance marketplace. And that's what New Jersey is.

COUNCILMAN RIZZO: Well, I'm saying manager effectively and make sure that the bills that you send to the customers are appropriate for the insurance coverage that you provide.

MR. MARSHALL: I would note one of the

things that you pointed out about geographic distinctions in your district. It is the case where you have a competitive marketplace. You want insurers making distinctions so that they can offer lower rates. You don't want everybody doing everything exactly the same all the time or else you're just going to have one rate and then just say, here, let the State take over the whole thing. If you believe in the private marketplace as an effective and efficient means of delivering coverage, and I think it is, I think you want there to be competition and you want to be those types of distinctions. To the extent the City wants to get involved in regulating the insurance industry, I just caution you, don't turn Philadelphia into New Jersey. Turn Philadelphia into the rest of the state, don't turn it into New Jersey. And my concern is setting up an office that, frankly, goes east rather than west in what the results are.

COUNCILMAN RIZZO: Thank you. Thank you, Mr. Marshall thank you Mr. Chairman.

COUNCILMAN NUTTER: Mr. Chairman.

COUNCILMAN COHEN: Councilman Nutter.

COUNCILMAN NUTTER: Mr. Chairman, if I

can just make a personal request. I know Mr. Marshall has been with us on a couple of occasions. He has a tremendous amount of information to share, and I do have a few questions to ask him. But I wanted to ask point of personal privilege, if I could ask the Chair to allow a Philadelphia resident and constituent to give his testimony, which he is willing to limit to some extent. He has a written testimony, as well, which we can incorporate into the record. But if we could hear from him and then I could subsequently have an opportunity to ask Mr. Marshall some questions, if he would accommodate us in that way. I'd just like to be able to get the citizen on then he can go and do what citizens do. Thank you.

COUNCILMAN COHEN: Mr. Marshall, will you be good enough to yield for a few minutes. We'll have Mr. Gordon and then you will come back?

MR. MARSHALL: I'm here to accommodate your every whim, Councilman.

COUNCILMAN COHEN: Thank you. Every way except rates.

COUNCILMAN NUTTER: It's incredible testimony here today. We may have scored a massive

victory for the citizens of Philadelphia.

Mr. Gordon, please identify yourself for the record and spell your last name and then proceed.

Councilman Nutter, I'm going to ask you to Chair.

MR. GORDON: Good afternoon everyone. Thanks for hanging with me, Councilman Nutter, Councilman DiCicco, Councilman Cohen, Rizzo and Verna. My name is Dan Gordon, and I'm long-time resident of Philadelphia and a small business owner. I do not sit here representing any special interest group. I'm just committed to this City and I want what is best for its residents. I'm not an expert on insurance. I cannot supply you with statistics relating to the insurance industry here in Philadelphia. I can only report what I see before my very eyes and have experienced personally in my 16 years in the City. What I've observed is an environment where abuse of the tort system abounds, where the consequences of abuse are truly damaging. My business is property management. As a landlord and as a private citizen, I've been a subjected to a number of cases of tort abuse.

To illustrate my point, one case in particular sticks out in my memory of two tenants who filed liability claims after they've been notified that they were being evicted. Although the claims were clearly a case of individuals working the system, my insurance company settled the cases and then notified me a few months later that my insurance policy was being canceled.

It provided little consolation a few months later when I happened upon an FBI agent at the door of the apartment building. The FBI agent was asking the whereabouts of one of the two evicted tenants because he was wanted for questioning in a landry list of offenses, including fraud.

The cost of all types of insurance in Philadelphia is high. Even obtaining insurance can be difficult. If these problems can be alleviated, I support the creation of an Insurance Advocate for the City. However, I only support the creation of such an advocate if that person investigates all aspects of the insurance problem.

I find it troubling that the insurance rates have not gone down proportionally with the reduction of claims in the City. Certainly, this is

a trend that must be investigated. But it's critical that the Insurance Advocate investigate all factors and entities which contribute to the high rates and limited availability of insurance.

So much of the criticism by government officials over high premiums have focused on the insurance companies alone. I am sure substantial criticism is justified, however, there's been little call by government officials to scrutinize the pervasive tort claims which have been such a contributing factor to the high insurance rates in Philadelphia.

I've raised the issue of tort abuse and it's damaging consequences with a number of elected officials. The response has been a shrug or silence. After attending a number of political fund raisers and scanning lists of campaign contributors, I soon understood this silence. The personal injury lawyers and the American Trial Lawyers Association are high on the list of financial supporters for area elected officials, especially Democrats. As a Democrat myself, I find it frustrating that the personal injury lawyers was such an integral factor to the insurance problems facing the City have

apparently purchased immunity from criticism.

I have a very high respect for many of our City elected officials, many of you are hard-working and concerned about the well-being of the City. In addition, tort reform should not be a shield for the rich nor should it prevent recovery for genuinely injured people. However, the consequences of tort abuse are so widespread that they call out for attention.

As insurance rates skyrocket, those who abuse the system oppose the cost on, not just the insurance companies, but all of us. We pay for it every day in the higher public transportation costs. We see it every week in reduced paychecks due to greater deductions for Workers' Compensation. We pay it annually like a tax in higher auto and homeowners insurance. Now we are feeling it in reduced availability of health care.

We need an insurance advocate, not just to lobby insurance companies for lower rates, but also to lobby the legal community for stronger controls and oversight of legal torts. We need an advocate to represent residents, homeowners and business owners who have been subjected to tort

abuse, as well as increased insurance rates.

Elected officials have thus far focused exclusively on insurance companies for being responsible for the current high rates paid by City residents. Before making the insurance companies the sole culprit, I wish to ask two questions: If the insurance companies are making such a profit on Philadelphia premiums, why are these companies not knocking down the doors in the City to underwrite insurance? And why did I receive a letter last week from my insurance 1company saying that it filed for bankruptcy and would not be able to insure my apartment buildings past May 11?

As I mentioned before, I've lived in Philadelphia for 16 years. With the exception of getting sued, I love this City. I wince when I see people leave the City, often taking their jobs with them to compound the suburban sprawl. I would like to see an environment created where residents and businesses want to locate in Philadelphia.

Thanks very much for your time and giving me this opportunity to talk to you.

COUNCILMAN NUTTER: Thank you, Mr. Gordon. First, I know the Chairman will have your

full testimony attached to this record as if the entire testimony had been read into the record. Secondly, you make a number of very important points and also point out, quite frankly, some of the ridiculousness with the entire situation.

I did ask Councilman DiCicco about the question that you raised. I'm sure he can answer this particular question. But it is certainly my understanding, and I agree with you, that we want the Insurance Advocate to look at all aspects of the insurance issue or problem here in Philadelphia. And actually, many of the points that you raised, I will be raising with the gentleman from the Insurance Federation about the claims issue and what kinds of things can be done to help lessen the impact of what is generally seen as a fairly litigious environment here in Philadelphia. We are certainly well known for having -- it's a high compliment, to be called, I think, a Philadelphia lawyer, but one of the problems in Philadelphia is, I think, we have a lot a lawyers. And a fair amount of that work results in everyone having a case, because that's one of the new-found ways to riches. But you're right, we all end of paying when someone

has a case that may not have the most merit in the world.

So thank you for your testimony. I don't have any questions.

Councilman DiCicco.

COUNCILMAN DICICCO: Thank you.

I just have one question. Thank you Mr. Gordon. You mentioned that your current insurance company has filed for bankruptcy. Have you been able to get insurance from another company to date?

MR. GORDON: Well, I talked to my insurance agent last week, and he said that he would be hot on the case. I wanted to call him this week, but, unfortunately, I was preparing this testimony. So tomorrow morning, my first call will be to him. I suspect I'll be able to get the insurance. A few years ago, for landlords insurance, there were very few companies writing it. I think the situation's improved a bit, but the one thing I am nervous about, I wouldn't be surprised if the rate doesn't up a lot.

COUNCILMAN DICICCO: That was going to be my next question.

MR. GORDON: So that's going to be my

first call tomorrow is to find out am I in business or out. But I think it will work out.

Thank you very much, Councilman DiCicco, Councilman Nutter.

COUNCILMAN NUTTER: Mr. Chairman.

COUNCILMAN COHEN: Councilman Nutter.

COUNCILMAN NUTTER: Mr. Marshall, a somewhat different tact for me. First, while I would normally drag any witness through sentence by sentence, paragraph by paragraph of their testimony from beginning to the end, I'm actually going to do something a little different.

MR. MARSHALL: Councilman, I forgot my file.

COUNCILMAN COHEN: We'll take a momentary recess.

COUNCILMAN NUTTER: I think your advocacy work out in the hall may actually point out the need here in Philadelphia as the largest marketplace for this kind of advocate because there is a great need for consumer information and education. This is the kind of issue where certainly one party could see it as a detriment and another party could see it as a benefit. And I'd

like to go through some of that.

What I'm going to do is actually go to the last page of your many testimony and work back from there.

Your testimony is that for all the efforts that have taken place so far, working together is the one that hasn't been tried and maybe it is time to do this.

And I agree with that statement. And I'd like to start with the premise that we should be working together. We should be exchanging ideas. We should be trying to educate the various -- I don't want to say sides, but the certainly the various constituencies on these issues, because in every one of these hearings I've certainly learned something additional and I would hope and think that my colleagues have as well.

What I do want to say, though, on the particular matter of the Insurance Advocate and while you may at moment see that as another attempt by Philadelphia to create an adversarial environment, I think the Insurance Advocate can be for us whatever we want the Insurance Advocate to be. Now, certainly, we would like rates to go down.

But I think the consumer information and education component to some extent is either being overlooked or ignored and that we would do a disservice both to the office, to the industry, and certainly most importantly to the consumers if we only emphasize the one component of this insurance rates versus the other very important component, which is consumer information and education, and how do you get a lower rate and how do you shop around and why does the industry do what it does, and how do those rates get set.

So I'd like to take this from a slightly different perspective. The reality is that at least the 17 of us, and I would tend to say that probably the Mayor as well, we don't have necessarily the time, the personnel, or the expertise to pay that much attention to insurance, in addition to the fact that we don't regulate it, we're just subject to whatever comes to us from Harrisburg. So I think that the City and its citizens could benefit from an Insurance Advocate similar to the type of advocacy work that we have being done on behalf of consumers over on PGW issues. This does not have to be a knock-down, drag-out fight. And so I think in this

environment where one side has possibly all the information, the other side has limited information or has whispered down the lane or has anecdotal information, we could spend our time fighting about stuff or we could spend our time educating each other about our concerns.

So I'd like to ask, one, if you would rethink for the moment the industry's perspective on this issue. Whether we have an advocate or not, it doesn't cost the insurance industry anything. I mean, it's a municipal government function just like you're probably not too concerned as to how many police officers we have or sanitation workers we have or how many people work in Fairmount Park. It may give us someone who an pay a little more attention to what you guys are doing. And if it benefits the citizens of this City to either have lower rates or find out about different types of policies that may lower their individual rates or creates an environment where maybe consumers have a better understanding of the fact that the neighbor down the street who has a case and is wearing a collar and is going through all the stuff that people go through often times which may or may not

be the most legitimate case in the world, that when they get that big award, you the neighbor are helping to pay for that with higher insurance rates. And I don't necessarily know that people think about it in that context.

So I'd like to change a little bit of the tone of the nature of the relationship between the industry and the City and see if we can, not only make the Advocate work for all of us, but also delve into areas that are better left to people that have a certain level of expertise, and insurance is certainly one of them.

What I'd like to ask you about is a couple ideas and issues that have been floated in the past, have you explained them to us and what you think the end result would be.

First, in your testimony, you make mention on page 2, you say, "And we've asked that the Task Force get involved in some administrative and legislative matters in Harrisburg we knew would and are increasing auto rates in Philadelphia." What are those?

MR. MARSHALL: The primary one -- and I made reference to it two weeks ago as well. The

Insurance Department requires that insurers have mandatory binding arbitration of uninsured and underinsured motorist claims. That arbitration system -- and I testified at reasonable length two weeks ago, but the arbitration system is significantly more expensive than the regular judicial system. Every other claim you have goes through the judicial system.

COUNCILMAN NUTTER: Who created this requirement and why did they do it?

MR. MARSHALL: It was not created by the General Assembly. It was created by the Insurance Department, and it probably goes back 20-some years.

COUNCILMAN NUTTER: All right. But that's that issue.

And then on page 3 you talk about rates here in Philadelphia have been flat or down over the past eight years for most insurers and insurance us far more available.

Have you provided to this Committee the data and information to support that statement?

MR. MARSHALL: Yes, sir. We provided it on numerous occasions to the auto task force, you know, surveying companies from 1995 to 2002. And

I'll get both of you that information. We did it for eight companies, a rate comparison, taking a couple in their mid-30s and a single person aged 23.

COUNCILMAN NUTTER: This is a year-by-year analysis?

MR. MARSHALL: We just took 1995, the year 2000 and the year 2002.

COUNCILMAN NUTTER: How many companies involved?

MR. MARSHALL: Eight. They were our eight big writers.

COUNCILMAN NUTTER: How many companies are there in the state?

MR. MARSHALL: Licensed in the state of all shapes and sizes, I suspect you always hear people say thousands. Probably actively writing insurance in Philadelphia, you may -- some of them life companies, some are health companies. I think actively writing insurance in Philadelphia it's going to be in the hundreds. Major writers in Philadelphia --

COUNCILMAN NUTTER: Could you give us an analysis by company of whatever the information you have to show market share in Philadelphia?

MR. MARSHALL: Sure.

COUNCILMAN NUTTER: Let's go back to the last page of your testimony and then I have a couple other items.

You talk about, first, get involved in state matters, not just in examining rate filings which you're already doing, but examining what the State is or could be doing about reducing the cost that drive rates.

What are those?

MR. MARSHALL: I'll give you a couple of examples. I think Councilman DiCicco or I think you mentioned it when you talked about a person with a collar and you mentioned it when you get tapped in the bumper and you say, "Here, I'm going to hit the Lotto." There are from time to time state laws that come up that deal with chiropractors and that deal with what unlicensed assistants to chiropractors can do. What we find, as insurers, is that what we end up paying for are chiropractic bills where they have just a number of unlicensed assistants and people come in and you get the heat treatment and it's --

COUNCILMAN NUTTER: A number of what? Unlicensed what?

MR. MARSHALL: Unlicensed assistants. And they run what we would call in our business chiropractic bills where they can go out and they can do all of this stuff. And what it leads to is high claims because not only does the person going for treatment, but the person is missing work; and the longer the person's missing work, the higher the economic damage is and non-economic damages end up being factor in that.

COUNCILMAN NUTTER: And this information has all been laid out? Have you written that somewhere? Is there a document that is, I guess, the industry premiere on what it would take to lower costs in Philadelphia?

MR. MARSHALL: We're talking two different things here. There are bills that are in play up in Harrisburg that get moved around from time to time. Sometimes they get enacted, sometimes they don't that effect insurance rates. For instance, the Minority Whip Mike Veon has a bill out there to increase the mandated coverage that people have to buy. You increase what people are going to have to buy, that's going to increase the cost of insurance.

There are bills that autobody shops have that are going to increase the cost of insurance. Whatever the merits are for autobody shops.

In terms of a primer on how to reduce rates, I think Herb Denenberg's no tort option --

COUNCILMAN NUTTER: I want to talk about a couple of those items. Talk to me about the limited tort differential.

Can I just ask -- I know everyone's trying to come into the 5 o'clock hearing. We're still in a 1 o'clock hearing on a totally different subject. I just need to be exchange with this particular witness and I want to be able to hear. Thank you.

MR. MARSHALL: The limited tort differential was something that came about in Act 6 of 1990. What it does is it provides that -- the limited tort differential provides that the person who elects it foregoes his right to non-economic damages, pain and suffering, if it's not a serious injury. If it's a serious injury, it gets the whole enchilada, but if it's not a serious injury --

COUNCILMAN NUTTER: Who determines whether it's a serious injury? Is that a medical

determination?

MR. MARSHALL: I'm sorry?

COUNCILMAN NUTTER: Who determines whether it's a serious injury? Is that a medical determination?

MR. MARSHALL: It's a medical determination that's sort of been judicially crafted. It tends to be a permanent and/or debilitating injury of a sustained nature.

COUNCILMAN NUTTER: Ladies and gentlemen, do me one favor. I'm in the middle of questioning a witness in a totally different matter. Please come in, get your seat. Our 5 o'clock hearing is going to be starting shortly. But we're still in a 1 o'clock hearing. And I'm just trying to extract some information from this witness about an issue that you may also actually be very interested in, which is auto insurance.

Please proceed.

MR. MARSHALL: The limited tort differential came about, and at the time it was enacted, the insurers were required to give a 12 percent rate differential, rate discount, because of that. Since that time, the State has required that

insurers give at least a 15 percent differential. Some companies give a greater differential. Councilman DiCicco's good hands company, for instance, gives a 20 percent differential for that.

It has been -- and it's through the Insurance Department. That differential has been the same in all territories of the Commonwealth. And this will go to Councilman Cohen's concern about geographic rating. We have been talking about it with the second version of the Auto Task Force, talking about it with the Administration. It may be that that differential should be greater in Philadelphia than in other territories.

COUNCILMAN NUTTER: Why?

MR. MARSHALL: That would be because -- and it's a theory. The Insurance Department is researching it. But the theory is that it changes behavior more in terms of bodily injury claims in Philadelphia than it does in other territories because there is a greater problem to begin with in Philadelphia than in other territories.

COUNCILMAN NUTTER: How does it change behavior, though?

MR. MARSHALL: Because when you elect an

limited tort option, you lose an economic incentive to have the collar, as we talked about, to have the soft tissue injury that just adds on and on. Because you no longer get that pain and suffering kicker, you lose that economic incentive.

COUNCILMAN NUTTER: Well, I would only suggest to you -- I mean, I have personally limited tort, but I guess there are a couple things that may work against people picking that option up. One, I think -- I don't know how it works in terms of your insurance provider and I don't know whether they get additional compensation based on how much insurance you pick up. I don't know that side of the business. Again, an Insurance Advocate could help explain that. Limited tort is often discouraged. It's certainly discouraged by any of my friends in the legal community. You know, I'm only interested in getting what I think I'm due. I want my car fixed if I get in an accident. And if somehow some way my insurance didn't cover some cost that I had from a medical standpoint or an injury, I want it covered. I'm not interested in having a long, drawn-out case. I'm not interested in being court. I'm not interested in going to a whole lot of stuff

that I don't want to be involved in. And I do know, I at least figured out, that it would give me a lower rate while still providing all the coverages. When you listen to the term, it sounds like you are giving something or getting something less than what everyone else is getting. And many consumers may not necessarily be interested in pursuing all this activity and the collar and the doctor and the whole rigmarole that goes with it. But if it's not properly explained, if you can't figure out that not having uninsured or underinsured coverage -- I mean, I don't quite honestly know what I'm getting if I had uninsured motorist coverage, because if I had it and the person is uninsured, it's not like they're going to pay anything. And I'm not sure what extra I'm getting. So I think I don't have those either. So there is fair amount of education that needs to be conducted amongst consumers. And we're about to go into another hearing on a very important issue, but I think it would be helpful to have from you a more detailed explanation of all of these issues and also take some, you know, without names and addresses, but take not just hypotheticals, but take some real live people. I mean, I'll give you myself

and my information, and show us on paper what the different coverages would provide, what the different coverages would do to someone's actual insurance bill, and then lay out what is it that they may be, quote/unquote, giving up by having limited or no tort. You know, are you getting your full coverage for your vehicle? I'm sure the answer is yes. Are you getting full coverage for any out-of-pocket expenses that are legitimate? The answer is probably yes. And then there's a whole bunch of frill stuff that goes with it that you may not necessarily need, but you're fearful that if you don't take all this stuff, which only jacks up your bill, that somehow you're going to be in a lesser position.

So I don't want to continue this because we're a couple minutes after 5:00, but I would like to explore these issues in more detail and I'd like to continue a dialog going back and forth, and I'd like to ask if you would seriously think about how we can make the Insurance Advocate work for the City and its citizens and for the industry as a communications device and an information sharing device back and forth, because as long we're putting

out the truth and as long as we're educating people, I think all of us are going to e beneficiaries in this particular process.

MR. MARSHALL: Councilman, I appreciate that. That actually is our goal. I'd actually refine that a bit. Yeah, I'm an advocate for the insurance companies, but what I advocate is creating a better insurance marketplace. If you have a decent insurance marketplace, it benefits companies, it benefits consumers. I'm happy to work with you on it. I think the consumer outreach programs, consumer education programs are important. I would urge that City Council goes forward with this, I would urge that you talk with the Governor's office, you talk with the Insurance Commissioner so that you can learn in way where I'm not going to be the best teacher so that you can learn about state regulation of insurance. I've learned a lot about what City Council has to do. Because you don't want Philadelphia to be worse market than elsewhere, you want it to be better market.

COUNCILMAN NUTTER: I understand that. And maybe our Insurance Advocate will help us with that. So let's think about how we can work together

and better educate each other. But I would only caution you that when the industry takes an almost immediate negative reaction to an action by us borne out of frustration or whatever it's borne out of, you allow yourselves to fall into an instantaneous knee-jerk reaction and a perspective that says, "Well, of course. What else would they say?" And that further creates suspicion and animosity between the parties. And if we're trying to lower the rhetoric and get to what the real deal is, you know, sometimes you may just have to accept, "Well, we're not thrilled about that but that's their right to do that and if that's how the City wants to conduct itself, okay. How can we now turn this around to a positive?"

MR. MARSHALL: As I've said at the outset of my testimony, I realize that opposing it is the best argument for it. I'll hand deliver this week the stuff that we've sent before. You'll see we've been trying to work with the City on this. We want Philadelphia to be a good marketplace for us, obviously, but also for our policyholders.

COUNCILMAN NUTTER: Thank you.

Thank you, Mr. Chairman.

COUNCILMAN COHEN: We can recess hearing next week some day because I think this is important.

COUNCILMAN NUTTER: I'll accede to the Chair's wishes. I am prepared to actively and aggressively get into this particular issue I think as long as the insurance industry is willing to keep their hand out, with their palms up, and in some kind of spirit of cooperation. I won't go as far as to say partnership at the moment, but I think the expression here this afternoon has been a good one. And if it helps to keep attention on the issue, and the gentleman I know is sincere about getting us information, then certainly we can follow-up hearing just to keep this issue moving.

COUNCILMAN COHEN: How do you feel about that?

MR. MARSHALL: Councilman, as I said, I'm here at your beck and call, and more important, our industry is. I'm happy for hearing. I'm also happy for round-table discussions which sometimes can produce greater understanding.

COUNCILMAN COHEN: Well, we'd like to settle the question auto insurance at some point in

a way that makes the Philadelphia resident feel he's not been treated really unfairly, as most people in Philadelphia feel.

MR. MARSHALL: We would like that same thing, Councilman.

COUNCILMAN COHEN: So we would like to see this continued.

COUNCILMAN NUTTER: Mr. Chairman, why don't we set it to a date and time certain. If we are ready to go with that particular date at that moment, we'll take it. If not, we can recess to another time. But we'll have a continuing -- we'll maintain our continuing quorum and the flexibility of the committee to conduct its business. Why don't we just recess it a week to a date and week.

COUNCILMAN COHEN: Why don't we recess it until May the 1st at 4: 30 p.m. That will allow some time for discussion. We can change the time at that point if it seems advisable. Would that be agreeable? It's a Thursday, May 1st at 4: 30 p.m.

MR. MARSHALL: Yes, sir.

COUNCILMAN NUTTER: Thank you, Mr. Chairman.

COUNCILMAN COHEN: The Law and

Government Committee on the matters of car insurance before it will recess its hearing today until May 1st, at 4: 30 p.m.

Thanks, those that are here on the auto insurance.

We're now going to have a short five-minute recess because the court reporter has been very busy since 1 o'clock recording everything. We want to make sure that the court reporter is in good condition for the next bit of reporting. So we'll stand in recess for five minutes and that will give everybody a chance to talk. We had to hush you as you were coming in the room because this other hearing was ongoing. So the Committee will stand recess for five minutes. Thank you very much.

(Council adjourned at 5:10 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of April 22, 2003, were reported fully and accurately by me, and that this is a correct transcript of the same.

RE: COMMITTEE ON LAW AND GOVERNMENT

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Lisa C. Bradley, RPR
and Notary Public