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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

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VOLUME II

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

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REPORTED BY  
MICHELLE SUBIA  
REGISTERED PROFESSIONAL REPORTER

1 PANEL MEMBERS APPEARING:

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

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CERTIFICATE OF REPORTER

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

2 MS. DAWSON: Welcome back, everyone. We're  
3 going to begin the hearing, pick up from where we  
4 left off at lunch.

5 Mr. Hageli from PCI, Property Casualty Insurers  
6 Association, is here with us today.

7 Mr. Hageli, welcome, and if you have any  
8 opening remarks, we'll be happy to hear that.

9 MR. HAGELI: Thank you, Ms. Dawson.

10 Good afternoon, Commissioner McCarty, members  
11 of the panel. I want to thank you for the  
12 opportunity to address this important issue today.

13 COMMISSIONER McCARTY: Thank you for coming.  
14 We appreciate it.

15 MR. HAGELI: You're having some fantastic  
16 weather. I love it.

17 My name is Alex Hageli. I'm the manager of  
18 personal lines with the Property and Casualty  
19 Insurers Association of America, or PCI for short.  
20 We are a national insurance trade organization and  
21 our members write 56 percent of the private  
22 passenger auto insurance in Florida.

23 As you consider this issue, there are three  
24 facets that I want to emphasize for you.

25 Number one, the use of education and occupation

1 is actuarially justified. Much like age, gender and  
2 marital status are widely accepted underwriting  
3 criteria because they are accurate predictors of  
4 future loss, education and occupation work exactly  
5 the same way. Women, married people and experienced  
6 drivers have fewer losses and as a result pay lower  
7 rates for their insurance; the same works with  
8 education and occupation.

9 MS. DAWSON: Mr. Hageli, let me stop you right  
10 there. I'm having a little trouble hearing you. If  
11 you could maybe move the mike a little bit closer or  
12 just speak up a little bit?

13 MR. HAGELI: Sure. I apologize for that. Is  
14 that better?

15 COMMISSIONER McCARTY: Yes.

16 MR. HAGELI: Okay.

17 Much like age, gender and marital status are  
18 widely accepted underwriting criteria because they  
19 are accurate predictors of future losses, education  
20 and occupation works in exactly the same way.

21 It makes sense that certain occupations that  
22 require individuals to drive at unusual hours and  
23 are subject to more distractions than a normal  
24 individual is subject to as a result has a greater  
25 chance for risk and as a result pays a higher

1 premium.

2 COMMISSIONER McCARTY: What example are you  
3 using? I'm sorry.

4 MR. HAGELI: Any kind of job that requires an  
5 individual to drive at unusual hours or is subject  
6 to more distractions.

7 COMMISSIONER McCARTY: Just thinking  
8 hypothetically?

9 MR. HAGELI: Right. Something that requires a  
10 great deal of cell phone usage, like in the Quality  
11 Planning Study, a real estate agent, for example --  
12 not to pick on real estate agents, and let me admit  
13 that I am a lawyer and I do admit that I probably  
14 have a higher risk potential than most drivers.

15 A VOICE: The microphones are just for  
16 recording purposes, they're just for our system.

17 A VOICE: Okay.

18 MR. EAGELFELD: They're not amplified.

19 MR. HAGELI: The use of education and  
20 occupation as been approved by Maryland and in  
21 New Jersey, and, in fact, the State of Arkansas  
22 requires a discount for certain college graduates.  
23 These three states also have prohibitions against  
24 the setting of unfairly discriminatory rates. They  
25 have, obviously, come to the conclusion that the use

1 of that information does not result in an unfairly  
2 discriminatory rate.

3 That brings me to my second point.

4 COMMISSIONER McCARTY: Would it concern you if  
5 -- have you looked at the Census data that we put  
6 together?

7 MR. HAGELI: I have to admit that I have not.

8 COMMISSIONER McCARTY: Okay. Well, then I  
9 won't ask you a series of the Census data questions.  
10 But let's just move ahead.

11 If, in fact, we can demonstrate that occupation  
12 and education is a surrogate or a proxy for income,  
13 would you find that to be an acceptable practice at  
14 that point?

15 MR. HAGELI: Respectfully, Commissioner, I  
16 believe that's a question the Legislature needs to  
17 address. What I'm here to say and what I'm here to  
18 stress is that the current use of education and  
19 occupation is actuarially justified under the laws.

20 COMMISSIONER McCARTY: Okay. All right. But,  
21 quite frankly, the mortality tables that established  
22 race-based rates in the 1900s to 1970 were  
23 actuarially justified.

24 MR. HAGELI: Yes, that's true. I'm glad you  
25 bring that up. That's exactly the kind of thing

1           that we, as a society, through our representatives,  
2           decided shouldn't be used in the setting of rates,  
3           and it is not used in the setting of rates. If  
4           society decides that the use of this information  
5           should be prohibited for public policy reasons, then  
6           the insurance companies would comply with that.

7           COMMISSIONER McCARTY: Okay.

8           MR. HAGELI: That brings me to the second  
9           aspect I wish to highlight for the committee, and  
10          that is that the use of actuarially justified data  
11          benefits consumers through better risk assessment.

12          When insurance companies are able to collect as  
13          much actuarially justified information as possible,  
14          that allows them to get the best possible picture of  
15          risk that an individual represents and then  
16          therefore allows them to set the most accurate  
17          premium for that individual.

18          I don't think it's a radical statement to say  
19          that people expect to be charged for the risk that  
20          they represent. I want to pay the rate that's  
21          representative of what risk I represent, be it  
22          higher or lower. I think that's a reasonable  
23          expectation, and that expectation is met when the  
24          most possible actuarially justified information is  
25          utilized.

1           And that brings me to my third point, which is  
2           that when you begin to restrict the use of  
3           actuarially justified information, you stifle  
4           innovation and you ultimately hurt the consumer.

5           Mr. Poe earlier mentioned how rates could go  
6           up, if you restrict the risk of certain information  
7           how it could cause all rates to go up. I can tell  
8           you how it can cause all rates to go up. When you  
9           have less competition, you have less market forces  
10          forcing prices down. Companies that are already in  
11          a market will be less willing to expand in that  
12          market if they're told that the information that you  
13          have that you've been relying upon for your business  
14          model needs to change in order to expand into this  
15          market or to enter into this market. It's going to  
16          be less willing to do that.

17          Each company has its own unique risk data, risk  
18          history. Each company develops its own proprietary  
19          rating system, and each company obviously believes  
20          that their system is the best method for that  
21          company.

22          When you begin to restrict what they cannot  
23          use, you're messing with their formula, and that's  
24          going to cause them to be more conservative in terms  
25          of expanding into the market.

1 I would just leave you with the thought --

2 COMMISSIONER McCARTY: But you've already  
3 spoken to the issue that Legislatures have  
4 prohibited the use of certain rating factors even if  
5 they have been actuarially predictive as a matter of  
6 public policy.

7 MR. HAGELI: Yes.

8 COMMISSIONER McCARTY: And that didn't seem to  
9 suppress the appetite for business. Certainly the  
10 life insurance business is as robust today as it's  
11 ever been and we don't allow race-based rates. We  
12 didn't seem to suppress the appetite for sales of  
13 life insurance policies.

14 MR. HAGELI: Whenever -- the effect that it's  
15 going to restrict business, I mean, you're telling  
16 -- this company has evolved their proprietary  
17 systems over the years. If you begin, as  
18 regulators, to tell them what they can and cannot  
19 do, they're going to be more conservative. I mean,  
20 that to me seems to be pretty commonsensical.

21 COMMISSIONER McCARTY: It seems pretty what?

22 MR. HAGELI: Pretty commonsensical, that when  
23 you tell companies they can't do things the way  
24 they've been doing it, it's going to cause a  
25 reaction that's going to hurt.

1           COMMISSIONER McCARTY: Yes, and will cause an  
2           adjustment and as a result of that adjustment other  
3           competitive factors will be substituted for the  
4           underwriting criteria that was formerly used, as the  
5           case has been in life insurance policies.

6           I guess I reject the premise. I think it would  
7           be an adjustment for a company and they would alter  
8           their business plan if they weren't able to use  
9           relatively inexpensive underwriting tools that  
10          heretofore they've been using and it's an integral  
11          part of their rating system. I would agree with  
12          that.

13          But over time I think the appetite for the  
14          business that you have opportunities in Florida and  
15          all the other rating factors that you are allowed to  
16          use would compensate for the changes that a  
17          particular company would use. It might not be  
18          particularly beneficial to that company, but other  
19          companies who don't use those rating factors would  
20          be able to capitalize on that competitive market.

21          MR. HAGELI: If you're asking me to speculate  
22          as to what market products might be developed in the  
23          future to compensate, I don't know.

24          COMMISSIONER McCARTY: No, but you're  
25          speculating as to a non-competitive market by

1 elimination of potentially unfairly discriminatory  
2 factors, is what I'm saying. You're saying that the  
3 fact that you're allowing to use occupation and  
4 education makes for a more robust market and, ergo,  
5 elimination of that would result in a less  
6 competitive market, and I don't believe you've  
7 established a factual predicate to make that  
8 conclusion.

9 MR. HAGELI: I believe when you hamper the  
10 formula, it's going to have a result. I don't know  
11 how that result results in lower prices.

12 COMMISSIONER McCARTY: Okay.

13 MR. HAGELI: I would just like to leave the  
14 committee with a final thought, and that is the  
15 expression or statement from the Maryland Insurance  
16 Commissioner that competition is the best consumer  
17 protection possible, and we at PCI couldn't agree  
18 more with that.

19 And I would be happy to answer any additional  
20 questions you may have of me at this time.

21 MS. DAWSON: Thank you, Mr. Hageli.

22 COMMISSIONER McCARTY: Thank you, Mr. Hageli.

23 MS. DAWSON: Are there any questions?

24 COMMISSIONER McCARTY: I don't have any  
25 questions.

1           MR. EAGELFELD: Are you aware of what the  
2           circumstances of that Arkansas law are?

3           MR. HAGELI: I don't know the specifics. I  
4           know that it -- I believe it's if you have a certain  
5           grade point average.

6           MR. EAGELFELD: Right.

7           MR. HAGELI: I don't know what the range is.

8           MR. EAGELFELD: You have to be under the age of  
9           25, have graduated from college and have a certain  
10          grade point average.

11          And I suspect strongly, although I haven't  
12          researched the legislative history of it, that this  
13          has something to do with people who get what many  
14          companies give as a good student discount who then  
15          graduate from college and lose that good student  
16          discount so they end up getting a higher premium  
17          after they've graduated, and this is a way of  
18          preventing that.

19          It's hardly a ringing endorsement of the use of  
20          educational attainment as a rating variable,  
21          wouldn't you say?

22          MR. HAGELI: Well, I would just point out that  
23          Arkansas, like Florida, prohibits the setting of  
24          unfairly discriminatory rates.

25          MR. EAGELFELD: The degree of contradiction

1           between this statute and -- well, we've never --  
2           we've been talking about the possibilities of  
3           disparate impact, we haven't really used the term  
4           unfairly discriminatory today, I don't think.

5           MR. HAGELI: Right. I want to focus on the  
6           actuarial justification because I cannot speak to  
7           company-specific practices such as previous  
8           testimony.

9           MR. EAGELFELD: If I came up with a study that  
10          found that eye color or birth order or number of  
11          cell phones in the family was predictive of  
12          insurance experience, would you say that we would be  
13          obligated to permit those variables to be used in  
14          rating?

15          MR. HAGELI: Obligated?

16          MR. EAGELFELD: Yes.

17          MR. HAGELI: I don't know that you would be  
18          obligated. I mean, the State of Florida can set  
19          whatever restrictions it wants to. If there's an  
20          actuarial basis for it, it should be used, unless  
21          there is some overriding public policy concern.

22          MR. EAGELFELD: So eye color would work?

23          MR. HAGELI: Yeah, I think so.

24          MS. DAWSON: I'm sorry, you said what?

25          MR. HAGELI: Yes, I think so.

1 MS. DAWSON: What about number of plasma TVs in  
2 the house?

3 MR. HAGELI: Sure. If it's actuarially  
4 justified, absolutely.

5 MR. EAGELFELD: How about family income?

6 MR. HAGELI: I don't think that companies  
7 collect income information.

8 MR. EAGELFELD: It doesn't seem to be an  
9 overwhelming difficulty to collect income. Mortgage  
10 companies do it.

11 MR. HAGELI: The collection of the information,  
12 of course, would be easy, but I don't know that it's  
13 allowed.

14 MR. PARTON: Do you have any knowledge of any  
15 law that would prevent that? I certainly don't.

16 MR. HAGELI: No, I don't.

17 MR. PARTON: But there's been no attempt to  
18 collect information such as income so that you could  
19 show some correlation between some of these factors  
20 and income?

21 MR. HAGELI: To collect that information?

22 MR. PARTON: Yes.

23 MR. HAGELI: I don't know. We don't -- we're  
24 not a statistical organization. We don't collect  
25 information for that purpose.

1 MR. PARTON: But you're a trade organization?

2 MR. HAGELI: Yes.

3 MR. PARTON: You represent various insurers?

4 MR. HAGELI: Yes.

5 MR. PARTON: I would think the trade  
6 organization -- this isn't the first time the issue  
7 of unfair discrimination, not used in the actuarial  
8 sense, but in the wide sense, has been raised before  
9 with regard to some of the practices of the  
10 insurance industry?

11 MR. HAGELI: Yes.

12 MR. PARTON: And have you not gone out and  
13 tried to gather some statistics to show one way or  
14 the other whether that accusation or those concerns  
15 are appropriate?

16 MR. HAGELI: With respect to which issue?

17 MR. PARTON: With regards to income, for  
18 instance.

19 MR. HAGELI: I'm not aware of anything like  
20 that.

21 MR. PARTON: Just so we have an understanding,  
22 when you use the term unfairly discriminatory,  
23 you're using that in an actuarial sense, am I  
24 correct?

25 MR. HAGELI: Yes.

1           MR. PARTON: Is it fair to say that if there is  
2           a correlation demonstrated that says all African-  
3           Americans have a worse driving record and are more  
4           prone to losses, that, actuarially speaking,  
5           underwriting somebody based on race would be  
6           appropriate, from an actuarial unfairly  
7           discriminatory standpoint?

8           MR. HAGELI: Like I said, there are certain  
9           instances where states have decided that the use of  
10          actuarially justified information should be  
11          prohibited for various public policy reasons, and  
12          that's such an instance.

13          MR. PARTON: Yeah. But your use of the term  
14          unfairly discriminatory, however, and as I  
15          understand the concepts of actuarial practice, would  
16          allow race as a factor if, in fact, you could show a  
17          correlation between race and loss?

18          MR. HAGELI: I believe Ms. Lawson pointed out  
19          earlier that with respect to the life insurance  
20          that, statistically speaking, African-Americans have  
21          a lower life expectancy, I believe, didn't you?

22          MS. DAWSON: No, I didn't mention that. I  
23          think that was one of the presenters or maybe it was  
24          someone up here on the panel.

25          MR. HAGELI: Someone mentioned it.

1 MS. DAWSON: It wasn't me.

2 MR. HAGELI: But, like I said, society has  
3 decided that there's certain information that  
4 shouldn't be utilized regardless of whether --  
5 regardless of its actuarial value.

6 MR. PARTON: I really understand that. And  
7 I'll trying to get straight, when you use the term  
8 unfairly discriminatory, that from an actuarial  
9 standpoint it would not be unfairly discriminatory  
10 to use race as a basis for underwriting if in fact  
11 there was a correlation between loss and race?

12 MR. HAGELI: Technically speaking, yes, unless  
13 there's a law prohibiting it, yes.

14 MR. PARTON: Thank you.

15 MR. EAGELFELD: A question about public policy:  
16 You mentioned public policy, and I imagine you have  
17 an interest in public policy as it respects the  
18 insurance business.

19 MR. HAGELI: Yes, sir.

20 MR. EAGELFELD: What criteria or what bases  
21 would you suggest that public policy decision-  
22 makers -- and it certainly may not be me -- but  
23 other people should make such a decision to not  
24 allow a particular variable?

25 MR. HAGELI: Really, you know, I've considered

1           this issue, really I feel that it would be almost  
2           arrogant of me to come down to Florida and tell  
3           citizens of Florida what laws they should or  
4           shouldn't pass. I'm here to simply tell you that  
5           the use of this information is actuarially  
6           justified.

7           MR. EAGELFELD: And I'm just asking not for a  
8           particular draft of legislation but more for the  
9           general principle under which you think that the  
10          public policy-maker should operate on when it is  
11          justified, if ever -- and apparently you believe  
12          that sometimes it is -- when it may be justified?

13          MS. DAWSON: In other words, where do you draw  
14          the line?

15          MR. EAGELFELD: Yes.

16          MS. DAWSON: Where do you draw the line? If  
17          you say, okay, we have the numbers actuarially so  
18          it's okay to look at race, it's okay to look at  
19          income, it's okay to look at immigrant status or  
20          something, for example. We have a large immigrant  
21          population here in Florida. If actuarially it makes  
22          sense to charge those folks more, is that okay?

23                 In other words, where do you draw the line  
24          morally, ethically in relation to the use of various  
25          factors for underwriting?

1           MR. HAGELI: All right, and my response to that  
2           is that's not our call; that's the call of the  
3           people of the great state of Florida to make. Race  
4           was decided to be over the line and that was  
5           restricted and we comply with it and we agree with  
6           it. As for what could be the next --

7           MS. DAWSON: But that is contrary to your  
8           response to General Counsel Parton's question where  
9           he asked you if the numbers -- and I'm paraphrasing,  
10          of course -- the numbers were reasonable or accurate  
11          in terms of using race, you said yes, that it would  
12          be okay to use that as a factor.

13          MR. HAGELI: Except for the fact that it's  
14          prohibited by law.

15          MS. DAWSON: We know that. But in terms of the  
16          other factors that he was mentioning, in other  
17          words, where do you draw the line in terms of, okay,  
18          if the numbers flesh out, then it's okay?

19                 There has to be some sort of, well, no, it's  
20          not right to look at that, it's not ethical to look  
21          at that, it's not moral to look at that, it's not  
22          fair to treat people differently because of their  
23          education or their level of -- their occupation,  
24          their status, coming over, you know, to the United  
25          States for a better opportunity. Where do you draw

1 the line?

2 MR. HAGELI: Really, that's a question for the  
3 Legislature to decide.

4 MR. EAGELFELD: I was really asking how do you  
5 draw the line for a recommendation on what they  
6 should consider or the Commissioner, whoever it is  
7 that's entitled to make that public policy decision?

8 MR. PARTON: If we acknowledge that race, as a  
9 public policy matter, is not an appropriate basis  
10 upon which to underwrite a rate and yet a  
11 methodology is being used that nevertheless impacts  
12 individual rates in the same manner as using race,  
13 what's the difference?

14 MR. HAGELI: The difference is that if you're  
15 saying somehow that it's a proxy, there's no --

16 MR. PARTON: Well, proxy contains an element of  
17 intent. I don't care what the intent is.

18 MR. HAGELI: Right.

19 MR. PARTON: If the ultimate effect on  
20 protected classes, okay, is the same as actually  
21 blatantly, openly using race as a factor, what's the  
22 difference?

23 MR. HAGELI: Really, that's the question that  
24 the Legislature needs to answer.

25 COMMISSIONER McCARTY: Well, not really,

1           because I think the question that Mr. Parton is  
2           posing is a very valid question because if in fact  
3           that the use of factors has a disparate impact on  
4           protected classes, then what you're saying is that  
5           would be prohibited because the Legislature has  
6           already said it should be prohibited because we  
7           don't allow discrimination based on race.

8           MR. HAGELI: I don't know the law with respect  
9           to disparate, that law. I don't know that.

10           COMMISSIONER McCARTY: But see, what kind of  
11           amazes us sitting up here today is we have this  
12           plethora of data out there on education, on  
13           Caucasian/non-Caucasian, the education records.  
14           We've cited the U.S. Census Bureau that all of us  
15           seem to be familiar with. Yet when we talk about  
16           the interlay of that data on underwriting practices,  
17           everyone seems to go into this like, "I don't know,  
18           I never looked at it, never seen Census data like  
19           this." And, you know, I understand it's a difficult  
20           issue to have to address that potentially what is  
21           being used as an underwriting practice is  
22           potentially hurting protected classes of Floridians,  
23           but I think we have a fundamental requirement and  
24           obligation to look into those questions.

25           MR. HAGELI: I think -- and correct me if I'm

1 wrong -- but I don't believe there's any study out  
2 there that --

3 COMMISSIONER McCARTY: Well, we have heard  
4 that. We have heard that. We actually have heard  
5 people in underwriting departments who have not seen  
6 the U.S. Census data regarding this information  
7 until today, so we're aware that there are no  
8 studies.

9 But given the questions that have been asked,  
10 is PCI willing to engage in a study to look at these  
11 factors and to see whether or not protected classes  
12 of Floridians are in fact being impacted by the use  
13 of occupational rating or income or any of these  
14 other factors that are currently under question?

15 MR. HAGELI: I don't know that that's what  
16 their capability would be, to undertake such a  
17 study. I really don't know.

18 COMMISSIONER McCARTY: Okay.

19 MR. EAGELFELD: I think our major focus has  
20 been on personal auto insurance. I just wanted to  
21 ask you what relevance -- you mentioned things about  
22 occupations that require unusual driving hours and  
23 distractions and all of this.

24 Do you think that has a direct relevance to  
25 personal auto? Wouldn't those kinds of losses be

1 covered on commercial policy?

2 MR. HAGELI: No. Well, if you're driving to  
3 work at an unusual hour, I mean, that's your  
4 personal coverage. While you're working, you're  
5 driving on the road at unusual hours, when you leave  
6 and when you come to work, that also puts you on the  
7 road at unusual hours as well.

8 MR. PARTON: I understand what you're trying to  
9 say, that there may be some relationship between,  
10 you know, when or how somebody's driving and the  
11 propensity to have an accident. But in point of  
12 fact -- excuse me, Commissioner, for using that  
13 phrase -- the empirical data doesn't bear that out.  
14 I mean, we looked at a study here that shows, for  
15 instance, lawyers and doctors have worse driving  
16 records in terms of tickets and accidents than, you  
17 know, the garbage man, yet they get the preferable  
18 treatment based upon their occupation and education.

19 MR. HAGELI: At least with respect to -- I  
20 mean, I can't comment on specific company practice,  
21 but I did bring to the community's attention this  
22 study from Quality Planning showing that there is a  
23 distinct difference from the top category and the  
24 bottom category. I mean, it's there for you to see  
25 the difference.

1           How companies choose to use that information  
2           and what that results in, I mean, I really can't  
3           comment on specifics, from antitrust experiences.

4           MR. PARTON: It just seems to me what we are,  
5           again, measuring, okay, is the ability of an  
6           individual to pay a claim without relying on his  
7           insurance, and thus you end up with the people who  
8           are the least able to pay high rates, who most need  
9           insurance, paying the highest rates and subsidizing,  
10          if you will, attorneys, doctors and other people in  
11          other professions.

12          MR. HAGELI: I don't look at it that way. I  
13          look at it as the use of actuarially justified  
14          information.

15          Any other questions?

16          MS. DAWSON: Oh, that's my job. Are there any  
17          other questions?

18          MR. HAGELI: Oh, I'm sorry.

19          MS. DAWSON: That's okay. I'm just kidding  
20          with you.

21          COMMISSIONER McCARTY: Thank you, Mr. Hageli.  
22          We appreciate you coming out.

23          MS. DAWSON: Thank you, sir.

24          MR. HAGELI: Thank you. Thank you very much.

25          MS. DAWSON: Okay. We have next a summary of

1 the submission by the Consumer Federation of  
2 America, and Bob Hunter submitted documentation to  
3 us which is available to everyone here today and it  
4 is a part of the record, so if you don't have a copy  
5 of that, we do have copies of the CFA submission  
6 outside on the table.

7 Here with us today is Amanda Parnell. She's an  
8 Assistant General Counsel with the Office of  
9 Insurance Regulation, and she will briefly summarize  
10 that submission.

11 Ms. Parnell, thank you.

12 MS. PARNELL: Thank you.

13 COMMISSIONER McCARTY: We're going to subject  
14 you to rigorous cross-examination.

15 MS. PARNELL: I was going to say I'm not Bob  
16 Hunter. He was unable to attend today. But the  
17 material that he submitted is part of the record,  
18 and you can pick up a copy of it on the outside.

19 Just to briefly introduce him, Bob Hunter  
20 currently serves as director of insurance for  
21 Consumer Federation of America, and after this, I'll  
22 refer to them as CFA. And that's a federation that  
23 represents almost 300 consumer groups with a  
24 combined membership of more than 50 million  
25 Americans.

1           CFA's member organizations range from small  
2           local consumer groups to very large organizations  
3           such as the AARP and Consumer's Union. CFA has  
4           focused its research on GEICO's practices, but they  
5           have stated that their concerns are equally  
6           applicable to any insurer using education or  
7           occupation as classifications for the pricing of  
8           auto insurance.

9           Based on its research, CFA states that GEICO  
10          varies its auto insurance prices based just on  
11          occupation and education, independently of other  
12          factors.

13          In its March, 2006, letter to the National  
14          Association of Insurance Commissioners, CFA stated  
15          that based on GEICO's rating and underwriting  
16          guidelines, a factory worker in Miami without a  
17          four-year college degree who has the same  
18          qualifications and driving record as an attorney  
19          with a professional degree would pay 15.35 percent  
20          more for coverage than the attorney would pay.

21          According to CFA, GEICO places individuals  
22          whose highest level of education is a high school  
23          diploma in a group that is ineligible for preferred  
24          rates at the GEICO company. CFA further asserts  
25          that the only coverage offered by GEICO to that

1 group comes from one of GEICO's substandard  
2 companies, which has significantly higher base  
3 rates, and that individuals receiving this coverage  
4 are not being informed that they are being rejected  
5 by GEICO's preferred company totally due to their  
6 educational status.

7 CFA states that GEICO's continued use of the  
8 education and occupation criteria will lead to  
9 negative competition in the insurance marketplace  
10 and that it will encourage GEICO's competitors to  
11 follow suit, because those competitors will see that  
12 GEICO is taking away their more affluent clients.

13 Bob Hunter also states that although GEICO does  
14 not directly base its rates upon income or race,  
15 when education level and occupation are used the  
16 result severely impacts lower income and minority  
17 populations nationwide.

18 Mr. Hunter also stated in his letter that CFA  
19 is continually doing additional research on the  
20 matter, so I'll just hit some high points of the  
21 research that they have done so far.

22 In particular, their comprehensive study of  
23 GEICO's rates in Maryland and the preliminary  
24 results of that research can be summarized in the  
25 following way: higher skilled and educated customers

1           tend to receive a break in price on auto insurance  
2           rates from GEICO. The break in rates is granted at  
3           the Bachelor degree level. Master's and Ph.D.  
4           degrees do not appear to result in additional  
5           reduction in rates.

6           Additionally, those with Bachelor degrees in  
7           less skilled positions and usually lower incomes do  
8           not always receive a reduction as compared to those  
9           in the same low skilled and low income professions  
10          with high school level degrees.

11          There are three to five tiers for rate quotes  
12          that depend on occupations. Regardless of  
13          education, those with the lowest skilled jobs tend  
14          to pay more for insurance than those with higher  
15          skilled, higher income jobs. Those with middle tier  
16          professions, for example, researchers and  
17          technicians, still pay less and in some cases  
18          significantly less than the lowest individuals with  
19          skills pay.

20          Additionally, CFA's preliminary research shows  
21          that those in the lower income bracket do not  
22          receive price breaks by attaining more education if  
23          they do not change jobs after attaining that  
24          additional education. The occupations that receive  
25          a break in price based on education are those with

1 education that can significantly influence income.

2 Mr. Hunter concluded in his submission to the  
3 Office by saying that he was very appreciative, as  
4 was CFA, that the Office was conducting such a  
5 public hearing, and then asserted that more  
6 objective analysis will show that GEICO's use of  
7 education and occupation as classifiers for auto  
8 insurance prices is unfairly discriminatory and has  
9 a disparate impact on low income and minority  
10 communities.

11 He further asserts that, based on these  
12 observations, that CFA recommends that Florida ban  
13 the use of these unfair methods.

14 COMMISSIONER McCARTY: And I'll also add for  
15 the record that Mr. Hunter is an actuary.

16 MS. PARNELL: Thank you.

17 MS. DAWSON: Thank you.

18 MR. PARTON: And former head of, I believe, the  
19 Texas Department of Insurance.

20 COMMISSIONER McCARTY: Yes.

21 MS. DAWSON: Are there any questions?

22 MR. EAGELFELD: We're not going to ask you the  
23 questions we would ask Mr. Hunter.

24 MS. PARNELL: Thank you.

25 MS. DAWSON: Thank you, Ms. Parnell.

1           MR. EAGELFELD: But have you read the U.S.  
2           Census data?

3           MS. PARNELL: I have.

4           MR. EAGELFELD: I bet you have. Thank you.

5           MS. DAWSON: We're going to take a brief break  
6           here for about five minutes, at which time the  
7           composition of the panel will change a little bit,  
8           but we will be here and we'll convene in about five  
9           minutes, so let's take a quick break and we'll kick  
10          off when we come back. Thank you.

11          (Brief recess.)

12          MS. DAWSON: We're going to start back. Again,  
13          we took a brief break. The composition of the panel  
14          has changed a little bit.

15          Mr. Parton had to step away for a matter, but  
16          he may be rejoining us, depending upon the length of  
17          this afternoon session. Our Deputy Commissioner,  
18          Belinda Miller, is here filling in for the  
19          Commissioner, who also had to step away.

20          Ms. Miller, would you like to make any comments  
21          or would you like to just proceed with AIG's  
22          testimony?

23          DEPUTY COMMISSIONER MILLER: I think we should  
24          just proceed, Ms. Dawson.

25          MS. DAWSON: Okay, thank you.

1           On behalf of AIG, if you're ready to proceed,  
2           we can start with either one of you. Tell me who  
3           you are and we'll go from there.

4           MR. FEDAK: Will do. I'll have to line out  
5           here my first sentence, Commissioner McCarty, so  
6           I'll say Deputy Commissioner Miller and esteemed  
7           panel members, thank you for providing us with the  
8           opportunity to discuss this important topic with  
9           you.

10           My name is John Fedak, and I am the vice-  
11           president for AIG Direct's southeast region. Also  
12           joining me today is our regional actuary, David  
13           Bowman, and our Associate General Counsel, Moira  
14           Popp.

15           For over 20 years, AIG Direct has been selling  
16           personal auto insurance directly to consumers  
17           through its licensed company phone representatives  
18           and more recently over the Internet.

19           We currently have approximately \$160 million of  
20           in-force premium in Florida, insuring about 140,000  
21           vehicles with the simple goal of charging an  
22           appropriate premium for a policyholder's predicted  
23           risk of loss.

24           Please allow me, without being too technical,  
25           to provide a brief history of our filed rating plan

1 in Florida.

2 In 2002, we developed a countrywide rating and  
3 tiering model to be rolled out generally state by  
4 state. Some variation of this model has been  
5 implemented in over 40 states. The data underlying  
6 the model and its development was based on a  
7 personal auto loss experience.

8 As indicated in the documents we provided to  
9 the OIR in advance of this hearing, the use of  
10 occupation in our tiering model has been supported  
11 by the objective historical loss experience of our  
12 policyholders. Let me also state clearly and  
13 unequivocally that AIG Direct has never used  
14 educational level in any way to determine a  
15 customer's tier assignment or premium.

16 Regarding the use of occupation, we have found  
17 it to be a statistically valid predictor of future  
18 underwriting losses and have successfully supported  
19 its use in states where we have been asked to  
20 provide additional justification such as New York,  
21 Alabama, Mississippi and Virginia.

22 I would also like to confirm for the panel that  
23 AIG Direct has filed its complete rating tiering and  
24 underwriting guidelines with the State.

25 At the end of the day and in very briefly

1 concluding, if the OIR requires insurance carriers  
2 to remove occupation from the rating process, our  
3 tiering model will be revised and will become less  
4 accurate in predicting losses.

5 Thank you. We're happy to answer any questions  
6 you may have concerning our use of occupation in the  
7 state.

8 MS. DAWSON: Thank you. Are there any  
9 questions from the panel?

10 I have --

11 DEPUTY COMMISSIONER MILLER: Go ahead.

12 MS. DAWSON: Well, I defer to you.

13 DEPUTY COMMISSIONER MILLER: I have a couple.

14 The information that you provided to us in  
15 response to the subpoena, we have in a bound  
16 document, is there anything in here to which you  
17 claim trade secret that you're aware of?

18 MS. POPP: No.

19 MR. FEDAK: Nothing that we provided, no.

20 DEPUTY COMMISSIONER MILLER: Okay, go ahead.

21 MS. DAWSON: Okay. My question relates to the  
22 use of credit and non-credit variables. Tell us how  
23 for either new or renewal business how the variables  
24 of credit, education and occupation interact.  
25 Explain that.

1           MR. FEDAK: Well, education doesn't enter into  
2           the equation. You mentioned the use of education,  
3           and it does not.

4           MS. DAWSON: Okay.

5           MR. FEDAK: What specifically would you like?  
6           We could spend a whole lot of time going into the  
7           guts of all of our models and would be happy to do  
8           so. But is there a --

9           MS. DAWSON: Is there a certain weight or  
10          greater emphasis placed on credit as opposed to  
11          occupation, or is it seen equally? What's the  
12          interplay between those variables, if you know?

13          MR. FEDAK: Sure.

14          MR. BOWMAN: In our tier model, both credit and  
15          non-credit variables come into the model through a  
16          multi-variant regressive analysis, and the multi-  
17          variant regressive analysis only explains the  
18          additional impact of a variable that's unexplained  
19          by other variables, so in that sense, they're  
20          independent, they're only explaining propensity to  
21          risk independent of one another.

22          MS. DAWSON: Okay. That's all the questions I  
23          have related to that.

24          DEPUTY COMMISSIONER MILLER: Well, I guess I  
25          have one, and you may have heard testimony earlier

1 about the study that was done that showed that  
2 doctors and lawyers tend to have more accidents.

3 How does that square with the use of the  
4 categories that you've defined? Do you think it's  
5 inconsistent, and can you maybe give us some insight  
6 as to why that study would show that they have more  
7 accidents and yet they're typically treated better  
8 in rating plans?

9 MR. FEDAK: Just by reference, are you making  
10 reference to the Quality Planning document --

11 DEPUTY COMMISSIONER MILLER: Yes.

12 MR. FEDAK: -- that was provided out front?

13 DEPUTY COMMISSIONER MILLER: Yes.

14 MR. BOWMAN: As I alluded to before about the  
15 use of occupation comes into our underwriting model  
16 to explain variables, it's unexplained by other  
17 rating variables. There could be much of that data  
18 explained by other rating variables. I'm sure  
19 physicians tend to work in urban areas and that  
20 might be the reason for some of the variations of  
21 data. That study is not saying anything about how  
22 occupation is adding to the measure of risk of loss  
23 type, all of the other rating variables.

24 DEPUTY COMMISSIONER MILLER: So you don't think  
25 there's necessarily any relationship between the

1 number of accidents that a particular group  
2 occupation may have and the rating for a particular  
3 company?

4 MR. BOWMAN: I certainly do, and I think that's  
5 picked up in many of the rating variables other than  
6 occupation as well. Occupation is only explaining  
7 the additional amount that has been unexplained by  
8 the other rating variables.

9 DEPUTY COMMISSIONER MILLER: How many different  
10 occupations does your company use, how many  
11 different categories?

12 MR. BOWMAN: We used -- if I counted correctly,  
13 it's ten.

14 DEPUTY COMMISSIONER MILLER: Ten groups?

15 MR. BOWMAN: Yes, that is correct.

16 DEPUTY COMMISSIONER MILLER: And within those  
17 groups, you have a couple of hundred different  
18 descriptions of occupations, is that correct?

19 MR. BOWMAN: Correct.

20 DEPUTY COMMISSIONER MILLER: How did you  
21 determine which occupations go in each group? For  
22 example, some of these occupations are similar,  
23 there's attorney there's prosecutor and there's  
24 public prosecutor, but those are all different  
25 occupations. Are they all in the same group because

1 of the similarity to the job description, or how are  
2 they grouped?

3 MR. FEDAK: There is part of that -- let me  
4 give you, if I may, provide a little bit of history  
5 in terms of your question.

6 When we created the classifications, we looked  
7 at other competitor classifications and competitor  
8 rate filings. We researched the federal  
9 government's Standardized Occupation Code, SOC,  
10 Manual and assigned individual occupations listed in  
11 the manual to one of those broad categories as  
12 defined and scripted, crafted by the federal  
13 government. That will give you at least a high  
14 level sense of how that process worked.

15 DEPUTY COMMISSIONER MILLER: Well, let me ask  
16 the question, are, for example, attorney, prosecutor  
17 and public prosecutor in the same category?

18 MR. BOWMAN: I believe they are, yes.

19 MR. EAGELFELD: Are you aware of the degree of  
20 separation that your formula causes with regard to  
21 income of your insureds? In other words, do you  
22 have any feel for whether higher income insureds are  
23 paying less or more as a result of your use of  
24 occupation?

25 MR. FEDAK: We don't capture income from our

1 insureds or prospective insureds.

2 MR. EAGELFELD: Is it at all of interest to  
3 you?

4 MR. FEDAK: In what respect?

5 MR. EAGELFELD: Well, you don't capture it, but  
6 you do capture occupation. Why did you choose to  
7 capture occupation as opposed to capturing income or  
8 some other variable, perhaps? But you chose to  
9 begin, at some point, capturing the occupation of  
10 the insureds. What led you do that?

11 MR. BOWMAN: I would speculate that the reason  
12 is because, working in a direct marketing basis, we  
13 have people calling us up and answering questions,  
14 people don't like to answer questions on, "What is  
15 your income."

16 DEPUTY COMMISSIONER MILLER: For the record,  
17 you don't ask them their race, either?

18 MR. FEDAK: That's correct, we do not.

19 MR. BOWMAN: No.

20 MS. POPP: Oh, no.

21 DEPUTY COMMISSIONER MILLER: Are you aware of  
22 any studies that would support the use of occupation  
23 and would tend to not support the premise that that  
24 is a substitute for income and race?

25 MR. FEDAK: I'm not aware of any studies, other

1 than analyzing our own book of business.

2 DEPUTY COMMISSIONER MILLER: But when you  
3 analyze your book of business, you don't have a  
4 record of the person's race, right?

5 MR. FEDAK: That's correct.

6 DEPUTY COMMISSIONER MILLER: And you don't have  
7 a record of their income?

8 MR. FEDAK: That's correct.

9 DEPUTY COMMISSIONER MILLER: Okay. Would you  
10 be willing to analyze your business to determine  
11 race or income, if that were available, and see if  
12 you're having a disparate impact on people of  
13 different races?

14 MR. BOWMAN: I think we would be very much  
15 against trying to determine the race and income of  
16 our policyholders.

17 MR. FEDAK: But we would be happy to work with  
18 the Department, the OIR, to the extent that you're  
19 looking to analyze this issue.

20 DEPUTY COMMISSIONER MILLER: Okay.

21 MS. DAWSON: I'm going to follow up for just a  
22 second on Mr. Bowman's response.

23 You said in response to the question -- I  
24 forget the exact detail of the question -- you said  
25 that, well, people do not like to tell you what

1           their income is.

2           MR. FEDAK: I think he speculated that he  
3           thinks that that's what they would think.

4           MS. DAWSON: Okay. Well, let's take that the  
5           next --

6           MR. BOWMAN: I don't know. As an actuary, that  
7           was probably not a correct question for me. That  
8           would be our --

9           MS. DAWSON: Well, you seemed to come forward  
10          with that response pretty quickly, and you didn't  
11          put any disclaimers on it at all when you said it.

12          MR. BOWMAN: I did say I speculate.

13          MS. DAWSON: So let me ask you this. Is AIG  
14          using the question regarding occupation as a  
15          substitute for income, because people don't want  
16          to --

17          MR. FEDAK: No.

18          MS. DAWSON: -- answer questions about income?

19          MR. FEDAK: No, we're not.

20          MR. BOWMAN: No.

21          MS. DAWSON: So you're just guessing, well, if  
22          you're an attorney, oh, you make a lot of money?

23          MR. FEDAK: No, we're not.

24          MS. DAWSON: Okay. So you were just  
25          speculating, you didn't really -- you weren't

1           stating company position?

2           MR. BOWMAN: The question was why don't we  
3 collect income from our policyholders, I think.

4           MS. DAWSON: And what are you saying now that  
5 your response was?

6           MR. BOWMAN: My response was, I would speculate  
7 that we would be unwilling to ask that of our  
8 customers, our customers would be unwilling to  
9 provide that to us.

10          DEPUTY COMMISSIONER MILLER: But if we were to  
11 undertake to do a study, for example, and we were to  
12 request that you give us customer information so  
13 that we could match it with perhaps voluntary  
14 responses, would you be willing to participate in  
15 something like that?

16          MR. FEDAK: Through any industry-wide data call  
17 that you would be interested in pursuing, we would  
18 absolutely participate to the extent that it was --  
19 in due process, under the regs and statutes, we  
20 would be fully compliant.

21          MR. EAGELFELD: I just wanted to ask a little  
22 bit about your operation. You're the Direct branch  
23 of AIG?

24          MR. FEDAK: That's correct.

25          MR. EAGELFELD: Do you folks actually manage a

1 life insurance operation as well, or is that  
2 separate?

3 MR. FEDAK: No, we do not.

4 MR. EAGELFELD: So you're only personal lines?

5 MS. POPP: Auto.

6 MR. FEDAK: Correct.

7 MR. EAGELFELD: Personal lines auto only, in  
8 fact?

9 MR. FEDAK: Yes.

10 MR. BOWMAN: Yes.

11 MR. EAGELFELD: And you never consult with your  
12 colleagues in any other of the AIG profit center  
13 areas?

14 MR. FEDAK: Generally not.

15 MR. EAGELFELD: Generally not.

16 DEPUTY COMMISSIONER MILLER: When a customer  
17 comes to apply for a policy, do they come in and  
18 apply through a central system and then you decide  
19 which company they go in, or do I, as an applicant,  
20 choose the company that I'm applying for?

21 MR. FEDAK: No, you do not, as an applicant,  
22 choose the company. We have three companies that we  
23 currently write business in in the state of Florida,  
24 and those companies are separated based on our  
25 marketing distribution channel. We have a company

1           that we write affinity-based business in, a company  
2           that we write general direct-to-consumer business  
3           in, and then a company for media, mass media-  
4           generated business. The rating structures in all of  
5           the variables in our filings are the same across  
6           those three companies.

7           DEPUTY COMMISSIONER MILLER: They are. So you  
8           don't really have a situation like it was described  
9           earlier where you have one company where the  
10          preferred drivers go in and another company where  
11          people with worse driving records --

12          MR. FEDAK: No, we do not.

13          DEPUTY COMMISSIONER MILLER: Okay. So you  
14          decide which company I go in based on whether I'm  
15          coming in through an association with some  
16          corporation? Give me an example.

17          MR. FEDAK: National Rifle Association members.

18          DEPUTY COMMISSIONER MILLER: All right. That's  
19          a stretch.

20          MR. FEDAK: An affinity-based program that  
21          would go under a specific underwriting company as  
22          opposed to if we solicited you as a direct mail  
23          customer, general retail customer, you would go into  
24          a separate company.

25          DEPUTY COMMISSIONER MILLER: Okay, and no

1 matter how I come in, the rating structure is the  
2 same? So if I have three tickets in five years,  
3 it's going to be the same? Well, that's a bad  
4 example. One ticket in five years?

5 MR. BOWMAN: Yes.

6 MR. FEDAK: All of our rating variables are the  
7 same across all three of those companies.

8 DEPUTY COMMISSIONER MILLER: How many rating  
9 variables do you use?

10 MR. BOWMAN: Many. We have rating variables  
11 that are used to determine manual rate, and on top  
12 of that we lay it on our formula, our tiering  
13 formula that modifies our rate. In our tiering  
14 formula, there are approximately 40 rating  
15 variables.

16 The underlying rating plan has I think what the  
17 Department would consider typical rating variables.  
18 They vary by territory, they vary by age, marital  
19 status, annual mileage, driving record.

20 DEPUTY COMMISSIONER MILLER: Okay. And the  
21 tiering formula, the 40 rating variables, is that  
22 where occupation comes in, or is it in underwriting?

23 MR. BOWMAN: Yes, it comes in in the tiering  
24 model.

25 DEPUTY COMMISSIONER MILLER: Tiering, okay. If

1 we were to look at your book of business, would we  
2 be able to find examples where people have the same  
3 characteristics except they have different  
4 occupations and it results in them having a  
5 different rate?

6 MR. BOWMAN: You would find examples where that  
7 could result in a different rating. It's the  
8 definition of a rating variable, I believe.

9 DEPUTY COMMISSIONER MILLER: Right.

10 MR. FEDAK: But you would also find many cases  
11 where that would not be the case.

12 DEPUTY COMMISSIONER MILLER: Where I might have  
13 a different occupation that's in a different one of  
14 your ten categories and that wouldn't change my  
15 rate?

16 MR. FEDAK: And if that's all you varied, yes,  
17 you would see some cases -- you would see some cases  
18 where you would have the same rate and others where  
19 you would not.

20 DEPUTY COMMISSIONER MILLER: How much does it  
21 vary? I mean, if I'm a clerk or a janitor, how much  
22 different is my rate going to be than if I'm a  
23 professional or in one of your higher level  
24 occupations?

25 MR. BOWMAN: There's a potential in certain

1 extreme circumstances for a person's tier that  
2 they're assigned to move by two tiers based on the  
3 occupation variables, and that would result in  
4 approximately a 30 percent rate difference.

5 DEPUTY COMMISSIONER MILLER: Thirty percent?

6 MR. FEDAK: That would be the maximum.

7 DEPUTY COMMISSIONER MILLER: So it's not going  
8 to be 300 percent?

9 MR. BOWMAN: No.

10 MR. FEDAK: No, it would not.

11 DEPUTY COMMISSIONER MILLER: Okay. Do you find  
12 that AIG has a competitive disadvantage as a result  
13 of not offering more of a discount to the higher  
14 level, higher income people?

15 MR. FEDAK: If you strike the term higher  
16 income from that statement or that question, no, I  
17 don't believe we feel that we are at a competitive  
18 disadvantage.

19 DEPUTY COMMISSIONER MILLER: So if other  
20 companies were to use -- I won't say income -- if  
21 they were to use occupation as a method of  
22 distinguishing more, in other words, you could save  
23 a whole lot more money by being more educated or a  
24 higher level occupation, higher income, it's hard to  
25 get away from that, if companies were to have a

1 greater disparity, you don't think that gives them a  
2 competitive advantage?

3 MR. BOWMAN: Analysis of our data is that our  
4 rating plan works optimally for us. I mean, I can't  
5 speak to how other companies are using occupation in  
6 their rating plans. I'm sure they're using it  
7 differently.

8 The fact that our company uses something  
9 different than another company, I don't know if you  
10 can necessarily conclude that one is given a market  
11 advantage or a disadvantage. I think we're both  
12 trying to optimize our ability to take risks.

13 DEPUTY COMMISSIONER MILLER: Okay. Well, the  
14 reason that I ask is that, you know, we had some  
15 testimony this morning about the fact that if one  
16 company is permitted to do this and they do it very  
17 successfully, that their competitors are going to  
18 have to do it, and my question is whether that is  
19 sustained and whether, given your statement, that if  
20 the law were to require that nobody uses occupation  
21 that you would be willing to comply with that?

22 MR. FEDAK: We believe and I think in our  
23 testimony that we would lose some predictive power,  
24 so we would not be happy about that.

25 However, if a rule or reg or statute was

1 promulgated that applied evenly to the industry at  
2 the some point in time, we would absolutely comply  
3 with such.

4 DEPUTY COMMISSIONER MILLER: Okay. Do you  
5 think that complying with a statute like that would  
6 result in higher rates for everybody?

7 MR. FEDAK: I don't know. It's possible.

8 DEPUTY COMMISSIONER MILLER: Or higher rates  
9 for some who are getting a discount now? I mean,  
10 it's not going to change the rate for everybody,  
11 it's not going to change the number of cars that are  
12 insured.

13 MR. BOWMAN: We would be less able to predict  
14 so there would be, therefore, some averaging of  
15 rates in the classes where we've previously been  
16 able to segregate, segment.

17 MR. FEDAK: Segment business.

18 MR. EAGELFELD: Do you have any recommendations  
19 for public policymakers as to what, if any,  
20 circumstances a variable might not -- should not be  
21 permitted for use, or are there no such  
22 circumstances, in your opinion?

23 MR. FEDAK: It's difficult for us to offer a  
24 recommendation. I would harken back to the  
25 testimony of a prior witness wherein we would look

1 to the regulators and the legislators to pass such  
2 prohibitions or not, and we would be absolutely  
3 compliant with those decisions.

4 MR. EAGELFELD: Would you be at all disturbed  
5 with the idea of a facially neutral practice,  
6 meaning one that does not consider race or income,  
7 that if it were proven to have an adverse and a  
8 disparate impact on protected classes, would that  
9 discomfort you at all, or would that just be, oh,  
10 well?

11 MR. FEDAK: No. We would -- I personally would  
12 certainly want to look at that data and that  
13 information, but, speculating and generalizing, it  
14 could be trouble.

15 DEPUTY COMMISSIONER MILLER: I have to ask,  
16 have you seen the Census data on occupations?

17 MR. FEDAK: I have not.

18 DEPUTY COMMISSIONER MILLER: What Web site is  
19 that on? Susan, do you have that handy?

20 MS. DAWSON: It's the U.S. Census Bureau Web  
21 site. I do have it. It's tab 4 of my book. If you  
22 Google U.S. Census Bureau, it should pop up.

23 DEPUTY COMMISSIONER MILLER: Well, it's  
24 something dot gov, huh, U.S. dot gov?

25 MS. DAWSON: It's pretty easy to find.

1           MR. EAGELFELD:  Apparently it wasn't -- didn't  
2           seem to be terribly important to you, at least  
3           before knowing of this hearing or before today, to  
4           actually find that.  I don't think it's really  
5           difficult to find, frankly.

6           What would have prevented you or why did you  
7           think that it wasn't important enough in your course  
8           of activities, business to look for such  
9           information?

10          MR. FEDAK:  Well, it's part of the subpoena.  
11          It was pretty clear what we were being asked to  
12          testify to, and that was our use of occupation and  
13          the experience relating to it, and I think we  
14          diligently went through a whole lot of our internal  
15          records to produce a lot of documents and comply  
16          with the subpoena as assigned to us, or served to  
17          us, rather.

18          MR. EAGELFELD:  So we didn't specifically say  
19          you should go out to look at Census racial  
20          information?

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

22          MR. EAGELFELD:  So you didn't?

23          MR. FEDAK:  And it was a voluminous document  
24          production.  We spent a good deal of time complying  
25          with the subpoena as directed.

1           MR. EAGELFELD: I'm an actuary, I'm not into  
2           subpoenas. I was thinking more in the course of  
3           your normal business operation it never occurred to  
4           you that this might be a worthwhile thing to  
5           investigate how your use of occupation might  
6           interrelate with race or income of the insured  
7           population?

8           MR. BOWMAN: We have never done an analysis of  
9           how race or income affects what we charge for  
10          automobile rates. I don't think it's appropriate to  
11          do that.

12          MR. EAGELFELD: No, I mean how your use of  
13          occupation might affect different racial or income  
14          groups, you didn't think that that was important or  
15          interesting or relevant?

16          MR. FEDAK: We did not look at it.

17          DEPUTY COMMISSIONER MILLER: Is there anything  
18          else that you think that we should consider in the  
19          course of this inquiry?

20          MR. FEDAK: Nothing that comes to mind, no.

21          DEPUTY COMMISSIONER MILLER: Okay. Does  
22          anybody else have questions?

23          MS. DAWSON: I don't have any other questions.

24          MR. FEDAK: Thank you for allowing us to come  
25          down and discuss with you.

1           DEPUTY COMMISSIONER MILLER: Thank you for  
2 coming.

3           MS. DAWSON: Thank you.

4           MS. POPP: Thank you.

5           MS. DAWSON: Okay, now we're going to take some  
6 questions from the public. There have been several  
7 individuals who have asked to speak.

8           We're going a little bit off the agenda. We  
9 were going to have some concluding remarks, but  
10 we'll go on ahead and take the questions from the  
11 public first before we do that.

12          I have Mr. Garcia. Is he here?

13          (Affirmative response.)

14          MS. DAWSON: Mr. Garcia, if you could just  
15 identify yourself and who you're associated with and  
16 proceed with your questions? Some of the company  
17 representatives are still here, so if you have  
18 questions for them, I'm sure they'll be happy to  
19 respond.

20          MR. GARCIA: Thank you, Ms. Dawson, Deputy  
21 Commissioner Miller and other OIR officials. My  
22 remarks are just brief and not framed as questions,  
23 just remarks for the record.

24          My name is Reggie Garcia. I'm an attorney in  
25 Tallahassee, Florida, an insurance arbitrator and a

1 lobbyist before Florida's legislative and executive  
2 branches. Today I'm representing the Florida  
3 Justice Association, formerly the Academy of Florida  
4 Trial Lawyers.

5 The Florida Justice Association provides  
6 advocacy on auto and other insurance legislative and  
7 regulatory issues, including enforcement of  
8 Florida's unfair methods of competition and unfair  
9 or deceptive acts in the Insurance Code and  
10 otherwise, and some of those provisions prohibit  
11 unfair discrimination in insurance rating and in  
12 claims handling.

13 The Consumer Federation of America's  
14 January 30th letter, now part of the record here in  
15 this public hearing, makes very compelling points  
16 which I will not repeat. The concern as stated by  
17 the Consumer Federation of America, in OIR's notice  
18 of hearing and other consumers, is whether the use  
19 of education and occupation circumvents the  
20 prohibition against using race in rates or claims  
21 handling.

22 Last year there was proposed Legislature before  
23 the Florida Legislature advocated by certain life  
24 insurance and other insurance companies to require a  
25 mandatory arbitration for claims disputes of life

1 insurance policies under \$25,000, and we see an  
2 analogy in that type of proposed legislation and the  
3 types of ratemaking and underwriting practices that  
4 are the subject of today's public hearing.

5 The Florida Justice Association, with public  
6 documents available from the Office of Insurance  
7 Regulation, successfully argued last year that such  
8 a law would further hurt owners and policyholders of  
9 life policies for minorities, low income workers and  
10 seniors, and some of the same analogies can be drawn  
11 to some of the automobile rating factors and  
12 underwriting criteria of occupation and employment.

13 The notice of hearing for today's public  
14 hearing documents well the practice of certain  
15 companies selling race-based premium policies and,  
16 most important, the multi-state enforcement actions  
17 by 50 Insurance Commissioners to stop this unfairly  
18 discriminatory practice.

19 Once the Legislature learned this history and  
20 the practical impact of mandatory arbitration of  
21 certain low face value life policies, that they  
22 would further victimize minorities, low income  
23 Floridians and seniors, even the bill sponsors  
24 themselves, which frankly I've never seen in the  
25 House and Senate, withdrew consideration of their

1 bills.

2 To conclude, insurance companies using  
3 occupation and education, as is referenced in the  
4 notice of hearing by examinations in Maryland and  
5 Ohio and otherwise as rating factors or underwriting  
6 guidelines, would seem to have the effect of  
7 circumventing the current Florida unfair and  
8 deceptive practice laws and unfair methods of  
9 competition, prohibiting unfair discrimination in  
10 race in insurance rating and claims handling.

11 Thank you very much for the opportunity to  
12 present these ideas, and we would be happy to  
13 respond to any questions.

14 MS. DAWSON: Okay, thank you.

15 Are there any questions?

16 DEPUTY COMMISSIONER MILLER: Thank you, Mr.  
17 Garcia. I have one question.

18 You've listened today to the proceedings that  
19 we've had this morning and this afternoon and you've  
20 heard a number of insurance company executives sit  
21 here and say they've never looked, they didn't know,  
22 don't ask what the race of their policyholders is or  
23 what the income level of their policyholders is and  
24 they have never looked at United States Census data  
25 to try to determine whether what they're doing is

1           having a disparate impact on people of different  
2           races or income levels.

3                     Do you find that credible?

4                     MR. GARCIA: Well -- and, again, I did not have  
5           the benefit of reading their written submissions,  
6           and I think on behalf of the Florida Justice  
7           Association our goal today is not really to take a  
8           shot at any one individual company, but if there  
9           seems to be a systematic or pervasive action or  
10          strategic failure to active research to be able to  
11          accomplish using occupation and education because  
12          race and income are excluded and prohibited, if  
13          they're trying to do something that's directly  
14          disallowed by indirectly doing something else that  
15          the credible public data from the Census and  
16          otherwise indicates may have the same effect, then  
17          that certainly would be a concern. It is up to you  
18          all, frankly, as I read the current law under  
19          626.954(1), unfair methods of competition and unfair  
20          and deceptive practices, particularly (g), unfair  
21          discrimination.

22                     I guess the purpose of this is twofold, is  
23          what's being done -- and they've candidly admitted  
24          to the degree they're doing it -- but whether it is  
25          lawful, which makes it an enforcement issue, or,

1 more important, going forward, whether it's directly  
2 prohibited, if it isn't and it's achieving things  
3 that are certainly currently prohibited by Florida  
4 law, if they're being achieved indirectly and,  
5 giving the industry the benefit of the doubt, not  
6 intentionally, then, going forward, either through  
7 administrative rules, through advocacy to the  
8 Legislature -- we're on the eve of a session --  
9 making that clear, going forward.

10 I didn't know that doctors and attorneys had  
11 more speeding tickets and accidents disproportionate  
12 to other occupations, but it sounds like almost  
13 inverse that certain professions are getting the  
14 benefit of lower rates, when, and I don't know if  
15 that's all the data, but at least some data  
16 indicates it should be just the opposite.

17 So I guess that's a long way of saying I don't  
18 want to directly say whether one or several specific  
19 companies are being credible or not, but certainly,  
20 as an insurance industry, things like U.S. Census  
21 data, which is publicly gathered every ten years,  
22 certainly if we use it to establish congressional  
23 United States House of Representatives districts, I  
24 would think it would be somewhat informative for  
25 auto and other insurance research purposes.

1 DEPUTY COMMISSIONER MILLER: Thank you.

2 MR. GARCIA: Thank you, Commissioner.

3 DEPUTY COMMISSIONER MILLER: Thank you for  
4 coming.

5 MS. DAWSON: I have a request to speak from Liz  
6 Reynolds.

7 MS. REYNOLDS: Thank you for the opportunity to  
8 speak. I have a statement.

9 MS. DAWSON: Good afternoon, Ms. Reynolds. If  
10 you can just identify, you know, who you're here on  
11 behalf of?

12 MS. REYNOLDS: My name is Liz Reynolds. I'm  
13 here on behalf of the National Association of Mutual  
14 Insurance Companies.

15 MS. DAWSON: You may proceed when you're ready.

16 MS. REYNOLDS: Thank you.

17 The National Association of Mutual Insurance  
18 Companies, or NAMIC, is a trade association  
19 representing more than 1,400 member companies  
20 underwriting 40 percent of the property and casualty  
21 insurance premium in the United States. In Florida  
22 we have 125 members who collectively write  
23 34 percent of the auto market.

24 In your hearing notice and the accompanying  
25 press release, you allege that auto insurance

1 companies use education and occupation underwriting  
2 criteria in order to charge minority and low income  
3 customers more for their insurance premiums, in  
4 effect creating a disparate impact on those groups.

5 NAMIC research, conducted and released in a  
6 public policy paper in 2004, points out that the  
7 foundation of the business of insurance underwriting  
8 and ratemaking is classifying policyholders by risk.  
9 Since insurers make decisions based on actuarial and  
10 business principles that group policyholders for the  
11 reason of treating similar policyholders similarly,  
12 any potential correlation to race is not part of the  
13 risk assessment process, as you've heard today.  
14 This renders the disparate impact test an unreliable  
15 means by which to identify illegal discrimination,  
16 according to our paper.

17 DEPUTY COMMISSIONER MILLER: Actually, let me  
18 interrupt you for just a minute, isn't it then the  
19 only means of identifying discrimination, because if  
20 you don't collect the data, you could never prove  
21 that you're intentionally discriminating? So the  
22 only other real test is whether you're having a  
23 disparate impact, with or without intent.

24 MS. REYNOLDS: Well, disparate impact is not  
25 applied to insurance underwriting, and that's why I

1 brought the paper along, so that you can read  
2 further. I'm not an academic and cannot address the  
3 question in that way. But I have brought the paper  
4 to provide that information to you regarding the  
5 study.

6 DEPUTY COMMISSIONER MILLER: Okay. But you  
7 heard the discussion this morning about willful  
8 blindness?

9 MS. REYNOLDS: Yes, I did.

10 DEPUTY COMMISSIONER MILLER: Okay.

11 MS. REYNOLDS: And as the Seventh Circuit  
12 states in NAACP vs. The American Family Mutual  
13 Insurance Company, risk discrimination is not race  
14 discrimination, and there's more about that in the  
15 paper as well.

16 MS. DAWSON: Do you have the cite for that?

17 MS. REYNOLDS: Let's see. 978 F.2d 287.

18 MS. DAWSON: Okay.

19 MS. REYNOLDS: Is that what you need?

20 MS. DAWSON: Yes, thank you.

21 MS. REYNOLDS: It's in the written testimony  
22 that I'll provide to you as well.

23 MS. DAWSON: Okay.

24 MS. REYNOLDS: Insurance companies do not  
25 collect information about race or income, nor do

1           they engage in an effort to make coverage  
2           unavailable or unaffordable or the basis of race or  
3           income. They are, however, in the business of  
4           competing with other insurers to most effectively  
5           match rate to risk in the market-sharing process.  
6           That objective clearly flies in the face of pricing  
7           their product so that large groups of people are  
8           unable to purchase their products.

9           In addition, some insurance companies were  
10          formed to provide insurance to those engaged in a  
11          specific occupation. Would you deny teachers,  
12          military personnel, government employees or farmers,  
13          just as examples, the benefits of choosing an  
14          insurance company that understands and caters to  
15          their specific needs, underwriting and pricing their  
16          risk accordingly? How will we explain to those  
17          groups why they no longer qualify for special  
18          service and pricing?

19          And if you apply the anti-underwriting by  
20          education level argument to an even more unrealistic  
21          conclusion, does that mean that you're against  
22          discounts for students with good grades? I think  
23          you mentioned that earlier, and I didn't hear the  
24          entire conversation about that.

25          What will you tell minorities and low-income

1 wage earners who have occupations or education  
2 levels that you consider to be in a higher bracket  
3 that they now should pay more under the proposal?  
4 Because there are situations where that exists.  
5 Just because someone has a higher level of education  
6 does not necessarily mean they earn a particular  
7 high income. Just because somebody has a low, as  
8 you might call it, level of education doesn't mean  
9 that they're a minority. You know, there's so many  
10 variables that exist, and insurance companies are  
11 addressing all of those various combinations by all  
12 of the rating factors that they have.

13 You've heard already testimony about Maryland  
14 and the decision by the Insurance Commissioner there  
15 and their findings that both education and  
16 occupation have been shown to be valid predictors of  
17 loss and are lawful.

18 MS. DAWSON: And, of course, we question that  
19 because we haven't seen any sort of data,  
20 statistics, charts, analysis or anything that backs  
21 that up.

22 MS. REYNOLDS: I understand. I can't speak to  
23 that right now, but certainly that's one thing that  
24 I wanted to point out in my comments today.

25 MS. DAWSON: Sure.

1 MS. REYNOLDS: NAMIC supports underwriting  
2 freedom and opposes limitations and restrictions on  
3 the insurer's ability to underwrite freely.

4 Underwriting involving the assessment, analysis  
5 and pricing of risks -- and that's what we're  
6 concerned about -- is the most fundamental function  
7 of insurance. Insurers need to be able to engage in  
8 this function as freely as possible in order for  
9 insurance markets to work properly, which ultimately  
10 benefits consumers and society in general. By the  
11 same token, limitations and restrictions on  
12 underwriting freedom stifle innovation and thereby  
13 hamper competition, ultimately harming consumers and  
14 society in general.

15 DEPUTY COMMISSIONER MILLER: By underwriting  
16 freedom, are you suggesting that if I can pinpoint  
17 every attribute of a person and rate them  
18 individually accordingly, that that would be  
19 something that we should permit?

20 MS. REYNOLDS: I can't answer that question  
21 because it's a theoretical question, and I'm not a  
22 company.

23 DEPUTY COMMISSIONER MILLER: It is, and  
24 theoretically we're going from a sharing of the risk  
25 very broadly down to individual attributes of every

1 single policyholder, and it seems to me that the  
2 industry has made a concerted effort to do that more  
3 and more precisely to gain a competitive advantage.

4 MS. REYNOLDS: And in an effort to match rate  
5 to risk appropriately --

6 DEPUTY COMMISSIONER MILLER: Right.

7 MS. REYNOLDS: -- so that those who have a  
8 higher risk level are charged more and that those  
9 who have a lower risk level are charged less.

10 DEPUTY COMMISSIONER MILLER: So is it NAMIC'S  
11 position that there should be no restrictions on  
12 that?

13 MS. REYNOLDS: Our position is that there  
14 should be freedom to underwrite appropriately.

15 MS. DAWSON: Is that the same?

16 DEPUTY COMMISSIONER MILLER: No.

17 MS. DAWSON: Isn't that the same, freedom, no  
18 restrictions?

19 DEPUTY COMMISSIONER MILLER: That's not the  
20 same thing here. I mean, what we're talking about  
21 is if you could know everything about a person, you  
22 could rate them precisely.

23 MS. REYNOLDS: And we're not at that point so I  
24 can't address that question.

25 DEPUTY COMMISSIONER MILLER: You're not at that

1 point. I think you're pretty close.

2 MS. REYNOLDS: Our views on this critical issue  
3 are more fully addressed in a public policy paper  
4 that I'll leave with you. The Case for Underwriting  
5 Freedom: How Competitive Risk Analysis Promotes  
6 Fairness and Efficiency In the Property/Casualty  
7 Insurance Markets comprehensively discusses in the  
8 role of underwriting freedom in the context of the  
9 insurance underwriting process, the benefits of  
10 underwriting freedom and the detrimental effects of  
11 restricting that freedom.

12 I'll also leave you a copy of the paper  
13 regarding the disparate impact theory that I  
14 mentioned earlier.

15 Again, in order to effectively underwrite,  
16 insurers must group policyholders with like risk  
17 characteristics together. By doing so, those  
18 policyholders with the highest risk of loss pay more  
19 for their coverage, policyholders with the lowest  
20 risk of loss pay less. That's fair.

21 The insurer that develops an appropriate  
22 actuarially based system for accurately matching  
23 rate to risk is able to protect all of the  
24 policyholders who transfer their risk of loss to the  
25 company.

1           On behalf of NAMIC members whose policyholders  
2           rely on our companies to accurately assess and price  
3           their risk of loss so that the ability to pay future  
4           claims is not compromised, I respectfully request  
5           that you continue to allow insurers the freedom to  
6           effectively underwrite.

7           DEPUTY COMMISSIONER MILLER: Do you think that  
8           NAMIC's position is that we would be restricting the  
9           freedom to underwrite if we require companies to  
10          find out whether or not their practices are  
11          disparately impacting a particular race?

12          MS. REYNOLDS: I can't answer that. We don't  
13          have a position on that at this time, so I can't  
14          answer that.

15          DEPUTY COMMISSIONER MILLER: You don't have a  
16          position whether that would be a restriction of  
17          freedom of underwriting, to require them to find out  
18          if they're hurting anybody?

19          MS. REYNOLDS: Well, certainly as the regulator  
20          you have the ability to find out that type of  
21          information if you need to do so, and we would  
22          support our companies in their efforts to cooperate  
23          with requests of that nature.

24          MR. EAGELFELD: Well, frankly, I have a problem  
25          with your use of the word freedom. It's one of

1           those sloganeering things. Freedom is something  
2           that everybody thinks is great, but freedom may also  
3           come with responsibility on the other side.

4           Do you think there is ever a proper reason for  
5           prohibiting or limiting the use of some piece of  
6           information in insurance rating?

7           MS. REYNOLDS: Well, obviously there's already  
8           been a determination that there are times when that  
9           should be prohibited. That's why race is  
10          prohibited, for example.

11          MR. EAGELFELD: And could that ever be extended  
12          to any other piece of information or is it frozen  
13          forever and just what has been --

14          MS. REYNOLDS: We're in flux, so, you know,  
15          there could be time in the future where public  
16          policy and a decision made by the Legislature and  
17          those who represent the public may make that  
18          determination.

19          MR. EAGELFELD: Would you have any  
20          recommendations for those people on what criteria to  
21          use in making a determination as to whether one or  
22          other piece of information could be or should be  
23          prohibited?

24          MS. REYNOLDS: No, we do not have a  
25          recommendation of that sort at this time.

1           MR. EAGELFELD: Doesn't that really amount to  
2           you in so many words saying that no piece of  
3           information other than what's already been  
4           prohibited should ever be prohibited?

5           MS. REYNOLDS: Well, at this time we believe  
6           what is currently allowed is appropriate and is used  
7           appropriately.

8           MR. EAGELFELD: So the status quo is --

9           MS. REYNOLDS: Well, we can't predict what the  
10          future will hold.

11          DEPUTY COMMISSIONER MILLER: Well, we had some  
12          discussions this morning, you know, for example, if  
13          eye color were a prediction of risk. The statement  
14          that freedom to underwrite includes the freedom to  
15          underwrite based on the prediction of risk, would it  
16          be NAMIC'S position that you could rate based on eye  
17          color or you can rate based on the number of plasma  
18          TVs? I mean, that's back to the same question,  
19          isn't it?

20          MS. REYNOLDS: We don't have a position on that  
21          specific question, but I would direct you to the  
22          paper that I'm leaving about underwriting freedom.  
23          Again, I'm not an academic who has prepared this  
24          paper, but I can certainly provide you with it for  
25          further study.

1 DEPUTY COMMISSIONER MILLER: Okay.

2 MS. DAWSON: Ms. Reynolds, thank you. You said  
3 you had a paper?

4 MS. REYNOLDS: Yes.

5 MS. DAWSON: And you did not prepare that?

6 MS. REYNOLDS: No.

7 MS. DAWSON: Who prepared it?

8 MS. REYNOLDS: It's been prepared by Robert  
9 Detlefsen, Ph.D., who is on the NAMIC staff, who was  
10 not on the NAMIC staff at the time of the paper.  
11 But anyway, you can see that --

12 MS. DAWSON: Okay.

13 MS. REYNOLDS: -- by the information there.

14 And those are also available on our Web site.  
15 I didn't bring a lot of extra copies because it was  
16 so many pages.

17 MR. EAGELFELD: What is your Web site?

18 MS. REYNOLDS: It's [www.namic.org](http://www.namic.org).

19 MR. EAGELFELD: Okay, that's easy.

20 MS. DAWSON: Okay. Thank you, Ms. Reynolds.

21 MS. REYNOLDS: Thank you.

22 MS. DAWSON: I have Mr. Hartwig who has also  
23 submitted a request to speak.

24 Mr. Hartwig, if you want to come up? And the  
25 same thing, just identify yourself and who you're

1 here on behalf of.

2 MR. HARTWIG: Good afternoon. My name is  
3 Robert Hartwig, and I'm president and chief  
4 economist of the Insurance Information Institute.  
5 The Insurance Information Institute is an  
6 international trade association with the vast  
7 majority of premiums written in the United States  
8 represented by its membership.

9 My comments today will address the benefits of  
10 the policyholders, economic benefits of the  
11 policyholders as well as society associated with  
12 insurance rating systems that accurately reflect the  
13 individual risk characteristics of each driver as  
14 accurately as possible, and I also plan to address  
15 the Consumer Federation of America and New Jersey  
16 CURE's allegations that two ratings criteria in  
17 particular, occupation and education, are unfair to  
18 certainly socioeconomic groups.

19 Basically the issue I think that we're here to  
20 address is the issue of underwriting criteria, which  
21 I view as the very cornerstones of fairness, equity  
22 and accuracy in rating systems.

23 I want to discuss first risk-based or cost-  
24 based pricing.

25 Insurance premiums are nothing other than

1           messengers of risk, nothing more, nothing less. To  
2           the maximum extent possible, the premium charge  
3           should reflect the risk characteristics of each  
4           individual policyholder. Put differently, the  
5           premium must reflect the expected cost of providing  
6           the coverage sold. Risk- or cost-based pricing  
7           provides consumers with a variety of benefits.

8           In the case of auto insurance, risk-based  
9           pricing reduces cross-subsidies from drivers with  
10          relatively poor driving records who account for a  
11          disproportionate share of losses, while rewarding  
12          motorists who are involved in fewer accidents and  
13          impose little if any cost on the system.

14          By definition, a system of rates that  
15          accurately reflects risk and costs is fair and it is  
16          equitable. States that restrict actuarially valid  
17          underwriting criteria implicitly subsidize drivers  
18          with relatively poor records at the expense of the  
19          state's better drivers.

20          The determination of fair and accurate rates  
21          requires insurers to identify risk factors that can  
22          be used to predict future loss. Over time, auto  
23          insurers have identified many such factors, and  
24          we've heard about many of them today, such as miles  
25          driven, type of vehicle owned and so forth.

1           Education and occupation are just two more of  
2           those factors. No single factor determines  
3           eligibility for coverage or the premium charged. In  
4           fact, insurers simultaneously employ up to 20 or  
5           more risk factors.

6           Now, risk- or cost-based pricing also enhances  
7           and promotes competition. To the extent that  
8           insurers can employ actuarially valid underwriting  
9           criteria to better predict future loss, uncertainty  
10          is reduced. Reduction in uncertainty leads  
11          unambiguously to more competition among insurers,  
12          more choices for consumers and lower average costs.

13          Improvements in predictive modeling have even  
14          helped insurers to underwrite even the toughest-to-  
15          place risks, leading to reductions in the population  
16          of expensive state-run residual market facilities  
17          across the country.

18          Restrictions again on actuarially valid  
19          underwriting criteria would lead directly to more  
20          uncertainty and therefore less competition, higher  
21          prices and, most likely, growth in auto insurance  
22          markets of last resort.

23                 MS. DAWSON: What are you basing that on?

24                 MR. HARTWIG: Basically on statistical science,  
25                 actuarial science. If you remove rating factors

1           which are actuarially predictive, you wind up with a  
2           higher standard deviation or variance in terms of  
3           any individual customer who comes your way.

4           In other words, you're going to be able to  
5           project the expected losses less actively, simply  
6           because you're removing information that can be  
7           used. By definition, from an actuarial or  
8           forecasting standpoint, you then have a wider range,  
9           you have sort of a midpoint, but the range over  
10          which the losses could apply or exist will be wider  
11          by definition.

12          MS. DAWSON: Okay, but did you go out and  
13          survey all of the private passenger auto insurers  
14          that operate in the state of Florida and ask them,  
15          okay, if this variable -- if these two variables are  
16          prohibited from being considered, you know, you all  
17          are not going to do any business anymore in the  
18          state of Florida or you're going to raise rates, did  
19          you do anything like that?

20          MR. HARTWIG: No, but that's not what I said.  
21          What I said is that when you reduce the amount of  
22          information available to insurers, you increase  
23          uncertainty, therefore you're making the pricing  
24          more situation more difficult.

25          On the margins, what you do is when you

1           increase uncertainty, therefore you force the  
2           insurer to compensate for that increased uncertainty  
3           by charging a higher price.

4           MS. DAWSON: But that's speculation, isn't it?

5           MR. HARTWIG: It's not speculation. It's  
6           Finance 101.

7           Let me give an example from the stock market  
8           perspective. If you have a stock over which you  
9           have a great deal of information, you are willing to  
10          put down a certain price for that stock. If you  
11          have a particular stock about which there is no  
12          information whatsoever, you're less likely to pay a  
13          premium for that stock. The same issue goes for  
14          interest rates, for bonds, it exists throughout the  
15          financial world, and in the end, this is a risk-  
16          based transaction, and higher degrees of risk have  
17          to be compensated for by a higher potential reward.

18          DEPUTY COMMISSIONER MILLER: So do you think  
19          that in our example that was up this morning, an  
20          engineer paying multiples of what an auto mechanic  
21          pays, all other factors being equal, do you think  
22          that could be credible?

23          MR. HARTWIG: These particular charts here, one  
24          of the glaring problems with every one of these  
25          charts as well as the entire CFA analysis is never

1           once is risk considered here.

2                   DEPUTY COMMISSIONER MILLER: Risk is considered  
3 all the way through that chart.

4                   MR. HARTWIG: No, it's not. What we have here  
5 is simply a comparison of two different job  
6 categories, for instance. Never once is there a  
7 pooled analysis of everybody in the particular job  
8 category that's paying a higher rate versus those  
9 who are paying a lower rate.

10                   If you were to make that association, what you  
11 would find out is the individuals who are paying the  
12 higher rate unambiguously would have higher relative  
13 loss ratios than the other group.

14                   DEPUTY COMMISSIONER MILLER: But these  
15 particular examples are taking two people whose  
16 characteristics are otherwise the same, same age,  
17 same car, same distance driven, same other factors,  
18 and the difference is their occupation, and it makes  
19 more than 100 percent difference in their rate  
20 between a mechanic and an engineer.

21                   MR. HARTWIG: And I guess I'll have to get back  
22 right to your very first sentence, "these two  
23 people." A sample of two is not a statistically  
24 reliable sample.

25                   MR. EAGELFELD: This is not a random experiment

1           here, and it is not groups that pay premiums, it is  
2           individuals, is it not, for personal auto?

3           MR. HARTWIG: It is individuals that pay  
4           premiums. But in these individual comparisons, what  
5           we need to do is take a look at the losses, the loss  
6           ratios associated with each one of these groups.  
7           That is not done in this analysis. And there's a  
8           very laborious analysis in the Consumer Federation  
9           of America's document, but somehow miraculously they  
10          never get to the concept of risk. It's omitted  
11          entirely from their analysis. And I don't see how  
12          we can have a discussion about the cost of insurance  
13          without talking about the actual risk and losses.

14          MR. EAGELFELD: Sir, it's you and your client  
15          companies who are in control of the information  
16          that's necessary to analyze risk. It's certainly  
17          possible for us to analyze the premiums being  
18          charged, and what we are asking is whether there  
19          exists information that is sufficient to establish  
20          that gap in risk that we see in the premiums being  
21          charged.

22          MR. HARTWIG: And I believe that insurers  
23          charge a premium that is appropriate for the risk  
24          associated with each one of these factors used in  
25          conjunction with a variety of other factors.

1           DEPUTY COMMISSIONER MILLER: So you believe  
2           that a mechanic poses a much higher hazard than an  
3           engineer?

4           MR. HARTWIG: I have no reason to contradict  
5           any of the rates that are being charged by any of  
6           the companies that have spoken today. I do believe  
7           they charge rates that are appropriate for the data  
8           that they have. If they systematically were to not  
9           charge a rate consistent with the data that they  
10          have, they would be out of business.

11          MR. EAGELFELD: What if they just erroneously  
12          did it, not systematically?

13          MR. HARTWIG: Erroneously? Now, that's a -- so  
14          I guess -- I mean, that's a hypothetical question  
15          that somehow these numbers --

16          MR. EAGELFELD: Well, you started with an "if"  
17          so I continued with an "if."

18          MR. HARTWIG: Well, I can't speculate on that  
19          question.

20          I'd like to continue, though, on the issue of  
21          the benefits to society of risk-based pricing.  
22          Higher auto insurance premiums for poor drivers  
23          offer a significant financial incentive to improve  
24          their driving behavior, thereby reducing accidents,  
25          injuries and, hopefully, fatalities as well. These

1 are socially desirable outcomes whose benefits are  
2 diminished when restrictions on actuarially valid  
3 underwriting result in premiums that are less than  
4 accurate messengers of risk.

5 In other words, when the message --

6 MR. EAGELFELD: Sir, is it a socially desirable  
7 outcome if those people choose to go without  
8 insurance because they would rather eat?

9 MR. HARTWIG: Again, I don't see how that's  
10 related to the particular conversation that we're  
11 having here.

12 MR. EAGELFELD: You're talking about a socially  
13 desirable outcome in measuring risk and in  
14 delivering messages of risk and in having people pay  
15 appropriate amounts for their risk, and I'm asking  
16 you whether there exists any social measure of  
17 desirability outside of your risk- and insurance-  
18 focused attentions here. Does society have any  
19 other interests but the risk, the size of the  
20 residual market and things like that?

21 MR. HARTWIG: Of course society has an  
22 unlimited number of concerns and risks for the  
23 welfare of its people.

24 When it comes to the issue of insurance, I  
25 can't speculate -- I cannot rank order, okay, the

1 problems of society. What I'm here to talk to you  
2 about is the issues associated with providing a fair  
3 and equitable rating system for all to the maximum  
4 extent possible based on the information available.

5 MR. EAGELFELD: And do you believe that there  
6 is no possible detriment to society? The further  
7 one pursues that objective there cannot be any  
8 detriments, there is only -- it's a win-win  
9 situation?

10 MR. HARTWIG: I think it is a win-win situation  
11 to the extent that you make the rating system as  
12 fair and equitable as possible. To the extent that  
13 you erode that, you make it unfair, inequitable to  
14 hundreds of thousands or millions of others.

15 Now, again, these socially desirable -- the  
16 issue, it is a messenger of risk issue. And in  
17 other words, when the message itself is statutorily  
18 redacted in some sense, in some way blurred or  
19 garbled or lost, the consequences for society are  
20 therefore unambiguously negative. The incentives to  
21 improve driving behavior are therefore diminished.

22 If you were to take the example of community  
23 rating in auto insurance, everyone pays the same,  
24 what would be the incentive for someone who is a  
25 reckless driver to improve their driving record?

1           There really wouldn't be any whatsoever.

2                     Now, just to get to the issue of the actuarial  
3           validity of underwriting factors of education and  
4           occupation specifically, all underwriting factors  
5           used by auto insurers, including occupation and  
6           education, have been actuarially demonstrated to  
7           enhance the insurer's ability to predict loss.  
8           Occupation and education are no different.

9                     If these two factors were not predictive, then  
10          no insurer, including GEICO, would bother to go  
11          through the time and expense of collecting such  
12          data, and indeed we've heard much about the Maryland  
13          Insurance Administration, June, 2006 study, but  
14          basically to quickly review that, they found that  
15          GEICO's use of both of these factors is in fact  
16          reasonably objective, that they are both predictors  
17          of loss, that they meet actuarial standards of  
18          practice and that the overall use of these factors  
19          they found to be reasonable.

20                    But as further evidence of the actuarial  
21          validity of occupation and education as rating  
22          factors -- and I think Mr. Nayden alluded to this  
23          earlier on -- it must be noted that prior to  
24          entering the New Jersey market in 2004, GEICO was  
25          obliged to submit its rating plan to the State for

1 review, and the New Jersey Insurance Department  
2 granted GEICO's request to operate in the state,  
3 approving its rating plan and the use of education  
4 and occupation in the process.

5 Now, the CFA study which has been submitted  
6 into testimony for this hearing urges a ban of the  
7 use of -- and I quote -- "banning the use of  
8 ratemaking methods that directly base eligibility  
9 and premiums," solely on -- and I use the word  
10 solely -- "upon the educational background and  
11 occupation of consumers, on the grounds that such  
12 information results in an unjustifiable increase in  
13 insurance rates for many lower income and minority  
14 consumers."

15 Well, first, neither GEICO nor any other  
16 insurer uses either factor as a sole criteria for  
17 ratemaking purposes.

18 MS. DAWSON: Mr. Hartwig, are you here on  
19 behalf of GEICO? You've mentioned them several  
20 times.

21 MR. HARTWIG: No they were the first witness  
22 here, and again, they were the one that the panel  
23 spent the most time on, so I am -- many of these  
24 issues came up with respect to GEICO. So I'm not  
25 here specifically for GEICO.

1 MS. DAWSON: Who do you represent, again?

2 The --

3 MR. HARTWIG: The Insurance Information  
4 Institute, which is a trade association with the  
5 majority of members -- in fact, all the companies  
6 that have testified here today are members of the  
7 Insurance Information Institute.

8 MS. DAWSON: Okay.

9 MR. HARTWIG: With the exception of New Jersey  
10 CURE.

11 MS. DAWSON: I just want to caution you that we  
12 really don't need for you to repeat or summarize all  
13 the testimony. Most of the folks have been here  
14 since 9:00, 9:30 this morning, so if you could focus  
15 on your client's --

16 MR. HARTWIG: Sure.

17 MS. DAWSON: -- or your Association's position,  
18 that would really be helpful to us.

19 MR. HARTWIG: Okay. Well, I'm drawing to a  
20 conclusion at this point, anyway.

21 MS. DAWSON: Thank you.

22 MR. HARTWIG: But I'm trying, as an economist,  
23 also to draw to your attention some of the, I think,  
24 pretty obvious market phenomena that have followed  
25 in the wake of a company that moved into a state in

1           which it had no presence. This is a real time, real  
2           life economic experience.

3           MS. DAWSON: Okay. New Jersey is different  
4           from Florida.

5           MR. HARTWIG: Certainly it's different from  
6           Florida.

7           MS. DAWSON: Totally different picture there.

8           MR. HARTWIG: But, on the other hand, many of  
9           the arguments are the same.

10           So I'll conclude with this, that in looking,  
11           again from the experience of an economist and  
12           looking at GEICO's experience when it entered New  
13           Jersey, okay, New Jersey is the -- and these are  
14           economic facts -- is the most urbanized, densely  
15           populated state in the country. It is the only  
16           state in the entire country where all of its  
17           counties form some part of a statistical  
18           metropolitan area, the federal government's  
19           definition for a big city type area.

20           And so GEICO went from a zero percent market  
21           share prior to entering in 2004 to becoming one of  
22           the state's leading insurers in just two years by  
23           offering policies to the full spectrum of New Jersey  
24           residents.

25           And, in fact, as an economist, I will tell you

1           it would have been impossible for GEICO to grow as  
2           rapidly as it did in a state as economically and  
3           ethnically diverse as New Jersey without penetrating  
4           every potential customer segment, and again, it did  
5           this while using a wide variety of actuarially valid  
6           criteria, including education and occupation.

7                        So that will be my final comment. I would be  
8           happy to take any other questions.

9                        MS. DAWSON: Well, I have a quick question.  
10           Again, you said you don't represent GEICO, but  
11           apparently some of your statements are very  
12           defensive of GEICO's practices, and you really don't  
13           need to do that here. None of the panel members has  
14           any sort of issue with the company. We're just  
15           trying to explore this matter as fully as we can to  
16           determine whether or not there is an adverse impact  
17           on racial minorities in the state, as well as low  
18           income Floridians. It's not just simply a race  
19           issue.

20                        But going to New Jersey, since you brought that  
21           example up, I visited your Web site after you called  
22           me and told me that you were coming and wanted to  
23           address the issue. And New Jersey has, according to  
24           your Institute's own research, New Jersey has one of  
25           the highest auto insurance expenditures of all 50

1 states, so, you know, there's a total difference  
2 between New Jersey and Florida.

3 I think Florida ranked sixth in your research  
4 in terms of ranking, in terms of expenditures, but  
5 New Jersey was at the top of the list, and that was  
6 pretty consistent over the years, the number of  
7 years in which your Institute did the studies, so  
8 big difference here.

9 I don't know if GEICO's made a big difference  
10 up in New Jersey, but certainly we do want to look  
11 at the issue of using education and occupation, and  
12 we do appreciate your comments.

13 MR. HARTWIG: Thank you.

14 DEPUTY COMMISSIONER MILLER: I have one  
15 question. I understand your point that if a company  
16 can accurately reflect the individual risk for a  
17 policyholder, they can rate it, and that it's  
18 desirable for companies to be able to rate  
19 accurately.

20 But is it your position that if that  
21 accidentally adversely impacts minorities, that  
22 still it is fair for a company to use a pure  
23 actuarial definition of rating, or is there a  
24 circumstance that you can think of that should be  
25 outlawed even though it would, as you might put it,

1 change the formula?

2 MR. HARTWIG: I think that it's incumbent on  
3 insurers to develop rating systems that are as fair  
4 and accurate and equitable as they can possibly be.  
5 It is up to legislators, regulators and public  
6 policymakers to decide which factors are permissible  
7 under the morés of society.

8 MR. EAGELFELD: I'm going to read you a  
9 statement and ask you for your comment on it or  
10 whether you agree with it. The statement is  
11 basically that, "Insurers consider the potential  
12 profitability of a policyholder's whole account. A  
13 physician might also insure a boat or a recreational  
14 vehicle and buy an umbrella policy from the company.  
15 Some companies would also try to sell life insurance  
16 to the physician."

17 Do you think that -- what's your reaction?

18 MR. HARTWIG: Well, certainly in the case of  
19 two of the three companies we heard today that  
20 wasn't an issue, both being direct auto writers, so  
21 there there's no applicability.

22 In general, as it is in the banking world or  
23 the insurance world, it is the case that insurers  
24 may consider an entire suite of products that might  
25 be offered or have been sold to an individual

1 customer.

2 MR. EAGELFELD: And in looking at the suite of  
3 products, would it not be justifiable, in trying to  
4 get a better penetration for the company, to offer a  
5 discount that wouldn't necessarily be driven by the  
6 particular product but by the whole --

7 MR. HARTWIG: Well, it is true that some  
8 insurers offer multi-policy discounts, and there are  
9 a number of reasons behind that. To the extent, for  
10 instance, that the same agent can handle multiple  
11 lines of business, there are expense savings there,  
12 so it's entirely justified. It's also the case that  
13 by offering individual policyholders incentives such  
14 as you've mentioned, insurers eliminate the need to  
15 incur very high customer acquisition costs in the  
16 future.

17 Acquisition costs for insurers are one of the  
18 highest expense components that they have, and so it  
19 is in the interests of the insurer to try to keep  
20 those costs down, and part of that offer means  
21 offering inducements for customers to continue to  
22 renew.

23 MR. EAGELFELD: I'm sure as an economist,  
24 you're professionally trained as an economist,  
25 you've heard of the concept of a loss leader?

1 MR. HARTWIG: Sure.

2 MR. EAGELFELD: Would it be -- and that is not  
3 unheard of in other industries to have a loss leader  
4 product?

5 MR. HARTWIG: Sure, but again, I'm not sure  
6 where that relates here with, again, two of the  
7 three companies testifying have no loss leader, by  
8 definition, being selling only one product.

9 MR. EAGELFELD: I'm not necessarily -- I'm  
10 happy to get away from the companies who were  
11 testifying. They've had enough focus drawn to them.

12 MR. HARTWIG: Yeah.

13 MR. EAGELFELD: But in general is it possible  
14 that marketing areas within companies, other  
15 companies, would consider professions that are -- or  
16 income levels, in fact, or professions as proxy for  
17 income levels, that could provide them with other  
18 profit centers, and could they consider auto  
19 insurance as a loss leader and sell it below  
20 expected cost or below completely risk-based cost in  
21 order to attain other objectives of the corporation?

22 MR. HARTWIG: I'm not aware, again, of auto  
23 insurance being offered as a loss leader product.  
24 Auto insurance is a product whose underlying loss  
25 costs the frequency and severity of which can vary

1 significantly over time and from state to state, and  
2 insurers monitor these underlying frequency and  
3 severity trends very closely and try to keep the  
4 price in sync with those underlying trends. And so,  
5 hence, you see right now, in 2007, the first year  
6 since 1999 when average auto insurance premiums  
7 countrywide are falling, and that's because the  
8 underlying frequency trends are favorable. The  
9 frequency of accidents is falling more rapidly than  
10 the severity associated with those accidents is  
11 increasing, and that's a good thing.

12 MR. EAGELFELD: If the profitability of some  
13 other parts of an account were high enough to offer  
14 the company the incentive to do so, is that not  
15 plausible as a reasonable economic behavior on the  
16 part of the company?

17 MR. HARTWIG: I can't speculate on what amounts  
18 to marketing considerations by individual companies.

19 DEPUTY COMMISSIONER MILLER: Income is a fairly  
20 accurate predictor of risk, though, isn't it?

21 MR. HARTWIG: I'm unaware of any establishment  
22 of income as a predictor of risk.

23 MS. DAWSON: Are there any other questions from  
24 the panel?

25 (Negative response.)

1 MS. DAWSON: Okay. Thank you, Mr. Hartwig.

2 MR. HARTWIG: Thank you.

3 MS. DAWSON: We certainly appreciate it. And  
4 we do have your submission. Thank you.

5 Mr. Alexander, Steve Alexander, and you're with  
6 the Consumer Advocate's Office, sir?

7 MR. ALEXANDER: That's correct.

8 MS. DAWSON: Okay. If you could just fully  
9 identify yourself. Thank you.

10 MR. ALEXANDER: I'm Steven Alexander. I'm a  
11 fellow of the Casualty Actuarial Society, a member  
12 of the American Academy of Actuaries, and I'm the  
13 actuary for the State of Florida's Consumer  
14 Advocate.

15 MS. DAWSON: Thank you. You may proceed if you  
16 have any opening remarks.

17 MR. ALEXANDER: I just have two recommendations  
18 for the Office of Insurance Regulation.

19 The first recommendation would be that the OIR  
20 establish a definition of disparate impact. I  
21 suggest that if a rating variable or underwriting  
22 variable excludes or includes some percentage, such  
23 as 70 percent, 80 percent or 90 percent, for  
24 example, of prohibited classes, that this would be  
25 prima facie evidence that the variable is a proxy

1 for prohibited classes and should be prohibited.

2 That's my first recommendation.

3 The second recommendation has to do --

4 MS. DAWSON: Well, let me stop you right there.

5 Many of the company reps have said, well, we don't  
6 collect that data. I mean, does that make sense in  
7 light of that? I mean, how would we determine that  
8 if they don't collect the information by race or  
9 income or what-have-you?

10 MR. ALEXANDER: I would suggest this is a role  
11 for the OIR that they analyze Census data. They may  
12 do some market studies, independent market studies  
13 to determine what occupations, what income levels  
14 reach these percentage criteria.

15 Let's say, for example, the OIR chooses to use  
16 70 percent. They could go out and do surveys to  
17 find out if prohibited classes provides 70 percent  
18 or more of the people who work as auto mechanics.

19 DEPUTY COMMISSIONER MILLER: So you don't think  
20 the insurance companies themselves who have access  
21 to all of their policyholder data ought to be  
22 required to make sure that they're not disparately  
23 impacting racial classes? You think that it's the  
24 OIR's responsibility to do that?

25 MR. ALEXANDER: Yes, I do.

1           DEPUTY COMMISSIONER MILLER: Okay. Has the  
2           Consumer Advocate's Office undertaken any such  
3           study? Do you think that the Consumer Advocate's  
4           Office has any way of determining whether or not  
5           people of different races or different income levels  
6           are being discriminated against by current rating  
7           practices, whether that's occurring?

8           MR. ALEXANDER: (Shakes head in the negative.)

9           DEPUTY COMMISSIONER MILLER: Do you have any  
10          idea how to even begin to undertake such a study?

11          MR. ALEXANDER: We only have anecdotal evidence  
12          to that point. We don't have any studies.

13          DEPUTY COMMISSIONER MILLER: I mean, to  
14          undertake a study like that, you would have to know  
15          the company's -- not just the company's rating  
16          scheme and who their customers are, but you would  
17          have to know their races and you would have to know  
18          their income levels, right?

19          MR. ALEXANDER: Well, I'm suggesting that you  
20          collect it.

21          DEPUTY COMMISSIONER MILLER: How would we get  
22          that?

23          MR. ALEXANDER: You collect all of the rating  
24          variables that are being used that potentially could  
25          be used as proxies for prohibited classes and that

1           you do independent research to determine whether or  
2           not a disparate impact is being -- is impacting  
3           those particular rating variables.

4           DEPUTY COMMISSIONER MILLER: Okay. I'm sorry,  
5           go ahead.

6           MR. ALEXANDER: And I would suggest that you  
7           look at establishing a percentage, such as 70 or 80  
8           or perhaps 90 percent.

9           DEPUTY COMMISSIONER MILLER: "A percentage"  
10          being percentage of what, again?

11          MR. ALEXANDER: If you find that 90 percent of  
12          the people below a certain income level are in the  
13          prohibited classes, then that would indicate that  
14          that particular -- that that income level is a proxy  
15          for the prohibited classes.

16          DEPUTY COMMISSIONER MILLER: Okay, go ahead.

17          MR. ALEXANDER: The second recommendation that  
18          I have is that there's a potential overlap between  
19          various rating variables such as age, credit rating,  
20          marital status, education, occupation, et cetera.  
21          Most actuaries realize that there's more or less of  
22          a correlation between these various variables.

23          If you look at each one of the variables  
24          individually, it shows a strong -- there's a strong  
25          correlation between those variables and loss costs.

1 In order to analyze and consider those variables for  
2 rating, most actuaries recognize now that they need  
3 to be analyzed simultaneously so that there is no  
4 overlap or piling on, so to speak, of a particular  
5 rating variable. We saw a 300 percent variation for  
6 GEICO based on, I believe it was occupation.

7 The OIR should require that all rate filers use  
8 some statistical analysis that considers all rating  
9 variables and underwriting variables simultaneously  
10 so that there is not this overlap or piling on, so  
11 to speak, and certain variables are not -- have an  
12 excessive impact upon the rate more than they should  
13 be if the variables were analyzed simultaneously.

14 And those are the only two recommendations that  
15 I have.

16 MS. DAWSON: Are there any questions?

17 MR. KOON: Yeah. Mr. Alexander, how much time  
18 did you spend evaluating this subject to come to  
19 your recommendations?

20 MR. ALEXANDER: Well, I was here this morning,  
21 and I also have quite a bit of familiarity with  
22 multi-variant statistical analysis.

23 DEPUTY COMMISSIONER MILLER: Do you agree in  
24 theory that if a company can accurately reflect the  
25 individually risk of a policyholder, that that's a

1           desirable thing, regardless of the impact that it  
2           might have on protected classes or on people of  
3           lower income levels?

4           MR. ALEXANDER:   Could you ask that question  
5           again?

6           DEPUTY COMMISSIONER MILLER:   The insurance  
7           companies have said, you know, it's desirable -- and  
8           particularly Mr. Hartwig said -- it's desirable for  
9           insurance companies to have rating schemes that  
10          accurately reflect the individual risk of a  
11          policyholder.

12          In general, that may be true.   But do you also  
13          agree that that is without respect to the impact  
14          that that may have on people of a particular income  
15          group or people of a particular race?

16          MR. ALEXANDER:   I believe that if a particular  
17          rating variable has an extraordinary disparate  
18          impact on a particular prohibited class or group of  
19          prohibited classes, that that variable in effect is  
20          a proxy for prohibited classes and should be  
21          prohibited.

22          DEPUTY COMMISSIONER MILLER:   And is it  
23          possible, in your opinion, that the difference  
24          between the engineer and the auto mechanic is  
25          perhaps more of a difference in income than it is

1 driving record or risk?

2 MR. ALEXANDER: I can't comment on that. All I  
3 would say is that when you're looking at rating  
4 drivers, you should look at all of the variables  
5 simultaneously to make sure that there's no piling  
6 on and there's no overlap.

7 DEPUTY COMMISSIONER MILLER: Okay, thank you.

8 MS. DAWSON: I have just one, maybe two  
9 questions, Mr. Alexander.

10 Does your office currently have an assigned  
11 Consumer Advocate? I know Mr. Burgess was the  
12 Consumer Advocate. Is there a replacement yet?

13 MR. ALEXANDER: Marcia Cantrell is the Acting  
14 Consumer Advocate.

15 MS. DAWSON: Okay, so these two recommendations  
16 were submitted on behalf of the Consumer Advocate's  
17 Office and are not your personal recommendations?

18 MR. ALEXANDER: These recommendations have been  
19 cleared through Marcia and also through Jim Cassedy,  
20 who is the chief of staff for Alex Sink.

21 MS. DAWSON: Okay, thank you. Those are all  
22 the questions that I have. Thank you, Mr.  
23 Alexander.

24 MR. ALEXANDER: Thank you.

25 MS. DAWSON: I do have Mr. Trafton, Mark

1           Trafton, who filled out a form, and I think we do  
2           have a few people still hanging on on the phone.  
3           There may be some members of the public who want to  
4           make a comment.

5                     Is there anyone on the phone who would like to  
6           make any public comments?

7                     MR. HUNTER:   Bob Hunter.

8                     MS. DAWSON:   I'm sorry?

9                     MR. HUNTER:   Bob Hunter.

10                    MS. DAWSON:   Bob Hunter.   Okay, so we're going  
11           to take Mr. Trafton and then we will go to you,  
12           okay?

13                    MR. HUNTER:   I don't have much time.   I have a  
14           meeting at 3:00.

15                    MS. DAWSON:   Okay.   Mr. Trafton, would you mind  
16           if we take Mr. Hunter out of order?

17                    MR. TRAFTON:   My pleasure.   Whatever you want  
18           to do.

19                    MS. DAWSON:   Okay.   Can we turn the volume up  
20           on that a little bit?

21                    DEPUTY COMMISSIONER MILLER:   Mr. Hunter?  
22           Mr. Hunter?

23                    MS. DAWSON:   Hello.

24                    MR. HUNTER:   Is it okay to start?

25                    MS. DAWSON:   Yes.

1           DEPUTY COMMISSIONER MILLER: Yes, sir, although  
2 I don't think anybody else is going to be able to  
3 hear you.

4           THE COURT REPORTER: I don't think I'm going to  
5 be able to hear him.

6           MS. DAWSON: How do you want to --

7           MR. EAGELFELD: We can move that there.

8           THE COURT REPORTER: I can barely hear him  
9 right now.

10          MR. EAGELFELD: Our transcriptionist can't hear  
11 you.

12          THE COURT REPORTER: Let me see. I can move a  
13 little bit.

14          MR. HUNTER: I'm speaking as loud as I can.  
15 This is a land line.

16          MS. DAWSON: Okay, she's going to move around a  
17 little bit here, okay? Just give her a second or  
18 two.

19          (Brief pause.)

20          DEPUTY COMMISSIONER MILLER: Mr. Hunter?

21          MR. HUNTER: Can you hear me?

22          DEPUTY COMMISSIONER MILLER: Is that better?

23          THE COURT REPORTER: Yes, thank you.

24          MS. DAWSON: Go ahead.

25          MR. HUNTER: I'm Bob Hunter, director of

1 insurance for Consumer Federation of America, and I  
2 submitted written comments which I hope are in the  
3 record.

4 MS. DAWSON: Yes, they are.

5 MR. HUNTER: And I just wanted to reiterate a  
6 couple of those points.

7 First of all, CFA does believe prices should be  
8 cost-based, but classification has to be subject to  
9 some kind of review by the Insurance Commissioners  
10 to determine if any unfair discrimination exists,  
11 including any disparate impact against prohibited  
12 classes such as minorities.

13 I think there ought to be a two-prong test of  
14 any classification besides disparate impact, and  
15 that is, first of all I think there ought to be a  
16 thesis that's being tested by some kind of  
17 statistical analysis. The first thing is a thesis.  
18 The first prong is a thesis. What are we measuring  
19 here? What is it about education or occupation that  
20 makes someone a higher risk? Why would I, if I  
21 changed jobs, be a worse driver or why, if I went  
22 back to school and got another degree, would I be a  
23 better driver? I don't understand the thesis  
24 underlying this, so I don't understand why it's a  
25 good class.

1           Second, there ought to be a correlation. A lot  
2           has been made of the Maryland Insurance Department's  
3           study of GEICO. The so-called study is not a study.  
4           We couldn't, even with a Freedom of Information  
5           request, get them to give us any analysis. There's  
6           no statistical analysis, there's no information by  
7           class -- for example, by occupation that is  
8           available that would prove even that there's a  
9           correlation, much less a thesis, and so this  
10          Maryland so-called approval is bogus. There's  
11          nothing public. There's no real analysis involved.  
12          And, you know, it's a local company, I understand  
13          the concern.

14          Second, the question of competition, can you  
15          bar a factor and still have a competitive market? I  
16          would point to California, which has barred credit  
17          scoring. There's no credit scoring allowed in  
18          California. It's a vigorously competitive market.  
19          There's nobody dropping out of the state. There's  
20          nobody not writing auto insurance there. That kind  
21          of competition that goes to excellence does not  
22          require you to have bad classes to make it work. It  
23          certainly doesn't require you to discriminate  
24          against poor people or minorities.

25          Second, under competition, competition also can

1           have some negative impacts. For example, in  
2           New Jersey, New Jersey CURE Insurance Company, which  
3           you've heard about, which is one of those people who  
4           brought to us this issue, is a competitor of GEICO  
5           there, and they don't want to use this  
6           classification but they're afraid if adverse  
7           selection occurs that they'll be forced to use it.

8           And just like Blue Cross-Blue Shield, when I  
9           was a young actuary working in the federal  
10          government I actually was at a hearing in the United  
11          States Senate where Blue Cross-Blue Shield came in  
12          to announce that they were going to stop using the  
13          single rate for everybody, the so-called community  
14          rating plan, and they came in and they almost wept.  
15          They said, look, we know that for America the right  
16          way to write health insurance is by one rate for  
17          everybody because all the young people who get a  
18          good rate now when they're young and healthy are  
19          going to turn into old not-so-healthy people later  
20          and they won't be able to afford it if we go to this  
21          new system, but we have to go because we're being  
22          adversely selected against. So out of fear that  
23          there might be some modicum of advantage, the  
24          company that sets the most egregious and most  
25          multiple set of classifications ends up setting the

1 standards of the industry. That's why you need  
2 regulation, to control that kind of inappropriate  
3 behavior, because competition doesn't work to  
4 control it, competition kills it.

5 The third point I want to make is there's a  
6 huge regulatory loophole here that I find very  
7 troubling, where insurance companies are starting to  
8 not file rate classifications. Pardon?

9 MS. DAWSON: No one said anything. Please  
10 continue.

11 MR. HUNTER: I was just saying there's a huge  
12 regulatory loophole I'm concerned about where the  
13 insurance companies, instead of filing rate filings  
14 with the State with classification built into them,  
15 are using these tiers, et cetera, in their  
16 underwriting guides, which are typically not public,  
17 not filed for approval and so on. And it's sort of  
18 an end run around the regulator to get some of these  
19 in, at least in a lot of the states where I've  
20 studied this.

21 Finally I would like to just comment on a  
22 couple of points Mr. Hartwig made. He said that CFA  
23 does not put in the loss ratios or consider the  
24 risk, and Mr. Hartwig knows we don't have the data.

25 We asked for the data and we weren't allowed to look

1 at it. All we have is the rates. We're convinced  
2 from looking at the rates that there's a disparate  
3 impact flowing to the minorities.

4 And interestingly, it looks like GEICO didn't  
5 have the risk data, either, because they've been  
6 unable to produce it to us, and so the question is,  
7 I think, if they say we have to look at the risk  
8 data, then I think the OIR should demand the risk  
9 data from them, and if they can't produce the risk  
10 data, these factors should not be used.

11 Finally, Mr. Hartwig mentioned something about  
12 incentives, and I agree with him totally. He said  
13 there are good incentives, such as you drive better  
14 because you have a good driving incentive, you get a  
15 better rate if you don't have accidents or tickets.  
16 I think that's a very excellent classifier.

17 But where is the incentive here with education  
18 and occupation? Look, you got a poor paying job, go  
19 out and become a CEO of a corporation, that's the  
20 incentive, I guess. But a lot of people can't do  
21 that. Most people who could get higher paying jobs  
22 would get them. So I don't see that the incentives  
23 that Mr. Hartwig mentioned are in any way applicable  
24 here.

25 That's my comments.

1 MS. DAWSON: Okay. Are there any questions  
2 from the panel?

3 DEPUTY COMMISSIONER MILLER: No.

4 MS. DAWSON: I have none.

5 Thank you, Mr. Hunter. And, of course, you're  
6 welcome to stay on the line there until we conclude  
7 matters.

8 Mr. Trafton, thank you for allowing --

9 THE COURT REPORTER: Can I move back?

10 MS. DAWSON: Yes.

11 (Brief pause.)

12 MS. DAWSON: Mr. Trafton, thank you for  
13 allowing Mr. Hunter to speak out of turn there.  
14 What are your comments and who are you here on  
15 behalf of?

16 MR. TRAFTON: Good afternoon, Deputy  
17 Commissioner Miller.

18 DEPUTY COMMISSIONER MILLER: Good afternoon,  
19 sir.

20 MR. TRAFTON: Ms. Dawson, Mr. Eagelfeld,  
21 Mr. Koon.

22 I heard your admonishment, Ms. Dawson, and I  
23 will be very brief.

24 MS. DAWSON: I hope I didn't sound mean or  
25 anything.

1           MR. TRAFTON: A lot of what I was going to talk  
2           about has been discussed over and over and over, so  
3           I'm not going to bore you and take up your valuable  
4           time with that.

5           My name is Mark Trafton, and I represent the  
6           Florida Insurance Council, which is the state's  
7           largest non-profit insurance company trade  
8           organization with some 250 companies writing some  
9           \$16 million in premium.

10          Early on today, Commissioner McCarty mentioned  
11          the genesis of this hearing, which basically takes  
12          us back to the life insurance problems of some years  
13          ago which we're all not proud of. He also mentioned  
14          the Consumer Federation of America's concerns  
15          surrounding certain insurance company practices, and  
16          the Maryland Insurance Administration's examination  
17          of a given insurance company has been well  
18          discussed, so I think what I'm really going to do is  
19          to perhaps ask a couple of questions for  
20          clarification, because I know insurance companies  
21          are going to start asking these questions of us.

22          First of all -- and this is just a little  
23          aside -- we must remember that a number of leading  
24          insurers were founded many years ago based on  
25          occupation. I'm not going to say that word again, I

1 don't think. But farmers, teachers, military,  
2 government employees, and the list goes on. Many of  
3 those more recently have had to open up because of  
4 market share just to try to increase business.

5 So my questions are basically, the focus of  
6 this hearing today, as I have gathered through  
7 listening all day, is personal auto. I have not  
8 heard the word -- maybe I heard the word homeowner's  
9 once.

10 DEPUTY COMMISSIONER MILLER: Not from us, I  
11 don't think.

12 MR. TRAFTON: I have not heard commercial  
13 business, commercial auto. For example -- and the  
14 reason I mention commercial versus personal auto,  
15 there are going to be situations where an individual  
16 may apply for insurance and he discloses that he has  
17 a pickup truck and the underwriter wants to know  
18 what is the truck used for, is it a personal use  
19 vehicle, is it a hunting vehicle or is it a vehicle  
20 that's used in the individual's artisan trade,  
21 electrician, plumber, so forth. If yes, the risk  
22 changes from a personal risk to a commercial type  
23 risk. And, of course, the insurer would want to  
24 know if they're insuring all of the tools and  
25 supplies that are always loaded on the backs of

1           these trucks. So that's my question about personal  
2           auto versus commercial auto. That's one question.

3                     Another one is --

4                     DEPUTY COMMISSIONER MILLER: Let's do one at a  
5           time. I think the focus of the hearing has been  
6           personal auto. That's not to say that we have an  
7           objection to a company asking the question, do you  
8           use that auto in a business or a trade, as you put  
9           it, what are we insuring.

10                    What we're concerned about is in the personal  
11           auto market particularly -- but it could apply in  
12           other markets -- are companies using occupation as a  
13           substitute for income or race --

14                    MR. TRAFTON: I understand.

15                    DEPUTY COMMISSIONER MILLER: -- or is it having  
16           a disparate impact on those lower income groups or  
17           different racial groups.

18                    MR. TRAFTON: That answers my question.

19                    DEPUTY COMMISSIONER MILLER: That's the focus  
20           of the hearing.

21                    MR. TRAFTON: Personal auto.

22                    DEPUTY COMMISSIONER MILLER: Okay.

23                    MR. TRAFTON: And also just as an aside  
24           because -- and I'll use the word again -- workers'  
25           comp is rated on occupation. We are not talking

1 about workers' compensation, are we?

2 DEPUTY COMMISSIONER MILLER: In workers' comp  
3 I'm unaware of any question about whether the use of  
4 occupation is a substitute for low income or race.

5 MR. TRAFTON: No, you don't, but you have to  
6 ask the occupation, whether the individual is a  
7 clerical office employee, a truck driver or a --

8 DEPUTY COMMISSIONER MILLER: We're not  
9 suggesting that a company can't ask the occupation.

10 MR. TRAFTON: That information has to come out  
11 from the insured so the policy can be rated properly  
12 for workers' comp.

13 DEPUTY COMMISSIONER MILLER: Sure.

14 MR. EAGELFELD: Right. What we may be  
15 suggesting is that doesn't serve as a precedent,  
16 open-door precedent to use that same information in  
17 personal auto insurance.

18 MR. TRAFTON: Well, I was thinking workers'  
19 compensation is off the table.

20 DEPUTY COMMISSIONER MILLER: We are not  
21 suggesting that a company cannot ask what is a  
22 person's occupation. We are questioning whether or  
23 not that should be a determining factor in their  
24 rate for auto insurance.

25 MR. TRAFTON: Whether it translates into

1 income?

2 DEPUTY COMMISSIONER MILLER: Whether it  
3 effectively discriminates on the basis of income or  
4 race.

5 MR. TRAFTON: Okay. Thank you for that answer,  
6 because I know I'm going to get the question.

7 DEPUTY COMMISSIONER MILLER: Now you have the  
8 answer.

9 MR. TRAFTON: And I think we've been here a  
10 long time. I just want to loosen things up a little  
11 bit.

12 DEPUTY COMMISSIONER MILLER: Okay.

13 MR. TRAFTON: I read where there was a study  
14 somewhere which identified a strong correlation  
15 between educational levels and income, big surprise.  
16 To me, I always knew that a Ph.D. or advanced  
17 degree, M.D. or attorney or an actuary, made more  
18 than a person with a Bachelor's degree. That is,  
19 there are a couple of exceptions, unless you're a  
20 professional athlete or a college football coach.  
21 Thank you very much.

22 MR. EAGELFELD: Or a government employee.

23 DEPUTY COMMISSIONER MILLER: You probably just  
24 created a new classification for --

25 MR. TRAFTON: On behalf of the Florida

1 Insurance Council, we would like to introduce a  
2 letter into evidence from the Council's president,  
3 Guy Marvin, which discusses in generalities the  
4 situation at hand.

5 DEPUTY COMMISSIONER MILLER: Okay.

6 MS. DAWSON: You can give that to me, Mr.  
7 Trafton. Thank you, I appreciate it. We'll add  
8 this to this record. Thank you.

9 MR. TRAFTON: Thank you.

10 DEPUTY COMMISSIONER MILLER: Thank you, Mr.  
11 Trafton.

12 MS. DAWSON: Okay. I don't have any additional  
13 public comment cards, unless someone is sitting out  
14 there and holding onto it, and I see the population  
15 here has dwindled a little bit. Folks are starting  
16 to -- sit up in those chairs there, you're starting  
17 to lean over a little bit. But I think that  
18 concludes the testimony.

19 Are there any remarks? We had some closing  
20 remarks by General Counsel, and our General Counsel,  
21 of course, is at another matter that he was called  
22 away on.

23 Deputy Commissioner Miller, do you have any  
24 closing remarks that you want to make? Otherwise,  
25 we can adjourn the hearing.

1           DEPUTY COMMISSIONER MILLER: I do want to thank  
2           everybody for coming. I want to thank you for  
3           sitting here for the entire proceeding and for the  
4           companies that attended and for the presenters who  
5           attended. Thank you for your testimony, and we  
6           appreciate your assistance in helping us get to our  
7           review of this issue. Thank you.

8           MS. DAWSON: Thank you.

9           The caller on the phone, we're going to hang up  
10          now. Is anyone there?

11          A VOICE: Thank you very much.

12          DEPUTY COMMISSIONER MILLER: Thank you.

13          (Proceedings concluded at 2:55 p.m.)

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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 125 through 233 represent a true,  
13 correct, 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  
17 anywise interested in the result of said case.

18 Dated this 12th day of February, 2007.

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MICHELLE SUBIA, RPR

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Court Reporter and Notary Public

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State of Florida at Large

FOR THE RECORD REPORTING, TALLAHASSEE, FL 850.222.5491

