

SENATE COMMITTEE ON
JUDICIARY

Meeting
Monday, July 14, 2003
1:00 p.m. - 5:00 p.m.
Room 412
The Knott Building
Tallahassee, Florida

VOLUME 1 OF 3
(Pages 1 - 174)

SENATOR J. ALEX VILLALOBOS, CHAIR
SENATOR DAVE ARONBERG, VICE CHAIR
SENATOR WALTER G. "SKIP" CAMPBELL, JR.
SENATOR CHARLES W. "CHARLIE" CLARY, III
SENATOR DURELL PEADEN, JR.
SENATOR ROD SMITH
SENATOR DANIEL WEBSTER

To receive testimony from invited parties regarding Medical
Malpractice.

Reported by: Susan Willis, RPR, RMR, CRR

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1 SENATOR VILLALOBOS: Ladies and gentlemen, could you
2 please take your seats so we can get started. And the
3 secretary, please call the roll.

4 (Roll call. A quorum was present).

5 SENATOR VILLALOBOS: Thank you. Ladies and gentlemen,
6 we are going to try and be as brief as possible. For those
7 of you that are here to testify today, I want to thank you
8 for showing up. And we are going to do this a little bit
9 different.

10 We would like to ask several questions from the
11 presenters, so we are not going to have Power Point
12 presentations or charts or graphs or other things. We are
13 just going to have people invited to come up to the stand
14 and be sworn in, and we'll have some questions asked, and
15 hopefully we'll move on very quickly.

16 There are no speeches, and I would ask the members to
17 stick to that also. If you have a question, ask a
18 question, and hopefully we'll get an answer, and we'll move
19 along. Mr. Feeney is not going to file a report or draft a
20 report or anything like that. We are just going to have
21 the information available, and it will be made available to
22 all members and the press and anyone else who cares to read
23 it.

24 Mr. Roddenberry. Are you here?

25 MR. RODDENBERRY: Yes, sir.

1 the audit process for the approval of insurance rates? In
2 other words, when an insurance company comes before you guys
3 and says, you know, we need to rate insurance because of the
4 expense, how do you guys do that?

5 A Well, the insurance companies will submit to us a rate
6 filing that includes data demonstrating the losses over the
7 course of the last five to ten to perhaps as much as 15 years.

8 What we do is we take that information, and we
9 extrapolate it prospectively. In other words, we look at what
10 has happened in the past, and we anticipate if those trends
11 continue going forward, exactly what will be necessary for the
12 insurance company to charge in order to be able to cover all
13 of their losses, all of their expenses, and recognize a profit
14 of approximately 5 percent.

15 Q And is that information audited in any way? In other
16 words, if an insurance company provided you with information,
17 do you have a mechanism by which you audit that?

18 A The information that is submitted to us is attested to
19 as to its accuracy by an actuary that is either employed
20 directly or indirectly by the insurance company. The
21 information that is provided to us is also subject to review
22 during the triangle examinations, financial examinations of the
23 insurance companies.

24 Q Is that information required to be attested to by the
25 chief financial officer or the owner of the company, president

1 of the company?

2 A No, sir.

3 Q Don't you think it should be? I mean, in light of
4 what's been going on in Wall Street where firms that have
5 bilked people for millions and millions of dollars, and they
6 just said, "Well, the total of this was whatever," shouldn't
7 our -- in this country, aren't we moving toward the practice of
8 having the people that are actually responsible for their
9 company and reaping the profits start signing and attesting to
10 the accuracy of information?

11 A They certainly could do that. It would not hurt
12 anything. I will tell that you that financial statements that
13 are submitted by the insurance companies have three directors'
14 or officers' signatures attesting to its accuracy and veracity
15 as well.

16 Q And how much deviation or leeway does an insurer have
17 with a single overall rate increase or decrease that's
18 approved?

19 A I am sorry, Mr. Chairman, would you repeat that?

20 Q How much leeway do they have, when you approve, say, a
21 5-percent rate, is there a deviation by which it is an average
22 of 5 percent, or is it a 5 percent across-the-board or whatever
23 that number might be?

24 A Typically, whenever we approve a single rate increase,
25 it's a statewide average, and that rate increase is then

1 distributed among the specialties based upon that insurance
2 company's filed and approved rate relativities.

3 They take into account location and specialty of the
4 particular insurer, or the particular insured for medical
5 malpractice. And so it's not 5 percent across the board. It's
6 dependent upon, again, the specialty of the doctor, as well as
7 the location of the doctor. It's a statewide average, and that
8 would be the case with any type of property coverage.

9 Q Can you tell me what you believe is the impact of
10 market rates when so many physicians are going bare? In other
11 words, if, if physicians were all required to have a given
12 amount, whatever that number be, wouldn't that really stabilize
13 the market?

14 A Well, it would depend on which doctors don't have it
15 now. If the doctors that do not have the coverage now are
16 forced to buy the coverage, and the insurance industry then
17 provides -- has to pay losses associated with those doctors, it
18 may raise the overall cost to the insurance industry.

19 But you are correct in that if every doctor has some
20 level of premium responsibility, that it will put more premium
21 into the system, and it may very well reduce the overall
22 relationship between premiums and costs.

23 Q You testified that that's because of -- in other
24 words, if high-risk practices start to come in, that would
25 affect the market, correct?

1 authorized to write?

2 A That would be a risk retention group, and they may
3 very well have recently received authorization to write. But
4 I --

5 Q How come you don't know that?

6 A Well, that's not something that would necessarily come
7 to my attention. Risk retention groups are not companies that
8 are subject to our regulation from a rated form perspective.

9 Q How many actuaries does the Office of Financial
10 Regulation have reviewing for medical malpractice filings?

11 A We have one actuary and an actuarial staff that
12 reports to him.

13 Q How many staff do we have?

14 A I think there are at least two actuarial analysts, or
15 perhaps a senior actuarial analyst and one actuarial analyst.

16 Q Do you rely mostly on company-hired actuaries to say,
17 yeah, the data we are supplying you is correct?

18 A With respect to the rate filings themselves, the
19 larger carriers usually have in-house actuaries that will
20 prepare the rate filings. Some of the smaller carriers will
21 use independent firms to prepare the rate filings.

22 SENATOR VILLALOBOS: But the question is whether or
23 not you use their data, or do you guys have individuals to
24 check it out? Is that right?

25 SENATOR CAMPBELL: Yes.

1 A We rely upon the information they submit.

2 BY SENATOR CAMPBELL:

3 Q So you rely upon the fox to guard the hen house?

4 A I understand the question. I think that in time, from
5 one rate filing to the next, the integrity of the data bears
6 itself out.

7 Q Well, let me ask this question: How often does the
8 Department of Insurance or Financial Regulation audit loss
9 reserves?

10 A Every three years.

11 Q Every three years?

12 A Yes, sir. Every three years they are subject to a
13 financial examination. The reserves are reviewed on a
14 per-claim basis and reconciled to the reserves pursuant to the
15 financial statements.

16 Q And how often do you audit paid losses?

17 A That would be part of the -- let me make sure I
18 understand the question. Are you referring to the closed claim
19 database?

20 Q Anything you want to call them.

21 A Okay. Well, as far as the paid losses are concerned,
22 what is actually paid and reserved is reflected in Schedule P
23 of the financial statement, and those are subject to the
24 triangle examination.

25 Q Let me ask this question: And more specifically FPIC,

1 in 2002 took a one-time loss of \$29,578,000, and indicated it
2 was because of an accounting change regarding the amortization
3 of goodwill and other assets. So what did our Department of
4 Insurance say about that?

5 A I don't know of our reaction, Senator. I'll be more
6 than happy to find out what that was and report back to you.

7 Q Okay. You talked about trends, and I am told that the
8 groups that are claiming the necessity of having such huge
9 increases in malpractice insurance, it is because there have
10 been numerous frivolous lawsuits filed and extravagant jury
11 awards.

12 Has your department done any investigation as to
13 frivolous lawsuits in the State of Florida, medical
14 malpractice?

15 A No, sir, we have not.

16 Q Have you found any evidence that there is a huge
17 increase of frivolous lawsuits in the State of Florida?

18 A No, sir.

19 Q Have you found any evidence that there's been
20 excessive jury awards in the State of Florida in the last three
21 years?

22 A No, sir.

23 Q And have the trends gone down as far as the number of
24 claims paid out? In the last three years, have the number of
25 claims gone down?

1 when the insurance company is notified by an injured party that
2 they are filing, thereby filing a claim pursuant to a policy
3 that that insurance company has issued. There is a process
4 that constitutes filing of a claim, and I think it's little
5 bit --

6 Q But is that a uniform process? I mean, in other
7 words, I go to the hospital, and, you know, it takes five hours
8 to, you know, see me, and I get all upset. And, you know, I
9 call the insurance company, and I say, "I am going to make a
10 claim and file a lawsuit," or you know, do something.

11 If the insurance company does some type of action, is
12 that reported to you as a claim, even though I never do
13 anything?

14 A If the insurance company believes that a claim is
15 being filed, they will investigate, they will set up a reserve.
16 Ultimately, whenever the financial statements are reported, and
17 the rate filing is submitted, we will see the evidence of that
18 reserve having been set.

19 If the insurance company does not believe that a claim
20 has been filed or will be filed, they may very well not set up
21 a claim -- may very well not set up a reserve. And if they
22 don't set up a reserve, we will not see the evidence of it.

23 SENATOR VILLALOBOS: One more, and I apologize for
24 interrupting, Senator Campbell.

25 SENATOR CAMPBELL: No, good question.

1 BY SENATOR VILLALOBOS:

2 Q My question is: Is there any way for us to track --
3 is there any way for the State to track, you know, how much is
4 in the so-called reserves? Because if somebody calls up,
5 upset, there is probably quite a number of times, and they, you
6 know, they set up the reserve, and they say, "This is how much
7 money we have. Potentially, this is what could happen."

8 I imagine when people are upset, in the heat of the
9 moment, that they say all kinds of stuff and don't follow
10 through on it, because they can't find an attorney that's
11 willing to take the case, or they don't want to pay to take the
12 case, or they just, you know, they made it up to them.

13 Is there any way for you to track, so we can get a
14 handle on the real number of claims? Right now, you testified
15 that they have maintained for a number of years.

16 A On closed claims.

17 Q Yet out of those that have been average, there really
18 is no way of knowing how many lawsuits there have been or not;
19 is that true?

20 A Well, each year when the financial statement is
21 prepared, there are officers and directors that sign and attest
22 to the accuracy of the financial statements, which include
23 reserves.

24 Each year an audited financial statement is prepared
25 that has an independent or an in-house actuarial attestation

1 that includes analysis of every one of the claims that have
2 been filed and an associated reserve.

3 And so, I mean, there is literally a name and number
4 associated with each dollar that ultimately comprises the total
5 reserves.

6 Now, you asked whether or not there is something that
7 we can do. On a triangle basis, we do just exactly that. We
8 look at each -- we get a data drop from the insurance companies
9 on a per-claim basis that shows us each claim and the
10 associated reserve.

11 Q Well, I mean, how -- if you guys audit this, how
12 accurate is that? Because, for example, you know, the State
13 gets information all the time on education or corrections or
14 whatever, that, you know, these are our projections, and then
15 they are always wrong. Always.

16 How accurate -- or do you have a mechanism by which
17 you claim this? This is very important, because, I mean, the
18 reason we are here is because one of the allegations is that
19 there are -- you know, claims are out of control. Yet I'm not
20 sure what that definition of a claim is.

21 So if money is being put aside as a reserve for a
22 claim and, in fact, it's never paid out, is there any way for
23 you to track that information so that you know at the end of
24 the year, last year there were X number of lawsuits filed for
25 medical malpractice, and the year before, there was Y, so that

1 you can compare, you know, apples to apples? Can you guys do
2 that?

3 A There is a schedule called Schedule P in the financial
4 statement that would allow you to track, typically going back
5 nine years, the reserves that have been established on an
6 aggregate basis each year and see how those losses played out,
7 and you can see then whether or not the original reserve that
8 was established was ultimately found to be excessive or
9 inadequate.

10 Q Well, and over the last nine years, or at least the
11 ones that you have looked at, have any of them been accurate,
12 or have they been inaccurate?

13 A Well, as you said, these are always estimates, and
14 they are always just exactly that. They are an estimate. They
15 establish a reserve in anticipation of cutting the check in
16 three to four to five years.

17 Q In other words, they are always wrong?

18 A They are rarely right on point. If they are, it's --

19 Q And are they rarely half of the times in favor of one
20 side and the other half in favor of the other? Or are they
21 mostly in favor of one side versus the other?

22 A Mr. Chairman, I do not -- cannot tell you of these 56
23 companies exactly how that bears out. That is something we can
24 certainly make available and get back to you, to see whether or
25 not, by and large, they are overestimating or underestimating

1 their reserves.

2 Q What I would like to hear from you -- and this might
3 not be pertinent for this time -- is whether or not you guys
4 are able to capture that data; and if not, isn't that something
5 that the Legislature could do to assist you in the future? In
6 the future, I mean, like next session?

7 A Yes, sir.

8 Q Not special session, next session.

9 SENATOR CAMPBELL: Mr. Chairman, I am going to yield
10 to Senator Aronberg. I do have some follow-up questions,
11 but he has some questions, and I don't want to --

12 SENATOR VILLALOBOS: Before you do that, Senator
13 Peaden has a question. Senator Peaden.

14 SENATOR PEADEN: Mr. Chairman, thank you.

15 EXAMINATION

16 BY SENATOR PEADEN:

17 Q For your proposed legislation and what we are asking,
18 but there is no record of which company might be more on target
19 about the reserves than others, as far as being above or below?

20 A There is a -- it would not take very much to look at
21 the financial statements to determine which ones are
22 particularly high, which ones are particularly low, and which
23 ones are particularly close. Is there a report that is
24 prepared with that information right now? No, sir, there is
25 not.

1 SENATOR PEADEN: Mr. Chairman?

2 SENATOR VILLALOBOS: Senator Peaden.

3 BY SENATOR PEADEN:

4 Q Would it be a big problem if you could get that report
5 to this Committee in the near future?

6 A No, sir, it would not be a big problem.

7 Q It's just a matter of mobilizing the numbers you
8 already have with the data in the computer?

9 A Yes, sir, we'll have to pull the statements and make
10 that information available.

11 SENATOR VILLALOBOS: Senator Aronberg.

12 SENATOR ARONBERG: Thank you, Mr. Chair.

13 EXAMINATION

14 BY SENATOR ARONBERG:

15 Q Thank you, Mr. Roddenberry. This is all about
16 collecting data. I guess that's been our big frustration is
17 finding the facts. During the Governor's Task Force meetings,
18 you had testified that some insurers may not report to the DOI
19 as required; it's even in the report; is that correct?

20 A They may not report closed claims to the closed claim
21 database, yes, sir.

22 Q But they are required to report closed claims
23 according to law?

24 A That is correct.

25 SENATOR ARONBERG: May I follow up?

1 SENATOR VILLALOBOS: Yes.

2 BY SENATOR ARONBERG:

3 Q Which companies are violating the law by not reporting
4 closed claim data?

5 A We do not know which claims have been closed and then
6 not subsequently reported to the Office of Insurance
7 Regulation.

8 We have certainly come to realize and appreciate the
9 significance or the value that a closed claim database may
10 provide to other parties. And we intend to certainly be more
11 diligent in our enforcement of that provision of the law.

12 Q Are there some companies that don't report closed
13 claim data to you at all?

14 A There are some entities that do not because they are
15 not required to. I am not aware of any particular insurer that
16 systemically has refused or been unwilling or failed to report
17 to the office.

18 Q What about this past year? Has there been any company
19 that has refused to report closed claim data to the DOI?

20 A To my knowledge, there has been no entity required to
21 report to the Office of Insurance Regulation, closed claim
22 data.

23 Q Thank you.

24 SENATOR VILLALOBOS: Senator Campbell.

25 EXAMINATION

1 BY MR. CAMPBELL:

2 Q I'm a little confused. You're trying to tell this
3 Committee that you guys, the Department of Insurance, takes
4 care of making sure that reserves are proper and audited, which
5 means that the carriers have to tell you the claims, correct?

6 A Yes, sir, they tell us the claims.

7 Q So now you know ahead of time the number of claims
8 that are being projected. I should be able to go to you and
9 say, "How many projected claims does FPIC have for this year?"
10 Correct?

11 A It wouldn't be the number of claims. It would be the
12 amount of reserves they have established or anticipated to be
13 established.

14 Q To the number of claims, because they are going to
15 reserve for 50 files, for 50 claims, that's 50 claims I can
16 look at some point in time, correct?

17 A They wouldn't be the actual number of claims. It
18 would be the reserves.

19 Q I don't reserve money unless I have a claim.

20 A Well, they have what's called incurred but not
21 reported, IBNR. They do reserve for claims that have not even
22 been reported yet.

23 Q Well, how much is being reserved for claims that
24 haven't been reported yet?

25 A Relative to the total amount of reserves, not a whole

1 lot.

2 Q What figure? I don't want, "Not a whole lot." Is it
3 20 million? Fifty million? One hundred million?

4 A No, sir, I would not -- the answer would have to be
5 with respect to an insurance, individual insurance company.
6 There is not a percentage for the industry.

7 Q You're the guy who is the Department of Insurance.
8 You're the State of Florida employee who is supposed to be
9 making sure that the law is followed.

10 I am asking you today to tell me how much money -- and
11 if you can't get it today, we'll come back, and we'll get that
12 data -- how much money is being reserved on claims that haven't
13 actually been filed?

14 A And that's information I'll have to bring back to you.

15 Q Okay. Now, with reference to the claims that have
16 been filed, and you're being told we're reserving for those
17 claims, do you ever go back and audit to see if, in fact, the
18 claim that they might have reserved \$100,000 actually was only
19 paid out \$10,000? So that we see whether there is, in fact, a
20 trend of over reserving for purposes of accounting, because we
21 know that they made money on reserves, correct?

22 A They enjoyed investment income, yes, sir.

23 Q And we know that they can put a lot of money in
24 reserves for the purpose of coming to the Department of
25 Insurance and saying, "Oh, listen. Look at all these potential

1 lawsuits that I have. So we want an increase in our premiums.
2 We want to charge the doctors a lot more money." Correct?

3 A They can overestimate their reserves, that is correct.

4 Q For instance, I noted that FPIC had an income
5 statement for the last year, I believe of \$220,865,000. They
6 had \$197,155 in total expenses. Now, kind of interestingly, is
7 they reported that \$139 million -- I'm not talking thousands,
8 I'm talking millions now -- \$139 million of these expenses were
9 what they called net losses or loss adjustment expenses. What
10 is that?

11 A Well, loss adjustment expenses are those expenses
12 associated with adjusting a claim, namely, litigation expense,
13 anything associated -- other than actually cutting the check to
14 the policyholder.

15 Q So \$140 million went for loss adjustment and not
16 paying the people that are actually making claims out of \$197
17 million, which would mean approximately \$60 million went to pay
18 claims? Whereas, twice as much went to actually pay for
19 expenses? There is a little something whacky there.

20 You're telling us that they are telling the State of
21 Florida, we are spending twice as much defending these things
22 as opposed to paying people that are making claims, if I am
23 looking at the figures correct.

24 That's a little whacky to me. And I think it sets a
25 little bell up for maybe the Insurance Commissioner to say,

1 "Wait a minute, something ain't right here. Let's look into
2 what these net loss adjustment expenses are."

3 Have you looked to see if they are sky boxes, or
4 whether they are jet planes, or whether they are salaries?
5 Have you looked to see whether or not they are adjusting
6 company fees paid to their own adjusting companies? Has the
7 Department of Insurance done that?

8 A The reserves that are shown to us for purposes of rate
9 making are costs to adjust the claim and the amount to pay the
10 claim. There are no expenses for purposes of those other items
11 that you identified.

12 Q Well, Mr. Chair, I think there's some major problems
13 if, in fact, we're paying twice as much for defense and
14 investigation than we are in actual claims. Because if these
15 figures are correct, they are only paying out \$60 million out
16 of \$200 million to the injured person and the injured person's
17 lawyer.

18 So something seems to be a little off balance here,
19 and I think we ought to look into it. And I would like to have
20 some information as far as that data.

21 Last question: What were the actual losses for the
22 industry, actual losses last year?

23 A Senator, I want to make sure I understand your
24 question. I'm afraid I may not be able to answer it right now.
25 I have the numbers here. There are 56 -- I would have to add

1 it up, but when you say actual losses, you mean checks that
2 they cut, or losses that they reserved for?

3 Q Sir, again, they are coming in, saying to the citizens
4 of the State of Florida, listen, the reasons why we are here
5 are we have loss cost trends, and they are, in fact,
6 contributed to by the frequency and severity -- and under
7 frequency, they are saying a lot of the frequency is frivolous.
8 I have heard nothing to indicate a lot of frivolous lawsuits.
9 Have you seen anything?

10 A The lawsuits, they don't designate them. They have
11 merit whenever they are reported to us.

12 SENATOR VILLALOBOS: Senator Campbell, get to the
13 point.

14 BY SENATOR CAMPBELL:

15 Q The last thing is severity. I haven't seen a big
16 increase in severity. So what I'm trying to figure out is why
17 the companies are coming in, saying to my doctors in the State
18 of Florida, "We are going to charge you 150 percent more than
19 we did last year."

20 The trends just don't make it. I mean, the math ain't
21 adding up for some reason. Would you agree with that, Mr.
22 Roddenberry?

23 A Senator, I would have to say that, respectfully, we
24 are -- we believe that on an individual company basis, the
25 rates that are being approved are actuarially sound. We don't

1 going through this same scenario. I went back and did a little
2 historical research, and the papers at that time claim that the
3 administrative cost and overhead cost was about 17 percent of
4 the premium dollar. And the percentage going to the claimant,
5 I guess, was about somewhere between 40 and 43 percent.

6 It would be interesting to know how it compares, when
7 we were in crisis back then, had administrative costs increased
8 somewhat percentage-wise to the dollar paid in?

9 A I think that's information that we can compile,
10 Senator, if you would like us to do that.

11 Q All right. Thank you.

12 SENATOR VILLALOBOS: Senator Aronberg, your last
13 question.

14 EXAMINATION

15 BY SENATOR ARONBERG:

16 Q Mr. Roddenberry, you had told me earlier that to your
17 knowledge there were no insurers that didn't comply with the
18 law about revealing their claims figures to the DOI; is that
19 correct?

20 A There are no entities, and by that, there are some
21 entities that are required to report to us that are not
22 insurers. But, yes, sir, I'm unaware of any entities that are
23 required to report to us that failed to.

24 Q Because -- and the reason why I ask that is that in
25 the Governor's Task Force, they said it was important that,

1 say, Steve Roddenberry confirms that some insurers may not
2 report to the DOI as required. And that was a big part of this
3 report, which is why they looked at the DOI data skeptically.
4 So which is it? Is it that they have not reported as required,
5 or did they report as required?

6 A Well, I said, because I do not know emphatically, I
7 could not represent to you that no one that was supposed to
8 report hadn't.

9 I can simply say I am unaware of anyone that was
10 supposed to that hasn't reported to us, and I think my
11 statements there were it was possible there was an entity
12 required to report to us that failed to do so.

13 Q The last question, Mr. Chair, is: Is there any way
14 that the DOI knows who reports according to law and who fails
15 to meet their obligation of reporting under the law?

16 A Well, the only way to do that would be to conduct
17 examinations of each of the companies to see whether or not
18 they have reported to us all of their closed claims.

19 The value of actually closing a claim from a
20 regulatory perspective is not that great, and so where we are
21 trying to allocate our resources, that's not one of the places
22 that we focused a great deal on.

23 Q Thank you.

24 EXAMINATION

25 BY SENATOR VILLALOBOS:

1 Q That's because you're trying to allocate your
2 resources, is that you have a lack of resources, and you need
3 more resources to make sure the information you provided the
4 Legislature is more accurate?

5 A Certainly, we would want to do whatever we could to
6 provide accurate information to the Legislature. I think that
7 with respect to the closed claims, I mean, the closed claim is
8 when the insurance company actually cuts a check.

9 The reserve that the insurance company placed on that
10 claim is provided to us whenever the claim is actually filed,
11 three or four years before the check is actually cut. And so
12 the closed claim database simply tells us when they have
13 actually released the funds as opposed to whenever they set up
14 the reserve, which is used from a financial perspective and a
15 rate-making perspective.

16 SENATOR VILLALOBOS: Senator Peaden.

17 SENATOR PEADEN: Thank you, Mr. Chair.

18 EXAMINATION

19 BY SENATOR PEADEN:

20 Q Which entities are not required or do not report to
21 you?

22 A Doctors that have gone bare. I think risk retention
23 groups do not report to the closed claim database. I don't
24 believe that risk purchasing groups report to the closed claim
25 database.

1 SENATOR PEADEN: Mr. Chairman.

2 SENATOR VILLALOBOS: Follow up.

3 BY SENATOR PEADEN:

4 Q What percentage of the market would you think that
5 they would cover?

6 A Not a very large percentage, Senator.

7 SENATOR PEADEN: Mr. Chairman?

8 A By that, I mean probably less than 15 percent.

9 SENATOR VILLALOBOS: Senator Peaden.

10 BY SENATOR PEADEN:

11 Q As Senatory Clary alluded to, if we have a problem, I
12 guess, in the future, do you think that information should be
13 on file with the Legislature and be available on both the
14 doctors that go bare and the other entities?

15 A There is no such thing as too much information,
16 Senator. Certainly, if that's available, we will compile it.

17 SENATOR VILLALOBOS: Senator Campbell, your last
18 question.

19 EXAMINATION

20 BY SENATOR CAMPBELL:

21 Q You know what I find unusual? On your CD that you put
22 out, here is a disclaimer, I want to read it. Neither the
23 Department of Insurance nor the State of Florida accepts legal
24 liability or responsibility for the accuracy, completeness, or
25 usefulness of this information on closed claim reports filed by

1 insurers. This information is unaudited.

2 I mean, that is, in my opinion, putting your head in
3 the sand when we are trying to determine trends, using maybe
4 some historical perspective. I think that maybe we ought to
5 change the Department of Insurance and make sure that they are
6 responsible to the citizens of the State of Florida, so that
7 when this crisis appears in another ten years, we will have it.
8 Thank you.

9 SENATOR VILLALOBOS: Thank you, sir.

10 MR. RODDENBERRY: Thank you.

11 SENATOR VILLALOBOS: Diane Orcutt. Good afternoon,
12 ma'am. I'm sure as a State employee, you'll appreciate the
13 amount of money that we spent on this building and having
14 to do this. Would you please raise your right hand and
15 repeat after me? Do you swear or affirm the evidence you
16 are about to give will be the truth, the whole truth, and
17 nothing but the truth?

18 MS. ORCUTT: I do.

19 EXAMINATION

20 BY SENATOR VILLALOBOS:

21 Q Very well. Please state your name and your
22 occupation.

23 A Diane Orcutt. I'm the Deputy Director of Medical
24 Quality Assurance for the Department of Health.

25 Q Why don't you move that microphone a little closer to

1 you so you don't have to lean over.

2 A It is sort of cumbersome. There is sort of a -- okay.
3 Is that better?

4 Q As long as you're comfortable. Thank you for coming
5 in. I just have a couple of questions for you. One of the
6 things that I have heard over the last few months is how many
7 doctors are fleeing the state, you know, because of the medical
8 malpractice crisis. Can you tell me how many physicians are
9 currently licensed in the State of Florida?

10 A Currently, we have -- that number fluctuates day by
11 day.

12 Q Or your last, your last number, what was the date and
13 what is that number?

14 A The last time we looked at how many physicians were in
15 the State of Florida with an active license, the number was
16 around 38,000.

17 Now, there is more on our file, because we also keep
18 on file inactive licenses and out-of-state physicians who have
19 Florida licenses.

20 Q And that was as of when?

21 A That was last Thursday, last week.

22 Q Okay. Thursday last week?

23 A In the file.

24 Q Now, go back, say, five years, pick a date. What I am
25 trying to establish is: Is it a fact that there are less

1 physicians today than there were five years ago?

2 A I don't believe so. But that's difficult to pinpoint,
3 because you can't go back, say, and pick July 1, 1999, there is
4 no way you can go back and find out how many were on file at
5 that time because there is such a fluctuation. It's like a
6 moving target.

7 Q I understand there is fluctuation. I mean, there is a
8 fluctuation in the prison population on a daily basis for all
9 kinds of reasons. You know, people are released. People die.
10 People escape.

11 A The same with the physicians.

12 Q Exactly. Exactly. So, I mean, we have to be able to
13 compare. I mean, are there --

14 A I do have the statistics on how many new licenses we
15 granted --

16 Q No.

17 A -- for each of the last four years.

18 Q The question I want answered: Are there less doctors
19 today than there were five years ago? You pick a date, but I
20 am sure five years ago somebody ran that number, as to how many
21 physicians there were in the State of Florida, whether it be --
22 and I don't want you to compare active doctors today with
23 active doctors five years ago, plus out-of-state, plus
24 whatever. I mean, I want you to compare one number here with
25 five years ago or three years ago or ten years ago, so that I

1 know whether or not there are less doctors today practicing in
2 the State of Florida than there were five years ago.

3 A If we would look at what we have in our computer
4 files, I would say no, there has been an increase over the
5 years on that number.

6 Q Your sworn testimony is that there are more doctors
7 today than there were five years ago in the State of Florida?

8 A Looking at our numbers, as far as our numbers can be
9 verified, which is almost impossible to do when you're looking
10 back into history, and trying to determine whether you're
11 counting apples and oranges the same way then as you are now.

12 But, you know, given the general trend and the number
13 of new applications that we are approving and licensing, I
14 would say if you look at -- for five years ago, yes, there
15 would be an increase.

16 Q So when somebody comes before the Legislature -- and,
17 look, you don't make up the numbers, and you're not responsible
18 for each of those doctors. Okay. But you are the number
19 keeper. So when someone comes before the Legislature and tells
20 us, you know, doctors have left the state in record numbers,
21 and there are less doctors today than there were five years
22 ago, that information is inaccurate; is it, or is it not?

23 A We have to depend on whether or not a physician gives
24 us an accurate address, and that's extremely difficult. They
25 renew their licenses every two years, and that's generally when

1 they update their address.

2 Right now we are six months away from renewal, so we
3 are a year and a half into information that we collected at
4 that renewal. Physicians who move out of the state, went to
5 Michigan, died, retired, or whatever, if they didn't update our
6 files, then --

7 Q Ma'am, I understand all that. I am asking just on the
8 information you have. I don't want -- you're not responsible
9 for what somebody failed to provide or if they gave you false
10 information or wrong information.

11 My question is: If somebody, according to your
12 records, were to come before the Senate and say there are less
13 doctors today than there were five years ago, is that accurate,
14 yes or no? That's it, yes or no?

15 A I would say according to our annual reports, our
16 published information, yes, there are more.

17 Q Okay. Do you guys keep records on how many physicians
18 are retiring each year? Is there any way -- do you have a data
19 bank for that?

20 A No, we don't keep that information.

21 Q And is there any way for you to know physicians that
22 are retiring -- or are not practicing further, I should say, do
23 they ever notify you and say -- or you just know --

24 A They are required to notify us if they change an
25 address, but other than that, no.

1 Q Okay. So there is no requirement to tell you, "I have
2 retired"?

3 A Right. They do not have to tell us that.

4 Q Okay.

5 SENATOR VILLALOBOS: Further questions?

6 SENATOR CLARY: Mr. Chairman.

7 SENATOR VILLALOBOS: Senator Clary.

8 EXAMINATION

9 BY SENATOR CLARY:

10 Q Along that same line of information that would be good
11 to have, assuming we have more doctors than we had five years
12 ago, it would be interesting to know how many of those doctors
13 are staying within the higher, more specialized fields, such as
14 the neurosurgeons or osteopaths or others that typically have a
15 higher liability, are they staying within those fields? Or are
16 they going back into practice? Or are they just maybe keeping
17 their license current, but just not practicing?

18 These may be questions you really can't answer, but
19 those are the kinds of things I'm hearing in my district, is
20 that people who are paying the really high premiums say they
21 can't afford to pay, are just not practicing in their
22 specialized field. They are going more to general medicine.
23 Are you getting any statistics like that?

24 A We have just started capturing specialty statistics
25 since we started doing physician profiles, around about the

1 year 2000. So we may be able to eventually have a continuum of
2 information of data that we could share with you on that. But
3 that was self-reported by the physician for purposes of
4 profiling, that we ask them the specialty they are practicing
5 in.

6 So we do have a bank of that information currently.
7 And, as I say, you know, that, again, that's subject to self-
8 reporting, and, you know, whether or not they report in a
9 timely fashion to us.

10 Q Thank you.

11 SENATOR VILLALOBOS: Senator Peaden.

12 EXAMINATION

13 BY SENATOR PEADEN:

14 Q Yes, ma'am. Do you have information on how many
15 physicians are covered by risk retention, mutual insurance, or
16 some type of medical malpractice insurance other than going
17 bare? Is that in your records?

18 A We have statistics -- they have to report their
19 financial responsibility, and there are several options laid
20 out in the statute. Again, at the renewal period, they report
21 whether they have gone bare, or whether they have got another
22 credit, whether they are insured. And we do have statistics
23 from the last renewal which was in January of 2002.

24 SENATOR PEADEN: Mr. Chairman?

25 SENATOR VILLALOBOS: Senator Peaden.

1 BY SENATOR PEADEN:

2 Q Do you happen to remember off the top of your head
3 what was percentage of those physicians did not have insurance?

4 A No, I do not. But we can furnish you those
5 statistics, and we didn't calculate it, I don't think, by
6 percentage, but we can give you those numbers. In fact, I
7 think that was published in the Task Force report. I think
8 that's in your Task Force report, that report on the financial
9 responsibility.

10 SENATOR VILLALOBOS: Any other questions?

11 EXAMINATION

12 BY SENATOR VILLALOBOS:

13 Q Let me ask you one last question. Is there any way
14 for you to tell us whether or not applications to practice
15 medicine in Florida are up or down?

16 A I do have those statistics for the last four years,
17 four fiscal years.

18 Q Okay.

19 A Do you want me to read those numbers to you? Yeah.

20 Q Yeah, if you could tell me.

21 A These would include applications from out of state, in
22 state --

23 Q Correct.

24 A -- whatever. And we don't know where these people are
25 going to practice at the time they file.

1 Q Just trying to figure out whether or not people are
2 wanting to come to Florida or wanting to leave.

3 A Okay. These are new licenses granted. In other
4 words, they were approved and granted a license in Florida.
5 This figure, '99-'00, 2261; '00-'01, 2205; '01-'02, 2471;
6 '02-'03, which would have ended June 30th this year, 2658.

7 Q So when people are testifying before the Senate
8 Committee that people don't want to come to Florida, that's not
9 what your applications reflect; is it?

10 A Well, as I say, we don't know whether these people
11 wound up in Florida. It's very typical --

12 Q I am saying applications. Applications are
13 actually --

14 A Yes.

15 Q Okay. Any other questions? Thank you very much,
16 ma'am.

17 A Okay.

18 SENATOR VILLALOBOS: Elizabeth Dudek, please. Good
19 afternoon, ma'am.

20 MS. DUDEK: Good afternoon.

21 SENATOR VILLALOBOS: Raise your right hand. Do you
22 swear or affirm that the evidence you're about to give is
23 the truth, the whole truth, and nothing but the truth?

24 MS. DUDEK: I do.

25 EXAMINATION

1 BY SENATOR VILLALOBOS:

2 Q Please state your name and your occupation.

3 A Elizabeth Dudek. I'm the Deputy Secretary for Health
4 Quality Assurance at the Agency of Health Care Administration.

5 Q And isn't it great to be in Tallahassee in the middle
6 of July?

7 A It's wonderful.

8 Q Can you tell the Committee how many emergency rooms
9 have closed in the last year due to inability to get physicians
10 to treat patients, if any?

11 A I don't know about the number of emergency rooms that
12 have closed. I am not aware of any that have closed for that
13 reason or closed for any other reason.

14 Q The reason I ask you is, again, a previous witness --
15 you know, they are not responsible for what happens or not
16 happens. You just have that information available. And I am
17 told, at least constantly, that, you know, emergency rooms are
18 closing down because of the high cost of health insurance.

19 Now, without commenting on the high cost of health
20 insurance or health insurance premiums for medical malpractice,
21 are emergency rooms closing down?

22 A If I could explain a little, preface my answer.

23 Q Please.

24 A A hospital is not required to have an emergency room.
25 There are certain hospitals that, in fact, do not have to have

1 emergency rooms, some of the specialty facilities.

2 Every hospital must provide for emergency care and
3 services, and then have a relationship for those types of
4 inpatient services that they provide.

5 What we do receive information on are those types of
6 services that they no longer -- either a termination of a
7 service or those types of services that they are no longer
8 providing emergency care for. I can give you that information.

9 Q Please.

10 A Okay. And this would be over the last several years.
11 We've had -- 11 facilities have received exemptions to not
12 provide certain emergency services. And those are: In
13 neurosurgery, there are five facilities. Orthopedic surgery,
14 three facilities. I won't say this one right. Otolaryngology
15 four.

16 Q I know what you mean.

17 A I am sorry. Plastic surgery, four. Ophthalmology,
18 four. Oral maxillofacial surgery, I'm sorry, two. Thoracic
19 surgery, one. Gastroenterology, one. Gynecology, one.
20 Pediatrics, two. Urological surgery, one. Cardiology, one.
21 And pulmonary medicine, one.

22 Q The places where babies are born, are they shutting
23 down?

24 A We have only had three facilities -- this was actually
25 since 1999 -- who have indicated to us they have ceased

1 providing obstetrical services. They are not required to tell
2 us about that, but we have only had three facilities since '99
3 close.

4 Q Do you know the reason for them not providing that
5 anymore?

6 A Since it was 1999, I don't know that they all
7 didn't -- maybe in some cases it may be they didn't have the
8 physicians available. I'll go back and check the requests and
9 see what I can glean from that. I don't know otherwise.

10 Q What I am trying to get at is, you know, that's
11 something that I hear, particularly from, you know, certain
12 senators who are about to have a baby, you know, great concern
13 for that area of medicine. And I'm trying to figure out: Are
14 places shutting down so that women can't go see their doctors?

15 A I can check again on the requests. They would have
16 had to put in a request to see what their reason was, but I
17 don't recall. There were only three of them.

18 SENATOR VILLALOBOS: Okay. Senator Peaden.

19 SENATOR PEADEN: Thank you, Mr. Chairman.

20 EXAMINATION

21 BY SENATOR PEADEN:

22 Q Liz, have any of these facilities or specialty
23 hospitals closed down their services because of inability to
24 have backup or backup call for those folks that have received
25 services as an outpatient already or in the facility itself?

1 A I'm not aware for those, for anything other than the
2 emergency services, which would be directly related to then
3 providing inpatient care. So they would not have had
4 necessarily the number of surgeons required to work the
5 emergency room for those specialties.

6 Q And in the statutes, in the regulations, they are
7 required to have someone on backup services called for those
8 who have had procedures done at their facilities or associated
9 facilities, that's for the licensure for the facility or not?

10 A I don't know that it is a requirement of the facility
11 licensure, but I would believe most facilities do that.

12 Q But no one has closed because of lack of --

13 A No.

14 Q Okay. Thank you.

15 SENATOR VILLALOBOS: Do you have your question
16 answered? Senator Aronberg.

17 SENATOR ARONBERG: Thank you, Mr. Chairman.

18 EXAMINATION

19 BY SENATOR ARONBERG:

20 Q Thank you. You have said that there were only three
21 obstetricians or hospitals that do those procedures that have
22 closed down. Can you restate that again for me, please?

23 A It used to be under the Certificate of Need program
24 that you had to have a Certificate of Need to terminate a
25 service. Now it's merely an exemption that you have to have.

1 Since 1999, we have only had three facilities cease obstetrical
2 services through the exemption process.

3 Q Okay. You know, I was reading through the Task Force
4 report, and it says in here that they did a survey, and 45 of
5 the 94 obstetricians -- and that's almost 50 percent who
6 responded -- have stopped some high-risk procedures. Is that
7 data accurate from what you know?

8 A I wouldn't know that. We wouldn't collect that for
9 our purposes.

10 Q Thank you.

11 EXAMINATION

12 BY SENATOR VILLALOBOS:

13 Q Let me follow up on what Senator Aronberg just asked.
14 Is there -- other than emergency rooms, is there a significant
15 decrease in surgical procedures of one type or another?

16 A Not that I'm aware of, no.

17 Q So, again, when somebody tells us that, you know, you
18 can't get whatever done you need done at the hospital, that's
19 not accurate?

20 A Again, I am only aware of the information they
21 provided us, which would have to do with the emergency services
22 or services in general.

23 Q But the information that you have doesn't substantiate
24 that claim; does it?

25 A No.

1 Q Is there a comparison with, say, the other states
2 regarding the closure of certain facilities here in the State
3 of Florida compared with other states? I mean, are we ahead
4 of -- are we closing down more places or not?

5 A We have not had a large number of facilities close. I
6 mean, some of those facilities, we've had more, for instance,
7 assisted living facilities, some nursing homes closed, but very
8 few hospitals closed.

9 Over the years, there have been some, but they tend to
10 be facilities that had overall lower occupancies. They may
11 have been the fifth or sixth hospital of the same chain within
12 a given area.

13 I have not noticed anywhere they have come to us and
14 said, "We are doing so because we can't -- we don't have,"
15 excuse me, "practitioners to practice here."

16 Q Thank you.

17 SENATOR VILLALOBOS: Senator Webster, do you have a
18 question?

19 SENATOR WEBSTER: Yes, Mr. Chairman.

20 EXAMINATION

21 BY SENATOR WEBSTER:

22 Q I had a question about emergency rooms versus trauma
23 centers. In Orange County the trauma center was sort of on the
24 edge, and because the county commission and others have stepped
25 in, it stayed open. But that was -- seemed to be more critical

1 than just the emergency rooms. Of the six level-one trauma
2 centers, are they -- have any of those closed, or even a
3 level-two, have any of those closed or are threatening to
4 close?

5 A I am not aware of any that have closed, Senator.
6 However, they are regulated by the Department of Health, so I
7 wouldn't have that specific information. I mean, I would
8 generally hear about it, but I have not heard that any of them
9 have.

10 Q Okay.

11 SENATOR VILLALOBOS: Anyone else? Senator Smith.

12 MR. SMITH: Thank you, Mr. Chairman.

13 EXAMINATION

14 BY SENATOR SMITH:

15 Q I just want to follow up on what you just said to our
16 Chairman. As I understand it, the rate of closure in Florida,
17 you don't have comparative data for the rate of closure for ER
18 rooms with other states?

19 A No. I can attempt to get that for you, if you would
20 like.

21 Q But as you review it, from your review of it, those
22 numbers are not such that -- at least in some part, they are
23 suggesting to you that there may have already been occupancy
24 problems or other natural business problems that have driven
25 those closures; is that correct?

1 A That's correct.

2 Q As a person who reviews this rate of closure, have you
3 ever done this in other states --

4 A No.

5 Q -- other than Florida?

6 A No.

7 Q Do you meet in other states, with people from other
8 states who do similar work to work that you do?

9 A Yes.

10 Q Do you find the rate of closure in Florida alarming
11 compared with the -- at least anecdotal evidence you get from
12 what is going on throughout the country?

13 A I haven't heard that it's unusual compared to other
14 states. Some states say that they have similar type issues as
15 Florida does. But, again, that is data I can get for you that
16 I don't have.

17 Q And in your capacity, because of having reviewed these
18 closures over the period of time, have you had sufficient alarm
19 about this, that you have notified anybody in your chain of
20 command, if you will, that you think the closure rate is
21 unacceptable in Florida?

22 A No, nothing to that extent where I would have to raise
23 the alarm.

24 Q Nothing has been that alarming to you?

25 A No.

1 Q Thank you.

2 SENATOR VILLALOBOS: Senator Peaden.

3 EXAMINATION

4 BY SENATOR PEADEN:

5 Q Liz, backing up, and you might need to correct us on
6 who has jurisdiction here, but under these licensures or
7 regulations like OB, has there been a situation where there was
8 closure, and the patients had to be redirected, and you had to
9 help redirect them, or someone from the State Department of
10 Health, your department, had to redirect those patients?

11 A I am not aware of any of those situations. Typically,
12 someone would let us know in advance, well in advance that that
13 might happen. They usually then have an arrangement for where
14 they would redirect them. So it may be the other provider
15 within the area or the closest provider.

16 Q But it would be customary things in the rules that
17 procedures would take place, so the safety of those patients
18 would be preserved, and nothing like that has happened?

19 A Nothing like that has occurred.

20 Q Okay.

21 SENATOR VILLALOBOS: Any other questions? Thank you,
22 ma'am.

23 MS. DUDEK: I will get you information on ER room
24 closures and comparisons with other states.

25 SENATOR VILLALOBOS: Thank you very much. Mr. Bob

1 White. Good afternoon, sir. Thank you for coming to our
2 meeting. Do you swear or affirm that the evidence you are
3 about to give will be the truth, the whole truth, and
4 nothing but the truth?

5 MR. WHITE: I do.

6 EXAMINATION

7 BY SENATOR VILLALOBOS:

8 Q Would you please state your name and your occupation,
9 sir?

10 A My name is Robert White. I am the president of First
11 Professional Insurance Company.

12 Q And you have been employed in that capacity for how
13 long?

14 A Since November of last year.

15 Q Okay. Mr. White, again, thank you for coming. I hope
16 now we are able to reach some type of conclusion fairly
17 quickly.

18 You have testified before a number of committees in
19 the past, and one of the things that I would like to ask you
20 concerns more a relationship that your company has with the
21 Florida Medical Association. Is that a business relationship
22 that you all have?

23 A A business relationship?

24 Q Yes, sir. In other words, do you all, do you all pay
25 for the lobbyists for the Florida Medical Association to come

1 before the Legislature? Or do you all invest in, say,
2 advertising that is sent out to the public regarding members of
3 the Legislature on behalf of the Florida Medical Association?

4 A No on the lobbyists, and no on the advertising.

5 Q Previously you have come before us on committees, and
6 you have stated that FPIC is not writing any new policies. Is
7 that still the case today?

8 A No, sir, it is not.

9 Q Okay. What are -- are you writing more policies?
10 Less policies? What is the difference?

11 A We began writing new business on February 1st of this
12 year after engaging in a moratorium since about May of last
13 year. And we have an internal number. It varies from month to
14 month as to how much new business we can write.

15 It depends on our retention and our renewal rates, how
16 many renewals we retain. We are trying to maintain our
17 policyholder count at roughly the same level it was at the
18 beginning of this year. It may grow a little bit, but we are
19 trying to stay close to that number.

20 Q Well, is it -- you're trying to stay close to the
21 level. But, I mean, is the prospect good? Bad? I mean,
22 what -- what's the deal?

23 A The deal is to maintain our financial integrity, we
24 have the capacity to write at only a certain level. We could
25 sell all the policies we wanted, sir. I mean, there's no

1 question about that. We can't meet the demands on our company,
2 because we would be outside of the capacity that we are able to
3 write and maintain our financial integrity.

4 Q Let me ask you about something that has kind of
5 perplexed me for a couple of months now. We have the 250 cap.
6 And my question is whether or not that is actually a good idea
7 or not.

8 I have a list of states that have caps. Alabama has a
9 \$400,000 cap; Arkansas, a 500; Hawaii, 375; Indiana, 400;
10 Illinois, 500; Maryland, 500; Massachusetts, 500; Michigan, 350
11 to 625; Nevada, 350; New Mexico, 600; North Dakota, 500; South
12 Dakota, 500; Utah, 400; Texas, 500; Wisconsin, 350; West
13 Virginia, one million. Why is 250 the magic number in Florida?

14 A Well, in my opinion, the lower the cap, the more
15 effective it will be in, first of all, lowering rates, and
16 second of all, providing stable outcomes, so that losses become
17 more predictable. And I said that backwards. Losses become
18 more predictable and rates stay stable over the long haul.

19 Q Well, but you would -- according to your logic, you
20 think 250 would give you a lot of predictability, right?

21 A Yes, sir.

22 Q Well, then, so would any other number. Say, 500, so
23 if the Legislature were to approve 500 versus 250, all you
24 would have to do is get the number that you have right now and
25 double it; isn't that correct?

1 A Well, the problem is the limits that are carried in
2 Florida, 85 percent of the market in Florida carries \$500,000
3 per-claim limits or less. So in terms of, in terms of what it
4 would do for those policy limits, it would be virtually nothing
5 at 500.

6 Q Well, I don't understand that, and I don't know a lot
7 about insurance. Okay. But if 250 -- and I have heard both
8 you, and I've heard a lot of people here say 250 will resolve
9 this crisis. I really don't understand why 500 would do
10 nothing. I mean, why, why is 250 the magic bullet, and 500 is
11 zero?

12 A Well, it works on more policy limits at 250, first of
13 all. And there is greater predictability at 250 than there is
14 at 500. It's the magnitude of the thing.

15 Q No. No. If there's 10 cases at 250, that's the
16 number, we are talking about the same 10 cases at 500, I mean,
17 why is it the magnitude? It's not the magnitude. It's the
18 amount.

19 A But there's 65 percent of the policy limits in Florida
20 are only at \$250,000. Sixty-five percent of the doctors would
21 get no benefit from a \$500,000 cap.

22 Q Okay. Let's talk about the doctors you insure. What
23 percentage of doctors, if you know, are insured?

24 A Oh, I don't know that, sir.

25 Q You don't know how many you insure?

1 A Yes, I do.

2 Q How many is that?

3 A Six thousand.

4 Q Okay. All the other ones that are not insured, how
5 many are there, you and --

6 A There are four companies actively operating in the
7 market place, writing business, that's what I know.

8 Q Okay. But there are a lot of doctors -- you would
9 admit there are a lot of doctors that are not insured; isn't
10 that correct? I'm not asking for the number because you have
11 no way of knowing that, but --

12 A Well, I think there's probably a larger percentage of
13 doctors uninsured in Florida than there is in most other
14 states.

15 Q Is there a larger number of doctors that are insured
16 versus uninsured?

17 A I think the vast majority of doctors buy insurance.

18 Q Okay. So if you put a cap on this, it wouldn't
19 affect, say, half the doctors?

20 A It depends on where you place the cap, what level,
21 what limit.

22 Q Okay. But it still would affect a large number of
23 doctors who are not insured? I mean, it would affect their
24 potential liability, but it would do nothing --

25 A Certainly, for their doctors, it wouldn't affect them

1 at all. I take that back. I mean, they are personally liable,
2 and they could go to court. Whether they buy insurance or not
3 isn't the issue.

4 They would be subject to more predictability in the
5 jury outcome if they were a bare doctor and got sued and went
6 to trial. In terms of payment on insurance premiums, it
7 wouldn't affect the insurance premium, that's certainly true.

8 Q I recently went on the Internet and under
9 www.fdfn.com, got a copy of the bare disclosure financial
10 network, which is FPIC Insurance Company, Inc., quarter four,
11 2002 financial conference call, transcript. Thursday, February
12 20, 2003. Are you familiar with that?

13 A Yes, I am.

14 Q Okay. There is an area where it starts -- Mr. John
15 Byerts is testifying. He thanks everybody for attending and
16 goes on in an explanation, and then there is a part that said:
17 As we previously announced, we are aggressively focusing on our
18 core business in states, with a primary focus on Florida, and
19 we are substantially reducing our funding business in favor of
20 our core business.

21 Florida is known as a state that requires substantial
22 expertise in underwriting and claims handling. We have this
23 expertise, having been the market leader for over 25 years, and
24 we are confident in our ability to continue to succeed in this
25 market.

1 I am also happy to report that our policyholder
2 retention rates continue very strong. Based on what we have
3 seen so far, we currently believe our Florida policyholder
4 retention rate will be around 90 percent in 2003.

5 As I said earlier, overall we are very happy with our
6 2002 operational and financial results, particularly in
7 Florida, which constitutes by far the bulk of our medical
8 professional liability insurance business.

9 We have a strong experienced management in place. Our
10 underwriting has also been -- have benefited from strict
11 underwriting and substantial pricing improvement, and we are
12 very excited about our claims handling processes and results.

13 Sound familiar?

14 A Yes, sir.

15 Q Okay. And I know you don't have a copy before you,
16 and I am just asking you if you remember that.

17 A Yes, sir, I remember it.

18 Q That sounds like it's good news to what FPIC does in
19 Florida; doesn't it?

20 A For our shareholders, there is no question about that,
21 yes.

22 Q Missouri was a more difficult environment in 2002,
23 both for us and for our competitors. While Missouri is a
24 relatively small component of our business, we'll aggressively
25 address operations and rates in that state this year.

1 Now, Missouri has a cap; doesn't it?

2 A Yes, it does.

3 Q Okay. Finally let me touch upon the status of tort
4 reform in Florida. As you may know, your organization actively
5 supports tort reform for Florida. You would obviously agree
6 with that; is that correct?

7 A Yes, I would.

8 Q Appropriately, tort reform would benefit our customers
9 with regards to both affordability and availability of coverage
10 and will assist in maintaining and improving the level of
11 healthcare to the general public. You like that, too, right?

12 A Love it.

13 Q Okay. For these reasons, we support appropriate
14 reforms. Having said that, we are not relying on the passage
15 or reform for our business plan. And we are confident of our
16 ability to succeed in Florida with or without tort reform.

17 Is that accurate also?

18 A Absolutely accurate.

19 Q So if you guys are going to continue to make a bundle
20 of money here, why am I here?

21 A Why are you here?

22 Q Yes, sir.

23 A I believe you're here because our customers feel that
24 our prices have reached the brink of unaffordability. I
25 believe that's why we are here.

1 Q That's correct. And what I am trying to determine:
2 Is it because there are a slew of frivolous lawsuits, which has
3 been alleged, therefore, causing physicians to leave and
4 practices to close down, of which the Department of Health and
5 the Agency for Health Care Administration have said that
6 hospitals are not closing down, and the physicians are actually
7 coming into the state, and applications are up?

8 So it's a question -- and we'll get to the Florida
9 Bar, but is that because -- well, why is that? I mean, is it
10 because there are so many frivolous lawsuits? Or is it because
11 you guys are making a lot of money? I mean, which one is it?

12 A Well, first, let me be clear. I don't feel you can
13 have a frivolous lawsuit in the State of Florida.

14 I think Florida fixed its frivolous lawsuit problem in
15 1988. I don't think I have ever said that our problem is we
16 have frivolous lawsuits.

17 I think what I said over and over again is that we pay
18 non-meritorious cases because of a concern about bad faith.
19 And what we have in Florida is a situation where the frequency
20 and severity of claims has caused an increase in premiums
21 that's brought premium levels to the brink of unaffordability.
22 That's how I view what we are confronting here.

23 Q Well, your testimony is that your stockholders are
24 making a lot of money; is that correct? I applaud you for
25 that, because that's good for you time.

1 A I believe our company is profitable. I am not going
2 to characterize whether they are making a lot of money because
3 I don't know that they think there are. But our company is
4 profitable.

5 Q Okay. You testified that your shareholders make a lot
6 of money, or you're making money for your shareholders?

7 A We are making money for our shareholders, yes.

8 Q Isn't that at the expense of charging physicians a lot
9 for their insurance?

10 A No, sir. We are charging a reasonable rate for our
11 product. We submit our rate filings to the Department of
12 Insurance. They approve them, and then we use them. If they
13 had trouble with our filing, we hear about it.

14 The amount of scrutiny our rate filing received in
15 2001 and 2002 was unprecedented for our company. And we were
16 asked more questions, and the process took longer than it has
17 in previous years because of the amount of concern on the
18 Department's part about whether these rates are justified. Not
19 just ours, but every carrier.

20 And we believe our rates are justified based on the
21 data we have on frequency and severity of claims, along with
22 the frequency of indemnity payments that we have.

23 Q Let me ask you to wade through this. Do you discount
24 certain doctors?

25 A Yes, sir.

1 Q So, in other words, you have a mechanism by which if a
2 physician has no claims, they kind of get a discount versus a
3 physician that has two or three claims against them?

4 A Yes, we have underwriting rules filed with the
5 Department, and the manner in which we discount for
6 claims-free, which is what we refer to it as, is laid out in
7 our filing with the Department.

8 SENATOR VILLALOBOS: Questions? Senator Smith.

9 MR. SMITH: Thank you, Mr. Chairman.

10 EXAMINATION

11 BY SENATOR SMITH:

12 Q I would like to follow up with some questions
13 regarding that same phone conversation of February 20th, 2003.
14 Just to be clear on this, this is a required disclosure, is it
15 not, something that has to happen, this conference call?

16 A Senator, I don't know if it's required that we have
17 the call. I honestly don't know the answer to that question.

18 Q Well, let's assume for a moment that Mr. Byerts --
19 what was his position with FPIC at the time you spoke on this
20 conference call?

21 A Mr. Byerts is the president of the company that owns
22 our company. They are a publicly traded company. We are one
23 of several businesses that they own.

24 Q Mr. Byerts would be a person, then, as president of
25 the company that owns your company that you would communicate

1 with regularly?

2 A I report to him as well as our board, yes.

3 Q And so from his statement, would you agree with the
4 following: That FPIC's indemnity payments in 2002 compared to
5 2001 were actually favorable?

6 A I believe he said -- well, he may have said that. I
7 don't recall that specifically, but I wouldn't be surprised by
8 the statement.

9 Q FPIC's -- he also stated or stated in that
10 conversation that FPIC's experience in Florida in 2002 was, was
11 better than other states' operations in which you were
12 involved. And one of the specific states mentioned was, the
13 Chairman said Missouri, which was identified as a problem where
14 caps exist, correct?

15 A Yes, Missouri is a problem. The environment there is
16 changing. They are having their own debate like this as well,
17 and Missouri was a problem, more of a problem than Florida,
18 that's right.

19 Q And the -- and, also, in the conversation it was
20 reported to those who were listening that FPIC's underwriting
21 ratio improved in 2002 in Florida?

22 A Yes, sir, that's absolutely correct.

23 Q And, in fact, that your 2002 professional liability
24 claims, incidents, as reported in this phone call by the
25 president, was what you expected, if not better?

1 A I don't recall that statement, but it was pretty much
2 what we expected, I know that. We expected improvement.

3 Q And was it also -- wasn't it also reported in that
4 same conversation that your closed claim experience for 2002
5 was, by those who observed it, on a, quote, good trend?

6 A Yes, sir.

7 Q And that FPIC believed that the progress that they had
8 made in 2002 was sustainable in Florida?

9 A We believe it is, yes, sir.

10 Q It is also true, is it not, from your review of the
11 non-economic loss history of this state, that for the time
12 periods between 19 -- or are you aware that for the time
13 periods between 1990 and 1994 and then 1995 through 1999, two
14 different five-year tracks, that, in fact, the total number of
15 claims and the total amount of payouts were percentage-wise
16 greater than they have been in the years for 2000 through 2002?

17 A What database are you relying on, please?

18 Q This would be the Analysis of Florida's Medical
19 Malpractice Closed Claims Data prepared based on information
20 from the Department of Insurance.

21 A I am aware that that database reflects those results,
22 yes.

23 Q And yet in those time periods when supposedly claims
24 as a total number and as an amount of payout were greater,
25 there was a more robust insurance business in Florida; is that

1 correct?

2 A There was more competition, there is no question about
3 that.

4 Q So is it an incorrect conclusion on my part that
5 whatever has caused the decline in the robustness of the
6 insurance business in Florida has not been related to the,
7 either the total amount of claims for non-economic damages or
8 the amount of payouts for non-economic damages?

9 A If you rely on the database you have in front of you,
10 I think that's a fair assumption for you to make based on that
11 database.

12 EXAMINATION

13 BY SENATOR VILLALOBOS:

14 Q Mr. White, I think what we are trying to get at is:
15 Are there more claims now than there were five years ago?

16 A Yes, sir, there are.

17 Q There are? And define a claim for me, please.

18 A A claim is a monetary demand for satisfaction made by
19 a patient or their authorized representative.

20 Q Okay. So is it your testimony that there are more
21 lawsuits filed? If you know, I mean --

22 A I can't answer the question about lawsuits, because we
23 consider a claim a lawsuit as well. They start out as a claim,
24 as a notice of intent, and that's the general manner. There
25 can be claims made other ways. But generally speaking in the

1 State of Florida, the whole process begins with a notice of
2 intent, and at some point they turn into lawsuits. And we do
3 code them as a claim when they start out, and when they turn
4 into a lawsuit, we code them.

5 But when I look for a higher level than running the
6 claims department, I don't care whether it was a claim or a
7 lawsuit. I look at them all as one item.

8 Q Sure. It's going to cost you money anyway.

9 A Exactly.

10 Q Okay. However, that information -- and I understand
11 you don't capture that data -- but it's obviously important to
12 us.

13 A We do capture it, I just don't happen to have the
14 information off the top of my head because it doesn't matter to
15 me.

16 Q Any increase in claims, you say is a result of bad
17 faith statutes and non-meritorious lawsuits; is that correct?

18 A I am not going to characterize them as being the
19 reason for the increase in claims. I don't know what the
20 reason for the increase in claims is.

21 I'll be frank with you. In 1996, there were eight
22 claims per 100 insured physicians in our book of business. In
23 2002, there were 11 claims per 100 insured physicians in our
24 book of business. That's not counting incidents. That's just
25 claims. So that tells me there has been an increase in claims.

1 Q So since you do capture that information on claims
2 versus lawsuits -- and I understand you don't have that with
3 you -- is there also an increase in the amount of malpractice
4 being committed by physicians? Do you capture that
5 information?

6 A I don't believe -- no. I mean, I'm a believer that
7 there is no more malpractice today than there was ten years
8 ago.

9 Q You base that on what?

10 A My personal observation of having handled claims in
11 Florida for 21 years.

12 Q So even though there are a lot more physicians now
13 than there were 20 years ago --

14 A Right.

15 Q -- you don't believe there is any more malpractice?

16 A As a percentage of all the cases presented, no. I
17 mean, in terms of sheer numbers, with increase in physicians,
18 you would have more. I am thinking in terms of as a percentage
19 of all the cases we see, there is no more today than there was
20 20 years ago.

21 Q Okay. Were you around, I guess, 10 years ago when we
22 had the last insurance crisis?

23 A (Nods affirmatively).

24 Q And the Legislature allegedly fixed this, and if
25 that's the case, I'm hoping the alarm clock will go off any

1 moment now, and I can wake up and find out that I'm not here.
2 But as a result of the last fix that the Legislature did under
3 another governor and another president and speaker, did claims
4 go down as a result of that last fix?

5 A Yes, sir, they did.

6 Q Okay. And did the premiums for your clients, for the
7 doctors go down as a result of that decrease in claims?

8 A Yes, sir, they did.

9 Q Okay. And about when did that turn around and start
10 going back in the other direction?

11 A About 1996 or 1997, thereabouts.

12 Q Okay. And it's because of what, or what, in your
13 opinion?

14 A I don't have a clue. I mean, I don't know why. These
15 things happen. There are cyclical in nature. I know what made
16 them go down was the tort reform in 1988. The fact that the
17 process started with an expert's report being attached to the
18 notice of intent.

19 We saw a rather dramatic decrease in frequency
20 associated with the 1988 legislation. That's why competition
21 was so rampant in the mid to late nineties, because things
22 improved so much after the 1988 tort reform.

23 Q But your testimony, though, is you really don't know
24 other than -- because it's cyclical, you really don't know or
25 can't testify here why you think they went back up?

1 A I have no opinion. I don't know.

2 Q Okay. Well, if you don't know why it went back up,
3 then what makes you think, you know, the bill that the Senate
4 has today won't make it go down? Or why would you think that
5 the bill that the House has versus the Senate has, you know, is
6 better than this one? I mean, if you don't know what caused
7 the problem, you know, how do you know what's going to fix it?

8 A Well, I think that addressing the only thing -- only
9 two things there are left to address, I mean, we fixed the
10 frivolous lawsuit problem in my opinion.

11 There are only two kinds of lawsuits in Florida,
12 meritorious and non-meritorious. What is driving things right
13 now are the low limits that doctors have. With our bad faith
14 laws, we are paying cases that we wouldn't pay if we were in
15 perhaps another state with different kinds of reality in terms
16 of policy limits.

17 Okay. I think that there is no more malpractice today
18 than there ever was. There are bad results. There's no
19 question about it. Some of the treatment modalities and some
20 of the diagnostic modalities doctors have available to them can
21 cause injuries that are sometimes worse than what they are
22 trying to treat or diagnose.

23 I think we see more of those cases today. The
24 technology and pharmaceutical agents that doctors have
25 available to them are capable of producing harm, not because

1 the doctor misused it, but because it acts differently on every
2 human body.

3 So I think that's what we have more of today, and we
4 see more of those cases than we did 10 or 15 years ago, because
5 they are big damage cases. We are almost faced in every one of
6 those situations with a possible verdict in excess of the
7 policy limit. So if you had to ask me what's causing it, I
8 think that's the answer.

9 Q So what's causing it is the fact that we have all
10 these advances in science? Is that what you're saying?

11 A And we have more, more bad results, not in terms of
12 negligence, but in terms of injuries to patients caused in the
13 normal course of delivery of medical care and services. Some
14 of those pharmaceutical agents and some of that diagnostic
15 modality can harm the patient.

16 Q So our medical -- so what you're testifying, then, is
17 our medical treatment is what's causing more and more of these
18 claims?

19 A Well, in my opinion, yes. I mean, when you're on the
20 cutting edge of human technology, there are risks associated
21 with it, like we see with the space shuttle or other things
22 like that.

23 We are -- medicine is always advancing its technology,
24 and there are risks associated with being on the cutting edge
25 of technology. There always has been in our society.

1 Q And your solution to this problem is to limit the
2 amount that a person who is injured as a result of this
3 technology to receive? Is that one of your solutions to this
4 problem?

5 A In the sense that our society's capacity to generate a
6 big enough pot for everybody to be able to recover the way they
7 always have in our society, to spread it to so many people
8 creates the burden on the few people who have to pay it. That
9 causes a problem for them, and makes them question whether or
10 not they can continue to provide the services that they were
11 trying to provide.

12 Q Mr. White, you know, I mean, I know many doctors, and
13 I'm related to some, and I certainly don't want to pay the
14 amount of insurance they pay, I don't.

15 But at the same time, I wouldn't want to be on the
16 receiving end of one of these mistakes. And if I were -- and
17 there aren't that many people -- let's clarify that right now,
18 you know, physicians by and large are great. But they are
19 human, and they make mistakes.

20 Okay. And if I am on the receiving end, frankly, I
21 don't care about, you know, all these averages and your company
22 or anybody else, you know. And if there aren't that many
23 people -- you know, if I put myself in their shoes, you know, I
24 don't see how your business has to make money at my expense,
25 you know, if I were the victim of one of these cases. And

1 frankly, you know, placing a limit on how much I can get for
2 pain and suffering -- well, that's my opinion. I said --

3 A I gave you mine, so that's fair.

4 SENATOR VILLALOBOS: Okay. Senator Peaden.

5 EXAMINATION

6 BY SENATOR PEADEN:

7 Q Mr. Smith, could you clarify something here? It seems
8 to me what I heard is you said we are on the cutting edge. We
9 have more modern treatments. We have more modern diagnosis.
10 And that lends itself for us to have more litigation; is that
11 what you said?

12 A I said it lends itself to create more injuries to
13 patients than we may have had in the past, and that does create
14 more litigation, yes.

15 Q So are you saying that this is misguided litigation in
16 the sense that we are looking at medical malpractice, but it
17 really should be products liability we are talking about?

18 A No, sir, that's not what I said.

19 Q Well, and you said there was no more medical
20 malpractice now percentage-wise than there were 15 or 20 years
21 ago. Somewhere I have missed the answer here. Could you just
22 clarify what you just said a little bit more to me? And maybe
23 this is -- we are going down a rabbit trail here, but how can
24 that lend itself to more litigation, the improvement of
25 medicine and products?

1 A Because that technology and those treatment modalities
2 cause injuries to patients. From the patient's perspective,
3 they have no idea whether it was the fault of the doctor, their
4 constitution, what it was, so they wind up going to a lawyer,
5 asking for answers. And the lawyers, you know, bring lawsuits.
6 That's how they get the answers to the questions.

7 They have the case reviewed by experts. They start
8 the process. And when you have people -- and I've said this
9 before. I mean, when I was growing up in this country,
10 doctors -- as a child, a lot of what a doctor did was just hold
11 your hand and hope you got better.

12 And in terms of where we are today versus then, we
13 have, we have modalities and pharmaceutical agents that cause
14 harm to patients. And it's not because, it's not because the
15 medicine is bad or the technology is bad, it's just because
16 that's the way it happens.

17 Q I think you said the right word about holding your
18 hand and waiting until things happen. And you asked --
19 mentioned about this being a cyclic event every 10 years or so.

20 Do you think that's what we should do is hold your
21 hand and wait until this gets on through the process? I mean,
22 you say that in looking at Missouri with the caps, and they
23 still have problems, and looking at the variability of what cap
24 we should use, whether it should be 250, or as the Chairman
25 said, 500, all we are looking for is certainty. What's your

1 response to that, sir?

2 A Well, I will tell you that from our perspective, doing
3 nothing doesn't, doesn't hurt our business and doesn't hurt our
4 shareholders. It may be beneficial to them in the long run.

5 We are here because our customers are telling us they
6 have reached the brink of unaffordability in terms of paying
7 for our product. That's why we are here.

8 We are not telling you we can't make money in the
9 business. At the rates we're charging, if we can't make money
10 at these rates, we ought to quit.

11 We are making money at these rates, and we haven't
12 denied that. But in order to do that, our customers have to
13 pay an amount of their income that places their ability to
14 continue to practice in jeopardy. That's what I hear from
15 them, and that's why we're here.

16 SENATOR VILLALOBOS: Senator Smith.

17 EXAMINATION

18 BY SENATOR SMITH:

19 Q Just to follow up on a couple of questions very
20 quickly. FPIC does business, obviously, in other states, or
21 your related companies do business in other states.

22 A First of all, First Professional does business in
23 other states, and FPIC owns companies that also do business.
24 When you say FPIC, I think of FPIC insurance, which is the
25 holding company.

1 Q Is Florida among the most profitable states where you
2 do business?

3 A At the present time, it is the most profitable state.

4 Q That was going to be my next question. It is, in
5 fact, the single most profitable state in which your company
6 does business; isn't it?

7 A I believe I have already answered that.

8 Q Can you explain a report that came out that was
9 reported in which it was stated that FPIC has contributed, over
10 the last eight years, \$4.5 million to the Florida Medical
11 Association? Is that a correct number?

12 A Well, I wasn't with the company five years ago. I
13 know that in the time I have been with the company, we have
14 paid the Florida Medical Association \$500,000 a year as an
15 endorsement fee.

16 Q And --

17 SENATOR VILLALOBOS: Wait, wait, wait a second.

18 BY SENATOR SMITH:

19 Q What is an endorsement fee?

20 A I believe -- I have not sat down and read the
21 contract, but I believe when somebody calls them looking for,
22 "Who is the carrier I should be insured with in Florida?" They
23 say, "FPIC."

24 EXAMINATION

25 BY SENATOR VILLALOBOS:

1 Q So, so when the Florida Medical Association tells
2 their doctors that are members to hire you guys, that's not
3 because you're the best, that's because you paid them to say
4 that?

5 A Well, I think they have a belief that any company that
6 they would endorse would be a good carrier that they could
7 endorse.

8 Q They have the knowledge --

9 A I don't know about that. You would have to ask them
10 that question.

11 Q But you gave it to them?

12 A Yes, sir.

13 Q That's a good deal.

14 SENATOR VILLALOBOS: Senator Smith. I apologize for
15 interrupting.

16 MR. SMITH: That's fine.

17 BY SENATOR SMITH:

18 Q I just want to follow up on this for one more second.
19 One of the things I've tried to do is try to look at ways we
20 could increase the competition within the state and new entries
21 into the business in the State.

22 And I am wondering whether or not having you pay --
23 your company pay \$4.5 million over the last eight years for an
24 endorsement, meaning to have them recommend FPIC, does that
25 encourage new entries in the business? Or don't you pay them

1 for the simple reason that you want a competitive advantage
2 over anybody else? You want them to keep other people out of
3 the insurance business. That's why you paid them \$500,000 a
4 year to recommend you; isn't it?

5 A I don't think it is to keep other people out of the
6 insurance business. I think it's to endorse a carrier that's a
7 responsible, long-term player in the marketplace, where they
8 make the recommendation that they know they are referring a
9 doctor to a carrier that's going to be here in five or 10 years
10 after they have paid premiums. I think that is what they are
11 interested in. But you would have to ask them.

12 Q We will. Thank you. Oh, before I leave that, just
13 one further question, Mr. Chairman. Do you pay in other
14 states, their medical associations for the same kind of
15 endorsements?

16 A First Professionals doesn't pay anyone else. We may
17 pay through a company we own in Missouri a fee to the Missouri
18 Medical Association, but I'm not sure.

19 SENATOR SMITH: Thank you, Mr. Chairman.

20 SENATOR VILLALOBOS: Senator Campbell.

21 EXAMINATION

22 BY SENATOR CAMPBELL:

23 Q How much have your premiums increased this year to the
24 physicians in the State of Florida?

25 A Our rate filing that was filed with the Department for

1 December 1st, 2002 increased our base rates 21.1.

2 Q And the year before it was 27?

3 A I am not exactly sure, but it was something in that
4 order.

5 Q And the year before, I think it was about 21 also?

6 A That may be true. I am not exactly sure.

7 Q I keep hearing rates, \$250,000 for insurance. What do
8 you charge for a typical obstetrician/gynecologist in
9 Miami-Dade County?

10 A For \$250,000 worth of coverage?

11 Q \$250,000 coverage.

12 A I don't know off the top of my head. Can I ask our
13 actuary if he knows?

14 Q Yes, sir, you can.

15 A Sixty-five or \$70,000 we believe, sir.

16 Q Sixty-five to \$70,000. So that's not \$220,000 that I
17 am hearing; is it?

18 A I think when you start seeing numbers like -- that's a
19 million-dollar policy limit. There are numbers like that when
20 you get to a million dollars, yes, sir.

21 Q I would like to take this step by step if I might,
22 because I am very confused.

23 A Okay.

24 Q I have been told that you -- when this issue first
25 came up -- said, "There is but one cure to Florida's tort

1 reform and medical malpractice, and that is an absolute cap on
2 non-economic damages in the amount of \$250,000."

3 A Please tell me what you're reading from, sir.

4 Q This is a written presentation to the Governor's
5 Select Task Force on Health Insurance, Liability Insurance by
6 Robert E. White, Jr., Executive Vice President, Chief Operating
7 Officer. That's you, correct?

8 A Yes. But I believe if you will read on, you will see
9 that I say, "But that cure is not yours to give," or words to
10 that effect.

11 Q I am going to get into it.

12 A Okay.

13 Q That's the sentence I just read to you that you gave
14 to this Task Force, correct?

15 A Yes, sir.

16 Q Going back to that telephone conversation that
17 occurred in February of 2003, I was kind of interested in
18 seeing that you piped up at one point in time, and you said,
19 "We are blessed in Florida right now with a very strong report
20 from the Task Force." So our Governor selected in September,
21 they issued their report in January. You were very intricately
22 involved with that Task Force; were you not?

23 A I made appearances and presentations to them, yes,
24 sir.

25 Q And there is a consortium of people that got together

1 and said we are willing to push for this \$250,000 on
2 non-economic damages, correct?

3 A Are you referring to the Coalition to Appeal Florida's
4 Healthcare?

5 Q Yes. Who is in that coalition? You have got the FMA.
6 We have got the insurance industry in bed. Who else is in bed
7 with you guys?

8 A The Florida Hospital Association.

9 Q Florida Hospital?

10 A The Florida Osteopathic Medical Society. There are
11 over 100 organizations, including Associated Industries. I
12 can't name them all. I don't know them off the top of my head,
13 but there's over 100 groups in that organization.

14 Q And it would be nice that we make laws based upon
15 true, factual data, correct?

16 A Yes, sir.

17 Q Rather than emotional hype, correct?

18 A Yes, sir.

19 Q Now, it was interesting in that conference phone
20 call -- you know, Mr. Kim Florek -- I presume Kim is a man?

21 A Yes, sir.

22 Q And Mr. Florek made the following response, which I
23 found to be pretty interesting. He says, "Our independent
24 actuarial firm has completed the field work of this study and
25 cleared our reserves as reasonable and adequate. Importantly,

1 it was not necessary to take an extraordinary charge to
2 strengthen the reserves this year as we did in 2001 and 2000.
3 Furthermore, we believe the improvements we are seeing in
4 claims development trends overall are sustainable. While we
5 are not resting on our laurels, and we remain squarely focused
6 on the execution, we are now confident that we have turned the
7 corner towards more consistent and profitable results." That's
8 what your COO or CFO said, correct?

9 A He is the CFO. Yes, that's correct, that's what he
10 said.

11 Q So if we are to believe that there's a need for
12 malpractice insurance rate increases, we would have to look at
13 the trends, correct?

14 A Yes, sir.

15 Q And he's pretty much indicating that the trends are
16 stabilized for 2003, correct?

17 A Well, he's indicating that our reserves are adequate
18 based on the trends we are seeing. That's all the function of
19 the premium, sir.

20 Q Sir, answer my question.

21 A I just did.

22 Q Did he say that the trends are stabilized, our
23 reserves are under hand?

24 A Our reserves are what?

25 Q Our reserves are well within reasonable expectations.

1 I will use his exact words if you want. "That development
2 trends overall are sustainable."

3 A Yes, he said those words.

4 Q And now I am trying to figure something out here. I
5 have been given information that the Governor's Task Force --
6 language that was drafted in the Task Force report didn't
7 actually come from the Task Force itself; that, in fact, some
8 of the information was given by a coalition.

9 Do you know if any special interest group gave the
10 Governor's Task Force the rate rollback language, the periodic
11 payment language, the set-off language, the non-economic
12 damages cap language, the sovereign immunity for emergency
13 rooms language, and the bills on fixed language, and the
14 vulnerable adult language? Do you know if any members of your
15 coalition actually gave the Task Force, this intellectually
16 honest Task Force, the language to put into the report that you
17 talked about early on in February of 2003 as being a Godsend, a
18 blessing?

19 A My recollection is all interest groups were invited to
20 submit information to the Task Force as they were preparing
21 their report. And, yes, we did submit things to them.

22 Q And would it be surprising that the blessing or the
23 Godsend was the fact that the Task Force was willing to accept
24 the language that you, the coalition, wanted?

25 A I don't know whether they accepted all the language we

1 submitted, what was accepted and what wasn't, because I didn't
2 see all of it, so I don't know.

3 Q Well, this goes to an interesting question, if I might
4 continue, Mr. Chair. You have indicated through us that this
5 bad faith is now the little thing that is going to bite you in
6 the butt, going to cause the increase in rates and stuff like
7 that.

8 Now, I am taking from your own data that your income
9 showed that your company, the Florida company, took in
10 \$220,865,000 in revenues.

11 A Are you talking about the insurance company, sir?

12 Q That's what I am going on, is your annual report.

13 A That is not correct.

14 Q What did you take in then?

15 A For 2002?

16 Q 2002, sir.

17 A \$101 million.

18 Q Okay, \$101 million.

19 A Sir?

20 Q How much was paid out, how much was paid out in
21 losses?

22 A I think you're reading from the financials of the
23 holding company.

24 Q Okay. Let's take the financials from the holding
25 company.

1 A I'm not an expert in those financials. I'm basically
2 familiar with them, but if you want to ask questions about
3 those, I would warn you now, I'm not the best witness on those.
4 My understanding may not be correct. I work for the insurance
5 company.

6 Q All right. Well, let's take the holding company
7 first, and then we are going to go into FPIC.

8 SENATOR VILLALOBOS: Mr. White, if you don't know,
9 just say so.

10 SENATOR CAMPBELL: I would appreciate your saying you
11 don't know.

12 SENATOR VILLALOBOS: If you're not sure, just say
13 that, too, okay?

14 BY SENATOR CAMPBELL:

15 Q In 2002 you reported a loss because you took a
16 one-time approximate \$30 million loss based upon an accounting
17 change regarding the amortization of goodwill and other assets.
18 Do you know what that was?

19 A Yes, I believe I do.

20 Q What is it?

21 A Now, it had to do with the Financial Accounting
22 Standards Board, Ruling Number 142 that required every company
23 in the United States to do a fair market value of goodwill and
24 adjust their books for the fair market value of the goodwill
25 they are booking on their financial statement.

1 Q Sounds like you know a little bit more about this than
2 you're --

3 A I know about the ruling.

4 SENATOR VILLALOBOS: Senator Campbell --

5 BY SENATOR CAMPBELL:

6 Q Let me move on. The income statement for your holding
7 company said that they took in \$220,865,000 in total revenues
8 and had \$197,155,000 in total expenses. Does that sound right?

9 A That sounds right, yes, sir.

10 Q And they said of those total expenses, \$139,511,000
11 were for net losses or loss adjustment expenses. What are
12 those?

13 A That would be the payments we make to folks, that
14 would be the allocated loss adjustment expense. I assume they
15 book those, and I don't know how -- they use gap accounting.
16 We use statutory accounting. I assume there are incurred
17 losses in there which also include reserves, but I can't say
18 that for sure.

19 Q This would indicate, if I read the figures, that
20 \$60 million was paid to claimants.

21 A I don't know how you get there, I'm sorry.

22 Q Out of your 101 million, how much was paid to
23 claimants?

24 A Well, if you will bear with me for a minute, I will
25 look it up for you.

1 Q Sure.

2 SENATOR VILLALOBOS: Senator Campbell, wrap this up.

3 Senator Aronberg has a couple of questions.

4 SENATOR CAMPBELL: Sure.

5 A According to the annual statement we filed with the
6 Insurance Department, for medical malpractice in Florida, we
7 paid \$44.6 million to patients, and -- I said that was Florida.
8 That is all states, excuse me, \$44 million in all states in
9 direct paid losses to patients. We are trying to get you the
10 allocated loss adjustment expense.

11 BY SENATOR CAMPBELL:

12 Q Can we get Florida from your company?

13 A You could get Florida from us. We don't file it that
14 way in this book.

15 SENATOR CAMPBELL: I am almost done, Mr. Chair,
16 because I do know there's other people.

17 BY SENATOR CAMPBELL:

18 Q So \$101 million was the premium for the Florida
19 company; \$44 million was paid in all states, so Florida would
20 be much less?

21 A Are you sure that's all states? And we paid
22 \$24.3 million in allocated loss adjustment expense.

23 Q I didn't hear that.

24 A We paid 23 -- I'm sorry, \$24.3 million in allocated
25 loss adjustment expense.

1 Q In Florida?

2 A In all states.

3 Q In all states?

4 A Yes, sir.

5 Q And that is for what? Cost of defense? Expert
6 witnesses?

7 A Yes, sir.

8 Q How much did we pay in Florida? You took in
9 \$101 million in premiums.

10 A We can get that for you if you would like.

11 Q Sir, that's important because we've got to find out if
12 there really is a crisis. Last thing, and I'll yield to
13 Senator Aronberg. You took off -- at least your consolidated
14 statement said \$33 million for claim administration and
15 management expenses. What is that?

16 A That's the two companies we own; one, Administrators
17 for the Profession, which manages Physicians for Insurers
18 Reciprocal in New York, and a TPA that handles health and
19 workers' comp claims for school districts and governmental
20 entities here in Florida.

21 The income and expenses that you're talking about
22 there in terms of fees and expenses would be for their
23 operation. The fees would be what they earn for those
24 services, and the expenses would be like our other underwriting
25 expense.

1 SENATOR VILLALOBOS: Senator Aronberg.

2 SENATOR ARONBERG: Thank you, Mr. Chair.

3 EXAMINATION

4 BY SENATOR ARONBERG:

5 Q Thank you, Mr. White, for being here. On October
6 21st, 2002, at the Governor's Select Task Force, you testified
7 that there is but one cure for what ails Florida's tort system,
8 and that is an absolute cap on non-economic damages.

9 You also said there is no alternative but to cap these
10 losses. And then on December 3, 2002, you said that the only
11 thing that will bring premiums down is to cap non-economic
12 damages at some level. And then finally you said an absolute
13 \$250,000 cap on non-economic damages will have the greatest
14 impact on rates in Florida. Do you still agree with that?

15 A Well, I think in all of those presentations, you will
16 see that I also mentioned bad faith as an issue. I think in
17 each and every one of those, you will see that we talked about
18 the need for bad faith.

19 I think the thing the cap does, as I mentioned before,
20 is it produces predictable losses, and predictable losses bring
21 about stable rates.

22 Q But you did say that the only thing that will bring
23 down premiums is to cap non-economic damages.

24 A Yes, sir, I did say that.

25 Q There's no room for bad faith when you say the only

1 thing is a cap.

2 A Well, I was obviously speaking -- and I think if you
3 will look and read on in all of those presentations, you will
4 see I also mentioned bad faith, and I also mentioned other
5 things as well.

6 Q Will a \$250,000 cap in non-economic damages and
7 nothing more, will that do anything to lower medical
8 malpractice rates in Florida?

9 A Well, it depends on what kind of -- is it a \$250,000
10 absolute, hard --

11 Q Absolute cap.

12 A Will it bring rates down? Yes. Across the board, it
13 will lower rates for physicians.

14 Q Then, then why in a letter on June 18th to the
15 Governor did you say that the House bill will not allow us to
16 lower our rates and, in fact, will result in significant
17 premium increases?

18 A Because it not only included caps, but it included
19 other things. And those other things, particularly the change
20 in extending the pre-suit to 180 days and defining bad faith as
21 offering the policy limit in pre-suit, I don't know any insurer
22 in Florida who could process claims that fast. It would do one
23 of two things: Drive rates through the roof, or drive the
24 industry out of Florida.

25 Q Well, the changes in bad faith in the House bill, is

1 that better or worse than current law?

2 A Are you talking about --

3 Q The House bill where you wrote to the Governor saying
4 the House bill will raise rates, even though the House bill had
5 a 250 hard cap.

6 A Right.

7 Q So you're saying because of additional bad faith, the
8 change -- that would cause the rates to increase?

9 A Yes, sir, absolutely.

10 Q You're saying the House bill bad faith provisions are
11 worse than the current bad faith provisions?

12 A Absolutely. In the bill as it existed when I wrote
13 that letter, okay, in the bill as it existed when I wrote that
14 letter, that was true.

15 SENATOR ARONBERG: May I continue?

16 SENATOR VILLALOBOS: Yes.

17 BY SENATOR ARONBERG:

18 Q Okay. Does the fact that there's a tight reinsurance
19 market and the failing bond market in recent years, did that
20 have anything to do with your increase in insurance premiums
21 for medical malpractice?

22 A Well, reinsurance costs have gone up to some extent.
23 It is available. It is not prohibitively expensive. In terms
24 of the bond market, we are required to give the insurer the
25 value of the time, or the benefit of the time value of money.

1 So when bonds drop, when our investment returns drop, we have
2 to collect more premium, because there is less investment
3 income coming in.

4 Q Right. What kind of effect did the tight reinsurance
5 market and then the failing bond market have on the rates?
6 That's what I am trying to figure out. If you can break it
7 down, because you said that it's the litigation problem. But
8 there is a reinsurance problem and a bond market problem; isn't
9 there?

10 A Well, we are still insured with the same consortium,
11 basic consortium of reinsurers. They did raise our rates. Our
12 actuary tells me that the rate impact of the change in our
13 reinsurance rates was about three points on this rate increase.

14 Q Three points? And what about the bond market?

15 A We believe that's 7 percent.

16 Q Seven percent for the bond market; three percent for
17 the reinsurance market?

18 A Yes.

19 Q Okay. And, furthermore, in a -- you said that your
20 rate of return on your investments in 2000 was 5.1 percent,
21 2001 it was 5.5 percent, and then in 2002, 2.757 percent. But
22 that's lower than either the Treasury or investment rate bonds.
23 So why are your expected rates ore return, your investments
24 lower than the standard rate of return for investment rate
25 bonds?

1 A You said I said. Are you talking about what we
2 included in the rate filing?

3 Q In the rate filing, excuse me, the FPIC rate filing.

4 A The rates that people talk about are before taxes.
5 What goes in the rate filing is after federal income tax has
6 been deducted. That's why there is a difference between the
7 two.

8 Q Okay. Thank you. And then my final question is: You
9 have 70 percent of your holdings in bonds; is that correct?

10 A That's not correct.

11 Q What about --

12 A Seventy percent of our assets are in bonds, if that's
13 what you mean, yes.

14 Q Seventy percent of your assets are in bonds. What
15 percent of your assets are in stocks?

16 A Less than one-tenth of one percent, I would imagine.
17 The only stocks we own, we have 300 shares, 100 shares each of
18 three of our competitors. That's the only stocks we own. We
19 are betting on them.

20 SENATOR VILLALOBOS: Would you care to disclose to the
21 rest of us who they are?

22 MR. WHITE: That is proprietary information.

23 BY SENATOR ARONBERG:

24 Q My question is about the final 30 percent. What is
25 the final 30 percent?

1 A Most of the 30 percent is not money. The biggest
2 thing, what we call the premium receivables account, a lot of
3 our insurance is sold on installments. And we collect -- let's
4 say a premium was \$100. We would collect \$20 today, and book
5 that as a cash asset, obviously, which we could invest. But
6 \$80 dollars, we don't have, because the doctor's paying in
7 installments. So we have \$70 million in premium receivables,
8 generally speaking, at any point in time during the year.

9 Q Do you have a rate of return for that 30 percent?

10 A No. What I am telling you is it's not money.

11 Q It's not money at all, so really the only money you're
12 making through the bond market, even though it over performed,
13 you're saying the difference between the amount that the bond
14 market performed and the percent listed in your rate filing is
15 because of taxes?

16 A Right. If you look at our rate filing, there's a page
17 that deals with what's called the imbedded yield, how we get to
18 our imbedded yield, and that's a formula that's set by the
19 State. All we do is fill in the blanks.

20 Q And my very, very final, I promise, final question,
21 Mr. Chair, is this: I have to know this. When the competitors
22 came in the mid-nineties and came and undercut you during when
23 was the stock market was reaching highs, did FPIC, in fact,
24 lower rates to compete with them? Or did they keep their rates
25 as is? Because I've seen testimony on both sides of this.

1 Q Just one quick question similar to what I asked Mr.
2 Roddenberry. What percentage of the premium dollar goes to
3 administration overhead?

4 A Well, it varies from year to year, and sometimes there
5 are transactions that can lower your expense ratio. For
6 example, last year, our expenses were very low because we
7 entered into a different type of reinsurance contract that we
8 get a seeding commission from that directly offset some of our
9 expenses. For last year, it was 15 percent. That means 85
10 percent of the dollars we collected were set aside for losses,
11 and 15 percent were used to run the company, essentially.
12 Actually, more than that, because we sustained an underwriting
13 loss last year in the sense of measuring premiums and, and
14 booking losses.

15 Q Would the dollars that are set aside for losses --
16 when I think of overhead and administrative costs, I would
17 think of that as being included in the total dollars. But
18 you're not -- you're separating that out?

19 A We separate in the lines in this book, which is filed
20 every year with the Department of Insurance, over 100 pages of
21 everything we do. We separate out three things that tell you
22 about our company. Number one is the premiums. Number two are
23 the losses that we book, both the indemnity and ALA portion.
24 And number three would be the other underwriting expense or the
25 operating expenses of the company.

1 Q As a thought, Mr. Chairman, the Task Force report
2 talked about the average, the average dollar spent in premium
3 that -- I think it was around 40 percent was paid, 40 to 43
4 percent was paid to the claimant, and it was a certain
5 percentage. At one time I think it was somewhere in the
6 neighborhood of 15 to 17 percent. Does that fluctuate much?

7 A Well, I have seen the pie chart you're talking about.
8 I'm not sure exactly where it came from. I have seen, like
9 health and human services. It could vary from year to year, I
10 would imagine. But the breakdown they have in the, in the Task
11 Force report is, I think, generally accurate from any given
12 year, in any given year.

13 Q Thank you.

14 SENATOR VILLALOBOS: Senator Peaden.

15 SENATOR PEADEN: Thank you, Mr. Chairman.

16 EXAMINATION

17 BY SENATOR PEADEN:

18 Q I have got a couple of quick questions here. Number
19 one, I may have missed this in the conversation, but the trend
20 of what the size of the policies these physician carry, is that
21 going down or up?

22 A There is no question about it, doctors are switching
23 to lower limits as a mechanism to manage their insurance cost.

24 Q And you heard the questions I asked Mr. Roddenberry
25 about the procedures to sequester away funds for reserves.

1 Would you disagree with anything he said?

2 A About reserves?

3 Q About how the reserves are identified, when they are
4 identified, and why they are kept a certain amount of time. I
5 think he said -- I think he mentioned nine years.

6 A I didn't listen closely to everything Mr. Roddenberry
7 said.

8 Q If you have got a second, just how do you identify the
9 reserves? And when do you tag a reserve? And how long do you
10 keep it in place, please, sir?

11 A Well, there's two ways we do it. One is for the
12 financial statement, which is, we determine -- we make
13 assumptions, and we book -- as the premium comes through the
14 door -- a particular amount of money for that year's claims.
15 And as these claims come through the door, okay, and start to
16 develop, we draw money from our bulk reserve to put over on
17 cases. And we make our rates, not from our bulk reserve, but
18 from our case reserves.

19 Q And I asked him about targeting. Now, when you target
20 a reserve, are your targets usually above or below the
21 anticipated settlements or your judgments?

22 A Well, every, every insurer wants to be over reserved.
23 There's no question that we try to be on the long side if we
24 can be.

25 There's a fine line we have to walk, because we have

1 several agencies, including the IRS, that look at our reserves
2 on a regular basis, and they can't be too far past a certain
3 point. And our reserves in the past have generally developed
4 so that we start out with a bigger number, and it gets smaller
5 over time.

6 Q So if you inaccurately estimated or augmented your
7 reserves or had them below the standards, you could -- there
8 would be a chance that the truthfulness of what your
9 profitability or losses were would be affected by those
10 changes?

11 A Well, what happens is, as Senator Campbell already
12 pointed out in reading some of the conference calls, there were
13 years where we were under reserved. And so we take money out
14 of the current year as it comes through the door, and we put
15 the money back in the years where the reserves are short.

16 Q And one final thing. You mentioned the frivolous
17 lawsuits, now -- and you said that they had gone down since the
18 last reform 10 years ago. What would you estimate your number
19 of percentage of reserves -- or your percentage of claims were
20 that were non-meritorious?

21 A Well, non-meritorious? I don't think there's any
22 frivolous cases in Florida, first of all. You used the word
23 frivolous in part of your question. I don't believe there are
24 frivolous causes in Florida.

25 Non-meritorious cases, about half the claims that are

1 made against physicians wind up being settled. So if you look
2 at it in terms of what we pay, it's about half and half. But I
3 believe that some of the non-meritorious cases we pay in
4 another state with different laws, we might try and close with
5 no payment.

6 Q But is it true in your brochures that you say you
7 settle 20 percent non-meritorious cases?

8 A Well, we don't say we settle 20 percent of
9 non-meritorious cases. That's a marketing brochure that we no
10 longer use that was used in the past, that said we basically
11 closed 80 percent of our cases with no payment to the patient,
12 that's correct.

13 Q Okay.

14 SENATOR VILLALOBOS: Any further questions for Mr.
15 White? Thank you, sir.

16 Jeff Scott. Thank you for coming. Raise your right
17 hand. Do you swear or affirm that the evidence you're
18 about to give will be the truth, the whole truth, and
19 nothing but the truth?

20 MR. SCOTT: I do.

21 EXAMINATION

22 BY SENATOR VILLALOBOS:

23 Q Thank you, thank you for being here. Can you state
24 your name and your occupation?

25 A My name is Jeff Scott. And I'm the counsel for the

1 Florida Medical Association.

2 Q And you've been doing that for how long?

3 A About seven years.

4 SENATOR VILLALOBOS: Okay. Senator Campbell.

5 EXAMINATION

6 BY SENATOR CAMPBELL:

7 Q Mr. Scott, I have a series of questions, if I might.

8 Do you know how many physicians are licensed in Florida?

9 A Exact numbers, no, sir.

10 Q Approximately?

11 A I have heard upwards of 50,000.

12 Q And how many members, or how many physicians are
13 members of the FMA?

14 A Approximately 16,000.

15 Q 16,000?

16 A Correct, sir.

17 Q Do you know how many doctors have left Florida in the
18 last year?

19 A No, sir.

20 Q How about the last five years?

21 A No, sir.

22 Q Do you know why the FMA continues to tell the press
23 that numerous doctors are leaving the State of Florida? You
24 don't know?

25 A I don't know that we have ever said an exact number,

1 sir.

2 Q Could you tell me how many practices have shut down in
3 the last year?

4 A No, sir.

5 Q How many in about the last five years?

6 A No, sir.

7 Q Do you know why the FMA is continually going to the
8 press saying that the practices are being shut down in enormous
9 numbers?

10 A I don't think we have ever said enormous numbers, sir.

11 Q What does the FHA say about the number of practices
12 that are being shut down?

13 A We know that individual physicians have decided to
14 shut down their practice.

15 Q How many?

16 A Like I stated earlier, we do not know the exact
17 number.

18 Q Do you know for what reasons they are closing down?

19 A The reason that they have given us are varied. There
20 are reasons of, obviously, the high cost of malpractice
21 insurance, and that's obviously the factor that we have focused
22 on.

23 Q That is an interesting question. I understand FPIC is
24 the endorsed carrier of FMA; is it not?

25 A Yes, sir.

1 Q How much of a premium does FPIC get by virtue of this
2 alliance?

3 A Those questions I have been instructed to leave to
4 Sandra Mortham, who you invited here today. She said she would
5 handle those questions.

6 Q Does FPIC pay any money to the FMA for endorsements?

7 A Again, that is an area of questions Ms. Mortham has
8 instructed me to leave to her.

9 Q Do you know if FPIC endorsements prevent the FMA from
10 seriously discussing alternative insurance vehicles and
11 insurance reform to assist physicians in the State of Florida?

12 A No, it does not.

13 Q Why not?

14 A Because as a membership association that represents
15 the interests of our clients, we are interested in looking at
16 any possible solution that would benefit them.

17 Q What is the purpose of payments that you receive from
18 FPIC?

19 A Again, that is an area that Ms. Mortham has indicated
20 she would like to handle.

21 Q Are the agreements in writing between this insurance
22 carrier and the FMA?

23 A There is a contract, yes.

24 Q Are premiums discounted for physicians that are
25 members of the FMA and buy a FPIC product?

1 A Yes, sir.

2 Q We have been given some information that some
3 physicians were being charged \$280,000 for \$250,000 worth of
4 coverage.

5 Now, Mr. White just testified that, in fact, I believe
6 in Miami-Dade County, it would be more in the range of \$68,000
7 as opposed to \$280,000. Where did the divergence in the
8 numbers come from?

9 A If you could tell me where the information came from,
10 I may be able to explain it you. I know certainly I've never
11 represented those types of numbers to the Committee.

12 Q Not you, but the FMA.

13 A I'm not aware of anybody from the FMA who has done
14 that. And if you have that information, I will be certainly
15 glad to look into where it came from and how they came about
16 it.

17 Q Do you favor mandatory financial responsibility for
18 insureds, for doctors?

19 A No, sir.

20 Q And why not?

21 A We believe that given the high rates, especially in
22 South Florida, that it would be an absolute disaster for this
23 Legislature to mandate insurance coverage on physicians.

24 It simply -- from many of them, it's unaffordable, and
25 to require them to have it would have devastating results.

1 Many of them simply would not be able to remain in this state.

2 Q What are the rates for the physicians in Miami-Dade
3 County for specialties such as OB/GYN for \$250,000?

4 A For an OB/GYN for a \$250,000 policy, I can't give you
5 an exact figure. I have that information, and I would be glad
6 to get it to you.

7 Q Can Ms. Mortham give that to us?

8 A She probably doesn't have that information at her
9 fingertips either.

10 Q What is it for a neurosurgeon?

11 A I don't know the exact information, but I do
12 have that. I will be happy to provide it to you.

13 Q How about for an orthopedic surgeon?

14 A Again, I have seen those figures. I have those
15 figures, but I'm --

16 SENATOR VILLALOBOS: Senator Campbell, rather than go
17 down all the different specialties in medicine, which I am
18 sure they are quite varied, do you have the numbers for any
19 of them?

20 MR. SCOTT: No, sir, I don't have the exact figures.

21 SENATOR VILLALOBOS: That should save 20 minutes.

22 SENATOR CAMPBELL: Yes, it did.

23 BY SENATOR CAMPBELL:

24 Q Can you tell me whether there are any cases that
25 you're aware of that patients have been denied care because of

1 the malpractice insurance crisis?

2 A Any specific patient?

3 Q Yes, sir.

4 A I have heard of instances of that. I have seen
5 articles in newspapers that have reflected instances where
6 physicians were no longer available to patients, and the
7 patients then had to go and receive care elsewhere.

8 I have had conversations with physicians since this
9 process began. I have listened to physicians give testimony to
10 the Governor's Task Force, the House Select Committee on
11 Liability Insurance. I have listened to the testimony that was
12 produced there.

13 At the time, at this specific moment, I'm not prepared
14 to give you an exact incidence of a particular patient that has
15 been denied access to care.

16 Q A lot of anecdotes but no facts?

17 A A lot of anecdotes from --

18 SENATOR VILLALOBOS: Wait a second, Senator Campbell.
19 If you have a question, ask him a question. If he knows
20 the answer, he will answer it. If he doesn't, then that's
21 the answer.

22 BY SENATOR CAMPBELL:

23 Q The FMA has continually said that the problem with the
24 medical malpractice insurance crisis in the State of Florida is
25 the enormous amount of frivolous lawsuits. Can you give me any

1 frivolous lawsuits that you're aware of?

2 A Senator, I'm not aware of any instance in which we
3 said that the problem is the enormous amount of frivolous
4 lawsuits.

5 I think it's matter of semantics about what you call a
6 frivolous lawsuit. I chair a committee that looks into expert
7 witness testimony. And I have several cases that are currently
8 before that committee that deal with expert witness testimony
9 that we believe is a gross misrepresentation of the standard of
10 care.

11 EXAMINATION

12 BY SENATOR VILLALOBOS:

13 Q One second. That's -- but you're not talking about
14 attorneys, you're talking about physicians then; aren't you,
15 that are testifying against other physicians?

16 A Experts, yes, sir.

17 Q Okay. So the committee that you're talking about,
18 you're talking about physicians that, in your opinion,
19 testified against a fellow physician. And you feel as though
20 that one is not telling the truth, and that's why there was a
21 judgment against one of your physicians. Is that what you're
22 talking about?

23 A It may not have resulted in a judgment, but it is an
24 instance that we believe that the testimony was not
25 representative of the true standard of care. And that is the

1 the defendant.

2 You remove that loophole, then you go right in the
3 back door and say that the qualifications that we have listed
4 are not the only ones that the judge can consider in deciding
5 whether to qualify or disqualify an expert. And it's that
6 loophole that does not fix the problem.

7 Q Mr. Scott, I believe the expert witness provision that
8 was in the Senate bill is the expert witness agreement that was
9 forged between the trial lawyers, the FMA, the Osteopathic
10 Society three years ago and was written off by everybody.
11 Everybody was happy. You were all holding hands, signing
12 Kumbaya.

13 SENATOR VILLALOBOS: That is Kumbaya, Senator
14 Campbell.

15 BY SENATOR CAMPBELL:

16 Q The people that killed it was Shands hospital, for
17 whatever reason.

18 A Yes, sir, that was a product of an agreement that was
19 signed off on by the FMA. At the time we signed off on it,
20 they told me that we cut a bad deal. And it was something --
21 that provision was something that we sought to rectify in the
22 previous -- the following year.

23 SENATOR CAMPBELL: Thank you, Mr. Chair. Senator
24 Aronberg has a question.

25 SENATOR VILLALOBOS: Senator Aronberg.

1 know, in talking about those physicians that you guys were
2 reviewing. Is it your belief that there are a lot of frivolous
3 lawsuits filed by attorneys?

4 A I believe that there are many instances of lawsuits
5 being filed in which you had a bad outcome, that it was not the
6 result of negligence or deviation from the standard of care on
7 the part of the physician. And if that is the way you want to
8 define frivolous, then that's the way we can define it.

9 I would consider that a -- it's hard to -- as you
10 know, there is a statute that deals with frivolous cases. And
11 these cases probably would not meet the definition of that
12 standard, because they have a physician who is going to sign
13 the affidavit that allows the lawsuit to go forward. So you
14 can't call that a frivolous case under the definition of
15 frivolous as is put forth in the statute.

16 Q Well, I am an attorney, and what I am hearing is it is
17 all the attorneys' fault. I mean, I don't do this type of
18 practice, so it is not my fault, but that's what I hear a lot.
19 And is it or isn't it? I mean, is it part of the problem that
20 attorneys are filing large numbers of frivolous lawsuits?

21 A I don't think we have ever said it is all the
22 attorneys' fault. We have definitely agreed that a significant
23 factor behind this is physicians who are misrepresenting the
24 standard of care in their expert testimony. And that's why --

25 Q Let me stop you there. Then it is not the attorneys

1 filing frivolous lawsuits, it's physicians that are
2 misrepresenting facts before a court that is getting other
3 doctors in trouble; is that your testimony?

4 A Unless it's the attorney who goes to this physician,
5 knowing full well that he is a physician for hire, and that he
6 will misrepresent the actual standard of care for a fee.

7 Q Well, but then the problem, though, the attorney is an
8 advocate, okay? The problem, then, and your testimony is that
9 there are certain physicians that are hired guns; is that
10 correct?

11 A Absolutely.

12 Q Okay. And then they go before a judge, and they
13 misrepresent the facts in a case; is that correct?

14 A Absolutely.

15 Q And that results in what you believe to be an unfair
16 number of actions filed against your members; is that correct?

17 A That would be correct.

18 Q Okay. Thank you.

19 SENATOR VILLALOBOS: Anything further? Senator Smith.

20 SENATOR SMITH: Thank you.

21 EXAMINATION

22 BY SENATOR SMITH:

23 Q Just, I would like to follow up on that just briefly.
24 You used the term, "hired guns," and I've heard that. And,
25 frankly, from my past life, I know that experts in any number

1 of fields can be seen that way.

2 One of the things we are hoping to avoid is to try to
3 get away from this cottage industry of where the defense has
4 their hired guns and the plaintiffs have their hired guns, and
5 that's kind of -- everybody knows in advance, oops, this is the
6 guy I go to get my opinion because he will testify for me.
7 It's true, isn't it, that the hired gun thing is a problem in
8 two different directions, though?

9 A Certainly.

10 Q One of the things I was wondering about is if we did
11 more on the front end in the pre-suit hearings, maybe required
12 more detail in the affidavit and more detailing in the, in the
13 demand -- in the initial letter of notifying somebody of a
14 potential lawsuit, do you think that if we strengthen on the
15 front end, would that -- you use the term non-meritorious, and
16 I think you're right. I don't think there are any frivolous
17 claims that meet the statutory definition.

18 Frankly, I think it's also pretty difficult, isn't it,
19 to justify that you would even file something, you know, to be
20 pretty much without merit, anyway, because the cost of doing
21 these is quite expensive; you'd agree with that?

22 A It is very expensive to file these suits.

23 Q I mean, there is a certain economic deterrent to
24 somebody to go out there and file a letter and try to get
25 involved?

1 A Well, filing the pre-suit affidavit in and of itself
2 doesn't cost a whole lot. And, you know, to the extent that
3 there are a large amount of damages that you could settle for
4 quickly, there is an incentive to do that.

5 Q If there is a danger, it would seem to be only at the
6 very front end. Maybe if we required -- you have seen where we
7 have upped the requirement for expertise, but there has been
8 some discussion about requiring more expertise on the front
9 end, both as to the defense and the plaintiff's case, more
10 disclosure as to the defense and the plaintiff's case during
11 the pre-suit. How would you react to that?

12 A We certainly support the provisions that require the
13 pre-suit expert to be in the same or similar specialty as the
14 defendant, we are absolutely in favor of that.

15 Q How about having the defense state out and have its
16 experts state out the basis for its defense in the pre-suit
17 period?

18 I mean, we are not going to do any good in this
19 process if we are trying to play gotcha. By July there ought
20 to be a cutoff on gotcha. Now we are in July. I'm looking for
21 something that is kind of equal positive and negative impact.

22 If we are going to tell the plaintiff's lawyers they
23 have got to have subspecialty experts, and they've got to have
24 more detail in their letter, then what about -- and I'm asking
25 you -- what about having the doctor who is defending set forth

1 what their defense is and what their experts are saying during
2 the pre-suit period, too?

3 A I think they do to a certain extent. They set forth
4 their theory on whether the case is defensible or not. And I
5 don't know that in the pre-suit period that you have enough of
6 an opportunity to formulate your entire theory of the case. So
7 I don't know how -- you know, what the cutoff here, how much
8 are we talking about --

9 Q I guess --

10 A -- whether it's going to be practical or not to do
11 that.

12 Q I'm not trying to be problematic. I guess what I'm
13 trying to ask: Some people have advanced to me an idea from a
14 wide array of people that what we ought to do is get more
15 information, more expertise during pre-suit; that both sides
16 are locked in much more to -- with much more detail, not to say
17 I don't find you have a good lawsuit, or I find this to be
18 below the standard of care. Detailing the ways in which the
19 standard of care has been deviated from, and detailing the
20 response as to ways in which the standard of care, as alleged,
21 has been met.

22 How would you react to a much more aggressive
23 pre-suit? Does that drive up costs? Does it drive up
24 problems? Or does it help solve the meritorious claims, in
25 your view?

1 the defense. I mean, why bring somebody from out of state?
2 How would you make them accountable?

3 A We have the provision for that. We would require them
4 to -- before they testify in Florida, they would show their
5 license to the Board of Medicine or the Department of Health,
6 and get an expert witness certificate that would then allow
7 them to testify in Florida.

8 Q But the court makes that determination, and the court
9 makes that determination on everything. So if that's the case,
10 you know, are you going to have the Department of
11 Transportation, you know, certify engineers before they can
12 qualify as an expert witness on a road design case or something
13 like that?

14 I mean, you know, the court does that. There's a
15 process in law by which an expert is tendered as an expert.
16 You know, questions are proffered, and taken back and forth in
17 testimony, and they are either declared an expert or not. I
18 mean, what you are saying is to do away with that as an
19 exception for healthcare?

20 A No. What we're saying is that the court can still
21 make a determination as to whether they believe they are a
22 qualified expert. But as a threshold matter, if they were
23 going to testify as an expert, they should simply have what we
24 call an expert witness certificate, that it is something, then,
25 that would allow the Board of Medicine to discipline if, in

1 fact, this expert from out of state gives testimony that is a
2 gross deviation, fraudulent or a gross deviation from the
3 accepted standard of care. The problem is that --

4 Q And have who, the Department of Health, do that?

5 A The Department of Health or the Board of Medicine.

6 Q Or the Board of Medicine. Okay.

7 A Yes, sir.

8 SENATOR VILLALOBOS: Senator Clary.

9 EXAMINATION

10 BY SENATOR CLARY:

11 Q As a follow-up, I was curious, the hired guns, as you
12 call it, are they generally members of the FMA or not?

13 A I don't know specifically of any hired guns that are
14 FMA members.

15 Q Does the, does the FMA work with, I guess, maybe the
16 AMA in terms of trying to put accountability standards in
17 professional testimony as these hired guns may be brought into
18 play?

19 A Yes, sir. The FMA has brought resolutions to the AMA
20 asking for a greater level of accountability in expert witness
21 testimony.

22 Q Thank you.

23 EXAMINATION

24 BY SENATOR VILLALOBOS:

25 Q So it's not true that you have little dart boards with

1 their pictures on them, and you throw darts at them during
2 lunch?

3 A No, sir.

4 Q Well, if it isn't, it ought to be, right?

5 SENATOR VILLALOBOS: Senator Peaden, do you have one
6 more question?

7 EXAMINATION

8 BY SENATOR PEADEN:

9 Q I want to get back to what Senator Smith asked about
10 the pretrial proceedings, whether we have a panel or whether we
11 have mediation, and whether that would enable you to flesh out
12 the hired gun that wasn't really qualified.

13 Is that your thought, that we should have that kind of
14 exposure early on? Or we should look to the subsequent
15 treating physician? Or which one of those proceedings would
16 have the most value for the system?

17 A Well, we certainly believe that the subsequent
18 treating physician problem would -- it's definitely something
19 that needs to be fixed. It's inequitable, and it would bring a
20 great deal of -- it would level the playing field in the
21 system. We certainly believe that is something that needs to
22 be done.

23 Q But my question was: Do you think if the subsequent
24 treating physician had an opportunity, whether it was a sworn
25 statement in the presence of both parties, would that help you

1 more easily qualify your expert witness or whoever signs the
2 affidavit?

3 A Well, first of all, we don't believe that it should be
4 in the presence of both parties. We should have the same
5 access that the plaintiff has to those type of witnesses. But
6 that information certainly would help us to evaluate the case
7 quicker.

8 SENATOR VILLALOBOS: Anymore questions?

9 EXAMINATION

10 BY SENATOR VILLALOBOS:

11 Q Let me ask you one last question. Do you know if FPIC
12 has given the FMA an economic incentive to support the FPIC
13 position on bad faith?

14 A I am sorry, I didn't understand your question.

15 Q Do you know whether or not FPIC has given the FMA
16 financial incentive to support FPIC's position on bad faith?

17 A Absolutely not. They have not given us any incentives
18 to support their bad faith position.

19 Q All right. Thank you.

20 SENATOR VILLALOBOS: Sandra Mortham. Good afternoon.
21 Do you swear or affirm that the evidence you're about to
22 give will be the truth, the whole truth, and nothing but
23 the truth?

24 MS. MORTHAM: Absolutely.

25 EXAMINATION

1 BY SENATOR VILLALOBOS:

2 Q State your name and your occupation, please.

3 A Sandy Mortham, CEO of the Florida Medical Association.

4 Q And is there a dart board with pictures on it?

5 A Absolutely not.

6 Q I have a couple. I have a couple.

7 SENATOR VILLALOBOS: Senator Campbell, you have some
8 questions that were not answered by the previous witness?

9 EXAMINATION

10 BY SENATOR CAMPBELL:

11 Q How much a year does FPIC pay the FMA to be the
12 endorsed carrier?

13 A \$500,000 a year.

14 Q Has it given any additional sums of money to
15 directors, officers for any type of political campaigning that
16 they might have for additional jobs in leadership of the FMA or
17 the AMA?

18 A I'm not sure what you're asking.

19 Q Well --

20 A My current -- our current board of the FMA, do they
21 receive remuneration from FPIC? Not to my knowledge.

22 Q If I was president of the FMA, and I decided I want to
23 run for the AMA, do you know if FPIC is giving any type of
24 campaign contributions for outside campaigns?

25 A Okay. The only thing that I think you could be

1 referring to is I believe FPIC gave \$50,000 when one of the
2 former presidents of the FMA ran for an AMA position. That's
3 the only campaign contribution I can imagine you're referring
4 to.

5 Q Do you know if FPIC also gives money to county medical
6 associations?

7 A Yes, they do. I believe that a couple of companies
8 actually give money to local counties.

9 Q And if you're a sole --

10 A I think I may have misrepresented. I do not believe
11 FPIC gives money to counties, but I do believe there is another
12 company that gives money to counties.

13 EXAMINATION

14 BY SENATOR VILLALOBOS:

15 Q To county medical associations?

16 A Correct.

17 Q Of the counties.

18 EXAMINATION

19 BY SENATOR CAMPBELL:

20 Q What company is that?

21 A ProAssurance.

22 Q How many insurance carriers write malpractice
23 insurance in the State of Florida?

24 A My understanding is I have heard four.

25 Q And can you tell us what is the purpose of the payment

1 of \$500,000 from an insurance carrier to the FMA to endorse
2 them?

3 A Well, I can tell you that I thought I might get a
4 question something like this, so I thought I would do a little
5 background research. And so we called every other state in the
6 nation to find out if, in fact, the state medical societies
7 were, in fact, endorsing insurance, malpractice insurance
8 carriers, and found that 30 state medical associations do, in
9 fact, endorse a company. And every one of those 30 states
10 received remuneration for that endorsement with the exception
11 of Montana.

12 They receive anywhere from 1 percent of the overall
13 budget, up to, in a couple of cases, over 30 percent. We
14 receive about 10 percent of our overall budget from this FPIC
15 endorsement, which I would say is probably average for all the
16 states that are endorsed.

17 It was actually kind of an interesting study. There's
18 only about eight states that do not endorse the carrier. And
19 then there are some states that have their own companies. And
20 there were several states that we weren't able to get the
21 information.

22 EXAMINATION

23 BY SENATOR VILLALOBOS:

24 Q Ms. Mortham, do you have to wear the little cap with
25 the logo like the Polo shirts or anything like that?

1 A I don't have one of those.

2 EXAMINATION

3 BY SENATOR CAMPBELL:

4 Q If I can follow up on some other questions. Has the
5 FMA indicated that the reason for the malpractice insurance
6 crisis in the State of Florida is an enormous increase in
7 frivolous lawsuits?

8 A Certainly I have never said that.

9 Q Is there an enormous increase in frivolous lawsuits?

10 A I wouldn't be in a position to answer the question.

11 Q Well, as the CEO of the Florida Medical Association,
12 would it be your opinion that there is no basis in fact to
13 indicate that there's an enormous increase in frivolous
14 lawsuits?

15 A I don't feel that I have the information to say
16 whether or not there are frivolous lawsuits in the State of
17 Florida. And that's -- I don't believe that's the reason we
18 are having this discussion.

19 Q Is this an enormous increase in the number of claims
20 against your members?

21 A It would be better for the carriers that represent
22 those doctors to answer that question.

23 Q Have your members told you that there is an enormous
24 increase in the number of claims presented against them?

25 A What they are telling us is that they are having

1 substantial problems paying their premiums. That's what they
2 are telling me.

3 Q Now, we have heard a divergence as far as the amount
4 that was actually being charged. And I would presume that the
5 FMA, as the representative of these doctors in the State of
6 Florida, would try to do as much research as you could do in
7 determining why insurance premiums are going up astronomically.
8 And you would agree with me they are going up astronomically;
9 wouldn't you?

10 A They have gone up.

11 Q The thing that concerns me the most, I guess, in this
12 whole debate is this concept of bad faith, which seems to have
13 now taken a forefront as to what is the solution.

14 And I am going to ask you, as a CEO of the Florida
15 Medical Association, why, under any circumstances, would your
16 organization want to have bad faith essentially done away with?
17 Which is actually the only thing that protects a physician from
18 the insurance company in a malpractice situation. It is an
19 adversarial situation.

20 Can you tell me why the FMA would be in the same room,
21 same category as the insurance industry, which would love to
22 see bad faith disappear?

23 A Senator Campbell, I think that what the FMA has said
24 from the day that we took this to our entire board of
25 governors, because this was a hotly debated issue, was that

1 they came out in support of the Governor's Task Force, which
2 included a changed bad faith. And beyond that, there's really
3 not an answer.

4 Q So you personally believe that the bad faith language
5 that's in the Task Force report would benefit physicians of the
6 State of Florida?

7 A I think that our board of governors voted to support
8 the Governor's Task Force, which includes the changed bad faith
9 under the -- the entire thing is we are trying to make it
10 better for the multitudes of doctors, so they can provide care
11 and continue access to patients.

12 This is all about patients and whether or not they
13 have access to care. And if it means that they are going to
14 have to bite the bullet on some issues, yes, they are going to
15 have to do that.

16 Q Well, I believe that an organization that represents
17 physicians would like to protect the physician. And this is
18 the only thing that protects the assets of the physician from
19 being squandered by an insurance company.

20 A Interestingly enough, our doctors are really more
21 concerned, believe it or not -- and I know some of you will
22 have difficulty with this -- that they want to continue to
23 provide care for their patients.

24 Q Did the FMA or any member of the coalition, if you
25 know, have any input into the language of the Governor's Task

1 Force on the rate rollback language?

2 A I don't know about specific to rate rollback, no.

3 Q The periodic payment language?

4 A I heard you read that list to somebody else. My
5 answer would be that we had input the same, I would assume, as
6 everybody else that was invited to the Task Force to submit
7 recommendations. I think that probably some were accepted, and
8 I can tell you some were rejected.

9 Q It's interesting that the members of the Task Force in
10 a meeting in December said that they thought that the \$250,000
11 non-economic damage cap was way too low. And yet when the
12 final report came out, that's the number that was put in there.
13 Do you know what changed those members' opinions?

14 A Hopefully, the information that came before the Task
15 Force.

16 Q And how did they get that information?

17 A By the people that provided testimony.

18 Q Thank you.

19 SENATOR VILLALOBOS: Senator Aronberg.

20 SENATOR ARONBERG: Thank you, Mr. Chairman.

21 EXAMINATION

22 BY SENATOR ARONBERG:

23 Q And thank you, Ms. Mortham, for being here. My
24 question is the same as it was to Mr. Scott. I just read an
25 article in the Florida Today, and I had one question that says

1 if federal securities records show FPIC and FMA called for the
2 association to get more money, unspecified amounts, if, quote,
3 certain targets are met, do you know what that refers to and
4 what targets they are?

5 A No. And, in fact, when you asked him that question, I
6 turned to our general counsel, who actually wrote the article.
7 When FPIC applied for this endorsement in 2001, we had no idea
8 what that means either.

9 Q Do you know anyone who would know more about that?

10 A I suggest you call Florida Trend and find out where
11 they got that from.

12 Q Florida Today.

13 A Or Florida Today. I never heard of that before.

14 Q Okay. Thank you.

15 EXAMINATION

16 BY SENATOR VILLALOBOS:

17 Q Ms. Mortham, do you know of any evidence of whether or
18 not there are a large number of either frivolous lawsuits or
19 non-meritorious lawsuits today versus five years ago?

20 A I don't know the answer to that question.

21 Q So what would you think, in terms of speaking on
22 behalf of your organization, that the claim of the medical
23 malpractice crisis, then, is -- as far as the information is
24 concerned, is not based on that information, it's on other
25 variables and other factors?

1 A I believe that the information --

2 Q I mean, namely, claims or rates are obviously very
3 high. I mean, that is a fact. And I am sure your physicians
4 don't care why that is. All they care is that is what they
5 have to pay. They have to pay it all the time. But other than
6 that, I mean, does the organization have any evidence that
7 there are more lawsuits today than there were five or 10 years
8 ago?

9 A Only anecdotal, just like the anecdotal information to
10 the physicians leaving the state.

11 Q So, then, there is no evidence other than anecdotal.
12 As a matter of fact, the evidence that is before this Committee
13 today from the Department of Health and the Agency for Health
14 Care, is that, in fact, they are not leaving the state, but
15 there's more physicians today than there were --

16 A Well, I'm glad you got to that question, because that
17 really bothers me a lot. Yes, there are more physicians here
18 today. And I believe there are more physicians here today than
19 there were five years ago. And there's also a huge increase in
20 the population from where it was five years ago.

21 So I am sure that there's a proportional shift.
22 However, to say that there aren't changes in the patterns of
23 practice, there are huge changes in the patterns of practice.

24 Are there physicians leaving the state? I could read
25 you pages of physicians that have left the State of Florida,

1 and this was put together this morning for this meeting today,
2 because I thought you might ask who are some of those
3 physicians that are leaving.

4 This is another group of physicians that have changed
5 their scope of practice. When you talk about emergency rooms
6 -- and I'm hoping that you will get to the hospitals here. But
7 there are, there are emergency rooms and trauma centers staying
8 open because they are having to bring physicians from out of
9 the State of Florida to keep those trauma centers open.

10 Taxpayers are having to subsidize the trauma center in
11 Orlando to keep it open. Now, for how long this can continue,
12 I don't know.

13 Q The taxpayers subsidize all emergency rooms.

14 A Well, that's true. But, you know, at some point, at
15 some point -- and has anybody not gotten care? I hope not. I
16 hope everybody gets care. I hope every emergency is taken care
17 of. We have done everything possible to ensure that nobody is
18 not cared for, because we don't want it to be one of your
19 children or my grandchild.

20 So, yeah, I think there is evidence that there are
21 people leaving. Do we have every doctor that has left? And I
22 could tell you the answer is no, we don't.

23 Q No. But, Ms. Mortham, number one, when you say that
24 the population has increased proportionately, therefore, you
25 have less doctors per capita, that's true. But that has

1 nothing to do with this argument, though. If the argument is
2 that they are leaving because of the price of healthcare, I
3 don't doubt some doctors leave because of that.

4 But by the same token, I don't doubt that some leave
5 because they are retired, and some leave because they are old,
6 and some leave because they are making money doing something
7 else.

8 A That is absolutely true. The concern is --

9 Q And that was the case five or 10 years ago also.

10 A The specialties, like neurosurgery, OBs, they are the
11 ones that we are having the most problems with, because if
12 those are the ones leaving the state, even though you have got
13 maybe, you know, a huge influx of family practice physicians,
14 for example, that's not going to alleviate the problem that we
15 are getting to in this crisis. And that's the thing that I
16 think we all need to be concerned about. Are the doctors
17 leaving the state in the specialties that are going to cause us
18 increasing problems?

19 Q Well, but just so that we get the headline straight,
20 when we hear doctors are leaving the state in record numbers, I
21 mean, that's just not true.

22 A Well, I don't know what's considered record numbers.
23 I don't know what the retirement has been in the past. But I
24 think when you get, when you get over 300 doctors, I can
25 identify primarily from newspaper articles over just the last

1 several months, that's a lot of doctors leaving. And those
2 aren't the ones that are, you know, making huge, big deals.
3 They are just closing up shop. I think, I think those are big
4 numbers.

5 Q That's true. That's true. But by the same token,
6 though, some of them are still coming in. And my point,
7 though, is when somebody says that, you know, there are fewer
8 doctors today than were before because they are all, you know,
9 heading for the hills, I mean, that is just not true.

10 I mean, some are leaving. Some are coming in.
11 Granted there is a problem. Like I said, I mean, you and I
12 have discussed, you know, a particular physician's insurance
13 premium, so that is a problem. But it is also disingenuous to
14 say that, you know, there is a physician shortage in Florida,
15 you know, over this issue, when they are leaving for all kinds
16 of issues and other others are coming in for other reasons. Is
17 that true?

18 A I don't know that anybody has called it a physician
19 shortage. I think you have got high-risk specialty areas where
20 we are at crisis level. I don't think there's any question
21 about it. And I'm sure that Dr. Peaden would be able to tell
22 you much better than I, that the average caseload for a
23 physician is about 5,000 patients a year.

24 So if you're talking -- if you just use my little tiny
25 survey of this morning of 300 docs that have left, times 5,000

1 patients, on average, you're displacing a lot of people who
2 are -- no longer are they getting to go to the doc that they
3 have been going to year after year. And, yes, there may be a
4 new kid on the block, but is that who mom and dad wants to go
5 to?

6 Q Is it?

7 A I don't think so.

8 SENATOR VILLALOBOS: Senator Campbell.

9 EXAMINATION

10 BY SENATOR CAMPBELL:

11 Q Ms. Mortham, does your data indicate where the
12 physicians are moving?

13 A I have got some of that. And, in fact, I would be
14 pleased to get you all copies. I've got one here that's moving
15 to North Carolina, August 1st. I've got one moving to San
16 Diego; moving back to Long Island; giving up private practice
17 to become a University of Miami faculty member.

18 SENATOR VILLALOBOS: They pay a lot of money.

19 A There is a lot. But, like I say, this compilation --

20 BY SENATOR CAMPBELL:

21 Q Well, let me ask this question. The AMA has
22 identified the states with national crisis, medical
23 malpractice. One of the states is North Carolina. One of the
24 states is New York. So it seems like you get some physicians
25 that are leaving Florida for states that are also considered by

1 the AMA to be in national crisis. Why?

2 A Maybe they haven't figured that out yet.

3 SENATOR VILLALOBOS: You better call the guy from
4 North Carolina and --

5 A I haven't got the answer to that. I haven't talked to
6 any of these people individually.

7 SENATOR VILLALOBOS: You better call the guy from
8 North Carolina and tell him they don't have caps there
9 either. Any other questions of Ms. Mortham? Senator
10 Clary.

11 SENATOR CLARY: Thank you, Mr. Chairman.

12 EXAMINATION

13 BY SENATOR CLARY:

14 Q Earlier you mentioned when you were talking about the
15 FPIC and the endorsement idea, that there was, I think, 30
16 states that did the same thing basically that Florida does, or
17 Florida is one of the 30. And there were a number of states
18 that had some kind of state insurance or self-insurance program
19 going on. Do you have a list of the states that do that?

20 A Yes. Kansas owns their own company. Mississippi has
21 Medical Assurance Company, which they only get 8 percent of the
22 revenue from, so it must not be much. Texas has its own
23 liability trust, and Oklahoma has Physician Liability Insurance
24 Company.

25 Q Is that an idea that would be supported by the FMA in

1 looking at trying to find ways to solve the insurance crisis?

2 A No. And the reason I say no is because FPIC actually
3 was started by physicians. That's how, that's how FPIC was
4 created. I think that the physicians -- and this was way
5 before my time -- decided that that probably wasn't the area of
6 their expertise, and, therefore, got out of the insurance
7 company business. But they tried that and decided that
8 probably wasn't the best use of their time.

9 Q Thank you.

10 SENATOR VILLALOBOS: Senator Peaden.

11 EXAMINATION

12 BY SENATOR PEADEN:

13 Q I've got one or two questions. Is there a requirement
14 for the FMA to put someone on the board, from the FMA on FPIC?

15 A I don't know if it's a requirement, or if they just
16 send a letter and ask the president if they have got a
17 recommendation. And that's what I seem to remember, that there
18 was a letter that came through, which I passed on to Dr. Cline,
19 and I think he just made a recommendation. It's never been a,
20 made a huge, big deal in the years that I've been there, to be
21 honest.

22 Q Are there any special benefits?

23 A I can't answer that. I have never been told what the
24 benefits are.

25 SENATOR VILLALOBOS: I think he paid some high school

1 guy \$90 million -- you better go back to FPIC and tell them
2 they owe more. Thank you.

3 MS. MORTHAM: Thank you.

4 SENATOR VILLALOBOS: Miles McGrane. Raise your right
5 hand. Do you swear or affirm that the evidence you're
6 about to give will be the truth, the whole truth, and
7 nothing but the truth?

8 MR. MCGRANE: I do.

9 EXAMINATION

10 BY SENATOR VILLALOBOS:

11 Q Welcome and thank you for joining us.

12 A Thank you, Mr. Chairman.

13 Q I am sure you had nothing better to do this afternoon.

14 A I was sitting with my son, so it was enjoyable.

15 Q Very well. Is he on the clock?

16 A He works for the Governor, so --

17 Q I know, that's why I am asking. State your name and
18 occupation.

19 A Mile McGrane. I'm an attorney.

20 Q And you are?

21 A President of the Florida Bar.

22 Q Okay. We've heard a lot of testimony today about
23 there being frivolous lawsuits, non-meritorious lawsuits. Have
24 you had an opportunity to do a little bit of research and
25 figure out, you know, how many tens of thousands of frivolous

1 lawsuits we had in the last, say, 10 years?

2 A Mr. Chairman, first of all, I really don't want to use
3 the term frivolous lawsuit, and I would like to define the term
4 if I might.

5 The Florida Bar opens about 9,000 grievance files a
6 year involving about 5,000 lawyers. We don't categorize them
7 by the type of claim. It could be a real estate lawyer. It
8 could be a tort lawyer. It could be whatever. But the staff
9 very carefully, this past weekend, went through all the files.

10 The only way we would get a complaint such as this
11 would be pursuant to Florida Statute 766.206(4), which provides
12 for a -- has a procedure where a circuit court judge can report
13 to the Florida Bar a lawyer, whether it be the plaintiff's
14 lawyer or the defense lawyer, who has, in the court's opinion,
15 filed a case without reasonable investigation. So if we can
16 use without reasonable investigation for your term frivolous, I
17 can answer your question.

18 Q You know, I know that's, that's the term that's used.
19 The reason I want to use frivolous or non-meritorious -- and
20 you can imply whatever definition you want -- is because that's
21 what the press has been talking about recently.

22 A I can't speak for the press, though, Mr. Chairman.

23 Q Thank you. I appreciate that. And, frankly, I was at
24 a Committee meeting last week in which there was some
25 testimony, and Senator Wasserman Schultz was asking a question

1 about some physicians and how they disciplined them when they
2 have a problem.

3 And the reason I asked you to come here today is
4 because we want to find out how the Bar does that. Because,
5 you know, there is a lot of members that are non-attorneys, and
6 just don't have a clue how that happens. So I would like to
7 get that information from you.

8 But during some of the questioning, she indicated
9 that, you know, the Bar has an adequate way of doing that. And
10 there were many physicians sitting here, and they all had a
11 good laugh over that, which I certainly didn't appreciate, not
12 because I'm an attorney, but I don't think it's a good idea
13 for, you know, anybody on that side to put this in gest.

14 Although, you know, I have a good sense of humor, you
15 know, it only goes so far. But I would like you to explain to
16 this Committee how it is that the Bar disciplines people, what
17 is the burden. And at the end of that, you can tell me how
18 many people in the last five years, how many attorneys have
19 been disciplined. And you can preface that by saying how many
20 complaints have been filed, because that would tell me if
21 there's 100,000 complaints filed, and there is only three
22 disciplines, then there's obviously a problem there.

23 But I would like to know how many complaints were
24 filed by people -- I thought attorneys filed a frivolous
25 lawsuit, non-meritorious or without sufficient evidence, I

1 would like to know how many people filed those complaints over
2 the last five years and how many were disciplined.

3 A The numbers have been pretty much static even though
4 our membership has increased. Basically, about 9,000
5 complaints have been filed a year over the past five years,
6 dealing with about 4,500 to 5,000 lawyers.

7 Q Is that a year or an aggregate?

8 A That's a year.

9 Q Okay.

10 A And they range from the most serious of violations,
11 trust accounts, to substance abuse, to lawyers who have been
12 arrested for laundering money, things across the board. And if
13 we take that number as an average, each year we have disbarred
14 from a low of 20 lawyers to a high of 38 lawyers. And by
15 disbarment, it's -- the longest the Supreme Court lets us do is
16 for five years. But no one has ever come back from a
17 disbarment. Though it says for five years, no lawyer has ever
18 come back from a disbarment. We also have suspended for a
19 period of time a low of 133 to a high of 155 lawyers.

20 We have given public reprimands to a low of 49 to a
21 high of 69. A public reprimand is when the lawyer is brought
22 in before the Board of Governors and literally is admonished in
23 front of his peers as to what he or she has done wrong. And
24 this also includes -- we have disciplinary resignations. That
25 is when the lawyer chooses to resign rather than fight the

1 charges. All in all, total final orders over the last five
2 years, has ranged from a low of 391 to a high of 472 lawyers
3 that have been disciplined in many, many different ways.

4 We also have some matters that we can take them out
5 and sort of send them to school, which don't count here. So
6 these are the numbers we have every year.

7 I might point out, since I'm here and I have a chance,
8 we do this without a penny of taxpayer dollars spent. We pay
9 for this out of our dues. Since you got your dues statement,
10 you know that, Mr. Chairman.

11 Q Is part of the punishment you send them to House and
12 Senate committees and make them listen to testimony for hours
13 on end?

14 A No, but I have listed that as a suggestion for next
15 year. Having said that, we have had one reported claim of a
16 circuit judge reporting a lawyer for participating in a
17 malpractice case without reasonable investigation, and that's
18 where he reported a defendant lawyer for filing an affidavit
19 that the judge didn't believe was meritorious. He struck the
20 pleadings of the defendant. We opened up an investigation.
21 The appellate court reversed the circuit court judge. We
22 closed the file.

23 Q Okay. If we are going back five years, can you tell
24 me how many complaints have been filed against attorneys for,
25 again, whatever term you'd like to use -- frivolous lawsuit,

1 non-meritorious lawsuit on a medical malpractice case?

2 A We have had two others. One involves a lawyer who
3 sued the wrong doctor with the exact same name.

4 Q I hate it when that happens.

5 SENATOR ARONBERG: So do I.

6 SENATOR VILLALOBOS: Actually, you rather enjoyed
7 that; didn't you?

8 SENATOR ARONBERG: Yeah.

9 A The other one involved a lawyer who sued the wrong
10 partner in a PA. You now have all of the complaints the Bar
11 has received dealing with medical malpractice issues.

12 BY SENATOR VILLALOBOS:

13 Q They received three complaints on medical malpractice
14 in five years; is that correct?

15 A That is correct.

16 Q You have how many attorneys in the Florida Bar?

17 A As of midnight last night, 72,728.

18 SENATOR VILLALOBOS: And I voted for another law
19 school at FIU. Mr. Speaker, you shouldn't have let us do
20 that. Senator Campbell.

21 EXAMINATION

22 BY SENATOR CAMPBELL:

23 Q One of the things in one of the complaints that
24 doctors have is legal advertising. And I can tell you that I,
25 unfortunately, have spent some days at home when I got sick,

1 and saw some very good doctors, and I was amazed at the legal
2 malpractice or medical malpractice ads that were being run by
3 lawyers, and it really offended me as a lawyer. And I am
4 offended.

5 You see billboards: Have you been injured by your
6 doctor? That's not right. So why is it the Florida Bar is not
7 doing something to stop these lawyers from advertising?

8 I mean, it's amazing that you go on TV, and: Did you
9 see a doctor last week? And: Do you feel good? Or do you
10 feel bad? If you feel bad, come see me, because I'm the lawyer
11 who is the best trial lawyer in the world.

12 And I think the doctors have a legitimate gripe about
13 that, and I would like to see the Florida Bar do something
14 about that.

15 SENATOR VILLALOBOS: Senator Campbell, if you think
16 that is bad, you ought to hear it in Spanish.

17 A Senator Campbell, the trouble is in 1972, the Supreme
18 Court of the United States said lawyers could do that. And I
19 would like to say that as bad as you think it is in Florida,
20 the State of Florida has the most stringent rules on lawyer
21 advertising of any of the state bars in the United States.

22 Do I agree with you, is it enough? I don't think it
23 is. But as you well know, Senator, since you're on the Board
24 of Governors, we are constantly involved in litigation where
25 the Bar is defending itself. We have been sued probably five

1 or six times a year, every time we try and go in and enjoin
2 lawyers from stopping. We have done this in the past. We will
3 continue to do it in the future.

4 Personally, I find it repulsive, repugnant, whatever
5 word you want to use. But as, you know, President of the Bar,
6 I've got to enforce the rules that the courts allow to enforce,
7 and it is the Supreme Court of the United States that said they
8 can do it, and we are stuck with it.

9 BY SENATOR CAMPBELL:

10 Q One final area. I was thinking last week how we could
11 possibly cure this problem, and it's kind of interesting.
12 Maybe if the lawyers take over the malpractice insurance
13 carrier for the doctors, and the doctors take over the lawyers'
14 malpractice insurance carrier, maybe we can get some
15 resolution.

16 Have you guys ever looked into maybe sitting down with
17 these folks and seeing if you can form an insurance company
18 that will have premiums that are reasonable?

19 A As you well know, this Bar is a mandatory Bar and is
20 very limited as to what it's allowed to do by the courts.

21 I would suggest to you maybe one of the sections of
22 the Bar could do that. But I don't think the big Bar could do
23 it. Though I would love that, now that he has got his breath
24 back. But there are certain issues that we always talk about.
25 But as you well know, because we are so strictly regulated, we

1 have to leave that to the sections.

2 SENATOR VILLALOBOS: Senator Aronberg.

3 SENATOR ARONBERG: Thank you, Mr. Chair.

4 EXAMINATION

5 BY SENATOR ARONBERG:

6 Q I know you were talking earlier about frivolous
7 lawsuits.

8 A I didn't use that word.

9 Q I am sorry, non-meritorious lawsuits, excuse me. And
10 I don't think -- did we speak about 57.105? My question to you
11 is: Have there been any medical malpractice lawsuits in the
12 past year that have resulted in 57.105 sanctions?

13 A The trouble with 57.105 is that really is found in the
14 court cost statute, and it doesn't provide a vehicle for the
15 Florida Bar to get involved.

16 It deals with sanctions against either the parties or
17 the lawyers and is really monetary cost, and there is no
18 referral in this.

19 Our grievance system it one of reporting. We are not
20 the policemen of the world. We don't go out and see things.
21 The way we get complaints is a client complains, or a judge
22 reports someone, or there's some type of referral.

23 So the trouble with 57.105 is it doesn't give the Bar,
24 or as I see it, the courts authority to make referrals to the
25 Bar for violations the way it's worded.

1 SENATOR ARONBERG: One other question. Thank you, Mr.
2 Chair.

3 BY SENATOR ARONBERG:

4 Q There was a suggested bill, suggested amendment to the
5 med-mal bill, and it was to prevent any attorney who has been
6 sanctioned by a court for violating 57.105 three times within
7 five years, preventing that attorney from filing any further
8 med-mal lawsuits. In your opinion, would that amendment help
9 matters? Would you favor that kind of amendment?

10 A If I can step aside just a second and take my Bar hat
11 off. If you look at the case law on 57.105, rarely are those
12 sanctions upheld.

13 I doubt sincerely in my lifetime you're ever going to
14 find one lawyer sanctioned three times in five years. So while
15 it's in there, I don't see where that would do anything. So if
16 you want the Bar to do something, if you want the Bar to do
17 something, it would have to be something in here where there
18 could be a referral on 57.105, but it isn't. It's really a
19 monetary penalty at this point.

20 Thank you. Any further questions? Senator Peaden?

21 SENATOR PEADEN: Yes, sir.

22 EXAMINATION

23 BY SENATOR PEADEN:

24 Q What's the procedure for disciplining the lawyers?

25 A It's a little byzantine possibly, but it works. There

1 are local discipline committees within each circuit. For
2 instance, in Dade where I come from, I think there may be 17
3 discipline committees, and you divide it by alphabet. They're
4 made up of both lawyers and non-lawyers.

5 They will do the initial investigation to see if there
6 is probable cause. If there is probable cause, they will make
7 a referral to the Bar to proceed with the discipline process.
8 Then we can negotiate.

9 If not, it goes to what they call a referee or a
10 trial, if you will, where a circuit court judge or a county
11 court judge sits as a referee and tries the case, and they make
12 their recommendation.

13 If it goes back to the Board of Governors for final
14 action, do we accept their referral? Do we think it's too
15 lenient? Do we want to take an appeal?

16 The ultimate decision on lawyer sanctions always rests
17 with the Supreme Court of Florida. They either accept the
18 resignation, accept the penalty. They can reject it saying
19 it's too lenient.

20 Interestingly enough, we are looking in to see if this
21 procedure is fast enough, Senator. But that's the way it works
22 right now.

23 Q This might be an unfair question, but I know at an
24 earlier meeting we asked one of your lobbyists from the Bar,
25 not the trial lawyers, what is the Bar's position on this

1 particular issue we are addressing today?

2 A I'm sorry, the Bar does not take a position on this.
3 We are limited by a case called Keller versus the California
4 State Bar, that limits us severely onto what positions we can
5 take.

6 And we're restrained to deal with things that are
7 within the scope of the Bar, because we are a mandatory Bar,
8 not a voluntary Bar. And in order for the Bar to take a
9 position, then the next step has to be whether or not that
10 would be divisive among the membership. And that requires a
11 three-quarters vote on both issues.

12 Because I would suspect that you could ask half of our
13 members do they want caps, they may say yes, and the other half
14 may say no. So the Bar cannot take a position on this issue.

15 Q Thank you.

16 SENATOR ARONBERG: Any further questions? Thank you
17 very much.

18 MR. MCGRANE: Thank you.

19 SENATOR VILLALOBOS: We are scheduled to go through
20 five, and obviously we are not going to finish. The
21 President has just let me know whoever does not testify
22 today that is on our list are certainly invited to return
23 tomorrow, and hopefully we'll be able to finish up.

24 I believe we are going to do it in the morning. I am
25 not certain yet, but I want to make sure everyone has the

1 opportunity. John Thrasher. Do you swear or affirm that
2 the evidence you're about to give will be the truth, the
3 whole truth, and nothing but the truth?

4 MR. THRASHER: I do.

5 EXAMINATION

6 BY SENATOR VILLALOBOS:

7 Q State your name and your occupation, sir.

8 A John Thrasher. I am President of the Southern
9 Strategies Group.

10 Q And you're representing the Hospital Association?

11 A The Florida Hospital Association in this matter, yes,
12 sir.

13 Q Okay. Mr. Thrasher, you have heard some of the
14 testimony here about the emergency rooms closing and care not
15 being able to be administered to certain patients. Are
16 emergency rooms closing?

17 A I think there have been some questions about whether
18 certain emergency rooms or trauma centers, Mr. Chairman, might
19 close. I think previous testimony, previous people have
20 testified, indicated that in some instances there have been
21 some question that might happen. But others have tried to
22 maintain the access to care for those people so far who need
23 it. And I'm not sure that I know personally whether any of
24 them closed.

25 Q What other specialties are you aware of with the

1 hospitals that are being threatened because of the situation we
2 find ourselves in now?

3 A Mr. Chairman, last week, I had a grandson that was
4 born, my third grandchild, at Florida Hospital in Orlando.

5 Q Congratulations.

6 A That was the good news. The bad news was about four
7 hours after his birth, we found out that he had a genetic
8 defect, and it was thought that he had Downs Syndrome. And my
9 wife and I were traveling, and we traveled to get back there in
10 time, because we wanted to be with our daughter; and
11 subsequently found out, Mr. Chairman, that there were only two
12 geneticists in the Orlando area, and neither one of those
13 practiced at Florida Hospital. They practiced at Arnold Palmer
14 Children's Hospital.

15 And as you can imagine, the anxiety that was setting
16 over our family. We did everything we could to attempt to get
17 that individual to come to Florida Hospital.

18 The reason she could not come to Florida Hospital was
19 because the malpractice costs that she and her group had
20 incurred would not allow her to have staff privileges at a
21 subsequent hospital other than the Arnold Palmer.

22 I'm happy to say that because of the work of the
23 hospital administrator, the risk management folks at the
24 hospital, and the goodness of this particular physician, that
25 she agreed to come to the hospital. They agreed to allow her

1 to come to the hospital as the guest of my family in order to
2 examine this child.

3 I think, I think that -- I don't know about what other
4 people have incurred, but I can assure you there was an access
5 to healthcare problem in my family last week. And I believe
6 it's other occurring in other places in the State of Florida.

7 Q Does your association show any evidence that there are
8 increased number of claims against hospitals as a result of
9 frivolous or non-meritorious lawsuits?

10 A You know, Mr. Chairman, I don't know about claims. I
11 just -- I hear what -- the testimony that you all have heard
12 since you were here in March. I have heard the Governor's Task
13 Force, the testimony was presented to it. I have noted with
14 great pleasure, frankly, the findings that you and the other
15 Senators have put in your bill, which indicate at the very
16 beginning, that Florida is in the midst of a medical
17 malpractice crisis of unprecedented magnitude.

18 You go on to cite the Task Force and other types of
19 studies that indicate we are in some kind of a problem, whether
20 it's because of anecdotal claims, of more cases being brought,
21 or higher, higher premiums, or the cost of those cases, that's
22 really the policy decision that you all have to determine. But
23 I think you have already made a finding. This state is in a
24 serious problem, and it needs a solution right now.

25 Q Mr. Thrasher, when we are talking about a 250 cap, we

1 heard testimony from Mr. White earlier today that he believed a
2 \$500,000 cap would not do anything to alleviate the situation.
3 Do you agree with that?

4 A Well, I agree with Mr. White's testimony about the
5 variations of cap. You know, Mr. Chairman, when you begin to
6 talks about caps in your findings, which, again, I agree with,
7 you believe that the cap is the last alternative that's a
8 available to help solve this problem, that's part of your
9 findings in your bill.

10 Having gone and watched this and observed this process
11 since 1976 when I was then at that time general counsel for the
12 Florida Medical Association, and I have seen it go through the
13 years, the eighties, the difficult times we had there; the
14 seventies were really availability of coverage problems; the
15 eighties when we had cost problems, and some emergency rooms
16 being closed actually in the eighties.

17 When you look at all, all of the alternatives that
18 were tried and have been tried since then, I don't think you
19 can find one in the State of Florida that hasn't been tried,
20 other than a cap on non-economic damages.

21 So do I agree with the fact we need a cap on
22 non-economic damages? Absolutely. The lower, the better,
23 because I think it then allows for the kind of access to
24 healthcare, which is what I believe this is about, that you all
25 ought to have in order to find the right kind of solution.

1 Q But a \$500,000 cap would, in your opinion, help the
2 Hospital Association, versus no cap?

3 A Certainly, a cap that provides some predictability. A
4 \$500,000 cap -- an actuary would have to determine that, that
5 certainly would be the case. Yes, sir.

6 SENATOR VILLALOBOS: Senator Peaden?

7 EXAMINATION

8 BY SENATOR PEADEN:

9 Q John, as Senator Pruitt brought out a couple of weeks
10 ago, Mr. Thrasher, Mr. Speaker, the comparison of the \$250,000
11 today and in light of \$250,000 value in 1975, would probably be
12 closer to \$800,000 today. Is there any more certainty with
13 \$500,000 or \$800,000 or \$250,000? I mean, we live in a
14 different world. We're not California. What do you think
15 about those comparisons and the \$800,000 compared to the value
16 of that in 1975?

17 A I think California, Senator, based on other testimony
18 that I have heard -- and I'm, obviously, I'm recalling it from
19 recollection -- has premiums that are one-third to a half as
20 low as they are in the State of Florida.

21 So, again, I go back, \$250,000 seems to have worked in
22 California. Granted, there is some dispute about whether the
23 insurance mechanism that was placed in there much later had an
24 effect on that. I don't know.

25 My guess is the cap is what's driven losses down,

1 because paid losses, as Mr. White has said, and I think the
2 other insurance people have said, is really what's driving the
3 premiums. Clearly, in Florida, we have, we have paid losses
4 that are more extensive than they are in California.

5 Q Mr. Speaker, you know, you and I have gotten in a
6 debate a long time ago about the number of doctors in Florida.
7 A lot of people said there were too many doctors in Florida.
8 Thanks to you, we did a study, and thanks to Senator Webster,
9 that verified there weren't enough doctors in Florida, and they
10 were poorly distributed. And I think what you said about the
11 geneticist speaks to that issue in that a lot of those super
12 specialists are around the medical schools and not out there in
13 the Hinterland where they can serve people, so I think that
14 reflects it.

15 In that particular vein, do you think we should do
16 anything else to incentivise (ph) those doctors to be better
17 distributed or to make sure that they have a home in the area
18 where they are more needed than around the academic centers?

19 A I think they need to be able to practice in an
20 environment, Senator, that is conducive to allowing them to
21 practice the finely honed skills they have been trained to do.
22 And when you have a highly trained geneticist, as we found last
23 week, that can only practice in one hospital, something is
24 wrong with that. Something is wrong with that. And I think, I
25 think the problem that she is experiencing and has

1 experienced-- and I have no idea of what -- any claims history.
2 All I know is she is the -- considered the expert in that area
3 in this field.

4 Whatever we could do to make the environment in which
5 they practice friendlier and more available to patients, we
6 ought to be doing. And even -- if I might add, sir, excuse
7 me -- even if it meant doing that delicate balance, which is
8 what you all are here about, which has been the case since the
9 seventies, the eighties, the nineties, of deciding which is
10 more important at this point in time, access to healthcare for
11 16 million people or restricting the rights of a few people who
12 might have subsequent injuries that might be affected by what
13 you're doing in the tort system. That's what this is about.

14 Q Mr. Speaker, though, in just looking at the global
15 problem, and I think you hit it right on the head about
16 distribution and quality of care and availability of super
17 specialists like that.

18 But not trying to divert the argument, but do you
19 think we should address other areas such as, you know so well,
20 hospital bylaws, flexibility of the hospital bylaws as well as
21 the Board of Medicine, in allowing those people to cross over
22 or practice in adjacent areas, such as these available
23 hospitals that are existent already that might not ever be able
24 to afford that type specialist in the future?

25 A Those are areas you might want to study, Senator,

1 absolutely.

2 SENATOR VILLALOBOS: Anymore questions for Mr.
3 Thrasher? Thank you, sir.

4 MR. THRASHER: Thank you.

5 SENATOR VILLALOBOS: Neil Roth. Raise your right
6 hand. Do you swear or affirm the evidence you're about to
7 give will be the truth and nothing but the truth?

8 MR. ROTH: I do.

9 EXAMINATION

10 BY SENATOR VILLALOBOS:

11 Q State your name and your occupation, sir.

12 A My name is Neil Roth, I'm a lawyer.

13 Q You have been an attorney for how long?

14 A Twenty-six years.

15 Q Mr. Roth, how about it? Are your professionals filing
16 too many lawsuits?

17 A Well, I do not believe that there is, by any stretch
18 of the imagination, an explosion or any significant increase in
19 the number of medical malpractice cases that are filed from
20 year to year.

21 I can say from our own firm's practice, there has been
22 no dramatic increase in the number of cases that have been
23 filed in the last several years.

24 Q Let's look at the economics about this. If we were to
25 place a \$250,000 cap on, on non-economic damages, you know,

1 attorneys make money off of, you know, the whole fee.

2 I mean, from a strictly financial point of view, from
3 your case, a patient believes that they are the victim of
4 medical malpractice and says this is what happened. You start
5 to investigate it. Why couldn't you do that if you had a
6 \$250,000 cap on non-economic damages, yet there is no cap on
7 anything else?

8 A The problem is that non-economic damages do play an
9 important component in cases. There are many people whose
10 cases do not have significant wage loss, either in the past or
11 the future, significant medical expenses in the past or in the
12 future, and those are the economic losses, particularly cases
13 involving where children are hurt or, God forbid, died. Cases
14 involving the elderly, where there is no lost income. There
15 may be some medical expenses. That given the overall costs and
16 time that it takes to investigate, do a notice letter, file the
17 lawsuit, do the discovery and bring yourself to a conclusion,
18 either by settlement or jury trial, the economic benefits of
19 handling those cases would not be beneficial for the clients,
20 or for the firm for that matter.

21 Q So if someone, let's say is 65 years old and retired,
22 okay. And they had a procedure performed on them in error, and
23 they lost the use of their arm or a leg or an eye, how would
24 you value that case?

25 A Well, if there is, if there is a hard non-economic

1 damage cap on it, it would be at best whatever that hard
2 economic damage cap would be in the absence of any economic
3 loss.

4 Now, if they are retired, as you said, no economic
5 loss. If it's something as dramatic, as you described, there
6 may not be really ongoing medical expenses associated with it.
7 And, you know, I get --

8 Q Let's suppose they lose their right arm. Okay. And,
9 basically, it's -- you know, there is a risk of infection.
10 That doesn't occur, so there's no infection. They just don't
11 have an arm anymore. What, what happens? I mean, what --

12 A On your -- one of the proposals that are out there --

13 Q If there's a \$250,000 hard cap on non-economic
14 damages, let's assume we do that and forget bad faith, bad
15 faith doesn't apply in this case. Someone comes to your office
16 and says, "I went to the doctor. They went to do a procedure.
17 They made a mistake and cut my right arm off. I am 65 years
18 old, and I'm retired. What can you do for me?"

19 A All I can do for them is, is get them \$250,000 after
20 doing a lot of investigation. And, you know, there could be a
21 myriad of reasons why that would happen to them,
22 notwithstanding the fact that the injury is obvious. The
23 reasons why it happened may be hotly debated and contested,
24 which would then require, you know, months of investigation,
25 expense, discovery, expert witnesses. And as you do all that

1 work, it diminishes the return that the 65-year-old without
2 an arm would get.

3 Mind you, that 65-year-old, even at 65 would probably
4 have a 15- to 20-year life expectancy, and they would be
5 getting the net of \$250,000 over a 15- or 20-year period. It
6 would be a problem with, with getting representation.

7 Q Would you take that case on?

8 A No.

9 Q And in the case of a child who doesn't work, do you
10 calculate the loss of income? Can that be done? In other
11 words, let's suppose something were to happen to a child, and
12 perhaps they lost their sight or something. And, again, bad
13 faith does not apply. There is a hard cap of \$250,000, what
14 can you do for that child and that family?

15 A The ability to prove a future loss of income involving
16 a child, particularly a young child, you know, is difficult.
17 You can make attempts, you know, to do it.

18 But depending upon the injury, you know, someone who
19 is blind, and we represented such a young child, arguments can
20 be made that in training, there are occupations that they can
21 nonetheless perform. And so at best you're looking at some gap
22 between what someone who is blinded might be able to do
23 economically or not. Those are difficult when there is no
24 proven track record of income.

25 On the non-economic side, it is \$250,000. There's not

1 anything else you could do. If it's capped in that fashion,
2 and in your example, you're talking about 70 years of not being
3 able to see the world.

4 Q Well, but how would you -- you say it's difficult.
5 How would, how would you figure out the loss of a salary for
6 that child who, you know, loses his sight at an early age? How
7 is that done? I know it is tough, but how far do you do that?

8 A The best that you can do is -- one of the things you
9 can do is look at the parents and look at what the parents have
10 done, and the parents, with whatever degree of education,
11 whether it is high school, college, or professional school --

12 Q Say the parents are poor.

13 A I've been in that situation. I've heard those
14 arguments made from the defense that, you know, the child
15 wasn't going to do much better than what their parents are
16 going to do, and it's very, very difficult. It's not
17 impossible to do, but you do your best. You look at the
18 demographics. You look at the parents. You know, then you try
19 and build an economic model that makes some sense.

20 Q But is that based on what the parents do? Say, the
21 mom doesn't work, and the dad, you know, makes \$25,000 a year.

22 A About all you can do is make a presentation to whoever
23 is evaluating the case. And if it happens to be a jury, say we
24 would hope that this child would have either graduated high
25 school, college, or beyond, find some statistical averages and

1 try to make your best, your best claim.

2 Q But that is done based on what? Based on who the mom
3 and the dad is?

4 A Part of it is.

5 Q What's the other part?

6 A Based on other things that happen in our society. And
7 hopefully some children, even though their parents may not be
8 well educated, can move forward. I think we've seen a lot of
9 that in our generation, and you do your best. But it's
10 difficult.

11 SENATOR VILLALOBOS: Any other questions for Mr. Roth?
12 Senator Clary.

13 EXAMINATION

14 BY SENATOR CLARY:

15 Q In 1987, I believe it was, the Florida Supreme Court
16 struck down, declared unconstitutional the \$450,000 cap on
17 non-economic damages. That was at best the year before that
18 medical crisis very much like we are experiencing now.

19 And I think that it was struck down -- part of the
20 reason was it did not deem that -- I guess the critical nature
21 of the State of Florida was part of the rationale. But I
22 don't, I don't know fully, and I was wondering if you had any
23 background information as to the \$250,000 cap, that was a
24 \$450,000 cap that was declared unconstitutional. What are the
25 similarities and maybe differences as to what we see today?

1 And are we looking at a very similar outcome in terms of the
2 Supreme Court striking this down if it passes?

3 A Okay. Senator Clary, I think you've raised a couple
4 of very important points. And as I have been working on this
5 issue now for more than a year, one of the things that has
6 struck me, and particularly is pertinent to your question, and
7 I was practicing law back in the mid-eighties when this
8 happened, was that in the mid-1980s, we indeed had a legitimate
9 healthcare crisis, because, in fact, in fact, after it was
10 studied, we had emergency rooms that had closed. We had trauma
11 centers that had closed. We had physicians who were not going
12 to attend to patients.

13 Much different than what is happening here, and I
14 think from the testimony you have heard, a lot of it has been
15 anecdotal reports. Even the reference to how many physicians
16 have left or changed their scope of practice is coming from
17 newspaper accounts as opposed to the testimony you heard today
18 is the number. So I think that's a critical difference that
19 exists today versus the mid-eighties.

20 Having said that, even with the, quote, proven crisis
21 based on the access to healthcare issues in 1984, '85, and '86,
22 the Florida Supreme Court declared that cap, which was \$450,000
23 for non-economic damages, unconstitutional, notwithstanding
24 what may have been the belief that there was some overwhelming
25 public necessity to pass the cap; but as importantly, there was

1 A The Supreme Court in 19 -- in its split decision
2 looked at a variety of constitutional issues, including the
3 particular Florida Constitution provision of access to the
4 courts.

5 When you're taking away someone's rights, you either
6 have to show an overpowering public necessity, or you have to
7 have some commensurate benefit, or you have to at least show
8 there was no alternative means to solve the problem.

9 And so when you look at what's happening now, and
10 particularly some of the things that are in the present Senate
11 bill, which shows that the malpractice insurance pricing
12 problem, which does exist, can be solved through alternative
13 means, such as the medical malpractice insurance fund that's in
14 the Senate bill, I think that's going to add another reason as
15 to why it's going to be difficult to cap damages. And I don't
16 think -- think it's worse now in terms of the fact that you're
17 singling out malpractice victims as opposed to all victims.

18 SENATOR PEADEN: Thank you.

19 SENATOR ARONBERG: Any further questions? Senator
20 Smith.

21 MR. SMITH: Thank you, Mr. Chair.

22 EXAMINATION

23 BY SENATOR SMITH:

24 Q I have a couple of questions. One is as it relates to
25 a \$250,000 cap, we currently have a provision in Florida, in

1 Chapter 766, for arbitration. If I remember right, the
2 arbitration provision is that you get \$250,000 if you agree to
3 go to arbitration, and it's resolved at arbitration. And I
4 won't say you admit liability, I think you choose not to
5 contest the issue of liability. Correct?

6 A Correct.

7 Q If you are offered the opportunity as a plaintiff to
8 go to arbitration and you refuse, and you go to trial, there is
9 also an imposition of a \$350,000 maximum -- and correct me if
10 I'm wrong, but I think that's \$350,000 in damages that you are
11 capped at, non-economic damages.

12 A Non-economic damages per claimant.

13 Q St. Mary's has interpreted both of those to be per
14 claimant. Currently, we have some proposals that have been
15 advanced for \$250,000. We haven't cleared that those are per
16 claimant, but let's assume for a moment that they are. Because
17 if they are per claimant, then wouldn't the imposition of a
18 \$250,000 per claimant cap essentially eliminate the arbitration
19 scheme that was imposed and apparently felt by a previous
20 Legislature to be very important?

21 A It would, and it was that scheme that allowed the
22 court in 1993 in Echarte to find that particular cap
23 constitutional.

24 Q Following up one that for a moment, Mr. Chair, the
25 flip side of it is that if we interpret it as not being per

1 claimant, then based on the St. Mary's language, isn't there a
2 real question under the equal protection dicta that is
3 contained therein, the whole matter would be thrown out?

4 A Yes, sir.

5 Q One more question if I could. One of the things that
6 was raised by several Senators, and I think a concern a lot of
7 people have, is that the testimony I have heard is that most of
8 the law firms are now taking claims, the nature of which
9 requires them to establish that the claim has merit before they
10 ever file it, correct?

11 A Correct.

12 Q In fact, the failure to do so could expose you to some
13 sanction?

14 A That's right.

15 Q The current structure set by the Florida Bar is that,
16 is that a fee is one-third prior to being filed and 40 percent
17 after filing. I know that that's a summarization. There were
18 up to one million above, et cetera, but the basic structure is,
19 for the great majority of cases it is one-third prior to filing
20 and 40 percent after you file; is that correct?

21 A Correct up to the limits, yes, sir.

22 Q One of the things that's troubling to people, I think,
23 is that you are now getting -- after you have determined the
24 claim is with merit, which has to be done in the area of
25 medical malpractice, you are now getting 40 percent and

1 costs -- I think one of the proposals, the concern the other
2 day was that costs were also factored into the attorney's fee.

3 A Okay.

4 Q Do you agree that is the normal practice, that you
5 take the total amount returned and take the attorney's fee
6 against that amount -- against that return?

7 A Right. The attorney's fee contract as set forth by
8 the Supreme Court and the guidelines from the Florida Bar, the
9 rules regulating the Florida Bar, say that lawyers, like my
10 firm, are allowed to advance the costs.

11 I often describe them to clients when I meet them as
12 an interest-free loan. We can advance the costs, because most
13 of our clients do not have the ability to pay -- and I have
14 brought the information if anybody wants it -- the kinds of
15 costs that are required for these cases.

16 If the case ends successfully through settlement or
17 verdict and judgment and payment, then the client is obligated
18 to pay to the attorney, simply give them back the money they
19 lent them for a period of one, two, three, four years,
20 depending upon what occurs. And that's how, that's how the
21 distribution is made, and those are the Bar rules, and that's
22 what we do.

23 Q If I could, one of the questions that was asked, and
24 I'm going to use the hypothetical, the million dollars. If
25 there is a million-dollar case, and let's assume that you

1 advanced \$100,000, that's both probably reasonable and easy
2 math. When the million dollars is paid, the attorney receives
3 40 percent of a million dollars and is paid back the hundred
4 thousand dollars that he advanced?

5 A Correct.

6 Q And the client then gets --

7 A \$500,000.

8 Q -- 50 percent of the return. Do you believe that it
9 is necessary that -- or would it be an improvement in terms of
10 what the client would return -- get returned, as some have
11 suggested, that you pay back -- that the attorney essentially
12 take the cost off the top, before calculating the fee against
13 the entire amount?

14 A Then we would be paying a percentage of the costs in
15 the case, which the Bar has said we shouldn't do, because that
16 is inappropriate in promoting litigation.

17 SENATOR VILLALOBOS: You cannot do that?

18 MR. ROTH: We cannot do that.

19 BY SENATOR SMITH:

20 Q You can't fee split?

21 A That's correct. And that's not to say that looking at
22 individual cases, on a case-by-case basis, adjustments aren't
23 made with the client where you work things out, you know, to
24 make it as equitable as you can. That happens often.

25 Q In some areas of the law, there have been fee

1 structures that have imposed Workers' Compensation, Social
2 Security, a wide range of areas. Most of those are somewhere
3 more in the neighborhood of 25 percent as a return. Sometimes
4 the courts award fees, and they use a basic structure of -- in
5 other areas of the law. Do you believe that 40 percent on a
6 claim that you have determined to be meritorious is an
7 excessive fee by an attorney?

8 A No.

9 Q Could I ask you to defend that position? Really,
10 because this is a question that's been raised by a number of
11 people in this Senate.

12 A And it's a fair question, because when people look at
13 an individual fee on an individual case, they may say 40
14 percent sounds like a lot.

15 But when you -- I would invite anybody in this
16 Legislature or in this room today to come with me whenever I am
17 done here and spend two weeks in my office, and see what goes
18 on in terms of how cases are handled from the first phone call
19 until most of them are turned down.

20 There is a tremendous amount of time, uncompensated,
21 and expense, uncompensated, which goes into evaluating medical
22 malpractice cases. And so when you look at the totality of the
23 circumstance and what happens in most of the cases, and the
24 fact that I cannot recall right now a single client in 26 years
25 complaining about the fee.

1 Q Nothing further.

2 SENATOR VILLALOBOS: Senator Aronberg. And, Senator
3 Aronberg, be brief, because there is one more witness I
4 want to get to that is a physician and can't be here
5 tomorrow.

6 SENATOR ARONBERG: Okay, Mr. Chair, I was just
7 informed we could call Mr. Roth back tomorrow, so I will
8 wait until tomorrow.

9 SENATOR VILLALOBOS: Okay. What I would like to do
10 then -- thank you, Mr. Roth. Mr. Roth --

11 MR. ROTH: I'll be here tomorrow.

12 SENATOR VILLALOBOS: Okay. Dr. Crump. Before you
13 start, anyone who is on the list of invited witnesses,
14 please try and be here tomorrow in case there is any other
15 questions that the members might have. We are going to
16 start at 10 a.m. And, Mr. Roth, we are not done with you.
17 I think we have a series of questions. But in order to
18 accommodate Dr. Crump, I appreciate you letting that
19 happen.

20 Would you please raise your right hand? Do you swear
21 or affirm that the evidence you're about to give will be
22 the truth, the whole truth, and nothing but the truth?

23 DR. CRUMP: Yes, sir.

24 EXAMINATION

25 BY SENATOR VILLALOBOS:

1 Q Please state your name and your occupation.

2 A My name is John M. Crump. I am a general surgeon in
3 Jacksonville, Florida, with North Florida Surgeons.

4 Q You have been employed in that capacity for how long?

5 A The group was formed in 1995, so seven years, eight
6 years. And I have been in Florida as a general surgeon since
7 1985. And I had my boards in general surgery in 1984 and
8 certificate in critical care in 1986.

9 Q Very well. Doctor, thank you for coming here and
10 being patient.

11 A Thank you very much for giving me this time. I have
12 to be working tomorrow.

13 Q I understand. That's why I asked Mr. Roth to step
14 aside and --

15 A I appreciate his letting me do that.

16 SENATOR VILLALOBOS: Dr. Peaden, do you have some
17 questions for Dr. Crump?

18 SENATOR PEADEN: Yes, sir.

19 EXAMINATION

20 BY SENATOR PEADEN:

21 Q Are you in active practice now?

22 A Yes, sir.

23 Q In the same -- is it an emergency room setting or
24 general surgery?

25 A I'm a general surgeon at Baptist Hospital in

1 Jacksonville, Florida.

2 Q And you have a number of partners?

3 A I have about 15 partners, yes, sir.

4 Q You share rotating call with those partners?

5 A I share rotating call with five partners, because my
6 practice is set up in such a way that six of us are at one
7 hospital, four at another, four at another, three at another,
8 so I only share calls at one hospital. I practice exclusively
9 at one downtown tertiary care hospital.

10 Q And who do you have your insurance with now?

11 A Right now it's a policy through Lloyds of London that
12 we got July 1st.

13 Q What is your rate of insurance, if you don't mind me
14 asking, for your general surgery? And, apparently, you do
15 not -- you do vascular surgery?

16 A No, sir, I do general surgery in critical care.

17 Q No vascular?

18 A No.

19 Q No thoracic surgery?

20 A I used to -- not cardiac thoracic, but it has not
21 worked into my practice. I do a lot of pancreatic surgery, a
22 lot of colon, a lot of breast, general intra-cavitary surgery.

23 Q Peripheral vascular?

24 A No peripheral vascular.

25 Q And your partners, do they have insurance with the

1 same coverage?

2 A We all have the same policy.

3 Q And it's \$750,000 per year?

4 A No. We have -- the situation changes rapidly. As of
5 July 1st this year, we have a policy with Lloyds of London
6 through the Alternate Pathway, where we are responsible for all
7 defense costs and all indemnities paid so we can stay in
8 practice, but yet it is through Lloyds of London.

9 Q And that is \$250,000?

10 A 250 per incident.

11 Q Per incident, okay. Have you lost partners because of
12 the change in the environment, the insurance costs, or the --

13 A Yes, I have lost at least two partners. The other,
14 Dr. Hilton Sparks, is moving to Indiana. He is resigning
15 effective August 15th or so. He is the president of the North
16 Florida Surgeons.

17 Our insurance was \$88,000 for the 250 policy before
18 July 1st. And at that time, it went from \$88,000 to \$126,000,
19 with a \$25,000 deductible per case. And that was unaffordable,
20 and that's how we ended up with Lloyds of London. And I have
21 lost three partners.

22 Q Not too intrusive, but your three partners you lost,
23 what kind of track record did they have as far as malpractice
24 claims or either malpractice settlements?

25 A Well, before you is a report that shows the cumulative

1 history of all of us, all 20. And, in fact, I don't know
2 specifically. I know that Dr. Sparks has no lawsuits and is
3 leaving for Indiana. I know that.

4 SENATOR VILLALOBOS: One second, Dr. Peaden.

5 EXAMINATION

6 BY SENATOR VILLALOBOS:

7 Q Dr. Crump, you have given us a written document.

8 A Yes.

9 Q Did you prepare this document?

10 A Yes.

11 Q Would you attest to its authenticity?

12 A Yes.

13 Q And its validity?

14 A Absolutely.

15 Q Okay. Thank you.

16 A That -- you know, I have been here for many days, and
17 in hearing these issues and questions about legitimate examples
18 or whatever, this is the most legitimate, complete report that
19 I think is out there.

20 Now, it's small. It's a case report, if you will,
21 because it's only 20 surgeons in one Metropolitan area in the
22 state. It's the same 20 surgeons.

23 EXAMINATION

24 BY SENATOR PEADEN:

25 Q Since we have limited time, could I ask you something

1 else about your partners? How long have each one of those
2 individuals been in practice, the three?

3 A Well, I am 52 --

4 Q The three that left?

5 A The three that left?

6 Q Yes, sir.

7 A Dr. Sparks is 47 and Navy trained. He got out 10
8 years ago from the Navy. The other one who is left is two
9 years younger, maybe 50 years old. And then the other one is
10 still deciding, and he's 45. He is waiting for an issue, a
11 court settlement with his children, and he is taking a job in
12 New Mexico, so the exact date of his departure depends a little
13 on some other issues.

14 Q So the other two physicians had, had claims against
15 them or settled claims for malpractice?

16 A Yes. I also have settled claims against me for
17 malpractice.

18 Q How many claims did the other two physicians have
19 against them since they have been with your group?

20 A Not really knowing exactly, I am going to -- because,
21 I mean, this is under oath, and I want to give -- I suspect one
22 had three. I think they both had three.

23 EXAMINATION

24 BY SENATOR VILLALOBOS:

25 Q Doctor, are those claims settled already?

1 A No, because --

2 Q Well, then --

3 A Well, the reality of it is with a case taking four
4 years to close --

5 Q What I was going to tell you, if it's not closed, that
6 may not be an appropriate response for you to give right now.

7 A Well, I can count the number of claims, and that's
8 inherent in the report. That is very important, because that's
9 what determines our insurability. So the claim, be it open or
10 closed, be it innocent or guilty, doesn't have anything to do
11 with the issue of continuing us in practice.

12 SENATOR VILLALOBOS: Okay.

13 EXAMINATION

14 BY SENATOR PEADEN:

15 Q So it would be safe to say at least there has been one
16 settlement for each one of your partners?

17 A No, sir, in terms of settlements, there were 20 of the
18 39 claims that have been settled. Okay. And of those 20
19 closed claims, we have never lost one. We have won three that
20 went to trial. Since I wrote that report, one additional
21 claim, we won. So we've never lost a case, and we have been
22 forced out of business by the current situation.

23 Q Okay.

24 SENATOR VILLALOBOS: Any other questions? Senator
25 Campbell.

EXAMINATION

1

2 BY SENATOR CAMPBELL:

3 Q I am a little confused, Doctor. You've had 39 claims?

4 A Yes, sir.

5 Q You've settled 20 of them?

6 A Leaving 19 open, yes, sir. No, there's 20 closed
7 claims.8 Q On page 4 of your report here it says the number of
9 surgeons sued each case. The number of cases is 33. The
10 number of surgeons sued, one. I don't understand what that
11 means.12 A Okay. There were 39 lawsuits. And the way we did
13 that, because often we will -- multiple doctors will be sued in
14 the same lawsuit, so we counted it to the surgeon who was --
15 whose patient it was, realizing we cover in the group setting,
16 so that would be reasonable. Two other partners might be sued
17 in the same one.18 If I was the primary surgeon, we counted it against
19 me. So we have been sued at North Florida Surgeons, in seven
20 years, 39 times. Of those 39 times, 20 of them have now been
21 brought to a resolution or closed, and 19 are still open.22 Q I am trying to look at the statistics that you are
23 putting here. Are you saying 33 cases were presented against
24 one surgeon?

25 A No, sir. I am saying that 33 cases had a single

1 surgeon named in the lawsuit. Then if you will see under that,
2 the next box down, there were four cases where two surgeons
3 were named in that lawsuit. And there were two cases where
4 three surgeons were named in the lawsuit.

5 Q If I am looking at what else you have on page 3, you
6 have won two cases in court.

7 SENATOR VILLALOBOS: Senator Campbell, it is five
8 o'clock. We are going to come to an end.

9 DR. CRUMP: Thank you.

10 SENATOR VILLALOBOS: The Senate doesn't permit us to
11 extend. However, Doctor, since you have attested to
12 documentation you have given us, it is part of, part of our
13 record. So I thank you for coming here, and I apologize
14 for not having you finish. If you -- sir, one moment,
15 please.

16 If you can, you're certainly invited to come back
17 tomorrow. I understand that patients are waiting, so I
18 understand that. With that, we'll be back tomorrow at 10,
19 and Senator Peaden will be ready.

20 (The meeting adjourned at five o'clock p.m.)

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1
2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 CERTIFICATE OF REPORTER

5 I, SUSAN WILLIS, CCR, RPR-CM, State of Florida; do hereby
6 certify that I reported the foregoing proceedings at the time
7 and place and in the cause indicated in the caption; that I
8 later had the same reduced to written form by means of
9 computer-aided transcription; and that the foregoing
10 pages are the proceedings had before me as I was directed to
11 transcribe.

12 I FURTHER CERTIFY that I am neither related to nor employed
13 by any party to this litigation, or their counsel, and that I
14 am not financially or otherwise interested in the outcome of
15 this case.

16 WITNESS MY HAND AND SEAL at Tallahassee, Florida,
17 this 17th day of July, 2003.

18
19 
20



Susan Willis
MY COMMISSION # DD136786 EXPIRES
August 16, 2006
BONDED THRU TROY FAJN INSURANCE, INC.

24
25
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