



OFFICE OF THE BROOKLYN BOROUGH PRESIDENT
TASK FORCE ON EQUITY IN STATE & LOCAL POLICY

Putting the Brakes on Out of Control Rates:

An Examination of Brooklyn's Record High Automobile Insurance Rates and How They Can Be Reduced

BOROUGH PRESIDENT'S TASK FORCE ON EQUITY IN STATE & LOCAL POLICY

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EXECUTIVE SUMMARY

With nearly 2.5 million residents, Brooklyn is the largest of New York City's five boroughs. While Brooklyn is experiencing significant growth across the economic spectrum, much of its large population (42% of whom are foreign born and 41% of whom live in households with an annual income of less than \$25,000) face innumerable challenges as they struggle to provide a livable and secure lifestyle for themselves and their families. In July of 2003, Brooklyn Borough President Marty Markowitz established the Borough President's Task Force on Equity in State & Local Policy (the *Task Force*) to examine critical areas where New York City, and Brooklyn in particular, do not receive the same level of economic assistance and opportunities as other areas in the state, as a result of statutory, regulatory, political and market forces. One of the areas targeted for review and analysis is the high cost and limited availability of automobile insurance coverage. The *Task Force* is chaired by Brooklyn Assembly Member James Brennan, and includes Frederick C. Arriaga, Esq., Dr. Ruth C. Browne, William Casey, Dr. Rosa Gil and Dr. Jerome Krase.¹

It is generally accepted that Brooklynites experience the highest automobile insurance rates in the country. It is not an exaggeration that the entire auto insurance sector as it operates in Brooklyn is in crisis. (*See pp. 4, infra.*) This crisis results from many factors including the conduct of vehicle owners; the insurance industry; the actions or non-actions of state regulators and legislators; local, state and federal criminal justice agencies; and unscrupulous personal injury lawyers and medical providers.

This report focuses on the *Task Force's* work to date on the perplexing issue of automobile insurance. We include recommendations of operational, regulatory, and enforcement changes and highlight areas that merit further review and investigation by all of the stakeholders. In particular, we recommend immediate, coordinated action by the State Legislature, the State Insurance Department, the industry, and law enforcement agencies to launch an aggressive campaign to reduce auto insurance rates in Brooklyn. This campaign must increase consumer awareness, increase market competition, and significantly reduce the number of Brooklyn drivers for whom the Auto Insurance Plan ("The Plan") is the only legally available option. Additionally, the legislature and the State Insurance Department must address the key factors that have caused insurance premiums to skyrocket in recent years: in particular, the unfettered growth of no-fault insurance claims, a significant portion of which are inflated or outright fraudulent. (*See Section: The No-Fault Crisis, infra.*)

There are many opinions as to why Brooklynites are confronted with ever-increasing, record high insurance premiums and a shrinking group of insurers competing for their business. Brooklyn drivers cannot afford, and should not have to pay the overwhelmingly highest auto insurance rates in the country. Therefore, there must be a drastic revision of the entire auto insurance system if under-served and over-priced areas like Brooklyn are to have access to the affordable coverage that others around the state and the country take for granted.

¹ Frederick C. Arriaga, Esq., when appointed to the Task Force, directed the Brooklyn Low Income Taxpayer Clinic at South Brooklyn Legal Services. On May 24, 2004, Mr. Arriaga was appointed Counsel to the Brooklyn Borough President; Dr. Ruth C. Browne is Executive Director of the Arthur Ashe Institute for Urban Health at SUNY Downstate Medical Center; William Casey is Vice-President of the After School Corporation; Dr. Rosa Gil is President of Health Industry Resources Enterprise, Inc. and a former President of the New York City Health and Hospital Corporation; Dr. Jerry Krase is a Professor of Sociology (Emeritus) at Brooklyn College.

INTRODUCTION

As part of the focus on the high cost of auto insurance in Brooklyn, the *Task Force* has interviewed and corresponded with virtually all stakeholders: the State Insurance Department, insurance companies (also referred to as *underwriters*), their industry associations and their agents, independent insurance brokers (including *storefront brokers*, who are the primary provider for many of Brooklyn's ethnic and minority neighborhoods) and criminal justice agencies, including the Offices of Attorney General Elliot Spitzer, Kings County District Attorney Charles J. Hynes and the New York City Police Department's Fraudulent Accident Investigation Squad. In addition, the *Task Force* has interviewed numerous Brooklyn drivers and received e-mails, letters and phone calls, mostly from very frustrated people who are struggling to insure the family car and still pay the rent. The *Task Force* also hosted industry meetings and conducted a full day hearing on November 12, 2003 in conjunction with the New York State Assembly Standing Committee on Insurance.

It is difficult to identify another example of more blatant inequity towards Brooklyn residents than auto insurance rates. Over the past few years, much has been said concerning whether New Jersey or New York State has the nation's highest auto insurance rates. However, Brooklyn, with a population of 2.5 million, exceeding that of 16 states, has the country's highest auto insurance rates. A brief examination of quoted rates² tells the story of the crisis facing Brooklyn drivers.

WHAT INSURANCE COSTS IN BROOKLYN

Consumers may obtain auto insurance in New York in one of two ways. The first method is the market or "voluntary" coverage. Voluntary coverage is the primary, traditional method, with the vehicle owner dealing with an insurance agent representing a specific company (e.g., Allstate or State Farm), with an insurance broker who, without any intervening broker or agent (e.g., Geico), may be able to offer coverage from several companies or directly with the company itself. The second method is the New York Automobile Insurance Plan ("NYAIP" or "The Plan"). By comparison, it is extra-high cost coverage that, by law, companies must issue in standard form to those who are unable to obtain affordable, voluntary coverage. Initially seen in the 1950's and 1960's as a way for "high risk" drivers to stay on the road, in recent decades it has ceased being the provider of "last resort" and assumed the role of provider for those whom companies won't touch for any number of reasons, good and bad. However, for many Brooklyn drivers, "The Plan" is the only offered auto insurance option.

Chart 1 displays the most recent available figures of nationwide and statewide average cost to obtain full coverage in the voluntary insurance market, compared to the cost of a policy issued to a driver living in Albany, Rochester and Brooklyn by two of the leading underwriters, Allstate and State Farm. While the nationwide average to fully insure a car is \$817 and the New York State average is \$1,161, in Brooklyn State Farm will collect \$4,092 for that same policy, more than four times what a driver in Albany will pay, and that is for an adult with a good driving record.

² Virtually all of the rate information in this report is derived from schedules of sample rates published in the New York State Insurance Department's Annual Consumer Guide to Automobile Insurance. We note that these are, at best, crude approximations and that individual underwriters do not provide such schedules without a potential consumer providing detailed, personal information.

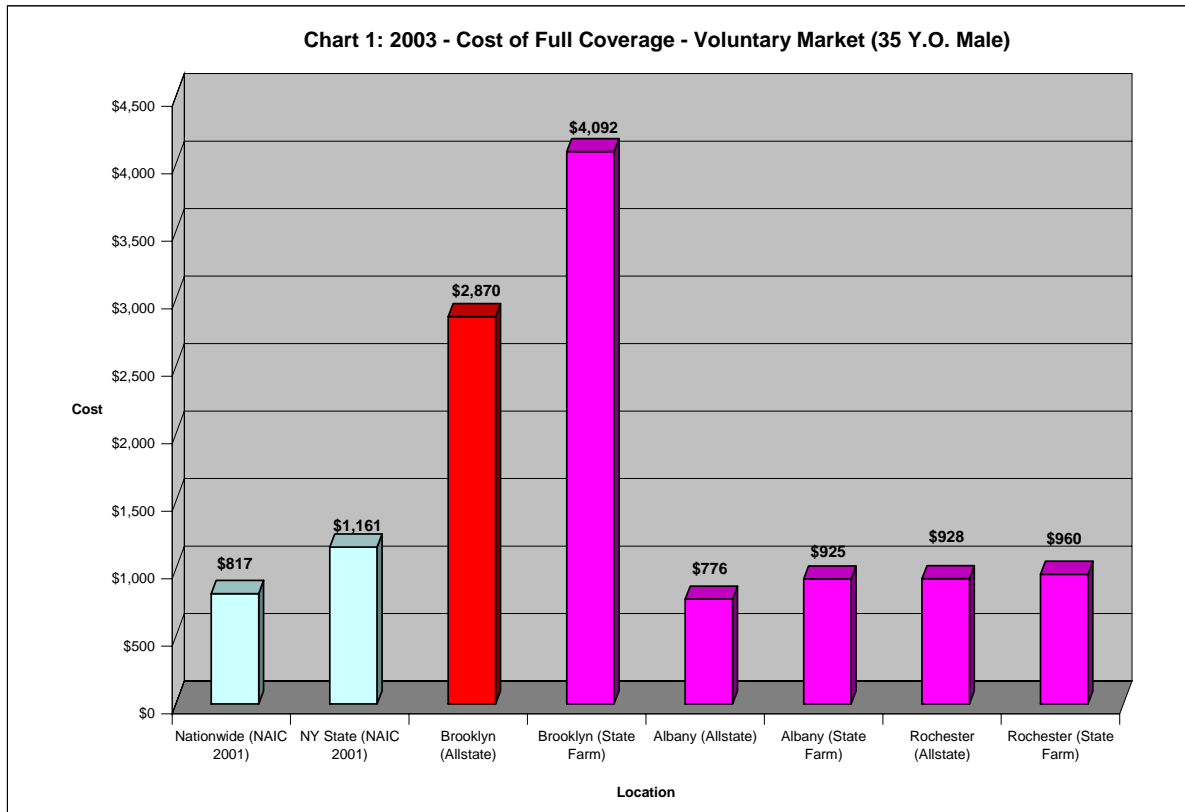


Chart 2 shows that when comparing the cost of obtaining just the legally required minimum coverage, the disparity is even greater. The policy that State Farm charged \$424 for in Albany costs \$2,666 in Brooklyn, a difference of over 600%. Allstate's rates are nearly 400% higher here in Brooklyn.

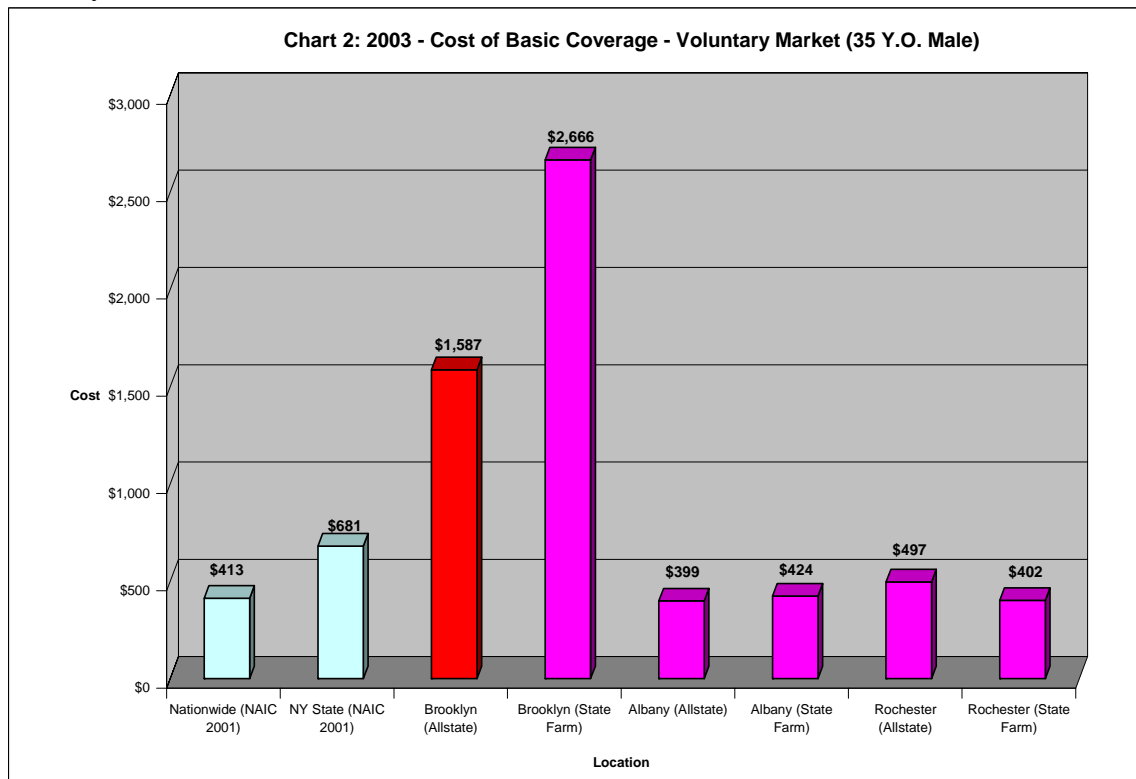
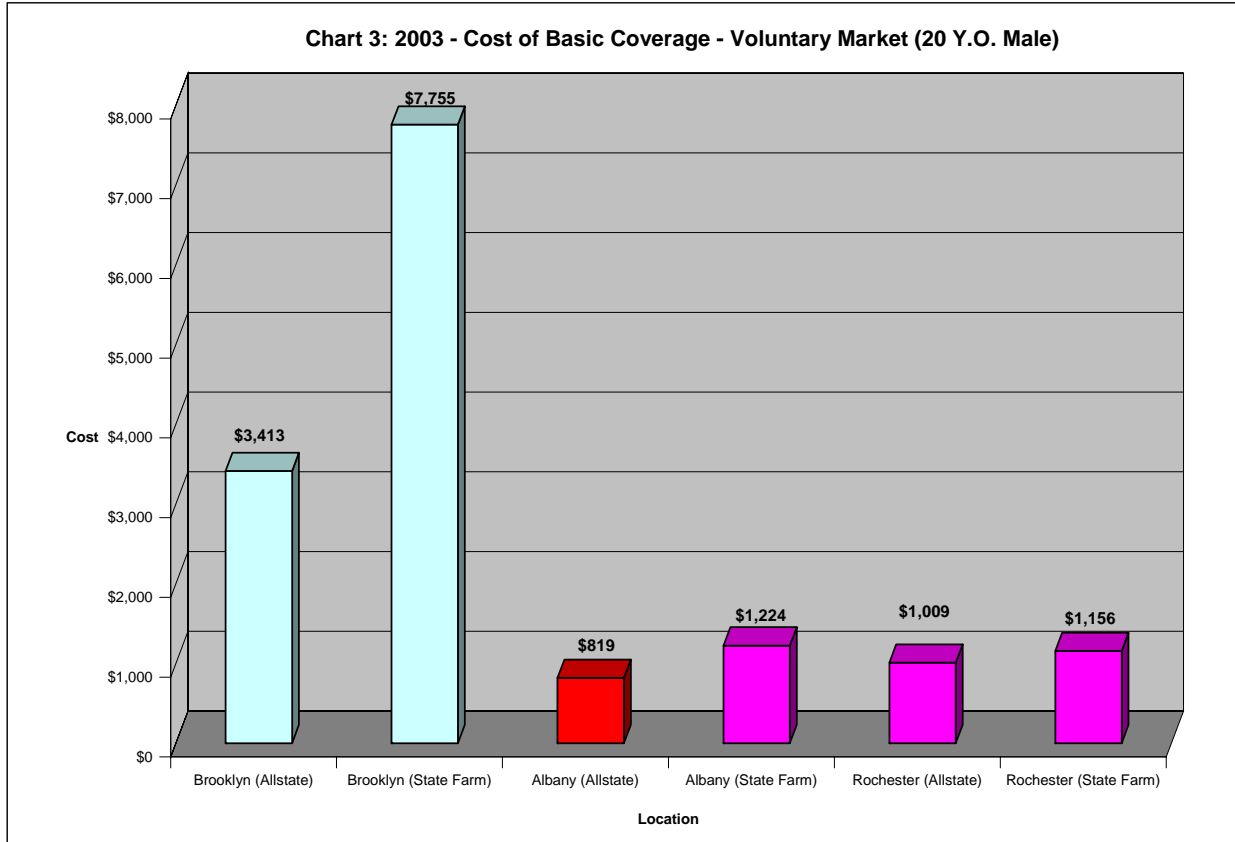


Chart 3 shows the disparity for younger drivers. For example, if a 20-year-old high school graduate works hard at his job to buy a used 1992 Honda for \$2,500, that young person in Albany can get basic coverage for \$819 from Allstate, but it will cost \$3,400 in Brooklyn, if coverage is even available in the voluntary market. That is a 417% difference, while State Farm’s \$7,755 rate is more than six times their Albany rate.



While the rates shown in Charts 1-3 seem very high, many Brooklynites are excluded from the voluntary market altogether and are faced with even substantially higher rates in “The Plan.” (See Charts 4 and 5) Indeed, they essentially have four choices: (i) obtain coverage from “The Plan,” (ii) lie on their application and insure their car in the name of a friend or relative, from another region or in another state; (iii) make an initial insurance payment (to register the car and get license plates) and then allow the coverage to lapse, or (iv) do without a car altogether. Charts 4 and 5 show what “The Plan” coverage would cost the typical driver for full and basic coverage. Needless to say, rates in “The Plan” are outrageously high.

Chart 4: 2003 - Full Coverage - Auto Plan (35 Y.O. Male)

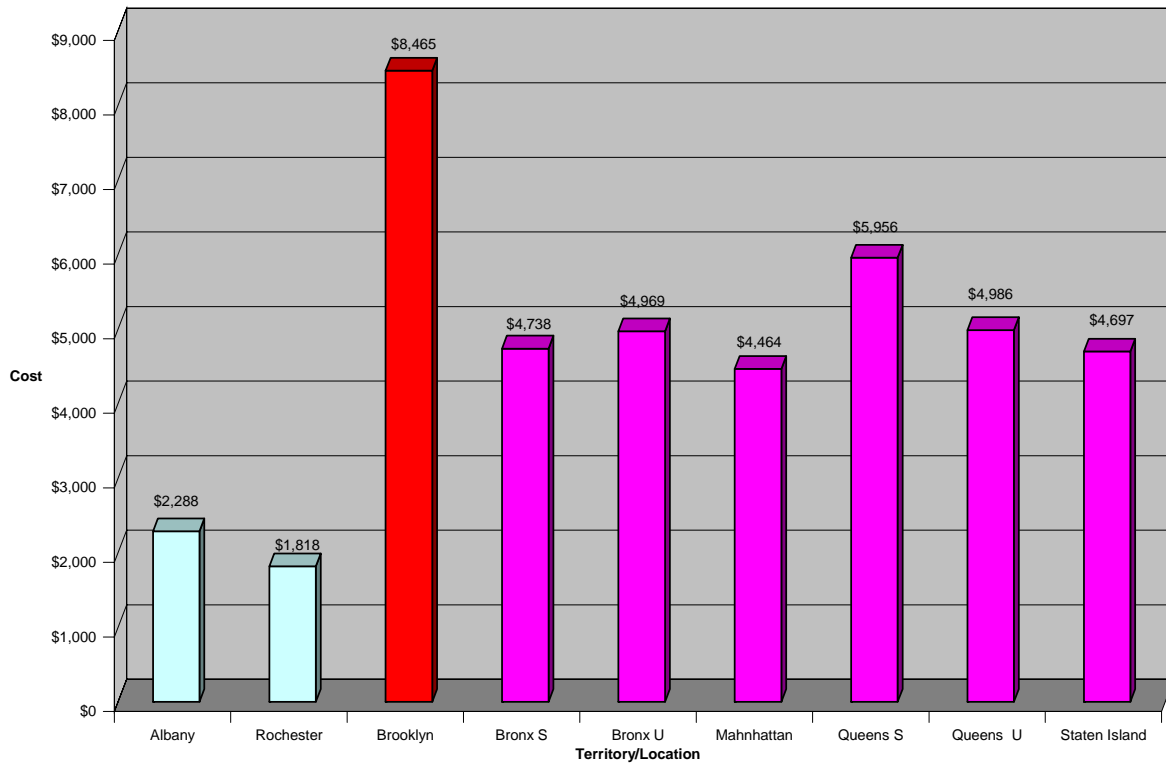
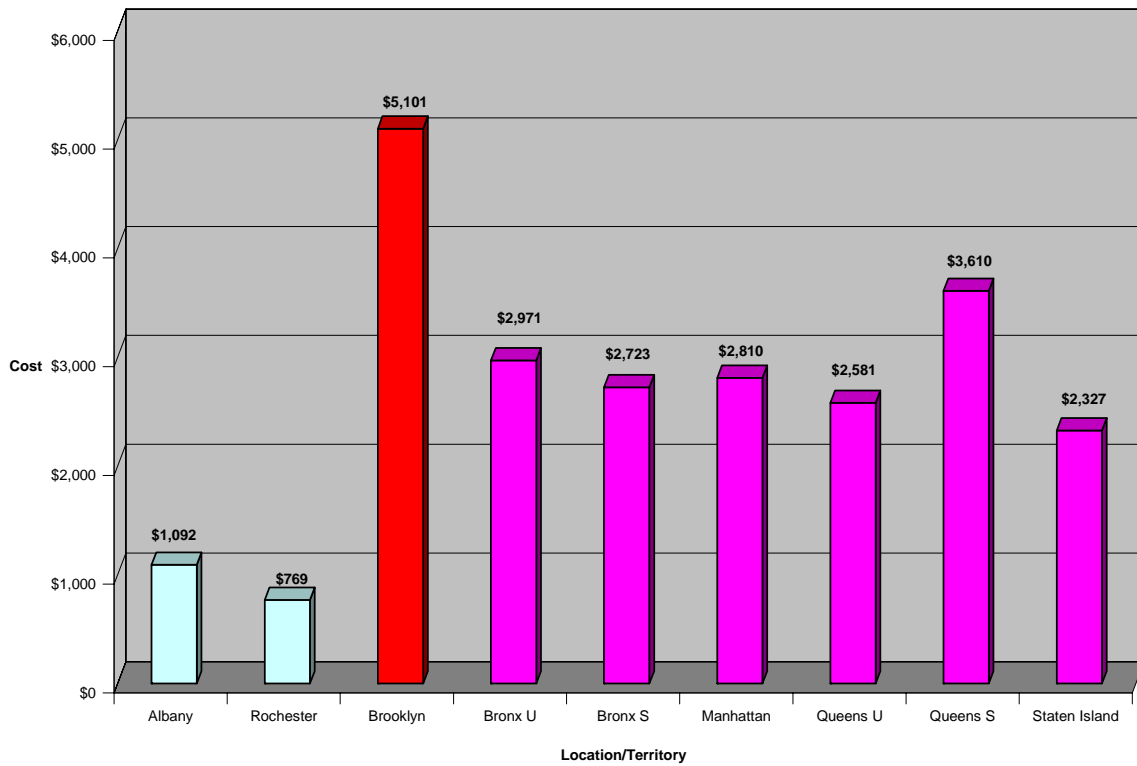


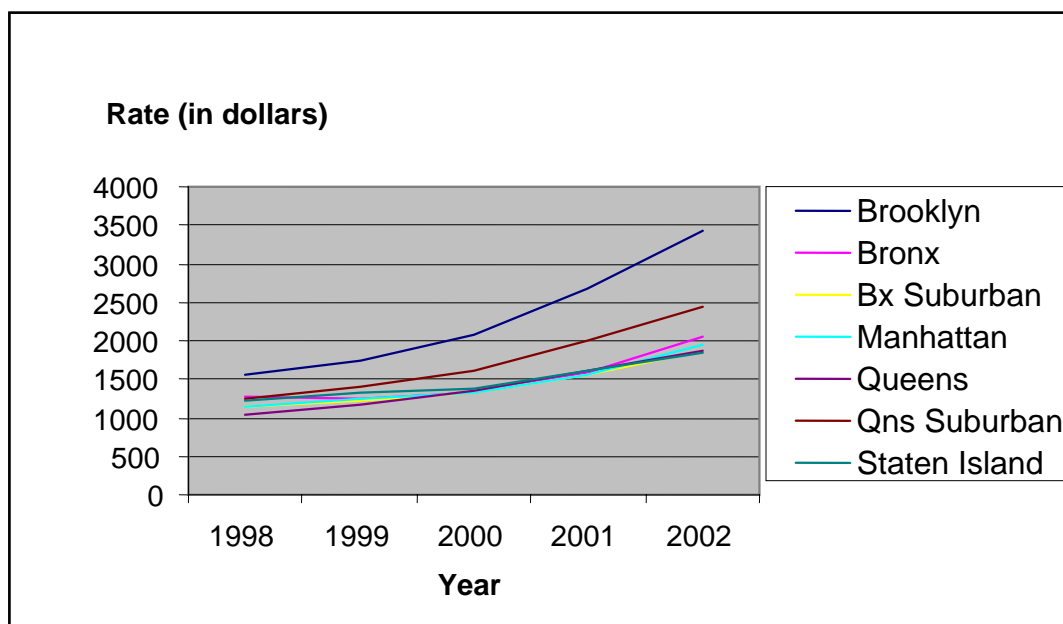
Chart 5: 2003 - Cost of Basic Coverage - NY AUTO PLAN (35 Y.O. Male)



At the November 12, 2003 hearing at Brooklyn Borough Hall, State Insurance Department Superintendent Gregory Serio asserted that the number of Brooklynites dependent upon the Auto Plan for coverage has decreased markedly in recent years. Yet, according to data provided by AIPSO, the entity that administers the Auto Plan in New York, in many poor and moderate-income communities the number of households that are turning to “The Plan” has *increased* markedly in recent years. Thus, it appears that “The Plan” increasingly is becoming the car insurer for low and moderate income Brooklynites.

The cost of required coverage under the Auto Plan has risen over the past five years, more so in Brooklyn than other boroughs of New York City. Chart 6 compares the cost of AIP (“The Plan”) coverage for a 35-year-old good driver in Brooklyn to the cost of the same coverage elsewhere in the city.

Chart 6: New York City premiums for a 35-year old driver with required AIP coverage



Source: NY State Insurance Department, Auto Insurance Consumers’ Guides, 1998 - 2002

HIGH PREMIUMS RESULT FROM HIGH CLAIMS

In New York, liability insurance is mandated, and includes minimum coverage requirements in three areas:

1. No-Fault (Personal Injury Protection or PIP) – designed to pay promptly regardless of who might have been at fault or whether there was any negligence – for actual economic losses (medical expenses, lost earnings, and other reasonable and necessary expenses related to injuries sustained), up to \$50,000 per person (“Basic No-Fault coverage”), for a driver or passenger injured in your car and to pedestrians injured by your car, because of its use or operation.

2. Liability – to cover third parties and their property injured by your car with minimum coverage of \$10,000 for property damage, \$50,000 for personal injuries and \$100,000 for death.
3. Uninsured Motorist – to cover injuries to yourself or passengers in your car injured by an uninsured driver or in a hit-and-run accident.

Underwriters and regulators uniformly point to the comparatively high level of claims as the principal reason for the high rates in Brooklyn. In particular, they point to New York’s extremely generous no-fault coverage as the true culprit. In fact, the State Insurance Department and the industry are quick to point out that Brooklyn’s claiming activity itself is off the chart.

Chart 7

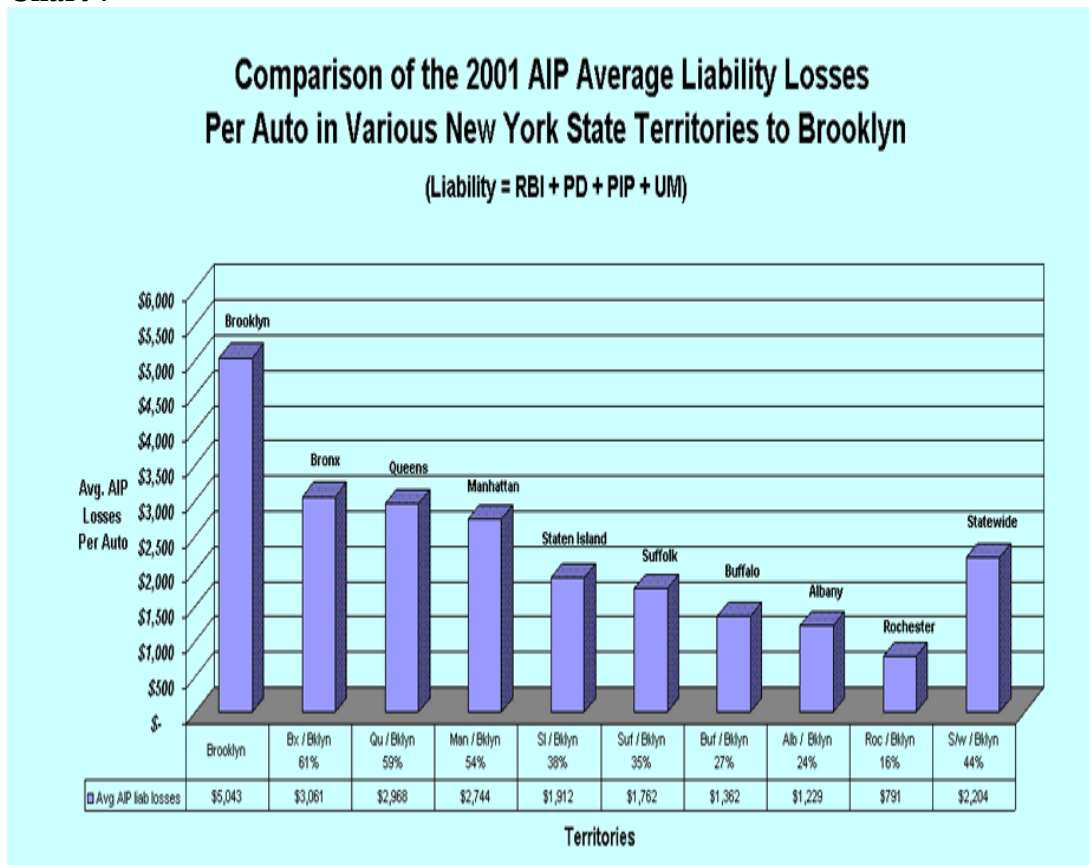
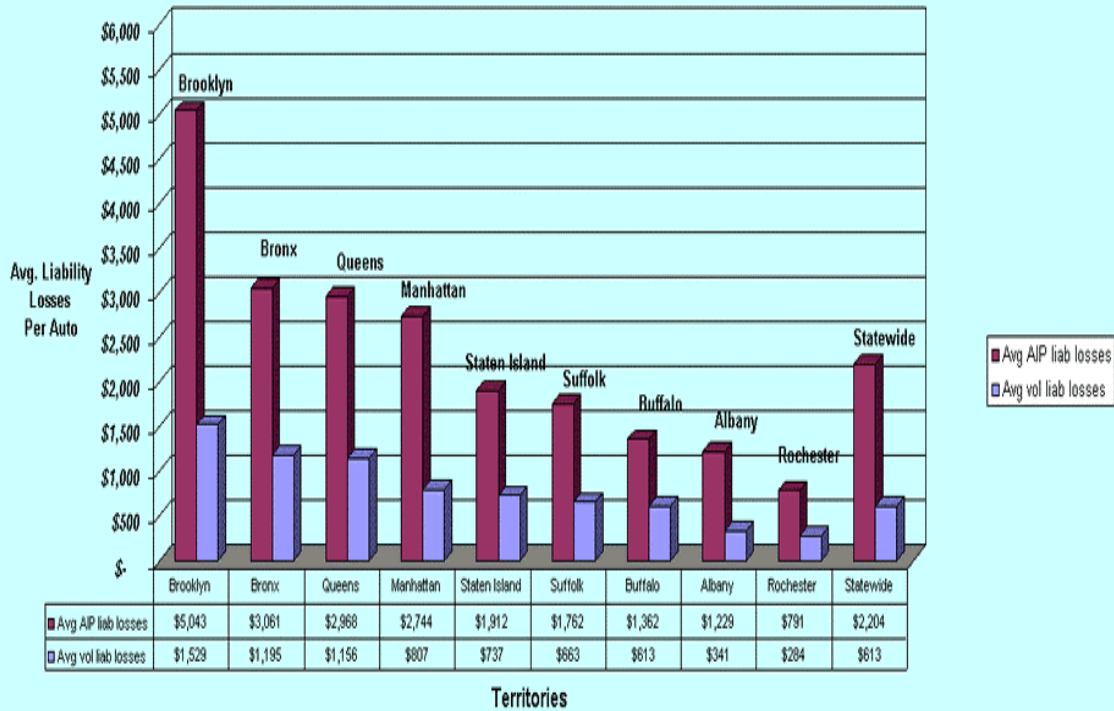


Chart 8

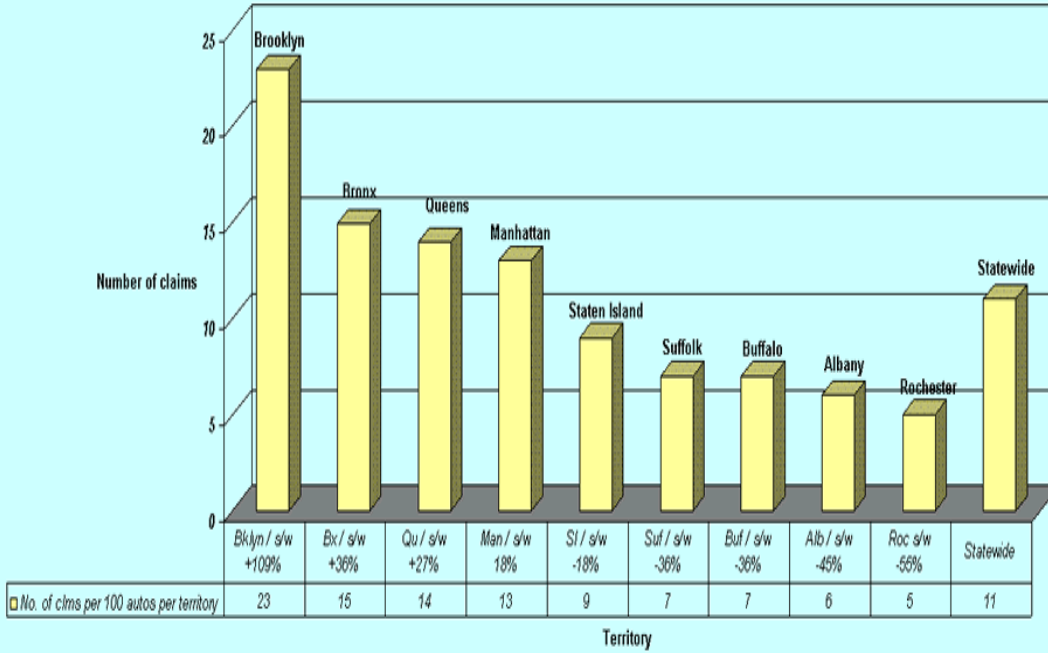
Comparison of the Average 2001 AIP and Voluntary Liability Losses Per Auto in Various New York State Territories



Source: the NY State Insurance Department, at www.ins.state.ny.us/autogrc.htm

Chart 9

The Average Number of AIP PIP Claims per 100 Automobiles in Various Territories from 1999 - 2001



THE NO-FAULT FRAUD CRISIS

Brooklyn is the state’s most populous borough with a great number of congested streets. Does it follow that Brooklyn drivers are accident prone and legitimately require more, and more costly, medical treatment than residents of the rest of the city and the state? The weight of the evidence suggests that the answer is “no.” Brooklyn’s rates are, to a great extent, inflated as the result of the high number of fraudulent or grossly inflated claims that are submitted under the state’s no-fault law.

The cost of fraudulent no-fault personal injury claims in Brooklyn alone is estimated at nearly \$500 million annually.³ Obviously, great organizational and business skills are required to generate upwards of \$500 million in billings a year, and the no-fault industry is no exception. Here is a brief primer on how no-fault auto insurance fraud works, and thus how it increases everyone’s auto insurance rates.

³ This estimate is based on the work of Robert Hartwig, Ph.D., Chief Economist for the Insurance Information Institute, New York, NY. Dr. Hartwig has estimated that the total cost of no-fault personal injury fraud is \$1.4 billion for New York State. One-third of all insurer complaints of fraud to the NY State Insurance Department’s Frauds Bureau come from Brooklyn, thus the estimate of 1/3 of \$1.4 billion.

RUNNERS, CRASH DUMMIES & DOC-IN-THE-BOX STOREFRONT CLINICS

Each day in Brooklyn (and more increasingly in other areas throughout the region) dozens of “runners” are on the prowl for “patients” they can refer for medical treatment to which injured persons are entitled under the state’s no-fault auto insurance law. A “runner” recruits patients for clinics, and often for the lawyers with whom the clinic works.⁴ According to authorities, it is extremely likely that anyone entering a Brooklyn hospital complaining of any injury from an auto accident will be contacted by a “clinic” that specializes in the exclusive treatment of auto accident victims in order to be steered for a full schedule of treatments. Typically, someone treated and released from an Emergency Room will receive a call from someone claiming to represent the hospital for the purpose of scheduling a follow-up visit, not at the hospital but at a store-front or “doc-in-the-box” clinic. These clinics have been set up for the purpose of processing high volumes of no-fault insurance medical treatment claims.

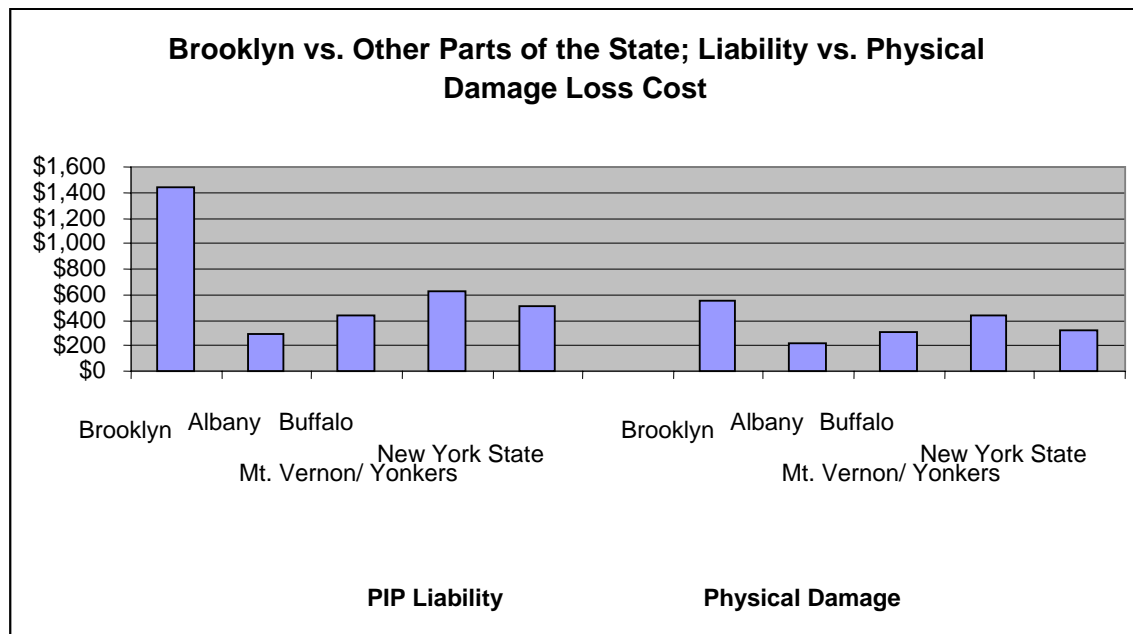
In addition to canvassing hospital hallways and the City’s highways for potential no-fault claimants, runners increasingly have turned to recruiting “crash dummies” to participate in phantom or staged accidents.⁵ Runners recruit individuals eager to cash in on the promise of a successful lawsuit to recover for their claimed (usually phantom) injuries. Typically, four or five unrelated people will hop into the “missile” car, and the driver will then set off in search of a target vehicle with which to collide. The target vehicle is often driven by an older person who will not cause much trouble. Alternatively, the crash dummies will perform a “jump-in” and hop in the car right after the crash. The police are then called and each of the crash dummies will complain of similar orthopedic injuries, even when the car itself shows little or no structural damage.⁶ Indeed, the relationship between personal injury and property damage claims in Brooklyn no-fault incidents is striking. **See Chart 10.**

⁴ For example, on July 8, 2004, the Borough President’s Office received an email from a woman whose husband had been in a car accident. She indicated that although both her husband and the other driver were not injured, people approached him, telling him to say that he was hurt and that he needed medical assistance. They went on to tell her husband that they had their own doctors and lawyers and “not to worry” because they would deal with the insurance company for him.

⁵ A phantom accident often relies upon the help of a corrupt clerical aide in a local precinct house, where accident reports necessary to substantiate no-fault claims can be fabricated and entered into the computerized data base for a \$200 - \$400 bribe.

⁶ However, staged accidents have become increasingly dangerous. In Queens in 2003, an elderly driver was killed in a staged accident.

Chart 10: Injury vs. Physical Damage Loss Cost per Auto, in Brooklyn and Other Areas



Source: National Association of Independent Insurers, *Analysis of the High Cost of Auto Insurance in Brooklyn*, presented to the NYS Assembly Committee on Insurance, November 12, 2003.

The key to breaking into no-fault insurance revenue is the doc-in-the-box or store-front clinic. Located in commercial strips throughout Brooklyn, Queens and the Bronx, these clinics are owned, in name only, by licensed physicians. In fact, the owners of clinics are shrewd and well-organized business people, rarely doctors, and often linked to organized crime factions.

Typically, the *de facto* clinic owner signs a contract with a doctor who is listed as the owner of the clinic on corporate documents. The doctor also executes a series of blank sales agreements and resignation letters. The blank documents discourage the doctor from complaining about the clinic operations, and if they do, the *de facto* owner can later replace the doctor with a new “owner” if he so wishes. The doctor is lured by the promise of regular income for little work (according to industry and law enforcement sources, it is rare for the doctor who is listed on corporate filings as the clinic owner to practice any real substantive medicine). If any treatment occurs at all, it is via a phalanx of assistants, therapists, chiropractors, acupuncturists, x-ray technicians, psychiatrists and even dentists.

Once at the clinic, the patient is advised that his or her injury qualifies for extensive diagnostic and rehabilitative treatment, at no cost whatsoever, with the likelihood of a substantial recovery in a lawsuit once all treatment is complete. The clinic will perform a battery of diagnostic evaluations

and tests and schedule therapy with numerous specialists, virtually all of which bear little if any relation to the patient's actual condition.

Indeed, it is not unusual for a no-fault accident victim to receive these diagnostic tests and this treatment plan – all prescribed the very first day the patient walks into the clinic:

- MRI for cervical spine
- MRI of lumbosacral spine
- Neurological consult
- Chiropractor consult
- Psychiatrist consult
- Acupuncturist consult
- Current Perception Threshold evaluation
- Range of Motion test
- Functional Capacity Evaluation
- Muscle Testing
- Intensive Physical therapy (4 x week)

In no time, the cost of this treatment can approach the \$50,000 per person no-fault coverage limit. Multiplied for each of the additional “crash dummy” occupants, and one staged accident, for which the record owner of the projectile vehicle may have paid only one or two installment premiums on his insurance, and the policy limit is quickly reached. This certainly contributes to Brooklyn having the state's highest average claim per policy (see chart 10).

OTHER CONSUMER ISSUES AFFECTING RATES

Some in the industry, and even within the State Insurance Department, take the position that if Brooklyn's rates are simply the result of the claims its drivers produce, inflated by thousands of fraudulent claims each month, then the borough is just reaping what its residents have sowed; but like everything involving insurance in Brooklyn, it is much more complex. Below we highlight some of the other non-fraud related factors which cause Brooklynites to pay more for auto insurance. In the past, the insurance industry engaged in a practice known as red-lining in which race was a consideration in offering coverage and calculating premiums. While the practice of red-lining has been barred, the industry appears to have developed new mechanisms which achieve similar results.

Tiered Rating

Tiered rating occurs within the voluntary market where drivers are quoted different rates based upon certain characteristics. “Nonstandard” drivers who previously could only obtain coverage in “The Plan” because of factors such as driving record, newly licensed or age of vehicle, are offered voluntary coverage but at a rate higher than that of “standard drivers.” Previously, underwriters accomplished this by establishing entirely separate affiliate corporations to handle what they viewed as the ultra high-risk clients. This explains why companies such as Allstate Indemnity and Geico Indemnity traditionally offer rates far higher than their mass-market affiliates.

However, figuring out precisely what multi-tier underwriting is and how it works has been a challenge for the *Task Force* and for consumers, as well. The *Task Force* asked the State Insurance

Department and the top 20 companies that provide auto coverage in Brooklyn to describe their multi-tiered underwriting standards. The responses did not provide a useful guide to understanding what shifts someone from tier to tier. What seems clear is that multi-tiered rating has blossomed in the computer age, where underwriters and their actuaries can create hundreds, if not thousands, of cells of captured experiential data in their endless pursuit of identifying and valuing behavioral characteristics. The problem is that no one knows what those specific characteristics are, as the industry deems them proprietary, a position unchallenged by the State Insurance Department. While we expect companies to include appropriate data, such as age, driving record and claim history, innumerable “lifestyle” cells have been created in which information ranging from occupation, home ownership, education, profession, address (zip code) and credit history are also recorded. The *Task Force* questions whether criteria such as these, which result from each household’s personal decisions, are truly relevant to the process of selling insurance notwithstanding the possibility that actuarial computations may attribute some level of loss prediction. Indeed, “multi-tiered” underwriting bleeds into another area of grave concern, credit scoring.

Credit Scoring

Similar to multi-tiered underwriting, the actual criteria that an underwriter uses to attribute a finite “score” to an applicant’s credit-worthiness are treated as a trade secret throughout the industry. We assume that all manner of data are churned to produce a single numerical value that heavily influences the underwriting decision of whether, and at what price, to offer coverage. Is this handled as an underwriting decision? A number of consumers were advised by an agent or broker that voluntary coverage would not be available based solely upon the zip code of their residence, rather than an in-depth review of their application.

On October 22, 2004, Assembly Member Grannis’ Insurance Committee hosted a full day hearing to explore the nature and impact of credit scoring practices. The industry insists that much as occurred with the issue of smoking and cancer in the 1960’s, that there is no correlation between a family’s income level and their credit score. We, however, are persuaded by the consumer advocate witnesses at that hearing and the statements of numerous storefront brokers, that with credit scoring and multi-tiered rating there is no real need for underwriters to engage in the decades old practice of “red-lining” neighborhoods where they prefer not to do business. Rather, the consumer is faced either with the record high rates offered by the Auto Plan or, if he has a steady record of car ownership so as to attract an offer of voluntary coverage, a tiered rate that is equally unaffordable.

We fail to see how one’s personal choices - such as the decision to pay medical bills, but default on consumer loans during a period of unemployment - should dictate what one pays for insurance if one is a good driver. The industry’s assertion of actuarial correlation between credit score and claiming activity is insufficient to rebut the obvious racial, ethnic and poverty based bias of credit scoring. Whether resulting from multi-tiering or credit scoring, the *Task Force* is extremely concerned with the lack of availability of affordable, voluntary coverage in many neighborhoods served by storefront brokers.

LEAVING THE CITY IN SPIRIT, IF NOT IN BODY (OR INSURANCE, AN OUT OF BOROUGH EXPERIENCE!)

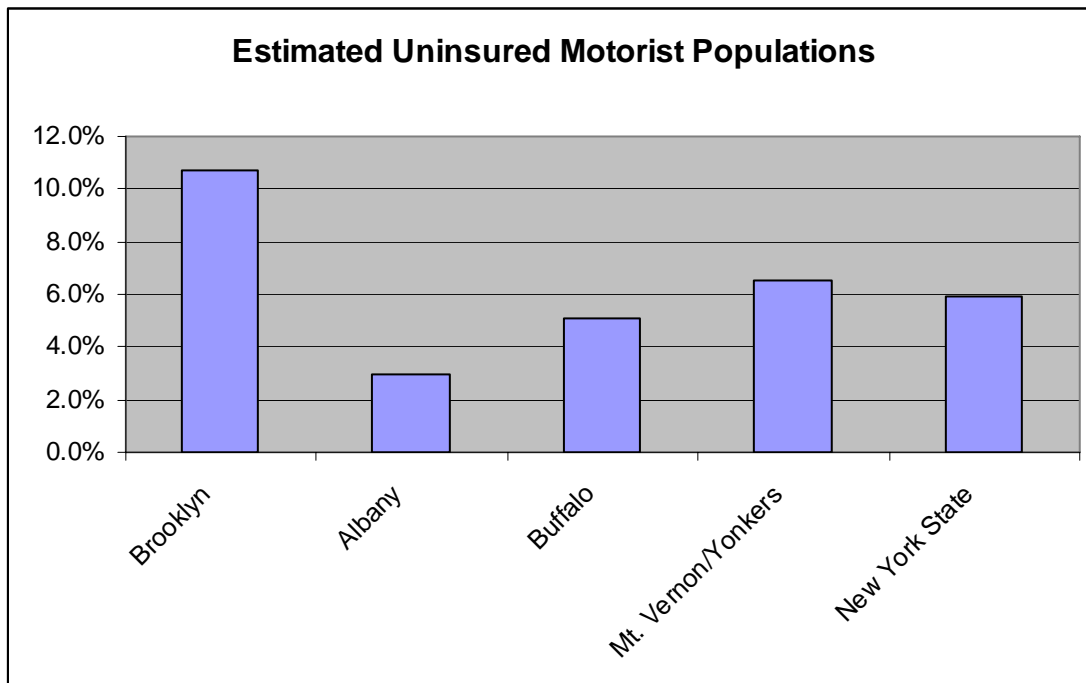
As we have outlined above, there are multiple pressure points facing a Brooklyn resident seeking to insure a vehicle and who presents a relatively low risk but imperfect driving history and/or a lack of credit or car ownership history.

Citing high claims and poor profits, many underwriters have abandoned the Brooklyn market in recent years, reducing any competition for all but the most low risk drivers living in moderate and high-income areas. While the State Insurance Department's Annual Consumer Guide lists over 200 insurance companies licensed in New York State, only a handful of companies – Allstate, Amica, Countrywide, Geico, Hartford, Liberty Mutual, Progressive and State Farm - appear to be writing a significant number of policies in Brooklyn. Drivers are faced with rates as high as \$5,000 or more just to obtain basic coverage on a used car worth half that amount, either as the result of multi-tiering or having to turn to "The Plan." Virtually no companies are offering voluntary market coverage to the driver who has not owned a car in the previous year, relegating most first time car owners to "The Plan." This comports with the statements of storefront brokers throughout the borough that while they had a number of underwriter's voluntary policies to offer their clients up until a year or two ago, today they can only provide coverage under "The Plan."⁷

The *Task Force* has also taken note of the fact, pointed out by underwriters and brokers, that Brooklyn streets often contain more out-of-state than local license plates – even in areas off the beaten path for tourists. The trend of registering cars at relatives' addresses "upstate" or in other states is growing, as is the fear that more and more drivers are obtaining coverage either via "The Plan" or by putting out-of-state plates on their car and then allowing the coverage to lapse for non-payment.

The out-of-state license plate phenomenon presents additional policy concerns that warrant further review. First, the Brooklyn owners who insure their cars upstate or out-of-state, practically speaking, may be driving without valid auto insurance coverage. The Brooklyn drivers while current with their premiums may, nonetheless, run the risk of cancellation or denial of coverage if the authorities or their underwriters later realize the policies were issued upon fraudulent residency information. Presumably, an increase in uninsured drivers will further increase the cost of auto insurance and will prevent legitimate accident victims from recovering their medical expenses and other damages. In addition, in these difficult fiscal times, the City and State of New York are losing out on badly needed automobile registration revenue, revenues which could be targeted to auto insurance fraud.

⁷ The Task force believes that in order to understand fully the impact of the shrinkage of the voluntary market, and its particular impact on lower income areas, it should be provided access by the STATE INSURANCE DEPARTMENT to the information that insurers are required to maintain and file annually pursuant to 11 NYCRR 218.7, also known as "Reg 90." The material includes reports, by zip code, of the number of voluntary policies issued, renewed, cancelled (other than for non-payment of premium) or non-renewed by each underwriter. Although STATE INSURANCE DEPARTMENT rules provide that this data is a "public record," the agency has refused to make it available because of industry assertions that where they do business is a trade secret. At the request of the Task Force, the Borough President has asked the New York City Law Department to again request the zip code data and to commence litigation to compel disclosure if necessary.



Source: National Association of Independent Insurers, *Analysis of the High Cost of Auto Insurance in Brooklyn*, presented to the NYS Assembly Committee on Insurance, November 12, 2003.

WHAT NEXT – IMMEDIATE SOLUTIONS

Insurance reform at the state level is always a challenge in New York. The parties are fairly entrenched, with the State Insurance Department and the Senate often seen as aligned with the insurance industry and the Assembly viewed as more focused upon consumer issues and the rights of those injured in a motor vehicle accident. Certainly, there are many complex issues that do not lend themselves to easy solutions. Nonetheless, solutions to the auto insurance crisis in Brooklyn must be identified and implemented. Otherwise, Brooklyn drivers will continue to face outrageously high premiums or, if they cannot pay those premiums, go without auto insurance or misrepresent their place of residence. Whether one is supportive of the insurance industry should not matter since as a matter of public policy, no one can afford to sit idle as more and more drivers in the state's most populous borough drive without auto insurance.

There are a variety of approaches being suggested in the State Legislature. We have outlined the major pieces of legislation in the appendix of this report.

The *Task Force's* believes that its focus and the analysis of the problems facing Brooklyn drivers will result in solutions that will benefit vehicle owners throughout the state, particularly those in urban and low-income areas. While our examination of the industry will be on-going, we believe that it is incumbent upon us to now propose – and to vigorously support – a platform of recommendations that should, directly and indirectly, bring rate relief to Brooklyn consumers. We

have broken this menu of solutions into three categories (1) fighting no-fault fraud, (2) increased consumer awareness and participation, and (3) targeted rate reduction.

FIGHTING NO-FAULT FRAUD

1. **Suspend no-fault in Brooklyn.** As a pilot program, suspend no-fault for policies issued to vehicles issued to Brooklyn residents and establish a special court part to handle all resulting litigation. Also, make disputes of provider's claims for reimbursement subject to mandatory arbitration.
2. **Increase funding and coordinate law enforcement efforts to combat no-fault fraud.**
 - a. **Increase and target resources to the areas most affected by no-fault fraud.** In the 2002-03 fiscal year, the State provided \$4 million to combat no-fault fraud. Of that \$4 million, despite estimates that 60% of no-fault fraud occurs in Brooklyn, Brooklyn only received a grant for \$200,000, 5 % of the total. State funding to combat auto insurance must be increased with funds allocated to target the areas like Brooklyn where the no-fault claiming activity is highest. These additional grants focused on Brooklyn's catastrophic no-fault issues must be provided not only by the legislature but also by the State Division of Criminal Justice's Motor Vehicle Theft and Insurance Fraud Prevention Board.
 - b. **Improve communications and coordination among prosecutors and law enforcement agencies.** Establish an on-going task force of New York metropolitan region criminal justice agencies, including NY Police Department, Kings County District Attorney, NY Attorney General, NYAIPSO, to support an enhanced, coordinated and proactive pursuit of corrupt no-fault clinics and the corrupt operators, runners and lawyers who support their activities.
 - c. **Provide direct mandates to agencies** such as Kings County District Attorney to either provide additional resources or reallocate existing personnel to focus on insurance related criminal activity.
 - d. **Establish and improve partnerships.** State and local authorities, who often are disinclined to share information, must improve their level of partnership and sharing of intelligence and resources. (It was only when pressed by the *Task Force* and Brooklyn Borough President's Office that the Kings County District Attorney, State Insurance Department, and NY Attorney General began a process of regular meetings.)
 - e. **Require all underwriter reports of suspected fraudulent claims,** now sent only to the State Insurance Department's Insurance Fraud bureau, also be sent directly to the NY Attorney General and the local prosecutor.
 - f. **Require the State Insurance Department and the NY Attorney General to jointly evaluate the effectiveness of each underwriter's anti-fraud efforts** and link rate adjustments to the commitment of additional resources in territories where rates are seen as elevated due to fraudulent billing.

- g. **Encourage prosecutors to pursue forfeiture and penalty revenue** and earmark proceeds to support and enhance staff who are dedicated to no-fault investigations.
 - h. **Require that the State’s Office of Court Administration designate specially trained judges** and court administrative staff to handle no-fault related cases in high volume counties. This will address underwriters’ concerns that the courts are sometimes too sympathetic to plaintiff’s representatives in large volume jurisdictions.
3. **Identify and regulate no-fault medical mills.** Develop a comprehensive plan to identify medical mills and implement procedures that will make it impractical and less profitable for clinics to set up for the purpose of defrauding the no-fault system.
- a. **Mandate pre-certification and yearly recertification of all no-fault medical providers.** Establish a bench mark number for no-fault claims for any one provider in a given period. Providers who exceed the benchmark would be required to pre-certify and re-certify with the appropriate State and City authorities who monitor, regulate, and license medical and health care providers.
 - b. **Adopt no-fault treatment protocols.** Accident victims cannot be denied necessary medical care. However, no-fault providers cannot have unfettered ability to prescribe diagnostic services and the use of durable medical equipment. Prescribing protocols should be established so that there is built in oversight of the providers treatment plans. Any protocol would include a “fast track” means of approving a special procedure required by a particular patient.
 - c. **Establish a special medical provider section within the Secretary of State’s Corporations Bureau** to handle incorporation and oversight of no-fault medical providers. The licensure and responsibility of the clinic owners, who are required to be physicians, should be thoroughly vetted at the time of incorporation (and the incorporation fees should be increased to support additional investigative resources). Additionally, require providers to notify the Bureau within 30-days of a change in physician ownership or control.
 - d. **Establish a special Office of No-Fault Provider Oversight and Inspection in the Department of Health.** Because doc-in-the-box storefront clinics are the engine that drives no-fault fraud, it is vital to provide the primary oversight agency with the authority and resources to adequately police the industry. The Office will be funded by a fee per patient paid by no-fault providers based upon a sliding scale. Providers whose practices are predominately no-fault will pay a higher fee per transaction. The revenue will support vigorous and independent audit and oversight to ensure that the responsible practice of medicine actually occurs.
 - e. **Shut runners out of hospitals.** Require all hospitals to develop and implement programs that prohibit staff from steering patients to no-fault clinics and educate

patients on how to respond to inappropriate approaches. Establish formal liaison between hospitals, NY Police Department and local prosecutors.

CONSUMER AWARENESS & PARTICIPATION

1. **Establish an Office of Automobile Insurance Consumer Advocate & Counsel within the Office of the New York State Attorney General.** The Attorney General’s Office has a distinguished record in advocating for and protecting the rights of consumers in a broad array of industries. In recommending that the Office be funded to protect the interests of auto insurance consumers, long-standing industry and legislative opposition to previous proposals for an advocate, much of which derived from criticisms of reforms enacted in Texas, will abate. The Attorney General can review rate applications and monitor underwriting practices to the benefit of both the premium paying public and the insurance industry.

Provide a specific mandate that the Advocate submit a yearly report to the New York Attorney General and the NYS Senate and Assembly. The report must provide both a comprehensive overview of automobile insurance in New York State and an in depth analysis of geographic areas like Brooklyn where insurance rates and claim rates exceed a specified acceptable threshold. The report would present “the 10 most serious issues affecting affordable auto insurance issues” and identify and evaluate the measures stakeholders including the State Insurance Department, law enforcement agencies, consumer groups, and the industry have taken to combat these problems.

2. **Provide resources to conduct multi-media multi-lingual public awareness campaigns** to educate consumers about auto insurance both generally and with specific focus on issues such as voluntary vs. “The Plan” coverage, multi-tiering and credit scoring, and the no-fault auto insurance fraud crisis in Brooklyn.
3. **Require State Insurance Department to post actual underwriting criteria on its website,** along with multiple sample rates that apply to applicants with dissimilar underwriting characteristics.
4. **Stop red-lining by closing loopholes in the law.** Prohibit location of residence within an underwriting territory to be an underwriting criteria. Whether an applicant lives in Brooklyn Heights or East New York should be irrelevant to the underwriting process.
5. **Require State Insurance Department to publish the annual Regulation 90 filings** of underwriters highlighting the impact of their underwriting and marketing practices on each zip code.
6. **Require insurance companies to prominently state at the front of all voluntary policies that they will advise the insured when and if the Auto Plan can provide coverage at a lower cost** and vice-versa.
7. **Provide all companies with the name and claim record of persons insured by the Auto Plan to encourage competition.** The option to “take out” a policy holder from the Auto Plan should not be restricted to the assigned company.
8. **Require State Insurance Department or Auto Plan administrators to post monthly census**

figures by zip code of the population of the Auto Plan in territories such as Brooklyn, where voluntary rates are high and competition is very low.

9. **Encourage insurance companies to conduct consumer fraud awareness campaigns.** Methods of publicizing information may include televised public service announcements and billboards.

RATE REDUCTION NOW

1. **Allow companies that actively pursue and significantly reduce rates for new and higher risk owners** to request relief from certain regulatory restrictions, including the right to cancel after six months with a showing of fraud as to vehicle ownership and residence of principal driver.
2. **Encourage rebates.** The State Insurance Department should encourage underwriters to issue policies to first time registrants and drivers with poor records with a provision that a significant portion of the liability premium will be refunded or credited to future premium payments if no or few claims are made in the first year, second and third year, with rebates increasing each year.
3. **Require all companies that offer voluntary coverage through independent brokers to utilize at least two additional “store-front” brokers** in zip codes and territories where they currently sell few voluntary policies.
4. **Require all underwriters to utilize a standard broker application and review processes** in underserved areas to increase market availability, competition and broker professionalism and responsibility.

CONCLUSION

As outlined in this report, the *Task Force* recognizes that the outrageously high rates charged for auto insurance in Brooklyn are the result of a complex web of factors. The *Task Force* further recognizes that there is no simple solution to the problem and that implementation of the recommendations will not necessarily yield immediate results. However, challenges presented should not prevent the stakeholders from acting. Indeed, the *Task Force* demands that the stakeholders look beyond their own limitations and, instead, fully commit their resources, knowledge, and expertise to address the inequitable and ultimately unsustainable auto insurance premiums that Brooklyn drivers are forced to pay.

APPENDIX

INSURANCE BILLS BEFORE THE LEGISLATURE

A4807-a Grannis (On Assembly calendar)

This bill provides comprehensive auto insurance reform to combat fraud and strengthen consumer protections by setting up a special office of Insurance Consumer Advocate. Specifics in the bill include:

- Require providers of health services to notify no-fault carriers within 30 days and provide proof of claim within 60 days. Proof of claim must include license or certification number of provider. Post office boxes must not be used for mailing reimbursement checks.
- Allow for defense against suspected fraudulent claims beyond the 30-day deadline for denying or paying claims.
- Require arbitration of no-fault disputes. Results can be challenged in an Article 78 proceeding.
- Ensure that injured claimants have the same fight as insurers to raise issues adjudicated in no-fault arbitration (collateral estoppel).
- Allow for limited reward to person who reports fraudulent activity that results in a successful prosecution.
- Ensure independent medical exams of no-fault claimants are performed by licensed and qualified neutral parties.
- Provides for discount in no-fault premiums if insured agrees to use own or insurer's managed care system.
- Provides for a mechanism to weed out unscrupulous providers by investigating and suspending or removing the authority to bill under no-fault if found guilty of medical misconduct and fraudulent activities.
- Requires State Insurance Department to provide consumers with information through their web site and toll free number.
- Gives municipalities standing to petition for a reduction in auto rates when actuarially the rates do not reflect current data.
- Provides for revised method of calculating insurer excess profits; provides for independent audit of insurer compliance with current excess profits law.
- Requires State Insurance Department to evaluate and address problems with carrier claim settlement practices.
- Requires State Insurance Department to evaluate and report on enhancing fraud fighting efforts.
- Requires that savings from enforcing various provisions mentioned here are passed on as lower rates for consumers.
- Creates felony level penalties for "runners."
- Adds insurance fraud as a "designated offense" that would warrant wiretapping under the CPL.
- Requires Department of Motor Vehicles to provide access within 48 hours to police accident reports to permit earlier detection of fraud scams and speed claims settlement.
- Requires insurers to file their underwriting criteria and any modifications to the Superintendent. Information would be subject to FOIL.

A11434 Grannis

This bill is a pared down version of the one above. Its purpose is also to make it easier for insurers and law enforcement to fight fraudulent auto insurance claims by:

- Allow insurers 45 days instead of the current 30 to pay or deny a claim. However, to encourage prompt payment, overdue claims payments would accrue 3% interest.
- Allow injured persons 45 days instead of 30 to provide notice of claim to no-fault insurer.
- Allows limited monetary award to person who report suspected fraudulent insurance activity of successfully prosecuted.
- Ensures that claimants (have same right as insurers) may raise issues adjudicated in no-fault arbitration with their own insurer in a separate law suit against at-fault party (collateral estoppel).
- Require insurers to provide injured with plain language notice of medical bills in order to have victims help identify questionable bills.
- Ensure independent medical exams and reviews, and ensure that the persons performing the exam are qualified, neutral and accountable.
- Establish mechanism to weed out unscrupulous health care providers
- Eliminate requirement that State Insurance Department may only enforce violations of unfair claims if they occur with regular frequency to appear to be “general business practice.”
- Creates felony level penalties for people acting to recruit persons to participate in scams to defraud.
- Adds insurance fraud as a “designated offense” that would warrant wiretapping under the CPL.
- Directs ½ funding from \$1 surcharge on insurance policies to be used to fight no-fault fraud where problem is greatest and for the most meritorious programs.
- Establish expedited hearing process for disputes regarding who is first party payer – workers’ compensation or no-fault.
- Requires rate savings accomplished by these measures to be used to lower premiums.

S683-b Seward

To reduce no-fault fraud this bill includes the following measures:

- Allow insurers to raise defenses after the 30-day period for paying or denying claims. Provides for interest (at 2%) to be paid for overdue claims.
- Allows Insurance Superintendent and DOH, SED commissioners to promulgate standards for investigating, suspending or removing health care providers to receive claims from no-fault insurance due to misconduct or incompetency. This is modeled after a similar system in place for workers’ compensation.
- Increases penalties for insurance fraud.
- Establishes a panel on medical care and treatment under no-fault to look for further ways to reduce fraud and abuse.
- Requires Superintendent to consider impact of these measures when issuing determinations for future rate filings.

S555 Skelos

Makes the use of “runners” illegal and provides for penalties.

S5019/A8460 Seward/Grannis as proposed by Attorney General

Strengthens prosecution of automobile insurance fraud by:

- Authorizing the Superintendent of Insurance to disqualify providers of health services judged as incompetent based on prior conduct.
- Provides for compensation for reporting of suspected fraud if successfully prosecuted.
- Decreases threshold for distinguishing among the 1st, 2nd, 3rd, and 4th degree crimes of Insurance Fraud.
- Establishing new crimes and reclassifies others

A3477 Ferrara

Purpose is stated as a way “to reduce the cost of automobile insurance.” Its provisions include:

- Reinstates the no-fault managed care option that expired in 1998.
- Requires the establishment of medical treatment and diagnostic testing protocols
- Establishes a 30-day window for initial filing of notice of a no-fault claim, unless one provides a reasonable justification for delay due to nature of injury.
- Establishes a maximum 45-day period from date of service until claim is submitted.
- Provides an increase to 45 days from 30 the time period in which no-fault payments are deemed timely. Allows for raising of the defense of fraud even if payment extends beyond that date.
- Arbitration is made exclusive remedy for claim disputes.
- Makes all assigned risk rates self-supporting.
- Requires insurance department to report incidence of misrepresentation by insured of the principal place where motor vehicle is garaged and driven.
- Creates monetary incentive for persons reporting suspected insurance fraud to authorities.
- Amends penal law defining “runners” as a criminal act and increases various penalties.
- Requires that NY Motor Vehicle Theft and Insurance Fraud Prevention Fund be used to support the efforts of local DAs to detect, identify and prosecute no-fault insurance fraud.
- Requires Superintendent of Insurance to study and evaluate impact and effect of NYAIFPRA on auto insurance costs. As a result, Superintendent must recommend a one-time no-fault premium reduction for every insurer.
- Appropriates \$3.1 million to NY Motor Vehicle Theft and Insurance Fraud Prevention Fund.