



SENATE INSURANCE COMMITTEE

LEGISLATIVE PUBLIC HEARING TESTIMONY

REGARDING NO-FAULT FRAUD IN NEW YORK STATE

ON

THURSDAY, FEBRUARY 4, 2010

AT

LEGISLATIVE OFFICE BUILDING, HEARING ROOM A

ALBANY, NEW YORK

TESTIMONY DELIVERED BY:

**ELLEN MELCHIONNI
PRESIDENT
NEW YORK INSURANCE ASSOCIATION, INC.**

GOOD MORNING CHAIRMAN BRESLIN. I AM ELLEN MELCHIONNI, PRESIDENT OF THE NEW YORK INSURANCE ASSOCIATION OR "NYIA." NYIA IS THE STATE TRADE ASSOCIATION THAT HAS REPRESENTED THE PROPERTY/CASUALTY INSURANCE INDUSTRY IN NEW YORK FOR OVER 125 YEARS. OUR EXTENSIVE MEMBERSHIP INCLUDES CARRIERS WHO WRITE OVER 40% OF THE NEW YORK STATE AUTO INSURANCE MARKET. BEFORE I BEGIN MY TESTIMONY, I MUST TAKE A MINUTE TO EXPRESS OUR APPRECIATION TO YOU AND THE ENTIRE COMMITTEE FOR HOLDING THIS HEARING. NO-FAULT IS A SERIOUS ISSUE BECAUSE OF THE RECENT DRASTIC ESCALATION IN COSTS, ESPECIALLY IN NEW YORK CITY AND DOWNSTATE NEW YORK. I WILL NOT GO INTO DEPTH ON THE NUMBERS, THERE ARE OTHER SPEAKERS TODAY WHO WILL ELABORATE ON THE TRULY ALARMING GROWTH BOTH OF NEW YORK'S NO-FAULT FRAUD AND IN NO-FAULT COSTS.

THE HEADLINES IN 2000 & 2001 FREQUENTLY REFERRED TO THE DRAMATICALLY INCREASING NO-FAULT COSTS IN NEW YORK. THE STORIES FOCUSED ON MEDICAL MILLS AND RAMPANT INSURANCE FRAUD. AS YOGI BERRA WOULD SAY, "IT'S DÉJÀ VU ALL OVER AGAIN" BECAUSE THESE HEADLINES FROM NEARLY A DECADE AGO ARE THE SAME HEADLINES DESCRIBING NO-FAULT IN NEW YORK IN 2010. DESPITE A MOMENTARY DECREASE IN THE LEVEL OF INTENSITY OF THE NO-FAULT FRAUD DURING THE MIDDLE PART OF THE LAST DECADE, THE VERY FACT

THAT THOSE SAME PROBLEMS HAVE REEMERGED MAKES IT ABUNDANTLY CLEAR THAT THE NO-FAULT SYSTEM IN THIS STATE CAN NOT BE EASILY REPAIRED BY ONE, TWO OR EVEN SEVERAL DISCRETE LEGISLATIVE OR REGULATORY SOLUTIONS. INSTEAD, NEW YORK'S NO-FAULT SYSTEM IS IN DESPERATE NEED OF FUNDAMENTAL AND SYSTEMIC REFORM.

NYIA VIEWS THIS HEARING AS AN EXCELLENT OPPORTUNITY TO BEGIN THE CHALLENGING TASK OF ADOPTING MEANINGFUL REFORM IN NEW YORK AND THEREBY SUBSTANTIALLY DECELERATE THE CONTINUOUSLY RISING COSTS OF NO-FAULT. NYIA MEMBER COMPANIES INFORM US THAT THERE HAS BEEN A RECENT EXPLOSION IN COSTS ASSOCIATED WITH NO-FAULT AND THIS IS A SEVERE PROBLEM FOR COMPANIES WRITING AUTO INSURANCE IN NEW YORK. IN ADDITION, NYIA HAS BEEN TOLD THAT THIS PROBLEM IS SUBSTANTIALLY AMPLIFIED DOWNSTATE, PRINCIPALLY IN NEW YORK CITY AND THE NEARBY SUBURBS. NOT TO SAY THAT NO-FAULT FRAUD DOES NOT OCCUR IN UPSTATE NEW YORK, BUT UPSTATE FRAUD TENDS TO BE MORE SPORADIC AND NOT AS WIDESPREAD. WE ARE CONFIDENT THAT THE RISING NO-FAULT COSTS ARE LINKED TO FRAUD ESPECIALLY SINCE THE INSURANCE DEPARTMENT'S OWN FRAUD BUREAU STATISTICS INDICATE THAT NO-FAULT REPORTS HAVE RISEN BY AN ALARMING 22% FROM 2006 TO 2008.

ONE FUNDAMENTAL AND UNIQUE CHARACTERISTIC OF NO-FAULT,

IS THE JUDICIAL DECISION THAT A NO-FAULT CARRIER IS ABSOLUTELY PRECLUDED FROM RAISING ANY DEFENSE TO A CLAIM (EVEN ON GROUNDS OF FRAUD SUCH AS EVIDENCE THAT THE CLAIM IS FOR A MEDICAL SERVICE THAT WAS NEVER PROVIDED) IF THE CARRIER DOES NOT RESPOND TO A CLAIM WITH EITHER A DENIAL OR A REQUEST FOR FURTHER INFORMATION WITHIN 30 DAYS FROM RECEIPT OF THE CLAIM. THIS REQUIREMENT WAS IMPOSED BY THE NEW YORK COURT OF APPEALS, BY A CONTENTIOUS AND NON-COMPELLING VOTE OF ONLY 4-3, IN THE 1997 CASE OF PRESBYTERIAN HOSPITAL V. MARYLAND CASUALTY. AS A RESULT OF THE PRESBYTERIAN DECISION, NO-FAULT CARRIERS INEVITABLY END UP PAYING FOR CLAIMS THAT WOULD OTHERWISE NOT BE COVERED BECAUSE THE SHEER VOLUME OF NO-FAULT CLAIMS MAKES IT AN IMPOSSIBILITY TO SCRUTINIZE EACH CLAIM TO DETERMINE ITS VALIDITY.

PRESBYTERIAN IS A MAJOR FACTOR IN THE INCREASED COST OF NO-FAULT COVERAGE BECAUSE NO-FAULT CARRIERS ARE PAYING AT LEAST SOME CLAIMS THAT WOULD NOT BE COVERED. AS A RESULT, ONE OF NYIA'S MAJOR 2010 LEGISLATIVE INITIATIVES IS MODIFICATION OF THE PRESBYTERIAN DECISION TO ALLEVIATE THE STRICT PRECLUSION RULE IN NO-FAULT CASES. PRESBYTERIAN OPENED THE DOOR TO UNSCRUPULOUS INDIVIDUALS TAKING ADVANTAGE OF THIS 30 DAY STRICT TIMEFRAME BY ESTABLISHING "MEDICAL MILLS" THAT ARE NOT TRUE MEDICAL

FACILITIES WITHIN THE MEANING OF NYS PUBLIC HEALTH LAW ARTICLE 28, BUT INSTEAD SET UP FOR THE SOLE PURPOSE OF GENERATING NUMEROUS MEDICAL BILLS FOR TREATMENT OF NO-FAULT CLAIMANTS WHO ASSIGN THEIR RIGHTS TO NO-FAULT BENEFITS TO THESE MEDICAL MILL PROVIDERS. THESE PROVIDERS, WHO ARE A VERY SMALL SUBSET OF THE STATE'S MEDICAL COMMUNITY, SUBMIT THESE CLAIMS IN MASS NUMBERS TO COLLECT MONEY FROM THE NO-FAULT SYSTEM PREYING ON THE FACT THAT NO-FAULT CARRIERS CANNOT VERIFY THE MEDICAL NECESSITY OF THE CLAIMED TREATMENTS NOR EVEN WHETHER THE SERVICES WERE ACTUALLY PROVIDED WITHIN THE 30 DAY DEADLINE.

UNLIKE A SERIOUS INJURY AUTO ACCIDENT WHERE ONLY ONE CLAIM IS MADE FOR THE ENTIRE AUTO ACCIDENT, IN NO-FAULT EACH MEDICAL TREATMENT IS A SEPARATE CLAIM. FOR THAT REASON NYIA SUGGESTS THAT INSTEAD OF THE CURRENT PIECEMEAL APPROACH, AN INSURER SHOULD BE ALLOWED TO BUNDLE ANY AND ALL BILLS FOR THE SAME CLAIM OR FROM THE SAME PROVIDER AND PROCESS THESE AS ONE SINGLE CLAIM.

THIS PROBLEM OF FRAUDULENT NO-FAULT CLAIMS BEING SUBMITTED IN LARGE NUMBERS IS ALSO CONTRIBUTING TO THE DRAMATICALLY HIGHER NO-FAULT PREMIUMS BECAUSE MANY OF THESE CLAIMS ARE BEING FILED BY THE MEDICAL MILLS AND UNSCRUPULOUS

HEALTH PROVIDERS IN NEW YORK CITY COURTS RATHER THAN USING ARBITRATION, A MORE COST EFFICIENT DISPUTE RESOLUTION METHOD. IN FACT, THE NYS OFFICE OF COURT ADMINISTRATION FOUND THAT NO-FAULT CASES WERE PRIMARILY RESPONSIBLE FOR A VIRTUAL DOUBLING OF THE NEW YORK CITY CIVIL COURT'S CASE LOAD FROM 212,000 FILINGS IN 2000 TO 414,000 IN 2004. THIS RISE IN CASES HAS NOT ABATED WITH NEW YORK CITY COURTS CURRENTLY SCHEDULING NO-FAULT CASES FOR 2011. NYIA BELIEVES SOME FORM OF MANDATORY ARBITRATION OF NO-FAULT CASES WOULD HELP AT LEAST SLOW DOWN THE DRASTIC INCREASE IN NO-FAULT COSTS AND COULD FERRET OUT EGREGIOUS CASES OF NO-FAULT FRAUD.

THE STRICT 30 DAY TIME FRAME FOR DENYING NO-FAULT CLAIMS OR REQUESTING VERIFICATION ALSO ENCOURAGES EITHER UNNECESSARY MEDICAL TREATMENT OR EVEN BOGUS MEDICAL CLAIMS OF TREATMENT BEING SUBMITTED WHEN NONE WAS ACTUALLY RENDERED. FOR THIS REASON, NYIA SUPPORTS DECERTIFYING FRAUDULENT NO-FAULT HEALTH PROVIDERS. WE ARE VERY SUPPORTIVE OF YOUR BILL, S.3552 AND A.7128 IN THE ASSEMBLY, TO AUTHORIZE THE INSURANCE SUPERINTENDENT TO "DECERTIFY" A HEALTH CARE PROVIDER FROM ELIGIBILITY FOR NO-FAULT PAYMENTS IF THE SUPERINTENDENT FINDS THAT THE PROVIDER ENGAGED IN CERTAIN FRAUDULENT ACTIVITIES. NYIA BELIEVES THIS BILL'S STRONG ANTI-

FRAUD PROVISIONS SUCH AS MAKING INFORMATION ON THE DECERTIFIED PROVIDERS PUBLICLY AVAILABLE AND AUTHORIZING THE SUPERINTENDENT TO LEVY A CIVIL PENALTY OF UP TO \$50,000 ON ANY DECERTIFIED PROVIDER WILL GO A LONG WAY TOWARD HELPING ROOT OUT SOME OF THE FRAUDULENT NO-FAULT ACTORS.

EXCESSIVE MEDICAL TREATMENT IS ALSO A DRIVER OF NO-FAULT COSTS. FOR THAT REASON, NYIA SUPPORTS THE ADOPTION OF MEDICAL PROTOCOLS OR WHAT SOME REFER TO AS MEDICAL TREATMENT GUIDELINES. IT MUST BE CAUTIONED AT THE OUTSET THAT MEDICAL PROTOCOLS ARE NOT A PANACEA AND NEW JERSEY'S SOMEWHAT INEFFECTIVE EXPERIENCE WITH SUCH PROTOCOLS MUST BE KEPT IN MIND. ALTHOUGH NEW JERSEY ADOPTED PROTOCOLS, THEIR AVERAGE NO-FAULT CLAIM COST AS OF 2009 WAS STILL ALMOST DOUBLE NEW YORK'S COSTS. AS YOU CAN SEE, PROTOCOLS ALONE IS NOT THE SOLUTION TO REIGN IN COSTS.

ANOTHER PERSISTENT NO-FAULT FRAUD PROBLEM IN NEW YORK HAS BEEN THE ISSUE OF "RUNNERS." RUNNERS ARE INDIVIDUALS WHO REFER NO-FAULT CLAIMANTS TO MEDICAL MILLS. SOME OF THESE CLAIMANTS MAY NOT EVEN REQUIRE TREATMENT AND RECEIVE UNNEEDED TRATMENT SIMPLY TO GENERATE NO-FAULT BILLS. SOME CLAIMANTS DO NOT EVEN RECEIVE TREATMENT AT ALL. IN SOME

EXTREME CASES, THESE RUNNERS EVEN RECRUIT PERSONS TO TAKE PART IN STAGED ACCIDENTS TO THEN RECOVER NO-FAULT BENEFITS. THIS PRACTICE APPEARS TO HAVE DECLINED FROM ITS FREQUENT USE IN THE LATE 1990s, BUT RUNNERS ARE STILL EXTREMELY ACTIVE IN CONDUCTING NO-FAULT FRAUD. MANY HAVE SHIFTED THEIR METHODS, WHICH HAVE MORPHED INTO SCAMS THAT REQUIRE LESS WORK AND ARE MORE DIFFICULT TO DETECT. RUNNERS ARE NOW FINDING PATIENTS IN HOSPITALS WITH INJURIES NOT CAUSED BY AN AUTO ACCIDENT AND USING THEM TO SUBMIT FRAUDULENT NO-FAULT CLAIMS. FOR THESE REASONS, NYIA STRONGLY ADVOCATES THAT THE FRAUDULENT ACT OF SERVING AS A RUNNER BE MADE A FELONY. THAT WOULD GIVE PROSECUTORS A MUCH-NEEDED WEAPON IN CURBING NO-FAULT FRAUD. IT WOULD ESPECIALLY HELP IN PROSECUTING NO-FAULT FRAUD RINGS BECAUSE THE THREAT OF A FELONY CONVICTION CAN HELP UNCOVER THE HIGHER LEVELS OF THESE NO-FAULT FRAUD CRIMINAL ENTERPRISES THAT ARE SO HANDSOMELY PROFITING AT THE EXPENSE OF NEW YORK AUTO INSURANCE CONSUMERS.

IN CONCLUSION, NYIA BELIEVES THAT NO-FAULT FRAUD IS A SERIOUS PROBLEM IN NEW YORK AND ONE THAT THRIVES ON THE VERY STRUCTURE OF THE STATE'S NO-FAULT SYSTEM. UNFORTUNATELY, THIS SYSTEM HAS SO MANY FLAWS AND INTERLOCKING COMPONENTS THAT ANYTHING OTHER THAN CAREFUL, SYSTEMIC AND COMPREHENSIVE

REFORM OF THE NO-FAULT SYSTEM COULD RESULT IN ALL OF US BEING BACK HERE AGAIN IN A FEW YEARS DISCUSSING THE NEXT ITERATION OF NO-FAULT'S DRAMATIC COST INCREASES. WE RECOGNIZE THAT FRAUD IS A MOVING TARGET AND WE MUST REMAIN VIGILANT IN MONITORING THESE CRIMINALS. UNFORTUNATELY A BAND-AID WILL NOT STOP THE PROFUSE BLEEDING.

THANK YOU AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.