

# New Jersey Automobile No-Fault Study: Analysis of the Cost Effects of AB 3531 and SB 2533

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## Summary

Pinnacle Actuarial Resources, Inc. (Pinnacle) was retained by the Save Choices for New Jersey Drivers group, an ad-hoc coalition of insurance companies, agents, trade associations and business organizations to conduct an independent actuarial study to determine the cost implications of the passage of New Jersey Assembly Bill 3531 and Senate Bill 2533 for New Jersey drivers.

The passage of AB 3531 and SB 2533 would eliminate the current judicial requirement that permanent injuries which do not meet the other eligibility criteria for making a tort claim in no fault cases must have a serious impact on the claimant's life. Pinnacle has evaluated the impact of eliminating this requirement and has determined that the implementation of the law would significantly increase the amount of claim losses that would be eligible for tort recovery and hence Bodily Injury (BI) Liability and Uninsured/Underinsured Motorist Coverage (UM/UIM) costs and premiums for drivers electing the verbal threshold in New Jersey. Drivers selecting the verbal no-fault threshold constitute approximately 92 percent<sup>1</sup> of all New Jersey auto insurance policyholders.

Pinnacle determined the potential effect of the proposed legislation based upon a Closed Claims survey conducted by Pinnacle for the purpose

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1. Source: New Jersey Automobile Insurance Risk Exchange Annual Cash Settlement Report, September, 2003.

of evaluating the impact of this proposed law change. The survey was based on claims closed during the period May 1 through June 30, 2003 as this data would represent the current judicial and insurance environment and be most reflective of the anticipated change. The survey was designed by Pinnacle and conducted by insurers representing 60 percent of the New Jersey personal auto market. Pinnacle processed and edited the data from the survey, tabulated the results, and conducted independent verification of the overall results. Based upon the survey, the estimated effect of this proposed legislation is a 57 percent increase in BI and UM/UIM costs for those insureds selecting the verbal no fault threshold option.

The survey was based on a statistical sample of BI and PIP claims. Since the same verbal threshold applies equally to BI and Uninsured/Underinsured Motorist Coverage, we have assumed that the impact on UM/UIM coverage will be approximately the same as the impact on BI Coverage.

Pinnacle performed an independent verification of the survey results based upon the application of a Generalized Linear Model to the Closed Claims Survey data. This model produced an estimated increase of 73 percent in BI costs. This model was similarly applied to the subset of claims, which were identified by the claims personnel as qualifying for tort recovery if the serious impact requirement were eliminated. Based on this second analysis, a 43 percent increase in BI losses was indicated. Also with respect to the additional qualifying claims, Pinnacle applied an objective analysis imposing a more rigorous requirement of surgery and/or hospital stay, which produced an indicated impact of 38.3 percent.

Pinnacle also verified the results of the survey through an analysis of the 1999 Insurance Research Council's Injuries In Auto Accidents study (IRC Study). Based upon an analysis of the IRC data, Pinnacle determined that the impact of the proposed law indicated by this data would be a 34 to 41 percent increase in BI losses. Since this data included only data for New Jersey prior to the implementation of the AICRA reforms in 1999, this impact could be affected by the extent of the cost savings realized by that reform.

In summary, the Pinnacle research team conducting this study concludes that the best estimate of the impact of the passage of AB 3531 and SB 2533 is an increase in Bodily Injury and UM/UIM costs for drivers selecting the verbal no fault threshold option of between 34 percent and 57 percent.

We have also calculated the impact of the proposed law changes on average premiums. Overall, an increase in BI and UM/UIM premiums for verbal threshold policyholders of 30 percent to 50 percent or between \$98 and \$163 per car annually was indicated. This amounts to an overall average increase of approximately 15 percent to 24 percent for those purchasing compulsory liability coverages only and 8 percent to 13 percent for those purchasing a full package of auto insurance coverages. These indicated changes in premiums assume that current premiums are adequate.

## Purpose and Scope of the Study

Pinnacle Actuarial Resources, Inc. (Pinnacle) was retained by the Save Choices for New Jersey Drivers group, an ad hoc coalition of insurance companies, agents, trade associations and business organizations, to conduct an independent actuarial study to determine the cost implications of the implementation of AB 3531 and SB 2533 on New Jersey Personal Automobile insurance costs. This article is a summary of that study, and readers interested in the public policy implications of this report are directed to the full study, which is available from Pinnacle.

Our conclusions in this study are predicated on a number of assumptions as to future conditions and events. Those assumptions, which are documented throughout this article and more fully in the various sections of the full report, must be understood in order to place our conclusions in their appropriate context. In addition, our work is subject to inherent limitations, which are also discussed in more detail in the full report.

## Background – New Jersey Tort Threshold

The original New Jersey No Fault Law was introduced on Jan.1, 1973. At that time and up until 1988, the threshold was based upon a monetary figure. Effective Jan. 1, 1989 a “verbal” threshold modeled after the New York No Fault law replaced the “monetary” threshold. The following is the 1989 verbal threshold which was required to be met by a person selecting the no fault verbal threshold Bodily Injury coverage in order to recover for pain and suffering and other “non-economic” damages resulting from an automobile accident.

“A personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person’s usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment.”

In 1992, the New Jersey Supreme Court found, in *Oswin v. Shaw*, 129 N.J. 290, 318 (1992), that to meet the requirements of the verbal threshold limitation, as it was enacted in 1988, a plaintiff must show a nexus between

an alleged injury and a resulting disability which had a serious impact upon the plaintiff and the plaintiff's life. To that end, to demonstrate that an injury had a serious impact upon his or her life, a plaintiff "must submit objective, credible evidence that could support a jury finding in his or her favor" and mere "subjective complaints of pain" would not be sufficient.

In *Oswin*, the Supreme Court held that when a motion for summary judgment seeks dismissal of a plaintiff's claim because the injuries at issue do not qualify under the verbal threshold statute, the trial court must determine whether the alleged injuries would, if believed by the fact finder, meet the requirements of the law. Effectively, the Court must address two questions: whether the plaintiff's injuries fall within any of the nine categories of the statute and, if so, whether the injury had a serious impact on the plaintiff and his or her life.

In 1998, the No Fault law was further amended (Automobile Insurance Cost Reduction Act or AICRA) to eliminate the so-called category 6 -9 types of injuries and replace them with new language defining permanent injuries. In addition AICRA included a change from "a fracture" to "displaced fractures" and a change to significant disfigurement injuries to add significant scarring.

The introduction of the permanent injury language arguably opened the door to claims that were previously not eligible for general damage awards under the previous language as the new threshold language did not contain specific language regarding the severity or significance of the permanent injuries.

Accordingly, cases which heretofore would not be eligible for suit were litigated. In the recent analysis of the effect of AICRA upon the verbal threshold, Judge Yannotti, in *Rogozinski v. Turs*, 351 N.J.Super. 536, 549 (Law Div.2002), ruled that although AICRA amended the verbal threshold to redefine the types of injuries that would allow an individual to bring a lawsuit seeking non-economic damages, the purposes of the law remain the same—to limit lawsuits and to hold down the cost of auto insurance. AICRA was intended to "tighten" the verbal threshold and to limit the number of lawsuits brought seeking non-economic damages arising out of automobile accidents. Therefore, Judge Yannotti concluded that:

"Because AICRA reflects an intention to 'tighten' the threshold and further restrict lawsuits arising from automobile accidents to claims for injuries that are permanent and serious, AICRA does not reflect an intention to modify the essential holdings of *Oswin v. Shaw*. Therefore, the plaintiff must show, by the presentation of objective credible evidence, that the injuries come within one of the categories of injuries defined in the amendatory legislation. In addition, the plaintiff must show that the injuries have had a serious impact upon the plaintiff's life."

Judge Yannotti rejected the plaintiff's contention that a permanent injury, sufficient to meet the AICRA standards to pierce the verbal threshold, could be shown "if a body part or organ has not recovered to 'function normally'". Instead, the Rogozinski court noted that "there is nothing in the language of the amended statute that reflects an intention on the part of the Legislature to alter the requirement under *Oswin v. Shaw* that the injuries have a serious impact upon the plaintiff and the plaintiff's life."

"Therefore, the Court finds that in order to meet the limitation of lawsuit threshold under N.J.S.A. 39:6A-8(a), as amended by AICRA, the plaintiff must present evidence of an injury that meets the statutory definition of a serious and permanent injury. The injury must be one that has had and will have a serious impact upon the plaintiff and the plaintiff's life."

The New Jersey Appellate Division approved Judge Yannotti's reasoning in *James v. Torres*, 354 N.J. Supra 586 (App. Div. 2002) on November 6, 2002 and the New Jersey Supreme Court declined the opportunity to review the James case by denying Plaintiff's petition for certification on February 13, 2003, 175 N.J. 547 (2003).

In May 2003 Assembly Bill 3531 and SB 2533 were introduced which would specifically eliminate the serious impact upon the plaintiff's life requirement. Please note that AB 3531 and SB 2533 are identical bills and for brevity will simply be referred to as AB 3531 in the remainder of this report.

## Reliances and Limitations

In our analysis, we relied without audit or verification on the 1999 Insurance Research Council's study *Injuries in Auto Accidents (IRC Study)*, the New York, New Jersey and Florida claims data underlying the IRC Study and data from the Fast-Track Monitoring System (Fast-Track) which is sponsored by the NAIC. If it is subsequently discovered that the underlying data or information in these studies are erroneous, then our calculations and conclusions will not be correct and will need to be revised.

In addition, Pinnacle conducted an independent closed claim survey of New Jersey personal auto claims, which closed between May 1 and June 30, 2003. Data was collected for Allstate New Jersey, First Trenton, Liberty Mutual, New Jersey Manufacturers, Selective and State Farm Indemnity Insurance Companies. This data was collected in order to obtain up-to-date information on the current New Jersey insurance environment since the 1999 IRC study was based on claims closed during the spring and summer of 1997 and therefore does not reflect the AICRA changes effective in 1999. Pinnacle collected additional data elements, which allow for a more focused analysis and quantification of the proposed legislation.

It is possible that the historical data used to make our estimates may not be predictive of future experience in New Jersey. We have not anticipated any extraordinary changes to the legal, social or economic environment, which might affect the size or frequency of auto insurance claims.

## **Cost Increases versus Premium Increases**

The cost estimates in this report are generally stated in terms of the impact on losses or loss costs. The impact on loss costs cannot be used interchangeably with premium impacts. This is because a portion of the insurance companies' expenses is for general overhead (rent, utilities, etc.) and does not increase proportionately to the loss costs. Based on the 2003 Best's Aggregates and Averages, Private Passenger Automobile Liability general and other acquisition expenses represent 11.9 percent of the industry-wide earned premium (this 11.9 percent does not include agents' commissions, premium taxes and other premium-related expenses). To estimate the liability premium increases corresponding to the cost increases shown in this report, it is necessary to reduce the cost increases by a factor of approximately .881. Thus a 50 percent cost increase equates to an approximate 44 percent premium increase. The above 11.9 percent is an industry-wide number and may vary significantly from one insurer to another.

## **2003 Pinnacle Closed Claim Analysis**

Since there did not exist a body of data ideally suited to determine the cost effects of the proposed legislation, Pinnacle undertook a new closed claims study based on actual New Jersey personal auto claims. Pinnacle collected closed claims for the period May 1 through June 30, 2003 from six of the major writers of personal automobile insurance in New Jersey. These six companies (Allstate New Jersey, First Trenton, Liberty Mutual, New Jersey Manufacturers, Selective and State Farm Indemnity Insurance Companies) represent a combined market share of approximately 60 percent of the personal automobile market in New Jersey. Each company was requested to randomly collect closed claims for this time interval for the number of claims Pinnacle requested from that company. The total number of claims for each company was determined by establishing the overall number of claims, which were needed by coverage for statistically valid results and apportioning this by market share to each company. Pinnacle designed the survey form, processed and edited the data from the survey, tabulated the results, and conducted independent verification of the overall results.

While the study collected similar data which was collected for the IRC Study, additional fields were requested that specifically addressed the issue of serious impact on the claimant's life.

### *Bodily Injury Results*

Data for the Bodily Injury (BI) liability coverage was collected in a manner similar to the IRC data by type of threshold applicable and, for those claims subject to no fault, the manner in which the threshold was overcome. Additionally, the data was segregated into whether the claim was settled on a pre or post AICRA basis. Set forth below are the comparisons between “how the threshold was overcome” for the 1999 IRC Study New Jersey data versus the Pinnacle post-AICRA Closed Claim survey (Special Call):

The percentages shown are the percentages of the BI losses paid by each category. For those claims for which multiple categories were selected, they have been assigned to a major category based on the following priority: fractures, loss of bodily function, disability, and permanent.

The Special Call post-AICRA data would indicate that the distribution of losses is relatively similar to the pre-AICRA data. Disability-type claims are the exception as they are no longer in and of themselves eligible for compensation under AICRA. The percentage of losses due to permanent injury is 35 percent based upon the Special Call which is substantially less than the 71 percent indicated by the Florida IRC data as discussed later in this report. As such, this data would indicate a 36 percent increase in BI costs due to the elimination of the serious impact on life requirement if the loss distribution after passage of the proposed legislation for New Jersey would simulate the Florida experience.

### How Threshold Was Overcome

	<b>New Jersey (IRC Study)</b>	<b>New Jersey (Special Call)</b>
<b>Death</b>	<b>0.4%</b>	<b>4.5%</b>
<b>Dismemberment</b>	<b>1.3%</b>	<b>0.0%</b>
<b>Disfigurement</b>	<b>5.5%</b>	<b>4.5%</b>
<b>Fractures</b>	<b>15.0%</b>	<b>17.7%</b>
Fractures only	9.3%	8.9%
Fracture together with permanent injury, loss of body function & disability	1.2%	4.1%
Fracture together with permanent injury & loss of body function	1.7%	0.0%
Fracture together with permanent injury & disability	0.2%	0.0%
Fracture together with permanent injury	1.8%	4.1%
Fracture together with loss of body function & disability	0.0%	0.0%
Fracture together with loss of body function	0.0%	0.6%
Fracture together with disability	1.7%	0.0%
<b>Loss of Body Function</b>	<b>18.9%</b>	<b>22.4%</b>
Loss of body function only	1.6%	15.7%
Loss of function together with disability	3.2%	0.0%
Loss of function together with permanent injury & disability	1.2%	0.0%
Loss of function together with permanent injury	2.9%	6.7%
<b>Disability</b>	<b>13.3%</b>	N/A
Disability only	10.6%	N/A
Disability together with permanent injury	2.7%	N/A
<b>Permanent Injury Only</b>	<b>29.8%</b>	<b>35.2%</b>
<b>Other</b>	<b>15.8%</b>	<b>15.7%</b>
Total	100.0%	100.0%

We have analyzed the Special Call data by type of injury as follows:

**Most Serious Injury for Claimants Who Surpassed the Post**

	# of Claims	\$ of Losses	Average Loss	% of Total Losses
Fatality	4	440,000	110,000	4.6%
No Injury	10	3,665	367	0.0%
Minor lacerations	18	13,045	725	0.1%
Serious laceration	3	40,000	13,333	0.4%
Scarring	13	784,417	60,340	8.2%
Neck sprain	249	643,263	2,583	6.7%
Back sprain	187	312,337	1,670	3.3%
Other sprain	15	26,513	1,768	0.3%
Knee	47	657,796	13,996	6.9%
Shoulder	23	665,379	28,930	7.0%
Disc	249	3,251,601	13,059	34.1%
Fracture of weight-bearing bone	11	905,702	82,337	9.5%
Other fracture	30	605,318	20,177	6.3%
Internal organ	2	315,000	157,500	3.3%
Concussion	2	0	0	0.0%
Permanent brain	2	105,027	52,514	1.1%
Loss of body part	0	0	0	0.0%
Paralysis	1	95,000	95,000	1.0%
TMJ Dysfunction	5	50,000	10,000	0.5%
Loss of sense	0	0	0	0.0%
Psychological/Emotional	5	135,000	27,000	1.4%
Unknown	22	4,595	209	0.0%
Other	24	459,401	19,142	4.8%
Headache	4	0	0	0.0%
Misc. sprains	14	20,052	1,432	0.2%
Total	940	9,533,111	10,142	100.0%

In addition, the survey requested information regarding claims which were closed without payment of non-economic loss. Specifically the survey asked if the claim was closed without payment of non-economic damage, would it have been paid without the current serious impact on the claimant's life requirement. The responses were as follows:

**Would Non-Economic Losses Have Been Paid Without  
"Serious Impact on Life" Requirement**

	\$ of Losses	% of Total	# of Claims	% of Total
Yes	838,115	57.2%	254	39.1%
No	438,013	29.9%	346	53.3%
Unknown	189,332	12.9%	49	7.6%
Total	1,465,460		649	

Therefore, 39 percent of these BI claims representing 57 percent of the losses for these claims would have been paid under the proposed legislation. Since this indicator only reflects BI claims which were closed without payment of non-economic damages under the current law and does not reflect the claims which were never submitted due to the restrictions of the current threshold interpretation, it can only provide an indicator of significant cost increase and cannot be used to draw definitive conclusions about the magnitude of the cost increases from this legislation.

### *Personal Injury Protection Special Call Results*

In addition to the BI data, experience was collected for the PIP coverage in order to examine all personal auto injury claims and determine what additional claims would likely become BI claims or UM/UIM claims as a result of the proposed law change.

A total of 1,868 claims were collected representing \$17,343,120 in loss payments. Since PIP claims represent payments received by all insureds, it was necessary to first delineate between those claimants who purchased the verbal threshold versus no tort limitation. For those claimants where the type of threshold was known, there were 1,557 claimants representing \$13,873,652 in losses who were covered under a tort limitation and 311 claimants representing \$3,469,468 in losses where the claimant was not subject to a tort limitation. For purposes of this analysis to determine the likely impact of the proposed legislation on the verbal BI coverage, it is only necessary to examine those claimants subject to the verbal (limited) threshold.

The Special Call requested that the claims personnel identify which PIP claims would qualify for a tort recovery under the current threshold language and also to indicate which additional claims would qualify under the proposed new language which would eliminate the serious impact on life requirement. Set forth below are the results of these questions:

#### **Qualify for Tort Recovery (Current language)**

	\$ of Losses	% of Total	# of Claims	% of Total
Yes	\$5,265,537	37.9%	181	11.6%
No	7,027,923	50.7%	1,233	79.2%
Unknown	1,580,192	11.4%	143	9.2%
Total	13,873,652		1,557	

Therefore, based upon the claims person's review of each claim, 11.6 percent of the PIP claims for those claimants purchasing a limited tort

coverage, or 37.9 percent of PIP losses would qualify as a BI claim under the current threshold language.

However, of those claims which do not qualify for a tort recovery under the current law, the claims personnel indicated the following:

#### **Would Claim Qualify Under Proposed Language?**

	\$ of Losses	% of Total	# of Claims	% of Total
Yes	\$3,004,047	42.7%	467	37.9%
No	3,858,217	54.9%	735	59.6%
Unknown	165,660	2.4%	31	2.5%
Total	7,027,923		1233	

Therefore, these claims experts reported that 38 percent of the claims did not qualify under the current language (30 percent of all “verbal” threshold claims) represent 43 percent of the losses for those claims (22 percent of all “verbal” threshold losses) would additionally result in successful BI claims. Note, we have not included the data for those claimants where the claims personnel could not determine whether the claimant would qualify or not. This would tend to produce a conservative estimate of the impact of the proposed law change since some of these additional claims would also possibly qualify under the new language.

Therefore the estimate of the impact of AB 3531 on the limited tort BI losses would be an increase of 57 percent if the increase in BI losses is proportionate to the PIP losses as the additional PIP losses of \$3,004,047 represents a 57 percent increase relative to the current PIP tort qualifying losses of \$5,265,537.

The estimate is based on the assumption that the increase in BI losses would be proportional to the increase in PIP losses for those PIP claimants who qualify for tort. This amounts to assuming that the increase in payments for non-economic losses would be proportional to the increase in payments for economic losses. (“Economic” losses are those losses which relate to the actual “out of pocket” costs associated with a claim such as medical costs, lost wages, rehabilitation and essential services.)

It should be noted that the average severity associated with the PIP claims qualifying under the current language is \$29,000 whereas the average severity for new claims that would qualify under the proposed language is \$6,400. This is not surprising since under the current language, only the most serious of cases would qualify. Past IRC studies have indicated that the ratio of non-economic to economic losses decreases as the severity of economic loss increases. The 1999 study indicates the following ratios of average BI payment per dollar of economic loss by size of economic loss:

Size of Economic Loss	Average Economic Loss	Average Payment	Average Payment per Dollar of Economic Loss
\$1 – 500	\$243	\$796	\$3.28
501 – 1,000	738	1,913	2.59
1,001 – 2,000	1,473	3,675	2.5
2,001 – 5,000	3,236	6,963	2.15
5,001 – 10,000	6,991	13,791	1.97
10,001 – 25,000	15,222	25,348	1.67
25,001 – 50,000	34,143	49,346	1.45
Over \$50,000	110,948	77,337	0.69

Thus it would be reasonable to assume that the additional losses, which will emerge due to the more liberalized language would also have a higher proportion of non-economic loss associated with them. However, for purposes of this analysis, we have conservatively assumed a proportionate increase in non-economic loss.

## Pinnacle Independent Verification

In order to verify these results, Pinnacle performed an independent evaluation of the additional claims that were identified by the claims adjusters as qualifying under the proposed law change. Pinnacle developed a generalized linear model, which could be applied to the closed claim survey in order to determine the likelihood of a BI claim based on the individual characteristics of each PIP claim.

The model approach begins with using the Insurance Research Council 1999 Personal Injury Protection closed claim study database. We selected several fields from the database for analysis from Florida, with the underlying assumption that this change in the New Jersey no-fault law would cause it to be more like Florida in terms of the likelihood of a BI claim given a PIP claim. For each of the PIP claims, there is a field called QUALTORT, which is the determination of whether or not the PIP claim qualified for tort recovery.

We then developed a generalized linear model based on the Florida data to determine the likelihood of a PIP claim qualifying for a BI recovery based on the characteristics of the claim.

Once we developed the likelihood of BI recovery model based on the claim characteristics, we applied the model to the characteristics of the PIP claims in the New Jersey closed claim survey that had a verbal threshold. Based on the characteristics of the claim, the probability of BI recovery was

developed. We then applied the probability of BI recovery to the total amount paid under the PIP coverage to calculate an expected recovery given the claim characteristics. Summing all the expected loss amounts over the entire PIP database gives us the expected increase in costs. Based on this method, we estimate that the costs would increase by 73 percent. This compares directly to the 57 percent impact based upon the claims experts' determinations.

In addition, in order to validate the additional claims which would qualify if the proposed law is enacted, we also just looked at the subset of claims that did not qualify for tort recovery today, but based on the claim person's evaluation, would qualify for tort recovery under the new system. Applying this probability model to just this subset of claims resulted in an overall increase of approximately 43 percent in claim costs.

Also, in order to further test the reasonableness of the claims person's opinion regarding the additional claims, which would qualify if AB 3531 is enacted, Pinnacle reviewed the additional claims by injury characteristics and imposed several additional standards that the claims would have to surpass in order to qualify. This would establish an extremely conservative estimate of the impact of the proposed law and establish a lower bound for our estimate. This standard required that the newly qualifying claims must have been associated with a burn, scarring, neck, back or disc injury and that the claimant must have either had surgery or a hospital stay associated with their injury. Under this more rigorous standard, 232 claims totaling \$2,017, 402 in additional losses would qualify. Comparing this to the losses which qualify under the current language (\$5,265,537) produces an indicated impact of the proposed law change of an increase of 38.3 percent.

## 1999 Insurance Research Council (IRC) Analysis

The 1999 IRC study represents the fourth analysis of this type conducted by the IRC and represents what is generally regarded as the most definitive study to use in analyzing proposed tort reforms for automobile insurance. Pinnacle reviewed the data from this study in order to independently check the results from the Closed Claim Survey.

BI liability coverage data from the IRC analysis is provided by state and, for no-fault states, the IRC data indicate whether the claim was subject to a tort threshold. If the loss was subject to a threshold, the loss is identified by the type of loss, which was used or could be used to overcome the tort threshold. Accordingly, it is possible to analyze the Florida, New Jersey and New York data by type of loss in order to compare how the threshold was overcome in each state (note – for New Jersey, this data includes only those claims where the no fault option was selected). We chose Florida and New York because of the similarities between their verbal thresholds and New Jersey's. The Florida tort threshold allows BI

liability claims for non-economic damages only when the injury consists in whole or in part of:

- a. Significant and permanent loss of an important bodily function.
- b. Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- c. Significant and permanent scarring or disfigurement.
- d. Death.

We have particularly focused on Florida due to the general similarity of the threshold to New Jersey's and particularly with respect to the provision for non-economic loss recoveries in cases of permanent injury.

Set forth below are the percentage of BI losses paid by each category. For those claims for which multiple categories were selected, they have been assigned to a major category based upon the following priority: fractures, loss of body function, disability and permanent as shown below:

#### **How Threshold Was Overcome**

	New York	New Jersey	Florida
Death	1.5%	0.4%	4.7%
Dismemberment	1.5%	1.3%	2.0%
Disfigurement	9.5%	5.5%	4.8%
Fractures	25.0%	15.0%	6.8%
Fractures only	10.6%	9.3%	2.5%
Fracture together with permanent injury, loss of body function & disability	0.9%	1.2%	0.3%
Fracture together with permanent injury & loss of body function	0.8%	1.7%	0.0%
Fracture together with permanent injury & disability	6.1%	0.2%	0.8%
Fracture together with permanent injury	2.1%	1.8%	3.0%
Fracture together with loss of body function & disability	1.1%	0.0%	0.0%
Fracture together with loss of body function	1.6%	0.0%	0.1%

**How Threshold Was Overcome (continued)**

Fracture together with disability	1.8%	1.7%	0.1%
Loss of Body Function	16.6%	18.9%	1.2%
Loss of body function only	8.3%	11.6%	0.8%
Loss of function together with disability	4.2%	3.2%	0.0%
Loss of function together with permanent injury & disability	1.2%	1.2%	0.0%
Loss of function together with permanent injury	2.9%	2.9%	0.4%
Disability	17.4%	13.3%	0.9%
Disability only	12.4%	10.6%	0.3%
Disability together with permanent injury	5.0%	2.7%	0.5%
Permanent Injury Only	15.1%	29.8%	70.8%
Other	13.5%	15.8%	8.9%
Total	100.0%	100.0%	100.0%

As can be seen from this data, the percentage of losses in Florida which result from the permanent injury criteria (71 percent) is disproportionately higher there than in New York (15 percent) and New Jersey (30 percent). We conclude that this is primarily because there is no serious impact requirement in Florida as there is in New Jersey. The New York verbal threshold language is the same as the pre-AICRA New Jersey language with significant limitations on the types of permanent injuries allowed.

Therefore, the Florida data would indicate that it is likely that if AB 3531 is enacted, the number of lawsuits in New Jersey would increase dramatically specifically resulting from lawsuits for permanent injuries which did not have a serious impact on one's life but since permanent, would now be compensable for general damages. If the percentage of compensable permanent-only BI losses were to increase from the current 30 percent to 71 percent in New Jersey, the indicated increase in overall losses is 41 percent.

As noted, those claims categorized under multiple criteria, were assigned to one category as a function of the most major category cited as described above. Conversely, another approach to the handling of these claims would be to assign all claims which had a "permanent" designation, whether in combination with another category or permanent-only, into one permanent category. We have calculated the impact which would be

indicated using this procedure. Using this approach, 75.3 percent of the losses in Florida would be assigned to this category as opposed to 41.4 percent in New Jersey. Therefore this would indicate the impact of the proposed legislation would produce a 34 percent increase in New Jersey losses.

It should also be noted that the above estimates of 34 to 41 percent based upon the 1999 IRC data are on a pre-AICRA basis. To the extent that AICRA succeeded in reducing BI costs the resultant estimated impacts may be understated. It is beyond the scope of this study to provide a retrospective analysis of the AICRA legislation; however NAIC Fast Track data for the Insurance Industry would indicate that cost savings were indeed realized. Set forth below is the BI Fast-Track data for New Jersey and Florida for the time interval immediately subsequent to the implementation of AICRA.

#### NAIC Fast-Track Data

Year	Florida Bodily Injury		New Jersey Bodily Injury	
	Change in Pure Premium since 1st Q 1999	Change in Claim Frequency since 1st Q 1999	Change in Pure Premium since 1st Q 1999	Change in Claim Frequency since 1st Q 1999
1999-2	-1.2%	-0.4%	-0.7%	-1.6%
1999-3	0.2%	-0.9%	-2.3%	-3.8%
1999-4	1.5%	-0.9%	-2.1%	-5.2%
2000-1	4.6%	-0.4%	0.1%	-4.8%
2000-2	8.6%	0.6%	2.5%	-4.5%
2000-3	10.6%	1.3%	4.6%	-3.8%
2000-4	10.4%	0.1%	6.1%	-4.6%
2001-1	11.2%	-0.5%	7.7%	-4.3%
2001-2	11.8%	-1.2%	8.0%	-4.8%
2001-3	12.5%	-1.5%	7.7%	-5.5%
2001-4	17.1%	0.2%	8.5%	-4.4%
2002-1	17.0%	0.7%	4.9%	-6.1%
2002-2	17.2%	1.3%	-0.7%	-9.1%
2002-3	18.9%	2.0%	-3.2%	-12.0%
2002-4	16.5%	0.4%	-10.1%	-16.0%
2003-1	16.7%	0.0%	-11.9%	-19.0%
2003-2	18.3%	1.2%	-12.8%	-20.8%

It can be seen from this data that the BI losses in New Jersey have declined significantly over this interval with the latest data indicating an approximately 20 percent reduction in claim frequency and a decrease in pure premiums of over 12 percent. Florida data for this period shows a

virtually flat claim frequency with overall pure premiums increasing in excess of 15 percent. Thus it would appear that the implementation of AICRA together with the case law interpretations reasserting the serious impact on life requirement has succeeded in reducing BI costs in New Jersey.

It is possible to analyze the permanent-only cases from the IRC data by type of injury in order to further identify claims resulting in tort recovery. Set forth below are the BI claims as categorized by the most serious injury assigned to the claim:

**Breakdown of Claims and Losses by Type of “Most Serious” Injury**

	New York % of Claims	New Jersey % of Claims	Florida % of Claims	New York % of Losses	New Jersey % of Losses	Florida % of Losses
Fatality	0.9%	0.3%	0.6%	1.5%	1.4%	4.6%
Minor Burns	2.4%	2.8%	3.2%	0.6%	0.3%	0.7%
Laceration	0.6%	0.3%	0.8%	0.5%	0.6%	1.3%
Scarring	3.7%	1.3%	1.8%	3.9%	0.9%	2.5%
Neck sprain	20.0%	21.4%	35.6%	8.7%	8.9%	18.2%
Back sprain	17.4%	18.7%	21.1%	10.9%	10.7%	14.2%
Other sprain	2.0%	2.7%	2.3%	0.7%	0.4%	1.0%
Knee	5.7%	3.7%	3.7%	7.6%	5.5%	4.8%
Shoulder	3.0%	1.3%	2.4%	2.8%	3.8%	4.0%

**Breakdown of Claims (continued)**

Disc	14.3%	20.2%	6.8%	16.3%	31.9%	15.0%
Fracture of weight-bearing bone	4.4%	3.0%	2.4%	15.4%	9.0%	9.0%
Other fracture	6.8%	3.8%	3.1%	7.0%	4.2%	6.2%
Internal organ	0.4%	0.5%	0.4%	0.2%	0.8%	0.7%
Concussion	0.6%	0.5%	0.5%	0.2%	0.1%	0.5%
Permanent brain	0.6%	0.5%	0.3%	6.2%	3.2%	0.9%
Loss of body part	0.0%	0.2%	0.1%	0.0%	1.0%	0.5%
Paralysis	0.1%	0.2%	0.1%	0.4%	0.1%	0.5%
TMJ Dysfunction	0.5%	0.7%	0.8%	1.2%	0.8%	2.2%
Loss of sense	0.2%	0.0%	0.1%	0.2%	0.0%	0.1%
Psychological/Emotional	0.3%	0.8%	0.5%	0.8%	1.7%	0.3%
Unknown	7.6%	7.4%	4.9%	7.4%	8.4%	5.5%
Other	3.0%	3.5%	2.8%	4.0%	2.8%	3.8%
Not defined	5.5%	6.0%	5.9%	3.4%	3.4%	3.5%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

As can be seen, in Florida there are a disproportionate number of the so-called “soft tissue injuries” such as neck and back sprains as compared to New York and New Jersey. These two types of injuries represent 56.7 percent of all claims and 32.4 percent of all losses in Florida as compared to 37.4 percent of claims and 19.7 percent of losses in New York and 40.1 percent of claims and 19.6 percent of losses in New Jersey. This would be expected as these type injuries are less likely to be deemed to “seriously impact life” and thus would not be compensable in New Jersey under current law.

The implementation of AB 3531 would arguably allow for any permanent injury to qualify for litigation no matter the degree of seriousness of the injury on the plaintiff’s life.

## Conclusion – Cost Increases

In summary, our research indicates that the passage of AB 3531 would significantly increase the amount of claim losses that would be eligible for tort recovery and hence BI and UM/UIM costs and premiums for drivers selecting the verbal no-fault threshold in New Jersey. The results from the survey of PIP claims, which reflects the best estimate of the potential claims which would likely be submitted should this legislation be passed, indicates a 57 percent increase in BI and UM/UIM claim costs. Other estimates of the increase in BI and UM/UIM losses developed from the survey and the IRC Study generally fall in the range of 34 to 57 percent. We conclude that the best estimate of the increase in BI and UM/UIM costs is in the range of 34 to 57 percent for policyholders selecting the verbal no-fault threshold.

In order to put the cost impact of the proposed legislation into perspective as it relates to the average policyholder, we also obtained the average rates for the sample companies for the year ending Dec. 31, 2002 and determined the premium impact on a liability only and a liability and physical damage combined basis. As indicated previously, we determined the loss cost impact of the proposed legislation to be an increase of 34– 57 percent on the BI and UM/UIM coverages for policyholders selecting the verbal threshold. This loss cost increase would translate to a premium increase of 30 - 50 percent as a result of factoring in the impact of overhead expenses. As shown below, this amounts to an overall average premium increase of 15 - 24 percent for verbal threshold policyholders purchasing a liability-only package of coverage and 8 – 13 percent for those purchasing a full package of auto insurance coverages. These indicated changes in premiums assume that current premiums are adequate. The dollar amount of premium increase to the average policyholder of this legislation is estimated to be between \$98 and \$163 per car annually in New Jersey.

Coverage	New Jersey Average Premium	BI &UM/UIM Premium Impact of +30%	% Increase	BI &UM/UIM Premium Impact of +50%	% Increase
BI	\$ 251.97	\$327.56		\$377.95	
PD	\$ 160.78	\$160.78		\$160.78	
UM/UIM	\$ 73.47	\$95.51		\$110.20	
PIP	\$ 188.27	\$188.27		\$188.27	
Liability					
Subtotal	\$ 674.48	\$772.12	<b>14.5%</b>	\$837.20	<b>24.1%</b>
Comprehensive	\$ 189.56	\$189.56		\$189.56	
Collision	\$ 396.83	\$396.83		\$396.83	
Phys. Damage					
Subtotal	\$ 586.39	\$586.39		\$586.39	
<b>Total</b>	<b>\$1,260.88</b>	<b>\$1,358.51</b>	<b>7.7%</b>	<b>\$1,423.59</b>	<b>12.9%</b>