

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
INSURANCE COMMITTEE

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IN RE: PUBLIC HEARING ON FRAUD

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BEFORE: DAN FRANKEL, Chairman
Nicholas Micozzie, Bryan Barbin,
Robert W. Godshall, Marguerite Quinn,
Adam Harris, Rick Taylor, Arthur McNulty,
Stacia Longenecker, Kate M. Harper,
Kathy McCormac, Josh Shapiro,
Eddie Day Pashinski,
Members

HEARING: Thursday, January 28, 2010
Commencing at 10:09 a.m.

LOCATION: AETNA Headquarters
1425 Union Meeting Road, Auditorium
Blue Bell, PA 19422

Reporter: Pamela Day

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1 WITNESSES: Robert Godshall, Bryan Barbin,
2 Basil Merenda, Dr. James Goodyear,
3 Stewart Anmuth, Steven Elliott,
4 Dave Tideman, Dom Pellegrino,
5 Sam Marshall, John S. Hanlon,
6 Ralph Burnham, Jack Wagner, Mary Mahoney

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P R O C E E D I N G S

CHAIRMAN:

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4 My name is Dan Frankel. I'm a
5 representative from the 23rd District in Allegheny
6 County, City of Pittsburgh. And I am the Vice Chair
7 of the Insurance Committee. And I want to welcome you
8 to the Insurance Committee's third public hearing on
9 the subject of insurance fraud, something that we have
10 been focused on for much of this session. Previously
11 the committee has met in Harrisburg and in Pittsburgh.
12 Today we're taking testimony to obtain information
13 from companies in associations with an eastern
14 Pennsylvania perspective.

15 Unfortunately, today our Chairman,
16 long-standing Chairman Tony Deluca could not be here,
17 because he is in Western Pennsylvania engaged in other
18 business. And we expected him to be here, but
19 unfortunately that is not the case today. He sends
20 his regrets. And clearly I think many of you who have
21 been following these issues known of his long-standing
22 interest in these issues in this package of
23 legislation that we're looking at today. We have a
24 very full agenda, so we're going to move on with it
25 and try and keep everybody as close to schedule as

1 possible. We're going to be hearing from a number of
2 elected officials today. State officials including
3 Auditor General Jack Wagner, folks from the Department
4 of State and representatives for the insurance
5 industry, both large insurers and small ones, industry
6 representatives on the front lines of detecting and
7 fighting insurance fraud, medical practitioners and
8 the authorities specifically charged with monitoring
9 the insurance market, financing the fight against
10 fraud and educating the public of the significant harm
11 that insurance fraud can produce.

12 The committee has pending before it a
13 number of bills that address the major issues
14 identified to date. Educating the public, balancing
15 the needs of law enforcement and consumers in terms of
16 what level of immunity to assign those reporting
17 suspect fraud, structuring the Commonwealth's
18 resources into fighting and prosecuting fraud and what
19 remedies both criminal and civil may be appropriate.

20 Before we get to our agenda, I want to
21 lay out the size of the problem that we are tackling
22 through the committee's legislation. The Coalition
23 Against Insurance Fraud estimates that nationally
24 insurance fraud costs at least 80 billion dollars or
25 approximately \$950 per family per year. The National

1 Insurance Crime Bureau estimates that 10 cents of
2 every premium dollar is used to pay for fraudulent or
3 padded claim. For Pennsylvania specifically the
4 Insurance Fraud Prevention Authority, an independent
5 public corporation created by Act 166 of 1994, reports
6 that allegations of fraud reaching law enforcement
7 indicated an increasing Pennsylvania insurance fraud
8 problem. The Authority is here today, and they offer
9 specific numbers on size and the problem later today.
10 Unfortunately, the Office of the Attorney General will
11 not be here today, but we are informed that the number
12 of suspected fraud referrals to the Insurance Fraud
13 Bureau increased from 1,649 to 2,233 in the past year.

14 Before getting to our witness, I'd like
15 to recognize the minority chair, a long-standing
16 member of this committee serving prior to my tenure in
17 the state house, Representative Nick Micozzie.

18 REPRESENTATIVE MICOZZIE:

19 Thank you, Mr. Chairman. I have a long
20 support for fraud reform, insurance fraud reform. And
21 fraud reform as everyone knows impacts negatively many
22 areas. It increases our premiums on our policies, and
23 the insurance industry has problems as far as trying
24 to come up with premiums necessary to cover the fraud.
25 So I echo everything Representative Frankel has just

1 said, and hopefully we can get a bill that everyone
2 can be bipartisan on and get this issue solved once
3 and for all. So I, again, thank you for coming and
4 let's begin the hearings.

5 CHAIRMAN:

6 Thank you, Chairman Micozzie. Before we
7 get started, I'd like to ask two of the authors of
8 much of the legislative that we'll be talking about
9 today if they'd like to make some comments.
10 Representative Bryan Barbin is the author of a package
11 that includes many of these bills that we're talking
12 about today. Representative Barbin.

13 REPRESENTATIVE BARBIN:

14 Thank you, Representative Frankel, and
15 thank you all for being here. This is the third of
16 the hearings that were called to try to provide an
17 answer to the over 33 percent increase in fraud
18 referrals to the Office of the Attorney General. This
19 House Bill 1750 has a package approach that it's
20 addressing the problem that we haven't revised this
21 particular law in 16 years. And because of the
22 economic recession, we're in a position where people
23 that normally wouldn't take actions that rise to the
24 level of fraud are doing that. And we can tell that
25 just by the Attorney General's referral numbers alone.

1 So while all of these issues are important to the
2 overall goal of fighting fraud, none of the issues are
3 set in stone. And we look forward to your testimony
4 on any of the issues, whether they be penalties,
5 whether they be immunity or immunity protection.
6 Whether they be suggestions on how to make the
7 Attorney General's database work better so that we can
8 change that number and get that number of criminal
9 referrals moving down in this economic recession.
10 Thank you, Mr. Frankel.

11 CHAIRMAN:

12 We also have with us today Representative
13 Bob Godshall, who is the author of four of the bills
14 that we will be talking about today. And I'd like to
15 offer him the opportunity as well to make some
16 remarks.

17 REPRESENTATIVE GODSHALL:

18 Thank you, Mr. Chairman. I'd like to go
19 over briefly what the bills do and what they're for.
20 Now, before that I want us to welcome to our end of
21 the Commonwealth, home of the Philadelphia Eagles
22 wannabes and the Philadelphia Phillies national
23 champions and world champions. I appreciate the
24 committee coming here and continuing its leadership in
25 addressing the problem. I just want to go over

1 briefly what some of the bills will do. Insurance
2 fraud's a crime. It's not a victimless crime. In
3 fact, it's a very serious crime that affects all of
4 us, especially when one considers the cost insurance
5 fraud has on the premiums. Insurance fraud costs
6 everyone. The insurance industry estimates more than
7 96.8 billion dollars a year. According to the
8 Pennsylvania Insurance Fraud Prevention Authority, the
9 most recent estimate for fraud costs are 30 billion
10 dollars for property and casualty insurance and
11 approximately 68 billion for health insurance fraud.

12 I've introduced a package of bills that I
13 think can help. House Bill 1736 amends the Public
14 Adjuster Act. House Bill 1737 will give the forfeited
15 funds to the Pennsylvania Insurance Fraud Prevention
16 Authority and require health facilities to display a
17 poster offering a reward for reporting fraud. House
18 Bill 1739 will require all lines of insurers to file
19 anti-fraud plans with the insurance department and
20 report suspect fraud to law enforcement, similar to
21 current requirements on auto insurers. And House Bill
22 1740 would provide asset forfeiture of people
23 convicted of insurance fraud.

24 In addition to these bills, Chairmen
25 DeLuca and Micozzie introduced House Bill 2154, which

1 provides insurers immunity when working together to
2 fight fraud. And Representative Barbin has introduced
3 House Bill 1750, which would expand fraud plan filing
4 and reporting requirements. Hearings like this give
5 us a chance to have a discussion with the real
6 experts, the people who see and fight fraud every day
7 on what will really work, whether it is any of the
8 bills we've already introduced or something else or
9 amendments of the same. You can see from the bills
10 that we have real bipartisan support for getting tough
11 on insurance fraud, especially in these hard economic
12 times. It's important to make sure that the
13 hard-earned premium dollars consumers pay to insurers
14 go to pay legitimate claims, not fraudulent ones.

15 Insurers can't pass off fraud as just a
16 cost of doing business. And we need to make sure that
17 law enforcement and insurers have the proper means to
18 identify, prevent and secure and prosecute this fraud.
19 We also need to make sure government is doing all it
20 can to avoid being a victim of fraud, because that
21 means higher taxes. I'm happy the Auditor General
22 will be with us today to talk about that. And we need
23 to continue public awareness of the cost of fraud, and
24 to make sure that consumers understand it really isn't
25 ripping off an insurance company, it's ripping off

1 your neighbor, because it really is all of us who pay
2 for this fraud. I've seen some good programs run by
3 the Insurance Fraud Prevention Authority, and I hope
4 its Executive Director, Ralph Burnham, will be able to
5 talk about that and maybe how we as legislators can
6 help. I'm not looking for legislation for the sake of
7 legislation. I am looking for ways in which the
8 public and private sectors can work together in a
9 meaningful and efficient way to combat fraud.

10 This is our third hearing on this issue,
11 and we've heard some good ideas from the people in the
12 trenches on this. I look forward to working with all
13 the interested parties in getting these ideas enacted
14 as practical and meaningful ways to help in this
15 effort. And I thank you. We have a job to do. I
16 think we can sit down, put our heads together and work
17 out some of the differences and some problems. There
18 may be something you see with the bills in your own
19 industries. You want to take a look at the whole
20 picture for something that's going to be meaningful
21 for the people of Pennsylvania. Thank you.

22 CHAIRMAN:

23 Thank you Representative Godshall.
24 Before we get started, why don't we just go around the
25 dais here and introduce the staff members starting

1 with Representative Quinn.

2 REPRESENTATIVE QUINN:

3 Good morning, I'm Marguerite Quinn. I
4 represent the 143rd Legislative District which is
5 located in the central and portions of upper Bucks
6 County.

7 REPRESENTATIVE PASHINSKI:

8 Good morning, Representative Eddie Day
9 Pashinski, Luzerne County, 121st District.

10 REPRESENTATIVE HARRIS:

11 Good morning, Representative Adam Harris,
12 Juniata, Mifflin and Snyder Counties.

13 REPRESENTATIVE TAYLOR:

14 Rick Taylor, Montgomery County.

15 REPRESENTATIVE BARBIN:

16 Representative Bryan Barbin. I represent
17 Cambria County.

18 MR. MCNULTY:

19 Arthur McNulty, Executive Director of
20 House Insurance Committee.

21 CHAIRMAN:

22 Representative Dan Frankel, 23rd
23 District.

24 REPRESENTATIVE MICOZZIE:

25 Nick Micozzie, 163rd District, Delaware

1 County.

2 REPRESENTATIVE GODSHALL:

3 Bob Godshall, Montgomery County.

4 REPRESENTATIVE HARPER:

5 Kate Harper, Montgomery County. Welcome
6 to the 61st.

7 REPRESENTATIVE MCCORMAC:

8 Kathy McCormac, Executive Director for
9 the House Insurance Committee for the Republican
10 stance.

11 REPRESENTATIVE SHAPIRO:

12 And Representative Josh Shapiro for
13 Montgomery County.

14 CHAIRMAN:

15 I thank the members for their attendance
16 today, and we will start with hearing testimony from
17 the Department of State, Basil Merenda.

18 SECRETARY MERENDA:

19 Good morning, First Chair Frankel and
20 Chair Micozzie and distinguished members of the House
21 Insurance Committee. Thank you for inviting the
22 Department of State to provide testimony on the role
23 of the Bureau of Professional and Occupational
24 Affairs, affectionately referred to as BPOA, and its
25 role in disciplining licensees who commit insurance

1 fraud. Before I get into my prepared remarks, I would
2 like to say that perhaps the best description of BPOA
3 was made by the Dauphin County District Attorney. He
4 said that BPOA is the best kept law enforcement secret
5 in the Commonwealth. So what I'd like to do with my
6 testimony is first provide the commission with an
7 overview of BPOA, identify its mission, how we carry
8 out our duties. This information would assist the
9 members since I rarely testify for this committee. I
10 present regular presentations to the House of
11 Professional Licensing Committee, which provides
12 oversight for my bureau.

13 Second, I would like to inform the
14 committee how BPOA meets its responsibility to
15 discipline licensees who violate the law including
16 those who commit insurance fraud and the steps we've
17 taken to effectively bring licensees to the BPOA bar
18 of justice in an expedited manner. I would then like
19 to focus my testimony on BPOA's authority to prosecute
20 licensees for insurance fraud and what can be done to
21 improve BPOA's solid record of prosecuting these types
22 of cases.

23 For the record, my name is Basil Merenda.
24 I serve as the Department of State's Deputy Secretary
25 of Regulatory Programs and Commissioner of the Bureau

1 of Professional and Occupational Affairs. I'm a
2 lawyer, please don't hold that against me. And if you
3 haven't already guessed, I come to BPOA from
4 Philadelphia so I also bleed Eagles green and Phillies
5 red. As Commissioner, I administer the Commonwealth's
6 29 licensing boards, and I sit as a voting member on
7 27 of those boards. Those Boards include the State
8 Board of Medicine, Nursing, Pharmacy, Real Estate
9 Commission, State Board of Funeral Directors, among
10 others. Each Board has its own legal counsel and its
11 own group of prosecutors. The BPOA and its boards
12 have a two-fold mission. The first is to maintain the
13 integrity of the professions we license and regulate,
14 and the second most important is to protect the
15 health, safety and welfare of every consumer in the
16 Commonwealth.

17 BPOA, indeed, touches every aspect of
18 life from the cradle to the grave, from the physicians
19 and nurses who help to bring us into this world and to
20 the funeral directors who take us to our final resting
21 place. What BPOA does can boil down to three basic
22 functions. First is the administrative function.
23 That's the actual issuance of a license. That is
24 taken care of by our staff for the most part, but
25 licensure issues do come before our boards. Then

1 there's the regulatory function. That's the board's
2 responsibility to draft and enact the rules by which
3 the professional conducts itself. And then the
4 disciplinary function. There is no doubt about it,
5 the disciplinary function is our most important duty.
6 Nothing is more important than bringing dishonest,
7 incompetent and unethical licensees and unlicensed
8 operators to the bar of justice pursuant to due
9 process as swiftly and fairly as possible.

10 With regard to our disciplinary duty, I
11 would like to highlight for the committee the steps
12 that the department has taken to institute a more
13 efficient and much fairer way to evaluate and review
14 numerous disciplinary cases filed by consumers against
15 our licensees. These efforts have already paid
16 immediate dividends to consumers in the discipline of
17 professional licensees including those engaged in
18 various forms of insurance fraud which, today, is the
19 focus of the Committee's hearing.

20 Most significantly, I have established
21 what we call a Charging Unit to review and evaluate
22 consumer complaints that come into BPOA. The Unit
23 consists of four attorneys headed by Cal Shields, who
24 is the Director of Bureau of Enforcement and
25 Investigation, BEI. BEI is the investigative arm.

1 BEI is to BPOA what the FBI is to the Justice
2 Department and what the local police are to the
3 District Attorney's office. The Charging Unit has a
4 triage approach that brings experienced attorneys into
5 the evaluation of a consumer, or in some cases an
6 insurance company, complaint filed with BPOA. In
7 fact, most, if not all, of our district attorneys in
8 the Commonwealth have a similar unit to evaluate
9 criminal complaints and cases.

10 In the past, a consumer complaint against
11 a licensee would come into the Professional Compliance
12 Office at BPOA and be reviewed by a paralegal. That
13 review would get to a point where it had to be
14 transferred to a lawyer who would receive the file and
15 place it at the bottom of his or her huge caseload.
16 In the meantime, a complaint would sit for a year or
17 two with no benefit to the consumer or the licensee.
18 The consumer doesn't receive his or her justice.

19 And in some cases where there may be a
20 complaint, the licensee is out there with a sword
21 hanging over his or her head. Based on the simple
22 principle that justice delayed is justice denied, now,
23 with the Charging Unit that we've established, we have
24 brought attorneys into the review and complaint
25 process as soon as possible to render four legally

1 defensible decisions that are made on a case-by-case
2 basis. First, they can settle the case with a consent
3 agreement. That is our version of a plea bargain.
4 Second, they can close it for a lack of merit. Third,
5 they can issue a non-disciplinary warning letter, or
6 fourth, they can forward the more complex case to a
7 prosecutor who will bring the case to a hearing. It
8 is all done on an expedited basis.

9 What perhaps highlights the work of the
10 Charging Unit is the number of cases that it has
11 closed. It has reviewed and resolved 18,791
12 investigations and legal cases since it was
13 established in August of '06. As a result, the
14 caseload of a BPOA prosecutor has been reduced by 49
15 percent from 281 cases to 143, despite the continued
16 rise in the number of complaints filed by consumers.
17 This reduced case load frees up the prosecutor to
18 focus on more complex matters.

19 Finally, the Charging Unit is directly
20 responsible for reducing the average time for
21 reviewing a BPOA complaint. Today the average age of
22 a legal case is 237 days, down from 355 days average
23 prior to the Charging Unit. That constitutes a
24 decrease of over four months. This has been
25 accomplished despite being down five prosecutor

1 positions.

2 I would just ask the Chair to indulge me.
3 One unsung hero in this is a fellow who supervises all
4 of our BPOA lawyers, both the court counsels and the
5 prosecutors. His name is Peter Mark. And for the
6 record, Mr. Mark has reorganized the legal office, has
7 improved morale and deserves a lot of the credit for
8 these phenomenal stats. As the Committee can see,
9 BPOA has an outstanding method and procedure for
10 aggressively and quickly evaluating and prosecuting
11 all types of legal misconduct. Licensee misconduct,
12 excuse me, ranging from unprofessional conduct and
13 unethical behavior to egregious clinical deficiencies
14 as well as insurance fraud allegations.

15 Now, I would like to focus on BPOA's
16 authority to prosecute licensees for insurance fraud
17 and what can be done to improve BPOA's solid record of
18 prosecuting these cases. For the record, all of our
19 29 licensing boards have authority to discipline
20 licensees who commit insurance fraud pursuant to
21 various statutory provisions. The first, and perhaps
22 the best-recognized, is when a licensee has been
23 criminally prosecuted for insurance fraud.
24 Pennsylvania licensure boards can and do impose
25 disciplinary action on licensees for felony

1 convictions and also misdemeanors related to the
2 practice of their profession and the occupation. In
3 addition, most, if not all of our licensing boards
4 have separate authority to reach insurance fraud
5 allegations and prosecute licensees for engaging in
6 unprofessional conduct and general fraud in the
7 practice of that profession. The rubric is
8 unprofessional conduct and general fraud.

9 Also, licensees can be disciplined for
10 insurance fraud pursuant to provisions in the
11 professional practice act that prohibits unethical
12 conduct. For the record, our health-related boards
13 routinely discipline individuals for committing
14 insurance fraud. Those boards view conduct by
15 licensees that amount to insurance fraud as a serious
16 violation of their professional oath and obligations.

17 Interestingly enough, I can report to the
18 Committee that the Chiropractic Practice Act actually
19 does have provisions that provide the board with
20 direct authority to specifically discipline a licensed
21 chiropractor for insurance fraud. For instance,
22 section 506(a)(14) of the Chiropractic Act allows the
23 Board to discipline a licensee for quote,
24 intentionally submitting to any third-party payer a
25 claim for a service or treatment which was not

1 actually provided to a patient. In fact, the
2 Chiropractic Board's regulations define unprofessional
3 conduct and consequently permit the board to impose
4 discipline if the licensee quote, orders excessive
5 tests, treatments or use of treatments and diagnostic
6 facilities not reasonably warranted by the condition
7 of the patient, end of quote.

8 Therefore, I would submit that BPOA and
9 our 29 licensing boards already have more than enough
10 statutory authority to prosecute licensees who are
11 responsible for committing any form of insurance
12 fraud. And while it would add some measure of
13 additional consumer protection, I would note for the
14 record that it may not be worth the effort. It will
15 be a heavy lift to open each and every practice act to
16 include specific insurance fraud provisions modeled
17 after the Chiropractic Act, because we already have
18 the necessary statutory authority to bring licensees
19 to the bar of justice for committing insurance fraud.

20 However, most notably, I would submit
21 that the key to improving the already effective
22 prosecution by BPOA of licensees who engage in various
23 forms of insurance fraud is to improve law
24 enforcement's timely notice to BPOA of allegations of
25 insurance fraud committed by licensees. Quite

1 frankly, the one big obstacle standing in the way of
2 timely and effective disciplinary prosecutions of BPOA
3 licensees who engage in various forms of insurance
4 fraud is the Criminal History Records Information Act,
5 better known as CHRIA. I would submit that a
6 so-called legislative fix may be in order. For the
7 record, CHRIA precludes the Attorney General, the
8 County District Attorney and any other law enforcement
9 agency, including the state police, from sharing with
10 BPOA any criminal investigative materials and evidence
11 that they have gathered --- that they may have
12 gathered in an investigation of a BPOA licensee. This
13 includes criminal investigations of insurance fraud.
14 Interestingly enough, law enforcement is not permitted
15 to share investigative files with BPOA, because BPOA
16 is not considered a law enforcement agency despite or
17 in spite of BPOA's mission to protect the health,
18 safety and welfare of every consumer in the
19 Commonwealth.

20 Unfortunately, this prohibition may mean
21 that an applicant for a license can practice or a
22 licensee is permitted to continue to practice, thus
23 potentially placing the public at unnecessary risk
24 until some type of public action is taken in the
25 criminal case or a court filing is made like an arrest

1 or execution of a search warrant.

2 Short of amending CHRIA to recognize and
3 designate BPOA as a law enforcement agency, I would
4 submit that one of the only ways that BPOA can bring a
5 disciplinary action, which is part of a criminal
6 insurance fraud prosecution, is if an outside party
7 like an insurance company investigator provides BPOA
8 with information about the alleged insurance fraud at
9 the same time that information is provided to law
10 enforcement. This will of course mean that the
11 insurance company investigator will have to do double
12 duty. Also, keep in mind that BPOA is not permitted
13 to receive any follow-up evidence and information that
14 may be developed and gathered by law enforcement after
15 the initial referral by the insurance company
16 investigator.

17 Now, all is not lost. Despite CHRIA's
18 restrictions, under my watch, we have taken a number
19 of steps to develop an effective working relationship
20 with the Attorney General's Office and other law
21 enforcement agencies across the Commonwealth including
22 the U.S. Attorney's Office, which I might add is not
23 restricted by CHRIA. Part of that success can be
24 attributed to Cal Shields, who as Director of BEI and
25 as a former four-time elected District Attorney of

1 Schuylkill County, has personal contacts with the
2 Attorney General's Office and other law enforcement
3 agencies throughout the Commonwealth. This has proven
4 to be invaluable for BPOA's disciplinary prosecutions.

5 However, I would note that it would be
6 very beneficial to actually formalize and cement the
7 good working relationship between BPOA and state law
8 enforcement agencies, which was established under our
9 watch. Simply put, I would submit that the best way
10 to formalize a relationship would be to amend CHRIA to
11 designate BPOA as a law enforcement agency. I would
12 point out to the Committee that the Gaming Commission
13 already has this CHRIA designation as well as the
14 Department of Welfare in limited cases relating to
15 juvenile delinquents.

16 To that end, I would recommend that
17 perhaps the committee can collaborate with the House
18 Professional Licensing Committee, which, as you know,
19 has legislative oversight of BPOA, to hold a joint
20 hearing on CHRIA and its impact on licensure
21 discipline. BPOA would enthusiastically participate
22 in that proceeding. So with that, thank you for this
23 opportunity to appear before the committee, and I
24 welcome any questions you may have.

25 CHAIRMAN:

1 Thank you, Secretary Merenda. Any
2 members of the committee have questions or comments?
3 Well, thank you very much for your testimony. Our
4 next testifier will be Dr. James Goodyear, who's the
5 President of the Pennsylvania Medical Society.

6 DR. GOODYEAR:

7 Thank you very much. Good morning. I am
8 Dr. James Goodyear, President of the Pennsylvania
9 Medical Society, and I also practice here in
10 Montgomery County. Let me thank Chairman Frankel,
11 Representative Micozzie and all members of this
12 committee for the opportunity to share with you our
13 concerns regarding insurance fraud. We certainly
14 welcome this dialog, and we all strive for better
15 health here in Pennsylvania. As you know, the
16 Pennsylvania Medical Society represents physicians
17 from every medical specialty throughout the
18 Commonwealth. Not surprisingly, this issue is of
19 great importance to the physician community and to the
20 patients for whom we provide care.

21 As you might imagine, since we are the
22 largest organization representing physicians here in
23 Pennsylvania, we take great pride in promoting
24 excellence within our medical communities.
25 Professionalism at all levels of clinical medicine is

1 our mantra. When it comes to insurance fraud, or any
2 fraud for that matter, at the end of the day we all
3 pay the price. However, while our objectives like
4 yours is to ultimately rid the healthcare insurance
5 system of fraudulent activity, we must collectively
6 agree to do so in a manner that does not unfairly
7 single out a particular individual without due
8 process. Don't get me wrong. We fully support all
9 appropriate measures to identify and hold accountable
10 any healthcare provider who commits fraud. The key is
11 appropriate measures.

12 Suffice it to say, I believe that we all
13 agree that insurance fraud drives up the overall cost
14 of healthcare. But then again, there are a lot of
15 cost drivers in the healthcare delivery system.
16 Defensive medicine, cutting edge medical technology
17 and drug therapies. And of course, for all of us
18 still practicing medicine, independent of a large
19 medical health system, a mind-blowing amount of
20 administrative hassles thrust upon us by health
21 insurers. In the normal course of day I often feel I
22 have to jump through more hoops than a dolphin at Sea
23 World.

24 With that said, let me assure you that
25 our organization is passionate about doing everything

1 we can to improve our healthcare delivery system. And
2 we're anxious to work with you in an attempt to rid
3 our current system of fraudulent activity. Working
4 together I believe that we can improve the existing
5 system. Hopefully if successful, we can make health
6 insurance less expensive and more available to those
7 who today cannot afford it. We are all very sensitive
8 of course to this plight. The basis of today's
9 hearing is to discuss several insurance fraud bills.
10 For the most part, we are comfortable with what the
11 sponsors of these bills are intending to change.
12 However, there are parts of House Bill 1750 and House
13 Bill 2154 that cause us great concern and with which
14 we strongly object.

15 Let me be more specific. We believe that
16 the language contained in these two bills could have
17 an unintended consequence of adversely affecting a
18 physician who without due process, has been unfairly
19 identified of engaging in fraudulent activity. Again,
20 if a physician has been legitimately found to have
21 committed insurance fraud, we have no vested interest
22 to protect him or her. At the same time, nothing
23 could be more debilitating or professionally damaging
24 than to be wrongly accused of fraud or incorrectly
25 placed on an industry watch list or data base.

1 In House Bill 1750, for example, Section
2 1161 provides absolute immunity to an insurance
3 company for sharing information with designated
4 individuals and entities, potentially the watch list
5 or data base that I previously referred to. But what
6 if that information is not credible? What if it has
7 not been substantiated? What if the physician in
8 question has no idea an accusation has even been made?
9 It is one thing to give insurers some level of
10 immunity when they report credible evidence of
11 fraudulent activity to law enforcement, but to grant
12 absolute immunity to an insurance company who has
13 released suspected evidence without responsibly
14 verifying its validity is, for some, analogous to
15 McCarthyism.

16 Other problems exist with the language
17 found in Section 1161. What if the information is
18 shared in an act of bad faith or with malice? I would
19 like to think that would not happen, but what if it
20 did? Again, by giving insurers absolute immunity for
21 sharing information, you could be giving the insurers
22 far more power than I think you intended.

23 In our opinion, the bottom line is this.
24 There needs to be a fair balance between removing
25 barriers that impede identification of possible

1 insurance fraud and protection against false
2 accusations and innuendos. Unsubstantiated
3 information being spread around the insurance industry
4 regarding a physician has the real potential of
5 ruining a physician's reputation and destroying a
6 medical practice. I don't believe that you, Mr.
7 Chairman, or anyone on this committee, wants that to
8 happen. As a result, while we do not condone any
9 physician who commits insurance fraud, we strongly and
10 respectfully argue against giving insurers absolute
11 immunity in this arena.

12 I hope you will agree with me when I say
13 that, with few exceptions, the overwhelming majority
14 of physicians that practice in this state do so
15 honestly each and every day. For that matter, all of
16 us who provide care to patients are doing our very
17 best to make this system work better. Thank you for
18 this opportunity to share with you our thoughts on
19 insurance fraud and specifically House Bills 1750 and
20 2154.

21 REPRESENTATIVE MICOZZIE:

22 Thank you for your testimony. And
23 suppose one entity --- insurance entity has an ongoing
24 --- results from an ongoing investigation has found
25 that a doctor or hospital or individual has had a long

1 history of potential fraud. Why not share that with
2 another insurance company?

3 DR. GOODYEAR:

4 I think we don't have any objection if
5 that information has been substantiated and there's
6 been due process and due diligence on the part of
7 identifying that information is appropriate for
8 sharing. We don't have any problem with that, but we
9 think that due process should --- there should be
10 language in the law that says that there should be
11 substantiation and due process before that information
12 is allowed to be shared with absolutely immunity in
13 the process of sharing.

14 REPRESENTATIVE MICOZZIE:

15 Can you provide me with an example of a
16 situation where due process has not been initiated?

17 DR. GOODYEAR:

18 Not specifically, but I think that from
19 the Pennsylvania Medical Society's standpoint it's
20 appropriate for us to be proactive and not allow that
21 to happen. And I think that the language can be
22 strengthened. I don't write bills, I'm not a
23 wordsmith, but I think that instead of saying things
24 like sharing information after due process, sharing
25 credible and substantiated or substantiated

1 information might be the kind of the thing we're
2 looking for.

3 REPRESENTATIVE MICOZZIE:

4 Would you define for me what you mean by
5 due process?

6 DR. GOODYEAR:

7 Looking at source --- what the source of
8 that information is. That it's not innuendo or rumor,
9 but actually substantiated investigated ---.

10 REPRESENTATIVE MICOZZIE:

11 But I'm sure that the insurance
12 companies, whether it be AETNA, whether it be Blue
13 Cross or whatever before they would send a letter of
14 concern or whatever for due process, they went through
15 all the investigation and documentation and whatever.
16 And I consider that due process, as your definition
17 and should be able to share that with another
18 insurance company when they have the same type of data
19 that they have.

20 DR. GOODYEAR:

21 I absolutely agree with you that they
22 should have. But what we're asking for is to see that
23 in the legislation. Thank you.

24 REPRESENTATIVE MICOZZIE:

25 Okay. Anyone else?

1 CHAIRMAN:

2 Go ahead.

3 REPRESENTATIVE BARBIN:

4 I was going to follow that up by saying
5 that, you know, given what the, you know, the Fraud
6 Prevention Authority indicates is 38 percent of
7 arrests as it relates to healthcare providers on the
8 referrals come from false billing. The language in
9 161 immunity says that there is immunity for insurance
10 or insurance licensees. And I listened to Chairman
11 Micozzie's statement, and I can't, looking at this
12 language, see anything wrong with the language as it
13 exists. I mean if there are any --- do you have any
14 language --- are you asking for a due process hearing
15 before an insurance provider provides information from
16 the database for an insurer?

17 DR. GOODYEAR:

18 I think that due process can be internal.
19 But what I'm saying is, for example, in Section 1161
20 it says for requesting or providing information. I
21 would suggest, and again, I don't write bills and I'm
22 not a wordsmith, but I would suggest possibly in
23 requesting or providing information after a reasonable
24 due process, credible or substantiated information.
25 That's the type of language that we're looking for.

1 That this is not innuendo. It's not rumor, but it's
2 credible and substantiated just to strengthen that
3 language of what type of information they're sharing.
4 Again, we don't condone in any way, shape or form
5 fraudulent activity by physicians, and we are not in
6 any way trying to protect physicians. What we are
7 trying to protect is false accusations. Once a
8 physician is labeled, that label is very difficult and
9 can ruin a practice. We just would like to make sure
10 that this language remains strong, stays strong, is
11 not weakened in any way and the process of
12 substantiation is in place.

13 REPRESENTATIVE BARBIN:

14 My question though is, this information
15 is confidential between insurance companies, and it's
16 confidential to the criminal broad authority. So it
17 doesn't seem to me that this is any different than the
18 FBI or anybody else who's in law enforcement using
19 whatever information is available. And I don't see
20 how any of the language in 1161 could stigmatize
21 anyone who would have had, you know, information
22 recorded to the database. And if you have any
23 language that would change this, I'd be happy to
24 review it in the context of section. But I don't see
25 how any of this information is labeling anybody,

1 because it's just another piece of information that
2 will be used by the authority or by the insurers to
3 determine what level of review is appropriate. Thank
4 you, Mr. Chairman.

5 CHAIRMAN:

6 Representative Pashinski.

7 REPRESENTATIVE PASHINSKI:

8 Thank you, sir. Thank you, Doctor.

9 Could we just stay on this for a bit, because I'm
10 trying to figure out what is a possible solution?
11 Should the AMA be contacted when there is some concern
12 about a particular physician? Do you believe the AMA
13 should be at the table with respect to due process?

14 DR. GOODYEAR:

15 Not necessarily. I don't think they
16 necessarily need to be at the table. I think that
17 from our perspective the concern is, what is the
18 validity of the information being shared? That's all.
19 Not that --- we're not trying to in any way trying to
20 protect fraudulent activity by physicians. What we
21 want to make sure is that the information that's being
22 shared --- nor do we object to the process of sharing
23 credible, substantiated information. But the way I
24 read this bill it says information. It doesn't say
25 credible information. It doesn't say substantiated

1 information. We would just like that language
2 strengthened, if at all.

3 REPRESENTATIVE PASHINSKI:

4 What I'm trying to understand is who
5 would determine whether it's substantiated and
6 credible? As Representative Godshall mentioned, I
7 would think the insurance company would go to great
8 steps to make sure that the accusation that they're
9 making are indeed credible. Otherwise there'd be an
10 incredible lawsuit, especially if the physician's
11 practice was lost.

12 DR. GOODYEAR:

13 And correct me if I'm wrong, and I don't
14 interpret legislation, but this grants immunity, so
15 there wouldn't be a lawsuit.

16 REPRESENTATIVE PASHINSKI:

17 Well, this is what I'm looking ---.

18 DR. GOODYEAR:

19 And that's our concern. Our concern is
20 that if that would happen, there would be a lawsuit,
21 but this grants immunity to that. Maybe I'm mistaken,
22 but it seems to me that this comes under the heading
23 of immunity. It grants them immunity for sharing
24 information. If you're going to grant them immunity,
25 let's make sure that information is substantiated.

1 REPRESENTATIVE PASHINSKI:

2 But who does that? Who substantiates it,
3 and who makes it credible?

4 DR. GOODYEAR:

5 Well, I think that the first level would
6 be the insurance company. But then if it turns out to
7 be not credible, but you've granted them immunity and
8 it's damaged the individual, then we would have
9 concern. We're trying to be proactive.

10 REPRESENTATIVE PASHINSKI:

11 If the immunity section was eliminated,
12 then you'd be okay with it?

13 DR. GOODYEAR:

14 It's an absolute immunity for sharing
15 information that's not necessarily substantiated or
16 credible. It's a combination of that ---.

17 REPRESENTATIVE PASHINSKI:

18 But what I'm saying if you eliminated
19 that clause that there was no immunity?

20 DR. GOODYEAR:

21 I think if you would, we would feel ---
22 we would be okay, but we're not saying that that needs
23 to be done. We're basically saying that the language
24 needs to be strengthened as to the nature of the
25 information.

1 REPRESENTATIVE PASHINSKI:

2 Okay. Is that what you're referring to
3 in the paragraph that says in our opinion the bottom
4 line is this, there needs to be a fair balance between
5 removing barriers that impede identification and
6 possible insurance fraud and protection against false
7 accusations? That's it?

8 DR. GOODYEAR:

9 Yes, sir.

10 REPRESENTATIVE PASHINSKI:

11 Okay. Thank you very much.

12 CHAIRMAN:

13 Representative Harper.

14 REPRESENTATIVE HARPER:

15 Thank you, Mr. Chairman, for letting me
16 talk. I appreciate that. I don't know if this goes
17 along to the question of Representative Barbin, but it
18 seems to me that one thing the committee could look at
19 would be not making it absolute immunity, but
20 qualifying it so that if the person --- you could
21 insert the word credible before information. That
22 would limit it somewhat by requiring the person
23 reporting to make some judgment as to whether the
24 information is credible. But the other thing you
25 could do is take the immunity away if the person acts

1 in bad faith or with malice. An example of that would
2 be I'm negotiating with Dr. Goodyear to set rates for
3 his practice for the year, and he's proving a tough
4 customer. So I let him know that I could put him on
5 the list if he doesn't cooperate. That would be
6 actual malice. And that person should not be entailed
7 to immunity, just a suggestion.

8 CHAIRMAN:

9 Any other questions, comments?

10 Representative Godshall.

11 REPRESENTATIVE GODSHALL:

12 Doctor, are you more comfortable with the
13 language in 2154 than in 1750, and are you --- or
14 aren't you comfortable with the language in there
15 either? It's somewhat milder than ---.

16 DR. GOODYEAR:

17 Yes. Let's go to bullet --- section
18 349.1, bullet 1. Again, it used this term,
19 information. We would like some sort of qualifier
20 with regard to information. And sir, I don't write
21 bills, but I would like it somehow to say credible or
22 substantiated information, reasonably credible
23 information rather than just any --- I heard that Dr.
24 so and so submitted insurance, a faulty claim, and all
25 of a sudden that's all around the insurance industry.

1 We think that could be potentially harmful to a
2 practitioner.

3 REPRESENTATIVE GODSHALL:

4 Well, when we get down to the basics on
5 this, it's going to be a combination of what we have
6 here. And I'm also looking at the remarks that we get
7 in and try to formulate the, you know, bills or senate
8 bills that everybody can agree with and live with.
9 And this what we really want to do. If we have a
10 problem out there, we know that it exists, and we want
11 to do the best we can. And at the same time to
12 protect, you know, the industry and try to cure a
13 problem for our residents that are paying a lot more
14 insurance than they should have to do.

15 DR. GOODYEAR:

16 Representative Godshall, I want to let
17 all the members of the committee know that the
18 Pennsylvania Medical Society is very supportive of
19 this activity, want it to go forward, want it to be
20 strong. We do not, and I want to repeat that, we do
21 not in any way condone or want to protect in any way
22 fraudulent activity by physicians or anyone. I don't
23 want that to ---.

24 REPRESENTATIVE GODSHALL:

25 Right.

1 DR. GOODYEAR:

2 All we want to do is protect against
3 labeling inappropriately physicians.

4 REPRESENTATIVE GODSHALL:

5 I fully understand that. Thank you.

6 CHAIRMAN:

7 Any other members?

8 REPRESENTATIVE QUINN:

9 Yes. Thank you. Thank you for being
10 here today, Doctor. I just wanted to clarify.
11 Representative Pashinski asked if you thought that the
12 AMA would be involved. It's my understanding you're
13 here to represent the PMS, not the AMA?

14 DR. GOODYEAR:

15 That's right. I'm a member of the AMA
16 and active leadership in the AMA, but I don't --- I
17 can't speak for the AMA. It's my impression that they
18 don't need to be at the table at least early on. We
19 do have a litigation center as part of the AMA, and
20 certainly as things move forward they could get
21 involved, but I don't think at the first level they
22 need to be part of it.

23 REPRESENTATIVE QUINN:

24 Do you think that at the first level the
25 Pennsylvania Medical Society, which is the national

1 organization, should or could be involved or would be
2 willing to be involved?

3 DR. GOODYEAR:

4 We would certainly be happy to be
5 involved in assisting this committee in crafting the
6 legislation to address our concerns. Absolutely.

7 REPRESENTATIVE QUINN:

8 But as far as having a review panel to
9 look at something that they might come up and just to
10 substantiate --- just to address your concerns about
11 the substantiated ---?

12 DR. GOODYEAR:

13 I think we would. I think we would be
14 happy to do that. I'm not aware of a mechanism that's
15 in place now for that, but I think we do have the
16 resources to establish and work with regulators around
17 the state. We'd be happy to do that.

18 REPRESENTATIVE QUINN:

19 Thank you. That might be something to
20 look into. I will defer to Art or Kathy here, but
21 it's my understanding that House Bill 2154 does
22 address your concerns. It's more precise language.
23 You might want to take a look at that.

24 DR. GOODYEAR:

25 And Representative Quinn, I actually

1 have. And again, the concerns are about the
2 qualifiers for information more than anything. We
3 understand that the House bill does talk about bad
4 faith and malice, and we're appreciative of that. But
5 it still does not, to our satisfaction, qualify
6 information and how it's obtained and how credible and
7 substantiated it is before. And what is the
8 responsibility of the insurance agency to substantiate
9 that information before sending it forward. And
10 that's our concern, and that's what I'm trying to
11 express.

12 REPRESENTATIVE QUINN:

13 Thank you for your comments. There's
14 nothing more precious to most members in this
15 committees than to make sure the climate for
16 physicians in Pennsylvania is not only improved, but
17 we want to improve it.

18 DR. GOODYEAR:

19 Thank you very much. I appreciate that.

20 CHAIRMAN:

21 Any other members? Dr. Goodyear, thank
22 you very much for your testimony. Our next testifier
23 will be Stewart Anmuth, who is the President of the
24 Pennsylvania Association of Healthcare Underwriters.

25 MR. ANMUTH:

1 Good morning. Actually I'm the immediate
2 past president of the Health Underwriters. Do you all
3 have copies of my testimony? I'm afraid it got
4 submitted late. I have copies if you'd like. Thank
5 you, Mr. Chairman, and to Representative Josh Shapiro,
6 who approached me to testify today. I'm going to be
7 brief. Probably just an hour, hour and a half, and
8 then I'll move on.

9 CHAIRMAN:

10 I don't think so.

11 MR. ANMUTH:

12 Actually I'm coming to represent the
13 Health Underwriters, but more so a practitioner of the
14 field. I basically represent clients', companies',
15 individual's health insurance. Not really on the
16 property casualty side, but more the health insurance
17 side. I've looked over the bills, and I'm a
18 supporter, proponent of anything that is going to help
19 our industry be stronger, be more professional and
20 support the insurance department and some of the other
21 agencies that are involved.

22 So I'm really here just to comment and to
23 say that we're out in the field trying to make sure
24 that things are done right and that insurance agents
25 and professionals continue to be at the highest level

1 of professionalism that they can be. And bills like
2 this are a good thing for our industry. It's
3 important that we're able to be held to the highest
4 standard that's out there.

5 I'll point out a couple things unrelated
6 maybe to the bill specifically, but just a couple
7 quick points that maybe you would all consider as a
8 --- when you're thinking of our industry and other
9 ways to incorporate various aspects of even other
10 bills or other thought processes. So just a couple
11 quick points of three areas of legislation where we
12 think you should look at, increasing the budget for
13 the insurance department. And I'm jumping around the
14 testimony just so you know. I'm going to brief, and
15 you guys can read it at your leisure. We feel that
16 the insurance department is vital to our industry.
17 They do a great job, but now they're underfunded.
18 There's been closures of offices, local offices. And
19 to really enforce some of the things that are in even
20 the legislation that's being proposed today is very
21 tough for them to do when they're underfunded and
22 undermanned.

23 So we really encourage you within the
24 budget process, and I'm not trying to open up a whole
25 entire can of worms, but just on the record, to do

1 whatever you can to support the insurance department
2 because it's important. We're out there trying to be
3 their eyes and ears also and seeing if there's things
4 that are occurring that should be reported. And I
5 know in some of the legislation that's out there that
6 it's our responsibility and more so our job to do
7 that, but we can only do so much also. And even when
8 we report it, if you don't have a strong agency that
9 can handle the overwhelming amounts of things that
10 come into them, where does it go? It gets left, you
11 know, unfortunately to be just piled up on. So we
12 encourage you for that piece of it.

13 Also, there is other legislation out
14 there or at least talk of legislation about medical
15 loss ratios and holding to an 85 percent medical loss
16 ratio. We know that the majority of dollars being
17 paid out --- talking about health insurance now that
18 is for claims. We urge and encourage you to really
19 look if there is going to be a medical loss ratio that
20 you do not include the aspect that go to fraudulent
21 claims. That should be carved out, because obviously
22 there's such little room there to be able to
23 incorporate it in.

24 Just to jump around. So that's
25 encouraged. And then lastly, we also would hope that

1 you would --- some of the wording in the legislation
2 talks about penalizing people who self-report if they
3 made a mistake or if there's been an activity that
4 shouldn't have occurred. We would hope that you look
5 upon that and say, hey, if someone's going to be, so
6 to speak, correcting their mistake, it wasn't malice.
7 It was a bookkeeping mistake. That that would be
8 excluded or maybe a lot more leniency looked upon that
9 if someone really through an internal audit processor
10 finding that they made a mistake. Again, a
11 bookkeeping mistake that was shown clearly that was
12 just a mistake and not something that was purely
13 fraudulent that they were trying to do something in
14 that nature. We'd ask that piece be looked at to be
15 carved out.

16 I'm really here to have a discussion if
17 you really want to ask any questions about someone
18 who's living, breathing health insurance all day long
19 out in the field working with individuals, working
20 with companies, you know, seeing them struggle and
21 trying to come up with solutions. So I'm really just
22 here to resource and to be as brief as you want me to.
23 Thank you.

24 CHAIRMAN:

25 Thank you. We have a question from

1 Representative Godshall.

2 REPRESENTATIVE GODSHALL:

3 Yeah. I agree with your testimony about
4 bookkeeping mistakes and so forth. But I think what
5 I'm really interested in is including a series of
6 bookkeeping mistakes and what could happen now and
7 what could happen then and so forth. But what if you
8 have a series of this happening? That's what we
9 really want to get at. We did receive a letter that I
10 believe I got I guess this morning from I guess the
11 Attorney General pertaining to his thoughts on this
12 also. And even a confiscator of property, that that
13 would be one of the biggest returns that we could
14 possibly have. You know, and I agree with that.
15 That's one of the bills that we're presenting here.
16 But we want to get after the people that are doing it
17 continuously that are making deliberate mistakes.

18 MR. ANMUTH:

19 And I agree with that. You know, also
20 there's fraud, there's malice, there's fraud. And
21 there's also professionalism, and we should all be
22 held to the highest level of professionalism. And if
23 you're making a series of mistakes, you think serious
24 mistakes, it's going to start going into more of a
25 gray area of why is that occurring? I agree with your

1 statement that people should be allowed to make a
2 mistake once. It's an honest mistake. Maybe even one
3 and a half times. But after that, they should be able
4 to correct that.

5 REPRESENTATIVE GODSHALL:

6 Thank you.

7 MR. ANMUTH:

8 I appreciate it.

9 CHAIRMAN:

10 Representative Josh Shapiro.

11 REPRESENTATIVE SHAPIRO:

12 Stewart, thanks for your testimony today.
13 Two questions, you said you're out living, breathing,
14 sleeping health insurance.

15 MR. ANMUTH:

16 Not sleeping.

17 REPRESENTATIVE SHAPIRO:

18 What are sort of the common types of
19 fraud that you're seeing? Is there one thing that
20 stands out that you think this committee should give
21 particular attention to, or you know, what is it that
22 you're seeing out there?

23 MR. ANMUTH:

24 Great question. Probably
25 misrepresentation of information that's provided to

1 insurance companies. I would say over the years of my
2 experience --- I actually came from an
3 accounting/finance background and worked for the
4 University of Pennsylvania health system for some time
5 back in the early '90s when we were doing the systems.
6 You guys can remember all that. You know, I think
7 over the years it's putting --- sculpting --- I don't
8 know if that's the appropriate word. Of data to try
9 to obtain a more competitive rate maybe. I've seen
10 that. Not giving all the information possibly when
11 it's there. Obviously we know there's privacy laws
12 and things like that. I'm not talking about things
13 that they shouldn't be talking about, practices. You
14 know, I've never come across it personally other than
15 have been maybe one or two separations from where
16 there have been agents, and thankfully they're caught,
17 and some of them have gone to jail and got their
18 licenses removed where they mishandled a premium.
19 When you're handling company dollars and individual's
20 money, and it has to be done prudently, and it has to
21 be done to the letter of the law. And I've seen some
22 of that over the years, issues. So continuing to
23 focus on that is the key?.

24 REPRESENTATIVE SHAPIRO:

25 On that issue of misrepresentation, is it

1 sort of purposely ignoring certain facts, or is it
2 fabricating facts? Is there one in particular or ---?

3 MR. ANMUTH:

4 Unfortunately it can be a combination of
5 both. It can be again blatant, fraudulent activity
6 and then some sloppiness. And I don't want to,
7 personally speaking, tolerate that in my industry. We
8 know the health insurance industry is under scrutiny
9 as it is. I can tell you when you I say living,
10 breath, I mean, to give you just an example. We're on
11 the phone with the pharmacy trying to help someone get
12 their prescription filled. Now, there's lots of
13 reasons for that. I'm not pointing the finger at
14 anyone. So we're out there day in and day out, not
15 just trying to line up premium and plan and say, hey,
16 this is where you should go. It's really helping the
17 individual. That's what the agent does all day long,
18 but it's also our job and our responsibility to make
19 sure that we can be held to the highest standard. And
20 that would be that the information that you get has to
21 be submitted correctly, it has to be clean. It cannot
22 be a combination of overlooking something because you
23 think it's okay to overlook it. And two is it should
24 --- you know, T's should be crossed and I's should be
25 dotted. It's too important to the consumer, the

1 employer through the employee.

2 REPRESENTATIVE SHAPIRO:

3 Okay. Mr. Chairman, if I can ask one
4 more question. Your testimony on the medical loss
5 ratio, the 85 percent figure. I just want to make
6 sure I understand. You start talking in the first
7 paragraph of that section about the 85 percent figure.
8 I think your point was that it was sort of an
9 arbitrary figure that, you know, sort of where do you
10 grab 85 percent from. And then the second paragraph
11 seems to suggest that you want to exempt certain
12 things from that 15 percent. So is it that the 85 is
13 arbitrary, or is it you're okay with the 85, but you
14 don't quite like how the 15 is carved up? Help us,
15 help you. Okay.

16 MR. ANMUTH:

17 That's a good question. The 85 percent
18 is somewhat arbitrary. Any of you at the presentation
19 probably almost a year ago where I put up dollar bills
20 for a bunch of staff members. Maybe a couple of
21 representatives were there I think. Kathy, you were
22 there actually. I put it up on the wall, and you
23 know, you have 85 cents. It could be a little more,
24 could be a little less. Every dollar of claims ---
25 excuse me. Every dollar of healthcare costs is going

1 towards claims.

2 So when you have only 15 cents for state
3 taxes. There's absolutely profit. There's
4 commissions in there. There's administrative fees in
5 there. There's a lot of things, but it's such a small
6 piece. That's why we say let's focus on the 85
7 percent as opposed to the 15 percent. Not that we
8 should again not look to where we can be the most
9 efficient that we possibly can. But 85 is a little
10 arbitrary, because the reality is that the cost is not
11 --- for a smaller insurance company can be different
12 than obviously a larger insurance company. And to
13 couple in that small margin of 15 cents things like
14 fraudulent claims, makes it that much harder to keep
15 the cost down. It really does. And to be held to a
16 standard that way would be very difficult.

17 REPRESENTATIVE SHAPIRO:

18 Okay. Thank you. Thank you, Mr.
19 Chairman.

20 CHAIRMAN:

21 This 85 percent, is that just pure
22 losses, no lost development, no expense in that at
23 all? Just pure loss ratio of 85 percent? Can you
24 talk to that for a moment?

25 MR. ANMUTH:

1 Probably. It's really based on just the
2 claims in and claims out.

3 CHAIRMAN:

4 But your cost in terms of administering
5 the claim and so forth would be part of that 85
6 percent?

7 MR. ANMUTH:

8 No. The cost of administering claim's
9 only 15 cents. Sorry if I wasn't answering that.

10 CHAIRMAN:

11 Representative Micozzie, and I think we
12 also have Representative Pashinski.

13 REPRESENTATIVE MICOZZIE:

14 Go ahead.

15 CHAIRMAN:

16 Representative Pashinski

17 REPRESENTATIVE PASHINSKI:

18 Thank you. Thank you very much. When
19 you said that the insurance department was severely
20 cut, do you have a number of people that you think
21 needed in order to be a safe oversight of this, and if
22 so, is there a cost of how much you estimate?

23 MR. ANMUTH:

24 That's a great question. I don't have an
25 answer for it, but I'd love to think that one through

1 further and get back to you on that.

2 REPRESENTATIVE PASHINSKI:

3 Okay.

4 MR. ANMUTH:

5 Yeah.

6 REPRESENTATIVE PASHINSKI:

7 And of that 85 percent on your loss
8 ratio, is there a number that you think is a fairer
9 number, and is it possible to have a standardized
10 number for big and little companies?

11 MR. ANMUTH:

12 That's another great question. I don't
13 know if there'd be a standardized number. It would be
14 great if we could somehow come up with one. If I had
15 a number in my mind, it's somewhere probably more in
16 the 75 percent range. But diversity between a small
17 company and a large company can be so great that it
18 might be tough to standardize it. But I'd be more
19 than happy to be part of a panel or a committee to try
20 to come up with something that will work right. And
21 we know it's probably the toughest thing you guys have
22 been dealing with for a long time. How we can do
23 something that really can work to the mass. But I do
24 think it's important, something that we don't have to
25 keep battling year after year. I don't mean us. I'm

1 talking about us as a state. But states are also
2 regionalized too, and that makes it difficult also,
3 because the cost of care is different in different
4 areas. I will point out --- take a look at Maryland
5 and how they operate as an all payer state. And
6 that's something that we haven't brought to you guys
7 yet, but we're looking into that more and more. They
8 actually have a pretty good model as far as how
9 insurance companies are dealt with as far as
10 levelizing some of the playing field. And if you can
11 do that, you might be able to levelize some of the
12 competition amongst insurance companies also.

13 REPRESENTATIVE PASHINSKI:

14 Thank you very much.

15 REPRESENTATIVE MICOZZIE:

16 Just a few comments. You know, you said
17 you take care of individuals. You eat, drink, sleep
18 the profession. You sound like the House of
19 Representatives.

20 MR. ANMUTH:

21 I appreciate that.

22 REPRESENTATIVE MICOZZIE:

23 Thank you.

24 CHAIRMAN:

25 Thank you very much, sir. We appreciate

1 your testimony.

2 MR. ANMUTH:

3 I appreciate it. Thank you very much. I
4 appreciate Josh for inviting me. Thank you.

5 CHAIRMAN:

6 Steven Elliott. He is the President of
7 PAMIC. How are you doing, Steve?

8 MR. ELLIOTT:

9 Good, Mr. Chairman. Good seeing you.

10 CHAIRMAN:

11 Whenever you're ready.

12 MR. ELLIOTT:

13 Thank you. Good morning, Mr. Chairman,
14 Chairman Micozzie and members of the committee. Can
15 you hear me clearly? My name is Steven Elliott. I'm
16 the President of the Pennsylvania Association of
17 Mutual Insurance Companies, PAMIC, P-A-M-I-C. I'm
18 happy to be here to testify on behalf of the 63 member
19 mutual property and casualty companies which belong to
20 PAMIC. Thank you for this opportunity to present the
21 observations and the concerns of this particular
22 constituency.

23 Now, preliminarily, insurance fraud is
24 obviously something that every insurance company,
25 every single one, has a vital self-interest in

1 combating. We're gratified that Chairman Deluca,
2 Chairman Micozzie, members of the House Insurance
3 Committee, and the sponsors of the bills under
4 consideration today clearly share this deep concern.
5 We at PAMIC thank you for this interest and concern.

6 I want to share with you very briefly
7 PAMIC's thoughts on the bills under consideration
8 today, some of which may well provide insurance
9 companies with some useful fraud fighting tools.
10 First, House Bills 1736, 37 and 40. These bills are
11 part of a package introduced by Representative
12 Godshall, who's a proud sponsor, House Bill 1736. And
13 excuse me, that's a typo on the written material.
14 1736 enhances the penalty for violation of the Public
15 Adjuster Law to a felony of the third degree. Our
16 position is that public adjusters are professionals
17 and they can be valuable in the adjustment of complex
18 claims. But it's also the case that they can
19 sometimes be the catalyst of claims activity that
20 ultimately proves fraudulent. Public adjusters are
21 lightly regulated in Pennsylvania when compared with
22 nearby states, and anything tightening up current
23 statutes is to be welcomed.

24 House Bill 1737 requires, among other
25 things, health facilities to place posters in each

1 facility announcing a \$25,000 reward for reporting
2 fraud. Our companies have no particular comment on
3 this proposal, but on its face, it certainly appears
4 sensible.

5 HB 1740 establishes the asset forfeiture
6 program. The assets used in the perpetration of
7 insurance fraud could be forfeited after appropriate
8 court procedures and distributed to the Insurance
9 Fraud Prevention Authority, law enforcements, or
10 affected insurance companies. This is a very good
11 idea, and we support it. Although I want to point out
12 that it would seem that most of the valuable assets
13 that would be forfeited in that program would be motor
14 vehicles. And most PAMIC members, all but 18, do not
15 underwrite auto.

16 Next, HB 2041, introduced by Chairman
17 Deluca and co-sponsored by you, Representative
18 Micozzie, and others, was reported out of this
19 committee on January 25th. But I do need to weigh in
20 on that. It establishes a long needed consumer Bill
21 of Rights on towing and storage issues. Once again,
22 this is primarily an auto issue. It is a useful
23 reform, and PAMIC strongly supports that measure.

24 PAMIC also strongly supports HB 2154,
25 also introduced by Chairman Deluca with Chairman

1 Micozzie among the co-sponsors. This bill is a
2 strengthened immunity bill which would include certain
3 insurer-to-insurer communications within its scope.

4 When we get to House Bill 1739 and House
5 Bill 1750, PAMIC membership starts to have some
6 reservations. Both the bills would extend the
7 requirements for development and maintenance of
8 insurance fraud plans from the current mandate for
9 such plans for auto and Workers' Comp only to all
10 lines of insurance. And both bills contain reporting
11 and penalty provisions that are in our judgment
12 burdensome and unnecessary, and in the case of the
13 penalties provided, draconian.

14 Both bills require plans to contain
15 certain specific provisions. HB 1739, introduced by
16 Representative Godshall, is a stand-alone bill focused
17 on insurance fraud plans. 1750, sponsored by
18 Representative Barbin, is comprehensive, amending the
19 Title 18 insurance fraud statute and reenacting the
20 Insurance Fraud Prevention Authority Act in the
21 Insurance Department Law. This includes a new general
22 provision requiring fraud plans for all lines of
23 insurance. So in the interest of your time, I will
24 focus solely on the insurance fraud plan provisions of
25 those bills. The Godshall plan does not require as

1 much as HB 1750. 1750, in addition to the requirement
2 for participation in an industry-wide database, which
3 is also in the Godshall plan, requires the employment
4 of a professional fraud investigator. Both bills
5 require that loss costs be stripped of fraudulent
6 claims and claim payments. Both permit companies to
7 add the costs of maintaining the fraud activities set
8 out in the fraud plans to the rate base. Both bills
9 would impose costs that we are concerned are
10 unrealistic and unproductive in the case of the
11 typical PAMIC member company.

12 Most of our membership consists of
13 companies writing personal lines in Pennsylvania. For
14 our average member, commercial lines of business
15 constitute 25 percent or less of its book of business.
16 Most often, these commercial line coverages are small
17 business coverages or landlord property. For the
18 average member, the preponderance of homeowners'
19 premiums and losses are on the property side, not
20 liability. For our companies, the biggest single
21 source of loss related to criminal activity is arson.
22 That's important because arson does not constitute
23 insurance fraud under the criminal statute, Title 18.
24 Granted, an arson case will inevitably generate a
25 false claims report, which is covered, but that's just

1 an additional count on a basic arson criminal
2 investigation. The underlying crime is arson. The
3 investigation, the science, and the law enforcement
4 contacts that arson investigations require are far
5 different from the false claims that are the standard
6 fare of the typical insurance fraud claims in which
7 quite frankly we've been discussing in depth this
8 morning.

9 Our smaller companies do know how to
10 employ good, solid cause and origin investigators.
11 They have good relationships with the fire marshals
12 and the fire chiefs in their communities. In fact,
13 many insurance claims people also serve as volunteer
14 fire fighters. A lot of them do. They understand
15 arson investigations, and they readily and
16 aggressively conduct them. That's why the Fraud
17 Prevention Authority doesn't deal with arson. And
18 presumably that's why the Insurance Fraud Authority
19 does not include preponderantly property and
20 preponderantly personalized carriers in its board
21 representation of insurers. If you look at page 8 of
22 1750, starting at line 3, and that simply reenacts the
23 existing provision of Fraud Prevention Authority. The
24 insurer representatives on the board are to be a
25 representative of a Workers' Comp writer, an accident

1 and health writer, an auto writer and a general
2 commercial liability writer. And I emphasize
3 liability and not property. I submit that this board
4 representation in and of itself shows a legislative
5 recognition of where the problems are. And outside of
6 auto it's not personalized and not property insurance.
7 The typical PAMIC member company writes about 10
8 million dollars in annual DWP. That's a very small
9 company in the insurance world with 75 percent
10 personal lines, commercial remainder being small
11 business packages.

12 The president of a member company in an
13 adjacent state told me that his company was realizing
14 about \$180,000 per year in fraud recoveries including
15 reserve takedowns, and that's important. He had a
16 full-time fraud investigator on staff at the cost of
17 about \$150,000 including salary and all other benefits
18 and associated overhead in employing that individual.
19 So he's happy with that return. He's satisfied with
20 that. When I continued to dialogue with him, I found
21 that half of his business was commercial lines and
22 that most of his fraud recoveries were commercial
23 lines and that 60 percent of his recoveries were, in
24 fact, arson related. The staff investigator also is a
25 fully trained arson investigator as well as a fraud

1 investigator. Assuming these results are typical and
2 applying them to the 25 million dollar PAMIC member
3 with a more comment 75/25 split, personal versus
4 commercial, such a company could expect a return of
5 about \$160,000 on its \$150,000 investment. Then the
6 numbers go down to \$130,000 for a 20 million dollar
7 company and less than \$100,000 for a \$15 million
8 company.

9 So we suggest that somewhere at the 20 to
10 25 million dollar point utilization of an investigator
11 becomes counterproductive. That's important, because
12 the proven fraud dollars are to be stripped out of the
13 loss cost, but the costs of fraud prevention are to be
14 added into the rate. So let me suggest a couple of
15 things. Instead of sweeping the entire industry into
16 a new bureaucratic structure with intended costs,
17 fines and penalties, why not adopt an incremental
18 approach? Surely this series of public hearings has
19 generated sufficient evidence, anecdotal or otherwise,
20 to determine where and if certain additional lines of
21 business should be covered. Adopt an incremental
22 approach we would suggest.

23 Second, regardless of what you do be
24 mindful. Be mindful that there is a differential
25 impact of regulatory burdens on smaller companies.

1 Pennsylvania has one of the oldest housing stocks in
2 the nation. And the small town and county seat mutual
3 throughout the Commonwealth are one major reason why
4 you do not hear about availability and affordability
5 problems in rural and small town areas such as you
6 frequently do in urban areas.

7 And finally, and probably most
8 importantly, why do this at all? The industry and
9 you, the legislature have a common interest in
10 fighting insurance fraud. Instead of multiplying
11 expenses, reporting requirements and paperwork, why
12 not give the insurance industry some tools that will
13 help them in our common fight and common interests
14 against fraud? What are some good examples?

15 At the first hearing last summer, our IFP
16 colleagues mentioned several interesting and
17 worthwhile proposals, some of which have been acted on
18 by introduction of some of the bills I mentioned
19 earlier in my presentation. So in closing, I will
20 instance one of Sam Marshall's proposals in
21 particular, one that has not yet resulted in a filed
22 bill. He asked that homeowners insurers be given the
23 same opportunity that auto insurers currently enjoy
24 whereby insurers can cancel policies on the basis of
25 claims frequency. Think about it. Before mandating

1 that all insurers contract with an ISO, or a
2 Lexis-Nexis, or some yet to be designed common
3 database, whether commercial or state operated, so
4 that claims patterns may be detected, why not permit
5 insurers first to act when the activity of their own
6 policyholder on their own company's insurance policy
7 is already exhibiting such a pattern?

8 With simple reforms such as these, we're
9 confident we can together go a long way towards our
10 common goal of combating insurance fraud. Mr.
11 Chairman, this concludes my prepared remarks, and I'd
12 be happy to try to answer any questions your committee
13 might have.

14 CHAIRMAN:

15 I thank you, sir. I apologize for having
16 to step out. There were a couple of business things
17 that popped up this morning, so I apologize. Do any
18 members have any comments or any questions?
19 Representative Micozzie.

20 REPRESENTATIVE MICOZZIE:

21 You say public adjusters are lightly
22 regulated in Pennsylvania compared with nearby states.
23 How are they regulated?

24 MR. ELLIOTT:

25 Two states of which I'm aware, Chairman

1 (sic) Micozzie, are Connecticut and New Jersey. And
2 they are states that we have identified as
3 jurisdictions that appropriately and aggressively
4 regulate public adjusters. I believe New Jersey
5 contains requirements of a --- if you'll pardon the
6 expression, a cooling off period before preparing on
7 the site of a fire or other loss. I think maybe
8 Pennsylvania does include that as well. A lot of the
9 states require two-way communication that kind of
10 parallels what insurance companies are required to do
11 as to frequency of communication with their insurer
12 during a loss adjustment process. And I believe New
13 Jersey and I think Connecticut.

14 In fact, if a public adjuster is involved
15 in the process, then the adjuster also must
16 communicate with the insurance department readily and
17 frequently. It sets out guidelines. There's also a
18 requirement that a public adjuster when he is employed
19 has to announce his employment to the carrier early in
20 the process, rather than, to coin the expression, lay
21 back in the weeds, if you will. And it's also
22 required that a copy of the contract be included when
23 the public adjuster notifies the carrier of his
24 engagement by the insurer. There are several other
25 requirements in both of those states, and I would

1 commend them to the legislature's intention. I think
2 they are worthwhile. And as I said, public adjusters
3 in my life when I was a company person, we weren't
4 overjoyed to have a public adjuster on the case. But
5 we did recognize that they can serve a useful role,
6 and I've ran across them in mostly highly complex
7 commercial losses when we're dealing with time
8 elements or business interruption or accounting issues
9 and that sort of thing. The kind of public adjusters
10 that you're dealing with out there are competent
11 professionals. But we do get in certain areas of the
12 Commonwealth public adjusters that visit malls and
13 stuff flyers under windshield wipers about how much
14 they can save.

15 REPRESENTATIVE MICOZZIE:

16 They're independent contractors and
17 independent business?

18 MR. ELLIOTT:

19 They are indeed.

20 REPRESENTATIVE MICOZZIE:

21 And they're licensed as far as they go
22 through testing?

23 MR. ELLIOTT:

24 There is a licensing and testing
25 procedure that is included under the Pennsylvania

1 public adjuster law. And public adjusters are
2 regulated by the insurance department.

3 CHAIRMAN:

4 Representative Barbin.

5 REPRESENTATIVE BARBIN:

6 Yes. Mr. Elliott, thank you for your
7 testimony today, and we're all, I think, very
8 interested in making sure that the balance in any of
9 these bills properly takes into consideration the
10 insurance companies are providing gainful employment.
11 So my question to you would be taking into
12 consideration the fact that there are costs that are
13 included in all of these reporting bills, if the cost
14 would be revised to an amount that you would not
15 believe would be burdensome, would you support
16 including all lines of insurance as a way of trying to
17 get at the fraud premium that all Pennsylvania
18 residents have to pay?

19 MR. ELLIOTT:

20 Well, Representative Barbin, thank you
21 for that question. That certainly puts me on the
22 horns of a dilemma. A carve out for insurance
23 carriers that are contoured in such a way as I
24 suggested, it would be appropriate if the committee
25 desires to go ahead in the manner in which the bills

1 are currently drafted, set out. I would say that
2 would be a third place proposal that PAMIC would have.
3 The second place proposal would be to really focus and
4 hone down on what lines of business are you starting
5 to see a spike in fraudulent activity as defined under
6 Title 18, Criminal Statue, in addition to Workers'
7 Comp and auto. But I would like to go there first.
8 And I would submit to you from the experience of our
9 companies that regardless of size that arson related
10 and property-related coverage's and most personal
11 lines coverages are not where the fraud is occurring,
12 leaving aside arson.

13 The prime proposal would be, is this
14 really necessary? I mean, is it necessary to have
15 development and submission of a plan and annual
16 reporting of the results of the plan and fines imposed
17 for an inadequate plan for not adhering to the plan?
18 When I believe that every insurance carrier is just as
19 interested as any member of this committee in
20 combating insurance fraud. Our companies when we find
21 it we address it aggressively. As carriers, though,
22 we're stuck. It's a two-headed vice that has screws
23 on both ends of it. We heard people testifying this
24 morning that were very concerned about sharing data
25 between companies. And medically that's --- there are

1 potential privacy problems there that need to be
2 addressed. But that's what we --- the regime that we
3 operate under current laws and regulations are very
4 concerned that we are abundantly fair to our policy
5 holders, and we try to be. And in an abundance of
6 fairness to our policyholders, sometimes that pushes
7 against very aggressive claims adjusting. So we have
8 to try and walk that line. I do think some of the
9 additional bills that have been introduced, and in
10 particular the insurer-to-insurer immunity, which will
11 be very helpful. It would be very helpful. And I
12 think revisiting maybe the Public Adjuster Act would
13 also be very helpful. Those would give us the tools
14 to actually address fraud when and where it occurs
15 rather than report writing and filing, if you will.

16 REPRESENTATIVE BARBIN:

17 Thank you for your testimony. I would
18 ask that you do one thing for us, though. I would
19 think that based on your testimony this morning that
20 homeowners would be such a line where there could be a
21 benefit with additional fraud review. And if you do
22 believe, assuming that we are moving forward with this
23 legislation, or one of the packages of legislation, if
24 you could identify for us an appropriate level of
25 cutting off the costs at either the size of an insurer

1 on the basis of policyholders or on the basis of
2 premium that might be helpful as we go forward.

3 MR. ELLIOTT:

4 Thank you, Representative Barbin. I'd be
5 happy to explore that. I know some other states that
6 have requirements such as this. I believe New Jersey,
7 for example, has a threshold of a number of auto
8 policies or something like that. So I'll be happy to
9 explore that for you.

10 CHAIRMAN:

11 Mr. Elliott, and this is not part of the
12 package of legislation, but I'm looking at a piece of
13 legislation now that I've introduced that would allow
14 sole proprietors and principals of partnerships and
15 LLCs to obtain Workers' Compensation insurance. And
16 many --- virtually all states around Pennsylvania
17 provide that ability to do that. Some concerns
18 expressed to me with respect to that legislation is
19 that it opens up a whole new potential area for fraud.
20 Do you have any comment about that?

21 MR. ELLIOTT:

22 That has not been raised to me by our
23 membership, Representative Frankel, so I can't
24 definitively answer your question. Personally, I read
25 your bill, and without receiving any comment from any

1 of my membership it seems like a good bill to me.
2 Most of our members are themselves small businesses,
3 and anything that benefits the small business
4 community is generally something we like. Having said
5 that, I have to bear in mind that we have 63 mutual
6 companies in our membership and only 14 write Workers'
7 Comp. And I haven't heard from them on the bill. It
8 sounds like a good approach, but I'll be happy to
9 follow up.

10 CHAIRMAN:

11 Thank you very much. Any other comments,
12 questions? Thank you very much for your testimony,
13 Mr. Elliott.

14 MR. ELLIOTT:

15 Thank you.

16 CHAIRMAN:

17 Next we will be hearing from Dave Tideman
18 and Dom Pellegrino, the counsel and claim team manager
19 for State Farm Insurance Companies respectively.
20 Thank you.

21 MR. TIDEMAN:

22 Good morning, Chairman Frankel and
23 Chairman (sic) Micozzie, members of the committee. I
24 appreciate the opportunity to share some information
25 from our perspective. I'm really only here to

1 introduce Dom Pellegrino, who is our claim team
2 manager. But I did want to just give you a bit of
3 context about State Farm and our interest here. We're
4 largely going to be talking about fraud from the
5 property casualty side of things. State Farm is the
6 largest auto insurer in the United States.
7 Country-wide we insure about one out of every five
8 autos. In the State of Pennsylvania we have about 1.8
9 million auto insurance policies, another 1.1 million
10 homeowners or property insurance policies. We have a
11 substantial presence here and substantial interest in
12 the topic.

13 We have about 729 offices just in
14 Pennsylvania, and we employ about 5,000 people all
15 total just in the state. So it's a big issue for us.
16 I just wanted to provide that context. Dom
17 Pellegrino, who will supply some of our more precise
18 comments on the subject matter of the legislation is
19 here as a manager specifically in the area we call
20 SIU, which is focused on investigating fraudulent
21 claims. And without further ado, I'll turn it over to
22 Dom.

23 MR. PELLEGRINO:

24 Thank you. Good morning, Mr. Chairman
25 and members of the committee. Thank you for the

1 opportunity to testify today. As stated, I manage a
2 special investigative team near Pittsburgh. I've
3 managed all types of losses, all types of claims
4 throughout the Northeast section of the country. And
5 I believe it gives me a unique perspective on
6 insurance fraud issues. I've been doing that for
7 approximately 17 years. I have six years in the field
8 as a field investigator. I've managed various
9 investigative teams over the last 11 years. State
10 Farm being the largest property and casualty insurer
11 in the state makes me particular proud of the fact
12 that they have such a commitment in providing both
13 training and resources in the fight against insurance
14 fraud. I would like to add that State Farm also
15 appreciates the efforts of Chairman DeLuca along with
16 Representative Godshall and Barbin as well as the
17 cosponsors for their willingness to introduce
18 legislation that will enhance Pennsylvania's fraud
19 laws.

20 My team works daily on a daily basis to
21 identify potential fraud, to investigate, evaluate,
22 reach claim decisions and work with law enforcement to
23 bring these cases to justice. We work on behalf of
24 our policyholders to keep them from becoming victims
25 and keep the cost of insurance down. Today you will

1 not hear me further analyze these bills, but instead I
2 hope to give you my perspective where the rubber meets
3 the road, so to speak, as it relates to property and
4 casualty insurance fraud. I would like to discuss
5 three topics today.

6 The first being immunity. In an
7 investigation, in any investigation time is crucial.
8 Many times information from other carriers can be
9 important to resolve suspicious loss indicators.
10 Privacy restrictions and liability concerns make this
11 very difficult as it stands today. And keep in mind
12 this is a two-way street. One of my investigators can
13 call a different carrier and look for information.
14 They can't get the information. That carrier can call
15 us. We can't give the information. So it presents us
16 with some problems. It creates delays. We have
17 access to an ISO Database, but quite frankly, the ISO
18 database provides merely a snapshot of prior claims
19 and prior claim history.

20 If the particular claim involved was
21 handled in SIU, that raises a question in our mind.
22 Was there potential fraudulent activity? What was the
23 outcome of that claim? We won't know. We can't find
24 out. And so what happens is this results in us having
25 to make referrals to the National Insurance Crime

1 Bureau sometimes based on incomplete information.
2 Many times the delay created in our being able to
3 obtain that information SIU to SIU results in
4 additional time delays in handling the claim. It
5 could result in making a decision without all the
6 pertinent information, and it can also lead to
7 referrals that again have not all of the complete
8 information that we need.

9 We can get to more timely resolution with
10 an exchange of information between SIUs that have
11 properly trained personnel in the handling and
12 dissemination of this information as appropriate. So
13 therefore, we would support a function whereby the
14 SIUs could exchange information in a controlled
15 manner.

16 Rate evasion --- obviously rate evasion
17 and in most cases entails some representing residency
18 in one location when, in fact, usually it's a rural to
19 metro scenario. This results in the failure of the
20 insurance companies to collect the appropriate
21 premiums, and in many as we deal with instances quite
22 often from the rural parts of Pennsylvania, the
23 Poconos to maybe the Bronx in New York, this results
24 in higher payouts by the insurer. Because if there's
25 an accident, bodily injury, we're obligated to pay

1 that state's higher liability limits, first party
2 benefits, things like that. So we're not collecting a
3 premium for that. So obviously that fraudulent
4 activity has a burden and a cost on all persons buying
5 insurance in the Commonwealth.

6 An example again is someone that lists
7 their residency in the Poconos, and in fact, lives in
8 the Bronx, New York. My team gets these types of
9 referrals regularly. We send out field personnel who
10 will go to the area in Pennsylvania. No one knows who
11 these people are. They don't live there. They've
12 never seen the cars. We send out field
13 representatives in the New York area in the Bronx and
14 lo and behold the vehicle's there with Pennsylvania
15 plates. And those interviewed in that area see this
16 car on a routine basis. In fact, many people own
17 businesses up there and on and on.

18 So again, we would support legislation
19 language that would strengthen the penalties,
20 including the ability of law enforcement to take
21 decisive action on these issues to deter this activity
22 from others that might be considering it.

23 The third issue is towing. Two things
24 come to mind when I think of towing in the State of
25 Pennsylvania. One is consistency and the other is

1 control. Most towers that deal in the State of
2 Pennsylvania are very honest. They're out there doing
3 a tough job everyday, and they're charging the
4 appropriate fees, and they're servicing the customer
5 appropriately. However, there are those who do not
6 comply with local contract guidelines. Many of these
7 are established through periodic contracts with law
8 enforcement, through municipality, and sometimes
9 there's no guidelines at all.

10 As a result, many times an insurer on the
11 back end of an accident is confronted with paying
12 excessive tow fees, winching and recovering fees,
13 which are exorbitant, accident debris, clean up and
14 storage fees. And unfortunately, we also see all too
15 often incidents where we see vehicles that are
16 basically captured by road towers or chasers as
17 they're known in the business. An accident occurs.
18 An insured is at the scene. The police are there.
19 They want to do the right thing. Traffic's backed up
20 for a few miles. And what do they do? These towers
21 swoop in. They say, here, sign my tow slip, and we'll
22 take it to the shop, and then everything would get
23 straightened out. They want to do the right thing.
24 They've just been victimized.

25 Sometimes we're confronted with once the

1 car gets to the repair facility we find that the tow
2 slip they signed was as authorization --- instead was
3 an authorization to repair. When, in fact, the
4 insured had no intentions of using this repair
5 facility to take care of their vehicle's damage. So
6 the insurer then is confronted with trying to get the
7 vehicle out of the shop. Many times once we go look
8 at the vehicle if that is presented as a factual
9 scenario, the insurer wants to move the car,
10 additional damages show up on the vehicle.

11 And so we're confronted with these issues
12 of trying to negotiate storage fees. It creates
13 delays. The insureds will exhaust their rental
14 coverage sooner than they normally would. And once
15 that occurs, we really can't help them with additional
16 fees along those lines. And sometimes we are
17 confronted with actually having to file a writ of
18 replevin to, in fact, get the vehicle released so the
19 insured can move on their way to get the vehicle
20 repaired. So again, this results in litigation,
21 higher cost of premiums and some contentious
22 situations where our insureds are actually caught in
23 the middle. They truly become victims.

24 So we would prefer to see standardized
25 fees and charges along with these towing facilities or

1 at least enforcement of existing standards where in
2 fact they do exist.

3 We would also suggest litigation --- I'm
4 sorry, legislation addressing vehicle capture and
5 commissions paid out by body shops and towers when
6 this activity is well documented. And I can tell you
7 from my own experience that there are --- again, most
8 body shops of the Commonwealth do a tough job. I
9 worked in a body shop for 16 years. It's tough work,
10 but there's body shops out there who will pay a
11 commission to a tow company for bringing work in. And
12 when they pay that commission, what do they do to
13 cover the cost of it? The insurer comes out, writes
14 an estimate. There's only a finite amount of money
15 that's going to be available to repair the car, and
16 most times there's a deductible involved that the
17 insured needs to participate in. So what happens is
18 that we find some shops will enhance, cause more
19 damages to the vehicle that when my investigators get
20 those referrals, which my team is responsible for the
21 Northeast section of this country, then we are
22 confronted with telling the insured these damages
23 don't appear to be consistent with the actual
24 accident. So that creates more delays, more problems.
25 Ultimately at times litigation and increased costs in

1 the way of premiums for all insured. So that is
2 another problem as well.

3 Finally, State Farm would support a
4 change in Pennsylvania Homeowner Renewal Act 205.
5 This law unlike any other state restricts an insurer's
6 ability to consider excessive loss history as grounds
7 for cancellation. Some property owners abuse the
8 system filing claim after claim. You know, we look at
9 this as claims come in, and we see repeat customers
10 over and over again with these types of claims that
11 would involve windstorm, lightning strikes, hail
12 damage. And we send an investigator out and no one
13 else on the street experienced any of these problems.
14 And the claims come in over and over again. So you
15 have to think how can one person have so much to file?
16 And at this time, again, I would like to thank the
17 Chairman and members of the committee for your
18 patience and time in handling our concerns. And I
19 would welcome any questions.

20 CHAIRMAN:

21 Thank you, Mr. Pellegrino. Other folks?

22 REPRESENTATIVE MICOZZIE:

23 This committee has worked long and hard
24 on the steered. And I know State Farm does not steer.
25 But I never realized the steering could occur if a ---

1 I'll call it a preferred shop is another word for
2 preferred shop. If a preferred shop who tows gives a
3 commission to an auto body and the towing. And the
4 result is it comes into this shop, that's a form of
5 steering. First of all, have you ever found --- well,
6 you just represent State Farm; right?

7 MR. PELLEGRINO:

8 Yes.

9 REPRESENTATIVE MICOZZIE:

10 In fact, I don't think it's in the bill
11 that we passed and became law. But I think that
12 should be considered in any of final legislation that
13 comes out. I have met with business owners who not
14 only repair the shops, but they also tow. And in my
15 meetings with them on two occasions there seemed to be
16 a conflict between when you have a business that has
17 towing and they fix the cars. And I've asked Art and
18 the Chairman to look into it further, to get a
19 statement with some of my business people to discuss
20 it further and maybe some amendments or whatever be
21 put in. But I never realized that could be a form of
22 steering.

23 MR. PELLEGRINO:

24 Yes. And to expand on that a little bit.
25 Sometimes what we see are --- I'll give you an

1 example. A body shop that does not have their own
2 towing facility, they have an agreement, working
3 agreement with a local tower who will, in fact, tow
4 their vehicles in when they solicit a job or from an
5 accident scene. And the insured agrees to --- the
6 customer agrees to that facility for repair. I've
7 seen many cases where the working relationship is such
8 that the body shop that gets the car in for the repair
9 will then submit the tow bill from the tower as a part
10 of their fees. And I've seen many times where the
11 body shop will have a business pad in the letterhead
12 of the towing facility. We've found evidence where
13 the tower will charge \$50 for that tow, and the body
14 shop will mark it up to \$150 and pass it on to the
15 insurance company.

16 REPRESENTATIVE MICOZZIE:

17 Have you found any, I'll call it
18 participation fraud, as far as the police department
19 or elected official? In other words, it comes in and
20 then they direct the location to the towing place.
21 Have you ever come across that?

22 MR. PELLEGRINO:

23 At this time I don't have any hard
24 evidence that has occurred or is occurring. There's
25 various speculation in various areas of the

1 Commonwealth that might be occurring. That's part of
2 what my team is looking at along with other issues at
3 this present time of enhanced damages and towing
4 issues. That's as far as I have on that right now.
5 I'm sorry.

6 REPRESENTATIVE MICOZZIE:

7 Thank you.

8 CHAIRMAN:

9 Any other questions? Thank you very much
10 for your testimony. We will next hear from Sam
11 Marshall, the President of the Insurance Federation of
12 Pennsylvania.

13 MR. MARSHALL:

14 Good afternoon. Good morning. Wherever
15 we are. Thanks for the chance to be here. I'm Sam
16 Marshall with the Insurance Federation. We represent
17 all sizes and shapes of insurers, ranging not only
18 from State Farm, who just preceded me, but also the
19 Eastern Alliance, but also across the spectrum in the
20 areas of life and health coverage as well as Workers'
21 Comp and all types of property/casualty coverage.
22 Today, I'll highlight the value of three measures in
23 varying stages of legislative development and try to
24 address any concerns about towing issues and some of
25 the comments that have been made.

1 Towing. We appreciate the committee's
2 approval of House Bill 2041, establishing towing
3 standards and disclosures. We're not aware of any
4 opponents to the bill, and it has the support of the
5 agency charged with enforcing it, the Attorney
6 General. So let's hope hearings like this keep the
7 pressure on it to get enacted. I don't think Chairman
8 Micozzie asked is there some way that the towing bill
9 would enhance steering on the part of companies? I
10 actually look at it the exact opposite way. I'd be
11 more worried about unscrupulous repair shops having
12 some sort of commission basis with towing operations.
13 It's not as if the tow truck operator knows who the
14 insurer is of a stalled vehicle until long after the
15 fact.

16 Insurer-to-insurer immunity. We
17 appreciate the introduction of House Bill 2154 by
18 Chairman DeLuca and Micozzie, and we appreciate the
19 support of the Attorney General. The bill continues
20 the immunity in current law for the insurance
21 department and for people sharing information on
22 unsuspected fraud with government agencies and similar
23 organizations and databases dedicated to identifying
24 and stopping insurance fraud. It extends the immunity
25 to fraud fighters within insurers when sharing

1 information about suspected fraud with their peers,
2 whether in-house or in other insurers. I know that
3 any bill with the words insurer and immunity is going
4 to be under scrutiny.

5 So the limited nature of this immunity
6 bears emphasis. It applies only to those people in an
7 insurer who are designated as responsible for the
8 investigation and disposition of claims related to
9 suspected fraud. And it applies only to the extent
10 those people are sharing information about suspected
11 fraud with others also designated as fraud fighters.
12 And it expressly doesn't erode any bad faith or other
13 claims against insurers or their employees based on
14 any other actions. And also I think as Representative
15 Godshall pointed out has actual malice and the
16 exception for actual malice and accidents. So it's
17 truly a limited immunity. We're not asking for a
18 blanket immunity in the claims process. Just
19 protection so designated people can work together in
20 fighting fraud.

21 Public adjuster reform. We ask that the
22 committee consider strengthening Pennsylvania's public
23 adjuster licensing law to ensure that consumers get
24 proper disclosures when contracting with adjusters.
25 You know, this would be the third bill. You have one

1 that's already at a committee, one in and this is, I
2 believe, in an embryonic state to be considered by
3 this committee. The disclosures that we would
4 recommend notice that the insured has the right to
5 rescind the contract within 15 days of signature.
6 Notice that the adjuster's fees come out of an
7 insurer's claims payment under a policy, not in
8 addition to those payments. Claims people constantly
9 say consumers are confused by that.

10 And notice that the adjuster will provide
11 the insured a copy of any loss or estimate that it
12 sends to the insurer. We're discussing these ideas
13 with the insurance department, since it is the agency
14 responsible for licensing public adjusters and
15 approving their contracts. We think they're
16 straightforward and reasonable disclosures and
17 requirements, and we welcome any input from others.

18 Now, we talked about these three targeted
19 arguments, but I'll close with a broader observation.
20 At times it seems the question is not so much what can
21 be done to fight insurance fraud. It's whether
22 insurers really care about fighting fraud with the
23 presumption being that this commitment isn't strong
24 enough, and it can be strengthened by legislation.
25 The good news is that we do care about fighting fraud.

1 Companies across the board, all sizes and all lines,
2 devote considerable resources to this. The approaches
3 will and should vary, but the commitment is
4 consistent. That's why people don't complain about
5 that insurers are too easy in paying claims or taking
6 on new risks. It's usually just the opposite.

7 The reality is that we ask hard questions
8 and request documentation not because we don't want to
9 pay claims, but because we only want to pay fair
10 claims. I appreciate the number of laws on the books
11 to prevent us from being overzealous in that
12 commitment. That's why you have prompt-pay laws and
13 restrictions on utilization review, bad faith
14 statutes, the Unfair Insurance Practices Act and the
15 like that all that amounts to. I hope as you consider
16 any fraud package, you recognize both our
17 across-the-board commitment to fighting fraud and the
18 existing checks and balances on that commitment. They
19 show that your worry isn't we do too little. It's
20 that we might be doing do too much, and historically
21 that's been the case.

22 We also recognize the importance of law
23 enforcement in fighting fraud and the importance of
24 insurers working with law enforcement. That's one
25 reason we support and fund the Insurance Fraud

1 Prevention Authority and its grants to law
2 enforcement. Over the years, we've learned the real
3 challenge is not so much how much we report in terms
4 of unsuspected fraud, but what we support. There's
5 some inevitable differences. We're claims
6 investigators and law enforcement agencies or criminal
7 prosecutors. So there's a learning curve on both
8 sides. We're working on it, and we're grateful for
9 the progress that's being made.

10 The point is our industry is already
11 committed to fighting fraud and working with law
12 enforcement on that. So we don't believe either area
13 needs more regulatory requirements, especially at a
14 time when industry and government regulatory resources
15 are stretched thin. What is needed are the practical
16 tools we talked about today. Towing standards,
17 insurer-to-insurer immunity and public adjuster
18 standards. We're thankful for your efforts on all
19 three fronts, and we're ready to work with you on
20 getting things done.

21 CHAIRMAN:

22 Thank you, Sam. Any questions?

23 REPRESENTATIVE SHAPIRO:

24 Mr. Chairman. Thank you, Mr. Chairman.
25 Sam, thanks for your testimony. I appreciate it. I

1 appreciate this sort of self-policing commitment that
2 the industry has made that you described in your
3 testimony. Do you have any empirical data? Do you
4 have any evidence to sort of help this committee work
5 through it? I appreciate where you're sitting that
6 you don't want to see additional regulations. I truly
7 do, and I understand your perspective in that. But
8 give us some sort of additional comfort in knowing
9 that it's not just a commitment, and I believe you
10 when you say that, but there are some real hard facts
11 behind what you're saying in terms of the number of
12 incidents of fraud internally you've addressed and
13 what has happened when you've done that.

14 MR. MARSHALL:

15 I'm happy to have companies, you know, do
16 that. The problem you get into in all of this is what
17 one considers suspected fraud.

18 REPRESENTATIVE SHAPIRO:

19 Okay.

20 MR. MARSHALL:

21 And I realize --- I mean, it's just
22 somebody who tried to get more out of an insurance
23 company than he should have. It seems simple. It's
24 actually very subjective. You know, when is a padded
25 claim fraud? In our mind when it's an excessive

1 claim, and thus, is fraud it's not necessarily what
2 law enforcement says that we want to spend our life's
3 work going after over utilization. And there's a sort
4 of a gray area between claims abuse and that.
5 Companies don't necessarily catalog, you know, in some
6 sort of a definitive way every time they ratchet down
7 a claim. Every time they say you know what ---.

8 Chairman Micozzie (sic) talked about auto
9 body shops. If you own an auto body shop, I don't
10 think \$40 an hour was a reasonable rate. I think \$36
11 an hour was a reasonable rate. Now, is that fraud
12 that somebody tried to submit a bill for \$40 when the
13 going rate was \$36? You know, that's going to vary.
14 We would look at it as responsibly paying claims. You
15 know, in truth when I was talking about self-policing
16 I --- and I think Steve Elliott also mentioned it,
17 it's in our self-interest not to pay out excessive or
18 fraudulent claims. And in truth, all of the laws in
19 terms --- that apply to insurance companies or the
20 overwhelming bulk of them and the overwhelming bulk of
21 regulation in the claims end are all designed to make
22 sure we don't ask too many questions. To make sure
23 that we're not too tough, that it isn't such a
24 one-sided deal. And that holds true not only in how
25 we're regulated, but judicially how we are. And how

1 we're regulated in the courts as well as in agencies.
2 That's why you have a bad faith statute. Generally,
3 the focus of laws are to say --- in Pennsylvania are
4 to say ease up on being tough in the claims process.
5 Ease up on utilization review. Ease up on questions
6 to the providers. If somebody wants to say we want to
7 have every dollar that you say you saved in the claims
8 process, I guess that could be done. I'm not sure
9 what great value that has to regulating the insurance
10 industry.

11 REPRESENTATIVE SHAPIRO:

12 Well, let me ask you a different way I
13 guess. I'm sure many of the companies that you
14 represent have folks that work for them that conduct
15 this self-policing; right?

16 MR. MARSHALL:

17 When you say self-policing I'm not ---.

18 REPRESENTATIVE SHAPIRO:

19 I'm trying to use the terminology. I
20 mean, you ---.

21 MR. MARSHALL:

22 Well, it's not a term that I ---.

23 REPRESENTATIVE SHAPIRO:

24 There are folks within the companies that
25 you represent that try and look for fraud, discover

1 it, go after it. That's what I mean when I say
2 self-policing. Is that a fair statement that there
3 are people in these companies doing that?

4 MR. MARSHALL:

5 Yeah. Self-policing to me means policing
6 oneself. What you're talking about ---.

7 REPRESENTATIVE SHAPIRO:

8 Internal maybe I should say.

9 MR. MARSHALL:

10 It's internally going after fraudulent
11 claims.

12 REPRESENTATIVE SHAPIRO:

13 Yes. And there are people in each of
14 those companies doing that?

15 MR. MARSHALL:

16 And there are people in each of the
17 companies doing that. Where you get somewhat
18 subjective and you --- for instance, Dom who was right
19 before me or John from Eastern Alliance who will
20 follow, both deal very specifically in sort of what I
21 call high-end fraud. But there also have been
22 company's claims people to simply hold down and say
23 you need the documentation.

24 REPRESENTATIVE SHAPIRO:

25 Right.

1 MR. MARSHALL:

2 I don't have it.

3 REPRESENTATIVE SHAPIRO:

4 I understand. Here's what I'm driving
5 at. I mean, if there are people being paid by these
6 companies to look for fraud or to not pay out
7 fraudulent claims, there is presumably people within
8 the company that have to justify the salaries of those
9 individuals, the positions of those individuals. And
10 then presumably if you dig down further there is some
11 data that those individuals have to provide to their
12 bosses, their managers, et cetera to say, yes, we are
13 doing our jobs. We have found X amount of fraud, or
14 we have looked at 100 cases, 50 of which were fraud,
15 50 weren't, but we looked at 100 cases. That's what
16 I'm driving at. I mean, you're suggesting to this
17 committee --- I'm not saying wrongfully so, but you're
18 suggesting to this committee we don't need more
19 regulations beyond the few that you think are
20 necessary, so trust us. We know what we're doing, and
21 we're looking after things, and so what I'm asking is,
22 where's the data to back that assertion up?

23 MR. MARSHALL:

24 I'm happy to get some companies who would
25 give you a representative sampling. The question is

1 companies, are you really doing something? You're
2 hearing from some companies today who are talking
3 about what they specifically are doing. If you want a
4 broader sampling that's fine. You know, our question
5 is always, you know, more related to once you have it
6 what are going to do with it, as a regulator. Whether
7 it's legislation regulating or the insurance part of
8 regulating.

9 REPRESENTATIVE SHAPIRO:

10 Well, from my perspective it suggests if
11 the work is being done and it's being done well, then
12 your claim that we really don't need additional laws
13 on the books or additional regs on the books carries a
14 lot more weight. If, in fact, it's not being done or
15 not being done effectively, then perhaps there's more
16 of a role for the legislature to play. That's where
17 I'm coming from.

18 MR. MARSHALL:

19 We're happy to talk about our fraud
20 efforts. That's one of the reasons why we're here.

21 REPRESENTATIVE SHAPIRO:

22 Sure.

23 MR. MARSHALL:

24 It's just we have seen at times
25 regulation for the sake of regulation, rather than

1 regulation that builds and promotes better practices
2 on anybody's part.

3 REPRESENTATIVE SHAPIRO:

4 I got that, and I share the same goal
5 that you have. And that is to have regulation that
6 actually works, not just serving as window dressing or
7 additional obstacles for you. I just need the
8 industry's help in demonstrating to us where that need
9 exists and who should best meet that need.

10 Mr. Chairman, on a related note I wanted
11 to public thank the Federation. You are strong
12 proponents of our ban on handheld cell phones and
13 texting while driving. We appreciate your efforts,
14 and as you know that passed with the broad bipartisan
15 majority this week, and we thank you for your work on
16 that.

17 MR. MARSHALL:

18 I'm pleased that everybody got that done.

19 REPRESENTATIVE SHAPIRO:

20 Yeah. Thank you. Thank you, Mr.
21 Chairman.

22 CHAIRMAN:

23 You do use your influence.

24 MR. MARSHALL:

25 We are strongly supporting it there.

1 Vice Chairman Frankel, just one comment related to a
2 question on your sole proprietor bill. As you know we
3 supported that bill when it was the subject of the
4 House Labor Relations Committee. That's actually the
5 kind of bill that would help from going after one area
6 of fraud in the area of Workers' Compensation, which
7 is when is somebody an independent contractor and when
8 isn't a person an independent contractor? If you have
9 a bill, it addresses the underlying problem of, can an
10 independent contractor get Workers' Comp coverage?
11 Right now in Pennsylvania the answer is no. And we've
12 endorsed in that area. We've endorsed your bill in
13 combination with a new national model from the NCOIL,
14 the National Council of Insurance Legislators, who
15 require everybody in the construction business to have
16 Workers' Comp coverage, whether they're an employee or
17 an independent. And that would address an ongoing
18 problem. Is it fraud? Is it, gee, facts change over
19 time? But when is a person an independent? That
20 tends to be different at the time an insurance company
21 audits an employer than it is when an employee is
22 hurt. And it would help a great deal in addressing
23 that.

24 CHAIRMAN:

25 And I thank you at this point. It stakes

1 ground in Pennsylvania law. It is in the labor
2 relations committee and insurance committee right now.
3 Representative Pashinski.

4 REPRESENTATIVE PASHINSKI:

5 Thank you, Mr. Chairman. Thank you, Sam,
6 for your testimony. On the same line as
7 Representative Shapiro, could you take me to the
8 different layers after an accident occurs? How many
9 people observe and evaluate the damage?

10 MR. MARSHALL:

11 Actually, you ought to bring Dom back,
12 because he actually deals with this day in, day out.
13 First of all, an accident occurs, are you talking
14 auto, are you talking ---?

15 REPRESENTATIVE PASHINSKI:

16 Let's take auto. They were talking about
17 auto before, and we're talking about you have your
18 internal employee that are looking for fraud.

19 MR. MARSHALL:

20 What you have obviously a claim comes in.
21 The claims examiner gets it. Is it for property
22 damage? Is it for bodily injury? You're going to
23 have different people presumably looking at it
24 different. People are going to have different levels
25 of expertise. And is it routine? What's being

1 claimed? That's what's going to go into it. And
2 companies are going to deal with that in their
3 different ways. That's why you have claims examiners
4 and claims managers, and they say here this is right,
5 now it's wrong now. Dom, you've probably dealt with
6 this, because you're in charge of this.

7 MR. PELLEGRINO:

8 Yes. Okay. Basically ---.

9 REPRESENTATIVE PASHINSKI:

10 By the way, I'm sorry. I was detained
11 outside there, so I probably missed the end of your
12 testimony. I'm sorry.

13 MR. PELLEGRINO:

14 We didn't address this anyway.

15 REPRESENTATIVE PASHINSKI:

16 All right. Then I feel good.

17 MR. PELLEGRINO:

18 The claim would go into one of our
19 central units. It's initially evaluated. Customer
20 contact is made. Through the course of the initial
21 contact with the insured, a number of things are
22 looked at. Is the policy enforced? Is this a new
23 policy? What coverages are enforced? What type of
24 vehicles are involved? And this is let's say an auto
25 theft claim. It makes it relatively easy. Is the

1 vehicle equipped with sophisticated antitheft system?
2 Automobiles today are very complex in their antitheft
3 characteristics. And quite frankly, they're hard to
4 steal. So if all keys are accounted for, we have a
5 vehicle with a sophisticated electronic overlay
6 system. And these lead to suspicious loss indicators.
7 At that point in time our central unit would contact
8 our intake unit or SIU. They would present to us what
9 they perceive to be suspicious loss indicators. At
10 that point in time a decision is made. Does that
11 claim come into the SIU? Once that is accomplished,
12 the claim is referred to my team, one of my folks on a
13 rotational basis, and we would begin the investigation
14 of the claim. First touching base with the agent to
15 let them know we had the claim. And then it would
16 basically start from there to --- in greater depth
17 than would normally be done at a line level where they
18 process claims continuously all day long.

19 We are charged with doing all the same
20 things they do, but only in greater depth. So we may
21 ask for a recorded statement. We may ask for
22 documentation. We may ask for service records. We
23 may send field folks out to talk to others at the
24 theft scene. We would certainly try to obtain police
25 reports and interview the officers involved in both

1 the theft report and recovery to see what the
2 circumstances are. And that would lead us to where
3 the claim investigation would eventually take us.

4 REPRESENTATIVE PASHINSKI:

5 Would there be an independent type of
6 investigation as well?

7 MR. PELLEGRINO:

8 At times if we are looking at issues of
9 highly complex technical issues. The vehicle was
10 recovered. It was recovered burned. It was recovered
11 stripped. So again, a State Farm investigator
12 although they may have some limited expertise on these
13 technical issues, we would then go to the outside and
14 employ an independent expert. Either a forensic
15 expert on a fire claim, involving homeowners it would
16 be an independent origin of cause expert to get an
17 independent evaluation so we can consider that with
18 the entire body of evidence that our investigation
19 reveals.

20 REPRESENTATIVE PASHINSKI:

21 Now, after all of that extensive
22 investigation, what is your win/loss ratio?

23 MR. PELLEGRINO:

24 First of all, it wouldn't be considered a
25 win/loss ratio. And I can only say this. In my world

1 working for State Farm in the SIU, our objective is to
2 pay claims that are valid claims and resist those that
3 are not. Do we keep statistics? We keep statistics
4 for the state, and we report to the state along the
5 lines of --- annually along the lines of fraud
6 detected, fraud resisted. I don't have those
7 statistics available today, but we do report to the
8 Pennsylvania State Insurance Department. And one of
9 the reasons is that we report in that manner is
10 because the insurance department is in an effort to
11 try to take the cost of fraud out of the rating
12 structure. They will look for a dollar figure so that
13 they can reduce the rating structure by that amount of
14 fraud.

15 REPRESENTATIVE PASHINSKI:

16 Okay. Thank you very much.

17 MR. MARSHALL:

18 Actually, Representative Pashinski, John
19 Hanlon, and you'll have a chance to hear from the
20 fellow from Eastern Alliance who will be able to talk
21 about it in a Workers' Comp context.

22 REPRESENTATIVE PASHINSKI:

23 Okay.

24 CHAIRMAN:

25 Representative Godshall.

1 REPRESENTATIVE GODSHALL:

2 I have a question on the situation on the
3 towing end that Sam brought up, you had brought up
4 previously. A family member of mine had an accident
5 in Bucks County recently, and I know that this is not
6 a similar incident. There was an accident took place.
7 The policemen arrived, and a tow truck from company A,
8 the policemen had this tow truck already on the way.
9 And they said I would like to have it towed to the
10 repair shop. And the policeman said the towers is on
11 their way, it only goes to his own location. So then
12 in order to get the car back to where the accident
13 victim wanted it, he had to pay a storage fee and half
14 a dozen other things to get the car back to where he
15 originally wanted to have it taken and originally who
16 he wanted to have it towed. What right does, say, an
17 accident victim have to get what he wants to do rather
18 than what the police order? I mean, what happens?

19 MR. MARSHALL:

20 Hence the value of the towing bill that
21 was --- that your committee approved. That will help
22 a great deal. That will at least get some of the
23 disclosures and the rights done. The police, I mean
24 --- I don't know Bucks County, you know, the
25 ordinances there in particular. But for instance, in

1 Philadelphia, they have a towing ordinance for the
2 city. If you break down in the streets of
3 Philadelphia, the city police will notify on a
4 rotational basis approved tow operators that are on
5 the city plan.

6 REPRESENTATIVE GODSHALL:

7 But this wasn't the city. It was Bucks
8 County.

9 MR. MARSHALL:

10 Then maybe Bucks County ---.

11 REPRESENTATIVE GODSHALL:

12 Apparently the person that's in the
13 accident really has no rights to get what he wants to
14 have done to his car.

15 MR. MARSHALL:

16 And the one thing that the bill will do
17 --- and some of that is, because in fairness to the
18 police, they have an obligation to try to get the
19 roads cleared as quickly as possible. You can't say
20 no, my tow guy's going to be here in another hour, and
21 the road remains congested. But the towing standard
22 bill this committee approved would deal with some of
23 the problems on storage and deal with some of the
24 problems of being able to get your car out of there
25 promptly. To actually deal with some of the location

1 problems. The tow operating guy says, I'll just take
2 it to my buddy not ---.

3 REPRESENTATIVE GODSHALL:

4 In my township, and we had a problem of
5 most of the cars being towed into an individual body
6 shop. In my own township the police were ordered to
7 if the accident occurred to take it to the nearest
8 body shop where the accident occurred. And rather
9 than, you know, a single body shop for every accident
10 in the whole township. So I think there's room here
11 for, you know, some support for the accident victims
12 along with what's happening out in the real world.

13 MR. PELLEGRINO:

14 Let me just add that I understand the
15 issues that you're dealing with on that particular
16 occurrence. In a theft recovery scenario, police
17 departments usually have a contract written with a
18 certain towing facility. The vehicle's recovered, and
19 they direct it to a tower, who picks it up, puts in
20 their yard, will charge daily storage fees until the
21 insurance company becomes aware of the claim, begins
22 the processing sequence involving it.

23 And if the vehicle's repairable, and the
24 customer wants it repaired at a different facility,
25 certainly we pay then for a second tow to take it to

1 their facility. Because that's just a reasonable cost
2 of doing business, and certainly it's one where we
3 cooperate with law enforcement, because you can't
4 leave abandoned vehicles that are stolen and burned
5 and half stripped on the streets. So that's just the
6 cost that we accept and move on. The situation you're
7 dealing with is quite different, though.

8 REPRESENTATIVE GODSHALL:

9 Okay.

10 CHAIRMAN:

11 Representative Barbin.

12 REPRESENTATIVE BARBIN:

13 Yes. And I have a question for you, Dom.
14 I listened to your testimony closely when you provided
15 it before. And I think it would be fair to say that
16 in the immunity-to-immunity protection would be a key
17 element of any insurance fraud package, because it
18 would increase your ability at the time that you do
19 the investigation to have the facts necessary to do
20 that investigation and determine up front is this
21 fraud or isn't it. Is that accurate?

22 MR. PELLEGRINO:

23 Yes, that's an accurate statement.

24 REPRESENTATIVE BARBIN:

25 Okay. Then is there any question in your

1 mind having heard the testimony that's gone on this
2 morning that if other lines of insurance information
3 were included in the database where you had access to
4 that as a special --- in your special investigative
5 unit, that would have an impact on lowering the fraud
6 premiums that we're paying, let's just keep them for
7 the moment, in automobile fraud?

8 MR. PELLEGRINO:

9 Yes. And the reason I feel that way is
10 because the access to available --- the access to
11 information in a timely manner that is expanded
12 information then that we could get from the ISO
13 database and wherever. That information would many
14 times serve to resolve what may be an issue on this
15 claim. The other insurer in a previous claim may have
16 looked at this issue. They may have already resolved
17 those questions, and we are presented with a very
18 similar scenario that really falls back to the same
19 scenario, but we don't know that. So without
20 gathering that information, we're confronted with
21 expending the costs of a new investigation. So we're
22 reinventing the wheel so to speak and ---.

23 REPRESENTATIVE BARBIN:

24 So if health insurance, for instance, was
25 included within this database, and you had access to

1 that database because you are a specialized fraud
2 investigator, wouldn't it help you make credibility
3 determinations to lead you where your investigation
4 should go to make a determination as to whether even
5 an auto policy claim was fraudulent?

6 MR. PELLEGRINO:

7 Yes. And what would come to my mind
8 there from a standpoint of expediting an investigation
9 to clear up issues. If you have a medical provider
10 who --- there was a question regarding his license
11 and there was a series of treatment provided, and a
12 prior carrier had already resolved this issue, gone to
13 the board and found out no, there was a mistake. This
14 particular provider was licensed, and there was just
15 some misunderstanding. If I could gather that
16 information early on, it would save a world of
17 resources and manpower and delay in paying claims that
18 should be paid.

19 REPRESENTATIVE BARBIN:

20 Okay.

21 MR. MARSHALL:

22 Just following up on that and showing a
23 little bit of diversity within our industry. We have
24 health insurers, I think, that in that instance would
25 understand and say there's got to be a more efficient

1 way to get Dom the information he needs on somebody's
2 license than to say that all that all health insurers
3 are all of a sudden going to start recording copious
4 plans. You also do get in --- and the Medical Society
5 mentioned it. You do get in to the question of
6 structuring databases that withstand legal scrutiny.
7 And some of us here are old enough to remember Act 6
8 when it was first enacted and its fraud index bureau
9 which we liked, I mean, as an insurance industry. It
10 was reporting all suspected fraud into a common
11 database. And it was, in my recollection --- and I
12 think Art is old enough and Representative Godshall
13 was around. But my recollection is that was struck
14 down as unconstitutional by the Supreme Court for the
15 whole Scarlet A reason that the Medical Society talked
16 about earlier.

17 REPRESENTATIVE BARBIN:

18 Would you be opposed to testimony the
19 Department of State lawyer wants that --- he indicated
20 that information was available to --- in juvenile
21 delinquency hearings. Would you be opposed to an
22 amendment of that type of information being
23 transmitted to the Insurance Fraud Prevention
24 Authority? And I'm asking you both the question.

25 MR. MARSHALL:

1 I thought his point was well made. You
2 know, it would be interesting to see. It sounds good
3 in theory. I want to see it in language. And I
4 thought his point about possibly designating BPOA as a
5 fellow law enforcement agency so that it can get the
6 data, which I thought was the heart of his
7 recommendations he made sense.

8 MR. PELLEGRINO:

9 I would just like to add that given the
10 complexity of the issues and the fact that, you know,
11 we always have a privacy concerns, we again support
12 that information can be shared within a controlled
13 group of trained SIU personnel. Believe me when a
14 claim decision's made, it's not me making the
15 decision. There's really a hierarchy of review that
16 goes into that claim. And we're acutely aware of the
17 bad faith potential on first party claims and for good
18 reason, and it's available in this state for good
19 reason. So again, we're very aware of that, and we
20 take it very seriously in our handling and in our
21 decision making.

22 REPRESENTATIVE BARBIN:

23 Thank you.

24 CHAIRMAN:

25 Thank you very much for you testimony.

1 And we're right on time here. Next we have John
2 Hanlon, who's the Director of Special Investigations
3 and Claims Compliance for the Eastern Alliance
4 Insurance Group. Thank you.

5 MR. HANLON:

6 Good afternoon. Thank you for the
7 opportunity to speak. My name is John Hanlon. I'm
8 the Director of Special Investigations and Claims
9 Compliance for the Eastern Alliance Insurance Group.
10 Eastern Alliance is a Workers' Compensation carrier
11 located in Lancaster, Pennsylvania. A lot of times my
12 friends will ask me what is it that I do. The
13 response that I give them is that I am part of a
14 collaborative team of individuals who work to maintain
15 the integrity of the Workers' Compensation claims
16 administered by our company. That commitment is why I
17 am speaking with you today. We applaud Chairmen
18 DeLuca and Micozzie and the support given by the
19 Attorney General in recognizing the importance the
20 immunity issues have on maintaining the integrity of
21 insurance claims system.

22 The introduction of House Bill 2154
23 continues to support and protect the insurance
24 department and those individuals who cooperate with
25 the governmental agencies. It also continues to

1 protect the reporting organizations that compile
2 injury and other loss data, which are used in the
3 fight against insurance fraud. Additionally, we
4 believe that House Bill 2154 recognizes that no
5 individual carrier can win the battle against
6 potential insurance fraud alone.

7 To understand the importance of
8 supporting a collaborative approach towards fighting
9 fraud, you need to understand where we were 20 years
10 ago, compared to where we are today. When I started
11 my career in insurance claims 20 years ago, it was a
12 much different world. There were no HIPAA laws.
13 Privacy was a consideration, although a concern, had
14 not yet transformed the company practices. One of the
15 biggest things was the Internet was not in use by the
16 industry at all. When a carrier received an injury,
17 we would run an ISO report back then and get
18 information on prior injuries or accidents that
19 potentially could impact our claims.

20 If we wanted to, we could call the other
21 carriers to obtain information on who the doctors were
22 for those claims, what the injuries were and ask if
23 they were aware of our claim. If it was 20 years ago
24 I could call down and say, hey, I've got this claim,
25 you know. I saw that you have the same person for the

1 same person, and we could talk. We could send out a
2 form asking for a very detailed outline of
3 information, and we would receive in return a highly
4 detailed form with enough information to determine if
5 anything inappropriate was indicated or to indicate a
6 need for further investigation. We could even call a
7 doctor's office 20 years ago. We could talk to the
8 doctor or talk to the nurse. We could ask them about
9 the claimant's treatment, medical history and other
10 accidents. We could also share information about our
11 claims with the other carriers.

12 Unfortunately, today that is not the
13 case. As access to information has improved, so did
14 our concerns with protecting the privacy and interests
15 of individuals and of companies. Everyone here has
16 probably seen privacy statements from their credit
17 card companies, from the banks and other financial
18 institutions. Let's not forget their insurance
19 companies. However, there have been unintended
20 negative consequences of implementing these changes.

21 Today, a claims adjusters cannot call
22 another carrier to obtain information. Our adjusters
23 cannot call a doctor's office to ask for information
24 over the phone. And there are times we cannot get any
25 information with a written request. I am not sitting

1 before you today asking for blanket insurer
2 immunities, nor to support a position where anyone
3 working for an insurance carrier should be shielded by
4 extended immunities. What my company does support is
5 the idea of providing specific insurance company
6 employees who are charged with the investigation and
7 disposition of possible fraudulent claims the
8 immunities they need to do the job. We believe that
9 House Bill 2154 does just that by supporting the
10 individual efforts of the insurance companies and the
11 collaborative efforts of the industry.

12 One major impediment to our ability to
13 investigate the injury history of a claimant is our
14 access to medical information. Today, I am often told
15 by carriers and medical providers that if I can
16 provide a medical release, maybe --- I stress maybe
17 they will be able to provide me with some information.
18 Of course, as a matter of course, we do ask for
19 medical authorizations, and we provide them.
20 Unfortunately, we are often told by carriers that our
21 authorization doesn't meet the requirements that they
22 feel the laws require.

23 Medical providers also tell us that, you
24 know, they don't feel that the authorization is
25 appropriate. We work for a Workers' Compensation

1 carrier. In the laws it specifically exempts and
2 states that a Workers' Compensation carrier is not
3 subject to the HIPAA laws. Unfortunately, when we
4 point that out and we make our best efforts to meet
5 those obligations, a lot of times they'll say they
6 don't care.

7 Allow me to provide an example of the
8 value in permitting fraud investigators to share
9 information and discuss medical information with each
10 other. I was investigating and defending a Workers'
11 Compensation claim of a self-employed claimant. The
12 worker was claiming over \$200,000 in expenses
13 associated with an alleged work-related auto accident.
14 Our investigation determined that the medical evidence
15 did not support the claim. We issued a denial and
16 flagged it as a potentially fraudulent claim. Her
17 auto policy provided approximately \$200,000 in medical
18 coverage, and they paid it with probably the
19 expectation that we would lose our Workers'
20 Compensation battle and ultimately have to pay them
21 back. The good thing is we won the case. After five
22 years of intense litigation, we were able to prove and
23 support that it wasn't a justified claim. Had we been
24 able to talk with that other carrier, would they have
25 paid the \$200,000? Maybe they would have taken a

1 better look that was presented to them. So it's not
2 necessarily the impact solely to us, but it's the
3 impact to the industry.

4 Another example of where the ability to
5 share and discuss medical information would be of
6 great assistance in identifying fraud is a claimant
7 who was out of work since July 2005. An ISO report
8 disclosed seven total claim matches for this same
9 individual. We have not been able to obtain any
10 information from any of the other carriers regarding
11 the medical issues associated with the claims. After
12 our attorneys issued subpoenas for the other carrier's
13 file, we only received a copy of an incident report.
14 The ISO report clearly showed more information than
15 was provided, but we were out of our ability to
16 request. We used every avenue to get it, but if
17 you're able to call up and say, hey, I know there's
18 more here, because the index has more information than
19 you're giving me. It's being able to talk,
20 communicate, and it avoids having to do everything
21 through a very litigious judicial system of send a
22 subpoena here, send this to a lawyer, have the lawyer
23 look at privacy issues. We should be able to have
24 those people charged with protecting the integrity of
25 the system, the fraud fighters to be able to talk to

1 each other in order to form a reference in
2 investigating a loss.

3 And in an age --- we all know the economy
4 is not the best. We see the budget issues with the
5 state and the issues and staffing of the Attorney
6 General's office as well as the staffing of companies.
7 Any one company, individual alone can't fight the
8 whole thing. But our combined efforts, by allowing us
9 to talk, we have a greater force to fight back.

10 One of the things that I also read in
11 House Bill 2154 is it supports communities of other
12 individuals who may help us in our investigation of
13 the claim. An example of this, and this is one of my
14 favorite ones, is --- this is really part of
15 third-party immunity. Talk about how if a neighbor or
16 somebody else can do something wrong and reports it to
17 the Attorney General, in other words, there's somebody
18 out there who knows or believes that something wrong
19 is done, they should be able to tell the fraud people.
20 Call the Eastern fraud line, call the State Farm fraud
21 line or an investigator without fear of repercussions.
22 And there's part of this where it seemed to extend
23 those immunities to that person reporting it to a
24 fraud fighter, not necessarily just the Attorney
25 General's office.

1 We had an example of a worker who was
2 claiming complete disability. During our
3 investigation, we discovered that the worker, who was
4 claiming complete disability, was taking skydiving
5 lessons. We had surveillance. We went out and we had
6 him in the school doing tumbling and doing all the
7 wonderful things. And I went and talked to the owner
8 of the skydiving school. I showed him the videotape
9 that we had obtained. The owner told me that they had
10 taken a video authorization or waiver from everyone
11 that comes there. And in that video waiver
12 authorization, they make anybody who skydives give a
13 health statement. And allegedly this individual on
14 video told the school that he was completely healthy
15 and able to jump out of a plane. But when we asked
16 for a copy of it, they said, we've been sued before,
17 We can't give you anything. If they knew that there
18 were immunities which could protect them talking with
19 fraud fighter, then I might have had a better result
20 on that claim.

21 In closing, I'd like to say that we are
22 very appreciative of all legislative efforts to
23 maintain the integrity of Pennsylvania's insurance
24 market. In these troubling economic times, the
25 industry has experienced an increase in insurance

1 fraud.

2 If this bill fails to pass, the existing
3 impediments to the carrier's ability to fully
4 investigate fraudulent claims will ultimately have a
5 drastic impact on both the carriers and their
6 policyholders. Passage of this bill will provide the
7 necessary immunity to fraud personnel and cooperating
8 parties who together have the potential to protect the
9 dual interests of insurers and the public in
10 decreasing insurance fraud. Thank you for the
11 opportunity to address the issue. I am happy to
12 answer your questions.

13 CHAIRMAN:

14 Thank you, Mr. Hanlon, for your
15 testimony. Let me ask, you especially a Workers'
16 Compensation carrier.

17 MR. HANLON:

18 Correct.

19 CHAIRMAN:

20 The use of physician panels that is now
21 common and mandatory in many cases, that's been a tool
22 that been able to mitigate this type of fraud. How
23 does that relate to the fraud prevention that your
24 company's engaged and your ability to get that
25 information out of those physician panels? Is that

1 something that is commonly used with your insurance,
2 or is it not adequate in and of itself?

3 MR. HANLON:

4 Physician panels is a very good tool.
5 Understanding that control of the treatment lasts 90
6 days. After 90 days, the workers are free to treat
7 forever. And those people who jump ship tend to be
8 the ones that my attorney told me to go there. My
9 neighbor told me to go there. There could be valid
10 reasons. There might not be. Yes, that has helped in
11 a lot of the issues. But those doctors have privacy
12 concerns too. Those doctors still have the issues
13 with the releases. They're not going to allow us to
14 call them up and ask them on the phone about anything.

15 And as an example, we had a fraudulent
16 claim where a worker forged return to work slips, gave
17 one to his employer, and we got one from the doctor's
18 office. You hold it up, it's the same form, same
19 signature, but somebody whited out and changed a few
20 things. And then, you know, on the second edition of
21 these forms, evidently the worker felt he got away
22 with it once, so he could be a little more brazen.
23 Somehow he just picked up the form at the doctor's
24 office, filled it out even down to the signature. We
25 went to the doctor's office, and I went there, had

1 both of them. Asked if they could please look at it
2 and talk to me about it. And the response was sorry.
3 We'll look at it and we'll run something through our
4 attorneys and we'll get back to you.

5 CHAIRMAN:

6 Thank you. Other questions?

7 REPRESENTATIVE HARRIS:

8 I have to ask, and I'm afraid to hear the
9 answer. Even though you couldn't acquire the video,
10 were you able to make your case and prove that it was
11 fraud on the skydiving issue?

12 MR. HANLON:

13 The answer to that is probably not. It
14 was referred to the AG's office.

15 REPRESENTATIVE HARRIS:

16 Okay. Thank you.

17 CHAIRMAN:

18 Representative Quinn.

19 REPRESENTATIVE QUINN:

20 Thank you. It's not so much a question
21 as it is a comment. I can't help, but sit here and
22 watch the smirk on Dom's face when you're talking
23 about busting this guy on the skydiving.

24 MR. PELLEGRINO:

25 It's my favorite. I love the video.

1 REPRESENTATIVE QUINN:

2 My father and my brother have defended
3 State Farm SIU claims for years, and it's my
4 understanding from them that the use of the Internet
5 and the Facebook is really helping them solve this.
6 You know, seeing them dancing at weddings and just
7 behavior, possibly bragging about that skydiving.
8 Have you found that being a helpful tool in your
9 investigation?

10 MR. HANLON:

11 Social networks are very big in our
12 investigations. I continuously monitor MySpace,
13 Facebook and others. Facebook has a lot more privacy.
14 But the problem there again gets into public and
15 private information. It's kind of that newborn child,
16 and if somebody has a private profile and you got on
17 it or a co-worker got on it, can you use that
18 information when it's not a public account? I don't
19 know the answer to that. And for an investigator who
20 is looking into this, community's a big thing, because
21 if we are doing things for the right reasons because
22 we're trying to maintain integrity of the insurance
23 industry, we shouldn't worry about an invasion of
24 privacy suit because we looked at a Facebook page.

25 REPRESENTATIVE QUINN:

1 A brave new world that we're trying to
2 all navigate. Thank you.

3 CHAIRMAN:

4 One of the examples that you used in your
5 testimony dealt with some of the issue that I was
6 talking about before that a Claimant that was
7 self-employed obviously purchased Workers'
8 Compensation policy and \$200,000 claim beyond that.
9 Is that an indication of some concern with respect to
10 potentially expanding availability of Workers'
11 Compensation insurance to sole proprietors and
12 partners, principals and LLCs and policies
13 partnerships?

14 MR. HANLON:

15 The whole issue of independent
16 contractors and sole proprietors, you know, we're
17 definitely in favor of, you know, doing something to
18 fix that. Because as was stated earlier, you know, at
19 the time this policy was written versus the time that
20 the claim is made, they look much different. And we
21 need to find a way to have more concrete definitions
22 of who those people are and take away the subjective
23 nature of it. And I think your bill addresses that.

24 CHAIRMAN:

25 Thanks very much. Any other questions,

1 comments? Thank you very much. Our next testifier
2 will be Ralph Burnham from the Pennsylvania Insurance
3 Fraud Prevention Authority.

4 MR. BURNHAM:

5 Good Afternoon. I'm Ralph Burnham of the
6 Pennsylvania Insurance Fraud Prevention Authority.
7 And on behalf of the board of directors of the
8 Authority, we extend our thanks and sincere
9 appreciation to the committee and to Representatives
10 DeLuca, Godshall and Barbin and Micozzie for getting
11 this issue of insurance fraud out into the open so we
12 can look at it again. It's been some years since that
13 was done.

14 Insurance fraud. It's a lie told to
15 steal through insurance. It's a public harm and
16 recognized by the General Assembly of the Commonwealth
17 as such since 1990. In 1995, my authority, the
18 Insurance Fraud Prevention Authority was created to
19 assist in the combating of this public harm. And why
20 is it a public harm. Because the first victimizes the
21 insurance companies, who are our front line of defense
22 against this crime. And then as those costs pass
23 through to your constituents in the form of a higher
24 insurance premium, they become victims. The IFPA is
25 charged by statute with doing a couple of things. One

1 is funding the prosecution of insurance fraud. The
2 other is preventing insurance fraud. We do that by
3 levying annual assessment upon the insurance industry,
4 the victims of this crime, to provide funds to give to
5 law enforcement, and to do our fraud prevention work.
6 Currently, we extend \$9.9 million in grants to 15 law
7 enforcement agencies in the Commonwealth to go after
8 insurance fraud. And they include the Attorney
9 General's Office, the Philadelphia District Attorney's
10 Office, Allegheny County DA's Office, several other
11 federal agencies.

12 We also provide grants to the
13 Pennsylvania State Police Fire Marshal to go after the
14 crime of arson, although arson is not covered under
15 Title 18 as insurance fraud. Insurance fraud often is
16 a result we're seeing coming from arson crimes. And
17 while we see few arson crimes done for profit, a
18 single case of arson for profit imposes a huge
19 potential loss to the insurance industry and thus,
20 their policyholders. Everybody on the house they tell
21 me the average house up in Cumberland County where I
22 come from is about \$164,000 these days. Many are
23 greatly more expensive. Businesses are much more
24 expensive. So an arson in either a private dwelling
25 or a commercial establishment can pose millions of

1 dollars in loss to the industry, driving up the cost
2 of insurance where there's fraud.

3 We also put \$2 million a year out into
4 our fraud prevention work. You may have seen our
5 television advertising, a commercial where we try to
6 get people not to commit the act of insurance fraud.
7 How large of a problem is insurance fraud? You'll
8 hear many estimates of how big a problem it is. None
9 of them are entirely accurate. They're all
10 estimations. What I can tell you is that it's a very
11 large dollar potential harm, and in Pennsylvania it's
12 an increasing problem.

13 In measuring fraud trying to see how big
14 it is, it's a little bit like closing the door on this
15 room and then having me stand outside and peek through
16 the keyhole trying to guess how many people are in
17 here, what your professions are, what kind of car you
18 drive and how much money you have in your pockets.
19 I'm not going to be able to do that. The way we can
20 measure fraud, to some extent, is through the laws of
21 the law enforcement agencies that we support with
22 funding. They provide statistics to the Insurance
23 Fraud Prevention Authority. And those statistics are
24 in two large categories. What we term referrals, the
25 incoming complaints of suspected fraud to the

1 different agencies each year, and then the arrests
2 that they actually made. Now, both the referrals and
3 arrests are a picture of past and present fraud
4 problem. In Pennsylvania, we seem to be developing
5 some kind of new fraud rule of thirds. I don't know
6 if any other state has come to that yet, but we seem
7 headed down that forest. This past year in
8 Pennsylvania, insurance fraud we've seen increasing
9 again to a new high watermark of over 2,800 complaints
10 of suspected fraud. Since 2007, that constitutes a 61
11 percent jump, two-thirds increase of suspected fraud
12 since 2007.

13 Two-thirds of that suspected fraud
14 reporting comes from the insurance industry
15 themselves, who believe they have been victimized. A
16 third of the insurer fraud reporting is sent in on an
17 informational basis clearly marked as such, because
18 they are seeking to comply with Pennsylvania's
19 mandatory fraud reporting statute, which applies
20 presently only to motor vehicle insurers. Law
21 enforcement after it pushes aside the one-third of
22 information reporting, look at the other two-thirds as
23 things that the insurance industry thinks are crime,
24 crime of insurance fraud or insurance related crime,
25 and they've been victimized. And of that those

1 two-thirds of things if you will turn in actual
2 complaints, only one-third are prosecuted. So we have
3 this process for mandatory fraud reporting for some
4 companies, not all companies. This 61 percent jump in
5 fraud, two-thirds of it coming from the industry. And
6 then eventually one-third of that reporting carved out
7 and resulting in someone being arrested and
8 prosecuted. So from that small number of things is
9 where we draw our idea about the Pennsylvania
10 insurance fraud problem.

11 And surprisingly, we see that the types
12 of fraud are not changing greatly. They're mostly a
13 reflection of where law enforcement is placing its
14 emphasis based upon its incoming complaints and the
15 likelihood of what they're hearing actually is a large
16 harm. Bogus auto accidents are a constant problem,
17 people who have financial problems. They have a car
18 that they don't like any longer, so they get rid of
19 it. They say it's stolen, they report it to the cops
20 as such, that's a crime. They report it to the
21 insurance company so the insurance company will pay
22 off their loan. That becomes a felony crime of
23 insurance fraud.

24 Bogus auto accidents and injuries, large
25 problem. But the problem we see through the arrests

1 mainly of the Philadelphia District Attorney's Office
2 and the AG's office over in the Philadelphia quadrant,
3 these crimes actually occurred back in 2005, 2007.
4 And they've been working up through the them through
5 the end of last year arresting people who are the
6 lower level participants looking to get up to the
7 people who actually have been the masterminds and the
8 folks who ultimately are benefiting from these staged
9 auto accidents.

10 A question earlier about cops being bad.
11 In Philadelphia two copes were arrested. They're no
12 longer cops. They sold fake accident reports on the
13 street. Those fake accident reports were used by guys
14 who ran around and recruited their friends, relatives
15 and others to participate in accidents that never
16 really occurred. They used the accident report to
17 make it appear the accident did occur, and then
18 everybody went to an attorney. Everybody went to a
19 medical provider. They all got treated. They all got
20 cash settlements for their pain and suffering from the
21 auto companies. Millions of bucks went out the door.
22 That's fraud. That's actually what was driving up the
23 rates in Philadelphia for the citizens down there who
24 really hate their high auto insurance rates.

25 Financial hardship. Is it a driver of

1 the insurance fraud problem? Probably so. Our
2 current economy that we alluded to previously, it's
3 tough on everyone. In other states they're seeing
4 similar increases as we are in Pennsylvania. They say
5 it's financial hardship. That's probably true. New
6 York State, which has all lines of fraud reporting,
7 gets in 23,000 reports of suspected fraud a year in
8 2008. I don't have the '09 numbers yet. Made around
9 800 arrests. New Jersey, which is --- has all lines
10 of fraud reporting, gets in about 5,000 reports a
11 year. Last year they made around 500 arrests.
12 Pennsylvania, which has only one line of insurance
13 mandated fraud reporting, auto, this past year got in
14 2,800 plus reports of suspected fraud and arrested 415
15 people and assisted in another 33 or so arrests with
16 other agencies.

17 So what's our fraud problem look like?
18 Currently auto is our biggest area followed by
19 healthcare insurance fraud. '09 saw a 46 percent jump
20 in the number of healthcare insurance frauds coming in
21 the units that we support. Auto constitutes the
22 largest percentage of the increase for '09. Other
23 categories that we've seen a problem with and a jump
24 last year, this business of rate evasion, not getting
25 the right amount of premium dollar for the risk that

1 you're insuring. They call it in-state and
2 out-of-state problem. A large problem with the
3 out-of-state folks who live up in New York and New
4 Jersey, come down here to buy their auto insurance
5 because ours is cheaper. They have to register their
6 car down here, so they fill out that they live in
7 Pennsylvania. They don't. Tell the insurance company
8 they live in Pennsylvania. They don't. They go back
9 to New York. They get hit in an accident. And then
10 Pennsylvania auto insurers are on the hook for paying
11 out claims under New York law. They call them
12 redeemer laws, first party liability medical. In
13 Pennsylvania, our minimum requirement is that you buy
14 a \$5,000 policy for medical, for yourself, your
15 passengers. In New York, it's \$55,000 per person per
16 --- in the car. New Jersey it's \$250,000 now.

17 So you take a Pennsylvania policy here in
18 Representative Godshall's area using --- faking an
19 address over there. You run up in Bronx. That car
20 gets hit in an accident. Now, that \$5,000 has become
21 a 55 times how many people in the car? Five? A
22 quarter million dollar exposure, and they're going to
23 pay out a considerably larger sum of money for that
24 New York accident in Pennsylvania. Why am I
25 thundering about this, because that money comes back

1 into the rate bases in Pennsylvania and it's used to
2 jack up the premiums that your constituents pay. And
3 that's why rate evasion, especially non-rated rate
4 evasion is a large harm. It's drawn the attention of
5 the Attorney General. Last year it jumped up from 6
6 to 11 percent of our total arrests, so we're making
7 some progress. It involves corrupt agents, insurance
8 agents, who actively recruited in other states. They
9 have runners. They go up there and bring down
10 paperwork to shuttle back and forth. They use post
11 office addresses that pose as apartments to make it
12 appear that we have Pennsylvania residence insured by
13 these companies.

14 A large area of Workers' Comp, employers
15 don't carry required insurance. That's not insurance
16 fraud, it's a violation of another section of law,
17 but it's financial hardship apparently affecting
18 business just like everybody else, because they're not
19 carrying state-mandated Workers' Comp coverage. And
20 when one of their workers is injured, there's nothing
21 to pay for their medical or wage-loss costs. They
22 turn to the Workers' Comp system. The Workers' Comp
23 judges impose judgments on these employers. They
24 don't pay, and these complaints come to our units.
25 And although they're not insurance fraud, we go after

1 them. Why? Because the employer is evading premium
2 at the front end, securing unfair advantages in the
3 business world by not bearing that expense when all
4 the other good citizens in the corporate world are,
5 so we do that. We go after that. We go after arson.
6 We go after Workers' Comp fraud, the worker or the
7 employer. We go after healthcare fraud. We go after
8 life insurance fraud whether it deals with liability
9 issues and disability insurance or folks, you know,
10 deliberately kill people for profit.

11 On the pending bills --- let me wrap
12 here. I get carried away very easily. On the pending
13 bills, anti-fraud plans and fraud reporting mandates
14 work perhaps too well. As I told you a minute ago of
15 the insurer reporting that comes in, at least a third
16 is sent in for purposes of comply with statutes. So
17 plans and reporting they work too well.

18 They do bring up a large amount of
19 reports. If you extend these mandates to all
20 companies, fraud reporting and anti-fraud plans ---
21 and I'm a believer in anti-fraud plans, by the way.
22 They will not only create additional reports coming
23 into the units we support. Currently we assess the
24 industry 11.6 million dollars each year. That money
25 is part of their operating cost in Pennsylvania. It

1 goes back into their ratemaking, and thus, the
2 premium's paid by constituents. Just like the rest of
3 the law enforcement is supported by the taxpayer money
4 through the Commonwealth's funds. So if we increase
5 our assessment to respond to a larger fraud problem,
6 and I think we have to increase it by at least \$8
7 million to keep up with the amount of work that would
8 be coming in with all lines requirement, that money is
9 going to pass through the rate back to the premiums,
10 something that we're trying to avoid in the first by
11 combating fraud.

12 In regards to the fraud plan, some
13 aspects of those make a lot of sense. The people of
14 the fraud investigation community and the insurance
15 industry are the keystone between the companies and
16 the law enforcement. If they weren't there, chances
17 are the company wouldn't be reporting the stuff to law
18 enforcement. Only in the most egregious of situations
19 where they sustained a large amount of loss would that
20 suspected fraud go to law enforcement.

21 The SIU said in there they talked to the
22 underwriters whose business it is to write business
23 and the claims people whose business it is to pay in
24 an a timely manner meritorious claims. They talk to
25 them. They assist them with finding fraud. And then

1 when fraud is found, they walk them over to law
2 enforcement. So they're a vital part of the equation
3 in getting fraud law enforcement or law enforcement to
4 go after it. And why do we need to prosecute these
5 folks other than we don't like them getting over?
6 Because prosecution is your best form of deterrence,
7 because if there's a prospect of being arrested out
8 there and prosecuted, folks aren't going to commit the
9 crime. We spent those \$2 million a year on
10 advertising because we want people to stop, think and
11 not do the crime.

12 We're going to have a fraud conference
13 this coming April. And we thank the House for the
14 introduction of the resolution of declaring April 19th
15 Pennsylvania Fraud Awareness Day. That will greatly
16 facilitate our work. We're jointly hosting the
17 conference with our friends, the International
18 Association of Special Investigation Units, and we're
19 working with the Chiropractic Association both on the
20 conference and also with our advertising reaching out
21 to the medical provider communities. So the fraud
22 problem's increasing. I applaud your efforts. Thank
23 you greatly. I'm done. Any questions?

24 REPRESENTATIVE MICOZZIE:

25 Thank you for your testimony. Back in

1 1995, when this committee had public hearings to have
2 the funding enacted, I remember the funding source was
3 from the insurance industry. Is it true that no other
4 source of funding comes to the authority?

5 MR. BURNHAM:

6 No. Some small amount. About \$250,000
7 for fines and penalties are paid back into the fraud
8 prevention trust fund. We have other source of
9 revenues.

10 REPRESENTATIVE MICOZZIE:

11 Has that increased over the years? I
12 mean, what's the funding based on? Not the whim of
13 the insurance industry; right? I mean, there must be
14 some kind of a formula.

15 MR. BURNHAM:

16 Yeah, there's a formula that was enacted.
17 It's a little complex. It basically seems to look at
18 the fraud that occurs in liability insurances we
19 alluded to previously. We assess all property
20 insurance, and that includes homeowners and
21 commercial, general liability, accident and health
22 insurance. And in life insurance, only accident and
23 health coverage. And in healthcare that is accident
24 and health insurance or health insurance rather, the
25 formula applies additional companies. In

1 Pennsylvania, a \$79 billion a year market in terms of
2 premium written, and we asses about 39 billion of that
3 amount to levy our assessment. It's from \$8 million
4 in '95, to \$11.6 million today. In total we have
5 collected \$143 million and some odd change of the
6 industry to go after insurance fraud.

7 REPRESENTATIVE MICOZZIE:

8 Thank you.

9 CHAIRMAN:

10 Representative Pashinki.

11 REPRESENTATIVE PASHINSKI:

12 Thank you. It's always nice to see
13 somebody who's excited about their job. It's great.
14 Did you see how excited he was? In any case, I'm
15 concerned about the check and balances or the lack
16 thereof when you're being inundated with New York or
17 out-of-state residents using Pennsylvania's fraudulent
18 addresses and so on. Isn't there another mechanism
19 that you can use to verify, you know, the residency of
20 these people?

21 MR. BURNHAM:

22 The short answer is the systems in
23 shambles. When you come in to PennDOT, you show them
24 something and say you're a Pennsylvania resident, they
25 have no means to verify that. When you show them the

1 insurance card, they have no means to know if that
2 insurance is real or not. After an insurance policy's
3 been in effect for 180 days, they have known ways to
4 know if that insurance still stays on the books.
5 Insurance companies don't tell PennDOT what cars they
6 cover. Financial Responsibility Law, which for most
7 of us is a policy of liability insurance, motor
8 vehicle liability insurance, they're insuring the car.
9 They're not insuring you. You're an operator of the
10 car, and you have some coverage, but Financial
11 Responsibility's insuring that car for any harm done
12 to anybody else. Companies don't report the coverage
13 of cars to PennDOT. There's a large cost that would
14 be included in doing that. PennDOT doesn't permit
15 insurance companies to look at their information,
16 driver's licensing, registration except through a
17 series of vendors. Because of that, these things
18 don't come together well.

19 And when someone walks up to the counter
20 and gives the PennDOT employee or tag agent ---
21 they're independent contractors PennDOT uses. If it
22 looks good, it is good. They get the license. They
23 get the plates, and they're out the door. Now,
24 driver's license, I understand, they do verify Social
25 Security numbers through a federal system. You have

1 to speak to the PennDOT folks for the details of that.
2 I'm not highly knowledgeable of their inner workings.

3 REPRESENTATIVE PASHINSKI:

4 So you've just already identified a
5 potential solution. We have the technical
6 capabilities of interoperability so that this system
7 could easily be set up as far as an IT. Now, the
8 question is what legal roadblocks do we have? It
9 appears to me that there needs to be some discussion
10 with PennDOT and see whether or not we can develop
11 some line of communication so that we can begin to
12 eliminate the fraud.

13 MR. BURNHAM:

14 It would greatly assist the insurance
15 industry resistance of both rate evasion premium fraud
16 and claim fraud where they have improved access to the
17 PennDOT information.

18 REPRESENTATIVE PASHINSKI:

19 Can you by any change put a dollar number
20 on that to see whether or not it's worth doing?

21 MR. BURNHAM:

22 Only an estimation by the insurance
23 department conducted back from 2006. This is for the
24 action on a Pennsylvania policy happened outside of
25 Pennsylvania in another state. And the estimation

1 from that study based on indications that there was
2 probably a non-resident involved with the policy put
3 the number \$12, \$15 million a year. That's probably
4 very low in my view.

5 REPRESENTATIVE PASHINSKI:

6 Okay. Thank you very much, sir.

7 CHAIRMAN:

8 Representative Quinn.

9 REPRESENTATIVE QUINN:

10 Thank you. Thanks for being here today.

11 A couple of questions. One, basically other than
12 canceling the policy, what is the penalty for rate
13 evasion?

14 MR. BURNHAM:

15 Well, making a false insurance
16 application is a misdemeanor one crime, so you could
17 be arrested if someone lied on the application.
18 Insurance company can --- within the first 60 days
19 they can void your policy if they catch the lie on the
20 application. After 60 days, they can rescind by
21 reason of fraud upon giving the customer 30 or 60-day
22 notice.

23 REPRESENTATIVE QUINN:

24 Does it go to jail time often?

25 MR. BURNHAM:

1 Very few people go to jail for insurance
2 fraud. That's the consequence. If you've seen our
3 television ads with the red and black stuff, and the
4 people there, the homeowner who's going to say he had
5 a 47-inch screen TV stolen when his home was broken
6 into and a 27-inch model taken. If you look at those
7 types of things, a majority of these people don't go
8 to jail. Only about 50, 60 folks a year out of the
9 400 and some that pass through actually go to jail.
10 The majority are first time offenders. They're
11 assigned to rehabilitative dispositions, or they're
12 put on probation. They're fined. Usually if they
13 stole the money if they weren't caught and they got
14 money, the courts make them pay it back. A few people
15 go to jail.

16 REPRESENTATIVE QUINN:

17 Do you have an active program in place
18 for a whistleblower type of thing? A neighbor up in
19 the Bronx saying that Pennsy plate's sitting here
20 seven days a week?

21 MR. BURNHAM:

22 Not formalized. The IPA's --- our
23 statute allows us to pay from a fraud prevention trust
24 fund rewards. We have done so in the past upon the
25 recommendation of prosecuting authority. We don't

1 have a formal program in place, because reward offers
2 a good press. I like them from the standpoint of, you
3 know, doing my marketing, because it puts the word in
4 the public. Realistically, only about 10 to 20
5 percent of what comes to the door is workable. And
6 law enforcement is a little concerned, because if you
7 pay someone money, you're promised to pay them money
8 upon conviction. They're concerned that might tank
9 the prosecution, tank the witness for prosecution.

10 REPRESENTATIVE QUINN:

11 I would think that if there was a
12 concerted effort among companies to get the word out
13 about rate evasion and how bringing it down could
14 bring down neighbor's insurance costs if you're able
15 to spin it into a rate reduction. And it could be an
16 effective way to help beat this up. One more
17 question. What, if anything, has the Right to Know
18 Law done to help you access PennDOT's records?

19 MR. BURNHAM:

20 We haven't attempted to use Right to Know
21 in that regard. Since we are a state agency, PennDOT
22 has been quite open with us and has provided us access
23 to any information we needed for studies. But that
24 doesn't assist the insurance industry, who are the
25 front lines of defense in combating fraud. Your broad

1 immunity bill, you're right on point with that. If
2 you broaden immunity so these companies can talk to
3 one another, it won't guarantee that they will, but
4 you'll have lawyers against them. But it will
5 encourage them. And the privacy laws you talk about,
6 all the privacy laws at all levels have exemptions for
7 people due to fraud investigations. So companies can
8 talk to each other if they choose. Now, the trick is
9 to get them to do it. Your immunity bill would be a
10 step down the road in that direction. It would
11 increase their ability to talk. It would improve
12 their detection of fraud. It would improve the
13 reporting of fraud. And most importantly in my mind,
14 from that universe of claims that go to the
15 prosecutors, it would increase the number --- the
16 percentage of prosecuted from a third, upwards.

17 REPRESENTATIVE QUINN:

18 Thank you. And I believe it's your
19 department that puts out the e-mail blasts about fraud
20 prevention. I want to thank you. I do pass them on
21 to my constituents.

22 MR. BURNHAM:

23 Thank you. I sent those out with this
24 feeling I know some people hate being spammed.

25 REPRESENTATIVE QUINN:

1 I'm not one of them.

2 CHAIRMAN:

3 Representative Godshall.

4 REPRESENTATIVE QUINN:

5 Is there any relationship between the
6 amount of the fraud ---?

7 MR. BURNHAM:

8 The amount of fraud that's out there?

9 REPRESENTATIVE GODSHALL:

10 Say there's \$10,000 worth of fraud. Is
11 there any relation there at all on how much the
12 penalty's going to relate, or say \$2,000 worth of
13 fraud, you know?

14 MR. BURNHAM:

15 There appears to be a direct
16 relationship. That's entirely in the hands of the
17 courts. For folks who attempt to steal something of
18 low value, they're going to get assigned a
19 rehabilitative disposition. If they steal a little
20 bit --- \$5,000 or more, they're probably going to see
21 probation and a fine. If they steal repetitively and
22 they steal a lot of money, they're going to receive
23 jail time.

24 REPRESENTATIVE GODSHALL:

25 Thank you.

1 CHAIRMAN:

2 Representative Barbin.

3 REPRESENTATIVE BARBIN:

4 On the insurance fraud language, your
5 testimony says that on average it takes 21 months from
6 the offence for discovery to arrest. Do we need to be
7 looking at lengthening the period of time in which to
8 prosecute fraud, or do the current statutes allow for
9 an acceptable level without problems with the statute
10 of limitations?

11 MR. BURNHAM:

12 Well the statute of limitations on
13 prosecuting fraud I believe is five years. So if you
14 commit insurance this afternoon in your home, in about
15 21 months you may get arrested. But if you have
16 managed to escape that, after five years you're home
17 free. I don't know. I'm not the expert.

18 REPRESENTATIVE BARBIN:

19 I'm just wondering is a misdemeanor
20 penalty, is it a two-year statute?

21 MR. BURNHAM:

22 Well, no. I'm not sure of the exact
23 maximum term of imprisonment which can be imposed for
24 a misdemeanor one. I'm not an attorney. I'm not
25 really on point with that. Some aspects of the bills

1 you're looking at decrease the severity of some types
2 of crimes like the use of a bogus insurance card.
3 Currently a misdemeanor. Getting that up to a higher
4 level, that might be useful. But generally that's not
5 my job to testify in that regard. I let the law
6 enforcement and prosecutors relay things.

7 CHAIRMAN:

8 Any other comments? Thank you very much,
9 Mr. Burnham. And we appreciate your testimony.

10 MR. BURNHAM:

11 Thank you. And if you're up in
12 Harrisburg over the next four days, please come out to
13 the auto show. You'll recognize our booth there
14 amongst all the beautiful cars, the Porsches, the
15 Jaguars, the Bentleys. There's going to be a damaged
16 old Dodge over there. I will be standing beside it
17 going fraud's bad.

18 CHAIRMAN:

19 Well, the Auditor General's timing is
20 impeccable, right almost to the minute. I want to
21 welcome Auditor General Jack Wagner. If I recall,
22 Jack, you also have some specific insurance background
23 in the claims area.

24 MR. WAGNER:

25 You're right. Mr. Chairman and Chairman

1 Micozzie and members of the committee, thank you for
2 mentioning that. Yes. I worked for CNA Insurance,
3 Continental National American, out of college as a
4 safety engineer, loss control engineer. And it was a
5 great experience of my life. As a matter of fact, I'm
6 sure, Dan, as you --- and you have a real considerable
7 background in the insurance industry also. But I
8 consider safety engineering my profession. And even
9 though we're all in public service, we all like to
10 hang our hat somewhere, and safety is a good one.
11 Thank you. Chairman Frankel and Chairman Micozzie and
12 members of the committee, I appreciate the opportunity
13 to come here today. I know you've had a distinguished
14 group of people testifying about a very important
15 issue related to fraud, insurance and fraud in
16 general.

17 During these difficult economic times, we
18 in state government must do all that we can to make
19 every dollar count. To that point, I would like to
20 commend both of the chairmen and the members of this
21 committee for looking into the issue of insurance
22 fraud, which is costing taxpayers millions, if not
23 billions, of dollars. And I also want to mention with
24 me today is my Bureau director, Mary Mahoney, Bureau
25 Director of Public Assistance Audits, because that's

1 what I'm talking about, a number of audits that we
2 have done within the Department of Public Welfare.

3 As Pennsylvania's fiscal watchdog, the
4 Department of the Auditor General is dedicated to
5 finding and eliminating waste, fraud and abuse of
6 taxpayer dollars. Our auditors are in all 67 counties
7 every day, auditing school districts, volunteer
8 firefighter relief associations, liquor stores, county
9 assistance offices and many other agencies and
10 organizations that receive state money or federal
11 funds that pass through state government. The
12 Department of the Auditor General produces more than
13 5,000 audits each year, and they are available to the
14 public at www.auditorgen.state.pa.us. In addition,
15 our Office of Taxpayer Advocate is available to help
16 Pennsylvanians cut through bureaucratic red tape or to
17 receive reports of waste, fraud or abuse. The
18 toll-free number of the Taxpayer Advocate hotline is
19 1-800-922-8477. In other words, we can even send hard
20 copies of audits to those who are interested in
21 getting them.

22 It's no surprise that insurance fraud is
23 on the rise, especially when the economy is hurting as
24 it is today with the worst recession since the Great
25 Depression. According to the Pennsylvania Insurance

1 Fraud Prevention Authority, the United States
2 insurance industry pays as much as \$160 billion per
3 year in fraudulent claims. That's hard to believe,
4 \$160 billion. They range from staged auto accidents
5 and phony theft claims to arson and false billing for
6 healthcare services. The Department of the Auditor
7 General is responsible for auditing the state's
8 Medicaid program, which is administered by the
9 Department of Public Welfare. Better oversight and
10 review always deters fraudulent behavior and also
11 detects it more readily. We believe that insurance
12 fraud will be deterred if there is more oversight by
13 the legislature, all of you and the insurance industry
14 as a whole. With a potential for up to \$900 million
15 in additional funds coming from the federal government
16 for Medicaid, steps must be taken immediately to
17 prevent potential fraud and abuse in the state
18 government.

19 In a series of reports issued beginning
20 in December 2007, our department found widespread
21 errors in the state's Medicaid program that are
22 costing Pennsylvania taxpayers millions of dollars
23 each year. Our auditors found that DPW, through its
24 county assistance offices, failed to make proper
25 Medicaid eligibility determinations on more than 1,900

1 randomly selected Medicaid applicants between January
2 '05, and January of '09, resulting in \$3.5 million in
3 improper payments made on behalf of ineligible
4 recipients. And they were random samples, not all
5 files, a small percent of files. Many of the improper
6 eligibility determinations were due to DPW's failure
7 to perform semi-annual reviews and annual renewals
8 when they were due. Consequently, information that
9 would have deemed the recipient ineligible was not
10 reviewed in a timely manner, and benefits continued to
11 be paid. This lack of proper oversight could
12 encourage an environment of potential fraud on the
13 part of the recipient or recipients in general.

14 Another eligibility problem that we have
15 found was related to citizenship issues. A small
16 percent, but it's there. Some recipients may have
17 been U.S. citizens, and therefore eligible for the
18 program, but they did not have the proper
19 documentation to prove it.

20 I want to be clear. My goal is to save
21 money by eliminating ineligible individuals from the
22 program, not by cutting the program for those who are
23 truly needy of this important service. We found
24 errors in 1,951 or 14.7 percent, of the 13,225
25 Medicaid cases selected randomly from 567,000 Medicaid

1 cases from 90 county assistance offices in 64 counties
2 in Pennsylvania. Even though DPW has asserted that
3 the error rate is only four percent. In other words,
4 they have challenged us and said the error rate is not
5 14 percent, it is 4 percent. Eliminating just four
6 percent of those errors would save Pennsylvania
7 taxpayers \$320 million per year. DPW's policy of
8 reviewing certain income information at 6 and 12 month
9 intervals, rather than when this information becomes
10 available on the state's data information system,
11 contributed to improper eligibility determinations.
12 The improper eligibility determinations occurred
13 because recipient increases in income placed them
14 above the eligibility limits. We recommended that DPW
15 require a review of these increases as soon as
16 information becomes available. The sooner DPW detects
17 increases in income from ongoing employment, the
18 sooner the recipient can be deemed ineligible and the
19 improper payments can be stopped.

20 This is especially critical when the
21 recipient is enrolled in a managed care organization,
22 to which DPW makes monthly capitation payments for
23 recipients, regardless of whether they receive medical
24 services. If a recipient is not in a managed care
25 organization, DPW pays on a fee-for-service basis. In

1 other words, only when the recipient actually receives
2 the medical attention. Of the \$3.5 million in
3 improper payments we uncovered, \$3.2 million were
4 monthly capitation payments made to managed care
5 organizations, which are in essence insurance
6 companies. That's 90 percent of the payments, our
7 capitation payments. DPW has 89 county assistance
8 offices in 67 counties that administer benefits such
9 as cash assistance, food stamps and Medicaid benefits
10 to needy Pennsylvanians. Twenty-five (25) counties
11 fall under the mandatory managed care program for
12 physical health services. All 67 counties fall under
13 mandatory managed care for behavioral health services.

14 Our audits made several recommendations
15 to DPW to correct the identified deficiencies,
16 including changing its policy of reviewing increases
17 in income only at 6 and 12 month intervals, as
18 mentioned earlier, and improving monitoring to ensure
19 compliance with established internal controls. DPW
20 told us that it's trying to improve its eligibility
21 determinations by updating its data information
22 systems and that it has secured the services of a
23 forensic accounting firm to review its eligibility
24 processes, including those regarding income
25 determination.

1 DPW has informed us it has changed its
2 policy of reviewing increases in income when the
3 information becomes available, and we will look to
4 verify this is actually occurring in future follow-up
5 audits. These are good first steps, but more must be
6 done to stop the continued waste of taxpayer dollars.
7 In a related issue, I would like to note that the
8 problems we uncovered in the Medicaid program are only
9 part of a disturbing pattern that we identified in
10 other programs. Including LIHEAP, the Low Income Home
11 Energy Assistance Program, where we found the
12 potential for taxpayer fraud through the use of
13 fraudulent, and I repeat fraudulent, Social Security
14 numbers that DPW had failed to validate. We actually
15 had auditors that had the ability to instantaneously
16 determine whether Social Security numbers were valid
17 Social Security numbers. And at the time of our audit
18 of LIHEAP three years ago, DPW did not have the same
19 capabilities to determine if, in fact, Social Security
20 numbers were valid Social Security numbers.

21 In the special allowances program,
22 another very important program managed by DPW, a \$200
23 million program. LIHEAP is a \$200 million program,
24 and the special allowances program is a \$200 million
25 program. And as all of you know LIHEAP is completely

1 funded with federal taxpayer dollars, Pennsylvania
2 taxpayers with money coming back to Pennsylvania from
3 the federal government. The special allowances
4 program, which is in essence a back to work program,
5 is another \$200 million program with 75 percent of it
6 funded with state taxpayer dollars and 25 percent
7 federal taxpayer dollars. In other words, we put \$150
8 million into that program with state taxpayer dollars
9 directly.

10 In the special allowances program, our
11 auditors found that DPW had approved hundreds of
12 thousands of dollars in cash assistance to welfare
13 recipients who were seeking jobs without requiring
14 receipts or any other form of documentation to prove
15 that the money was being spent on legitimate
16 purchases. We randomly audited files and found that
17 the lack of receipts in those files was at 45 percent
18 of the expenditures. And again, this program is used
19 to help people get training to get off of welfare. A
20 vitally important program to help those individual and
21 to reduce the cost to state taxpayers and also federal
22 dollars.

23 In closing, I would like to make a couple
24 points. First and foremost, we have found that the
25 county assistance office employees are actually

1 excellent employees, very hard-working employees. I
2 have visited some of those county assistance offices.
3 I've seen them actually doing their job. And we
4 cannot commend them enough. What they don't have is
5 sufficient backup information, timely information to
6 determine if, in fact, recipients that are receiving
7 benefits are eligible at the time of receiving that
8 benefit. In other words, it could be 6 months late or
9 12 months late. And during that entire process
10 eligibility can change. Eligibility related to
11 income. Eligibility related to citizenship.
12 Eligibility related to family size, et cetera. So
13 those county assistance employees must have available,
14 up-to-date, timely information.

15 In closing, I would like again to commend
16 the chairmen and committee members for investigating
17 the issue of insurance fraud. I can assure you that
18 the Department of the Auditor General will continue to
19 monitor the areas that we have discussed today and
20 others going forward. Other areas in the Department
21 of Public Welfare and other areas of state government.
22 I very much appreciate the opportunity to appear in
23 front of your committee.

24 CHAIRMAN:

25 Thank you, Auditor General. Questions?

1 REPRESENTATIVE HARRIS:

2 Yes.

3 CHAIRMAN:

4 Representative Harris.

5 REPRESENTATIVE HARRIS:

6 Thank you very much for coming here. I
7 know you're very busy. I know this isn't your area
8 expertise, but what determines whether an individual
9 who's eligible for Medicaid gets the managed care plan
10 or gets the fee for service? Is that a location thing
11 or are there people in all 67 counties that have some
12 of one, some of the other?

13 MR. WAGNER:

14 I can give you an answer, but personally
15 I think Mary Mahoney can give you a better answer.

16 REPRESENTATIVE HARRIS:

17 Okay.

18 MR. WAGNER:

19 She is the Bureau's Director of Public
20 Assistance Office. Mary, please join us.

21 MS. MAHONEY:

22 It's determined by DPW. They go out and
23 determine what areas are the most right, say, for
24 managed care. The 25 counties that we talked about
25 are Philadelphia and the four surrounding counties,

1 Allegheny and 10 counties out that way, plus we call
2 it the Lehigh capital area, which is Harrisburg,
3 Cumberland County on up through the Lehigh County. So
4 they aren't mandatory managed care. They went to the
5 federal government and asked permission to do that.
6 And they thought the circumstances were right that
7 there would be enough providers in those areas to take
8 care of that population.

9 REPRESENTATIVE HARRIS:

10 So you said 25 counties. So it isn't
11 just a few small pockets. It's pretty easily spread
12 throughout the state?

13 MS. MAHONEY:

14 Right.

15 REPRESENTATIVE HARRIS:

16 And so if I'm to summarize what you're
17 saying, I believe Mr. Wagner is --- you have a
18 situation where an individual is qualified for
19 Medicaid. Maybe two weeks later they go out and if
20 they're fortunate they can find a job making \$35,000,
21 \$40,000. We want DPW to be able to get that
22 information two weeks from the time that they left the
23 county assistance office, if that's when they got the
24 job, as opposed to when DPW's catching it now, which
25 might be six months, a year from now. Is that what

1 you're saying?

2 MR. WAGNER:

3 Yes. I'm saying that plus individuals
4 that may be employed that have a lesser income but
5 receive a raise or get a second job. And as a result
6 of that, their eligibility changes, their income level
7 changes. And we're finding that out six, nine, ten
8 months later when, in fact, they are continuing to
9 receive a benefit that they are ineligible to receive.
10 Now, keep in mind also that we have also determined
11 that appropriate information has been flowing at times
12 from the Department of Labor and Industry and made
13 available but has simply not systemically been used
14 properly by the Department of Public Welfare.

15 REPRESENTATIVE HARRIS:

16 That was very helpful. Thank you both.

17 CHAIRMAN:

18 Representative Pashinski.

19 REPRESENTATIVE PASHINSKI:

20 Thank you, sir. Along those same lines,
21 does that mean they don't have the electronic
22 capabilities, the equipment, or is it just management
23 error?

24 MR. WAGNER:

25 Well, we believe they do have the

1 electronic capabilities. As a matter of fact, in
2 another audit of information technology that we have
3 done, we have uncovered, and it's all public
4 information that DPW has spent about \$350 million in
5 the last four years in information technology
6 improvements. So we are of the strong belief that the
7 appropriate public resources have been made available
8 to properly enhance the system and --- but in some
9 instances it simply has not been utilized.

10 REPRESENTATIVE PASHINSKI:

11 In your estimation do they have enough
12 staff or qualified staff?

13 MR. WAGNER:

14 Actually we're speaking of another audit
15 also. There is actually a company that is working
16 within the Department of Public Welfare on information
17 technology. We strongly believe that there has not
18 been a knowledge transfer from that contractor to the
19 employees of DPW sufficiently. Mary, do you have
20 anything to add on that?

21 MS. MAHONEY:

22 The enhancements they are making at DPW
23 are allowing the caseworkers to have the information
24 at their fingertips, so some of those are really being
25 helpful. In fact, the one recommendation we made

1 whereas we recommended that they look at income. A
2 client will get an increase in income from a current
3 job. What we found in the audits were that they
4 weren't requiring a caseworker to look at that
5 information until their annual renewal came up, which
6 could've been, you know, nine months, ten months
7 later. So we recommended that they send an alert for
8 the caseworker that will come up on their --- they
9 call it a dashboard. And it will come up on there,
10 and it will always be there to say this increase
11 happened. Here's an alert. Take a look at this. So
12 those technological advances are helping the case load
13 and the caseworkers get information.

14 REPRESENTATIVE PASHINSKI:

15 So you've seen a reduction maybe in the
16 fraud?

17 MS. MAHONEY:

18 Well, I'm saying the alerts appear there.

19 REPRESENTATIVE PASHINSKI:

20 Okay.

21 MS. MAHONEY:

22 Whether the caseworker acts upon them or
23 not is what we are going to be looking at in our
24 follow-up audit.

25 MR. WAGNER:

1 And our future audits of every one of
2 these individual county assistance offices.

3 REPRESENTATIVE PASHINSKI:

4 And I'm sure you've made recommendations
5 to the department and corrected errors?

6 MR. WAGNER:

7 Absolutely we have. And to utilize the
8 information that's available on a more timely fashion.

9 REPRESENTATIVE PASHINSKI:

10 Thank you very much.

11 CHAIRMAN:

12 Representative Barbin.

13 REPRESENTATIVE BARBIN:

14 Thank you for your testimony, General. I
15 just have one question as it relates to our package of
16 bills for insurance fraud. I was wondering what level
17 of immunity do your employees receive in the context
18 of your job? I mean, is it a qualified immunity, or
19 is it a complete immunity?

20 MR. WAGNER:

21 We call it as we see it. We uncover the
22 facts and report the facts. And it's important to
23 note that in all of our audits, whether it's the
24 audits of the Department of Public Welfare or
25 Department of Transportation, et cetera. When we

1 complete an audit, it's in a draft form. And that
2 audit is then provided to the audit team to review in
3 terms of accuracy and a response to the audit. As a
4 matter of fact, we demand a response. And we take
5 their response based on our findings and
6 recommendations and their written response back to us
7 and incorporate it into the audit. Our audits are
8 accurate documents. And there are rare instances
9 where, yes, in the audit process we may have uncovered
10 something or didn't get all the information. It may
11 not have been totally accurate. That is corrected in
12 the process. So when an audit is finally completed,
13 it is an extremely accurate document.

14 REPRESENTATIVE BARBIN:

15 Do you believe that the insurance fraud
16 investigators which our legislation would say ---
17 would grant an immunity to those insurance fraud
18 investigators if they were providing information to a
19 database or sharing it with other insurance fraud
20 investigators. Should they be protected as well?
21 Should there be an immunity for those in order to try
22 to get at, you know, the incredible increase in
23 insurance fraud that some of it has to do with the
24 recession. But how do we get at that? Is full
25 immunity an appropriate way of trying to get at the

1 problem?

2 MR. WAGNER:

3 Well, it's an issue that we haven't
4 looked at in all frankness. We'd be happy to consider
5 looking at it. And I don't want to shoot from the hip
6 sitting here today on the issue.

7 REPRESENTATIVE BARBIN:

8 Thank you.

9 CHAIRMAN:

10 Representative Micozzie.

11 REPRESENTATIVE MICOZZIE:

12 There's instances in Delaware County
13 where there has been embezzlements and whatever. Do
14 you audit on a timely basis the nonprofits like fire
15 companies or whatever?

16 MR. WAGNER:

17 Well, Representative, as you know, we
18 audit every --- virtually every volunteer fire
19 department in the state through their financial arm,
20 which is their Volunteer Fire Relief Association.
21 Because all of you, the General Assembly, through
22 legislation a while back have a dedicated funding
23 source to help volunteer fire departments. We
24 routinely audit these VFRA's. And where we find fraud
25 waste or abuse, we identify it. If it's waste and

1 abuse, it's generally simply reported accordingly to
2 the VFRA and the officers and the local community. If
3 it is fraud related, that's generally taken to a
4 higher level, generally the district attorney within
5 that respective county. And I should also add that,
6 you know, one of the great, as all of you know,
7 resources of Pennsylvania are our volunteer fire
8 departments. And the other service that we provide
9 from the Department of Auditor General is that we
10 actually have training sessions that we provide
11 several times a year in different regions of the state
12 to work with the officers, especially the treasurer of
13 the those VFRAs to assist them in terms of how to keep
14 the books. Because they're doing their work in a
15 volunteer way, and they need assistance up front. And
16 so we try to educate them in the process, so they can
17 make sure that the state revenue that they're
18 receiving is properly accounted for.

19 CHAIRMAN:

20 Thank you, Auditor General for appearing
21 today. Your testimony is very useful. I have a
22 couple of housekeeping items before we conclude.
23 There is a sign-in sheet up here for those who
24 participated and have been here in attendance today if
25 you'd like to sign in. I understand we may have run

1 short of copies of testimony. If anybody here would
2 like a copy, please contact our staff. We'll be able
3 to get the copies out to you. There was other
4 testimony, written testimony provided here today by
5 the Pennsylvania Academy of Family Physicians, the
6 National Healthcare Anti-Fraud Association and the
7 National Insurance Crime Bureau. The Attorney General
8 also provided us with testimony as well.

9 I want to certainly thank our host, AETNA
10 Insurance Company here, and specifically Greg Martino,
11 who helped put this together and facilitated our
12 ability to have a hearing here today. We are very
13 grateful. And I want to thank all of my colleagues,
14 particularly Chairman Micozzie, who is obviously a
15 long-standing chair of this committee.

16 Again, we will be transmitting
17 information to other members of the committee and
18 certainly our Chairman. Representative Tony DeLuca
19 could not be with us here today. I know he is really
20 very anxious to get these bills moving and onto the
21 House floor for votes. And I think a lot of
22 information brought in here today will be helpful in
23 terms of moving those things, making some adjustments
24 to amend the process if necessary. We want to thank
25 everybody for their testimony. It was extremely

1 useful. Thanks very much.

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HEARING CONCLUDED AT 1:46 P.M.

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CERTIFICATE

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I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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