1. The same oath must also be taken by every professor, instructor, teacher or other person employed in any teaching capacity in any State college. N.J.S.A. 18:13-9.2.
2. *Art.* II, §1, *par.* 8 of the United States Constitution provides as follows:

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Art. IV, §8, *par.* 1 of the New Jersey Constitution provides as follows:

Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly) according to the best of my ability." Members-elect of the Senate or General Assembly are empowered to administer said oath or affirmation to each other.

Art. IV, §8, *para.* 2 of the New Jersey Constitution provides as follows:

Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of . . . . . , to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law."

Art. VII, §1, *para.* 1 of the New Jersey Constitution provides as follows:

Every State officer, before entering upon the duties of his office, shall take and subscribe an oath or affirmation to support the Constitution of this State and of the United States and to perform the duties of his office faithfully, impartially and justly to the best of his ability.

February 19, 1969

HONORABLE CHARLES R. HOWELL
Commissioner of Banking and Insurance
State House Annex
Trenton, New Jersey 08625

FORMAL OPINION 1969—NO. 1

Dear Commissioner Howell:

You have requested our opinion as to whether an insurance company, as a subrogee, is a "party in interest" within the meaning of *N.J.S.A.* 39:6-100, in order that it may file for payment from the Motor Vehicle Liability Security Fund. For the reasons to follow, it is our conclusion that a subrogee in the position of the claimants hereinafter referred to should be permitted to file with the Fund.

You have advised us that the Chesapeake Insurance Company, a Maryland corporation authorized to do business in New Jersey, (hereinafter referred to as "Chesapeake") was declared insolvent by a Maryland court. Due to its insolvency, various claims arising out of automobile accidents allegedly caused by its insureds remain unpaid. In each instance, the injured party was compensated pursuant to his

own automobile collision insurance policy. The collision insurers, as subrogees of non-negligent parties, now seek recovery out of the Security Fund, contending that they are "parties in interest" within the meaning of *N.J.S.A.* 39:6-100.

The Motor Vehicle Liability Security Fund Act (hereinafter referred to as the "Security Fund Act") was enacted in 1952, together with the Unsatisfied Claim and Judgment Fund Law, *N.J.S.A.* 39:6-60 to 91, and the Motor Vehicle Security Responsibility Law, *N.J.S.A.* 39:6-23 to 60. These Laws establish a comprehensive plan to provide, *inter alia,* financial protection for innocent victims of automobile accidents. See *Selected Risks Insurance Co. v. Zullo,* 48 *N.J.* 362, 371 (1966); *Matios v. Nationwide Mutual Auto. Insurance Co. v. Wall,* 87 *N.J. Super.* 543, 559 (*Law Div.* 1965). The Unsatisfied Claim and Judgment Fund Law, *supra,* provides a fund for the payment of claims against uninsured, financially irresponsible tortfeasors, arising as a result of injuries sustained in automobile accidents. The Motor Vehicle Security Responsiblity Law, *supra,* is designed to induce motorists to carry liability insurance, to facilitate the compensation of persons injured by uninsured and financially irresponsible motorists, and to remove such financially irresponsible motorists from the highways by providing for license suspension under specified circumstances.[1]

The Security Fund Act completes this legislative scheme by establishing an insolvency fund (hereinafter referred to as the "Security Fund") to pay automobile accident claims which remain unpaid because of the insolvency of the tortfeasor's motor vehicle liability insurance carrier. *N.J.S.A.* 39:6-95. The Fund stands in the shoes of the insolvent insurance company and, through the Commissioner of Banking and Insurance, is vested with whatever rights and remedies the insolvent insurer would have. *N.J.S.A.* 39:6-101. A claim may be settled or compromised by the Commissioner. *N.J.S.A.* 39:6-100. If a claim has been reduced to final judgment, the appropriate amount is paid out of the Fund. *N.J.S.A.* 39:6-100. If an action is instituted after the date of insolvency, the Commissioner must be joined as a party. *N.J.S.A.* 39:6-100.

N.J.S.A. 39:6-100 expressly defines those persons who are entitled to file a claim against the Security Fund. That section provides, in its relevant part, that: "*any party in interest* may file with the commissioner an application for payment from the fund. . . ." [Emphasis added] Research discloses no judicial or statutory definition of "party in interest" as contained in *N.J.S.A.* 39:6-100, nor has there been any definitive determination bearing upon the problem presented. Therefore, we must look to the pertinent legislative history of the act, including whatever related materials are available as an aid in determining what the Legislature intended when it used the cited phrase. See *N.J. Pharmaceutical Ass'n v. Furman,* 33 *N.J.* 121, 130 (1960); see also, *Dumont Lowden, Inc. v. Hansen,* 38 *N.J.* 49, 56 (1962). The language in question must be construed in light of the purpose of the statute and the problem which it was meant to correct. See *Seatrain Lines, Inc. v. Medina,* 39 *N.J.* 222, 226 (1963).

A statement of the Legislature's purpose in creating the Security Fund is expressly incorporated in *N.J.S.A.* 39:6-94. That section provides, in its relevant part, as follows:

> "There is hereby created a fund to be known as the 'Motor Vehicle Liability Security Fund' *for the purpose of securing the benefits under policies of motor vehicle liability insurance* on account of claims from accidents. . . ." *N.J.S.A.* 39:6-94 (Emphasis added).

This statement of legislative purpose, being non-restrictive as to the kinds of benefits to be secured, is indicative of the Legislature's intent to secure all benefits derived from a motor vehicle liability insurance policy. Naturally, the insured tortfeasor derives the primary benefit from such a policy. He purchases liability insurance for the very purpose of self-protection and insulation from the claims of injured persons. Therefore, when the Legislature utilized the broad phrase "securing the benefits", it must have intended to protect the insured tortfeasor if his insurance company became insolvent.

The existence of such a legislative intent is supported by two authoritative articles, cited with approval by the New Jersey Supreme Court.[2] In Gaffney, *The Motorist, His Victims and the State,* 25 State Gov't 266 (1952), Mr. Gaffney, then Commissioner of Banking and Insurance of the State of New Jersey stated, with reference to the Security Fund Act, that "*this law protects policyholders if their insurance company becomes insolvent*". Gaffney, *supra,* p. 267. [Emphasis added] Mr. Gaffney went on to explain that the then recent failure of an insurance company doing business in New Jersey had:

> ". . . .dire consequences to its New Jersey policyholders and their claimants. The Legislature apparently recognized that it would be inconsistent to require motorists to procure insurance policies unless *they* [the insureds] *were protected* against the consequences of the insurers' insolvency. Therefore, the Motor Vehicle Liability Security Fund Act was enacted." Gaffney, *supra,* pp. 269-283. [Emphasis added].

In a more recent article, Paul J. Molnar, then Special Assistant Deputy to the New Jersey Department of Banking and Insurance, also concluded that the Legislature had established the Security Fund to protect insured tortfeasors. See Molnar, *New Jersey's Answer to Financially Irresponsible Motorists,* Nov. Ins. L.J. 729 (1955).

Thus, both writers conclude unequivocally that the Legislature, in establishing the Security Fund, was primarily concerned with protecting the insured tortfeasor against the effects of his insurer's insolvency.[3]

We are, therefore, of the opinion that in creating the Motor Vehicle Liability Security Fund the Legislature intended, *inter alia,* to secure to the insured tortfeasor the benefits normally derived from his motor vehicle liability insurance policy. That being so, the technical legal status of the person making a claim against the Fund is irrelevant, the pertinent question being whether the insured tortfeasor is afforded protection by the Fund, as he would have been protected by his insurer had the company not become insolvent. If a subrogee is not permitted to file with the Fund, then the Fund would fail to achieve the very purpose for which it was created. The insured tortfeasor will lose the benefits derived by his purchase of a policy of insurance since the subrogee, not having access to the Fund, will simply institute suit directly against him. The act should not be construed so as to reach this absurd result. See *Robson v. Rodriguez,* 26 *N.J.* 517, 528 (1958); *State v. Gill,* 47 *N.J.* 441, 444 (1966).

Moreover, the use of the phrase "party in interest" is itself indicative of a legislative recognition that, under certain circumstances, it is necessary to permit a subrogee to file with the Fund. Since the subrogees in the matter *sub judice* have a substantial pecuniary interest to protect, they should fall within this broad phrase. Cf. *Black's Law Dictionary,* 4th Ed. (1947) at p. 1276; *In re Syde,* 16 *N.J. Misc.*

23 (*Essex Cty. Orphan's Court* 1937) and cases cited therein. This becomes more apparent when the "party in interest" requirement is contrasted with its counterpart under the Unsatisfied Claim and Judgment Fund Law. That Law strictly limits the right to file a claim to "any qualified person. . . .who suffers damages resulting from bodily injury or death or damage to property. . . ." *N.J.S.A.* 39:6-65. The distinction between these two provisions is rendered more significant because the Unsatisfied Claim and Judgment Fund expressly prohibits subrogation by an insurance carrier which has paid its own insured. *N.J.S.A.* 39:6-71. There is a conspicuous and, therefore, meaningful absence of a similar prohibition in the Security Fund Act. Since both Acts were passed at the same time and are in *pari materia,* it must be concluded that the Legislature, being familiar with its own enactments, intended to permit subrogation under the Security Fund Act.

Based upon all of the foregoing, we conclude that the insurance companies in the matter *sub judice,* as subrogees, are legally entitled to file for payment from the Motor Vehicle Liability Security Fund.

Very truly yours,
ARTHUR J. SILLS
Attorney General of New Jersey
By: E. ROBERT LEVY
Deputy Attorney General

1. See *Selected Risks Insurance Company v. Zullo, supra,* p. 368; Budget Message of Richard J. Hughes, Governor of New Jersey, for the fiscal year ending June 30, 1968, page 61; Gaffney, *The Motorist, His Victims and the State,* 25 State Gov't 266 (1952).
2. Both articles were cited by the Court as setting forth the genesis, operation and purpose of the Act. See *Indemnity Ins. Co., etc. v. Metropolitan Casualty Ins. Co., N.Y.,* 33 N.J. 507, 513 (1960).
3. The authoritative quality of their conclusion is further supported by the fact that the bill was recommended by the Department of Banking and Insurance. See statement accompanying L. 1952, c. 175, Assembly, No. 346, 1952.

February 17, 1969

HONORABLE RICHARD J. HUGHES
Governor
State House
Trenton, New Jersey 08625

FORMAL OPINION 1969—NO. 2

Dear Governor:

You have requested our opinion as to whether the current 193rd New Jersey Legislature may rescind a concurrent resolution proposing a constitutional amendment which had been agreed to by more than three-fifths of the members of both Houses of the preceding 192nd Legislature. The resolution has been ministerially