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OFFICE OF INSURANCE REGULATION

IN THE MATTER OF:

Case No. 88544-06

The Use of Occupational and Education
As Underwriting Factors To Determine Motor
Vehicle Insurance Premiums

VOLUME I

DATE: Friday, February 9, 2007
TIME: Commenced at 9:30 a.m.
Concluded at 2:55 p.m.
LOCATION: 200 East Gaines Street
Tallahassee, Florida

* * *

REPORTED BY
MICHELLE SUBIA
REGISTERED PROFESSIONAL REPORTER

1 PANEL MEMBERS APPEARING:

2 COMMISSIONER KEVIN M. McCARTY
3 STEVEN H. PARTON
4 HOWARD EAGELFELD
5 SUSAN DAWSON
6 RICHARD KOON

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16 CERTIFICATE OF REPORTER

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1 P R O C E E D I N G S

2 MS. DAWSON: Good morning, everyone, my name is
3 Susan Dawson, and I'm with the Office of Insurance
4 Regulation. I'm an Assistant General Counsel with
5 the Office.

6 We're here today to discuss and explore the use
7 of education and occupation as underwriting factors
8 in private passenger automobile, the determination
9 of premiums for private passenger auto insurance.

10 First I would like to introduce the
11 Commissioner, who will welcome all of you and make
12 brief opening remarks. Commissioner McCarty?

13 COMMISSIONER McCARTY: Thank you very much. I
14 appreciate the work you've done in preparation for
15 this hearing.

16 I'm Kevin McCarty, the Insurance Commissioner
17 for the state of Florida. The purpose of this
18 hearing, as Ms. Dawson has already spoken to, is to
19 consider the practice that is currently being used
20 by several auto insurance companies in our state
21 licensed to do business in our state of using
22 occupation and/or education as an underwriting
23 factor for determining the premium paid by Florida
24 policyholders.

25 Unfortunately, Florida has had somewhat of a

1 checkered past in regard to the use of potentially
2 race-based rates. In 2000, the National Association
3 of Insurance Commissioners initiated a working group
4 to study race-based premiums and the use of these
5 premiums in the life insurance marketplace.

6 The Office has been an active participant in
7 this endeavor which included a questionnaire to all
8 insurance companies nationwide about the use of this
9 practice. This ultimately resulted in a multi-state
10 market conduct investigation and multi-million
11 dollar fines levied against this practice. The
12 review period for this was 1900 until 1970, yet
13 resolution of these issues took until 2000.

14 According to one multi-state examination report
15 concluded by the state of Maryland, after the race
16 question was deleted from the application in the
17 1960s, several companies used occupation as a
18 substitute for race, occupations subject to
19 substandard rating, including housekeepers, busboys,
20 carwash workers and trash collectors. The multi-
21 state report noted that non-Caucasian workers were
22 disproportionately represented in these
23 disadvantaged occupations.

24 A similar examination conducted by the state of
25 Ohio on Nationwide Life Insurance introduced

1 education as a factor to discriminate against
2 minorities.

3 We're not here to suggest that any of the
4 companies that are subject to the subpoena today are
5 intentionally discriminating based on race. Yet a
6 review of GEICO's filings shows that a substandard
7 rating or risk placement could result from those
8 occupations considered minimally skilled, postal
9 clerks, long-haul workers, semi-skilled blue collar
10 and gray collar workers.

11 In March, 2006, I received a letter from the
12 Consumer Federation of America stating that in
13 addition to GEICO, a number of other auto companies
14 were considering using education and occupation as a
15 rating factor.

16 We commissioned a study by our market research
17 and business development unit to look at the
18 relationship with regard to occupation, education
19 and ethnic background. Using publicly available
20 data from the U.S. Census Bureau, our findings were
21 quite disturbing.

22 Caucasian and Asian-Americans were twice as
23 likely to have advanced degrees than minorities.
24 More over, African-Americans and Hispanics were
25 almost 60 percent more likely to have been

1 classified in blue collar jobs. Our research
2 concluded that underwriting schemes based on
3 education and occupation could disproportionately
4 and negatively impact minorities, simply based on
5 this empirical data.

6 The Office has called this public hearing to
7 determine the question whether the use of occupation
8 and/or education, either intentionally or
9 unintentionally, is acting as a proxy for race.

10 I have spoken with insurance representatives on
11 this issue and continue to hear the same argument,
12 that the use of occupation and/or education is
13 supported by the data and also that they used other
14 rating factors. It essentially makes the argument
15 that even if it is unfairly discriminated, it is
16 somehow mitigated by the fact that other factors are
17 being used.

18 Florida has a rich cultural and ethnic, diverse
19 population. Many of our minority residents are
20 struggling up the economic ladder. We should make
21 every effort to make that challenge less egregious.

22 Although the use of factors does raise serious
23 questions, we need to keep our mind open and listen
24 to the representatives who are traveled to present
25 their case here today.

1 Official notice has been presented in
2 accordance with Florida law, and we have subpoenaed
3 a number of companies to participate in our hearing,
4 including AIG, GEICO and Liberty Mutual. This
5 proceeding will be used to determine whether or not
6 occupation and education correlate with risk, and
7 what impact, if any, these underwriting practices
8 have on minorities and low income Floridians.

9 Remember that if you testify today that you'll
10 be asked to raise your right hand and you'll be
11 asked to testify under oath, and in the process, we
12 have a court reporter here to take down the
13 proceedings.

14 And let us begin by asking each member of the
15 panel to introduce themselves. We'll start with
16 Susan.

17 MS. DAWSON: Again, Susan Dawson, Assistant
18 General Counsel with the Office of Insurance
19 Regulation.

20 MR. EAGELFELD: I'm Howard Eagelfeld, actuary
21 with the Office of Insurance Regulation, primarily
22 devoted to personal auto insurance.

23 MR. PARTON: I'm Steve Parton. I'm General
24 Counsel for the Office.

25 MR. KOON: I'm Rich Koon. I'm the director of

1 Property and Casualty and Product Review.

2 MS. DAWSON: Thank you. Our first presenter
3 today is Mr. Eric Poe.

4 Mr. Poe, if you would be so kind as to sit up
5 front, and if you have any opening remarks, you may
6 present those remarks, and questions may be asked of
7 you by each member of the panel.

8 Sir, are you ready?

9 MR. POE: Yes, I am.

10 MS. DAWSON: Okay, you may proceed.

11 COMMISSIONER McCARTY: Could you swear him in,
12 please?

13 MS. DAWSON: Yes, sir.

14 If you would raise your --

15 COMMISSIONER McCARTY: I'll tell you what, just
16 for simplicity, everyone who's going to testify
17 today, would you raise your right hand, please?

18 (Witnesses sworn en masse.)

19 MS. DAWSON: Thank you very much.

20 Mr. Poe, are you ready to proceed?

21 MR. POE: Yes, I am.

22 MS. DAWSON: Okay.

23 COMMISSIONER McCARTY: Thank you, Mr. Poe.

24 MR. POE: I just want to start off by thanking
25 the panel and Commissioner McCarty and commend

1 Commissioner McCarty for actually examining this
2 issue. It takes a lot of courage to go against the
3 multi-billion-dollar companies in an industry that
4 is very competitive.

5 To start off, I would like to give a little
6 background about myself. I'm the chief operating
7 officer of New Jersey CURE Auto Insurance. We are a
8 not-for-profit auto insurance carrier in the state
9 of New Jersey that insures about 48,000 vehicles.
10 We are founded by a former New Jersey insurance
11 commissioner, who, much like Commissioner McCarty,
12 was a consumer advocate during his term.

13 We do not use, voluntarily do not use insurance
14 scoring, we do not use education and we do not use
15 occupation to determine rates.

16 To start off, I would like to explain why I'm
17 here. We learned, me personally, I learned in 2004
18 about GEICO's practice when GEICO reentered the
19 state of New Jersey after a 28-year absence. Prior
20 to GEICO reentering the state in 2004, no insurance
21 carrier in the state of New Jersey ever used or was
22 permitted by the Commissioner's Office to use
23 education or occupation as rating factors.

24 Coincidentally, the insurance commissioner in
25 New Jersey at the time was Holly Backy, and a year

1 later she worked for GEICO's parent company,
2 Berkshire Hathaway, and today she does as well.

3 But since GEICO entered the market, I've spent
4 two and a half years trying to inform the public as
5 well as consumer groups about the impact of using
6 these rating factors and what it will do.

7 We are here because we do not want to adopt
8 this practice. We are a competitor, we are somebody
9 who insures automobiles in the state of New Jersey,
10 but we simply don't want to compete on those
11 grounds, and we either have to make moves to ban the
12 use of this or we are going to be compelled to adopt
13 this rating practice. Otherwise, we will be forced
14 to lose a substantial portion of our book that are
15 highly educated and white collar workers that,
16 coincidentally, most likely you could draw the
17 conclusion, are higher income individuals, and to do
18 that at the price of lower income minorities.

19 Now, first, before I begin, I would like to
20 share an overview of what I hope to accomplish
21 through my testimony today.

22 First, I would like to clarify some seemingly
23 contradictory statements made by GEICO in previous
24 testimony, as well as published statements,
25 defending their practice. Then I would like to

1 explain why multi-billion-dollar multi-line
2 insurance carriers want to attract high income
3 individuals and why it's in their best interests to
4 do so.

5 Then I will explain how insurance companies, in
6 particular GEICO, attract high income drivers or
7 highly educated drivers to their insurance carrier
8 and how they accomplish that.

9 After that, I'll explain how the actuarial loss
10 data that they use, and what the individuals that
11 will be testifying after me today will be stating is
12 the support of why you need to use education and
13 occupation in this marketplace.

14 And I will clarify that this will not hurt the
15 competition. The only competition it's going to
16 hurt is the people that are competing for the highly
17 educated and white collar workers that are,
18 coincidentally, going to be your higher income
19 individuals.

20 And finally I will explain why, if you do not
21 ban this practice, the type of impact that you will
22 see in the marketplace.

23 First, GEICO states publicly that they use 20
24 other factors and they don't solely use education
25 and occupation in determining rates. Anybody who's

1 gone to geico.com and does the practice -- and I'm
2 sure a lot of press people have, as well as people
3 in the Insurance Commissioner's Office, say, well,
4 how can they make this statement that they don't
5 solely use education and occupation to determine
6 rates?

7 Well, they make this -- and obviously if you've
8 gone to geico.com you can see that the disparity in
9 rates can be between 50 to 70 percent or even, in
10 the Commissioner's example, up to two to three times
11 the amount you're going to pay for auto insurance.

12 The reason why they can make this statement is
13 because it's a sophisticated way of playing on
14 words. The reality is that they are trying to say
15 they don't use only education and occupation to
16 determine rates, and that should be clear and
17 unambiguous from this point forward. They're saying
18 that they don't disregard driving records, they
19 don't disregard where a person lives, they don't
20 disregard what type of car you insure. No one is
21 contending that. That's not what is at issue here,
22 and therefore that statement should be discredited.

23 Secondly, why do insurance companies want to
24 insure high income drivers? It's pretty much a
25 twofold reason. The first reason is because it's a

1 foot in the door for insurance carriers that sell
2 other lines of business.

3 For people that don't know auto insurance,
4 private passenger automobile insurance, it has a
5 profitability range between zero and 12 percent,
6 historically. When you look at homeowners'
7 insurance from a national average, it's
8 significantly higher. The bottom line is that a
9 higher income individual -- and obviously
10 homeowners' insurance is not necessarily applying
11 here in Florida -- but the bottom line is that when
12 you take a high income individual with assets, with
13 those assets come the need to buy insurance for
14 those assets. If you have somebody that's a lower
15 income individual, they don't own a boat, they don't
16 own a home, they don't have a need to buy life
17 insurance nor do they have the luxury to buy life
18 insurance because every dollar they earn gets used
19 to put food on their plates. So for a multi-state,
20 multi-line insurance company, it's always attractive
21 to go after somebody who's going to potentially give
22 you more profits.

23 Secondly, higher income individuals -- and
24 studies have shown this -- have higher disposable
25 income to absorb lower losses, so, in other words,

1 when people in this room most likely get into a
2 fender-bender in the parking lot, we have a choice
3 to afford to pay maybe up to \$1,000 to pay that
4 claim out of your pocket. Studies have shown up to
5 50 percent of eligible claims are not even reported
6 to insurance companies because of the fear that
7 their rates will go up. Unfortunately, lower income
8 individuals do not have the ability to make that
9 choice.

10 As the 105th Congress in 1998 Joint Economic
11 Committee Study said -- and I quote here --
12 "Families at the bottom end of the income scale have
13 very little disposable income, and every dollar
14 spent on premiums for auto insurance represents
15 money that could be spent on other essentials such
16 as food, shelter and health care."

17 As previously indicated, owning a car can be
18 extremely important in terms of finding and holding
19 down a job. We call this claim consciousness.
20 Therefore people with higher income will have lower
21 loss ratios.

22 Now, obviously, because of the impact in terms
23 of the scrutiny that people would have if their auto
24 insurance carriers asked you every day, "How much
25 money do you earn," to find out what they're going

1 to charge you for auto insurance, there are other
2 ways that they have to skin the cat.

3 Now, how do these two factors differ from other
4 factors that we all hear about today which are in
5 use, like age, marital status, your driving record?
6 PCI is going to testify how this is just another
7 rating factor, this is something to predict losses
8 in the future for auto insurance carriers and it's
9 necessary.

10 Well, let me explain the difference between
11 those rating factors and these. Your age is not
12 affected by socioeconomic influences. You don't get
13 older -- poor people get old just as rich people get
14 old. Your ability to get married is not predicated
15 on how much money you have, unless your wife happens
16 to a huge wedding.

17 So these types of rating factors should be
18 categorized, as I call them, as socioeconomic rating
19 factors, which are influenced because not everybody
20 has the equal opportunity to get a four-year college
21 degree in this country.

22 As you can see from the visual aid I brought
23 with me, it's obvious that when you adopt these
24 types of practices, you are going to have a
25 tremendously disparate impact on certain minorities,

1 and this is -- I don't think it's disputed in this
2 country that not everyone has the equal opportunity
3 to get a four-year college degree, but I thought it
4 was important to illustrate that for the panel.

5 The next thing that I wanted to testify was how
6 do auto insurance companies accomplish this goal of
7 what I call red-lining? The easiest and most
8 sensible way of doing it is doing what GEICO has
9 done, which is create four companies with the same
10 trademark name ahead of it so the public does not
11 know the difference of what they're getting
12 insurance from.

13 As we get all pervaded by these ads every
14 single day by GEICO, what they don't tell you is
15 that if you polled everybody in this room before
16 they came in here, "Did you know that there were
17 four GEICO companies with four separate financial
18 statements, four separate loss ratios and four
19 abilities to go through rate increases in some of
20 those companies and not rate increases for others?"
21 Essentially, by creating GEICO, GEICO General, GEICO
22 Indemnity and GEICO Casualty, the consumer is
23 unaware of who they are currently insured really
24 with when they get insurance with GEICO. And
25 anybody that goes to geico.com and did change those

1 education and occupation rating factors, it doesn't
2 say, by the way, because you have a high school
3 diploma only and you're a janitor, you're rejected
4 from the preferred company in which the rates are
5 substantially less.

6 I've looked at the Florida Office of Insurance
7 Regulation's rate filing of GEICO, and you will see
8 that the base rates for the preferred companies in
9 Tallahassee, for example, is close to 70 percent
10 less than their substandard companies.

11 Now, what is the purpose of having these four
12 companies? It's because they're allowed to live
13 both sides, the best of both worlds, and that is,
14 they get to say that they don't reject drivers based
15 on their socioeconomic rating factors like education
16 and occupation, because as a group they insure and
17 offer insurance for all of them. The reality is
18 that they are able to do the best on the other side
19 in terms of insurance, and that is, go through rate
20 increases for your substandard lower educated
21 individuals and not risk losing your high income
22 individuals, which is always the fear that a
23 multi-state, multi-billion-dollar company will have.

24 If you do the rate examples, you'll see that is
25 why you are seeing huge rate disparities between

1 just changing education and occupation, because
2 they're actually putting you in a separate insurance
3 company with separate base rates. In fact, when you
4 go into their substandard company, at least in New
5 Jersey, they won't even offer you the same amount of
6 insurance to purchase if you're with a substandard
7 company.

8 Now, the next item that I would like to talk
9 about is explaining how the industry, who will be
10 testifying after me as well as some of my fellow
11 competitors with GEICO and Liberty Mutual that
12 compete on these grounds, and what they say is
13 actuarial loss data and how misleading this
14 actuarial sound data is.

15 I went to my own actuary and asked him, what is
16 actuarially sound data? It sounds like something
17 really sophisticated that a layperson doesn't
18 understand, and if an insurance person says it, it
19 sure as hell sounds like it's justified.

20 I'm going to tell you right now that
21 statistical correlations never show causality. Just
22 because you show statistics that are correlated to a
23 specific factor does not make that particular factor
24 the driver of those losses.

25 And I give you that in that if you assume that

1 higher income drivers will produce lower loss ratios
2 because they can absorb more of those claim losses,
3 then any characteristic trait that correlates to
4 income will produce the same correlation.

5 An example, let's just use their actuarial loss
6 data, sound data to justify a characteristic trait.
7 I would venture to say that if we grouped everybody
8 by TV ownership and if people that had plasma TVs,
9 we would put them in one group, people who owned
10 regular conventional TVs in another group, people
11 who own black and white TVs in another, and the last
12 one, people who don't even have a TV, if we group
13 all of those in separate groups I would venture to
14 say that you would find the same statistical
15 correlation, that the people with plasma TVs would
16 have lower loss ratios. Does that mean that we
17 should be able to use TV ownership as a criteria to
18 determine auto insurance rates? That is one of the
19 examples that I use.

20 And in terms of income, we can pretty much show
21 that education is correlated to income more than any
22 of the factors with TV ownerships, and I'd like to
23 display that.

24 As I said before, if income is correlated to
25 lower loss ratios, it makes sense that anything

1 that's related to income will produce the same
2 results. I don't think there's ever been a U.S.
3 census ever done in which higher educated
4 individuals in this country make less money than
5 people who are not educated. Otherwise, my mother
6 was completely wrong by telling me to go to law
7 school and telling me to get my CPA, because then I
8 would be making less money in certain circumstances.
9 It obviously occurs, but it's not the norm.

10 Now, looking at this chart, as I said, you
11 would have to agree that if income does correlate to
12 loss ratios -- and this is a great way of an
13 insurance carrier to make sure that they can use
14 income as a criteria without necessarily using the,
15 quote, unquote, income as a criteria. I would
16 almost have to say, and no one would argue with
17 this, that education is more of a predictor of
18 income than education is a predictor of auto
19 insurance or risk or loss.

20 Now, to dispute finally in terms of the impact
21 of this, the new trend is that since insurance
22 scoring was introduced a few years ago, this has
23 opened Pandora's box with the insurance industry,
24 okay? Since they've confused regulators and
25 legislators that insurance scoring is necessary and

1 doesn't discriminate against lower income
2 individuals, they figured, why don't we just go for
3 the entire throat on this?

4 Due to the attractiveness of insuring higher
5 income individuals, this is simply a new way of
6 going after that a little further. We believe that
7 if you don't stop this, you're going to end up
8 finding that every insurance carrier is going to be
9 compelled to adopt it or, like I said, they will
10 lose all of their highly educated and white collar
11 workers.

12 In terms of what would happen if every single
13 insurance carrier in the country were to adopt what
14 GEICO does in terms of education and occupation and
15 giving discounts of 70 or 80 or over 90 percent of
16 what you would pay for auto insurance based upon
17 education, the people that would benefit in this
18 country would be as follows. We would simply be
19 adopting a practice in the country that would allow
20 us to simply say 80 percent of all of the U.S.
21 population that's white is the people that qualify
22 for a four-year college degree, let's let them only
23 be the people that can get into the preferred
24 companies of these multi-billion-dollar companies
25 because 80 percent of all the people with four-year

1 college degrees are white individuals. You can see
2 that obviously there's 87 percent of the population
3 is white, but, as you can see, the bottom line is
4 that if you use education and getting a four-year
5 college degree as a criteria, you will be benefiting
6 these individuals. That makes up all the
7 individuals who have four-year college degrees in
8 the United States.

9 And finally, the smoking gun, what I always say
10 is what's important is how do people know -- some
11 people ask me, how do you know that they're really
12 going after people that are high income individuals,
13 aside from your conjecture? Well, if you look at
14 GEICO's Rate Manual and Underwriting Guidelines,
15 they specifically say ineligible military personnel
16 for their preferred companies are individuals, at
17 least in New Jersey, with a pay grade of an E-4 or
18 less, okay, a pay grade. We're not talking about
19 somebody who displays X, Y and Z characteristics.
20 We're talking about what somebody makes. If you go
21 do the research on what a pay grade E-4 individual
22 in the military, it's somebody who cannot make more
23 than \$24,000 a year in the U.S. government.

24 So basically we're very passionate about this
25 because we don't want to adopt the practice. If the

1 public is fine with using this practice, that's fine
2 with us. We just want everyone to know that this
3 practice goes on and the type of impact it will
4 have. Thank you.

5 MS. DAWSON: Thank you, Mr. Poe.

6 Are there any questions from the panel?

7 COMMISSIONER McCARTY: No, I just want to make
8 one comment. It's just that the issue you raise
9 with insurance scoring like credit scoring has not
10 been adopted by Florida unless there's a
11 demonstration of disparate impact. That is a
12 subject of a court challenge we're having. But that
13 is also a concern in terms of a surrogate for
14 income.

15 MS. DAWSON: Any additional questions?

16 MR. PARTON: Just a few questions. I just want
17 to make sure I understand the basis of your
18 testimony so we're just really clear.

19 If I understand what you're basically saying,
20 it is that when you correlate, if you will,
21 education with the rates or with the claims
22 experience that companies may be doing, are we
23 saying -- are you saying that basically what we're
24 measuring is not the propensity of a highly educated
25 individual to have less accidents or less traffic

1 tickets, but to be less likely to have to rely on
2 his insurance in order to pay his claim?

3 MR. POE: Yes. And I'll tell you that it's not
4 that simple, only because so many things go into a
5 loss ratio. To pinpoint one particular reason would
6 not be. But I would say that's the driving cost,
7 yes.

8 MR. PARTON: Thank you.

9 COMMISSIONER McCARTY: You can also see, as we
10 put up in a demonstration on the bulletin boards
11 over there, it's similar to what Mr. Poe has
12 demonstrated in his examples as well as a number of
13 examples that have been demonstrated by the Consumer
14 Federation of America whose letter we are going to
15 enter into the record as well.

16 MS. DAWSON: Yes, Commissioner.

17 COMMISSIONER McCARTY: The record that has been
18 presented to Susan Dawson in response to our request
19 for information to participate in this hearing.

20 But if you look at the example, the GEICO
21 example that we have, is a single male age 23 with a
22 2000 Chevy Malibu, 15,000 miles a year with one
23 speeding ticket and zero accidents. The policy
24 remains the same with all of the deductibles and
25 common coverages, so the only factor that's being

1 altered in this case would be the education factor.

2 And if you look at this for the Territory 45,
3 which is Gainesville, Florida -- no comment -- and
4 Territory 14, which is Hialeah, Florida, you'll
5 notice the disparity with regard to the education of
6 a Ph.D. engineer and a auto mechanic, which is
7 approximately three times more in the Territory 14,
8 which is Hialeah, which demonstrates that if you
9 change the factor of education and their occupation,
10 then you're changing the factor by 300 percent,
11 holding all other things common.

12 And again, I direct your attention and we will
13 enter into the record the examples that were
14 supplied by the Consumer Federation of America, Mr.
15 Bob Hunter.

16 MS. DAWSON: Yes, Commissioner, and those
17 documents -- all documents that were submitted to
18 the Office shall be a part of this record.

19 I do have a couple of questions for you, Mr.
20 Poe. It actually may be just one question with
21 possibly a follow-up.

22 In your testimony today, you made a comment
23 that this practice -- if, for example, your company
24 had to adopt the use of these factors, that this
25 would be at the price of lower income policyholders.

1 Could you explain that a little further? Are
2 you talking about a subsidy?

3 MR. POE: Yeah.

4 MS. DAWSON: The richer folks subsidizing those
5 who make less?

6 MR. POE: Well, because if the entire
7 marketplace were to adopt this practice and because
8 of the need to go after those higher income
9 individuals, we would lower our rates for those
10 individuals who have higher educations and white
11 collar jobs, knowing that the rest of the
12 marketplace would have higher rates, substantially
13 higher rates for the alternative groups, which are
14 the blue collar workers and less educated. Even to
15 stay competitive, we could raise our rates to make
16 up the difference. So essentially we would compete
17 on the same grounds.

18 MS. DAWSON: So essentially it's the richer
19 folks subsidizing those with less or who make less?

20 MR. POE: I mean, I would conclude that, but of
21 course there are situations where people who don't
22 have high school diplomas that are wealthy.

23 MS. DAWSON: There are always exceptions.

24 MR. POE: My landscaper probably makes a lot of
25 money.

1 MS. DAWSON: Thank you.

2 COMMISSIONER McCARTY: But just for the factual
3 predicate here, an insurance company needs X dollars
4 to pay the claims per year and it's how they
5 separate that?

6 MR. POE: Exactly.

7 COMMISSIONER McCARTY: So in essence, by giving
8 a discount to an occupation or a certain class of
9 occupation essentially equates to a surcharge to
10 those who don't qualify for that?

11 MR. POE: Exactly. That's why, you know,
12 someone from PCI will testify that this will hurt
13 competition and rates will go up for all consumers.
14 I really don't understand that.

15 COMMISSIONER McCARTY: Yeah.

16 MR. POE: How can all consumers end up having
17 their rates go up? The people that are going to see
18 their rates go up are the highly educated people
19 that have white collar jobs. Those are the people
20 that are going to see their rates go up. The people
21 that will see their rates go down are the people
22 that are blue collar workers that do not have a
23 four-year college degree. It's a zero-sum gain.
24 You only have so many losses every year, as you were
25 saying, Commissioner. And I don't understand how

1 the way that you underwrite changes, what those
2 losses are going to be. It's a matter of fairness
3 and that's what it comes down to.

4 If we all agree that income does correlate to
5 lower loss ratios, does that mean that we are
6 capable of just using income? We've seen, as you
7 alluded to, life insurance companies, they can
8 actually prove -- now, they offer insurance for
9 life -- they can actually prove the mortality tables
10 for African-Americans show that they live shorter
11 life spans, but they are prohibited to use race as a
12 reason to charge higher rates for life insurance,
13 and that's at least directly correlated to the
14 insurance that they're giving. Why is it
15 prohibited? Because it's unconscionable, because we
16 as a society believe it's unfair.

17 So you can talk as much as you want about
18 statistics; the bottom line is what is fair. You're
19 taking people that are going to make the least
20 amount of money and charge them the most amount of
21 money for car insurance, an essential for them to
22 even get a job and for them to hold down a job and
23 to get out of that class and move into a higher
24 income status.

25 COMMISSIONER McCARTY: And I think our concern

1 and the concern raised by consumer advocacy groups
2 like the Consumer Federation of America is the use
3 of occupation or education is tantamount to using
4 factors that are impermissible or have been
5 determined to be impermissible, such as the
6 actuarial tables or life mortality tables that were
7 used to set race-based rates back in the 1900s to
8 1970.

9 MR. POE: I mean, a perfect example of how the
10 impact is, if you look at -- there's going to be
11 somebody who testifies after me that says GEICO
12 entered in 2004 in New Jersey and now they've become
13 the fourth largest auto insurer in New Jersey,
14 offering insurance to thousands and thousands of
15 drivers, which almost makes you conclude, jeez,
16 well, this must work for everybody.

17 If you look at the actual population of each of
18 the four insurance companies -- or actually, in New
19 Jersey, it's three -- for GEICO, there's three times
20 the amount of drivers that they insure in their
21 preferred company than there are in any other
22 substandard companies, which shows that they are
23 showing the attractiveness to the higher educated
24 individuals.

25 But somebody who is not educated in New Jersey

1 is going to geico.com and finding that their rates
2 are more than what they pay now. It's what we
3 call -- it's very similar to what's called rate
4 underwriting. If you make me, as an insurance
5 carrier, insure a 17-year-old -- we did this with
6 examples with Progressive in New Jersey -- and I say
7 I don't want to insure 17-year-olds, but I have to
8 because the law says that I have to, what I do is I
9 punch in the numbers for Progressive and it says
10 that I have to pay \$12,000 a year for a car that
11 cost me \$15,000.

12 So yeah, I get to go on the books and say I
13 comply with the law, I insure 17-year-olds. But who
14 in the hell is going to get insurance and pay
15 \$12,000 a year using Progressive to insure a \$15,000
16 car? So it's what we call rate underwriting. You
17 can underwrite them by rate, and that's exactly what
18 this type of practice does.

19 MS. DAWSON: Any further questions from the
20 panel?

21 MR. EAGELFELD: One question: I noticed that
22 you had worked a bit with Consumer Federation of
23 America. Some of the results that the Commissioner
24 mentioned and some of their results seemed to show
25 that for GEICO in particular the disparity between

1 the occupations appears to be even greater in urban
2 areas than in rural type areas.

3 Do you have any comment on that?

4 MR. POE: Yeah. Well, the reason why is
5 because we all start with a base rate, as you know,
6 and what that means is you take relativities or
7 multiplicative factors and multiply a factor times
8 that base rate, so an example is that if you live in
9 a highly densely populated area with more risk of
10 car theft, et cetera, you might have a 2.0, and that
11 will be multiplied times your base rate, than if you
12 were living in a nice suburban area where there
13 aren't as many vehicles and there aren't as many
14 stolen vehicles, you have a 1.5.

15 So if you take these multiplicative factors,
16 you'll see a bigger disparity in the insurance
17 companies that are -- I mean, in the areas in which
18 those multiplicative factors are there.

19 MR. PARTON: Are you aware of any studies that
20 have been done with regard to occupational education
21 or even credit scoring that show the impact, if you
22 will, of such practices on minorities or people with
23 low income?

24 MR. POE: Not in particular that you're
25 referring to.

1 MR. PARTON: Are you aware of the constant
2 response of the insurance industry, which is, we
3 don't track race and we don't track income and that
4 shows that we are not intentionally discriminating
5 or using a factor that --

6 MR. POE: Right.

7 MR. PARTON: Are you familiar with that?

8 MR. POE: Well, I'm familiar with their
9 argument on that, yes. And like I said, I think
10 it's pretty obvious that when the life insurance
11 companies were told that they had to delete race and
12 they started using occupation and started putting
13 carwashes at a certain rate that's higher, I don't
14 think it takes a rocket scientist to understand that
15 just because you don't use rates doesn't mean that
16 you are not -- either intentionally or not
17 intentionally -- going to impact that race by
18 adopting a certain practice.

19 MR. PARTON: Would you agree with me, even if
20 insurance companies are not capturing that data,
21 that there's plenty of census data out there which
22 would lead one to the conclusion that if you're
23 using a process in any way that equates with income,
24 you may be in fact having a disparate impact to
25 minorities or people with low incomes?

1 MR. POE: I would firmly agree with that. And
2 if you look at even GEICO's Web site and how they
3 determine what occupation or even education that
4 they put on the drop-down menu to categorize to you,
5 it's eerily similar to the way that the Census
6 actually determines their categories. So I don't
7 know if it's coincidence or, you know, Ripley's
8 Believe It or Not.

9 MR. PARTON: Would you agree with me it's kind
10 of hard to argue that we don't know whether or not
11 we're discriminating when you have all of these
12 other studies out there that equate income and
13 occupation and things of that nature?

14 MR. POE: I mean, for an entire industry that
15 is predicated on how smart we are, we would be
16 probably the dumbest industry in the world not to
17 know that those statistical correlations exist.

18 MR. PARTON: Thank you.

19 MR. POE: Thank you.

20 COMMISSIONER McCARTY: We appreciate the
21 passion you bring to this issue and taking time out
22 of your schedule to come and visit with us today.
23 We appreciate it very much.

24 MR. POE: Thank you very much.

25 MS. DAWSON: Thank you, Mr. Poe.

1 We have several representatives from GEICO who
2 are here today, if they could come forward.

3 COMMISSIONER McCARTY: I just wanted to start
4 off by saying I had an occasion after Hurricane
5 Charley to visit the central Florida office of GEICO
6 and was quite impressed with the operations of
7 GEICO. A number of the employees were in the
8 impacted area and had significant damage to their
9 homes and made it to their offices to service their
10 policyholders, and it was an impressive display of a
11 good work team and good workforce.

12 Again, I want to reemphasize that we're not
13 here to impugn the reputation of GEICO, which has
14 made great strides in our state to provide for
15 competitive products, and by the same token we want
16 to express our deep concern about the potential
17 disparate impact on low income Floridians as well as
18 minorities. And thank you for coming today.

19 MR. NAYDEN: Thank you, Commissioner. I
20 appreciate the compliment. I know our folks in our
21 Lakeland office, all 1,800 of them have been working
22 double time and it's been a difficult several weeks.
23 But again, thank you for the compliment.

24 My name is Hank Nayden. I am vice-president
25 and legislative counsel for the GEICO group of

1 companies. I'm going to let my associate introduce
2 himself.

3 MR. LAVREY: My name is Paul Lavrey. I'm
4 assistant vice-president of underwriting research
5 and a fellow at Casualty Actuarial Society and a
6 member of the American Academy of Actuaries.

7 MR. NAYDEN: Thank you for this opportunity to
8 be here to talk about this issue and the benefits
9 that competition and choice have brought to Florida
10 drivers.

11 Our company was founded in 1936 on a simple
12 philosophy: offer customers excellent auto insurance
13 coverage at low prices. That business model has
14 succeeded.

15 GEICO is now the third largest private
16 passenger auto writer in Florida and the fourth
17 largest writer in the country. I'm also proud to
18 say that we employ over 1,800 associates in our
19 Florida offices to service our Florida customers.

20 GEICO was founded to serve only government
21 employees, just as other companies were founded to
22 serve only military Officers, farmers, teachers and
23 lawyers. Over the years, GEICO has broadened its
24 marketing and underwriting criteria to include all
25 drivers, but the companies have used education and

1 occupation as underwriting criteria for decades.

2 The overwhelming majority of GEICO's business
3 is done over the phone or the Internet. Any
4 customer anywhere in Florida can log onto GEICO's
5 Web site or call our toll-free number 24 hours a
6 day, seven days a week to purchase a policy. As you
7 may have noticed, our advertising aggressively seeks
8 to attract all Floridians in every part of the
9 state. GEICO recently brought on line a new Spanish
10 language Internet site to better service our
11 customers who prefer to conduct business in Spanish.

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

18 The use of these criteria is supported by
19 actuarially tested data, and GEICO has vetted its
20 use of these criteria throughout the country with
21 regulators for many years.

22 Our loss data overwhelmingly demonstrates that
23 racially blind risk characteristics such as
24 occupation and education are valid predictors of
25 risk. We have provided to the Office of Insurance

1 Regulation, as well as other regulators nationwide,
2 volumes of credible data that prove this to be true.

3 GEICO is headquartered in Maryland, and the
4 Maryland Insurance Administration thoroughly reviewed
5 GEICO's use of these risk characteristics in 2006,
6 along with an independent actuarial firm.

7 COMMISSIONER McCARTY: Excuse me, though. That
8 report that was prepared by the Maryland Department
9 did not look at disparate impact on protected
10 classes of people, if I'm not mistaken.

11 MR. NAYDEN: Maryland found and the report of
12 the independent actuaries found -- and I will quote
13 -- "There is no evidence that GEICO's use of these
14 factors is intended to have or actually has a
15 disparate impact on any protected class."

16 The conclusion of the Maryland review was that
17 education and occupation are valid predictors and
18 are not utilized by GEICO in an unfairly
19 discriminatory manner.

20 COMMISSIONER McCARTY: Let me just ask you a
21 question. If, in fact, it were determined,
22 hypothetically, that it had a disparate impact on
23 protected classes, would GEICO continue to use it?

24 MR. NAYDEN: Absolutely not.

25 COMMISSIONER McCARTY: So the issue, then, is

1 not a matter -- well, obviously it's not intended --
2 but it's a matter of research. If research were to
3 conclude that the use of occupation and income or
4 occupation and education did in fact disparately
5 impact on protected classes of minorities, GEICO
6 would disband the use of that?

7 MR. NAYDEN: And to our knowledge, there is no
8 credible data and no credible study reflecting that.
9 GEICO does not believe that race or income are at
10 all relevant to risk selection.

11 MR. PARTON: Has GEICO done a review of its
12 book of business to determine the impact, on a
13 racial basis or even an income basis, of the use of
14 occupation or education on its book of business;
15 that is to say, a study that would indicate who was
16 represented in what companies and the rates that
17 they are being presented based upon either income or
18 on race?

19 MR. NAYDEN: Again, our underwriting and rating
20 processes are both income- and race-blind. We have
21 no interest in collecting or analyzing any data on
22 race.

23 MR. PARTON: So GEICO's position is, "Ignorance
24 is bliss, if it is having that impact, we don't want
25 to know about it," is that correct?

1 MR. NAYDEN: Our position is that our customers
2 would very likely find it extremely offensive for us
3 to ask them what race they are, what their ethnicity
4 or their religion is, and, quite frankly, we also
5 find that offensive.

6 COMMISSIONER McCARTY: Is it --

7 MR. PARTON: Excuse me, Commissioner.

8 COMMISSIONER McCARTY: Go ahead.

9 MR. PARTON: Don't you agree that your
10 customers who are minorities and are of low income
11 would also be equally angry if they found out they
12 were paying the highest rates just because of their
13 race or their income as a result of the use of these
14 factors?

15 MR. NAYDEN: And the Maryland study says that
16 that is absolutely incorrect, that that is not the
17 case.

18 MR. PARTON: Did the Maryland study do an
19 analysis of your book of business based upon race or
20 income to determine whether or not there was a
21 disparate impact upon any particular classes?

22 MR. NAYDEN: Again, the Maryland study and the
23 independent actuaries concluded there is no evidence
24 that GEICO's use of these factors is intended to
25 have or actually has a disparate impact on any

1 protected class.

2 MR. PARTON: And I'm asking you, how did
3 Maryland arrive at that conclusion? Did they
4 conduct an analysis of your book of business based
5 upon the placement and tiering of these particular
6 individuals based upon either their income or on
7 their color or race?

8 MR. NAYDEN: Because GEICO's underwriting and
9 rating processes are both income- and race-blind,
10 that data is not collected and it was not analyzed.

11 MR. PARTON: Okay, so your answer to my
12 question is no, correct, they did not conduct such a
13 study?

14 MR. NAYDEN: The Maryland study and the
15 independent actuaries looked at GEICO's use of
16 education and occupation as underwriting criteria
17 and again found it had no disparate impact.

18 MR. PARTON: Without reviewing your book of
19 business and the impact that such use of occupation
20 and education may have upon people of low income or
21 race?

22 MR. NAYDEN: GEICO has no information on the
23 racial makeup, the religion or the incomes of our
24 customers.

25 MR. PARTON: So your answer is I am correct,

1 Maryland did not look at this issue as it relates to
2 your book of business and the impact of these
3 criteria on your book of business?

4 MR. NAYDEN: Mr. Parton, I'll let my answer
5 stand.

6 COMMISSIONER McCARTY: Sir, just to follow up
7 on a comment that you made that kind of piqued my
8 curiosity, you said it would not be appropriate to
9 use race or income, is that correct?

10 MR. NAYDEN: That is correct.

11 COMMISSIONER McCARTY: Okay. Yet in your
12 underwriting manual, you put groups together that
13 specify for -- are you familiar with the military
14 classification of pay grade 4 or 5?

15 MR. NAYDEN: I am.

16 COMMISSIONER McCARTY: Okay. Is the pay grade
17 4 or 5 reflective of the compensation military
18 personnel received?

19 MR. NAYDEN: Commissioner, I'm glad you brought
20 this up, and let me just clarify for the record,
21 that is not one of our underwriting criteria. You
22 have an old underwriting guideline, I don't know how
23 old it is, but our current practice does not use
24 that as an underwriting factor.

25 COMMISSIONER McCARTY: Okay. This was revised

1 in 2004 when I first raised this issue with GEICO,
2 so this is the manual that I'm looking at which uses
3 pay grade classifications in 2004 when this issue
4 was raised, so in 2004 you used income as an
5 underwriting criteria.

6 MR. NAYDEN: I can't speak to the underwriting
7 guidelines that you have in your hand, but I can
8 tell you that our current guidelines do not include
9 that as a criteria.

10 COMMISSIONER McCARTY: Okay, but the use of
11 income or race is inappropriate?

12 MR. NAYDEN: Absolutely.

13 COMMISSIONER McCARTY: At least as of today,
14 not knowing what was in your guideline in 2004?

15 MR. NAYDEN: The use of income or race as a
16 risk selection criteria is not appropriate.

17 COMMISSIONER McCARTY: Is it appropriate to use
18 pay grades, military pay grades?

19 MR. NAYDEN: That's an arguable point, but
20 since we do not use military pay grades as an
21 underwriting criteria, I won't speculate.

22 MS. DAWSON: But you do use ranking, isn't it
23 correct, Mr. Nayden, for military, lower rankings
24 are in a different group and they pay a higher rate,
25 is that not correct?

1 MR. NAYDEN: There are a number of companies
2 that underwrite for the military based on rank. One
3 of the largest insurers in the country writes almost
4 solely military, and that is precisely how they
5 underwrite.

6 MS. DAWSON: But doesn't it follow that if you
7 are a lower ranking member of the military that you
8 do make less money than, say, for example, a general
9 or someone who is of a higher rank?

10 And I think you're still using that today. We
11 subpoenaed documents, your company has provided
12 information to us through counsel, and it clearly
13 states in the documents that you sent us that lower
14 military rankings or members of the military who are
15 lower military rank are specified in Group A and
16 that is seen as a least favorable rate grouping and
17 that group is described as those exhibiting a higher
18 loss experience, so you're doing that by ranking.
19 And if you are a low ranking person in the military,
20 you are making less money. How can you say that
21 there's no relationship there? Explain that to me.

22 MR. NAYDEN: Again, that underwriting criteria
23 is based on occupation, and we would consider
24 various occupations within the military a legitimate
25 underwriting criteria. There is no study --

1 COMMISSIONER McCARTY: But those occupations
2 correlate with their pay. The lower pay are in the
3 highest -- pay the highest premium. So they may be
4 specific occupations, but they are the lowest paid.

5 MR. NAYDEN: Well, first of all, Commissioner,
6 it is an absolute fallacy to say that under GEICO's
7 rating and underwriting plans the lowest occupations
8 pay the highest premiums.

9 COMMISSIONER McCARTY: The lowest pay grades,
10 the lowest military pay grades.

11 MR. NAYDEN: And that is absolutely not
12 correct.

13 COMMISSIONER McCARTY: Okay.

14 MR. NAYDEN: What I will say is that obviously
15 we have a very deep interest in this issue and we
16 recently looked at our book of business to see, for
17 example, educational levels, what the premium levels
18 were for our customers who had a high school
19 education or less compared to our customers who had
20 Bachelor degrees or higher, and it is absolutely
21 clear that our customers who are high school
22 education or less pay lower premiums than our
23 customers who have -- are degreed.

24 MR. EAGELFELD: Is that because they have less
25 expensive vehicles and don't buy physical damage and

1 things like that?

2 MR. NAYDEN: There are literally hundreds of
3 factors that go into a premium, and that, of course,
4 is the fallacy behind doing a single rate comparison
5 and repeating the same factors and changing it by
6 simply occupation.

7 MR. EAGELFELD: No, I'm asking you if you had a
8 controlled comparison there or are you comparing the
9 idea that people with Bachelor's degrees buy more
10 oranges and therefore they pay more for oranges?

11 MR. NAYDEN: What we looked at are the premiums
12 for our customers in these two educational
13 categories, and that's what we found, that the high
14 school -- folks who had a high school level of
15 educational attainment or less paid lower premiums.

16 MR. PARTON: Well, let me ask you this
17 question, because I think we need to now define our
18 terms.

19 There are two different issues that it seems to
20 me are applicable to this. First of all, there's
21 something known as the rate, and then there's the
22 premium. Would you agree with me rate and premium
23 do not mean the same thing?

24 MR. NAYDEN: I would absolutely agree with you.
25 And my testimony touches on this later, if I'm

1 allowed to get to it. And I want to make precisely
2 this point later in my testimony, because obviously
3 the rating examples that are being displayed today
4 are not rate, they are simply premiums.

5 There is no study that finds that the use of
6 education or occupation as a risk selection
7 characteristic has an adverse impact on minorities
8 or low income individuals. GEICO does not use
9 education or occupation as a proxy for race or
10 income. The simple fact is --

11 MR. EAGELFELD: Could there ever be such a
12 study, based on your unwillingness, inability,
13 whatever you want to phrase it, to have that
14 information on income or race, could there ever be
15 such a study, and if there couldn't, isn't it a
16 vacuous statement to say there is no evidence if
17 such a study could never be done?

18 MR. NAYDEN: Again, I'll return to the
19 actuarial review that the Maryland regulators and
20 the independent actuaries did, the analysis they did
21 on our use of education and occupation. They were
22 very clear in their determination that these factors
23 do not have a disparate impact on any protected
24 class.

25 COMMISSIONER McCARTY: But they didn't look at

1 anything. They didn't look at any data. They
2 didn't look at Census data. They didn't look at
3 book of business. The question wasn't, it wasn't
4 intentional, so therefore the result is. I read the
5 Maryland report; I didn't see any study done at all
6 looking at the characteristics or arrays of data
7 concerning income or occupation.

8 MR. NAYDEN: Again, GEICO does not use income
9 or race. Our underwriting and ratemaking process is
10 completely race-blind.

11 COMMISSIONER McCARTY: But yet you say if it
12 had a disparate impact, you would support the
13 prohibition of its use. Yet the question Mr.
14 Eagelfeld is asking is, yet it seems as though we
15 could never get to that conclusion because we could
16 never ask the appropriate questions.

17 MR. NAYDEN: Commissioner, if your question is
18 would GEICO support serving our customers as to
19 their race or ethnicity --

20 COMMISSIONER McCARTY: I didn't ask that.

21 MR. NAYDEN: -- or religion, my answer would be
22 no.

23 COMMISSIONER McCARTY: No, I didn't ask that.
24 But continue your testimony.

25 MR. NAYDEN: The simple fact is that GEICO's

1 educational and occupational groupings are based on
2 decades of data that show that people in some
3 occupations or educational groups are less likely to
4 have losses.

5 GEICO uses more than 20 factors, not just one
6 or two, in determining rates for auto insurance. No
7 single factor is ever used exclusively or even
8 primarily to determine a rate.

9 Our company's growth across all occupations and
10 educational levels give the lie to any notion that
11 certain individuals are being harmed by our
12 underwriting practices. If individuals from certain
13 occupations and educational levels could not get
14 competitive rates from GEICO, they would be buying
15 insurance from our competitors.

16 Let me be absolutely clear. GEICO's goal is to
17 have virtually every driver in Florida as a
18 customer. We aggressively advertise and market to
19 every group throughout the country, and every
20 occupational and educational group is eligible for
21 all of our companies.

22 GEICO is one of the largest urban writers in
23 the United States and one of the largest insurers of
24 urban drivers in Florida, insuring over 900,000
25 vehicles in urban areas. Our growth in every region

1 and in every sector of the economy is evidence that
2 GEICO is achieving its goal to make auto insurance
3 more affordable for everyone.

4 Competition for Florida auto insurance
5 customers is fierce. Florida auto insurance buyers
6 are extremely price-sensitive, and they shop. If
7 GEICO was charging unfair rates, our Florida book of
8 business would be shrinking, not growing.

9 We are pleased to note that over the past two
10 years GEICO has continued to increase its Florida
11 policyholders at a double-digit rate. In fact, more
12 than one in three Florida consumers who contact us
13 for an insurance quote buys auto insurance from
14 GEICO.

15 What's more, GEICO offers a policy to more than
16 98 percent of all Florida applicants. GEICO is
17 doing this by providing substantial savings to our
18 customers across every region in the state. In
19 fact, according to over 10,000 policyholder surveys,
20 the average annual savings for GEICO's Florida
21 customers is over \$500 in total. Based on our
22 policyholders' reported savings, last year alone
23 GEICO saved Florida drivers over \$134 million.

24 Our customers enjoy these savings across all
25 cities and towns and all demographic groups. In a

1 recent comprehensive survey, nine out of ten of our
2 Florida customers told us they would refer GEICO to
3 a friend or family member.

4 In short, GEICO is succeeding in the Florida
5 marketplace because it is saving Florida drivers
6 money. The Florida auto insurance buyers currently
7 enjoy the benefits of a strong auto insurance
8 market. This is because they have many choices and
9 because auto insurers must compete for consumers'
10 business based on price and service. GEICO hopes
11 that the information we have provided today will
12 assist the Commissioner and his staff in our mutual
13 goal of maintaining that healthy marketplace. Thank
14 you.

15 COMMISSIONER McCARTY: Thank you, Mr. Nayden.

16 MS. DAWSON: Mr. Lavrey, did you have any
17 comments that you wish to make?

18 MR. LAVREY: Nothing additional.

19 MS. DAWSON: Okay.

20 COMMISSIONER McCARTY: Have you ever had the
21 opportunity to look at the U.S. Census data with
22 regard to the breakdown for Caucasian/non-Caucasian
23 in terms of occupation?

24 MR. NAYDEN: I have not.

25 COMMISSIONER McCARTY: Are you curious in how

1 that data might have ranked?

2 MR. NAYDEN: I would have an interest, yes.

3 COMMISSIONER McCARTY: We'll be happy to share
4 that information with you.

5 MR. PARTON: Does anybody in your company pay
6 any attention to Census data as it may relate to the
7 representation of the various educational or
8 occupational groups broken down, if you will, in
9 racial or income categories?

10 MR. NAYDEN: Let me refer that question to my
11 colleague, Mr. Lavrey.

12 MR. LAVREY: Well, I can speak to what I know,
13 and I have not reviewed it.

14 MR. PARTON: So GEICO really doesn't care what
15 the representation is in any particular occupation
16 as it may impact the rates an individual may be
17 paying?

18 MR. NAYDEN: Mr. Parton, again, our
19 underwriting and rating processes are racially
20 blind.

21 MR. PARTON: Well, by "racially blind" --

22 MR. NAYDEN: We simply use our own data
23 collected over decades to show what the loss
24 experience is and try to get to, you know, the most
25 accurate rate we can for each individual risk.

1 MR. PARTON: Would it be fair to -- well, the
2 bottom line is when you use the term racially blind,
3 what you mean is you haven't looked to see how it's
4 impacting people by race, am I correct?

5 MR. NAYDEN: Again -- and maybe I didn't make
6 this clear in my earlier testimony -- but GEICO does
7 its business over the phone and the Internet. We
8 neither know nor care the color or ethnicity of our
9 customers. We simply want to insure all drivers in
10 Florida.

11 MR. PARTON: So you really don't care how it
12 impacts people based upon income or color, am I
13 correct?

14 MR. NAYDEN: I'm sorry, again, our policies are
15 sold based on a completely racially blind
16 underwriting process.

17 MR. PARTON: Right, meaning you don't care how
18 it impacts people with income or color?

19 MR. NAYDEN: We have no interest in
20 ascertaining or analyzing or using race or income to
21 select risk.

22 COMMISSIONER McCARTY: We'll be entering the
23 Maryland Market Conduct Report. I know that's been
24 relied on and referred to here.

25 I do want to make the observation that the

1 Market Conduct Examination, which was completed in
2 June of 2006, did make a number of assertions as to
3 the use of occupation and education as not having a
4 disparate impact on protected classes. However, the
5 exam report had no graphs, analyses, charts,
6 spreadsheets, tables or analysis of any kind to
7 support the conclusions made in that report.

8 We will be attaching that report as part of the
9 record, and also the response by the Consumer
10 Federation of America.

11 Any other questions?

12 MS. DAWSON: Yes, I have questions.

13 Going back to the report, I have a copy of the
14 Maryland report. Do you have a copy of that as
15 well, Mr. Nayden, with you?

16 MR. NAYDEN: Not in my hand, no.

17 MS. DAWSON: Okay. Obviously you are familiar
18 with the report. As the Commissioner has stated,
19 the exam report, which, you know, is available on
20 the Internet, the Market Conduct Exam Report, was
21 conducted or concluded back in June of 2006.

22 Are you aware of any tests, analysis, charts or
23 any sort of statistical data that was done or
24 completed, created, that supports the conclusions
25 that the Maryland Insurance Department made with

1 this report?

2 MR. NAYDEN: I am aware that the independent
3 actuaries received from GEICO voluminous data on our
4 book of business and analyzed that -- they analyzed
5 it fairly well, that data, some of which is
6 proprietary. I'm sure that the Maryland Insurance
7 Commissioner and his staff would love to discuss the
8 data and give you whatever information that you
9 would desire on that.

10 I might also add that similar data has been
11 given to the Florida Department on various occasions
12 in either separate filings or rate filings or
13 through our underwriting filings and have been
14 reviewed and analyzed.

15 MS. DAWSON: Okay. I certainly do appreciate
16 that.

17 Looking at the report and looking at the
18 conclusions in the report, usually when -- for
19 example, the Office occasionally on various exams
20 will hire actuarial firms to come in and assist with
21 an examination, and apparently the Maryland
22 Department did that as well, they hired a very
23 reputable firm. Generally, most of the time, there
24 are attachments, charts, graphs on just about every
25 aspect of the exam, probably more than you need or

1 want to know, attached to it to support the
2 conclusions, and that's not here, which gives us,
3 you know, concern that the conclusions are just not
4 supported.

5 Looking at the first page of the exam, the
6 Market Conduct Exam, it says that GEICO's use of
7 education and occupation as underwriting factors is
8 reasonably objective, but there's nothing to support
9 that. There are no statistics, there's no data.
10 All the report states is that the independent
11 actuarial firm reviewed information received from
12 GEICO. There's no reference to, well, we went and
13 did something outside of what GEICO gave us or we
14 looked at, as the Commissioner has stated, U.S.
15 Census Bureau data. Nothing was done to really,
16 from what I've seen from my reading of this report,
17 to show that something was done outside of just
18 looking at GEICO's manuals and the examples that
19 GEICO gave to this independent actuarial firm.

20 So that's what I'm asking you: What else was
21 done by this firm to support the conclusions, if you
22 know?

23 MR. NAYDEN: Again, I don't think that -- as
24 you say, this was an extremely reputable group and
25 actuarial firm that's been used by many

1 Commissioners around the country. I don't think
2 that they would have been so pointed and decisive in
3 the conclusions and their findings had they not had
4 sufficient data to reach those findings.

5 If I may say one more thing that I left out of
6 my testimony, I think it's a key point. The very
7 individuals, the drivers who are in the occupational
8 classifications and educational classifications that
9 we are discussing today, make up by far and large,
10 far and away the largest part of GEICO's book in
11 Florida.

12 We write working class drivers all across
13 Florida. We are growing dramatically. They are a
14 group of extremely savvy consumers who are shopping
15 and they are shopping at GEICO and they are able to
16 save money at GEICO. If we were not providing an
17 accurate and fair rate, they would certainly be
18 flocking to our competition. They are not. They
19 are buying and they are staying with GEICO.

20 MS. DAWSON: Okay. Well, I appreciate your
21 comments on that.

22 Going back to the report, because you're
23 relying heavily on this report and there's just
24 nothing here statistically to support it; there's a
25 lot of conclusions but no support.

1 I'm looking at page 10 of the report -- and if
2 someone up here on the panel has an extra copy to
3 give to Mr. Nayden so he can --

4 MR. NAYDEN: I just received a copy. Thank
5 you.

6 MS. DAWSON: Okay, great, fantastic.

7 Page 10 of the report, the actuarial firm,
8 working along with the examiners for the Insurance
9 Department up there in Maryland, looked at three
10 factors to determine whether or not education and
11 occupation should be used at all, and one of the
12 factors was the homogeneity, objectivity of the
13 factors and the credibility of the factors. And
14 I'll let my actuary co-worker up here deal with
15 credibility.

16 But looking at homogeneity of the groupings of
17 occupation and education, that's questionable here
18 because, as your counsel has sent to us different
19 groupings where you have different occupations in
20 different groups, some are viewed more favorably
21 than others; for example, doctors and lawyers are in
22 the more favorable groups.

23 Is that correct in terms of the groupings of
24 occupations?

25 MR. NAYDEN: I have to apologize here. While I

1 was handed what I thought was a full copy,
2 apparently it's only pages 1 through 5 and you've
3 quoted page 10.

4 MS. DAWSON: Okay. Could someone get him a
5 full copy, please?

6 MR. NAYDEN: Thank you.

7 MS. DAWSON: Okay, back to page 10. According
8 to the information we received from your counsel, as
9 well as information from different consumer groups
10 and information from your filings, for that matter,
11 certain occupations are viewed more favorably than
12 others. For example, doctors, lawyers, dentists,
13 judges, et cetera, are viewed in the favorable
14 groups, I believe groups 1 and 2, then there are
15 groups that are viewed less favorable, and they're
16 grouped together by occupation and somewhat by
17 education as well, and that's apparently a Group 5.
18 And those are blue collar workers, gray collar
19 workers, non-skilled workers.

20 If this report determined that education and
21 occupation using those factors was okay based upon
22 the similarity of those groupings, how does that
23 make sense when there's such a disparity in the
24 occupations that are part of those groupings?

25 And if you have the Consumer Federation

1 handout, which was on the table, I don't know if you
2 have that, but that's Bob Hunter's group, he gave us
3 an example and it's very close to what you're using
4 now. It may be 2004, but it's close to what you're
5 using now because I compared it with what your
6 attorney sent over to us.

7 Group 1 consists of -- and these groups are
8 viewed more favorably -- administrators, architects,
9 business officers, commercial writers, dentists,
10 dietitians, engineers, judges and lawyers,
11 navigators, pharmacists, pilots, scientists,
12 teachers, translators.

13 What is similar about all of those occupations
14 that it's, quote, okay to use them, as this report
15 is saying, looking at homogeneity, credibility and
16 so forth, what is similar about all of those that
17 you group them together and say that they're
18 favorable?

19 MR. NAYDEN: I'm going to ask Mr. Lavrey to
20 address your question because I am an attorney, not
21 an actuary. But I would like to make -- since you
22 brought up the CFA surveys, I would like to make one
23 note.

24 The survey quotes circulated by CFA completely
25 mischaracterize GEICO's rating process and rates.

1 They have deliberately used a very narrow grouping
2 of factors and repeated the example several hundred
3 times in an attempt to bolster their argument and to
4 mislead the public. The so-called survey is
5 completely invalid and here's why: They could have
6 easily --

7 MS. DAWSON: Okay, I'll tell you what, Mr.
8 Nayden, I'll give you an opportunity to make that
9 response if you want to add something, but I need to
10 get this question answered.

11 MR. NAYDEN: And we're absolutely going to
12 respond to your question. But since CFA has
13 repeatedly made these assertions and since, as I'm
14 sure you're aware, the quotes, the sample quotes
15 that they have supplied in their submission are all
16 Maryland quotes, I think it's quite relevant to
17 point out that the Maryland Commissioner and the
18 independent actuaries have discredited their
19 assertions and the quotes. I was simply trying to
20 explain why.

21 MS. DAWSON: Okay. Well, I appreciate that.

22 Mr. Lavrey, if you can address my question
23 there as to the homogeneity, credibility, why are
24 these grouped -- you heard my question. I don't
25 need to repeat it. Go ahead.

1 MR. LAVREY: Homogeneity as an actuarial
2 concept means that we are looking at occupations
3 with similar loss experience, so we review the
4 occupations within the occupation groups and group
5 those that have similar occupations. So that is
6 what is meant in a risk classification system as a
7 homogeneous set of persons.

8 MS. DAWSON: Okay. Going over to what you've
9 termed Group 5, which is the least favorable group
10 for GEICO's company placement, minimally skilled
11 clerks, assistants, postal clerks, stock clerks,
12 what makes them more of a risk than judges, lawyers,
13 doctors, pharmacists? It just doesn't seem fair.

14 How do you explain why you have these
15 groupings, which are generally poor or folks that
16 earn less money than those that earn more money,
17 judges, lawyers, navigators, pharmacists, pilots,
18 they're in the favorable group, why is that?

19 MR. LAVREY: Again, we group the occupations
20 based on the loss experience, and we put those that
21 have our best loss experience, the lowest loss
22 ratios, in our Groups 1's and 2's, and in Groups 4's
23 and 5's are occupations that have higher loss
24 ratios.

25 MS. DAWSON: Okay. There's a study --

1 MR. NAYDEN: Ms. Dawson?

2 MS. DAWSON: Excuse me for a second, please.

3 There's a study, Mr. Lavrey, done by Quality
4 Planning Corporation. Are you familiar with that?
5 We had it as a handout out on the table there. And
6 if you don't have that, if I can get someone --
7 Lisa, if you don't mind getting the Quality Planning
8 Corporation study?

9 As you know, Quality Planning does a lot of
10 statistical analysis in the industry. The auto
11 insurance industry uses Quality Planning's
12 information, and Quality Planning is now a
13 subsidiary of ISO, and you're familiar with ISO, of
14 course?

15 MR. LAVREY: I am.

16 MS. DAWSON: They did a study back in October
17 of 2003 looking at which occupations have the most
18 accidents, and if you look at that study, those in
19 the top tier or the top ten, so to speak -- for
20 example, students were number one in number of
21 accidents and number one in speeding tickets, and I
22 don't think that's a surprise to many of us here in
23 the room.

24 This Quality Planning study looked at one
25 million drivers, okay, over a 22-month period, and

1 just go through the top ten here for accidents.
2 Students, number one; medical doctors, number two;
3 three, attorneys; four, architects -- present
4 company excluded on the attorneys, I would assume
5 that -- architect, four; real-estate broker, five;
6 enlisted military, six; social worker, seven; manual
7 labor, eight; analyst and engineer rounding it out
8 and nine and ten. And they go through 40 different
9 occupations.

10 How do you explain where you have grouped in
11 your groupings for company placement and view as
12 favorable medical doctor, attorney, architect? And
13 these are the ones who looking at one million
14 drivers, an independent, unbiased firm that,
15 analyzing this type of data, have determined that
16 these occupational groupings, members in these
17 groups are the ones having the most accidents? How
18 do you explain giving these folks favorable
19 treatment in light of data such as this?

20 MR. LAVREY: I would say that the QPC study --
21 and I haven't actually seen the study. I think this
22 is a press release. This is what I've seen. I
23 haven't seen their actual --

24 MS. DAWSON: Well, it's at the very top and
25 then the press release is behind it. But the data

1 is right there in front of you.

2 MR. LAVREY: And I think what the study does
3 show is that there is a relationship and it does
4 kind of reinforce that different occupations may
5 have different driving experience.

6 The QPC study did not go all the way as far
7 as -- you know, Howard can tell you about the
8 actuarial -- you know, how the -- what you would
9 have to do to make this a good actuarial study.

10 This does not account for all of the other
11 rating factors. It does not account for the rating
12 plan. And students is a good example, and I think
13 you kind of recognized that right up front. You
14 know, students tend to be a lot younger and have a
15 lot of accidents, and that's already accounted for
16 in our rating plan, so you wouldn't -- you know,
17 what we're looking at is trying to charge the rate
18 for the risk, and we already captured that in the
19 class effect, so we wouldn't want to capture that
20 again.

21 And again, you know, farmers are down low on
22 the list. They tend to be to be in very rural areas
23 that have lower base rates, so these are the things
24 that aren't captured in this study.

25 So I think it does kind of point out that there

1 is a relationship that's worth studying and that we
2 look at our own loss experience and show relative to
3 the rate the premiums that they're being charged,
4 you know, how should we group those risks.

5 MR. NAYDEN: I might add -- and I'm going to
6 leave it here, which I probably shouldn't but I will
7 anyway -- it appears to me -- and I've just, again,
8 read the press release on the QPC study -- but it
9 appears that, unlike an auto insurer who would
10 verify, I guess, the loss propensity of each one of
11 these occupations independently, the QPC study
12 simply looks at everything in a big box and doesn't
13 account for things like age, gender, territory, you
14 know, the vehicle that they're driving.

15 I might also say that, for example, to speak
16 to, you know, what the study shows, I think Paul was
17 absolutely correct, it shows that it makes sense to
18 take a look at occupation and say that some drivers
19 may exhibit various propensities for loss compared
20 to other drivers, based on occupation.

21 For example, teachers have exhibited better
22 loss experience than bartenders. That's just what
23 the data shows.

24 MS. DAWSON: But the key is how GEICO is
25 treating them, and that's what we need to look at.

1 If doctors, attorneys, architects, engineers are the
2 favored few, okay, in terms of the amount of premium
3 paid or how they're classed, how they're grouped in
4 different GEICO companies, then this just, you know,
5 slaps that right in the face. So how do you explain
6 that?

7 Yes, there may be some validity. But in terms
8 of favoring some over the other, it looks like those
9 that are favored are those that have higher incomes,
10 those that make more money, and that doesn't make
11 sense in terms of this study, and that's basically
12 what I wanted to have you address.

13 MR. NAYDEN: Well, the key point that I wanted
14 to make -- just to finish my statement -- was that
15 although, for example, a teacher may have better
16 loss propensity than a bartender, a bartender with a
17 good driving record can easily be getting a better
18 rate than a teacher with a poor driving record, and
19 that's because we use so many factors in
20 underwriting rating.

21 COMMISSIONER McCARTY: Well, if we were to look
22 at -- there have been a number of examples that were
23 made, rating examples that were done from GEICO's
24 rating manuals. We looked at the one that we did in
25 Florida that I've asked our actuarial staff to

1 develop, is to hold those other factors constant.

2 For instance, in the example that we give of
3 the policyholders or applicants from a GEICO policy
4 without a high school education, there was an auto
5 mechanic and someone with a Ph.D. who is an
6 engineer, and if you hold all of the other factors
7 constant, you get a rate differential of 300
8 percent.

9 MR. NAYDEN: Let me let my colleague address
10 that.

11 MR. LAVREY: Well, again, what we're trying to
12 do is trying to match the rate to the risk, and we
13 want to -- when we -- when somebody calls in for
14 insurance or gets on the Internet and they put in
15 all sorts of factors, what we do is we take all of
16 those factors, you know, what cars they're driving
17 and what limits they have, their age, gender,
18 marital status, all of this information, how far
19 they drive to work, just a ton of information, we
20 take all of this information and we try to analyze
21 that and figure out, you know, what's an appropriate
22 premium to charge for the risk. And occupation and
23 education are just two of those factors.

24 COMMISSIONER McCARTY: But my question is --
25 and I'm sorry I'm not more specific -- but we

1 understand that you use 27 or something like that
2 factors in looking at this, so when we go through
3 and we're using the rating manual, we change the
4 factors for education and occupation, and this is
5 the result that comes out.

6 So if you hold all of the other factors that
7 you're mentioning, accident history, age, type of
8 vehicle and I'm sure a number of other factors that
9 go into this, if the only factors that are altered
10 are education and occupation, it changes the premium
11 development to 300 percent.

12 MR. NAYDEN: Commissioner, let me just say this
13 in trying to respond to your question. And I'm just
14 looking at the example that you show, the 24-year-
15 old mechanic compared to the 24-year-old Ph.D. --
16 and I would congratulate the mythical 24-year-old
17 Ph.D., that's quite an achievement at that age -- I
18 guess what I would say is that you could easily have
19 created hundreds if not thousands of rating examples
20 that show a service worker receiving a similar or
21 lower premium when compared to a teacher or other
22 professional.

23 COMMISSIONER McCARTY: But the thing is --

24 MR. NAYDEN: And we would be happy --

25 COMMISSIONER McCARTY: -- this has been

1 replicated not only in our office and the Consumer
2 Federation but a number of people in the press corps
3 have gone to the Web site and they've changed the
4 factors and they generate these numbers themselves.
5 It's not, you know -- we just used this one as an
6 example. There are countless other examples. We
7 just chose the highest territory and the lowest
8 territory, not to come up with a -- we just came up
9 with a fictional, not to exacerbate it. Some people
10 have suggested that the range is even greater than
11 300 percent. But we just pulled a particular risk
12 profile and we used that in two rating territories,
13 both the highest and the lowest, to show that even
14 in the lowest territory that rate differential is
15 25 percent.

16 MR. EAGELFELD: Are you suggesting that a
17 service worker compared to a teacher might have a
18 lower rate, all other things being equal in a
19 specific rating example?

20 MR. NAYDEN: No, I'm saying given the wide
21 variety of factors, age, gender, the kind of car the
22 person drives, where that person lives, credit
23 rating and other factors --

24 MR. EAGELFELD: There are some service workers
25 that get lower rates than some teachers is what

1 you're saying?

2 MR. NAYDEN: Absolutely. Not just some, but
3 many, many.

4 MR. EAGELFELD: Many, many?

5 MR. NAYDEN: Since the bulk of GEICO's book are
6 for simply working class drivers.

7 MR. EAGELFELD: If you hold things constant --
8 I mean, I think you're attempting to put a cloud
9 around this. If everything else is the same except
10 I am a service worker and you are a teacher, you
11 will get a lower rate from GEICO, isn't that true?

12 MR. NAYDEN: If you have two identical twin
13 drivers who, out of the hundreds of different
14 variables, are exactly alike and you vary any of
15 those factors, whether it be gender, marital status,
16 any single factor, if you vary it you could get a
17 variation in the rate. It is not guaranteed, you
18 might not. They might pay exactly the same rate.

19 I guess the point that I'm trying to make is
20 risk differentiation and accurate pricing is driving
21 down prices for our customers; better pricing,
22 better prices.

23 MR. EAGELFELD: That's certainly relevant on a
24 different question.

25 Do you have any idea in terms of age, for

1 instance, the effect of age alone on the rate of a
2 person, how much age disparity there would have to
3 be between two individuals to get to a 200 to
4 300 percent difference in premium?

5 Paul, I imagine that you have an idea?

6 MR. LAVREY: I don't have the rating plan in
7 front of me, but, you know, a young driver versus a
8 older --

9 MR. EAGELFELD: I'm willing to go out on a limb
10 and say that there's got to be at least 20 or 30
11 years between them. I mean, those are extremes.
12 But a 200 or 300 percent difference is not a minor
13 little thing to be sneezed at.

14 I had a different kind of question to ask of
15 you. When somebody contacts GEICO, either over the
16 phone or on the Internet, for a quote, are they
17 given the opportunity to say, you know, "My neighbor
18 has GEICO General, can I get a quote on GEICO
19 General"?

20 MR. LAVREY: I don't know how that would be --

21 MR. NAYDEN: I don't know the answer to that
22 question.

23 MR. EAGELFELD: Have you been on the Web site
24 recently?

25 MR. NAYDEN: Presumably yes, either on the

1 phone -- certainly if you called on the phone, if
2 you can get a GEICO General clerk.

3 MR. EAGELFELD: I suppose that if you specified
4 to the CSR that you would only take a quote from
5 GEICO General, perhaps they would obey your wishes.
6 I know on the Web site you have no ability to do
7 that.

8 MR. NAYDEN: It's certainly not uncommon for
9 companies to do business on the Internet. And many,
10 many, many companies have multiple companies, you
11 know, within a state, just like GEICO.

12 COMMISSIONER McCARTY: Have you filed all of
13 your underwriting manual with the Office of
14 Insurance Regulation?

15 MR. LAVREY: We generally file the underwriting
16 manuals, yes.

17 MR. NAYDEN: I think that's required by law,
18 and I believe, yes, that we have absolutely filed.

19 COMMISSIONER McCARTY: So anything that would
20 be used in determining a rate of an individual risk
21 profile would be filed with the Office of Insurance
22 Regulation?

23 MR. NAYDEN: I would say that whatever the
24 statutory requirements are, we've complied with
25 them.

1 MR. EAGELFELD: I had just one question along
2 that line. There are a couple of statements that I
3 find difficult to reconcile.

4 The Guide to Company Placement says that it is
5 attempting to avoid hard and fast rules as to risk
6 placement among the four companies. Maryland Market
7 Conduct Examination and my own observation, based on
8 things that you've submitted, Maryland said in fact
9 that the placement of the applicant is an automated
10 process.

11 So which is it? Is it an automated process or
12 are there no hard and fast rules?

13 MR. LAVREY: We have the underwriting guides
14 that describe how we, you know, view each of the
15 risks. We do have a model that I think that you're
16 aware of that we have provided to you for review
17 upon your request that actually places -- that we
18 use to place the business.

19 MR. EAGELFELD: I guess we'll have to ask you
20 to revise the Guide to Company Placement.

21 MS. DAWSON: Are there any other questions?

22 MR. PARTON: Yes. I just want to make sure the
23 record for those people who are not insurance people
24 and may not have an understanding of how things work
25 is a little bit clearer.

1 Mr. Poe indicated that there are four different
2 GEICO entities that do business in the state of
3 Florida. Is that a correct statement?

4 MR. NAYDEN: That is correct.

5 MR. PARTON: And as I understand it, the way
6 things would work, if I make a phone call or I get
7 on the Internet, which company I go into and what
8 rating of that company that I receive is going to be
9 based upon a number of underwriting factors
10 including occupation and education. Am I correct?

11 MR. NAYDEN: Yes.

12 MR. PARTON: Each one of those companies is
13 assigned a different rate, not premium, rate, am I
14 correct.

15 MR. NAYDEN: Each company has a rating plan,
16 yes, that is filed with the Department.

17 MR. PARTON: And there is what is known as a
18 preferred company where the best rates are, and then
19 there are lesser companies where the rate are not so
20 favorable, am I correct?

21 MR. NAYDEN: Generally speaking, the preferred
22 company would have, I guess, a lower rate base than
23 a standard or non-standard company, just like every
24 other company that does business in Florida.

25 MR. PARTON: Okay. Have you provided us with

1 any analysis of the various companies in terms of
2 the occupational classes and makeup of the business
3 of the occupational classes and a percentage, if you
4 will, of the business of that particular company to
5 the Office?

6 MR. NAYDEN: Yes, we have in great detail on
7 several occasions, to Mr. Eagelfeld and others in
8 the Department, showing pretty definitively that
9 there's an extraordinarily high percentage of,
10 again, the varied occupational classes and
11 educational classifications that are under
12 discussion today that are being placed into our
13 preferred companies. You all have reviewed those
14 documents and our data in some detail.

15 MR. PARTON: I just want to make sure that I
16 understand what you're saying.

17 You have provided us a breakdown, if you will,
18 of the various classes per company that is a
19 representation of those classes within each one of
20 the companies that are doing business in the state
21 of Florida, am I correct, on an individual company
22 basis, not on a GEICO basis, an individual company
23 basis?

24 MR. NAYDEN: Well, let me just clarify one
25 thing. The rating plans for our two preferred

1 companies are identical, so we may have combined the
2 rating plans for GEICO General and GEICO Insurance
3 Company, but yes, the answer to your question is
4 yes.

5 MR. PARTON: I would like to follow up on
6 something that Ms. Dawson was asking you about.

7 If we look at the -- and I can't remember the
8 name of the study that looked at the accidents
9 versus professions. Which study was that?

10 MS. DAWSON: The Quality Planning.

11 MR. PARTON: Yeah, the Quality Planning study.
12 I'm curious, it shows among the highest, of course,
13 are attorneys and doctors in terms of tickets and
14 accidents, and yet I hear you talking in terms of
15 occupations determining the risk and the loss.

16 Would you agree with me that the use of
17 occupation or education is not an indicator of an
18 individual's driving record or propensity to have a
19 ticket or propensity to have an accident? Would
20 that be a correct statement?

21 MR. LAVREY: That would be a piece of it,
22 certainly, in coming up with the overall premium.
23 The accident frequency is a portion of that.

24 MR. PARTON: I understand the accident
25 propensity is. The use of education or occupation

1 is not determinative of an individual's risk to have
2 a ticket or have an accident, am I correct? What it
3 really is indicating -- let me rephrase it a
4 different way.

5 MR. LAVREY: Okay, I guess I'm not
6 understanding.

7 MR. PARTON: The use of occupation and
8 education is indicative of who is most likely to
9 make a claim, not necessarily who most likely will
10 have a ticket or an accident, am I correct?

11 MR. LAVREY: The data that we would review has
12 the accidents and the losses that we have paid out.
13 You know, as far as any accidents that aren't
14 reported, we don't know.

15 MR. PARTON: So my statement is correct?

16 MR. LAVREY: I would say that we are -- we look
17 at the accident frequency and severity and the
18 premium that they are paying for a risk as a whole
19 based on what we know, and whether that's all of the
20 claims or not -- I'm sure some claims aren't
21 reported and we don't know about them so we wouldn't
22 have that.

23 MR. PARTON: And that might explain, for
24 instance, why attorneys or doctors might receive
25 more favorable treatment in terms of a rate -- that

1 is, because they have not made a claim against their
2 insurance policy -- than, for instance, a garbage
3 collector, correct?

4 MR. LAVREY: Again, our groupings and our
5 experience would be based on what we know about,
6 which is the losses that are reported.

7 MR. PARTON: No other questions.

8 MR. NAYDEN: Mr. Parton, we would certainly be
9 interested in any studies that you have that would
10 reflect that statement that you just made. We're
11 not aware of a study, but we would certainly like to
12 review it, if you have one.

13 MR. PARTON: I don't know that we have one. I
14 was just curious as to why the industry and the
15 company who uses these things doesn't do more to
16 determine why there is a correlation between an
17 occupation, education and a risk of loss that you're
18 using for a rating factor. If you have such a
19 study, we would like to see it.

20 MR. NAYDEN: Again, we're using our own loss
21 data to build our rates.

22 MR. PARTON: Is it fair to say that you don't
23 know why occupation and education correlates to risk
24 of loss?

25 MR. LAVREY: I think there are, you know,

1 several possible --

2 MR. PARTON: I understand what the
3 possibilities are. My question was, it's fair to
4 say you do not know why occupation and education
5 correlates to risk of loss?

6 MR. LAVREY: Causality as an actuarial concept
7 cannot be -- you know, is not part of a rating
8 requirement. You know, you can't know the cause-
9 and-effect relationship of any risk.

10 MR. PARTON: Okay.

11 MS. DAWSON: Any other questions from the
12 panel?

13 COMMISSIONER McCARTY: No, but I would just
14 like to take this opportunity to thank Mr. Nayden
15 and Mr. Lavrey for taking the time. I know this is
16 difficult questioning, but it does give the Office
17 and the public an opportunity to review this very
18 important public policy issue and provide an
19 opportunity for a full hearing of the facts and
20 circumstances on the use of occupational as well as
21 educational factors. Thank you.

22 MS. DAWSON: Actually, Commissioner, before we
23 let them go, I do have a few questions.

24 Going back to the Maryland study or the Market
25 Conduct Exam Report, there was a problem that was

1 found or discovered in the exam, and apparently
2 GEICO was using, for at least one sub-class of the
3 occupational groupings, was using occupation as a
4 sole factor, is that not correct? It's on page 4,
5 if you have that still in front of you.

6 MR. NAYDEN: I believe when they ran our entire
7 book of business -- and again, they went through
8 voluminous data -- there was -- and, again, I think
9 it was one-tenth of one percent of our book that was
10 impacted -- they notified us of that and we
11 immediately corrected it.

12 MS. DAWSON: Okay. All right. You did make a
13 comment regarding the terms, "There is no disparate
14 impact," in relation to this exam. I've combed
15 this; I can't find it. You can go through it and if
16 afterwards, you know, talk to me, because nowhere in
17 this document do I see where that conclusion was
18 reached.

19 MR. NAYDEN: I would be happy to provide you
20 with both the press release from the Maryland
21 Insurance Commission --

22 MS. DAWSON: It may have been in the press
23 release, but it's not in the report.

24 MR. NAYDEN: -- and the White Paper presented
25 to the Commissioners at the NAIC where that language

1 is directly quoted.

2 MS. DAWSON: Okay. I appreciate that, but I
3 certainly cannot find it in the report.

4 And before you go, I do have just one or two
5 questions regarding this disparate impact.

6 What is the status of the class action lawsuit
7 in federal court against GEICO that was filed by
8 several African-Americans claiming, alleging that
9 the use of education and occupation factors are
10 discriminatory or have a discriminatory impact?
11 What's the status of that?

12 MR. NAYDEN: The case is pending. While I
13 can't discuss pending litigation, I will say that
14 those allegations are absolutely baseless.

15 MS. DAWSON: All right, I have no further
16 questions. Thank you.

17 MR. EAGELFELD: May I just ask one question?

18 With regard to the material that was supplied
19 to us concerning the distribution by occupation, I
20 wasn't clear on what you said. It sounded like you
21 were saying that occupations were across the board.

22 Were you claiming that the distribution of
23 occupations within the preferred company is about
24 the same as the distribution within the other
25 companies?

1 MR. NAYDEN: Mr. Eagelfeld, I do not have those
2 documents with me. I did actually review them
3 before we left our offices this week, and it was
4 very clear, and they clearly show and exhibit that
5 these educational and occupational classifications
6 of drivers of all of those classifications are
7 being -- they are applying and being written into
8 our preferred company at a very, very high ratio.

9 MR. EAGELFELD: That's not what I'm asking.
10 What I'm asking is --

11 MR. NAYDEN: You asked if we were writing -- I
12 guess what you're asking is were we writing folks
13 with a high school education or less into our
14 preferred companies. The answer is yes, at a very
15 high ratio.

16 MR. EAGELFELD: Yeah. What I'm asking is, is
17 that percentage approximately equivalent amongst the
18 preferred company and the non-preferred companies?

19 MR. NAYDEN: I don't have that information in
20 front of me, but I will certainly go back and review
21 the exhibits that we provided earlier, and we would
22 be happy to go through this in detail with the
23 Department.

24 MR. EAGELFELD: All right. I can tell you that
25 I won't tell you what the results are because the

1 results were given to me as trade secrets.

2 MR. NAYDEN: Again, like Coke or Pepsi, GEICO
3 is a little leery of discussing our proprietary
4 business information in front of a room full of
5 competitors, but we are happy to sit down and very
6 glad to sit down and discuss in detail all of the
7 data with the Department.

8 MR. EAGELFELD: Is there any possibility that
9 the lack of documentation within the Maryland report
10 has something to do with restrictions that were
11 placed on publication of information based on the
12 data that you provided the actuarial firm on that?

13 MR. NAYDEN: We provided all of the data to the
14 actuarial firm.

15 MR. EAGELFELD: Did you accompany it with
16 restrictions that they could not distribute it or
17 publish results based upon it?

18 MR. NAYDEN: Just as Florida -- and quite
19 justifiably so -- has a Corporate Trade Secret Act,
20 and the Department oftentimes grants companies,
21 insurance companies trade secret protection,
22 Maryland has a similar law that does the same thing.

23 MS. DAWSON: So is that a yes, Mr. Nayden, yes,
24 there were restrictions based upon trade secret or
25 some other sort of privilege?

1 MR. NAYDEN: We gave all of our data and all of
2 our proprietary information to Maryland, so
3 obviously some of that would not be provided to our
4 competitors.

5 MS. DAWSON: So the answer to Mr. Eagelfeld's
6 question is yes, GEICO did, for at least some
7 portion of the documentation provided to Maryland,
8 did restrict the publication of some information or
9 actuarial information, is that correct? It's yes or
10 no to the question.

11 MR. NAYDEN: I apologize. Did we restrict the
12 dissemination --

13 MS. DAWSON: Yes.

14 MR. NAYDEN: -- of our proprietary documents,
15 yes.

16 MR. PARTON: Let me follow up, because I'm
17 curious, I'm curious as to whether you claim a trade
18 secret to how your book of business ultimately is
19 broken out by category of occupation. Do you claim
20 a trade secret to that?

21 MR. NAYDEN: You know, how far we're willing to
22 discuss our proprietary underwriting model in a
23 public forum, I don't know. That's an interesting
24 question.

25 MR. PARTON: I don't think I'm asking you to

1 talk about your underwriting model. As I understand
2 it, while you use occupation and education as
3 underwriting criteria, it's not the sole one that is
4 used and how the distribution ultimately ends up is
5 merely a matter of chance, you're not sitting there
6 saying, I want X percentage of attorneys in this
7 company and I want X percentage of attorneys in the
8 other company, so the chance of how that
9 distribution occurs is just that, it's just by
10 chance, and I would assume it's not part of your
11 underwriting guidelines. So the information of how
12 it actually pans out, are you making a claim of
13 trade secret just to that breakdown?

14 MR. NAYDEN: I think what I would ask you to
15 do, Mr. Parton, is, if you have a request for
16 additional data from GEICO, again, we would be happy
17 to provide it and sit down and talk with the
18 Department as we have in the past. But to speculate
19 as to exactly what privileges we would ask for from
20 the Department, it's very hard to do with your
21 question.

22 MR. PARTON: Okay, that's a fair request. So
23 what you're indicating is a willingness to sit down
24 with the Office and take a look at some of the
25 matters that we would like to publish and work with

1 us on that?

2 MR. NAYDEN: We're eager to do that. And I
3 might note that while there may have been other
4 companies who were subpoenaed today, GEICO was not
5 subpoenaed. We offered, volunteered and were ready,
6 willing and able to come down and discuss this
7 issue, as we are at length with the Department on an
8 ongoing basis.

9 MR. EAGELFELD: I have one last question, if I
10 may. Since our attorneys have asked actuarial
11 questions, I wanted to avail myself --

12 COMMISSIONER McCARTY: I guess that means
13 you're going to ask a legal question.

14 MR. EAGELFELD: -- the opportunity, yes. We
15 talked back and forth about disparate impact a
16 couple of times, and it sounded as if the disparate
17 impact you were talking about is not the disparate
18 impact that we're talking about.

19 Do you contend that if you have a policy that
20 is, on the face of it does not look at, does not
21 know of race or income, that it is therefore
22 impossible to have a disparate impact of your
23 operation, it would never be a disparate impact on
24 those protected classes, could not be?

25 MR. NAYDEN: Well, impossible is a very hard --

1 I guess that what we would say is, under legal
2 standards in Maryland and, we believe, in Florida,
3 that there's been no evidence and there is no
4 disparate impact on protected classes.

5 I would like to go back to, Ms. Dawson, you
6 asked me for a copy of the language that was in the
7 Maryland report.

8 MS. DAWSON: Right.

9 MR. NAYDEN: Our counsel handed me a copy and
10 I'll provide it now.

11 MR. EAGELFELD: Is that the press release that
12 you were referring to?

13 MR. NAYDEN: I believe that's the actual White
14 Paper, but that's just an extract.

15 MS. DAWSON: You said this was an abstract?

16 MR. NAYDEN: It's the conclusions from the exam
17 report.

18 MS. DAWSON: Okay. That's dated June 9, 2006,
19 and the copy we have is dated June 8, 2006. Was
20 there a revised version of this Market Conduct Exam
21 that was done?

22 MR. NAYDEN: I'm not aware of that, but I can
23 certainly get you the comprehensive, definitive
24 document from the MIA.

25 MS. DAWSON: Okay, well, we can get that as

1 well, but if you can provide that quickly, that
2 would be great.

3 MR. NAYDEN: Absolutely.

4 MS. DAWSON: Thank you.

5 COMMISSIONER McCARTY: But what we've entered
6 into the record is the document provided by Maryland
7 as their Market Conduct Investigation Report.

8 MS. DAWSON: Well, it was readily available on
9 the Web site, so that's what we have.

10 I have one follow-up to the disparate impact in
11 relation to this lawsuit, and I'm not asking you to
12 comment on any sort of litigation strategy or
13 anything like that or what you're planning to do
14 there. But has the nature of this lawsuit -- and
15 it's in federal court, it's a class action -- has
16 the nature of the lawsuit and the claims caused
17 GEICO to reevaluate the use of education and
18 occupation as underwriting factors? Has it given
19 you pause to say, well, maybe there's an impact and
20 we need to look at this because of this lawsuit out
21 there which can have wide-ranging impact, not only
22 on the company financially but reputation-wise? So
23 has there been some opportunity to reflect on the
24 use in light of that?

25 MR. NAYDEN: Obviously, GEICO is concerned. We

1 have a sterling reputation in the industry. We are
2 a very reputable company. It's one of the reasons
3 that we're attracting so many customers in Florida.

4 And we take any such allegation very, very
5 seriously, and when I say that this particular
6 allegation is absolutely baseless, that's absolutely
7 correct, that's our position.

8 MS. DAWSON: But it has survived a motion to
9 dismiss, has it not?

10 MR. NAYDEN: And it has not been certified.

11 And again, I am not going to discuss pending
12 litigation, but those allegations in our opinion are
13 absolutely baseless.

14 MS. DAWSON: I appreciate your comments. If
15 there are no further questions, I think we can let
16 you two gentlemen go. Thank you.

17 MR. NAYDEN: Thank you very much for the
18 opportunity to speak with you today.

19 MR. LAVREY: Thank you, Commissioner.

20 COMMISSIONER McCARTY: Thank you, sir.

21 MS. DAWSON: We have representatives from
22 Liberty Mutual who are here today to address this
23 very important issue. After their testimony, we
24 will be taking a brief lunch break, so for those of
25 you who do need to step out for a little bit, feel

1 free to do that. You're not tied to the chairs.
2 But very shortly after the testimony from Liberty
3 Mutual's representatives we will be taking a lunch
4 break. Thank you.

5 Mr. Neal, I see you're here with Christopher
6 Cunniff. If you want to introduce yourself or your
7 client, you may proceed.

8 MR. NEAL: Thank you, Ms. Dawson.

9 Commissioner, members of the panel, I'm Austin
10 Neal, I'm with Foley & Lardner. I'm one of the
11 attorneys with the bad driving records that we were
12 talking about a few minutes ago.

13 I have with me Christopher Cunniff, who is the
14 auto product manager for Liberty Mutual. He'll be
15 the one speaking to you and addressing your
16 questions.

17 We assisted the company in complying with the
18 document request that we got from the Department,
19 and certainly if there are specific questions about
20 that that I can assist on, I will, but Mr. Cunniff
21 will be doing the lion's share of the talking.

22 And with that, I'll let him introduce himself,
23 give you some brief background, and he's got a brief
24 opening statement.

25 COMMISSIONER McCARTY: Please proceed.

1 Welcome.

2 MR. CUNNIFF: Thank you.

3 Good morning. My name is Christopher Cunniff.
4 I'm a vice-president in Liberty Mutual's personal
5 market. My current role is auto product manager, so
6 I'm responsible for research, underwriting and
7 pricing of our private passenger auto product in 50
8 states and the District of Columbia.

9 I've been with Liberty since 1999. Prior to
10 taking my current position in October, 2006, I held
11 various positions in our personal market, including
12 chief actuary of the market and manager of property
13 underwriting pricing. I'm a fellow of the Casualty
14 Actuarial Society and a member of the American
15 Academy of Actuaries.

16 Liberty Mutual's personal market insures over
17 130,000 auto policies in the state of Florida.
18 We're the tenth largest carrier by premium volume
19 with just over two percent market share.

20 We're dedicated to growing our auto business in
21 Florida by providing a high quality, low cost auto
22 insurance to a wide spectrum of Florida drivers. We
23 share a commitment to safety and responsibility.
24 Liberty Mutual also provides home insurance to over
25 120,000 homeowners. We're the sixth largest

1 homeowner insurer in the state, with approximately
2 3.5 percent market share.

3 When we received the subpoena from the OIR on
4 January 23rd, we worked quickly to provide the
5 requested material by the deadline of February 2nd.

6 The subpoena asked for information about our
7 use of education and occupation in rating our auto
8 book in Florida. Our rating plan and underwriting
9 guidelines have been filed and approved by the
10 Office of Insurance Regulation, and our answers to
11 the subpoena questions are consistent with the plans
12 and guidelines we use and those that are on file
13 with the OIR.

14 COMMISSIONER McCARTY: Are all of your
15 underwriting guidelines on file with the Office of
16 Insurance Regulation?

17 MR. CUNNIFF: I believe so, yes.

18 COMMISSIONER McCARTY: So the materials that
19 you asserted as trade secrets are not underwriting
20 guidelines?

21 MR. CUNNIFF: I don't believe so.

22 MR. NEAL: Anything that was filed prior that
23 was a trade secret -- I mean, you know, there are
24 provisions for making filings even in rate and
25 underwriting filings where you can claim trade

1 secret protection.

2 I think most of the things that we asked for
3 trade secret protection of, you know, probably are
4 not the same type of information that was filed. It
5 may contain similar facts and figures and things
6 like that; it may not be exactly the same.

7 COMMISSIONER McCARTY: Are you familiar with
8 the Florida law requiring that if it's not part of
9 the rating plan, underwriting guidelines must be
10 filed in personal lines auto and homeowners'
11 insurance in Florida?

12 MR. CUNNIFF: Yes.

13 COMMISSIONER McCARTY: So is your testimony
14 that you have provided the Office with all of your
15 underwriting guidelines?

16 MR. CUNNIFF: Yes.

17 COMMISSIONER McCARTY: Okay. In the rate
18 filing or in the underwriting or as part of the
19 subpoena?

20 MR. NEAL: No, we've complied with the filing,
21 the rate filing and the underwriting guidelines
22 outside of the subpoena.

23 COMMISSIONER McCARTY: Thank you. And you may
24 have in those asserted protection --

25 MR. NEAL: That's correct.

1 COMMISSIONER McCARTY: -- or some legal
2 protection with regard to those documents that were
3 filed in compliance with Florida law?

4 MR. NEAL: That's correct, Commissioner.

5 COMMISSIONER McCARTY: Thank you very much. I
6 appreciate it. I didn't mean to cut you off.

7 MR. CUNNIFF: No. Just to clarify, I believe
8 that the material in the trade secret were primarily
9 internal company documents that referred to our
10 strategy in other states which weren't relevant to
11 what we're doing necessarily in Florida, but that
12 was part of the --

13 COMMISSIONER McCARTY: Well, we'll get to that.

14 MR. CUNNIFF: Okay. To summarize our answers
15 to the subpoena questions, Liberty Mutual does use
16 education and whether or not an applicant is
17 employed when we evaluate new business customers as
18 part of our underwriting process. These factors are
19 used alongside several other factors at the time of
20 new business.

21 Liberty Mutual does not use education or
22 occupation as rating variables in Florida. Liberty
23 Mutual does not use education to rate renewal
24 business. We do not use education or occupation to
25 determine whether or not to non-renew an existing

1 customer. Liberty Mutual does not use education or
2 occupation at all for rating or underwriting
3 homeowners' insurance in Florida.

4 At this point, I'm available to answer any
5 questions you may have.

6 MR. EAGELFELD: I'm a bit confused by your
7 answer to our first question, which you write that,
8 and I think you repeated it now, that Liberty Mutual
9 does not use education or occupation as rating
10 variables?

11 MR. CUNNIFF: Right.

12 MR. EAGELFELD: In the very next sentence, you
13 say it does use education and employment for
14 underwriting at point of sale.

15 MR. CUNNIFF: Right.

16 MR. EAGELFELD: Does that underwriting at point
17 of sale also involve the price at which the prospect
18 will be accepted?

19 MR. CUNNIFF: We use underwriting to make a
20 slotting decision at the time of new business, so we
21 have -- currently we write new business in Liberty
22 Mutual Insurance Company, Liberty Insurance Company,
23 or may reject an applicant. But we have different
24 base rates within those -- within the two companies,
25 and within the two companies some customers may not

1 be offered a quote, but that's rare.

2 MR. EAGELFELD: Right, so that the slotting
3 means whether you're going to be written by one
4 company or the other of the two that are currently
5 accepting new business, is that --

6 MR. CUNNIFF: Correct.

7 MR. EAGELFELD: And that decision affects the
8 amount of premium that the insured will be requested
9 to pay for the same coverage?

10 MR. CUNNIFF: Correct.

11 MR. EAGELFELD: So what is the distinction that
12 you make between rating and underwriting, then?

13 MR. CUNNIFF: Well, the vast majority of the
14 new business that we write is written in Liberty
15 Mutual Insurance Company, and we have a large number
16 of employed, unemployed, college-educated,
17 non-college-educated in that company, and once you
18 qualify for coverage within that company, your level
19 of education or your current employment status has
20 no impact on your rate.

21 MR. EAGELFELD: So it has no impact on whether
22 you're renewed or not, but it has an --

23 MR. CUNNIFF: No. No. Once you've qualified
24 for that company, Liberty Mutual Insurance Company,
25 then if you were to go and run iterations and say

1 I'm educated, not educated, employed, unemployed,
2 your rate stays exactly the same.

3 MR. EAGELFELD: I see.

4 MR. CUNNIFF: So the only people that would
5 experience a difference would be the people that,
6 through the use of education and occupation, along
7 with other variables, saw their offer go from one
8 company to another.

9 MR. EAGELFELD: There are some people who would
10 not qualify for the lower-rated company because of
11 education and occupation?

12 MR. CUNNIFF: At the time of new business.

13 MR. EAGELFELD: At the time of new business?

14 MR. CUNNIFF: Yes, it is possible that some
15 small segment of customers, the use of that variable
16 does push their slotting decision from one company
17 to another.

18 MR. EAGELFELD: And if I were one of those
19 people, in my renewal you wouldn't run this model
20 again but I probably would be renewed in the same
21 company that I was originally slotted to, would I
22 not?

23 MR. CUNNIFF: Well, it does depend on, you
24 know, provided a customer is clean, a customer in
25 the Liberty Mutual Insurance Company, which is

1 generally the lower-rated company, will stay in the
2 lower-rated company.

3 Customers in our Liberty Insurance Company, if
4 they are clean for three years, do have the
5 opportunity to be rewritten, and if the price is
6 lower in our Liberty Mutual Insurance Company, then
7 we will move them to that company.

8 MR. EAGELFELD: So that will take three years,
9 but on my first renewal, I will remain then in the
10 higher-rated company that I was slotted to, I will
11 be renewed into that company? And if I were one of
12 those people that were placed in that company
13 because of education and occupation, that education
14 and occupation would continue in year two to have an
15 effect on what I'm paying?

16 MR. CUNNIFF: That's a fair statement.

17 MR. EAGELFELD: Okay. I noticed that in some
18 of the material you provided, California had a
19 criticism of your computer model.

20 What is your opinion of the validity of their
21 criticism, and why did you take the action that you
22 did take in response to that criticism?

23 MR. CUNNIFF: I'm certainly not an expert on
24 that Market Conduct Examination. I will say that
25 insurance is a state-regulated business and

1 different states have different statutory
2 requirements and also different regulatory
3 interpretations, so I'm not -- I guess I'm not
4 prepared to comment on exactly what actions were
5 taken and what the rationale of their decision was.

6 MR. EAGELFELD: So you're not aware of whether
7 the computer model that you're using to do your
8 slotting and tiering in Florida is in use in
9 California?

10 MR. CUNNIFF: It would be a different model.

11 MR. EAGELFELD: It would be a different model?

12 MR. CUNNIFF: Well, I believe it would be a
13 different model because you have different
14 requirements. States with different pricing
15 characteristics would generally perform -- would
16 require different models.

17 MR. EAGELFELD: I think if I can tell you, the
18 Market Conduct Examination that was submitted says
19 that the resolution -- under Resolution it says,
20 "Liberty Mutual discontinued usage of the computer
21 eligibility model effective May 1, 2005." I don't
22 know whether that meant you substituted a different
23 model or you just stopped using any model
24 whatsoever.

25 And the criticism stated that the criteria that

1 are in the model, amongst which are education level,
2 employment stability and other pieces of
3 information, the conclusion of the California
4 Department was that these criteria do not satisfy
5 the requirements that eligibility guidelines be
6 specific, objective and substantially related to the
7 risk of loss.

8 You submitted that to us. I certainly would
9 not have divined that.

10 MR. CUNNIFF: Yeah. Well, each state can make
11 their own determination. I'm sure we disagree with
12 them, but ultimately it's the state that has the
13 final say in those matters.

14 MR. EAGELFELD: Do you have any general opinion
15 as to whether education and occupation as used by
16 your company or by other companies -- certainly
17 you've been sitting here, you're aware of --
18 somewhat aware of how GEICO uses it -- are valid and
19 should be socially -- or as a matter of policy are
20 things that you recommend that the OIR continue to
21 permit?

22 MR. CUNNIFF: Well, the data that we have show
23 that there is a meaningful credible relationship
24 between education and occupation as relates to
25 insurance losses, and, you know, based on that,

1 we're using that information in response, and it has
2 been approved by the Office of Insurance Regulation.

3 COMMISSIONER McCARTY: If education and
4 occupation criteria used in underwriting or rating
5 were shown to have a disparate impact on protected
6 classes of people, regardless of the actuarial
7 justification or the correlation, would your company
8 continue to use it?

9 MR. CUNNIFF: Well, that's a hypothetical
10 question which I can't answer, and certainly we
11 wouldn't comment in advance on business plans with
12 our company.

13 COMMISSIONER McCARTY: Okay. Have you looked
14 at Census data as it relates to occupation or
15 education and how it impacts or it breaks down by
16 Caucasian or non-Caucasian groups?

17 MR. CUNNIFF: Other than the material submitted
18 for this hearing, no.

19 COMMISSIONER McCARTY: So prior to this
20 hearing, you, representing the company, have not
21 looked at arrays of data from the Census Bureau on
22 occupation and education?

23 MR. CUNNIFF: I have not, and I'm not aware of
24 anyone at Liberty who has.

25 COMMISSIONER McCARTY: Looking at the evidence

1 that you presented in your actuarial memorandum, you
2 looked at classification for those who have
3 completed college and those who have not, and I
4 believe your explanation at the beginning of this
5 discussion was that after a three-year period you
6 may re-underwrite to see if they fit in that
7 classification.

8 If you completed college, would you then move
9 somebody to that next tier? If you changed jobs,
10 would you look at that? Would they move to the
11 preferred status?

12 MR. CUNNIFF: We make an underwriting decision
13 at the time of new business, and we don't have a
14 process for re-underwriting or re-slotting. One
15 exception to that would be the company -- people in
16 the Liberty Insurance Company do have an opportunity
17 to be rerated, so we have certain characteristics --

18 COMMISSIONER McCARTY: What do you mean by
19 "would have that opportunity"?

20 MR. CUNNIFF: We would look, and if they
21 qualified for the lower rate, we would rate them and
22 move them.

23 COMMISSIONER McCARTY: Those who are in the
24 substandard -- or standard program could be moved to
25 the preferred program --

1 MR. CUNNIFF: Right.

2 COMMISSIONER McCARTY: -- based upon changing
3 characteristics?

4 MR. CUNNIFF: Based on the characteristics at
5 the three-year time frame, yes.

6 COMMISSIONER McCARTY: So after three years you
7 would reevaluate factors, other factors, inclusive
8 of that would be occupation and education?

9 MR. CUNNIFF: Yes. For example, the driving
10 record would then be updated because they'd be three
11 years further out, yes.

12 COMMISSIONER McCARTY: Right. But if their
13 occupation changed or their education status
14 changed, you would change that as well?

15 MR. CUNNIFF: If we have it. I'm not entirely
16 -- I don't know the exact process, but we can
17 certainly provide that to OIR.

18 COMMISSIONER McCARTY: But it sounds like you
19 have the potential of getting locked in whatever you
20 have with regard to occupation or education at the
21 beginning. Why don't you just check that and get
22 back with me?

23 MR. CUNNIFF: Absolutely.

24 COMMISSIONER McCARTY: Okay.

25 MR. NEAL: Just real quick before -- are you

1 trying to get at whether the customer has to
2 initiate that or the company does it at the time, is
3 that sort of what --

4 COMMISSIONER McCARTY: I think he answered
5 that.

6 MR. NEAL: Oh, okay.

7 COMMISSIONER McCARTY: But I just want to
8 elaborate a little bit on that.

9 If the company looks -- I believe, I don't want
10 to characterize his testimony -- but it sounds like
11 they do, on a three-year basis, go back and look.
12 But I'm not sure if he's in a position right now to
13 say all of the factors that they look at. They
14 update the auto report, the DMV, et cetera, but I'm
15 not sure that they go back, and I think that's what
16 he's going to check on.

17 MR. NEAL: Yeah, do they look beyond the
18 driving record and that type of things?

19 COMMISSIONER McCARTY: Right.

20 MR. NEAL: Okay, thank you.

21 MR. CUNNIFF: That's a fair characterization of
22 what I said.

23 MR. NEAL: I'm sorry.

24 COMMISSIONER McCARTY: I'll try not to
25 characterize your testimony in the future.

1 MS. DAWSON: I have just a couple of questions,
2 Mr. Cunniff, and actually it may just be one
3 question.

4 You're a little different in the use of
5 occupation than how GEICO uses it, as we've heard
6 today. For Liberty Mutual -- and correct me if I'm
7 wrong -- it's just a matter of whether you're
8 employed or unemployed, right?

9 MR. CUNNIFF: Correct.

10 MS. DAWSON: Okay. How does Liberty Mutual
11 treat the applicant coming in the door who is
12 between jobs? I'm an attorney, I come in to Liberty
13 Mutual, I've just left one job and I've got this
14 great job that's lined up and I'm applying for that,
15 how do you treat those folks?

16 MR. CUNNIFF: That's a good question. I would
17 have to say I don't know the answer to that, but I
18 can inquire as to that answer.

19 MS. DAWSON: And get a response back to us,
20 please?

21 MR. CUNNIFF: Absolutely.

22 MS. DAWSON: Okay.

23 COMMISSIONER McCARTY: You're a relative
24 newcomer to the use of these factors, if I'm not
25 mistaken? How long have you been --

1 MR. NEAL: You mean the company?

2 COMMISSIONER McCARTY: Yes.

3 MR. CUNNIFF: I don't know when we started --
4 when we introduced this scoring, but I would say
5 probably within the last seven years.

6 MR. PARTON: Just a quick question with regards
7 to occupation, you rate people in terms of either,
8 whether they're employed or unemployed. With
9 regards to education, how does that break down?

10 MR. NEAL: Just to clarify, I think he said
11 it's an underwriting decision. It's not a rate
12 factor as to employed or unemployed, it's an
13 underwriting decision.

14 MR. PARTON: And, I apologize, you underwrite
15 based on education and occupation on really the
16 principle of you're either employed or you're not?

17 MR. CUNNIFF: Right. And I think the material
18 we provided said that we have essentially three
19 breakdowns, or if there's a multi-car risk, both --
20 well, I'll look at it to make sure.

21 MR. PARTON: And I probably read it, but my
22 brain is -- the hard drive is overfilled, every time
23 I read something, something else is displaced, and I
24 probably read something later in time and your
25 information was displaced, so I'm just trying to

1 figure out what you do education-wise.

2 MR. CUNNIFF: We have three groupings. The
3 first grouping is called named insured is college-
4 educated; the second is both named insured some
5 college or at least one named insured college-
6 educated; and the third grouping is at least one
7 named insured some college or at least one named
8 insured high school-educated or other, so those are
9 all put together.

10 MR. PARTON: The concern I think that I have
11 with regards to exactly how Liberty is using this is
12 if you look at that, I mean, you're really kind of
13 looking at a correlation, if you will, to income, as
14 was testified earlier by Mr. Poe. I mean, you would
15 expect, would you not, that if both individuals in
16 the household were college-educated, their income
17 would be greater than a household that had only one
18 person, as a general statement, that was college-
19 educated, and certainly much more likely to have a
20 greater income than a household that has none, isn't
21 that correct? Wouldn't you expect to find that?

22 MR. CUNNIFF: Yeah. I haven't done any studies
23 on --

24 MR. PARTON: Yeah, but intuitively that's what
25 you would think, wouldn't you?

1 MR. CUNNIFF: Well, you said --

2 MR. PARTON: It certainly makes sense?

3 MR. CUNNIFF: I have no evidence to the
4 contrary on what you said.

5 MR. PARTON: Right. And obviously if I'm
6 employed versus unemployed, I'm in a household that
7 has, if I'm employed, more income than a household
8 that, frankly, is unemployed, correct?

9 MR. NEAL: I don't know. I'd love to be
10 wealthy and not have to work, so I'm not sure if --

11 MR. PARTON: Well, I would, too, but I don't
12 think we're going to find a lot of these situations
13 where it's just a healthy person who decides not to
14 do anything. I suspect all of us have employment of
15 some sort.

16 But you would agree as a general rule that
17 would be true as well?

18 MR. CUNNIFF: As I said, I have nothing to
19 refute what you're saying, but it's certainly not my
20 area of expertise.

21 MR. PARTON: So you're telling us that you have
22 a correlation, if you will, between the potential
23 for a claim based upon these various categories, am
24 I correct?

25 MR. CUNNIFF: Yes, and I think in the material

1 we provided we showed a predictive value to those
2 variables and the likelihood of insurance loss
3 relative to insurance premiums paid.

4 MR. PARTON: And intuitively, knowing what
5 we've just talked about here, you would expect a
6 person of lower income or no income to have to be
7 more likely to rely upon his insurance claim for a
8 particular loss as opposed to someone who is in the
9 multi-college-level household that is fully
10 employed, correct?

11 MR. CUNNIFF: I have no data to suggest that,
12 but I will say that a lot of auto insurance claims
13 are -- actually, a majority are third-party
14 liability on first parties, so regardless of the
15 person causing the accident, the reporting would
16 come from the injured or impacted party, either
17 because their property or their person was injured
18 as an accident, so they wouldn't necessarily have --
19 the insured driver would not necessarily have the
20 opportunity to suppress those claims.

21 MR. PARTON: Well, certainly they would have
22 the opportunity to also pay out of their pocket as
23 opposed to having to make a claim against his
24 insurance policy, wouldn't they?

25 MR. CUNNIFF: They would. I think there are

1 also probably legal requirements to report a claim.
2 I'm not sure what specifically Florida law is, but
3 generally if you cause an accident, you're required
4 by law to report that, I believe. But I'm not sure
5 what the specifics of the Florida statutes are.

6 MR. PARTON: Now, this isn't really measuring
7 claim, it's measuring the loss, that is the payment
8 of a claim, is it not?

9 MR. CUNNIFF: Yes, the paid claim or the
10 anticipated ultimate claim. There could be
11 occasions where they're not filed, yes.

12 MR. PARTON: So you would expect someone who is
13 employed and someone who is a multi-college-educated
14 family to have a greater income and have a greater
15 ability be able to pay the claim as opposed to
16 relying on their insurance for that, am I correct?

17 MR. CUNNIFF: I have no basis for an opinion on
18 that.

19 MR. PARTON: You don't? You don't think that's
20 intuitive, logical, reasonable, any of the above?

21 MR. CUNNIFF: I would prefer not to comment.

22 COMMISSIONER McCARTY: It's not in his
23 database.

24 MR. PARTON: Thank you.

25 There's some information I was reviewing last

1 night that seems to suggest in the college-educated
2 versus non-college-educated that there's some
3 subsidization going on of the college-educated and
4 that there's an interest in the college-educated for
5 the sales of other products.

6 Are you familiar with that part of the
7 response? And part of it is in your general
8 response and part of it is in your trade secret, so
9 I don't really want to get into much in the details.
10 But if you're not familiar, I would like to take an
11 opportunity to continue and explore this because
12 obviously I'm not sure that I understood it
13 correctly, but the word subsidy was used in the
14 context of the subsidizing the college-educated with
15 the non-college-educated to suggest that they would
16 be paying a disproportionately high premium, based
17 upon their losses.

18 MR. CUNNIFF: I'm not sure I followed your
19 question. I'm sorry.

20 COMMISSIONER McCARTY: Have you looked at the
21 loss ratios of the college education versus non-
22 college education and are they self-supporting?

23 MR. CUNNIFF: In places -- the studies we have
24 is that prior to -- well, I think the data that we
25 have, that we provided as part of this hearing,

1 showed a couple of cases where both insured
2 customers are college-educated, they have a lower
3 loss ratio than other customers, which would
4 indicate that, relative to the amount of loss they
5 experience, the college-educated customers in
6 Florida are subsidizing the losses of -- are paying
7 a subsidy to provide insurance for the non-college-
8 educated.

9 COMMISSIONER McCARTY: All right. That's not
10 clear from the information provided, so I would like
11 to review those documents with you, if not today,
12 some other time.

13 MR. CUNNIFF: Okay.

14 MS. DAWSON: I have a question I would like to
15 -- in order to sort of lay the foundation for the
16 question, for your response, is to share with you
17 some Census Bureau statistics on education. And
18 this -- you know, these are statistics for Florida.
19 I'm not looking at New Jersey or California or
20 somewhere. This is for Florida, right here at home.

21 And these are Census Bureau statistics for
22 2005, and they show that 27 percent of the Caucasian
23 population has a Bachelor's degree -- that's in
24 Florida, okay -- 13.1 percent, so we're looking at
25 less than half, of African-Americans have a

1 Bachelor's degree, and for Hispanics, I believe the
2 number is -- I would have to look at my chart
3 here -- is 21.2 percent. So for minorities there's
4 a lesser percentage of that population being amongst
5 the most educated having the college degrees.

6 What do you think the impact is on those groups
7 in light of how you segregate and you treat those
8 with college educations versus those with some
9 college versus those with high school or less on
10 your chart, with the high school and less educated
11 being those that are on the bottom rung, and in some
12 cases, according to your earlier testimony, not
13 being able to qualify for the preferred companies,
14 what is your response in light of those statistics
15 and the impact that your treatment, your company's
16 treatment of those groups would be?

17 MR. CUNNIFF: Well, Liberty does not ask or
18 measure or track either income or race, so we have
19 no internal studies or position other than that we
20 absolutely do not discriminate on the basis of race
21 or income.

22 MS. DAWSON: Well, I'm not asking you whether
23 or not you have studies, okay? I think you know,
24 we've heard from other companies that, "We don't do
25 any studies, we're not going to ask anybody, that's

1 offensive."

2 But looking at U.S. Census Bureau statistics,
3 okay -- it's not the Office of Insurance Regulation
4 that's coming up with these numbers, we're pulling
5 them, you can pull them as well -- but looking at
6 that half of the -- that 13 percent of African-
7 Americans in this state have Bachelor's degrees,
8 where 27 percent of the white population have
9 Bachelor's degrees, don't you think there would be
10 an impact, not intentional, but don't you think
11 there would be an impact upon those minority groups
12 as well as Hispanics as well as low income
13 Floridians by using -- by segregating out, okay,
14 college-educated, some college and high school,
15 naturally don't you think there would be an impact
16 upon those groups?

17 MR. CUNNIFF: We will allow any customers,
18 regardless of race or income, to qualify -- we would
19 apply the exact same criteria to each of them.

20 MS. DAWSON: It's not about race or income
21 here. That's not what I'm asking you. You're
22 looking at education, the educational status.

23 If, looking at the statistics for Florida, 13
24 percent of African-Americans in Florida have a
25 Bachelor's degree, twice that amount for white

1 Americans or for the Caucasian population in
2 Florida, don't you think your treatment of the
3 educational status of the applicant coming in the
4 door to Liberty Mutual is going to be reflective or
5 those stats are going to have an impact on how you
6 fit these people into different -- the insurance
7 groups for Liberty Mutual?

8 MR. CUNNIFF: I would just say that we provide
9 our -- our underwriting guidelines are determined
10 objectively, based on loss experience, and we apply
11 them in a non-discriminatory, objective fashion.

12 COMMISSIONER McCARTY: But again, if you just
13 impose those standards, college education versus
14 non-college education and the number of non-
15 Caucasian and Caucasians with college education,
16 what do you think that impact would be?

17 MR. CUNNIFF: I'm not going to speculate on
18 that.

19 MR. PARTON: Let me ask you this. These Census
20 statistics are not -- okay -- I mean, every time a
21 census is done and you do a breakdown of what is
22 going on with consistency, while there may be some
23 changes over the years, nevertheless historically
24 they have indicated that there are certain
25 occupations, there are certain occupational levels,

1 that are certain income levels that are
2 overrepresented by some races and underrepresented
3 in other areas. This has been a constant for years.

4 Isn't your company and isn't the industry
5 engaging in a practice that I would call willful
6 blindness to this fact when they use things like
7 occupation and education or credit scoring or other
8 things like this that may very well deal with an
9 individual's income in their underwriting practice?

10 MR. CUNNIFF: I guess I'm not sure what the
11 question is.

12 MR. PARTON: The question is, is not your
13 company, with all of this information that is out
14 there provided by Census, breaking down education,
15 breaking down racial categories, breaking down
16 income, all of it out there indicating that there is
17 a racial bias that is out there and you're using
18 occupation and education, both of which equate to
19 income, is not your company and the industry, when
20 it uses those types of factors, engaging in a
21 practice of willful blindness when it uses those
22 things?

23 To come in here and say, "I don't collect that
24 information, I don't know, we don't intentionally
25 discriminate," aren't you intentionally

1 discriminating in a willful blindness way when that
2 stuff is out there and you don't acknowledge it?

3 MR. CUNNIFF: I would not agree with your
4 characterization of our actions as willful
5 blindness.

6 MR. PARTON: You haven't studied it, have you?

7 MR. CUNNIFF: No, we have not.

8 COMMISSIONER McCARTY: Have you looked at the
9 Census data and their arrays of data before it was
10 presented to you through this committee for this
11 hearing?

12 MR. CUNNIFF: No, I have not.

13 COMMISSIONER McCARTY: Okay.

14 MR. PARTON: You do know it exists, don't you?

15 MR. CUNNIFF: I certainly do now.

16 MR. PARTON: I mean, the industry would
17 certainly have had to have its head in the sand,
18 wouldn't it?

19 MR. CUNNIFF: I'm sorry?

20 MR. PARTON: The industry would have had to
21 have had its head in the sand to not know this
22 information is out there, wouldn't they?

23 COMMISSIONER McCARTY: He can't speak for the
24 industry.

25 MR. PARTON: I understand. I apologize. I'll

1 withdraw the question.

2 MS. DAWSON: I don't have any other questions.
3 Does any other member of the panel have a question?

4 COMMISSIONER McCARTY: We'll share with you the
5 Census data.

6 MR. EAGELFELD: I presume, as the product
7 manager, that you're involved with some of your
8 marketing folks when you make decisions on rating
9 variables and rates, is that correct?

10 MR. CUNNIFF: I guess -- could you clarify?

11 MR. EAGELFELD: You have people within your
12 company whose specialty is marketing?

13 MR. CUNNIFF: Correct.

14 MR. EAGELFELD: And are those people involved
15 in the decision-making process on what rates to
16 charge and what kinds of variables to use?

17 MR. CUNNIFF: We might get some competitive
18 feedback would be one method where we might rely on
19 them. It could be a certain territory or a certain
20 state where they feel like we're less competitive.

21 MR. EAGELFELD: So you do fairly regularly look
22 at your competitors and see what they're doing?

23 MR. CUNNIFF: Absolutely.

24 MR. EAGELFELD: Do you consider GEICO one of
25 your competitors?

1 MR. CUNNIFF: Yes, sir.

2 MR. EAGELFELD: I think it's fairly clear that
3 GEICO makes a much more pervasive use of occupation
4 than you do.

5 Do you not believe the source of their
6 information or do you believe it doesn't apply to
7 your book of business or are you considering perhaps
8 doing so in the future?

9 MR. CUNNIFF: Well, I certainly wouldn't
10 comment on our business plans, but I would say that
11 each company has certain historical and operational
12 attributes that make certain strategies more or less
13 effective for one company versus another, so you
14 can't necessarily export one company's strategy to
15 another.

16 COMMISSIONER McCARTY: Was your decision to use
17 rating factors such as education driven by the
18 competitors' using that?

19 MR. CUNNIFF: The use of -- we have to also be
20 aware of what the loss data show and what our
21 competitors are when we make decisions.

22 COMMISSIONER McCARTY: Is that a yes?

23 MR. CUNNIFF: In terms of -- I would say that
24 as a general rule we are aware of what competitors
25 are doing. In terms of how we chose to use these

1 characteristics, I don't know the nexus.

2 COMMISSIONER McCARTY: Okay, thank you.

3 MR. PARTON: Have you -- I had asked GEICO this
4 same question -- have you provided a breakdown to
5 the two companies you have in terms of your
6 educational factors and your unemployed and employed
7 status that we would take a look at how those
8 particular categories are represented throughout
9 those two companies?

10 MR. CUNNIFF: I'm not aware that we have, but
11 certainly we can sit down with our local team and
12 see what we're comfortable sharing from that,
13 similar to the same concerns I think that GEICO
14 shared regarding trade secret, the nature of the
15 data, but we can certainly work with the OIR to
16 provide or to see what distributions we can
17 reasonably provide.

18 MR. PARTON: We appreciate that. Thank you.

19 MS. DAWSON: I have no questions.

20 If there are no further questions from the
21 panel, I want to thank both of you for coming in
22 today, Mr. Cunniff, especially thank you.

23 We're going to take a break. Commissioner, how
24 long did you want to break for?

25 COMMISSIONER McCARTY: Just one minute. I just

1 want to make sure. And again, I appreciate you
2 responding and et cetera, and I just want for the
3 record to reflect that in no way are we asserting
4 that you're, you know, using your factors in this
5 regard in an unlawful way, and that we do appreciate
6 very much you testifying and participating in this
7 process. I know it's difficult, but it's a very
8 important public policy issue. Thank you again.

9 MR. NEAL: Thank you.

10 COMMISSIONER McCARTY: Thirty-five minutes.

11 MS. DAWSON: Okay, thirty-five minutes, folks,
12 so we'll return at 12:30. Thank you.

13 (Lunch recess.)

14 (Proceedings continued in Volume II.)

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1 C E R T I F I C A T E

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, MICHELLE SUBIA, Registered Professional
5 Reporter at Tallahassee, Florida, do hereby certify as
6 follows:

7 THAT I correctly reported in shorthand the
8 foregoing proceedings at the time and place stated in the
9 caption hereof;

10 THAT I later reduced the shorthand notes to
11 typewriting, or under my supervision, and that the
12 foregoing pages 3 through 121 represent a true, correct,
13 and complete transcript of said proceedings;

14 And I further certify that I am not of kin or
15 counsel to the parties in the case, am not in the regular
16 employ of counsel for any of said parties; nor am I in
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18 Dated this 12th day of February, 2007.

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