CONSTITUTIONAL LAW—INSURANCE LAW—NEW JERSEY NO-FAULT ACT'S MANDATORY RENEWAL PROVISION HELD APPLICABLE TO CARRIERS WITHDRAWING FROM STATE'S AUTOMOBILE INSURANCE MARKET—*Sheeran v. Nationwide Mutual Insurance Co.*, 80 N.J. 548, 404 A.2d 625 (1979).

The Supreme Court of New Jersey recently addressed the issue of whether the New Jersey Reparation Reform Act (No-Fault Act) provision[1] which mandates insurance carrier renewals of automobile insurance policies is applicable to an insurer opting to withdraw entirely from the state's automobile insurance market.[2] The No-Fault Act's renewal provision denies licensed automobile insurers the right to refuse renewals of policies issued in New Jersey absent the prior approval of the commissioner of insurance.[3] The court, finding the renewal provision applicable to withdrawing carriers, held in *Sheeran v. Nationwide Mutual Insurance Co.*[4] that such a carrier must elect between compliance with the insurance commissioner's regulations governing nonrenewals or the relinquishment of its license to engage in any insurance business in the state of New Jersey.

On October 13, 1977, Nationwide Mutual Insurance Company announced its intention to withdraw from the New Jersey automobile insurance market due to continuing business losses.[5] In pursuance of this objective, Nationwide notified its agents that their contracts would be cancelled. In addition, the carrier informed its policyholders that, while the company would honor contractual commitments previously assumed, including any renewal guarantees in outstanding policies through the end of the guarantee period, it did not intend to renew any other automobile policies and would undertake no future automobile insurance commitments in New Jersey.[6]

Subsequent to Nationwide's announcement, Insurance Commissioner James J. Sheeran instituted an action seeking a declaration that

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[1] N.J. STAT. ANN. § 39:6A-3 (West 1973).

[2] Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 404 A.2d 625 (1979).

[3] The No-Fault Act provides in pertinent part: "No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act without the consent of the Commissioner of Insurance." N.J. STAT. ANN. § 39:6A-3 (West 1973).

[4] 80 N.J. 548, 561, 404 A.2d 625, 631 (1979).

[5] *Id.* at 552, 404 A.2d at 627.

[6] *Id.* A substantial number of Nationwide's automobile policies contained guarantees of renewal: "As of December 31, 1977, Nationwide had outstanding 56,555 voluntary automobile insurance policies, 35,009 of which were guaranteed renewable for five years." Reply Brief for Defendants-Petitioners and Second Supplemental Index at 1, Sheeran v. Nationwide Mut. Ins. Co., 163 N.J. Super. 40, 394 A.2d 149 (App. Div. 1978) [hereinafter cited as Reply Brief for Defendants-Petitioners].

Nationwide either renew in force automobile insurance policies in accordance with the mandatory renewal provision of the No-Fault Act and the regulations issued pursuant thereto[7] or surrender its license to do business in the state.[8] Commissioner Sheeran contended that Nationwide's refusal to renew its policies violated the No-Fault Act because financial loss by a carrier was not listed among the acceptable grounds established for valid nonrenewals.[9]

Nationwide responded that the New Jersey No-Fault Act was inapplicable in cases where a carrier was withdrawing from an entire line of insurance as the result of continuing business losses; rather, the act was designed to prevent active carriers from exercising arbitrary and discriminatory nonrenewal practices against individual policyholders.[10] Nationwide further maintained that the No-Fault Act should be interpreted *in pari materia* with the Agency Termination Act,[11] which governed the renewal rights of terminated agents

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[7] N.J. ADMIN. CODE § 11:3-8.1 (1979). The administrative regulations established by the New Jersey Department of Insurance bar unjustified nonrenewals of automobile insurance policies. *See id.* § 11:3-8.1(e) (1979). Among the grounds deemed to justify nonrenewals are the insured's involvement in certain types of accidents, motor vehicle violations, use of the automobile in professional racing and physical or mental impairment of the insured. *See id.* § 11:3-8.1(e)(1)-(8) (1979).

Of particular pertinence to this case is the following exception to the renewal requirement, which allows nonrenewals in the event that a carrier is able to substitute similar coverage with another insurer for its own:

> Request by producer of record not to renew policy, provided such request is accompanied by a true statement by the producer that he has replaced like coverage at approved rates in the voluntary market with an admitted carrier . . .; provided also that the transferor carrier has advised the insured . . . of his right to renewal in the same company before obtaining the insured's consent to transfer, and of the insured's right to renew if he or she is cancelled by the new carrier for reasons other than nonpayment or suspension or revocation of registration or driver's license.

Id. § 11:3-8.1(e)(11) (1979).

[8] 80 N.J. at 553, 404 A.2d at 627.

[9] *Id.* at 555, 404 A.2d at 628.

[10] *Id.* at 553-54, 404 A.2d at 627-28. Nationwide was reluctant to surrender its license because retention of the license facilitated the servicing of national accounts. *Id.* at 553, 404 A.2d at 627.

[11] *Id.* at 554, 404 A.2d at 628. *See* N.J. STAT. ANN. § 17:22-6.14a (West Cum. Supp. 1980).

The Agency Termination Act sets minimum requirements for the renewal of policies upon the termination of an agent. The Act provides in pertinent part:

> The company shall during a period of 9 months from the effective date of such termination, upon request in writing of the terminated agent, renew all contracts of insurance for such agent for said company as may be in accordance with said company's then current underwriting standards and pay to the terminated agent a commission in accordance with the previous agency contract of the terminated agent.

Id.

and with which Nationwide had agreed to comply.[12] A number of constitutional objections were also registered against the commissioner's interpretation of the statute, the most significant being a violation of the fourteenth amendment due process clause.[13] Finally, Nationwide contended that the statute's grant of authority to the insurance commissioner constituted an invalid delegation of legislative authority.[14]

The trial court, ruling in favor of the insurance commissioner, ordered Nationwide to either comply with the statute or surrender its license.[15] On appeal, both the appellate division[16] and the supreme court[17] affirmed the lower court's holding.

Justice Pashman, delivering the supreme court opinion, relied upon the "plain meaning rule" of statutory construction and explained: " '[T]he meaning of a statute must . . . be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms.' "[18] Since the phraseology of the no-fault statute's renewal provision clearly requires commissioner approval for all nonrenewals of automobile insurance policies, Justice Pashman concluded that adherence to the plain meaning rule compelled the court to apply the provision according to its absolute terms because "[t]here is . . . no room for judicial interpretation."[19] Furthermore, notwithstanding the

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[12] 80 N.J. at 554, 404 A.2d at 628.

In exchange for release from exclusive representation and noncompetition covenants, most of Nationwide's agents signed a release waiving their rights to request renewals. Brief and Appendix on behalf of Plaintiff-Respondent Commissioner of Insurance at 5-7, Sheeran v. Nationwide Mut. Ins. Co., 163 N.J. Super. 40, 394 A.2d 149 (App. Div. 1978) [hereinafter cited as Brief for Plaintiff-Respondent]. Nationwide thereby attempted to circumvent any opportunity for renewal under the provisions of the Agency Termination Act. The question of whether Nationwide's efforts were successful was rendered moot when the carrier voluntarily agreed to honor nine-month renewal requests by its terminated agents. 80 N.J. at 553, 404 A.2d at 627.

[13] 80 N.J. at 554, 404 A.2d at 628. The due process clause, in pertinent part, provides: "[No state shall] deprive any person of life, liberty or property without due process of law . . . ." U.S. CONST. amend. XIV, § 1.

[14] 80 N.J. at 554, 404 A.2d at 628.

[15] Sheeran v. Nationwide Mut. Ins. Co., 159 N.J. Super. 417, 425, 388 A.2d 272, 276 (Ch. Div. 1978).

[16] Sheeran v. Nationwide Mut. Ins. Co., 163 N.J. Super. 40, 41, 394 A.2d 149, 149 (App. Div. 1978).

[17] 80 N.J. at 561, 404 A.2d at 631.

[18] *Id.* at 556, 404 A.2d at 629 (quoting Caminetti v. United States, 242 U.S. 470, 485 (1917)).

The *Caminetti* court clearly enunciated this primary rule of statutory construction: "[W]hen words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by . . . any extraneous source." 242 U.S. at 490.

[19] 80 N.J. at 556, 404 A.2d at 629.

plain meaning rule, the court examined the legislative history of the No-Fault Act and found that it provided no basis for a contrary conclusion. Noting that the legislature had been apprised of the possibility of wholesale nonrenewals during the public hearings which preceded the enactment of the No-Fault Act [20] and, therefore, presumably acted in accordance with this knowledge, the court rejected Nationwide's suggestion of an unexpressed exemption for carriers withdrawing from an entire line of insurance.[21] The majority adopted the position that the legislature's two-pronged intent was to ensure that companies carried their fair share of the burden of providing automobile coverage in the state and to guarantee insureds the right to renew indefinitely with the same company.[22]

Nationwide's last attempt to obtain a favorable construction of the no-fault statute was rejected when the court refused to read the Act *in pari materia* with the Agency Termination Law.[23] The court posited that an act which has as its primary concern the persons and the specific issue in question, namely, policyholders and their renewal rights with respect to automobile insurance policies, controls in the event of a "facial conflict" with a more generally applicable statute governing the renewal rights of terminated agents in all lines of insurance.[24]

The court then focused upon Nationwide's constitutional challenges. The contention that the no-fault statute lacked adequate standards to guide the insurance commissioner in his decisions to grant or withhold permission for nonrenewals and, therefore, constituted an undue delegation of legislative authority was found unacceptable.[25] In reaching this conclusion, Justice Pashman relied upon the principles governing valid grants of legislative authority as set forth in *Avant v. Clifford*.[26] He held that the statute, by restricting the commissioner

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[20] *Id.* at 556-57, 404 A.2d at 629. *See* COMMISSION TO STUDY CERTAIN AUTOMOBILE INSURANCE MATTERS, INCLUDING A "NO FAULT" AUTO ACCIDENT INSURANCE PLAN: PUBLIC HEARING, VOL. I at 69-70, 63 A (March 30, 1971).

[21] 80 N.J. at 557, 404 A.2d at 629.

[22] *Id.* The court seemed particularly concerned that Nationwide's retention of its license subsequent to a refusal to renew existing policies would enable it to select desirable new policyholders in the future and thus circumvent the statutory scheme. *Id. But see* Reply Brief for Defendants-Petitioners, *supra* note 6, wherein Nationwide voiced its willingness "to mak[e] any future re-entry into the New Jersey insurance market subject to the Commissioner's approval." *Id.* at 2.

[23] 80 N.J. at 557, 404 A.2d at 629-30.

[24] *Id.* at 557-58, 404 A.2d at 629-30.

[25] *Id.* at 558, 404 A.2d at 630.

[26] 67 N.J. 496, 341 A.2d 629 (1975). The *Avant* court concluded:

[T]here can be "no unconstitutional delegation of legislative authority as long as the

to the promulgation of "reasonable rules and regulations" in furtherance of the purposes of the Act, sufficiently circumscribed his authority to comply with constitutional requirements.[27]

Nationwide's claim that the mandatory renewal provision violated its due process rights was also rejected. The court noted that comprehensive regulations governing the insurance industry have long been upheld because "the insurance business is strongly affected with a public interest. . . ."[28] Rather than an unconstitutional deprivation of Nationwide's property, the renewal provision was held to be no more than a reasonable regulation governing automobile policies—policies which were both voluntarily issued by the insurance carrier and which were nonrenewable so long as the insurer was willing to surrender its license.[29]

Justice Mountain, in his dissenting opinion, conceded that a literal reading of the No-Fault Act would mandate policy renewals indefinitely;[30] however, he argued: " '[T]here is no surer way to misread any document than to read it literally.' "[31] He found the statutory renewal provision inapplicable to Nationwide because he concluded that an examination of the legislative intent behind the Act revealed its sole goal to be the elimination of arbitrary and discriminatory policy nonrenewals in individual cases.[32]

The "plain meaning rule," to which Justice Mountain took exception, bars any judicial interpretation of a statute absent an ambiguity

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> administrative discretion is hemmed in by standards sufficiently definitive to guide its exercise," such standards *not necessarily being stated "in express terms if they may be reasonably inferred from the statutory scheme as a whole."*

Id. at 553, 341 A.2d at 661 (quoting Association of N.J. State College Faculties, Inc. v. Board of Higher Educ., 112 N.J. Super. 237, 258-59, 270 A.2d 744, 756 (Law Div. 1970)) (emphasis added).

[27] 80 N.J. at 558-59, 404 A.2d at 630.

[28] *Id.* at 559, 404 A.2d at 630-31.

[29] *Id.* at 559-60, 404 A.2d at 630-31. The court did support, however, Nationwide's right to a reasonable profit, but suggested that the proper remedy lay in an action to increase rates rather than in an attack on the constitutionality of the no-fault law. *Id.* at 560, 404 A.2d at 631.

[30] *Id.* at 561, 404 A.2d at 631 (Mountain, J., dissenting).

[31] *Id.* (quoting Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944) (Hand, J., concurring)).

[32] *Id.* at 561-62, 404 A.2d at 632 (Mountain, J., dissenting). Justice Mountain attached great weight to an explanation of the purpose of the no-fault statute's mandatory renewal provision provided in a book written by the legal counsel to the Automobile Insurance Study Commission. *Id.* at 562, 404 A.2d at 632. This explanation supported the view that the purpose of the provision was the elimination of unjustified and discriminatory nonrenewal practices against individual policyholders. *See* M. IAVIOCOLI, NO FAULT AND COMPARATIVE NEGLIGENCE IN NEW JERSEY, 101-02 (1973).

in the phraseology of the Act.[33] This rule has been subjected to much scholarly criticism,[34] and courts have honored it as much in the breach as in the application.[35] Irrespective of whether the language of a statute should be regarded as the sole manifestation of legislative purpose, the language chosen by the legislature to express its will should certainly be accorded great weight in any determination of legislative intent. The wording of the no-fault statute's renewal provision is clear and absolute—no exception is made to the requirement of commissioner approval for any nonrenewal of automobile coverage by a licensed insurance carrier.

In addition to the legislative intent evidenced by the actual wording of the statute, a scrutiny of the historical background of the New Jersey No-Fault Act confirms the conclusion that the renewal provision was not designed to exempt carriers electing to withdraw from an entire line of insurance. In February, 1968, the New Jersey insurance commissioner denied a request for a 20.6% rate increase for automobile and casualty carriers.[36] Widespread industry reaction, in

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[33] *See, e.g.*, Vreeland v. Byrne, 72 N.J. 292, 302, 370 A.2d 825, 830 (1977). The plain meaning rule is singularly the most fundamental rule of statutory construction. *See* H. BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS §§ 25 & 26 (2d ed. 1911); 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 46.01 (3d ed., C. Sands, ed., 1973).

The very limited role of the court in the interpretation of a statute clear upon its face has been summed up as follows:

> Even though the court should be convinced that some other meaning was really intended by the law-making power, and even though the literal interpretation should defeat the very purposes of the enactment, still the explicit declaration of the legislature is the law, and the courts must not depart from it.

H. BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 26 (2d ed. 1911).

Township of Brick v. Spivak, 95 N.J. Super. 401, 231 A.2d 380 (App. Div.), *aff'd*, 49 N.J. 400, 230 A.2d 503 (1967), hypothesized that the underlying justification for the plain meaning rule lay in the doctrine of separation of powers: "[The Judiciary] should not assume the function of the Legislature and rewrite the law to include therein something which those charged with the legislative responsibility *might* have inserted if the matter had been called to their attention." *Id.* at 406, 231 A.2d at 383 (emphasis in original).

[34] *See, e.g.*, Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 WASH. U.L.Q. 2 (1939); Nutting, *The Ambiguity of Unambiguous Statutes*, 24 MINN. L. REV. 509 (1940).

[35] *Compare* Myers v. Cedar Grove Tp., 36 N.J. 51, 61, 174 A.2d 890, 895 (1961) and Hoffman v. Hock, 8 N.J. 397, 409, 86 A.2d 121, 126 (1952) and Lehmann v. Kanane, 88 N.J. Super. 262, 265, 212 A.2d 35, 37 (App. Div.), *cert. denied*, 45 N.J. 591, 214 A.2d 29 (1965) (utilizing the "plain meaning rule" in statutory interpretation) *with* New Jersey Builders, Owners and Managers Ass'n v. Blair, 60 N.J. 330, 338, 288 A.2d 855, 859 (1972) and San-Lan Builders, Inc. v. Baxendale, 28 N.J. 148, 155, 145 A.2d 457, 461 (1958) and Caputo v. The Best Foods, 17 N.J. 259, 263-64, 111 A.2d 261, 263 (1955) (rejecting statutory language as the sole determinant of statutory meaning).

[36] REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE AUTOMOBILE INSURANCE STUDY COMMISSION ON REPARATION REFORM FOR NEW JERSEY MOTORISTS, at 2-3 (1971) [hereinafter cited as REPORT TO THE GOVERNOR].

the form of cancellations, nonrenewals, agency terminations and restrictive underwriting practices, combined with a leading insurance carrier's announced intent not to renew any automobile policies issued in the state, created an insurance cost and availability crisis in the New Jersey insurance market.[37] A rate increase in 1970 failed to alleviate the problem, and the situation climaxed in June of that year when, because of "the imminent peril of an unprecedented restriction in the New Jersey [automobile insurance] market,"[38] the insurance commissioner declared a 90-day moratorium on all policy terminations.[39]

On June 18, 1970, the legislature established the Automobile Insurance Study Commission to consider, among other matters, the feasibility of a no-fault automobile insurance plan for New Jersey.[40] In its report recommending the adoption of such a plan, the study commission noted that, because of the grave insurance situation, it "did not lose sight of the importance to New Jersey motorists of an adequate supply of insurance coverage."[41] Indeed, an "availability objective" was listed among the four major foci of the commission's recommendations.[42]

There is certainly no question that one objective of the no-fault statute was the protection of individual policyholders through the elimination of arbitrary and discriminatory underwriting practices.[43] The historical background of the No-Fault Act and the Automobile Insurance Study Commission's report indicate, however, that the promotion of the general availability of automobile insurance to New Jersey residents was an additional objective.[44]

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[37] *Id. See also* COMMISSION TO STUDY CERTAIN AUTOMOBILE INSURANCE MATTERS, INCLUDING A "NO FAULT" AUTO ACCIDENT INSURANCE PLAN: PUBLIC HEARING, VOL. I. at 69-70 (March 30, 1971).

[38] REPORT TO THE GOVERNOR, *supra* note 36, at 3-4.

[39] *Id.* at 3.

[40] *Id.* at vi.

[41] *Id.* at 4.

[42] *Id.* at 7.

[43] *See* M. IAVIOCOLI, NO FAULT AND COMPARATIVE NEGLIGENCE IN NEW JERSEY, 101-02 (1973). *See also* Department of Insurance Inter-Communication from Richard C. McDonough, Commissioner of Insurance, to James Heaney, Asst. Counsel to Governor (May 17, 1972) (New Jersey State Archives, New Jersey State Library).

[44] It is apparent from the administrative regulations promulgated by the commissioner of insurance that, in the commissioner's view, a two-fold wrong was to be remedied by the statute. The majority of these regulations proscribe discriminatory practices against individual policyholders. *See* N.J. ADMIN. CODE § 11:3-8.1 (1979). Of particular significance to this case, however, is N.J. ADMIN. CODE § 11:3-8.1(e)(11) (1979), which balances the insurer's interests with the state interest in affording an adequate insurance market to its residents by allowing a carrier to avoid the renewal requirement if it can replace its coverage with similar coverage in

The no-fault statutes of Hawaii and Massachusetts, both enacted prior to the New Jersey statute, embody such an availability objective and squarely address the issue of a carrier's retention of its license subsequent to blanket policy nonrenewals resulting from the termination of an entire line of coverage. The Massachusetts law deprives a carrier of its insurance license for across-the-board refusals to renew motor vehicle liability policies absent commissioner determination that the insurer is not attempting to circumvent the statute.[45] The Hawaii provision permits nonrenewals of automobile policies only if an insurer ceases to underwrite any new policies of any kind in the state or if the insurance commissioner concludes that such renewals would impair the carrier's financial soundness.[46] To conclude, however, that the New Jersey No-Fault Act's renewal provision was not intended to be applicable to carriers abandoning the state's automobile insurance market because the New Jersey legislature failed to expressly provide for this situation in the manner of Hawaii and Massachusetts[47] would be doubly unsound. Certainly, more than one method may be utilized to express the same intention. The No-Fault Act's absolute pronouncement that "No *licensed* insurance carrier shall refuse to renew the required coverage . . . without the consent of the Commissioner of Insurance"[48] as effectively precludes any exception for withdrawing carriers as would a statute that spelled out the absence of such an exception in explicit detail. To require more would be to establish redundancy as a rule of statutory construction. Secondly, assuming arguendo that this particular application of the renewal provision escaped the contemplation of the draftsmen, a bar to this application does not automatically arise; rather, the judicial task in such a case is to determine whether the inclusion of the unforeseen situation within the scope of the statute is consistent with the probable legislative intent.[49]

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the voluntary market. This interpretation of the statute by the administrative agent charged with its enforcement is entitled to great weight. *In re* Application of Saddle River, 71 N.J. 14, 24, 362 A.2d 552, 557-58 (1976). *But see* Kingsley v. Hawthorne Fabrics, Inc., 41 N.J. 521, 528, 197 A.2d 673, 677 (1964), wherein the court explained: "An administrative agency may not under the guise of interpretation extend a statute to include persons not intended, nor may it give the statute any greater effect that its language allows." *Id.*

[45] *See* MASS. ANN. LAWS, ch. 175, §§ 22E & 22H (Michie/Law Co-op. 1977).

[46] *See* HAWAII REV. STATS. § 294-9(d) (1976).

[47] *See* Brief and Appendix on Behalf of Amicus Curiae, National Association of Independent Insurers at 13-17, Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 404 A.2d 625 (1979) [hereinafter cited as Brief on Behalf of Amicus Curiae].

[48] N.J. STAT. ANN. § 39:6A-3 (West 1973) (emphasis added).

[49] Dvorkin v. Dover Tp., 29 N.J. 303, 313, 148 A.2d 793, 798 (1959). *See, e.g.*, Browder v. United States, 312 U.S. 335, 339 (1941); Puerto Rico v. Shell Co., 302 U.S. 253, 257 (1937).

Nationwide's final contention that the commissioner had misinterpreted the scope of the no-fault renewal provision, grounded in a belief that the No-Fault Act was designed to be read *in pari materia* with the Agency Termination Act, was based on the latter law's requirement of a nine-month renewal of policies issued by a terminated agent. Since, prior to the enactment of the No-Fault Act, the Agency Termination Act had already provided for the continuation of policies which lapsed as a result of a carrier's termination of its agents, Nationwide argued that the no-fault statute's mandate of renewals of indeterminate duration was not meant to apply in such a situation.[50] The law is well settled, however, that in the event of a "conflict" between a specific and general statute, the specific statute prevails.[51] The Agency Termination Act is concerned almost exclusively with agent rights and the protection of commissions. Renewals are mandated only upon the request of the agent, while the desires of the policyholder are to no effect.[52] The policyholder nine-month renewal privilege, therefore, is merely an ancillary benefit. The No-Fault Act, on the other hand, is specifically designed to establish policyholder rights. Furthermore, its scope is limited to automobile insurance policies. The objectives of the two statutes, while not incompatible, are certainly distinct. The specificity of application of the no-fault statute demands precise compliance with its terms rather than accommodation to the generally applicable provisions of the Agency Termination Act.

As Justice Pashman concluded, all of Nationwide's statutory construction arguments are unpersuasive.[53] Nationwide's contention that the no-fault renewal provision constituted a "taking" violative of the due process clause, in that the statute required the carrier to allocate its resources to a particular line of coverage,[54] also fails as an

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[50] 80 N.J. at 557-58, 404 A.2d at 629-30.

[51] *E.g.*, Kingsley v. Wes Outdoor Advertising Co., 55 N.J. 336, 339, 262 A.2d 193, 194 (1970); State v. Dilley, 48 N.J. 383, 386-87, 226 A.2d 1, 3 (1967); State v. Hotel Bar Foods, Inc., 18 N.J. 115, 128, 112 A.2d 726, 734 (1955).

[52] *See* N.J. STAT. ANN. § 17:22-6.14a (West Cum. Supp. 1980).

[53] A situation analogous to *Sheeran v. Nationwide* was addressed by the Maryland Court of Appeals in St. Paul Fire & Marine Ins. Co. v. Insurance Comm'r, 275 Md. 130, 339 A.2d 291 (1975). The *St. Paul* court was asked to determine whether a statute mandating renewals of medical malpractice policies applied to carriers withdrawing from all medical malpractice coverage due to underwriting losses. The court held the statute to be inapplicable, 275 Md. at 144, 339 A.2d at 299, but to place reliance on this decision in determining the outcome of *Sheeran v. Nationwide Mut. Ins. Co.* would be to beg the question, for the Maryland statute, by its terms, only forbade nonrenewals "for any arbitrary, capricious, or unfairly discriminatory reason . . . [or] except by the application of standards which are reasonably related to the insurer's economic and business purposes." *Id.* at 137-38, 339 A.2d at 295.

[54] 80 N.J. at 559, 404 A.2d at 631.

effective argument when examined in view of the insurance industry's traditional treatment as a "regulated industry."

The United States Supreme Court made its classic determination of the due process rights of regulated industries in *Munn v. Illinois*,[55] wherein the Court stated: "When . . . one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good. . . ."[56] The Court further noted that "[the owner of such property] may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."[57]

The business of insurance has long been considered to be an industry of widespread public interest.[58] In *Osborn v. Oslin*,[59] the Court held that a "special relation" exists between government and the insurance industry in that government has long engaged in widespread and thorough regulation of this industry.[60] The degree of this "special relation" is manifested today in the fact that virtually every phase of a modern insurance carrier's operation is subjected to detailed regulation[61] and these regulations have long withstood due process challenges.[62] Indeed, with respect to the state's regulatory authority over insurance carriers, the United States Supreme Court,

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[55] 94 U.S. 113 (1876).

[56] *Id.* at 126.

[57] *Id.*

[58] *E.g.*, O'Gorman & Young v. Hartford Ins. Co., 282 U.S. 251, 257 (1931); German Alliance Ins. Co. v. Kansas, 233 U.S. 389, 412-15 (1914). This public interest is rooted in the fact that the efficiency and solvency of insurance carriers are matters of grave concern to society at large:

> Perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance business. Insurance touches the home, the family, and the occupation or the business of almost every person in the United States.

United States v. South-Eastern Underwriter's Ass'n, 322 U.S. 533, 540 (1944).

[59] 310 U.S. 53 (1940).

[60] *Id.* at 65.

[61] *See* R. KEETON, INSURANCE LAW § 8.3 (1971).

[62] *See* Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co., 284 U.S. 151, 159-60 (1931) (upholding mandatory arbitration clauses); Aetna Ins. Co. v. Hyde, 275 U.S. 440, 448 (1928) (permitting rate reduction by insurance commissioner); Orient Ins. Co. v. Daggs, 172 U.S. 557, 566 (1869) (upholding imposition of mandatory contractual terms).

Similar regulations in other highly regulated industries have been held to adequately fulfill due process requirements. In Brooklyn E. Dist. Terminal v. United States, 302 F. Supp. 1095 (E.D.N.Y. 1969), the court upheld a requirement that a railroad maintain an unprofitable line against an assertion that this constituted a "taking." *Id.* at 1100. In United Fuel Gas Co. v. Railroad Comm'r, 278 U.S. 300 (1929), an order that a public utility continue service in certain undesirable locations or withdraw entirely from the state was upheld against contentions that the order violated due process requirements. *Id.* at 309.

in *California Automobile Ass'n v. Maloney*,[63] stated: "[T]he power of the state is broad enough to take over the whole business. . . . The state may therefore hold its hand on condition that local needs be serviced by the business."[64]

Against such a background, Nationwide's assertion that the New Jersey No-Fault Act violates its right to due process collapses. Nationwide has not been forced to underwrite a single additional risk by the terms of the no-fault statute's renewal provision; the Act merely mandates, as a condition for continued licensure, the renewal of obligations voluntarily assumed by Nationwide in the past.[65] Since Nationwide fully retains its right to avoid the renewal requirements by surrendering its New Jersey license or, in the event that Nationwide instead elects to continue business in the state, to earn a "reasonable profit" as provided for under New Jersey law,[66] the carrier has been deprived of no property by this statute. The mandatory renewal provision is, therefore, no more than the imposition of a legitimate control on the business decisions of a highly regulated industry.[67]

Finally, Nationwide's argument that the No-Fault Act provides for an unconstitutional delegation of legislative authority, by failing to provide adequate standards to guide the insurance commissioner in

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[63] 341 U.S. 105 (1951).

[64] *Id.* at 110. In this case, the Court dismissed a due process challenge against a California statute which mandated equitable apportionment among insurers of applicants unable to obtain coverage in the voluntary market. *Id.* at 110-11. The Court commented: "[The insurer's] business may of course be less prosperous as a result of [a] regulation. That diminution in value, however, has never amounted to the dignity of a taking in the constitutional sense." *Id.* at 111.

[65] Brief and Appendix in Opposition to Petition for Certification at 8, Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 404 A.2d 625 (1979).

As a practical matter, the likelihood that Nationwide will have to renew its automobile insurance policies in perpetuity is slight since, in view of Nationwide's termination of its agents and notification of its insureds of its intention to withdraw from the automobile insurance market in New Jersey, most policyholders will probably seek coverage elsewhere. *See* Brief for Plaintiff-Respondent, *supra* note 12, at 8-10.

[66] *See* N.J. STAT. ANN. § 17:29A-11 (West 1973). *But cf.* Brief on Behalf of Amicus Curiae, *supra* note 47, at 37 n.13 (asserting that the right to a reasonable profit is largely "illusory" in that the process by which carriers may obtain relief from inadequate rates is long and cumbersome and often unproductive of anything other than marginal increases).

[67] Compliance with the due process clause of the federal constitution requires only that a statute "not be unreasonable, arbitrary or capricious, and that the means selected . . . have a real and substantial relation to the object sought to be obtained." Nebbia v. New York, 291 U.S. 502, 525 (1934). New Jersey certainly has the right to provide for the availability of automobile insurance to its residents, and a statutory provision and administrative regulations providing for renewal of automobile policies absent justifiable cause for nonrenewal, or unless similar coverage is obtainable in the voluntary market, bear a reasonable relation to the attainment of that goal.

the exercise of the discretionary powers entrusted to him, was properly rejected by the court. The no-fault statute's command that the commissioner of insurance promulgate "such *reasonable* rules and regulations as may be required *to effectuate the purposes of this act*"[68] provides a sufficient guideline for the commissioner. Although it is fundamental that a valid delegation of legislative authority must provide adequate standards to the administrator for the exercise of that authority,[69] exhaustive guidelines hemming in an administrator's discretion are not constitutionally mandated.[70] As explained by one New Jersey court: "A statute need establish no more than a sufficient basic standard, *i.e.*, a definite policy and rule of action which will serve as a guide for the administrative agency . . . ."[71] Furthermore, the standards defining the scope of the delegated authority need not even be stated in express terms in a statute if these standards can be reasonably inferred from the statutory scheme as a whole, that is, from the legislative history and objectives of the Act as well as from the statutory context.[72] In assessing the adequacy of legislative guidelines, the courts' approach is one of "flexibility and liberality."[73] A willingness by the courts to uphold broad grants of legisla-

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[68] N.J. STAT. ANN. § 39:6A-19 (West 1973) (emphasis added).

[69] *See, e.g.*, Ward v. Scott, 11 N.J. 117, 123, 93 A.2d 385, 388 (1952).

[70] *See* Camarata v. Essex County Park Comm'n, 26 N.J. 404, 140 A.2d 397 (1958), in which the court clearly rejected such a proposition:

> It is settled beyond controversy that the Legislature may enact statutes setting forth in broad design its intended aims, leaving the detailed implementation of the policy thus expressed to an administrative agency. . . . [T]hrough the entrustment of such powers, our lawmakers achieve expert and flexible control in areas where the diversity of circumstances and situations to be encountered forbids the enactment of legislation anticipating every possible problem which may arise and providing for its solution.

Id. at 410, 140 A.2d at 400.

[71] Department of Health v. Owens-Corning Fiberglass Corp., 100 N.J. Super. 366, 383, 242 A.2d 21, 29-30 (App. Div. 1968), *aff'd*, 53 N.J. 248, 250 A.2d 11 (1969). The fundamental rationale to be utilized by courts in assessing the adequacy of the standards set forth in delegations of authority was provided in Amalgamated Meat Cutters v. Connally, 337 F. Supp. 737 (D.C. Cir. 1971), in which the court posited that a principle of accountability underlies the standards required of legislative grants of authority. The court articulated the view that the grant of authority need only draw such a demarcation that the legislature, courts, and public are capable of ascertaining whether an administrator's actions were within the scope of his authority. *Id.* at 746.

[72] *See* Avant v. Clifford, 67 N.J. 496, 552-53, 341 A.2d 629, 660-61 (1975); Schierstead v. City of Brigantine, 20 N.J. 164, 169, 119 A.2d 5, 8 (1955); Ward v. Scott, 11 N.J. 117, 123, 93 A.2d 385, 388 (1952).

[73] *See* Esso Standard Oil Co. v. Holderman, 75 N.J. Super. 455, 474, 183 A.2d 454, 464 (App. Div. 1962), *aff'd*, 39 N.J. 355, 188 A.2d 599 (1963).

tive authority against constitutional challenges has been evident on many occasions[74] and is attributable to the courts' recognition of "the exigencies of modern government."[75]

In view of the foregoing, the delegation of legislative authority encompassed in the New Jersey No-Fault Act is constitutionally sound. The discretion of the commissioner of insurance is restricted to the establishment of regulations which are both reasonable and in furtherance of the purposes of the Act. The historical background and legislative objectives of the no-fault statute clearly indicate that regulations which either prevent arbitrary and discriminatory renewal practices or ensure an adequate insurance market for New Jersey motorists were within the contemplation of the legislature. The New Jersey legislature was certainly free to leave the detailed implementation of these objectives to an administrative agency.

The Supreme Court of New Jersey correctly concluded that the New Jersey Automobile Reparation Reform Act established commissioner approval as an absolute prerequisite for valid nonrenewals by licensed insurers. A carrier effecting a complete withdrawal from the automobile insurance market in the state must, therefore, elect between compliance with the regulations promulgated by the commissioner of insurance, pursuant to the powers and duties validly delegated to him, or the relinquishment of its license to engage in any insurance business in New Jersey. Both the absolute language of the No-Fault Act itself and the events immediately preceding that Act's passage demand this holding, and the due process rights of highly regulated insurance carriers are in no way breached by a statute which, thus construed, confronts them with a choice between two such alternatives.

Moira L. Brophy

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[74] *See, e.g.*, Yakus v. United States, 321 U.S. 414, 420 (1944) (commissioner instructed to promulgate regulations restricting prices to those which " 'in his judgment will be generally fair and equitable and will effectuate the purposes of this Act' "); Elizabeth Fed. S. & L. Ass'n v. Howell, 30 N.J. 190, 194, 152 A.2d 359, 361 (1959) (maintenance of an association as a bank branch office authorized if the branch was in the " 'public interest' "); *In re* Berardi, 23 N.J. 485, 490, 129 A.2d 705, 707-08 (1957) (revocation of private detective licenses allowed " 'for cause' ").

[75] Association of N.J. State College Faculties, Inc. v. Board of Higher Educ., 112 N.J. Super. 237, 258, 270 A.2d 744, 756 (Law Div. 1970).