

NEWFOUNDLAND AND LABRADOR  
**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**  
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

*Hearing Transcript*

**2017 Automobile Insurance Review**

**June 5, 2018**

**PRESENT:**

**The Board:**

Darlene Whalen, Chair and CEO  
Dwanda Newman, Vice-Chair  
James Oxford, Commissioner

**Board Counsel/ Staff:**

Jacqueline Glynn, Board Counsel  
Ryan Oake, Board Staff

**Parties (Alphabetical Order)**

**Atlantic Provinces Trial Lawyers Association**  
Libby Kinghorne  
Ernest Gittens

**Presenters:**

Sherry Hillier, President, CUPE  
Paula Elliott, Oliver Wyman

**Campaign to Protect Accident Victims**

Colin Feltham  
Jerome Kennedy

**Consumer Advocate**

Dennis Brown, Q.C.  
Andrew Wadden

**Insurance Bureau of Canada ( IBC)**

Amanda Dean  
Kevin Stamp  
Terry Rowe

**Spinal Cord Injury NL**

Thomas Fraize  
Lara Fraize-Burry

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1 (9:05 A.M.)  
 2 CHAIR:  
 3 Q. Good morning, everybody. I'd like to extend  
 4 a warm welcome to all present in this public  
 5 consultation phase for the Automobile  
 6 Insurance Review being undertaken by the  
 7 Board at the request of government. I'm  
 8 Darlene Whalen. I'm Chair and CEO of the  
 9 Board, and my colleagues joining me up on  
 10 the bench today are Commissioner Dwanda  
 11 Newman to my left who is Vice-Chair of the  
 12 Board, and Commissioner Jim Oxford. I'd  
 13 also like to recognize key board staff. I  
 14 can't see the back where – I know we have  
 15 some other staff present, but the key board  
 16 staff present today who will be assisting us  
 17 are Jacqui Glynn, our Board Counsel, who I  
 18 think most of you have met, and Ryan Oake,  
 19 our Regulatory Analyst, and Cheryl Blundon,  
 20 our Board Secretary, is at the back. We  
 21 also have Glenda Gibbons from Discoveries  
 22 who will be doing the transcription for us,  
 23 and Sara Kean, who is our Board Records  
 24 Manager who is assisting with our document  
 25 retrieval. Before we get going, I'd just

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1 like to ask the parties present at the  
 2 tables in front of us who are registered  
 3 interveners to introduce themselves just for  
 4 the purposes of the record and for  
 5 transcription. We'll come back for opening  
 6 statements in a few minutes. I'd like to  
 7 begin with the Consumer Advocate, please.  
 8 BROWNE, Q.C.:  
 9 Q. Pardon, Commissioner?  
 10 CHAIR:  
 11 Q. Can you hear me?  
 12 BROWNE, Q.C.:  
 13 Q. Yes.  
 14 CHAIR:  
 15 Q. Okay, sorry. Could you just – I'm asking  
 16 the parties to introduce themselves for the  
 17 purpose of the record and transcription.  
 18 BROWNE, Q.C.:  
 19 Q. Okay, Dennis Browne, Consumer Advocate, and  
 20 with me is Andrew Wadden, counsel.  
 21 MR. WADDEN:  
 22 Q. Andrew Waddon, counsel for the Consumer  
 23 Advocate.  
 24 MR. FELTHAM:  
 25 Q. Good morning, Madam Chair, Commissioners.

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1 Colin Feltham representing Campaign to  
 2 Protect Accident Victims.  
 3 KENNEDY, Q.C.:  
 4 Q. Good morning, Commissioners. Jerome  
 5 Kennedy, also on behalf of Campaign to  
 6 Protect Accident Victims.  
 7 CHAIR:  
 8 Q. Thank you.  
 9 ROWE, Q.C.:  
 10 Q. Good morning, Terry Rowe for IBC.  
 11 STAMP, Q.C.:  
 12 Q. And I'm Kevin Stamp, also for IBC.  
 13 MS. DEAN:  
 14 Q. Amanda Dean with IBC.  
 15 CHAIR:  
 16 Q. Welcome. At the back?  
 17 FRAIZE, Q.C.:  
 18 Q. Thomas Fraize on behalf of Spinal Cord  
 19 Injury Newfoundland and Labrador, Lara  
 20 Fraize-Burry and Michael Burry.  
 21 CHAIR:  
 22 Q. Welcome.  
 23 MR. GITTENS:  
 24 Q. Ernest Gittens, on behalf of APTLA, the  
 25 Atlantic Provinces Trial Lawyers

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1 Association.  
 2 CHAIR:  
 3 Q. Welcome, Mr. Gittens. Thank you very much.  
 4 I just have a few general remarks about the  
 5 Board's role.  
 6 MS. KEAN:  
 7 Q. Ms. Whalen, can we take a short break or a  
 8 short intermission here.  
 9 CHAIR:  
 10 Q. Yes.  
 11 (RECESS)  
 12 MS. GIBBONS:  
 13 Q. We're back on the record.  
 14 CHAIR:  
 15 Q. Thank you, Glenda. I'd just like to make a  
 16 few general remarks before we get started  
 17 about the Board's role and its ongoing work  
 18 in this Automobile Insurance Review. This  
 19 review is being undertaken by the Board and  
 20 it was directed by government in June, 2017,  
 21 as part of a wider review of automobile  
 22 insurance being undertaken by Service NL.  
 23 The terms of reference issued to the Board  
 24 require the Board to review and report on a  
 25 number of specific issues, including the

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1 reasons behind increasing claims cost for  
 2 private passenger vehicles and taxi  
 3 operators, and options to reduce these  
 4 costs.  
 5 The Board has been specifically asked  
 6 to examine the impact on rates and  
 7 implications for claimants of introducing a  
 8 monetary cap on claims for non-economic loss  
 9 for minor mild injuries or continue with the  
 10 current deductible of \$2,500.00, or  
 11 increasing the deductible.  
 12 To date the Board has, through its  
 13 consultants, completed a number of reports  
 14 as part of its work. These include five  
 15 reports by its actuarial consultant, Oliver  
 16 Wyman Limited, and a separate report  
 17 outlining the results of an audit of taxi  
 18 claims completed by Cameron and Associates.  
 19 Today Paula Elliott, our principal  
 20 actuary from Oliver Wyman, will present the  
 21 work and findings for each of their five  
 22 reports, and Mr. James Cameron of Cameron  
 23 and Associates will present their findings  
 24 for the taxi claims audit next Monday.  
 25 Both will be available following the

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1 report presentations to respond to questions  
 2 from the consumer advocate, the interveners,  
 3 and the Board. There are also a number of  
 4 other presentations scheduled at various  
 5 times over the course of the next two weeks.  
 6 The purpose of this hearing process is  
 7 to ensure that any interested persons or  
 8 parties have the opportunity to understand  
 9 the work completed to date and the reports  
 10 that have been made available, and to ask  
 11 questions if necessary, and also to allow  
 12 the opportunity for further input and  
 13 perspectives if desired.  
 14 I want to emphasize that the Board is  
 15 not a public policy instrument of  
 16 government, and as such the Board will not  
 17 be making any decisions on any of the issues  
 18 under review or making any recommendations  
 19 to government on the issue of the cap or  
 20 deductible. The Board's work is primarily  
 21 research, analysis, and information  
 22 gathering. The Board will listen and  
 23 reflect the information gathered through the  
 24 presentations, questions, answers, written  
 25 comments, and submissions in its final

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1 report to government. It will then be up to  
 2 government as to how they wish to use the  
 3 information contained in our final report  
 4 and whatever changes it contemplates for the  
 5 automobile insurance product in this  
 6 province.  
 7 This may or may not include the  
 8 introduction of a monetary cap for  
 9 compensation for pain and suffering,  
 10 retention of the current deductible scheme  
 11 or some other framework. I expect our  
 12 report will be but one consideration in the  
 13 any final public policy decisions to be made  
 14 by government.  
 15 That's the end of my general remarks.  
 16 There are also a number of other  
 17 housekeeping items that I'd like to quickly  
 18 review. Since our collective purpose here  
 19 is information gathering, this proceeding is  
 20 not intended to be as formal as our normal  
 21 hearing processes. There will be no  
 22 swearing of witnesses or strict adherence to  
 23 rules of evidence or examination. I only  
 24 ask that we be respectful and courteous and  
 25 refrain from interruptions while the

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1 presenter or questioner is speaking. The  
 2 proceedings are being recorded by  
 3 Discoveries Unlimited under the supervision  
 4 of the Board Secretary, and will be  
 5 transcribed daily throughout the afternoon  
 6 and evening. Transcripts will be emailed to  
 7 all the parties immediately upon completion,  
 8 with a paper copy available by the next  
 9 morning. All documentation presented during  
 10 the hearing, including all daily transcripts  
 11 will be posted on the Board's website as  
 12 received. Any parties who have concerns or  
 13 issues with the creature comforts in this  
 14 room; layout, supplies, sound, etc., or any  
 15 other issue should speak to the Board  
 16 Secretary, Ms. Blundon, and we'll make every  
 17 effort to assist you. Our normal daily  
 18 sitting times are 9 to 1:30 with a half hour  
 19 break from 11 to 11:30, and finally while we  
 20 tried our best to develop somewhat of a  
 21 schedule for the next two weeks, we are  
 22 flexible, and we'll try to allow as much  
 23 time as necessary for presentations by the  
 24 Board's consultants and questions, as well  
 25 as other presentations. However, I will

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1 exercise my prerogative as Chair to  
 2 interrupt if questioning becomes repetitive  
 3 or if I deem a question has been asked and  
 4 answered.  
 5 That's all I'd like to say at this  
 6 point. I know you're patiently waiting and  
 7 we'll going to go to the parties now. I  
 8 understand that there are some opening  
 9 statements that wish to be made, and we'll  
 10 start with the Campaign.  
 11 (9:15)  
 12 KENNEDY, Q.C.:  
 13 Q. Yes, thank you, Board Chair. Good morning,  
 14 Commissioners. My name is Jerome Kennedy  
 15 and with me is Colin Feltham. We appear as  
 16 counsel for The Campaign to Protect Accident  
 17 Victims. In our professional capacity we  
 18 represent victims of automobile accidents,  
 19 and we have firsthand knowledge of the  
 20 impact that accidents have on these  
 21 individuals and their families.  
 22 These are persons who are injured by  
 23 drivers who are negligent in the operation  
 24 of their vehicles. It's important to  
 25 remember, members of the Board, and all of

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1 us here, that while we will hear a lot of  
 2 statistics during this review, we are  
 3 dealing with real people whose lives are  
 4 detrimentally affected and will be  
 5 detrimentally affected due to the negligence  
 6 of others.  
 7 Members of the Board, while the terms  
 8 of reference outline various issues that the  
 9 Board must look at in its review, a key  
 10 issue will be whether or not a minor injury  
 11 cap should be imposed. A minor injury cap,  
 12 if imposed, will limit the amount of general  
 13 damages that an accident victim can receive  
 14 for a so-called minor injury, but one of the  
 15 things we will attempt to show, and expect  
 16 that we will be able to show in this review,  
 17 is that minor does not mean minor as we  
 18 understand it in the normal usage of that  
 19 term. For example, just to reflect on how  
 20 the minor injury cap could change the way  
 21 damages are awarded, an injury today which  
 22 currently results in an award of \$25,000.00  
 23 to \$30,000.00, for example, for pain and  
 24 suffering could receive a maximum of  
 25 \$5,000.00 for pain and suffering if a cap is

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1 brought in.  
 2 For years insurance companies have  
 3 said, and Commissioner, you sat here in  
 4 2005, Commissioner Newman was counsel, I  
 5 think, at that time, and the insurance  
 6 companies said in 2005 and they say again  
 7 that the cap will reduce the cost that  
 8 people pay for insurance in this  
 9 province. Yet, in what I can only describe  
 10 as a startling reversal, Natalie Higgins,  
 11 Vice President of Intact, one of the biggest  
 12 insurance companies in the province,  
 13 admitted on CBC Radio on April 13, 2018,  
 14 that the cap will not reduce insurance  
 15 premiums, but she stated that the cap will  
 16 stabilize premiums and possibly result in  
 17 reduction of premiums at some future point.  
 18 That is the basis upon which the insurance  
 19 companies want the people of our province to  
 20 give up their right to sue, or more  
 21 appropriately, for the government to take  
 22 away a citizen's right to sue in tort for  
 23 full compensation as we have in our present  
 24 system. Essentially, the insurance company  
 25 is saying trust us, we'll reduce premiums in

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1 the future. These are the same insurance  
 2 companies who, although the Superintendent  
 3 of Insurance says that they made 100 million  
 4 dollars in 2016, take the position before  
 5 the Board that they have lost money, that  
 6 they are losing money. We will show during  
 7 this hearing, during this review that the  
 8 statistics put forward by the insurance  
 9 company to justify the imposition of a cap  
 10 are flawed and incorrect, but this is not  
 11 the only area in which we say you cannot  
 12 accept the misinformation put forward by the  
 13 insurance industry.  
 14 For example, it is totally inaccurate  
 15 for Don Forger on, the President and CEO of  
 16 the Insurance Bureau of Canada to say, as he  
 17 did on Open Line, VOXM Open Line, on March  
 18 1st, 2018, that "Pain and suffering awards  
 19 for minor injuries are what giving rise to  
 20 increasing claims has cost". We will  
 21 present evidence that while the cost of  
 22 automobile insurance has increased in this  
 23 province, it is not simply a result of an  
 24 increase in bodily injury claims. One of  
 25 the reasons that the average premium, and we

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1 will attempt to show this, has increased is  
 2 because customers are buying more than third  
 3 party liability insurance. They're  
 4 purchasing other types of insurance, such as  
 5 comprehensive and collision. Also the cost  
 6 of property damage has increased  
 7 significantly in our province, thereby  
 8 giving rise to an increase in the average  
 9 cost of insurance premiums.

10 We will show in this review through the  
 11 evidence of an expert actuary, who has  
 12 analyzed insurance company data for us, that  
 13 the average premium for private passenger  
 14 liability coverage over more than the last  
 15 decade has not increased in real terms. The  
 16 increases have been less than the consumer  
 17 price index, which is to say less than the  
 18 rate of inflation. Try naming another  
 19 product or service that has not gone up with  
 20 the rate of inflation over the last decade.

21 So what will automobile insurance  
 22 customers get in return for the immediate  
 23 loss of their legal rights? I previously  
 24 referred to the comments of the Vice  
 25 President of Intact, that the imposition of

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1 the cap will not save people money. Similar  
 2 to Intact, Aviva, another big insurance  
 3 company, has also stated in its submission  
 4 to the Board on May 31st, 2018, that they  
 5 seek a solution to "stabilize insurance  
 6 premiums". So what do insurance customers  
 7 get in return for giving up their rights to  
 8 seek full compensation if they're injured;  
 9 rate stability, at its highest, not savings.

10 Therefore, one conclusion is that the public  
 11 will have the right to sue minimized, if not  
 12 taken away, to ensure that insurance  
 13 companies continue to make enormous profit.

14 In 2005, IBC argued strenuously before  
 15 this Board for the imposition of a cap, and  
 16 here we are in 2018 talking about caps. This  
 17 is like déjà vu all over again, as Yogi  
 18 Berra said. In 2005, the insurance industry  
 19 said give us a cap and the rates will go  
 20 down. This time in 2018, the insurance  
 21 industry is saying give us a cap, but the  
 22 rates won't go down at all. There was no  
 23 case in 2005 to strip people of their  
 24 rights. There is even less case for it in  
 25 2018.

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1 Members of the Board, in conclusion, we  
 2 realize that this is a review and that under  
 3 the terms of reference you are not given the  
 4 direction to make decisions on these issues.  
 5 However, you will be writing a report and  
 6 making findings which will obviously be  
 7 considered seriously by government. What we  
 8 will attempt to show during this review is  
 9 that there is no reason to take away from  
 10 the people of this province legal rights  
 11 which they have always possessed.

12 Thank you for your attention and we  
 13 look forward to working with you throughout  
 14 this review. Thank you.

15 CHAIR:  
 16 Q. Thank you, Mr. Kennedy. Atlantic Provinces  
 17 Trial Lawyers Association.

18 MR. GITTENS:  
 19 Q. Thank you, Commissioners, Madam  
 20 Commissioner. Ernest Gittens here. As the  
 21 representative of APTLA, which is the  
 22 Atlantic Provinces Trial Lawyers  
 23 Association, I would first say that we were  
 24 very reluctant to come forward in this  
 25 setting because of the optics of lawyers

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1 making representations where their interests  
 2 are also parallel with those of the victims  
 3 that are being dealt with here. We would  
 4 have rather not have that optics exist, and  
 5 would have rather that there be some  
 6 organization other than ourselves that could  
 7 articulate their concerns.

8 However, unfortunately victims of  
 9 accidents, motor vehicle accidents, are not  
 10 a homogeneous group and is not a group that  
 11 is organized in any fashion. Motor vehicle  
 12 accidents occur randomly as the word  
 13 "accident" implies, and the people involved  
 14 in the injuries could be pedestrians,  
 15 passengers, drivers. The only common  
 16 element among them is the fact that these  
 17 things tend to happen on our highways and  
 18 our roads throughout the province. So  
 19 there's no mechanism and no umbrella  
 20 organization that exists to speak on their  
 21 behalf. So as lawyers who are in the  
 22 industry dealing with personal injury on a  
 23 day to day basis, we do have some insight  
 24 and some information about what happens to  
 25 them on a day to day basis as a result of

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1 the injuries, and we can, therefore, as a  
 2 proxy for them, articulate some of the  
 3 concerns that we have and that they have in  
 4 relation to what is being proposed by the  
 5 insurance industry, and that is why we have  
 6 stepped forward to present and to question  
 7 on their behalf. That is the why we are  
 8 here, what is it we intend to do, and how do  
 9 we intend to do it.

10 I'd like you, because you've indicated  
 11 very clearly and your mandate is such that  
 12 you will be making findings in the sense of  
 13 a report to the government, as you said, you  
 14 will not be making recommendations, but we  
 15 would like to ensure three things  
 16 essentially that would show up in your  
 17 report, and we can identify them as follows.  
 18 The first thing we want to ensure that shows  
 19 up very prominently in your report is that  
 20 at a minimum the insurance industry in this  
 21 province from their own figures, not from  
 22 any analysis outside of their own figures,  
 23 have been making in excess of 100 million  
 24 dollars per year in profits. Let me repeat  
 25 that because we'd like that to show up in

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1 your review, and we'd like it to have a  
 2 prominent place, the actual figures will  
 3 come out during the course of the  
 4 presentations.

5 So number one, the insurance industry  
 6 throughout the province of Newfoundland and  
 7 Labrador makes in excess of 100 million  
 8 dollars per year. The second point we'd  
 9 like to make as we go through is that this  
 10 entire inquiry, this entire review, is  
 11 focused primarily because the insurance  
 12 industry claims that third party payouts for  
 13 injury is what is causing them to have  
 14 losses, and they must be referring to losses  
 15 in that area of their policy because we know  
 16 that as an industry they're making a profit.  
 17 So they are claiming that this payouts to  
 18 third party injured individuals is what's  
 19 their problem. In the course of these  
 20 hearings we will show that the claims losses  
 21 they are stating are not accurate and we  
 22 will show that they are able to manipulate  
 23 how they report their profits because of  
 24 their operating costs and their reserves.  
 25 (9:30 a.m.)

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1 MR. GITTENS:  
 2 Q. I would like you, please, to focus on the  
 3 concept of their reserves because that is a  
 4 moving target. I say it's a moving target  
 5 because the insurance industry, the  
 6 individual companies, put aside a certain  
 7 amount of reserves in each year so that they  
 8 can cover the costs of the third party  
 9 claims that come before them. However, that  
 10 is considered part of the loss in that –  
 11 part of the claims payout in that particular  
 12 year. So, if I want to hide \$20 million  
 13 worth of profit and I put that \$20 million  
 14 into the loss payout in that year, it's not  
 15 actually paid out, it's reserved, and if a  
 16 couple years later I make the payout on  
 17 those claims and it's \$20 million less, then  
 18 I have \$20 million left over which I will  
 19 claim as income in later years.

20 Why do we know this process? Because  
 21 this process has been done before. We will  
 22 show that the last time, the last go around  
 23 of these hearings when the insurance  
 24 industry claimed that they would have to  
 25 leave the province because they were making

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1 such grand losses that for the years  
 2 following that claim -- and we will bring  
 3 you their figures -- they made substantial  
 4 profits in the range of between 20 and 30  
 5 percent on their ROEs, their equity usage.

6 So, we will show as a consequence of  
 7 their own figures that we cannot depend on  
 8 their claims as they report their losses or  
 9 their reports of their claims payout to be  
 10 an accurate reflection of what has taken  
 11 place in any given year.

12 We will also show that in addition to  
 13 what the individual companies put aside as  
 14 their reserves when that is reported to the  
 15 IBC, the IBC itself puts aside reserves and  
 16 it's these figures that are reported to GISA  
 17 which is merely reflecting the figures given  
 18 to them by the IBC.

19 So, the second issue I would ask you to  
 20 pay attention to is the claims losses that  
 21 are being claimed and the reserves that are  
 22 being put aside for those losses.

23 The third item that we will show is  
 24 that unless this review board has access to  
 25 and is presented with the full cycle of

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1 insurance payments, premiums and revenues,  
 2 the full cycle, because in certain years the  
 3 insurance industry makes extreme profits, 20  
 4 to 30-32 percent. Now, in those years, they  
 5 don't say "oh my goodness, we've made too  
 6 much money. We should give it back". Then  
 7 they come to some years and there are lean  
 8 years in the insurance industry and that's  
 9 when they come before you and say "my God,  
 10 the sky is falling" and therefore – but, the  
 11 years that they have made between 20 and 30  
 12 percent in profits, they don't say "let's  
 13 use that to carry us through the lean  
 14 years".

15 We will show you that subsequent to the  
 16 last go around in 2002-2003, for the years  
 17 2003 to 2007, the insurance industry's  
 18 profits from this province was in excess of  
 19 20 percent to 30 percent. Now, that was the  
 20 years when they were supposed to be going  
 21 broke and we will show you why that cycle is  
 22 being repeated again.

23 So, those are the three things we want  
 24 to illustrate for you. I'm sure my  
 25 colleagues will illustrate some other

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1 things, but those are the three that we will  
 2 focus on from APTLA, so that hopefully you  
 3 will include that in your report. That is  
 4 the backdrop against which we appear for  
 5 those who are not able to appear on their  
 6 own behalf.

7 Yes, we have a vested interest in their  
 8 success and in not changing the regime as it  
 9 is, but what do we do? Do we say "well, you  
 10 know, because we might be seen to be self-  
 11 serving, we should keep our mouths shut" and  
 12 nobody will show up. We are thankful for  
 13 some groups like the Spinal Cord Injury and  
 14 so on, for showing up with their  
 15 constituents and speaking on their behalf.  
 16 But, there really is no one here who has the  
 17 authority or the information of the umbrella  
 18 group that would represent those diverse  
 19 people who appear, whether it be in St.  
 20 John's or in the outports or in the small  
 21 communities who are only connected by the  
 22 fact that they've been injured on a highway,  
 23 a roadway or a parking lot of some sort.  
 24 So, since they aren't able to organize  
 25 themselves, we are here to bring you that

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1 information. I thank you for allowing me to  
 2 make just that preliminary remarks.

3 CHAIRPERSON:

4 Q. Thank you, Mr. Gittens. Spinal Cord Injury  
 5 Association.

6 FRAIZE, Q.C.:

7 Q. Madam Chairman, members of the Board, we've  
 8 intervened here – our group is called Spinal  
 9 Cord Injury Newfoundland and Labrador Inc.,  
 10 formerly Canadian Paraplegic Association.  
 11 At this hearing either myself or my  
 12 colleague, Lara Fraize-Burry, with my firm  
 13 will be in attendance.

14 We came forward – when I say "we" I'm  
 15 talking about our organization – came  
 16 forward because this hearing and what's  
 17 going on here is going to have an effect and  
 18 so, what we've done, we basically are going  
 19 to present some points that we have to put  
 20 forward to the Board from our point of view  
 21 what our interest is in this hearing.

22 First, any erosion of victim rights is  
 23 of concern to the Spinal Cord Injury NL and  
 24 its members. Further, any person could be  
 25 injured in a motor vehicle accident and as

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1 such should be able to maintain an  
 2 acceptable quality of life, whether they  
 3 suffer from whiplash or spinal cord injury.  
 4 One comment: when an accident occurs, you  
 5 find the victim as they are. Some people  
 6 have major injuries to begin with and an  
 7 accident will affect them more than the rest  
 8 of us. First point.

9 Our organization's mission is to assist  
 10 persons with spinal cord injuries and other  
 11 disabilities to achieve independence, self-  
 12 reliance and full community participation,  
 13 but as a group that has a focus on advocacy.  
 14 We are concerned about all aspects of injury  
 15 on behalf of our membership. Persons with  
 16 disabilities, specifically the mobility  
 17 impaired, but also the rest of the general  
 18 public, are always at risk of suffering an  
 19 injury in a motor vehicle accident. Such an  
 20 injury for a person with a spinal cord  
 21 injury or mobility impairment could  
 22 adversely affect their lives, even without a  
 23 significant change to mobility, could alter  
 24 their quality of life. These persons could  
 25 be profoundly impacted by the cap. Keeping

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1 in mind individuals with these type of  
 2 injuries, if they get into a second injury  
 3 situation, the effect on them is dramatic  
 4 and so, consequently, trying to fit a cap on  
 5 all types of situations becomes very unfair.  
 6 Tort claims compensate injured parties.  
 7 The cap, on the other hand, penalizes the  
 8 injured party. The injured party may not be  
 9 insured. It could be a pedestrian, a person  
 10 on a bicycle, a person in a wheelchair. So,  
 11 not all injured parties are insured.  
 12 Insurance companies want to define the  
 13 injury and then allocate the value for the  
 14 injury. The Courts, in conjunction with the  
 15 medical evidence presented, determine the  
 16 injury and quantity and quantify the loss.  
 17 Now, the insurance companies want to define  
 18 the injury and define the value of the  
 19 injury. This seems to imply the insurance  
 20 companies take the position that the Courts  
 21 and the medical professionals are unable to  
 22 define the injury and quantify the injury.  
 23 As a lawyer, we go to Court if we can't  
 24 agree on what the injury is and what the  
 25 amount of damages. We present medical

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1 evidence. We argue. We use the law. We  
 2 have a history of Court cases. And  
 3 consequently, any removal of the ability of  
 4 the Courts to decide upon an injury and a  
 5 quantification is greatly unfair.  
 6 One issue which appears to be not  
 7 addressed or does not seem to be of concern  
 8 to the insurance companies is the uninsured  
 9 motorist and the need to recover under the  
 10 uninsured motorist's coverage under the  
 11 insurance policies. These claims, of  
 12 course, drive up the cost for those who  
 13 actually pay for the insurance due to  
 14 persons driving without insurance. The cap  
 15 is a trade-off of the injured parties' loss  
 16 and the insurance companies' profits,  
 17 keeping in mind that insurance companies are  
 18 private contract – I should say insurance  
 19 policy is a private contract between the  
 20 insurer and the insured.  
 21 Under the current Workers Compensation  
 22 system, an injured worker involved with a  
 23 motor vehicle accident can claim under the  
 24 Workers Compensation system or take a legal  
 25 action. If he or she elects to take Workers

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1 Compensation, the Workers Compensation  
 2 system can take an action to collect called  
 3 subrogation. A worker driving a motor  
 4 vehicle is at the same risk as the other  
 5 drivers. Insurance companies want to move  
 6 the cost back onto the Workers Compensation  
 7 system, consequently onto the employers,  
 8 presumably resulting in a higher cost for  
 9 products and so forth.  
 10 A further comment, the more you drive,  
 11 the greater the chance of an accident.  
 12 Therefore when considering the taxi  
 13 industry, there is more risk. Basic logic  
 14 dictates that more driving you do, the  
 15 higher the risk, consequently the higher the  
 16 premiums.  
 17 Further comment: the value of vehicles  
 18 have increased, so has the cost to repair  
 19 the vehicles. The payout of the claims have  
 20 to clearly identify the property damage  
 21 component. We all know what the value of a  
 22 vehicle is. We just have to look at what we  
 23 paid for a vehicle 10 years ago, 15 years  
 24 ago, 20 years ago.  
 25 And a last comment: why not concentrate

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1 on reducing the number of accidents, i.e.  
 2 the cause, rather than penalizing the  
 3 injured party?  
 4 These are our comments and I think you  
 5 have an idea of where we sit in this  
 6 situation. We will put forward our position  
 7 from time to time and we think it's grossly  
 8 unfair to put a cap on the injured party  
 9 while allowing accident – not looking at the  
 10 cause, whether it's drinking and driving,  
 11 not paying attention. The point is: why are  
 12 we penalizing the injured party rather than  
 13 looking at the cause of the accidents?  
 14 Those are our comments and as we stated  
 15 before, either myself or my colleague will  
 16 be here. The executive director for the  
 17 organization will be here because we have an  
 18 interest and we will be commenting and  
 19 posing questions and we may submit a  
 20 submission at the end. Thank you once  
 21 again.  
 22 CHAIRPERSON:  
 23 Q. Thank you very much. Insurance Bureau of  
 24 Canada.  
 25 STAMP, Q.C.:

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1 Q. Madam Commissioner, Commissioners, I will be  
 2 more brief than my colleagues so far. As  
 3 you've indicated, Madam Chair, the terms of  
 4 reference are essentially that the PUB, the  
 5 Public Utilities Board, has been tasked with  
 6 examining the issues associated with the  
 7 high cost of automobile insurance in this  
 8 province and to provide a report to  
 9 Government outlining, I guess, the Board's  
 10 findings.  
 11 Insurance companies are aware that the  
 12 cost of providing automobile insurance in  
 13 Newfoundland and Labrador is high. You're  
 14 aware of that, and of course, the people who  
 15 pay those high premiums are also aware.  
 16 What I'm afraid is perhaps less well  
 17 understood, at the moment at least, is that  
 18 those high premiums will have to go higher  
 19 unless some mechanism is addressed or  
 20 determined or applied to try and control  
 21 claims costs.  
 22 Now, speakers who've spoken previously  
 23 have spoken to these enormous profits that  
 24 they somehow believe exist. Every premium  
 25 charged by every insurer in this province is

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1 approved, as you know, by this Board, and of  
 2 course, by its nature, there is quite a lot  
 3 of judgment involved because you're setting  
 4 rates one day and you don't know what the  
 5 cost will be, their cost that will be  
 6 incurred next week, next month, next year,  
 7 ten years down the road. So, it's a  
 8 difficult task to try and match a premium  
 9 calculation today with all those costs in  
 10 the future.  
 11 But we have the benefit and the Board  
 12 has the benefit already of having its own  
 13 actuarial consultants having studied  
 14 information in its present engagement and  
 15 those reports indicate, of course,  
 16 unequivocally that the rates currently in  
 17 place are not adequate to pay the cost of  
 18 providing the insurance that's provided.  
 19 So, the choice for government ultimately  
 20 will be to continue the program, continue  
 21 the arrangements as they currently exist and  
 22 rates will inevitably climb higher or try  
 23 and introduce some mechanism, whatever it  
 24 might be, to control those claims costs to  
 25 try and control the cost of premiums,

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1 stabilize them and perhaps to lower them.  
 2 So, that's the task. This is an  
 3 information gathering exercise, as I  
 4 understand it. A report will be provided to  
 5 the government and of course, the government  
 6 will make the policy decisions as to what  
 7 should happen. Are there trade-offs? Of  
 8 course. We understand that. But, we – the  
 9 hard numbers are here and, as I understand  
 10 the reports that I've read, the Board's own  
 11 actuarial consultants can speak to those and  
 12 show that the conclusions are inescapable.  
 13 So, those are my comments initially and  
 14 we look forward to participating in the  
 15 presentations before the Board. Thank you.  
 16 (9:45 a.m.)  
 17 CHAIRPERSON:  
 18 Q. Thank you, Mr. Stamp. Consumer Advocate.  
 19 BROWNE, Q.C.:  
 20 Q. Thank you, Commissioners and colleagues.  
 21 Consumers of the province, the insured,  
 22 ratepayers, are not a ritualistic offering  
 23 to be carved up in this proceeding.  
 24 Consumers want to control their own destiny  
 25 and want to control their own spending. Why

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1 is it that there are not more offerings for  
 2 consumers coming from the insurance  
 3 industry? Why is it that consumers cannot  
 4 opt in to a program for a \$10,000 deductible  
 5 or give up their right to sue by paying  
 6 lesser rates? There are options out there  
 7 in other jurisdictions which can apply here.  
 8 Consumers want to be in control of  
 9 their own spending. Consumers want rate  
 10 stability. Consumers don't want to give up  
 11 any rights at the same time unless there is  
 12 something in it for them.  
 13 Here, in this province, today it is our  
 14 position that the focus should be on the  
 15 losses. What is causing so many losses in  
 16 the province that reflects on the system?  
 17 The case is not about a cap or a deductible.  
 18 The important issue is losses. Why are  
 19 there accidents? Why are there more  
 20 injuries here? What is going on?  
 21 In some jurisdictions, winter snow  
 22 tires are mandatory. The Province of Quebec  
 23 has had a good result which brought down  
 24 losses with the introduction of that  
 25 requirement. Why is it there are no

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1 stronger measures available to deal with the  
 2 problem of distracted drivers? Why is it  
 3 that the uninsured remain out there, moving  
 4 liabilities, when the Registrar of Motor  
 5 Vehicles informs that there is a disconnect  
 6 between the numbering on the insurance  
 7 premium and the numbering of the driver's  
 8 licenses and we need to put in that fix so  
 9 that when insurance is cancelled, the  
 10 insurer can notify the Registrar and the  
 11 Registrar can take appropriate action in  
 12 reference to that particular vehicle?  
 13 So, I urge caution here in terms of  
 14 assuming to speak for consumers. Consumers  
 15 want to be able to empower themselves to  
 16 take care of themselves. They don't need  
 17 custodians. They probably don't even need a  
 18 consumer advocate if they were empowered by  
 19 other policies that could be offered by the  
 20 insurance industry.  
 21 We look forward to being participants  
 22 in this hearing. We will bring forward  
 23 evidence pertaining to the loss segment and  
 24 how to bring improvements in the system. We  
 25 hope to bring evidence through the Registrar

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1 of Motor Vehicles. We hope to bring  
 2 evidence of what has been undertaken in  
 3 other jurisdictions and indeed, in the City  
 4 of St. John's where engineering – engineers  
 5 are reconfiguring various streets based on  
 6 accident results to try to reconfigure these  
 7 streets so these losses are curtailed. We  
 8 hope to bring evidence in that regard.  
 9 We've had an opportunity to speak with  
 10 representatives of the taxi industry. The  
 11 taxi industry finds themselves in dire  
 12 straits. They are in Facility. They're  
 13 paying annual rates in excess of 8, 9, 10,  
 14 11, 12 thousand dollars. The taxi drivers  
 15 are hard pressed. What can be done there?  
 16 Why is it that some taxi drivers with an  
 17 impeccable record are driving without  
 18 accidents for 23 or 30 years find themselves  
 19 in Facility? Why can there be no exceptions  
 20 within the grouping? So, we look forward to  
 21 speaking to these issues as well. Thank you  
 22 for your attention.  
 23 CHAIR:  
 24 Q. Thank you, Mr. Browne. Okay, we have—we're  
 25 a little bit disjointed because of our loss

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1 of yesterday, but we had a presentation  
 2 previous scheduled by CUPE. So, your  
 3 representatives are here, and I'll just ask  
 4 you to introduce yourselves and –  
 5 KENNEDY, Q.C.:  
 6 Q. Excuse me, Chair.  
 7 CHAIR:  
 8 Q. I'm sorry.  
 9 KENNEDY, Q.C.:  
 10 Q. There is one point that arose from your  
 11 comments. I'd like it if I could get very  
 12 quick clarification on it.  
 13 CHAIR:  
 14 Q. Absolutely.  
 15 KENNEDY, Q.C.:  
 16 Q. And we don't have to deal with it now, but I  
 17 want to raise it while it's at the top of my  
 18 mind. And I don't know how you plan to—when  
 19 we refer to a document that's on the PUB  
 20 website, how do you want us to do that?  
 21 Will you bring the document up or will—like  
 22 I want to refer to a letter from the  
 23 minister of Service NL to you, as Chair of  
 24 the PUB, on April 16th, 2018.  
 25 CHAIR:

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1 Q. You name the document, sir.  
 2 KENNEDY, Q.C.:  
 3 Q. Okay.  
 4 CHAIR:  
 5 Q. And Sara will bring it up on the screen in  
 6 front of you.  
 7 KENNEDY, Q.C.:  
 8 Q. So, it's a letter dated April 16th, 2018.  
 9 CHAIR:  
 10 Q. You wish to refer to that now? Now, sir?  
 11 KENNEDY, Q.C.:  
 12 Q. Yes, I do. Just very quickly.  
 13 CHAIR:  
 14 Q. Okay.  
 15 KENNEDY, Q.C.:  
 16 Q. We can deal with the point later on, but I  
 17 just want to raise the issue now.  
 18 CHAIR:  
 19 Q. Sure.  
 20 MS. KEAN:  
 21 Q. Would that be your response—the response to  
 22 the request to postpone the review?  
 23 KENNEDY, Q.C.:  
 24 Q. Yes, it is. Yes.  
 25 CHAIR:

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1 Q. Is that the correct letter, Mr. Kennedy?  
 2 KENNEDY, Q.C.:  
 3 Q. Yes, it is.  
 4 CHAIR:  
 5 Q. Okay.  
 6 KENNEDY, Q.C.:  
 7 Q. And I think it's important, Commissioners,  
 8 that we understand what we're doing here.  
 9 Now you're—the Chair stated earlier that you  
 10 will be—we're conducting a review. You will  
 11 be—I don't know if you used the word  
 12 "findings," but that there would be—you  
 13 wouldn't be making recommendations, that the  
 14 terms of reference would be governed, and  
 15 they don't refer to that. In this letter  
 16 though from the minister dated April 16th,  
 17 2018, the minister states in the last line  
 18 or the last two lines, "The process  
 19 implemented is independent and transparent  
 20 and provides multiple opportunities for  
 21 stakeholder engagement. The Board is  
 22 meeting the deliverables as set out in their  
 23 work plan, and I look forward to receiving  
 24 the Board's recommendations by the end of  
 25 June as it has committed." So, there seems

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1 to be a clear expectation from the minister  
 2 that the Board would be making  
 3 recommendations. So, I think that's an  
 4 important point in terms of the—how this  
 5 review will be conducted, and I don't—we  
 6 don't need to deal with this now because I  
 7 know you have these people there, but that  
 8 is a point that I would like to address at  
 9 some point, unless you can explain it to me  
 10 now, what exactly—there seems to be a  
 11 conflict between what the minister is  
 12 expecting and what the Board indicates that  
 13 it's going to do.  
 14 CHAIR:  
 15 Q. I can't speak to the minister's letter  
 16 specifically. In my opening statement I did  
 17 say that we will not be making any  
 18 recommendations on the issue of the caps,  
 19 monetary cap or deductibles that are Terms  
 20 of Reference specifically require us to  
 21 review and report on those issues. There  
 22 are a couple of specific areas within the  
 23 Terms of Reference that speak to  
 24 recommendations. So, where we've been asked  
 25 to make recommendations, we will.

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1 Otherwise, we are reviewing and reporting.  
 2 And as to the minister's expectation of  
 3 recommendations, I have no—we are guided by  
 4 the Terms of Reference that's been issued to  
 5 us.  
 6 KENNEDY, Q.C.:  
 7 Q. But the Terms of Reference do come from the  
 8 government and they come from this minister.  
 9 CHAIR:  
 10 Q. Absolutely. Absolutely, under the  
 11 legislation, Insurance Companies Act.  
 12 KENNEDY, Q.C.:  
 13 Q. And we can only assume that the minister  
 14 knows the-when she is giving you the Terms  
 15 of Reference, she knows the law that governs  
 16 and how this proceeding will take place.  
 17 CHAIR:  
 18 Q. Yes, I can –  
 19 KENNEDY, Q.C.:  
 20 Q. So, when I see the minister using words like  
 21 "recommendation," it causes me some concern,  
 22 but it's not an issue. We can come back to  
 23 that later. I don't want to keep these  
 24 people waiting. I just wanted to raise  
 25 that, that point.

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1 CHAIR:  
 2 Q. Well, thank you for raising it, but we're  
 3 clear on what our job is, Mr. Kennedy.  
 4 KENNEDY, Q.C.:  
 5 Q. Yes, we may have to revisit that issue,  
 6 Chair. Thank you.  
 7 CHAIR:  
 8 Q. Sure. Okay, we're back to you. If you—  
 9 thank you for your patience.  
 10 MS. HILLIER:  
 11 Q. That's okay, fine.  
 12 CHAIR:  
 13 Q. I'll just ask you to introduce yourselves,  
 14 and then, once you're ready, and you can  
 15 just take it away. Thank you so much.  
 16 MS. HILLIER:  
 17 Q. Thank you, Board. I'm Sherry Hillier. I'm  
 18 the newly-elected president of CUPE  
 19 Newfoundland and Labrador, taking over the  
 20 position of former president, Wayne Lucas.  
 21 MS. FERGUSON:  
 22 Q. Good morning. Carol Ferguson. I am the  
 23 research representative for the Atlantic  
 24 Region of CUPE.  
 25 MS. HILLIER:

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1 Q. So, good morning. I'd like to thank the  
 2 Board for the opportunity to speak to you  
 3 today about automobile insurance. CUPE is  
 4 the largest union with more than 650,000  
 5 members across the country. Our 6,300  
 6 members in Newfoundland and Labrador would  
 7 in various sectors included health care,  
 8 post-secondary K to 12 education,  
 9 municipalities, housing, social services,  
 10 libraries among others. CUPE Newfoundland  
 11 and Labrador's members are proud to provide  
 12 services which support the development of  
 13 vibrant healthy communities and strong local  
 14 economies. CUPE Newfoundland and Labrador  
 15 believes this review provides a valued  
 16 opportunity to explore the possibilities of  
 17 creating an improved automobile insurance  
 18 system for the province. Instead of just  
 19 tinkering with the existing system by  
 20 tweaking the rates, adjusting the profits,  
 21 moving the caps up and down, why not seize  
 22 the opportunity to fix the problem once and  
 23 for all? CUPE recommends the creation of a  
 24 publicly-owned non-profit automobile  
 25 insurance that can offer fair, non-

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1 discriminatory rates and high-quality  
 2 coverage for all licensed drivers, including  
 3 private passenger drivers, independent  
 4 commercial owner/operators, and drivers for  
 5 fleet companies such as trucking, courier  
 6 and taxi companies. By implementing a  
 7 public auto insurance plan, Newfoundland and  
 8 Labrador would become the fifth province  
 9 within Canada to have a publicly-owned  
 10 publicly-operated system of automobile  
 11 insurance. British Columbia, Saskatchewan,  
 12 Manitoba and Quebec have enjoyed the  
 13 benefits of public auto insurance for many  
 14 decades under governments of various  
 15 political stripes. Newfoundland and  
 16 Labrador would be in the enviable position  
 17 of being able to learn from experiences of  
 18 other jurisdictions to design costs to  
 19 implement made in Newfoundland and Labrador  
 20 full service system to meet the vehicle  
 21 insurance needs of the people of our  
 22 province. CUPE Newfoundland and Labrador  
 23 believes a public auto insurance plan makes  
 24 good sense both economically and socially  
 25 for our province. Today, I want to outline

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1 why we reached this conclusion and invite  
 2 anyone looking for more detailed information  
 3 to read our submission to the Public  
 4 Utilities Board Automobile Insurance. First  
 5 of all, it is important to remember drivers  
 6 are required by legislation to purchase  
 7 automobile insurance. It isn't an option.  
 8 It isn't like we're going to decide if we're  
 9 going to buy a coffee or not. Driving  
 10 without insurance is a very serious offence  
 11 and severe penalties which may include heavy  
 12 fines and suspension of a driver's licence.  
 13 Legislation requiring automobile insurance  
 14 means private insurance companies have a  
 15 captive market. Because governments require  
 16 drivers to purchase automobile insurance,  
 17 CUPE believes that governments have a  
 18 responsibility to ensure that benefits are  
 19 fairly delivered at a reasonable cost.  
 20 Insurance premiums in Newfoundland and  
 21 Labrador are among the highest in the  
 22 country. Newfoundland and Labrador was  
 23 ranked tenth out of 13 jurisdictions in  
 24 insurance premium rates in 2017. Ontario  
 25 report commissioned by the Minister of

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1 Finance titled "Clear Benefits Fairly  
 2 Delivered: A Review of the Auto Insurance  
 3 System in Ontario." This comprehensive  
 4 report compared current provincial auto  
 5 insurance premiums for private passenger  
 6 vehicles in each province and territory. It  
 7 supports what ordinary citizens are saying,  
 8 "Auto insurance rates in this province are  
 9 too high." In 2016 drivers in Newfoundland  
 10 and Labrador paid approximately 434 million  
 11 in premiums and received approximately 334  
 12 million in claims.  
 13 (10:00 a.m.)  
 14 MS. HILLIER:  
 15 Q. This information filed with the  
 16 Superintendent of Insurance. The premiums  
 17 exceeded disbursement payments for direct  
 18 claims for almost 100 million dollars.  
 19 Private companies used this 100 million  
 20 dollars presumably to cover operating costs  
 21 such as staff, offices, promotions, broker  
 22 fees and other profits—other expenses  
 23 including profits. Four companies have a  
 24 stranglehold on the insurance in  
 25 Newfoundland and Labrador. Ninety-five

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<p>1 percent of auto insurance services are                  2 provided by approximately 16 insurers. When                  3 common ownership among these are factored                  4 in, only four companies provide                  5 approximately 84 percent of the automobile                  6 insurance business. The automobile                  7 insurance industry in Newfoundland is                  8 profitable and monopolized. Most of the                  9 capital generated by auto insurance sectors—                  10 sector does not stay in the province. The                  11 head offices for most of these companies are                  12 located elsewhere. The profits go directly                  13 the companies' shareholders. Under a                  14 publicly-owned and administered system, that                  15 considerable business capital generated by                  16 insurance premiums could be invested here to                  17 support the goals of the people of                  18 Newfoundland and Labrador. Private                  19 insurance systems tend to be ineffective.                  20 Disputes lead to a very high percentage of                  21 premiums being used to pay experts and                  22 lawyers and not going directly to the                  23 injured persons. Business costs for private                  24 insurance systems include duplication,                  25 competitive market and profits. The</p>	<p>1 effectiveness of insurance plans, including                  2 the quality of the insurance product,                  3 reliability of service, capacity of the                  4 capital to remain within the province, et                  5 cetera. The four public auto insurance                  6 plans vary from province to province, but                  7 they share many common factors including:                  8 All Crown corporations with similar core                  9 values. They the sole providers of the                  10 mandatory auto mobile insurance plan within                  11 their respective provinces. They are                  12 responsible for driver licensing, vehicle                  13 registration, and play a leading role in                  14 education programs and road safety and                  15 driver improvement. They provide the                  16 mandatory insurance coverage and mandatory                  17 minimum amount of all vehicles registered by                  18 residence with valid driver's licences in                  19 their respective province. Because public                  20 insurance companies are required to insure                  21 all legal drivers in their respective                  22 province, they use the driving record of the                  23 individual and not that of his or her peer                  24 group to calculate the individual premium                  25 levels. All drivers in Manitoba and Quebec</p>
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<p>1 province public insurance—insurers of British                  2 Columbia, Quebec, Manitoba and Saskatchewan                  3 do not charge higher premiums than those of                  4 private insurers in other provinces. In                  5 fact, the public insurance tends to offer                  6 rates which are often lower than or at least                  7 comparable to rates in other provinces.                  8 Public automobile insurance companies have                  9 attributed their ability to offer a good                  10 insurance product at a lower premium due to                  11 the following factors. The not-for profit                  12 nature of their mandates. Insurance                  13 Corporation of British Columbia, ICBC,                  14 became the exception following an amendment                  15 to its legislation in 2010. Reduced                  16 administration costs due to the greater                  17 efficiencies and economies of scale. Lower                  18 marketing costs due to the monopoly status                  19 of mandatory insurance coverage. Reduced                  20 high-cost claims because of the                  21 effectiveness of their road safety and the                  22 driver improvement programs. While premium                  23 rates are important when considering the                  24 value of public insurance systems, there are                  25 other facts which contribute to the</p>	<p>1 are required to purchase public automobile                  2 insurance as a part of their annual driver's                  3 licence fee. Rate increases in                  4 Saskatchewan, Manitoba and British Columbia                  5 must be approved by the public regulators.                  6 In Quebec, the base rate of mandatory public                  7 auto insurance is set out by the provincial                  8 statute. Brokers provide the main point of                  9 contact for consumers looking to purchase                  10 auto insurance in their local communities.                  11 While there are many commonalities, there                  12 are also differences among the public                  13 insurance plans of each province including:                  14 Public auto insurers in Canada have                  15 historically operated on a not-for-profit                  16 basis. The recent exception is ICBC whose                  17 legislation was amended in 2010 permitting                  18 the provincial government to compel ICBC to                  19 pay dividends into the provincial treasury.                  20 ICBC is the only for-profit public auto                  21 insurance provider in Canada. British                  22 Columbia is the only province with a public                  23 auto insurance program which operates solely                  24 with a tort-based system. Manitoba system                  25 operates on a pure no-fault model.</p>

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1 Saskatchewan is the only province that  
 2 offers motorists a choice between no-fault  
 3 and tort systems of insurance. With the  
 4 introduction of tort option coverage in  
 5 2003. SGI coverage offered an opportunity  
 6 for claimants who selected the tort option  
 7 to go through the courts to sue for damages  
 8 like for pain and suffering. In Quebec—in  
 9 the Quebec system, public auto insurance is  
 10 limited to coverage of personal injuries  
 11 while damage to property is covered by the  
 12 private insurer. Each provincial public  
 13 auto insurance system offers special  
 14 products which have evolved over time to  
 15 meet the needs of their respective clients.  
 16 The salutation to a high cost of auto  
 17 insurance is not to reduce the benefits.  
 18 Fair benefits must be taken as the starting  
 19 point in any insurance system. The solution  
 20 lies with the developing a non-profit auto  
 21 insurance system that operates under public  
 22 scrutiny. CUPE Newfoundland and Labrador  
 23 urges the Public Utilities Board to use the  
 24 valuable opportunity provided by the  
 25 comprehensive automobile insurance review to

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1 recommend to the Government of Newfoundland  
 2 and Labrador to form a task force to develop  
 3 a publicly-owned made-in Newfoundland and  
 4 Labrador full-service not-profit automobile  
 5 insurance model. The task force’s  
 6 responsibility will be to identify the key  
 7 elements of the proposed model, start-up  
 8 costs and implementation time. The model  
 9 will continue—will outline a comprehensive  
 10 no-fault plan to provide all licenced  
 11 drivers in the province including private  
 12 insurance passenger drivers, independent  
 13 commercial owner/operators, and fleet  
 14 company drivers with access to a mandatory  
 15 automobile insurance coverage at fair, non-  
 16 discriminatory rates. In creating a made-in  
 17 Newfoundland and Labrador public automobile  
 18 insurance model, the task force can draw on  
 19 the experiences of British Columbia, Quebec,  
 20 Manitoba and Saskatchewan, as well as the  
 21 exploratory research undertaken by New  
 22 Brunswick, Nova Scotia and Ontario. CUPE  
 23 recommends that a not—that a not-profit  
 24 crown corporation created to operate at  
 25 arm’s length from the provincial government

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1 and to utilize independent brokers. The  
 2 Crown’s corporation’s mandate should include  
 3 the provision of vehicle registration,  
 4 driver’s licence and a mandatory auto  
 5 insurance. The public auto insurance system  
 6 created in Newfoundland and Labrador is  
 7 expected to be financially self-sustaining  
 8 and to operate on a break-even basis  
 9 calculated over time. Beyond the initial  
 10 start-up loan to be paid back in a timely  
 11 manner, the Crown corporation will receive  
 12 money--will not receive money from, nor pay  
 13 dividends to, the government. In its  
 14 corporate values and operating practices,  
 15 the auto insurance model should reflect  
 16 Newfoundland and Labrador’s commitment to  
 17 independence, fairness and prosperity for  
 18 all. Thank you.  
 19 CHAIR:  
 20 Q. Thank you very much. Ms. Glynn?  
 21 MS. GLYNN:  
 22 Q. Perhaps if we took five minutes to let the  
 23 presenters come up and get Ms. Elliott  
 24 settled.  
 25 CHAIR:

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1 Q. Okay, all right. We’ll take five minutes.  
 2 (RECESS – 10:10 a.m.)  
 3 CHAIR:  
 4 Q. Okay, Ms. Glynn, if you could introduce the  
 5 next phase of the morning.  
 6 MS. GLYNN:  
 7 Q. Thank you, Madam Chair. Good morning  
 8 everybody. The Board retained Oliver Wyman,  
 9 a consulting firm, to provide actuarial  
 10 consulting services for the automobile  
 11 insurance review. Oliver Wyman provided the  
 12 following reports: a Summary of Taxi  
 13 Experience in Newfoundland and Labrador; a  
 14 Closed Claim Study Summary; the Minor Injury  
 15 Reform Cost Estimates and then an amendment  
 16 to that report; a Profit and Rate Adequacy  
 17 Review for Private Passenger Automobiles;  
 18 and an Other Coverages Review, also for  
 19 private passengers’ automobiles. Ms. Paula  
 20 Elliott, principal with Oliver Wyman, is  
 21 here today to present those reports and in  
 22 the order just identified. She will present  
 23 each report separately and then each of the  
 24 intervenors will have the opportunity to ask  
 25 Ms. Elliott questions. We have agreed to

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1 the order of questioning to proceed as  
 2 follows: The Campaign to Protect Accident  
 3 Victims, the Atlantic Provincial Trial  
 4 Lawyers Association; Spinal Cord  
 5 Newfoundland and Labrador, Insurance Bureau  
 6 of Canada; the Consumer Advocate and then  
 7 questions from the panel. With that, I  
 8 would ask Ms. Elliott to start her  
 9 presentation of the first report, the  
 10 Summary of the Taxi Experience in  
 11 Newfoundland and Labrador.

12 MS. ELLIOTT:  
 13 A. Good morning. As expressed by Ms. Glynn, we  
 14 were retained, Oliver Wyman, to provide  
 15 reports, studies for the Board and our first  
 16 report that we prepared for the Board was  
 17 the Taxi Experience in Newfoundland and  
 18 Labrador. On page 1 of our report, we  
 19 present the premiums for taxis in the  
 20 province, the written premiums over the last  
 21 five years that were the available data from  
 22 2012 to 2016. There have been considerable  
 23 increases in the premium rates for taxis and  
 24 over this period, the five-year period, the  
 25 cumulative change of premiums written in the

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1 province for taxis is up 70 percent. And as  
 2 the graph on the table, the same page,  
 3 shows, it's been increasing over each of the  
 4 years. On page 3 of our report, we present  
 5 the written premiums by coverage on a five-  
 6 year basis and what that percentage increase  
 7 is, so must notable is that the third party  
 8 liability represents nearly 90 percent of  
 9 all taxi premiums, and the TPL, the third  
 10 party liability, had a five-year increase of  
 11 65 percent. So you can see that the TPL is  
 12 the driver of the 70 percent increase that's  
 13 occurred over the last five years, and quite  
 14 substantial increases are also noted for  
 15 accident benefits and for the uninsured  
 16 motorist coverages there.

17 I want to speak about the loss  
 18 experience next which is on page 4 of our  
 19 report. In this case we're presenting the  
 20 number of claims for third party liability  
 21 and what those average cost per claim are,  
 22 and in my opinion, it seems somewhat just  
 23 sort of random, no real pattern, up, down,  
 24 but overall five years it's, we're going to  
 25 scroll, if you could, to the next page 5.

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1 So in the first graph is for each of the  
 2 five accident years, we're presenting in  
 3 blue what the earned premiums are and you  
 4 can see the blue graph bar chart is  
 5 increasing year to year and this is with  
 6 regards to the 70 percent over the five-year  
 7 period increase in premiums, but at the same  
 8 time you can see the amount of losses in  
 9 each of those years. In 2012, quite notable  
 10 at nearly 6 million, so the losses have far  
 11 exceeded the premiums for these five  
 12 accident years in Newfoundland and Labrador,  
 13 and I'd like to explain and it may come up  
 14 later what an accident year is. An accident  
 15 year in the context of insurance is with  
 16 regards to all claims that occurred in that  
 17 year, not when they were settled, not when  
 18 they were paid or not when they were  
 19 reported, but the event occurred in that  
 20 year, so the claims that are reported for  
 21 2012 here, the red bar, and for all  
 22 accidents that occurred in that year,  
 23 regardless of what that claim event was  
 24 settled and paid and closed. And in the  
 25 second graph on that same page, as a result

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1 of the premiums increasing, the loss ratio  
 2 has declined and most notably it was very  
 3 high in 2012 at 340, but it's still high at  
 4 203 in 2013 and down in 2016, the 177, but  
 5 although the losses, as we said, might be  
 6 somewhat stable over the five years, it  
 7 doesn't say that they're reasonable and  
 8 appropriate in contrast to the premiums that  
 9 are being charged. So clearly in 2012, if  
 10 you have 6 million in losses and under 2  
 11 million in premiums, there's an extremely  
 12 wide gap, so although we may say the losses  
 13 don't seem to be changing very much over the  
 14 five years, in each year they are far in  
 15 excess of the premiums that were charged for  
 16 taxis. And on our final page of our report,  
 17 page 7, we presented or the key coverage is  
 18 the largest portion of the premium, the  
 19 third party liability, the premium, the  
 20 losses, and when we say here ultimate  
 21 incurred losses, including expenses, let me  
 22 clarify, that is related to claims handling  
 23 expenses, not expenses associated with  
 24 broker's commissions or premium taxes or any  
 25 of those operating expenses, these are the

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1 losses and the associated claims handling  
 2 expenses, and then the loss ratio is a  
 3 division of those two. So we have third  
 4 party liability, accident benefits, 619  
 5 percent loss ratio, the uninsured motorist  
 6 over 1000 and all coverages combined on a  
 7 five-year average of 213. And the total  
 8 amount of losses here, nearly 25 million  
 9 over the five-year period of which 21  
 10 million and a bit are for third party  
 11 liability, and over this five-year period  
 12 there's under 12 million in premium and, as  
 13 we said, nearly 25 million in losses that  
 14 are estimated and that is not including any  
 15 provisions for operating expenses. The  
 16 other thing I want to note is that the taxi  
 17 business is 95 percent of the premiums are  
 18 written through the Facility Association, so  
 19 the rate changes that were referred to in  
 20 our report are with respect to rate changes  
 21 that were filed by the Facility Association,  
 22 and the remainder of the market is very  
 23 limited, I'm not even sure who writes the  
 24 remaining five percent of the business.  
 25 MS. GLYNN:

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1 Q. Does that conclude your presentation, Ms.  
 2 Elliott?  
 3 MS. ELLIOTT:  
 4 A. Yes.  
 5 MS. GLYNN:  
 6 Q. She is ready for questions.  
 7 CHAIR:  
 8 Q. Campaign, do you have questions for Ms.  
 9 Elliott on this report?  
 10 MR. FELTHAM:  
 11 Q. I do, just a couple. Ms. Elliott, I'd like  
 12 to go to page 4 of your report, please.  
 13 MS. ELLIOTT:  
 14 A. Uh-hm.  
 15 MR. FELTHAM:  
 16 Q. And Under Item No, 2, Loss Experience, so  
 17 just to go back, so this is a review of both  
 18 the number of claims and the average cost  
 19 per claim for taxis from 2012 to 2016?  
 20 MS. ELLIOTT:  
 21 A. Yes.  
 22 MR. FELTHAM:  
 23 Q. And you conclude below the chart, you say  
 24 "It appears that the changes from year to  
 25 year are due to random variation. There is

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1 no apparent trend in this data." So in  
 2 terms of the cost, there's—you're not saying  
 3 there's any escalation in the loss cost?  
 4 MS. ELLIOTT:  
 5 A. That's correct, that the costs are—the  
 6 number of claims is fairly limited, it's  
 7 under 200 per year, as you can see, and so  
 8 it dips down, dips back up again, so to me,  
 9 it could be weather related, somewhat  
 10 random, I don't see a pattern there, and  
 11 similarly with the average cost per claim,  
 12 so the severity amount, the amount paid per  
 13 claim, it goes up, it goes down. On a small  
 14 volume of business it would be hard to  
 15 determine the trend rate out of that, that  
 16 there's a distinct pattern.  
 17 MR. FELTHAM:  
 18 Q. Thank you. Now, if we could, I'd like to  
 19 turn to a different document, this is the  
 20 report from Cameron & Associates. Do you  
 21 have that available? I think I put it on  
 22 the screen.  
 23 (10:30 a.m.)  
 24 MS. ELLIOTT:  
 25 A. Yes.

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1 MR. FELTHAM:  
 2 Q. And you've reviewed this report before  
 3 today?  
 4 MS. ELLIOTT:  
 5 A. No, I have not.  
 6 MR. FELTHAM:  
 7 Q. Okay, it may not matter to the question I'm  
 8 going to ask you, but, so I just want you to  
 9 go to page, well it's actually the Executive  
 10 Summary and that can be found on page 4, and  
 11 I want to look at the last paragraph and the  
 12 first sentence provided by Mr. Cameron. And  
 13 he says in there –  
 14 MS. ELLIOTT:  
 15 A. Which paragraph or what does it start in?  
 16 MR. FELTHAM:  
 17 Q. Oh, the last paragraph, sorry.  
 18 MS. ELLIOTT:  
 19 A. "A second factor"?  
 20 MR. FELTHAM:  
 21 Q. This should be page 4, keep going.  
 22 MS. GLYNN:  
 23 Q. The last paragraph on that page.  
 24 MR. FELTHAM:  
 25 Q. There we go, now we have it. Sorry, I'm

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1 looking at the paper and not the screen, so  
 2 - All right, so the first sentence there,  
 3 he says, "Taxi rate increases have been  
 4 attributed to continuously escalating loss  
 5 costs." So it's fair to state, though, Ms.  
 6 Elliott, that that statement is not  
 7 supported by the statistics on the taxi  
 8 claims experience for the period 2012 to  
 9 2016, on page 4 of your report?  
 10 MS. ELLIOTT:  
 11 A. What our report has provided and we have  
 12 been—participated and were advisors to the  
 13 Board on the FA Rate Applications for their  
 14 taxi, the rate increases that have occurred  
 15 in the province are due to the large gap  
 16 between the loss amounts for taxis and the  
 17 premiums charged. The fact that they have  
 18 been high and a wide gap between the loss  
 19 amounts and the premiums charged is the  
 20 reason for the rate increases.  
 21 MR. FELTHAM:  
 22 Q. Right, but again, if we go back to your  
 23 report on page 4, your report does not  
 24 conclude that there have been escalating  
 25 claims costs.

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1 MS. ELLIOTT:  
 2 A. That's correct, in terms of the five-year  
 3 period that's presented, the losses are  
 4 extremely large compared to the premiums and  
 5 that is the reason for the rate increases.  
 6 MR. FELTHAM:  
 7 Q. And your conclusion is that while the claim  
 8 costs change from year to year, it's random  
 9 variation verses some form of escalation.  
 10 MS. ELLIOTT:  
 11 A. I think it would be fair to state that this  
 12 is a five-year snapshot and that the gap  
 13 between the premiums charged and the losses  
 14 that are occurring, have changed over time.  
 15 We did not go back to 20-year history to  
 16 present the loss ratio for this line of  
 17 business, but I would assure you that the  
 18 losses have increased, that this gap of say  
 19 6 million in losses compared to 2 million in  
 20 premium hasn't occurred for 20 years, so  
 21 there has –  
 22 MR. FELTHAM:  
 23 Q. I'm not asking you to go back to 20 years, I  
 24 just wanted to look squarely at what you've  
 25 got here on page 4.

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1 MS. ELLIOTT:  
 2 A. Sure, yes, yes.  
 3 MR. FELTHAM:  
 4 Q. And again, between 2012 and 2016, which is  
 5 the data that you've presented, the claims  
 6 costs, they change from year to year,  
 7 there's random variation and there's no  
 8 escalating trend.  
 9 MS. ELLIOTT:  
 10 A. I stand behind that, that's correct.  
 11 MR. FELTHAM:  
 12 Q. Thank you. Those are all my questions.  
 13 CHAIR:  
 14 Q. Mr. Gittens, do you have any questions for  
 15 Ms. Elliott?  
 16 MR. GITTENS:  
 17 Q. Yes, thank you. In referring strictly to  
 18 the five years that you have focussed on  
 19 here, I take it you're acknowledging that in  
 20 the insurance industry there is a cycle for  
 21 insurance and that would apply to the taxi  
 22 industry TPL figures as well?  
 23 MS. ELLIOTT:  
 24 A. Well we shouldn't confuse cycle in terms of  
 25 loss experience. Loss experience, as you

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1 know, inflation increases over time, like  
 2 the consumer price index, we see the cost of  
 3 eggs increases over time, it doesn't dip  
 4 back down to what eggs were in 1929, so the  
 5 costs keep going up. The cycle reflects  
 6 with respect to how premiums change over  
 7 time, so there will be a big increase and  
 8 maybe the market tightens and then they  
 9 soften, they go back down. So the cycle is  
 10 with respect to premium changes, not the  
 11 cost of claims. They generally, depending  
 12 unless of course there's reforms that we're  
 13 referring to or some other change that goes  
 14 on, costs increase over time. The cost to  
 15 repair your car increases over time, so  
 16 that's not cyclical per se. There are  
 17 different forces that occur that cause maybe  
 18 one time shift in changes, but the costs go  
 19 up over time.  
 20 MR. GITTENS:  
 21 Q. Okay, so we can factor into, I'm going to  
 22 continue to use the word "cycle", we can  
 23 factor into a cycle specific items that  
 24 continue to increase over time or individual  
 25 events, such as a reform package or

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1 something of that sort, that occurs on a  
 2 one-time basis, but this is—is this  
 3 superimposed on the cycle is what I’m  
 4 asking?  
 5 MS. ELLIOTT:  
 6 A. No, because the costs keep going up, on  
 7 average, over time; things cost more.  
 8 MR. GITTENS:  
 9 Q. As does everything in inflation, right.  
 10 MS. ELLIOTT:  
 11 A. And then premiums react and as we can see in  
 12 this particular case for a taxi, there’s a  
 13 big reaction, there are large increase that  
 14 happen occurring and as a result of those  
 15 large increases, that is going to change, if  
 16 you will the negative profit results for  
 17 this line of business, but it’s changing it.  
 18 Now, so the impact of the premium changes is  
 19 driving the change in the profit or loss, a  
 20 financial loss in this case, so that’s the  
 21 cyclical nature there. So the impact of  
 22 premium changes, how that plays out into  
 23 whether where’s a profit or loss and that  
 24 change over time, that’s the cycle. But  
 25 with respect to claims in and of itself,

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1 what things cost, you know, putting aside  
 2 any economic forces or reform changes, costs  
 3 go up over time and there’s not a cycle  
 4 there.  
 5 MR. GITTENS:  
 6 Q. Okay, but costs going up tends to be, either  
 7 along the consumer price index or for some  
 8 extraneous reason, is there other factors  
 9 that would impact upon those increased  
 10 costs?  
 11 MS. ELLIOTT:  
 12 A. For losses, yes, there are many reasons why,  
 13 weather, density of a community, the traffic  
 14 density, road conditions, improved road  
 15 conditions, the safety of cars, I believe,  
 16 this is anecdotally that improved safety of  
 17 vehicles is helping reduce claims frequency  
 18 rate. So there’s a number of reasons that  
 19 can affect costs or a claim event.  
 20 MR. GITTENS:  
 21 Q. Right, a claim event can be impacted by any  
 22 of those things you just mentioned.  
 23 MS. ELLIOTT:  
 24 A. Uh-hm.  
 25 MR. GITTENS:

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1 Q. Including over time, we know that the  
 2 increase occurs based on inflation or the  
 3 increased costs of repairs, things of that  
 4 sort, whatever go into the factoring into  
 5 the cost factor, including wages, things of  
 6 that sort.  
 7 MS. ELLIOTT:  
 8 A. Uh-hm.  
 9 MR. GITTENS:  
 10 Q. But in terms of the industry’s reaction to  
 11 that, which you were referring to as far as  
 12 the premiums are concerned, that does  
 13 reflect a cyclical event?  
 14 MS. ELLIOTT:  
 15 A. I would say in this particular case that the  
 16 loss ratio, the experience for taxi is very  
 17 extreme, this is very unusual to see such  
 18 high loss ratios, and I can’t speak to why  
 19 FA allowed, you know, the timing of the  
 20 last—the first rate filing which I believe  
 21 was 2013 for this taxi filing, the timing of  
 22 when they chose, they had not had a rate  
 23 change for nearly, I’m estimating it was  
 24 about ten years prior to that. I don’t know  
 25 the reason for that, so in my opinion that’s

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1 not typical of what occurs, companies don’t  
 2 let their rates stay stagnant, unchanged for  
 3 ten years and then see some astronomical  
 4 loss ratio and then put in a rate filing.  
 5 It’s a much, more dynamic and especially  
 6 with the resources that companies have to  
 7 manage their data, collect data.  
 8 MR. GITTENS:  
 9 Q. So let me see if I understand a number of  
 10 things you have said. When you’re looking  
 11 at the loss claims, you have said, according  
 12 to your responses to Mr. Feltham, that you  
 13 do not in your report indicate that there is  
 14 a trend. You refer to it more as a random  
 15 variation.  
 16 MS. ELLIOTT:  
 17 A. Um-hm. And let me just, you know, we you  
 18 see—I’m eyeballing it here, but maybe 150,  
 19 60 claims in 2012 and it went down to maybe  
 20 140, down a little bit again to about maybe  
 21 105; in 2014, maybe 125, maybe 140. So, to  
 22 me that’s a random number of claims.  
 23 MR. GITTENS:  
 24 Q. That’s a random number, so therefore it in  
 25 terms of being helpful to this Board in

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1 making some determination as to what's going  
 2 to happen in the next year, the best you can  
 3 say to them is, there'll be another random  
 4 variation as opposed to a trend that you can  
 5 tell them will be taking place.  
 6 MS. ELLIOTT:  
 7 A. For this particular coverage for taxis there  
 8 is insufficient data upon which to base, if  
 9 you will, a regression analysis to measure,  
 10 but this is a very small segment of  
 11 business.  
 12 MR. GITTENS:  
 13 Q. So, my understanding then and I want to make  
 14 sure that I get this clear, is that in terms  
 15 of the taxi review that you've done, the  
 16 most you can say to the Board is, I cannot  
 17 say that you are seeing a trend here, but I  
 18 can say that next year, the year after next  
 19 there will be some random variation. You  
 20 can also say, that at the present time using  
 21 these few years, five, there is an  
 22 exorbitant differential between the claims  
 23 and the premiums. Am I getting that  
 24 correct?  
 25 MS. ELLIOTT:

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1 A. Yes.  
 2 MR. GITTENS:  
 3 Q. Okay. So, we know what you're limiting your  
 4 comments to in terms of these five years, I  
 5 guess the question I would ask is this, had  
 6 you been able to or had you done a longer  
 7 review, would you—and if it's not going to  
 8 matter, just say—would you have been able to  
 9 tell them there was a trend? Or would you  
 10 just say, at this point in time, Board, I  
 11 can't tell you from these figures what the  
 12 next figure is going to be for the taxi  
 13 industry for next year?  
 14 MS. ELLIOTT:  
 15 A. Well, it's very difficult to tell what  
 16 anything is going to be for –  
 17 MR. GITTENS:  
 18 Q. That's why we have trends, right.  
 19 MS. ELLIOTT:  
 20 A. - any line of business. But we know what  
 21 the premiums are being charged. We have a  
 22 five-year history of what the loss amounts  
 23 are. I think it would be reasonable for  
 24 anyone to assume that the subsequent year  
 25 would be at least a triple digit loss ratio.

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1 MR. GITTENS:  
 2 Q. Okay. And if I understood part of your  
 3 testimony earlier, you were wondering why  
 4 the Facility hadn't adjusted 10 years ago,  
 5 coming forward or over the period of time.  
 6 Did I understand that correctly from what  
 7 you were saying?  
 8 MS. ELLIOTT:  
 9 A. To my recollection and I may be off by a  
 10 couple of years, but not too far, it had  
 11 been a substantial amount of time since a  
 12 rate application came in for their first  
 13 rate increase. And it might have been said  
 14 at the rate hearing and I'm not remembering,  
 15 but yeah, it was a long time ago without a  
 16 rate increase for such a high loss ratio.  
 17 MR. GITTENS:  
 18 Q. Understood. So, at the end of the day your  
 19 comments on the taxi industry is this Board  
 20 cannot take away a specific trend even  
 21 though your gut tells you that next year  
 22 it's going to be in triple digits. That's  
 23 about it.  
 24 MS. ELLIOTT:  
 25 A. My purpose is not to present a trend in the

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1 technical term for the Board. I'm looking  
 2 and presenting actual premiums that have  
 3 been charged in the province and comparing  
 4 that to the losses, the loss ratios and how  
 5 the premium is distributed amongst the  
 6 coverages and that was the purpose of this  
 7 exhibit. It wasn't to present a trend rate  
 8 or anything else.  
 9 MR. GITTENS:  
 10 Q. Okay. Having done that, I will move onto  
 11 the second issue now. When you refer to the  
 12 losses, how do you call it, your cost per  
 13 claim loss?  
 14 MS. ELLIOTT:  
 15 A. Yes.  
 16 (10:45 a.m.)  
 17 MR. GITTENS:  
 18 Q. And then you work out your loss ratios.  
 19 When you're referring to that loss, is that  
 20 a reflection—because you've described the  
 21 accident years, all claims that occurred in  
 22 that year regardless of when the claim was  
 23 closed. So, when you're referring to all  
 24 claims in that year, you're referring—if a  
 25 claim happened to have closed in that year,

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1 it's included.  
 2 MS. ELLIOTT:  
 3 A. If it occurred in that year.  
 4 MR. GITTENS:  
 5 Q. In that year and even if it closed in that  
 6 year it still wouldn't matter because it  
 7 closed in that year. But that claim also  
 8 has a component of a reserve that's put—once  
 9 that claim is made in the year, let's pick a  
 10 year, 2015, a claim made in 2015.  
 11 MS. ELLIOTT:  
 12 A. An event occurred, yes.  
 13 MR. GITTENS:  
 14 Q. An event, thank you very much. An event  
 15 results in a claim and the monies that's put  
 16 aside to deal with that eventually will have  
 17 a payout portion, but will also have a  
 18 reserve.  
 19 MS. ELLIOTT:  
 20 A. Well, approximately could –  
 21 MR. GITTENS:  
 22 Q. Maybe I should have said it in the reverse  
 23 fashion. They would have a reserve from  
 24 which the payout would take place, am I  
 25 getting that correct?

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1 MS. ELLIOTT:  
 2 A. Well, maybe if I could help here.  
 3 MR. GITTENS:  
 4 Q. Please, I'm all here for help.  
 5 MS. ELLIOTT:  
 6 A. So, when we refer to ultimate losses and  
 7 perhaps we'll speak to the 2012 year, it's  
 8 the oldest of the five years presented. So,  
 9 this amount would include all, for any  
 10 accident that occurred in that 12-month  
 11 calendar period, the amount that has been  
 12 paid, the amount that the adjuster is  
 13 looking at the claim file has reserved  
 14 including any amounts paid for claims  
 15 handling, legal fees, estimates for that.  
 16 And that is what is reported by the company  
 17 to GISA and IBC is their service provider,  
 18 collects and organizes that data. Once that  
 19 data has been collected and compiled, for  
 20 each accident year an estimate is calculated  
 21 as to how much more or less from that total  
 22 aggregate amount may ultimately be paid.  
 23 Now, for a year like 2012, the estimate is  
 24 pretty solid. It's five years old. So, it  
 25 might be another five, ten percent more or

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1 five, ten percent less. Sometimes the  
 2 estimate can be lower than what's presented  
 3 by the companies. So, the older accident  
 4 years, the estimates that are presented of  
 5 the ultimate loss when all the claims are  
 6 settled and closed, are firmer, more  
 7 accurate, for in this case, 2012 than they  
 8 would be 2016. So, there's the individual  
 9 adjuster handling the file, dealing with the  
 10 lawyer, making estimates, that number is in  
 11 there, that's called the case reserve  
 12 estimate and then IBC will add on what is  
 13 referred to as a loss development factor.  
 14 And it's kind of a bolt number that applies  
 15 to all these losses. So, that's what's in  
 16 these numbers.  
 17 MR. GITTENS:  
 18 Q. Okay. So, let me see. The adjuster—an  
 19 event occurs, let's start off at the start.  
 20 An event occurs, like the big bang, right.  
 21 As a result of that, a claim is made. When  
 22 the claim is made, the adjuster looks at it  
 23 and says, hmmm, I've got to put aside a  
 24 reserve of X number of dollars.  
 25 MS. ELLIOTT:

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1 A. Yes.  
 2 MR. GITTENS:  
 3 Q. Right. In addition to that, when that is  
 4 reported to the IBC, the IBC says, hmmm, X  
 5 has been put aside, but we're going to bump  
 6 that up by Y which is a further reserve on  
 7 the X.  
 8 MS. ELLIOTT:  
 9 A. Not necessarily.  
 10 MR. GITTENS:  
 11 Q. Not necessarily, but is that what's done?  
 12 MS. ELLIOTT:  
 13 A. So, each of these individual claims that  
 14 occurred, let's say, in 2012, are all  
 15 reported to IBC. And all of that data is  
 16 looked at. So, it's not looked at oh, this  
 17 item here looks a little low, I'll bulk that  
 18 up and this one looks low and I'll bulk that  
 19 down. The data is looked at in aggregate  
 20 and it's looked at over time, how do these  
 21 claims settle out over time, pay out over  
 22 time when they're ultimately close? So, an  
 23 estimate is calculated based on the  
 24 aggregate data. And sometimes this  
 25 estimated reserve can take the total down or

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1 take it up.  
 2 MR. GITTENS:  
 3 Q. Or take it up.  
 4 MS. ELLIOTT:  
 5 A. But typically in this line, it would take it  
 6 up.  
 7 MR. GITTENS:  
 8 Q. Right, so we now have, as you've explained,  
 9 two levels of a reserve and then that  
 10 reserve being added onto all the other  
 11 reserves and that being bulked up or bulked  
 12 down. Is that correct?  
 13 MS. ELLIOTT:  
 14 A. Yes.  
 15 MR. GITTENS:  
 16 Q. Okay, so that's now put aside. And is  
 17 that's what reflected as the loss for that  
 18 2012 year?  
 19 MS. ELLIOTT:  
 20 A. Yes. In terms of 2012, like, the majority  
 21 of this has been paid and settled and it's  
 22 five years out.  
 23 MR. GITTENS:  
 24 Q. Um-hm, right. So, now we know that that's  
 25 been put aside to reflect what the insurance

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1 industry, whether it's an individual,  
 2 adjuster's level, company level or at the  
 3 IBC level, a certain amount has been put  
 4 aside. But when they are reporting these  
 5 figures, they're reporting that as to the  
 6 loss for 2012.  
 7 MS. ELLIOTT:  
 8 A. Yes, the amount that's been paid, it changes  
 9 over time, of course.  
 10 MR. GITTENS:  
 11 Q. Right. So, that's what they're putting in  
 12 there for 2012.  
 13 MS. ELLIOTT:  
 14 A. And let me clarify, for 2012 it's the amount  
 15 that's been paid as at December 31, 2016 and  
 16 the reserves that the case adjuster has  
 17 estimated as at December 31, 2016. So,  
 18 their estimates now are five years mature.  
 19 They've had a lot of time, you know, looking  
 20 at this file, handling it, understanding and  
 21 so their estimate is much firmer than the  
 22 case handler would have. So, the estimates  
 23 of the losses for 2012 in this example where  
 24 we're seeing 6 million compared to under 2  
 25 million in premium, they're pretty firm at

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1 that point.  
 2 MR. GITTENS:  
 3 Q. So, therefore, what we have is at that point  
 4 in time looking back, a claim that, in fact,  
 5 that there were only two million in premiums  
 6 for that year, but we estimate—in addition  
 7 to what we've actually paid out, plus what  
 8 we've holding back still for, yet to be paid  
 9 out, six million dollars in total claims.  
 10 MS. ELLIOTT:  
 11 A. In total –  
 12 MR. GITTENS:  
 13 Q. For 2012.  
 14 MS. ELLIOTT:  
 15 A. - the estimate when all claims were settled  
 16 and closed including adjusting expenses, it  
 17 would be about six million dollars, yes.  
 18 MR. GITTENS:  
 19 Q. Okay. So, let me ask you this, it is your  
 20 knowledge as to whether or not five years  
 21 out after the year in question, whatever  
 22 year that might be, there are amounts left  
 23 over in the reserves that are brought back  
 24 into profits of the company that's not going  
 25 to be paid out because that claim has been

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1 closed. It turns out that between the two  
 2 levels of reserves, they reserved more than  
 3 they needed to. Which is a good thing, you  
 4 know, we like to make sure they have enough  
 5 there to pay out, but the reality is if  
 6 they've overestimated the reserve, that will  
 7 be available to them in subsequent years as  
 8 profit.  
 9 MS. ELLIOTT:  
 10 A. Well, let me, I hope, help explain that.  
 11 MR. GITTENS:  
 12 Q. Sure.  
 13 MS. ELLIOTT:  
 14 A. So, what we're looking at here are accident  
 15 years. And each one year later, each year,  
 16 if you will, is more mature. So, at  
 17 December 2013 we can look at 2012 and see  
 18 how it is and then at December 2014. So,  
 19 each year we're updating the accident year  
 20 estimate, okay. And that changes over time  
 21 and of course, each accident year is  
 22 changing as you look back. With respect to  
 23 financial costs and changes, you know, maybe  
 24 too high, too low and we—that's referred to  
 25 a calendar year look. So, you look at a

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1 calendar year and you say, how much has been  
 2 paid out in that year? What were my  
 3 reserves last year at the beginning of the  
 4 year, December 31? What are they now at the  
 5 current year I'm looking at and any  
 6 difference in there? And so sometimes there  
 7 are takedowns and reserves or take ups and  
 8 reserves and that looks at your financial,  
 9 you know, your year-end reporting. That is  
 10 a different look than what an actuary would  
 11 look at in terms of statistics and how are  
 12 the results. So, yes, there can be flows  
 13 from older years where there's takedowns or  
 14 maybe there's take ups or whatever it is,  
 15 and when you're looking at that calendar  
 16 year, you're looking at those changes over  
 17 time. But in this particular look and it's  
 18 a clean look for pricing, we use accident  
 19 year data because it's always, how is that  
 20 one year looking? And it shifts a little  
 21 bit over time, but typically not too  
 22 dramatically. Like, I would be surprised if  
 23 2012 changed very much from what we're  
 24 seeing now. And so that is the look—we're  
 25 pricing and looking at the profit and well,

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1 profit if you will and doesn't need a rate  
 2 increase, that's what we look at. What  
 3 you're referring to is changes in reserves,  
 4 that's more of a financial look on the  
 5 calendar year results. Old years maybe  
 6 being—there's takedowns or maybe there's  
 7 take ups and how does that affect your  
 8 current financial reporting.  
 9 MR. GITTENS:  
 10 Q. So, if I take what you're saying to the  
 11 Board there because 2012 is five years ago  
 12 and as a result of that you believe the  
 13 numbers have solidified somewhat, the  
 14 corollary of that is 2016 which is your last  
 15 year here rarely is very young for us to be  
 16 talking about what the actual is going to  
 17 turn out to be, whatever number you've got  
 18 there, in five years' time you'll be able to  
 19 tell what us what that looks like, but right  
 20 now it is the estimate of what those claims  
 21 will cost. It's only been a year, well,  
 22 2017 (sic.) to 2016 and that can change  
 23 considerably depending upon—because it still  
 24 has five years to solidify.  
 25 MS. ELLIOTT:

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1 A. Or more.  
 2 MR. GITTENS:  
 3 Q. Or more, so therefore this commission should  
 4 be mindful that when you're talking about  
 5 2015, 2016, you're not really able to give  
 6 them a truly accurate picture of what the  
 7 cost claims are for those years.  
 8 MS. ELLIOTT:  
 9 A. I would say that there was less certainty  
 10 with 2016 than there is with 2012, but I  
 11 also, you know, we do give credence, of  
 12 course to the amounts that the case  
 13 adjuster, you know, in these files they'd be  
 14 dealing with lawyers and estimating what the  
 15 costs are going to be and what the  
 16 settlement is going to be. And so, you  
 17 know, we don't want to dismiss that just  
 18 because there is an estimate in there by the  
 19 case adjuster who typically would be the  
 20 experience adjusters handling these type of  
 21 files. So, you know, we wouldn't dismiss it  
 22 and say it has no credibility, but it is  
 23 more uncertain, 2016 and 2012, absolutely.  
 24 MR. GITTENS:  
 25 Q. Okay. Now, so that's number 1 and number 2.

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1 Number 3 and forgive me if I am a bit  
 2 skeptical of the insurance companies; it  
 3 comes with the territory. But if I wanted  
 4 to underestimate my profits in the insurance  
 5 industry, I would over estimate my reserves  
 6 knowing that five years from now when those  
 7 claims are settled, those reserves that  
 8 aren't paid out will come back into profits.  
 9 Am I making that up or is that theoretically  
 10 possible?  
 11 MS. ELLIOTT:  
 12 A. Well, there are two—what we're looking at  
 13 here and I'm not sure what reserves you're  
 14 referring to. If we're looking at the case  
 15 reserves that are set by the individual  
 16 adjuster, they would have a protocol, claims  
 17 reserving philosophy, how they manage each  
 18 claim. If you're referring—so that's done  
 19 and each company is a little bit different,  
 20 how they, the claims department –  
 21 MR. GITTENS:  
 22 Q. Absolutely.  
 23 MS. ELLIOTT:  
 24 A. - how they run it. Then outside of that,  
 25 there are these bulk reserves that you are

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1 you referring to that the, well, actuaries  
 2 that do that, what they said, but we're not  
 3 using that. We're not using what the bulk  
 4 reserves at each individual company sets by  
 5 the actuary, by their finance department.  
 6 These are aggregated industry data and in  
 7 this case and it does happen to be FA data,  
 8 but 95 percent is taxi, but you know, for  
 9 other lines of business, that's not the  
 10 case. We're looking at that aggregated data  
 11 and trying to estimate what that additional,  
 12 different reserve could be higher or lower,  
 13 should be added on to estimate the ultimate  
 14 cost. So, your reference to these bulk  
 15 reserves that they want to pat up, maybe the  
 16 actuary, for some reason, has—let me just  
 17 make sure I'm crystal clear here. Actuaries  
 18 are required to reserve what is their best  
 19 estimate for their financial statements.  
 20 There's a range around that, of course, but  
 21 there's no intent by any actuary, by any  
 22 appointed actuary to bulk up, you know, to  
 23 pat things that's not appropriate, but  
 24 hindsight may say, oh, they happen to be too  
 25 high for that particular year and maybe too

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1 low for the next year; that occurs. So,  
 2 theoretically, yes, you could do what you  
 3 suggested, but that's not much understanding  
 4 of what occurs.  
 5 MR. GITTENS:  
 6 Q. Okay, thank you very much, but when we get  
 7 into the other sections and we deal with the  
 8 industry as a whole and we look at the years  
 9 2003 to 2007, if we see that the industry  
 10 took out 20 to 30 percent in profits during  
 11 those years, one would have to say, maybe  
 12 the theory that they wouldn't do that would  
 13 have to be considered.  
 14 (11:00 a.m.)  
 15 MS. ELLIOTT:  
 16 A. Well, I think it's important to look at the  
 17 context of why those reserves were  
 18 established at the time.  
 19 MR. GITTENS:  
 20 Q. Right, well, we can look at context, but we  
 21 must also look at results, but that's  
 22 another discussion for later down in the  
 23 process. Thank you very much for your co-  
 24 operation in answering my questions. That's  
 25 all.

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1 CHAIR:  
 2 Q. Thank you. Spinal Cord Injury Association,  
 3 do you have –  
 4 FRAIZE, Q.C.:  
 5 Q. Yes, just a few questions. It goes back to  
 6 how I started this off this morning. Can  
 7 you tell us, with the data—you have the  
 8 number of claims, can you tell us how many  
 9 drivers there were?  
 10 MS. ELLIOTT:  
 11 A. For this line of business, taxi, the number  
 12 of—I assume you're asking vehicles, not  
 13 drives, but I don't know either for that  
 14 matter.  
 15 FRAIZE, Q.C.:  
 16 Q. The reason why I'm asking, insurance  
 17 premiums are based on risk, would you agree?  
 18 MS. ELLIOTT:  
 19 A. Yes.  
 20 FRAIZE, Q.C.:  
 21 Q. So, therefore, if for instance, a person  
 22 drives 10,000 kilometres a year and another  
 23 person drives 70,000 a year, there's a  
 24 greater risk factor of an accident?  
 25 MS. ELLIOTT:

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1 A. There would be an increased likelihood, yes.  
 2 FRAIZE, Q.C.:  
 3 Q. Now, the taxi business, it's commercial  
 4 insurance.  
 5 MS. ELLIOTT:  
 6 A. Correct.  
 7 FRAIZE, Q.C.:  
 8 Q. It's not private, you know, you buy  
 9 insurance for your own vehicle. Now, in  
 10 your data, can you tell us or was it shown  
 11 to you or can it be determined that with the  
 12 number of claims, how many drivers there  
 13 were?  
 14 MS. ELLIOTT:  
 15 A. The number of drivers is not provided in the  
 16 GISA exhibits that we have. So, I don't  
 17 know the answer to that.  
 18 FRAIZE, Q.C.:  
 19 Q. Did they give you the number of cars?  
 20 MS. ELLIOTT:  
 21 A. It's not provided in the GISA exhibit. And  
 22 the reason for that, it's not that they are  
 23 trying to hide it, it's that it's often  
 24 written by fleets and the number of cars  
 25 aren't, or vehicles are not provided in that

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1 format. So, when the taxi exhibit is  
 2 published for the industry, the number of  
 3 cars, vehicles, taxis, vehicles are not  
 4 provided. However, if you reference a  
 5 Facility Association Rate Filing you can see  
 6 the number of vehicles in that case. And  
 7 they would also have that information with  
 8 respect to driver record abstracts that are  
 9 ordered, so they would know how much drivers  
 10 that they have, but I don't happen to have  
 11 that information.  
 12 FRAIZE, Q.C.:  
 13 Q. Would there be a variance in premiums—okay,  
 14 the premiums that are charged to the taxi  
 15 companies, are they standard across the  
 16 board? Are they based on the number of cars  
 17 they have or is it based on the number of  
 18 drivers they have. How do they figure out  
 19 what taxi –  
 20 MS. ELLIOTT:  
 21 A. Well, the rate would be set per vehicle and  
 22 it would reflect a number of factors  
 23 including what limit of liability that they  
 24 purchased; what their driving record is; any  
 25 convictions that they have. There would be

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1 a number what are referred to as rating  
 2 variables. So, the rate would vary by  
 3 individual.  
 4 FRAIZE, Q.C.:  
 5 Q. Now, quoting Open Line, seems to talking  
 6 about this, there was a limo driver that  
 7 made reference that his mileage, he doesn't  
 8 put that much mileage on his vehicles, but  
 9 he's being charged the same premium as a  
 10 taxi that would drive 10 times the mileage,  
 11 is that correct? Are they just lumped in?  
 12 MS. ELLIOTT:  
 13 A. I would have to look that up to confirm,  
 14 okay, I would have to look that up.  
 15 FRAIZE, Q.C.:  
 16 Q. Now, in your information, was there a  
 17 distinction between property damage and  
 18 personal injury claims?  
 19 MS. ELLIOTT:  
 20 A. Yes, we provided—the amount of property  
 21 damage, like collision, comprehensive is  
 22 very limited for taxis. Is that what you're  
 23 asking about?  
 24 FRAIZE, Q.C.:  
 25 Q. No, I'm asking, like, taxi drivers that or

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1 taxi companies that have accidents, they do  
 2 damage to other individual who have a  
 3 vehicle and also the personal injury aspect,  
 4 does your report reflect that? The  
 5 accidents they cause and the division  
 6 between property damage and personal injury?  
 7 MS. ELLIOTT:  
 8 A. So, third party liability which we have  
 9 presented and is the focus of our discussion  
 10 because it represents 90 percent of the  
 11 premium, this information here is not  
 12 available to us in the format of the GISA  
 13 exhibit to separate, distinguish between the  
 14 bodily injury component and the property  
 15 damage component which the two together  
 16 comprise TPL. Again, that information would  
 17 be available through the Facility  
 18 Association's own data, that's available to  
 19 them.  
 20 FRAIZE, Q.C.:  
 21 Q. So, would I be correct in saying this, the  
 22 data that we have, we don't know how many  
 23 drivers. We may know how many vehicles. We  
 24 do not know the mileage. We don't know how  
 25 they divide it up between a good drive and a

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1 bad driver, is that correct?  
 2 MS. ELLIOTT:  
 3 A. Yes, that would be correct.  
 4 FRAIZE, Q.C.:  
 5 Q. Okay. And also within the taxi business  
 6 there are private individuals that work for  
 7 a taxi company and they have their own  
 8 drivers as well. Do you know if the driver  
 9 abstracts for those independents that are  
 10 under one taxi umbrella, are those also  
 11 looked at by the Facility?  
 12 MS. ELLIOTT:  
 13 A. I believe a driver abstract is obtained for  
 14 each driver on the vehicle.  
 15 FRAIZE, Q.C.:  
 16 Q. Now, would there be—is there any restriction  
 17 if an individual has a habit of having an  
 18 accident, say one a year? Is that picked up  
 19 by the Facility organization, a driver?  
 20 MS. ELLIOTT:  
 21 A. You're and I would like to answer your  
 22 questions, but you're sort of wading into  
 23 underwriting and of taxi business in how FA  
 24 underwrites its business and that was not  
 25 the purpose of my review. I was looking at

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1 the statistics that are provide through GISA  
 2 for taxi. I would answer your question if I  
 3 knew, but I do not work for FA. I'm not an  
 4 underwriter and I don't have the answer to  
 5 those questions.  
 6 FRAIZE, Q.C.:  
 7 Q. No further questions.  
 8 CHAIR:  
 9 Q. I'm noticing we are past our point of break  
 10 time. Is it the wish, we can take a 20  
 11 minute break or so and let everybody get  
 12 refreshed and we'll come back to you, IBC.  
 13 (BREAK – 11:08 A.M.)  
 14 (RESUME – 11:35 A.M.)  
 15 CHAIR:  
 16 Q. Are you ready, Mr. Stamp?  
 17 STAMP, Q.C.:  
 18 Q. Yes, I am, ma'am.  
 19 CHAIR:  
 20 Q. Okay, whenever you're ready.  
 21 STAMP, Q.C.:  
 22 Q. Ms. Elliott, when you're ready. Okay? I  
 23 just wanted to come back to the question  
 24 that one of the earlier individuals had  
 25 asked about and that was the adjustment to

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1 the claims adjusters' calculations for  
 2 reserves and then you spoke about somebody  
 3 at GISA, did you not, making a further  
 4 adjustment?  
 5 MS. ELLIOTT:  
 6 A. And these are referred to as lost  
 7 development factors.  
 8 STAMP, Q.C.:  
 9 Q. Um-hm.  
 10 MS. ELLIOTT:  
 11 A. So, GISA reviews the industry aggregated  
 12 data and based on the history of how claims  
 13 settle over time for a particular accident  
 14 year, development factors are determined and  
 15 then that is applied to the reported  
 16 accident year data to estimate what the  
 17 ultimate costs will be when all the claims  
 18 are closed and settled. So, yes, so GISA  
 19 determines factors that are applied to the  
 20 data.  
 21 STAMP, Q.C.:  
 22 Q. I'm not sure if I understand what I'm going  
 23 to be speaking about completely, but I  
 24 believe there is a factor to be included in  
 25 the reserves for claims that have actually

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1 occurred, but have not yet been reported,  
 2 sometimes referred to as IBNR.  
 3 MS. ELLIOTT:  
 4 A. Yes, so there's—the factor that I referenced  
 5 there that GISA prepares and it's published  
 6 in their exhibits that would encompass  
 7 claims that are late reported that you're  
 8 referring to. So, if a claim occurred in  
 9 November of 2012, but it didn't get reported  
 10 until January of 2013, these development  
 11 factors would account for late reported  
 12 claims plus any changes in what the, beyond  
 13 what's reported by the companies to an  
 14 ultimate level. So, it's an all-  
 15 encompassing factor that GISA provides.  
 16 STAMP, Q.C.:  
 17 Q. Right. And so that the adjuster in each of  
 18 the individual insurance companies has his  
 19 files folders, has his claims files, he's  
 20 looking at those files, that's the files  
 21 he's actually working on.  
 22 MS. ELLIOTT:  
 23 A. The individual adjuster.  
 24 STAMP, Q.C.:  
 25 Q. Individual claims files. And so he's doing

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1 his assessment, his analysis as he's  
 2 required to do, required to come up with a  
 3 reserve and I take it that that reserve is  
 4 reviewed annually, at least, to make sure  
 5 it's current and reasonable.  
 6 MS. ELLIOTT:  
 7 A. I'm sure more than annually, but yes.  
 8 STAMP, Q.C.:  
 9 Q. Maybe more than annually. And then, of  
 10 course, the industry knows that out there  
 11 are unreported claims. And so one of the  
 12 features that I recall looking at some of  
 13 the taxi information was that how frequently  
 14 claims went a long time without being  
 15 reported. Did you know—I don't know if you  
 16 saw that in some of the materials. It's it  
 17 the Cameron report actually, but I don't  
 18 know if you would have –  
 19 MS. ELLIOTT:  
 20 A. Well, there certainly are claims where  
 21 there's a delay in reporting, but there is a  
 22 statute of limitations. So, certainly for  
 23 2012 that would not be the case. And I'm  
 24 sure there are circumstances where there's a  
 25 delay, yes.

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1 STAMP, Q.C.:

2 Q. Well, I guess what I'm sort of focused on is

3 that the insurance companies, themselves

4 would know this, but GISA, which is an

5 independent group from the insurance

6 companies, it has to understand that

7 historically when they get the information

8 in from the individual adjusters, we'll say,

9 with the claims reserves that they've

10 calculated, but absent from that because

11 they don't have a file folder, there's

12 claims that have not yet been reported to

13 those adjusters. They don't have the files

14 for them, therefore, they can't reserve, but

15 GISA knows, historically, this is what

16 happens.

17 MS. ELLIOTT:

18 A. Yes.

19 STAMP, Q.C.:

20 Q. So they quantify in some ways, as best they

21 can, I guess, that the reserve has be

22 included as well.

23 MS. ELLIOTT:

24 A. Right, there is both factors for claim count

25 development and sometimes the number of

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1 claims reported reduces because someone

2 might submit a claim and then they realize

3 well, I'm fine after all and they withdraw

4 the claim. So, it can be fewer claims

5 reported eventually that are part of the

6 system then initially reported, but that can

7 go both ways, of course. And then there's

8 also separate and different factors for the

9 dollar amount. How much will the amounts

10 that are reported by all companies together

11 in aggregate, how will that change over

12 time? And an estimate is created for what

13 the cost will be by accident year, what the

14 ultimate cost will be when everything is

15 closed and finished.

16 STAMP, Q.C.:

17 Q. And that's the GISA group that gets that

18 ultimate number that they introduce into

19 the--for the reserves and paid amounts.

20 MS. ELLIOTT:

21 A. With respect to this exhibit, it's—taxi,

22 yes, it is a GISA.

23 STAMP, Q.C.:

24 Q. It's a continuous effort on the part of GISA

25 using the information from the individual

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1 adjusters and its own analysis to come up

2 with a proper reserve in each of these

3 years.

4 MS. ELLIOTT:

5 A. Yes, the companies report, in some cases,

6 they're reporting daily; sometimes it's

7 monthly, but they are reporting very

8 regularly to GISA, but GISA reviews, in this

9 particular case, annually, the factors, yes.

10 STAMP, Q.C.:

11 Q. Now, Ms. Elliott, and I don't expect you to

12 remember all of this because obviously some

13 of it is a time ago, but I checked a notice

14 published on the PUB website. It's actually

15 published on October 27, 2015. I bet you

16 won't know about this, but it referred to a

17 May 22, 2015 application by Facility

18 Association for rate adjustment for taxi and

19 limousine which is the group we're talking

20 about in this first report that you've done.

21 And in that notice on the PUB website they

22 refer to that, this occasion, this May 22nd,

23 2015 as the third application for a rate

24 adjustment by Facility for the taxi group in

25 three years. So, I'm assuming that

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1 somewhere in the three year period, '13,

2 '14, '15, there are actually three

3 applications to the PUB for rate increases.

4 Now, I don't expect you to remember all that

5 of that, but that's what they publish.

6 MS. ELLIOTT:

7 A. Yes, well, I don't remember the number of

8 applications we do reference in our report

9 on page 2, the approved rate changes by the

10 Board and you're right, I don't recall

11 anything interim that may not have been

12 approved. I don't recall.

13 STAMP, Q.C.:

14 Q. So, those are the rate changes that were

15 approved. Now, I want to ask this question,

16 but I want to maybe preface it by making

17 sure that we're all clear. When an

18 application is filed by Facility

19 Association, for example, for the taxi and

20 limousine group for a rate, then there's an

21 analysis done and obviously, I think your

22 firm is involved in that analysis typically

23 on behalf of the Board. And then there is a

24 judgment applied by you and ultimately by

25 the Board to the application and your study

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1 of, I guess, that information and trying to  
 2 come to a proper, I guess, calculation or  
 3 determination as to what that rate increase  
 4 or adjustment should be.  
 5 MS. ELLIOTT:  
 6 A. Right. We would, FA would submit an  
 7 application to the Board with their support.  
 8 We would review it and rather rigorously, I  
 9 would say, and then we would test  
 10 alternative assumptions that we may find  
 11 more reasonable and we would suggest those  
 12 to the Board and the Board would make a  
 13 determination as to what it finds reasonable  
 14 and appropriate and approved accordingly.  
 15 (11:45 a.m.)  
 16 STAMP, Q.C.:  
 17 Q. So, when I look at the chart on your page 5,  
 18 at the top of your page 5, Ms. Elliott,  
 19 that's the one that shows the earned premium  
 20 being the smaller blocks in each year and  
 21 the ultimate loss including expenses being a  
 22 much larger block, as you say, it's a very  
 23 significant gap. But is it fair to say that  
 24 when rate setting is being done, this is not  
 25 what's looking to be achieved. I mean,

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1 what's looking to be achieved, I take it, is  
 2 that these numbers, that these blocks will  
 3 match each other.  
 4 MS. ELLIOTT:  
 5 A. Well, I wouldn't say match. I would say  
 6 that the red line, the red bar should be  
 7 lower than the blue bar, not match.  
 8 STAMP, Q.C.:  
 9 Q. To allow for the other expenses and so on.  
 10 But what I'm assuming is therefore rate  
 11 setting is not looking to achieve this  
 12 result.  
 13 MS. ELLIOTT:  
 14 A. And this is not rate setting. This is the  
 15 presentation of the statistics.  
 16 STAMP, Q.C.:  
 17 Q. Oh, I understand, but it does, I guess,  
 18 reflect on how adequate or inadequate rates  
 19 may have been in any particular accident  
 20 year and we can see here that in 2013 for  
 21 example, '14, '15, '16, the ultimate loss  
 22 that's been identified is significantly  
 23 higher than the premium. And I presume  
 24 Facility, nor the Board, set out to have  
 25 that be the outcome.

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1 MS. ELLIOTT:  
 2 A. That would be correct. That would be my  
 3 understanding, that no one would intend to  
 4 have premiums of less than 2 million and  
 5 losses of 6 million.  
 6 STAMP, Q.C.:  
 7 Q. So, the idea is that because it's a  
 8 prospective exercise, it's difficult to be  
 9 precise. You're not going to ever, I guess,  
 10 be exactly on and identify that, but you  
 11 hope to be close. And as it turns out, in  
 12 these several years that you've looked at  
 13 here, that estimate as to what premiums  
 14 ought to be and the actual costs that are  
 15 incurred have been dramatically different.  
 16 MS. ELLIOTT:  
 17 A. With all due respect and defend my  
 18 profession, this is not typical results,  
 19 taxi here. And if you're managing a  
 20 portfolio, you know, whatever company you  
 21 work for, you would not want to see these  
 22 results. So, as I said earlier, I don't  
 23 know the reason for why there was a delay in  
 24 putting forth a rate proposal by FA, but  
 25 typically these bars would be the opposite,

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1 not quite the opposite, but you know, the  
 2 blue bar, the premiums would be higher than  
 3 he losses and the actuary would be doing  
 4 their best to forecast what they believe the  
 5 rates should be. And sometimes in hindsight  
 6 you'll see that, you know, you were pretty  
 7 good and sometimes, you were too high, too  
 8 low, but you're forecasting and you can't  
 9 always be a hundred percent accurate.  
 10 STAMP, Q.C.:  
 11 Q. But at page 2 your do indicate, Ms. Elliott,  
 12 that there was a rate, I guess, approval,  
 13 general rate approval of 50.1 percent,  
 14 that's a global rate, I guess, to be broken  
 15 down over all the sectors, but that was an  
 16 approval for taxi and limousine service at  
 17 August 2013.  
 18 MS. ELLIOTT:  
 19 A. Correct.  
 20 STAMP, Q.C.:  
 21 Q. And that rate that was approved, I don't  
 22 what the rate that was requested was, but  
 23 unlikely to be exactly that same rate, but a  
 24 rate was requested and a rate was approved  
 25 in August 2013, but when I look at your page

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1 4 chart, the '14 and '15 results, like,  
 2 don't tie in with that 50 percent rate  
 3 approval, the results are more unattractive.  
 4 The results are worse.  
 5 MS. ELLIOTT:  
 6 A. I'm sorry, what was your question.  
 7 STAMP, Q.C.:  
 8 Q. Well, my question is, rate approval was  
 9 given for taxi and limousine in August 1,  
 10 2013. So, I take that with that rate  
 11 approval the expectation was going forward,  
 12 in '14 for example, we would see a chart  
 13 where the loss, sorry, the ultimate loss  
 14 including expenses would be lower than  
 15 premium. That's what we would expect to see  
 16 in '14 after the rate increase in '13.  
 17 MS. ELLIOTT:  
 18 A. No.  
 19 STAMP, Q.C.:  
 20 Q. No?  
 21 MS. ELLIOTT:  
 22 A. No. That would have, obviously, been nice,  
 23 perhaps, you know, as a target of course,  
 24 that the losses would be less than the  
 25 premium, but no, that was not to be achieved

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1 with the 50 percent increase or even the—and  
 2 obviously with the 70 percent cumulative  
 3 increase that has been in evidence from 2012  
 4 to 2016, the 70 percent increase that  
 5 actually went through in the written  
 6 premiums, that has not brought the loss  
 7 ratio down to such that the premiums are  
 8 greater than the losses.  
 9 STAMP, Q.C.:  
 10 Q. But was it intended to or was it intended to  
 11 keep this separation—was it intended that  
 12 this gap, as large as it is, would continue?  
 13 MS. ELLIOTT:  
 14 A. Based on the evidence and support provided  
 15 in the individual rate applications and  
 16 there have been several since the first one  
 17 of 50 percent, a certain rate increase was  
 18 supported and defended and approved by the  
 19 Board. Because the database for the FA taxi  
 20 experience and it's essentially the total  
 21 taxi book, is small, it's not fully  
 22 credible, so it's not just a matter of  
 23 perhaps there's uncertainty to the loss  
 24 experience because it may be immature for  
 25 the more recent years. It's also, really

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1 it's a matter in this particular case is how  
 2 credible statistically is the data that is  
 3 available to prepare the rate indication.  
 4 And so to the extent that the database is  
 5 small, it wouldn't be fully credible. And  
 6 therefore, weight would be assigned to  
 7 another source which may not have as large,  
 8 if you will, implied needed rate increase.  
 9 And as a result the Board would have  
 10 approved or did approve a 50 percent rate  
 11 increase that they believe was fully  
 12 supported and defensible, albeit, if you  
 13 look strictly at the taxi experience, you  
 14 would have said, oh my goodness, you know,  
 15 six million in losses and two million in  
 16 premium, you know, we need to more than  
 17 triple the rates, but that's not how the  
 18 rate making process works. We also look at  
 19 the credibility of that data; how reliable  
 20 is it in the process, so.  
 21 STAMP, Q.C.:  
 22 Q. I think I understand what you're saying, but  
 23 I'm still trying to sort of, look at having  
 24 the rate increase in August of 2013, so I'm  
 25 looking at now, what do I expect to see, you

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1 know, in September looking forward to '14,  
 2 what's my expectation at Facility? I've got  
 3 this rate increase or what's—maybe more  
 4 importantly, what's the expectation that the  
 5 Board would have when they would increase  
 6 rates by 50 percent in August, what do they  
 7 expect to see in August 2013? What do they  
 8 expect to see in 2014?  
 9 MS. ELLIOTT:  
 10 A. Well, I have footnote, if you will, in our  
 11 report that subsequent to the three rate  
 12 changes that are listed that were  
 13 accumulatively 131 percent, they were also  
 14 additional rate increase that area  
 15 accumulative to 244 percent. So, you know,  
 16 effectively, the goal is to have rates that  
 17 area adequate and appropriate in the  
 18 circumstance to cover the cost of claims,  
 19 the operating expenses and a provision for  
 20 profit. So, that would be the goal.  
 21 STAMP, Q.C.:  
 22 Q. Sure. And I'm not trying to, please don't  
 23 misunderstand where I'm coming from, I'm not  
 24 trying to be sort of be critical of anybody.  
 25 I'm just trying to understand, looking ahead

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1 from '13 when a rate was ordered to be—that  
 2 was approved by the Board at that time, then  
 3 looking ahead to '14, the expectation that  
 4 the Board would have presumably is that they  
 5 would not see '14 results like we see here.  
 6 They would have hoped that the rate increase  
 7 that they gave would achieve the objective  
 8 of making premium a match for the ultimate  
 9 losses and operating expenses and so on.  
 10 MS. ELLIOTT:  
 11 A. Well, I will frame my response that the  
 12 Board would have approved, in my  
 13 understanding, the Board would have approved  
 14 a rate change that they believed was  
 15 supported on the data and the evidence  
 16 provided, which does not necessarily mean  
 17 that the loss ratios that are presented by  
 18 FA in a rate application which, you know,  
 19 clearly would have been high, that the  
 20 target that they looked strictly only at  
 21 those loss ratios and said, gee, what kind  
 22 of rate increase do we need to get these  
 23 down to a level that we think, you know,  
 24 will be 75 percent or whatever number.  
 25 That's not the exercise of rate making

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1 because as I expressed earlier, we want to  
 2 look at that database and assess how  
 3 credible it is. And unfortunately, in the  
 4 circumstance we have very high loss ratios,  
 5 but the data is not credible, it's a small  
 6 volume. So, it's a difficult situation, but  
 7 the Board, in my understanding, would have  
 8 approved a rate change that they believed  
 9 was appropriate and fully supported and  
 10 defensible in the circumstances which did  
 11 not necessarily bring the loss ratio down to  
 12 what FA might have wanted it to be.  
 13 STAMP, Q.C.:  
 14 Q. But the expectation, when you use the term  
 15 "not credible", I take it it's not like it's  
 16 dishonest, it's just statistically lacking  
 17 something.  
 18 MS. ELLIOTT:  
 19 A. It's limited, it's thin, there's not very  
 20 many claims.  
 21 STAMP, Q.C.:  
 22 Q. So, you add another data to try and help you  
 23 understand, when this is all going on, I  
 24 take it, what would happen with Facility  
 25 going forward and you try and incorporate

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1 its data and other data to try and give you  
 2 a reliable guide to what the rate should be.  
 3 MS. ELLIOTT:  
 4 A. Right, and as I expressed earlier, it was –  
 5 you know, they were very large, 50 percent  
 6 is a large rate increase with a very  
 7 rigorous review, and that was the rate  
 8 change that the Board approved, that it  
 9 believed was well supported and defensible,  
 10 and that was the process. It was not a  
 11 process to say what do we need to do to get  
 12 the loss ratio down to a more reasonable  
 13 level, how much, you know, should we  
 14 approve.  
 15 STAMP, Q.C.:  
 16 Q. I guess, all I'm saying, Ms. Elliott, is  
 17 that when you set the rates or when the  
 18 Board sets the rates, it doesn't have the  
 19 benefit of hindsight in a sense. They're  
 20 setting rates for the future, aren't they?  
 21 MS. ELLIOTT:  
 22 A. Yes, it is. We do rely on history.  
 23 STAMP, Q.C.:  
 24 Q. Sure, you do.  
 25 MS. ELLIOTT:

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1 A. And the data and the portfolio of risk, but  
 2 it's taking that history and trying to  
 3 forecast what will those costs be and what  
 4 the premium will be based on what you know.  
 5 STAMP, Q.C.:  
 6 Q. And taking all of that information that they  
 7 had available to them, the documentation  
 8 that was presented, the information that was  
 9 presented, and all the data that they could  
 10 sort of bring in to study this, to analyze  
 11 what they should do, the expectation when  
 12 they gave rate increase in August of '13  
 13 would be that that would hopefully achieve  
 14 the expenses and costs that Facility would  
 15 incur in '14 and going forward?  
 16 MS. ELLIOTT:  
 17 A. They would have likely submitted a rate  
 18 application for their perspective, what they  
 19 thought it would, and I would have perhaps,  
 20 I'm sure I did, have a different perspective  
 21 and that was reviewed and the Board made a  
 22 decision on that.  
 23 STAMP, Q.C.:  
 24 Q. Again I'm – perhaps you're interpreting my  
 25 questions as some kind of criticism, but I

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1 don't mean that.

2 MS. ELLIOTT:

3 A. No, no.

4 STAMP, Q.C.:

5 Q. What I'm saying is that as it turns out with

6 the benefit of hindsight, '14 was not

7 answered, the year '14 with the rates that

8 were approved in '13, didn't achieve the

9 kind of result that the Board was

10 anticipating would occur?

11 MS. ELLIOTT:

12 A. No, that's not what I would agree to. The

13 Board would have looked at the defence for

14 the rate indication that would have been

15 presented, and in the case of FA, there's no

16 profit loading allowed, so it's the losses

17 and the expenses here, and would have

18 approved a rate change on that basis, as

19 opposed to looking forward with a certain

20 other goal because – and this hinges on the

21 credibility of the data. So I think, if I

22 understand correctly, you're looking at it

23 and saying, gee, if the loss ratio was 200

24 or 300, whatever the number is, that a rate

25 change would have been put forth to bring

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1 that to a more appropriate level, and

2 conceptually, yes, that would occur on FA'S

3 data to the extent it's credible, and then

4 some other source needs to be used for the

5 balance, and that other source may cause

6 that rate change to be lower than one might

7 expect in the circumstance.

8 STAMP, Q.C.:

9 Q. And when you say "the other data that might

10 cause it to be somewhat different", that

11 would affect the anticipated cost to FA for

12 accident year, 2014, when they looked at it

13 in 2013?

14 MS. ELLIOTT:

15 A. Well, whatever rate change that was approved

16 by the Board would affect what the future

17 and loss ratio would be, yes. Ultimately, it

18 would come out.

19 STAMP, Q.C.:

20 Q. Yeah, so they look forward and with the

21 benefit of all the information they can get

22 in front of them, they make the best

23 decision that they can on what rate needs to

24 be in 2014?

25 MS. ELLIOTT:

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1 A. What rate is defended and supported, yes.

2 STAMP, Q.C.:

3 Q. Right, and that's the basis, and, of course,

4 they have FA's actuaries present their view

5 of things, and Oliver Wyman, on behalf of

6 the Board as the consulting actuary presents

7 its view of things, and the Board picks

8 through what they need to pick through to

9 determine a rate?

10 MS. ELLIOTT:

11 A. Yes.

12 STAMP, Q.C.:

13 Q. But when they pick that rate, and, you know,

14 no one expects it to be perfect, obviously,

15 but their anticipation – I guess, what they

16 presume will happen or hope will happen, or

17 expect will happen, I suppose, is that going

18 forward in 2014 we won't see what we

19 actually do see in 2014, we won't see this

20 significant margin, significant gap, between

21 earned premium and ultimate loss?

22 MS. ELLIOTT:

23 A. I'm going to make sure I'm very clear. When

24 a rate change is put through, it would be

25 the anticipation of everybody that we would

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1 see higher premiums when they're implemented

2 and those higher premiums are charged, and

3 as a result, if those higher premiums are a

4 larger percentage increase, then the claims

5 cost might be increasing and you would see

6 the loss ratio decline. That would be the

7 anticipated result.

8 (12:00 P.M.)

9 STAMP, Q.C.:

10 Q. Okay. I'm not sure if I'm clear on what

11 you're saying, but if I look at the chart in

12 2014, and this is the top of page 5 again,

13 Ms. Elliott, I look at the chart in 2014,

14 I'm just sort of going by where the lines

15 are, it appears that earned premium was up

16 in 2014?

17 MS. ELLIOTT:

18 A. Uh-hm.

19 STAMP, Q.C.:

20 Q. And that probably is reflected in the fact

21 that there was a rate increase of 50 percent

22 in August, 2013?

23 MS. ELLIOTT:

24 A. Yeah, definitely.

25 STAMP, Q.C.:

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1 Q. But, unfortunately, ultimate loss numbers  
 2 were actually higher in 2014 than they were  
 3 in 2013, so it appears from this chart?  
 4 MS. ELLIOTT:  
 5 A. Yes, yes.  
 6 STAMP, Q.C.:  
 7 Q. So that the idea of the prospect of rate  
 8 setting, unfortunately, I guess, the  
 9 ultimate loss costs that were being  
 10 anticipated in 2013 – because we knew what  
 11 the premiums were going to be, we set those,  
 12 but what we didn't know was what the loss  
 13 costs were going to be?  
 14 MS. ELLIOTT:  
 15 A. Yes, and that –  
 16 STAMP, Q.C.:  
 17 Q. That's the unknown piece.  
 18 MS. ELLIOTT:  
 19 A. Right, and that speaks to again the small  
 20 volume of data for taxis, small volume of  
 21 claims, and, therefore, lack of credibility  
 22 and there are going to be some ups and downs  
 23 because it's a smaller book of – more  
 24 volatility than a larger book of business,  
 25 yes.

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1 STAMP, Q.C.:  
 2 Q. Yeah, but when the rate was set in August –  
 3 I'm back to this question again, when the  
 4 rate is set in August of 2013, I presume it  
 5 was not the expectation of the Board that  
 6 the results that we see now published for  
 7 2014 would look like this?  
 8 MS. ELLIOTT:  
 9 A. I'm not sure, and I've never read a report  
 10 by the Board, and I could be corrected, that  
 11 said this is what I expect the results to be  
 12 with this rate change, so I don't know what  
 13 is in the Board's mind when they do that,  
 14 nor do we present our report of findings  
 15 when we do a rate filing review of what we  
 16 expect that to be. What we present is a  
 17 rate change that we believe is well  
 18 supported and reasonable and appropriate in  
 19 the circumstances. You know, if a database  
 20 is fully credible, then technically what  
 21 you're saying is correct, you'd expect it's  
 22 fully credible and you put in the rate  
 23 increase that's fully supported, you would  
 24 get the loss ratio that you would hope that  
 25 it would be – the losses would be less than

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1 the premiums. In the circumstance, due to  
 2 the limited data, it's a little bit of a  
 3 different situation than typical.  
 4 STAMP, Q.C.:  
 5 Q. More difficult to predict, you mean?  
 6 MS. ELLIOTT:  
 7 A. There's less credibility, so, yeah, more  
 8 difficult to predict and so there's less  
 9 weight put on – less weight, if you will,  
 10 and the experience when a rate application  
 11 is prepared, yeah.  
 12 STAMP, Q.C.:  
 13 Q. Okay, thank you.  
 14 CHAIR:  
 15 Q. Consumer Advocate.  
 16 MS. PAULA ELLIOTT  
 17 CROSS-EXAMINATION BY MR. WADDEN  
 18 Q. Hi, Paula. Much has been asked and answered  
 19 about this report, so we won't have too much  
 20 for you. Just so you have an understanding  
 21 of where we're coming from, we act obviously  
 22 for consumers on the whole, but by  
 23 extension, as well we, in some part,  
 24 represent taxi drivers.  
 25 MS. ELLIOTT:

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1 A. Uh-hm.  
 2 MR. WADDEN:  
 3 Q. And they are, to put it politely, an upset  
 4 group, given the premiums they're currently  
 5 paying in relation to policies for their  
 6 vehicles. We've read the report and heard  
 7 the other questions here today, and much  
 8 like the Spinal Cord Injury Association, I  
 9 think what we'd like to do just so we have a  
 10 good understanding of your views or your  
 11 calculations and opinions here, just sort of  
 12 try and bring this down to ground level, and  
 13 you may not know the answers to these  
 14 questions, but we'll give it a shot, anyway.  
 15 I know on page 2 of the report, you mention  
 16 here that the number of taxis written by the  
 17 industry is not available. Now I know Mr.  
 18 Fraize asked you how many drivers you had on  
 19 the road. He was referring presumably to  
 20 the number taxi drivers, but you said here  
 21 the number of taxis written is not  
 22 available, and, of course, the number of  
 23 taxis doesn't necessarily correlate with the  
 24 number of taxi drivers. Is it not available  
 25 because it's not something that Oliver Wyman

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1           went looking for?

2 MS. ELLIOTT:

3 A.     Oh, no, no, we went looking for it.

4 MR. WADDEN:

5 Q.     Okay, help me understand.

6 MS. ELLIOTT:

7 A.     It's not published in the exhibit, so GISA,

8           who collects all the data and publishes the

9           reports and compiles them, it's not

10          presented for this line of business for

11          taxis. For private passenger, it is.

12 MR. WADDEN:

13 Q.     Okay.

14 MS. ELLIOTT:

15 A.     So it wasn't that I didn't go looking for

16          it. It's not there.

17 MR. WADDEN:

18 Q.     Okay.

19 MS. ELLIOTT:

20 A.     But as I said, it is available within FA's

21          own database, so they would know how many

22          drivers they have and how many –

23 MR. WADDEN:

24 Q.     Okay, they would know, but in formulating

25          your report, you would not do such a deep

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1           dive so as to go talk to FA, you would just

2           go to GISA?

3 MS. ELLIOTT:

4 A.     Yes. We're looking at what the total losses

5           and premiums have been over the five years

6           of summary statistics. This is not a rate

7           making exercise to say, you know, what are

8           the rates now, what should they be; it's not

9           a snapshot, here are the premiums, here are

10          the losses, these are the results in the

11          last five years. That's pretty high level,

12          yeah.

13 MR. WADDEN:

14 Q.     High level, okay, fair enough. You go on in

15          that same sentence to say that your

16          understanding, however, is that the number

17          in terms of the last five years has not

18          changed in terms of numbers of taxis being

19          underwritten?

20 MS. ELLIOTT:

21 A.     Yeah, and I would base that on we have, as

22          described earlier, participated in the

23          reviews of the FA's application for rate

24          changes for taxis, and so that would be in a

25          confidential rate filing, so we would have

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1           seen it and I would know that it hasn't

2           materially changed over the five years, the

3           number of vehicles.

4 MR. WADDEN:

5 Q.     Okay. In that next paragraph, you

6           referenced approximately 95 percent of the

7           taxis in Newfoundland and Labrador are

8           insured by FA. The 95 percent, though, you

9           can't translate that into a number for me,

10          can you? We don't know what that actually

11          means, the ground level?

12 MS. ELLIOTT:

13 A.     I'm sorry, what do you mean, translate?

14 MR. WADDEN:

15 Q.     Well, 95 percent means how many cars? We

16          don't know that, do we?

17 MS. ELLIOTT:

18 A.     Well, we don't know – I don't have the

19          industry number of cars, and I don't have at

20          my fingertips, nor do I believe I have the

21          right to state what the FA number of

22          vehicles are, yeah.

23 MR. WADDEN:

24 Q.     Fair enough, if you don't know, you don't

25          know. The other thing that stands out to me

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1           about that number is where is the other 5

2           percent? Are we to assume that the other 5

3           percent are not insured or that they are

4           insured elsewhere?

5 MS. ELLIOTT:

6 A.     Oh, no, elsewhere.

7 MR. WADDEN:

8 Q.     So they –

9 MS. ELLIOTT:

10 A.     Insured elsewhere.

11 MR. WADDEN:

12 Q.     Okay. So there's taxis in the province,

13          licensed cabs that is, insured outside of

14          Facility?

15 MS. ELLIOTT:

16 A.     That is correct. So we would know what the

17          premium volume is for the FA, what their

18          total premiums are over this five year

19          period, and we would know what the industry

20          is, and FA has 95 percent of the premium

21          volume, and, therefore, somebody else has

22          the other 5 percent.

23 MR. WADDEN:

24 Q.     Okay. I understand I have to go to Facility

25          to get this information completely, of

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1 course, but if there are 5 percent in your  
 2 view that are insured, but insured outside  
 3 of Facility Association, do you have any  
 4 information as to who they would be insured  
 5 with, in particular?  
 6 MS. ELLIOTT:  
 7 A. No, it would be certainly a small number of  
 8 cars, but I don't know.  
 9 MR. WADDEN:  
 10 Q. All right, and, I guess, by extension then,  
 11 you wouldn't have any idea as to the rates  
 12 they might be paying with those insurers?  
 13 MS. ELLIOTT:  
 14 A. I don't know that. I've never seen a rate  
 15 filing for that other group of cars, no.  
 16 MR. WADDEN:  
 17 Q. All right. I'm just going a little bit  
 18 further down in that paragraph, Paula. It  
 19 says, "The industry experience is driven by  
 20 FA's experience". Just speak to that a  
 21 little bit more for me. Are you speaking to  
 22 the rate of losses? When you say "the  
 23 experience", what do you mean precisely?  
 24 MS. ELLIOTT:  
 25 A. Well, both. I mean, if we look at the

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1 premium level, they represent 95 percent of  
 2 the premium, yes, so they are the bulk,  
 3 they're 95 percent of the premium, and I  
 4 know from my own reviews of the loss  
 5 experience of FA and the rate applications,  
 6 yes, they're the driver of the experience,  
 7 FA is, not the other 5 percent.  
 8 MR. WADDEN:  
 9 Q. Okay. I just want to pop downward on the  
 10 page. The footnote there, footnote 1,  
 11 there's a couple of things in there I just  
 12 want to break up. Toward the end of the  
 13 second line there, Paula, you say  
 14 "Additionally, due to changes in the risk  
 15 characteristics of FA's taxi portfolio",  
 16 let's stop there. So what – when you talk  
 17 about changes in the risk characteristics,  
 18 what are you talking about; increased  
 19 accidents, or what do you mean?  
 20 MS. ELLIOTT:  
 21 A. Well, we would have expected, given the rate  
 22 changes that were approved cumulatively,  
 23 that the written premium would have been  
 24 higher in 2016. It should have been, if you  
 25 will – if every dollar went through, it

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1 would be 131 percent increase, but, in fact,  
 2 it was 70 percent, okay. So that could be  
 3 perhaps vehicles are taken off the road.  
 4 Perhaps they've improved their driving  
 5 record. Perhaps convictions, surcharges,  
 6 are fewer for whatever reason. It could be  
 7 taking coverage off. I don't – I mean, I  
 8 don't have that information to explain, but  
 9 there could be a variety of reasons. It's  
 10 quite astonishing that it's only 70 percent  
 11 versus 131, but on the other hand, it's a  
 12 very large rate increase, so people would  
 13 receive their premium notice and perhaps  
 14 have taken action to try to curb the cost.  
 15 MR. WADDEN:  
 16 Q. Okay, and again just so you understand, my  
 17 questioning is under the auspices of - at  
 18 the end of the day, what the consumer  
 19 advocate would like to do is figure out a  
 20 way to at least suggest that we can get  
 21 taxis out of Facility, that we can get their  
 22 rates down because really that's what they  
 23 want, okay.  
 24 MS. ELLIOTT:  
 25 A. Yeah.

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1 MR. WADDEN:  
 2 Q. So I'm just trying to understand a few  
 3 things about your report. You mentioned  
 4 just then in respect of premiums going down,  
 5 certain coverages being dropped off  
 6 vehicles. In fact, you mention that in your  
 7 footnote there, dropping optional coverages,  
 8 etc. Do you have any numbers in relation to  
 9 what coverages are being dropped and what  
 10 percentage at least of vehicles are dropping  
 11 such coverages?  
 12 MS. ELLIOTT:  
 13 A. No, I don't at my fingertips. On page 7 of  
 14 our report, we reference the earned premium  
 15 and clearly accident benefits and uninsured  
 16 motorists have increased substantially, but  
 17 I can't tell you, unfortunately, what you're  
 18 trying to understand here. Although the  
 19 premium has grown, maybe some have dropped  
 20 accident benefits because it's an optional  
 21 coverage. I don't know the answer to that  
 22 based on the data that's provided through  
 23 GISA.  
 24 MR. WADDEN:  
 25 Q. Okay. Some questions were asked around the

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1 rate application – the rate increases,  
 2 rather, of 2013, 2014, and 2015. I don't  
 3 think we spoke much, but there was mention  
 4 of rate applications prior to that. It's my  
 5 understanding that there was no rate  
 6 application or change in premium, I should  
 7 say, from 2003 to 2013. In 2013, it popped  
 8 up, 15 percent, right, according to page 2  
 9 of your report? The rate increase, rather.  
 10 MS. ELLIOTT:  
 11 A. Well, the first rate increase was 50  
 12 percent.  
 13 MR. WADDEN:  
 14 Q. Right, but prior to that, when was the last  
 15 rate increase, do you know that?  
 16 MS. ELLIOTT:  
 17 A. As I said earlier, working on recollection,  
 18 approximately 10 years, but that would be in  
 19 a report somewhere.  
 20 MR. WADDEN:  
 21 Q. Right, so FA would have gone –  
 22 MS. ELLIOTT:  
 23 A. A substantial amount.  
 24 MR. WADDEN:  
 25 Q. I'm sorry.

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1 MS. ELLIOTT:  
 2 A. A substantial amount of time, yes.  
 3 MR. WADDEN:  
 4 Q. Right. FA would have gone then 10 years, we  
 5 assume, without making rate application in  
 6 respect of taxis. Can you tell me, because  
 7 I'm guessing you've done reports similar  
 8 this, or at least in many jurisdictions  
 9 throughout the country, is that something  
 10 that stands out, is that standard to go that  
 11 long without any sort of rate application?  
 12 MS. ELLIOTT:  
 13 A. For some smaller lines of business that will  
 14 occur, but I'm going to say generally we  
 15 don't see a rate application come in with a  
 16 10 year gap and then such a large rate  
 17 increase. That would be unusual.  
 18 MR. WADDEN:  
 19 Q. Right. Do you have any knowledge or  
 20 understanding as to why that would have been  
 21 in this case, why there was a 10 year gap?  
 22 MS. ELLIOTT:  
 23 A. I have a recollection that perhaps that was  
 24 discussed at the hearing, but I don't recall  
 25 the response by FA off the top of my head.

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1 MR. WADDEN:  
 2 Q. I don't have anything else. Thank you,  
 3 Paula.  
 4 CHAIR:  
 5 Q. So that's the taxi report. We're moving on  
 6 to –  
 7 MS. GLYNN:  
 8 Q. The Closed Claims Study Summary.  
 9 CHAIR:  
 10 Q. You tell me where we're going, Jacqui.  
 11 (12:15 p.m.)  
 12 MS. GLYNN:  
 13 Q. Ms. Elliott, are you ready to present the  
 14 Closed Claim Study Summary?  
 15 MS. ELLIOTT:  
 16 A. Yes.  
 17 MS. GLYNN:  
 18 Q. Thank you. You can start whenever you're  
 19 ready.  
 20 MS. ELLIOTT:  
 21 A. So, as we know, the Board had asked Oliver  
 22 Wyman to participate in a review of  
 23 estimating the cost impact of minor injury  
 24 reforms, three alternative cap levels and a  
 25 deductible as currently is the case but at

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1 higher limits of 5,000, 7500 and 10,000.  
 2 And in order to complete that exercise, a  
 3 Closed Claim Study, which is a database, so  
 4 it's a collection of files that have been  
 5 closed, not remaining open, and all  
 6 claimants in that claim file, all files for  
 7 the claimants are all closed, and so, there  
 8 was a need to collect this data and this  
 9 data is collected manually, unlike data that  
 10 IBC through GISA collect, which is  
 11 automatically transferred electronically.  
 12 In this case, it's a manual review of  
 13 individual paper files for each claimant.  
 14 So, we wanted to target to get the most  
 15 recent data that we could use for this  
 16 study. We didn't want to go back to ten-  
 17 year-old data. We wanted to use as most  
 18 recent that we could. So, we targeted to  
 19 get all files that were closed in the 12-  
 20 month period beginning July 1st, 2016 through  
 21 to June 30th, 2017, and based on the number  
 22 of claims, bodily injury claims, and this is  
 23 for private passenger vehicles only, we  
 24 estimated to be that would give us about  
 25

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1 2,000 claimants which we thought would be a  
 2 reasonable size database to work with for  
 3 the analysis.  
 4 So, that was the first step that we  
 5 spoke with IBC and said this is what we'd  
 6 like, 2,000 claimant files, and this is the  
 7 time period that we think we'll get 2,000.  
 8 IBC has conducted a number of Closed Claim  
 9 studies in the context of working with the  
 10 insurance companies, training them, explain  
 11 to them what's needed, testing that data,  
 12 auditing that data that it's correct and  
 13 they had a template for that collection of  
 14 data.  
 15 So, we reviewed that template of data  
 16 and asked for a few additional items to be  
 17 added to the template, and it's basically an  
 18 Excel file that has a long list of columns  
 19 of the data that's collected, and we asked  
 20 IBC to add a couple of items. We wanted to  
 21 collect additional information with respect  
 22 to accident benefits and claimants; how they  
 23 would review claimants with respect to  
 24 whether they would be subject to the minor  
 25 injury reform caps in Nova Scotia and New

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1 Brunswick; whether there was an assessment  
 2 of serious impairment performed and the  
 3 results of that; and also, to collect the  
 4 data regarding the amount for non-pecuniary  
 5 losses that would be gross of the \$2500  
 6 current deductible. So, those additional  
 7 attributes were added.  
 8 And so the Closed Claims Study collects  
 9 data on each individual claimant. There are  
 10 a number of attributes about the date of  
 11 claim, the location, the rating class for  
 12 the first party, and in addition, there is  
 13 the information by injury type that's  
 14 collected for each claimant and then the  
 15 amounts that are paid by head of damage.  
 16 And I should make sure it's clear that  
 17 for an individual claimant that might have  
 18 suffered two or three different injury types  
 19 or whichever injury types that the amount  
 20 that is provided by head of damage is for  
 21 all the injuries of that claimant. It is  
 22 not if you have a whiplash and you had a  
 23 knee injury that the amount for non-  
 24 pecuniary loss is split between the injury  
 25 types. So, it's one amount for the head of

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1 damage for all injuries that are suffered by  
 2 that claimant.  
 3 So, that was the initial discussion  
 4 with IBC to collect this data. That  
 5 happened in the fall of 2017 and then IBC  
 6 went on its way to collect the data through  
 7 the fall and then in February 2018 provided  
 8 us a copy of this data file and there were  
 9 just under 2,000 claimants included. So,  
 10 this would be an Excel file that we're  
 11 provided with essentially 1977 rows of data  
 12 and each row would have all this information  
 13 that's collected for each of the claimants.  
 14 And on average, there are about 2. – sorry,  
 15 1.2 claimants per claim file. So, sometimes  
 16 there's just one claimant in an event and  
 17 sometimes there's more than one. So, on  
 18 average, there are 1.2 claimants in the  
 19 claim event.  
 20 When we received the data, at that  
 21 point in time, IBC had completed their  
 22 exercise of validating, working with the  
 23 companies to gather this information and  
 24 they had provided it to us and they also  
 25 explained that with our target of 2,000

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1 claimant files and the window of time that  
 2 was stated, we wanted to get all files  
 3 closed between July 1st, 2016 to June 30th,  
 4 2017 and that's regardless of when the claim  
 5 occurred. The claim could have occurred in  
 6 2008, but due to the passage of time and the  
 7 settlement process, it didn't close until  
 8 July 1st, 2016. So, the date that the action  
 9 occurred wasn't material here. It was the  
 10 date when the file, all claimants in the  
 11 file closed; so that 12-month window. IBC  
 12 expressed that due to the target of 2,000  
 13 that they were not able to meet that within  
 14 that window. So, there were six large  
 15 insurer groups, I think 20 companies  
 16 involved in the collection of this  
 17 information and so the companies were told  
 18 "well, for your proportionate share to meet  
 19 this 2,000 target, there's going to be  
 20 premium volume, you're going to have to add  
 21 a few more files". So, they were to  
 22 iteratively go back month by month; so from  
 23 June and start with June 2016 and then May  
 24 2016 and add all the files that you need for  
 25 closed files to meet your target. So, IBC

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1 explained that that's why they added outside  
 2 of our original window. So, our window of  
 3 the 12 months that was initially expressed  
 4 represented 80 percent of the files and this  
 5 extra window that was added on was an  
 6 additional 20 percent.

7 So, we received the data. IBC  
 8 explained this; okay, fine. And we wanted  
 9 to review the data for our own purposes and  
 10 not in terms of validating each individual  
 11 data element that's in it but does this make  
 12 sense to us as an actuary in aggregate  
 13 that's provided to us. And in the process  
 14 of doing that and looking at this window  
 15 that had been extended, we identified that  
 16 there were two companies that had a  
 17 disproportionate share of more in this  
 18 window than we would have expected than the  
 19 other companies and as a result of that, we  
 20 asked IBC to investigate that and it became  
 21 known that these two companies, due to  
 22 changes in their systems and acquisitions,  
 23 that older claims were not transferred when  
 24 the acquisition occurred to the new system  
 25 of the company. So, these files were

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1 missing some of the older claims, larger  
 2 claims, that never got transferred over.  
 3 So, they were settled in the old system, not  
 4 transferred to a new system, and so they  
 5 were not included. And we felt if those  
 6 companies were included in this sample it  
 7 could potentially present a bias because  
 8 they would have too few of these older  
 9 claims from perhaps whichever years, older  
 10 years, which were not transferred to the  
 11 companies. So, in our review, we chose to  
 12 exclude these two companies in case they  
 13 might present any bias to our study. And as  
 14 a result of doing that, our original sample  
 15 provided by IBC that was close to the  
 16 target, 1,977, it reduced down to 1,721  
 17 claimant files.

18 MS. GLYNN:  
 19 Q. Okay.  
 20 MS. ELLIOTT:  
 21 A. In Section – I'm on page seven of the pdf,  
 22 I'll just – we can go over for you some of  
 23 the claimant – some of the data collected.  
 24 So, this is again only private passenger  
 25 vehicles. It's not any other commercial

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1 taxis or anything else. And there's the  
 2 employment status, primary location of the  
 3 vehicle, the date of the accident, the date  
 4 of notice, date of first payment, degree of  
 5 innocence, a number of information is  
 6 collected. We provide a few highlighting  
 7 bulletins, bullet points on our findings.

8 In Section 3, we discuss the heads of  
 9 damage, the total aggregate amount. The  
 10 general damages is the largest component.  
 11 This is on page nine of the pdf. The  
 12 general damages is 57.3 million and  
 13 scrolling down to the next page, page 10, we  
 14 have a breakdown of the general damages by  
 15 the non-pecuniary which is net of the 2500  
 16 deductible is 43.9 of that amount.

17 On page 11, we've presented all the  
 18 claimants, all 1,741 claimants, into 20  
 19 percent bands of the first 20 percent, then  
 20 the next 20 percent, so split the claimants  
 21 and that is split according to the total  
 22 average settlement cost and also to show the  
 23 average non-pecuniary amount and what is  
 24 apparent from this chart presentation is  
 25 that the average non-pecuniary amount is a

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1 larger percentage of the total average  
 2 settlement amount for the smaller claims.  
 3 So, for the first 20 percent band, it's 89  
 4 percent. So, the non-pecuniary amount is 89  
 5 percent of the total settlement amount. But  
 6 when we get to the top band, it's roughly 50  
 7 percent. So, the 50,000 or the average non-  
 8 pecuniary 50,234 is about half of the  
 9 100,000 total settlement amount.

10 On page 12 of the pdf, we have a  
 11 discussion of the claimant injuries that  
 12 were collected. So -  
 13 KENNEDY, Q.C.:  
 14 Q. Excuse me one minute, Ms. Elliott.  
 15 Commissioners, Ms. Elliott's referring to a  
 16 pdf number and I'm wondering where – it  
 17 doesn't correspond with the actual number of  
 18 the report. So, is there a way that we can  
 19 correspond – I'm following along but I think  
 20 Ms. Elliott, did you refer to this as page  
 21 11 of the pdf report?  
 22 MS. ELLIOTT:  
 23 A. Yes, I was actually -  
 24 KENNEDY, Q.C.:  
 25 Q. It's actually page 8 of the report that we

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1 have.

2 MS. ELLIOTT:

3 A. - trying to accommodate showing you on the

4 screen for our – for Sara so that she could

5 show it more quickly. If I said the pdf

6 number for her that -

7 MS. GLYNN:

8 Q. So, you can continue to refer to it in that

9 way and then I will provide the page number.

10 KENNEDY, Q.C.:

11 Q. Okay, good. Thank you.

12 MS. GLYNN:

13 Q. So, we are on page 8 right now of the paper

14 document.

15 (12:30 p.m.)

16 MS. ELLIOTT:

17 A. Okay. So, in the template of data to be

18 collected, there were 35 injury types that

19 were defined by IBC and its medical expert

20 and these were grouped by IBC into three

21 classes, defined as Class 1, 2 and 3. Class

22 1 would be less severe injury types of the

23 three classes and these would be the most

24 common injury types. So, on average, for

25 the sample that we have of 1,741 claimants,

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1 there were reported 4,029 injuries. So, on

2 average, there are 2.3 injury types reported

3 per claimant. So, clearly some people

4 report one; some people report two, maybe

5 three different injury types. And in terms

6 of the Class 1 injury grouping, that would

7 be the most common, and there were 3,172

8 times that a Class 1 injury type was

9 reported in this database.

10 Class 2 has – the next category, there

11 are six injury types and it was reported 533

12 times and then the more serious group of

13 claims, more serious in the category or

14 Class 1 or Class 2, there are 21 injury

15 types and it was reported 324 times.

16 So, this report is really a prelude

17 into – it’s a discussion of the data that

18 was collected on a summary level. You know,

19 clearly with almost 2,000 claimant data

20 pieces, we can’t describe each and every one

21 of those, so it’s at a summary level, and

22 there are attachments to the report that

23 describe numerically the injury types and

24 their average cost and what was paid under

25

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1 the various heads of damages for each of the

2 groupings, but I won’t go through those

3 exhibits here.

4 MS. GLYNN:

5 Q. Does that conclude your presentation, Ms.

6 Elliott?

7 MS. ELLIOTT:

8 A. Yes.

9 MS. GLYNN:

10 Q. Ms. Elliott is available for questions.

11 CHAIRPERSON:

12 Q. Okay.

13 MS. PAULA ELLIOTT, CROSS-EXAMINATION BY JEROME

14 KENNEDY, Q.C.

15 KENNEDY, Q.C.:

16 Q. Yes, thank you. Thank you, Ms. Elliott. My

17 name is Jerome Kennedy and I’m here on

18 behalf of the Campaign to Protect Innocent

19 Victims. I have some questions for you.

20 So, yesterday, Ms. Elliott, we received

21 a document that was referred to as your

22 Terms of Engagement. That would be

23 standard, I assume, in doing any job. You

24 would reach an agreement as to an

25 understanding as to what the work was

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1 expected of you and what your remuneration

2 would be in return. Is that correct?

3 MS. ELLIOTT:

4 A. That’s correct.

5 KENNEDY, Q.C.:

6 Q. Okay. And that terms of engagement, would

7 that then guide you in terms of how you go

8 about your work?

9 MS. ELLIOTT:

10 A. It would be a high level agreement, if you

11 will. There’s a brief description. I do

12 not have it in front of me, but it would

13 have a brief description of the work that we

14 would be doing and yes, it would guide us.

15 KENNEDY, Q.C.:

16 Q. Okay. And you would have been provided, I

17 assume, with a copy of the terms of

18 reference?

19 MS. ELLIOTT:

20 A. That’s correct.

21 KENNEDY, Q.C.:

22 Q. And I don’t think, Commissioners, that the

23 engagement letter is actually – is that on

24 the website?

25 MS. GLYNN:

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1 Q. No, it's not.  
 2 KENNEDY, Q.C.:  
 3 Q. So, I think it was provided to all counsel  
 4 yesterday?  
 5 MS. GLYNN:  
 6 Q. No, it was only provided to you yesterday at  
 7 your request. We do have a copy there.  
 8 Yeah, Sara is going to bring it up for you.  
 9 KENNEDY, Q.C.:  
 10 Q. I do have some questions and just very high  
 11 level questions, more in timing than  
 12 anything else, but I don't know if - should  
 13 I continue or people be provided with a  
 14 copy?  
 15 MS. GLYNN:  
 16 Q. We can -  
 17 CHAIRPERSON:  
 18 Q. If you're using a document for questions, it  
 19 should be provided to all parties.  
 20 KENNEDY, Q.C.:  
 21 Q. Okay. This was provided - we specifically  
 22 requested yesterday from the Board as to a  
 23 copy of the engagement letter.  
 24 CHAIRPERSON:  
 25 Q. There was no - was there an indication in

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1 your request that you were going to use it  
 2 in your questioning today?  
 3 KENNEDY, Q.C.:  
 4 Q. No, we only received it last night or  
 5 yesterday afternoon, excuse me, Ms. Glynn  
 6 provided it. She provided it immediately.  
 7 CHAIRPERSON:  
 8 Q. Yes, absolutely, but if it was intended to  
 9 be used for questioning, it would have been  
 10 your responsibility to distribute it to  
 11 everybody.  
 12 KENNEDY, Q.C.:  
 13 Q. Okay. I had assumed yesterday that it had  
 14 gone out to all counsel. That's fine.  
 15 Okay. Just a couple of high level questions  
 16 on it. The date of the engagement letter,  
 17 September 28th, 2017.  
 18 MS. ELLIOTT:  
 19 A. Yes.  
 20 KENNEDY, Q.C.:  
 21 Q. Do you have a copy of the letter yourself?  
 22 MS. ELLIOTT:  
 23 A. I've just found it, yeah.  
 24 KENNEDY, Q.C.:  
 25 Q. Okay. So, we know that in this particular

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1 case, the letter from the Minister -  
 2 MR. WADDEN:  
 3 Q. Excuse me. Sorry, Jerome. If you don't  
 4 mind - just I have no problem if Jerome has  
 5 some questions on this, but it would be  
 6 helpful, I think, if we could have it on the  
 7 screen to refer to while Jerome's asking  
 8 questions.  
 9 KENNEDY, Q.C.:  
 10 Q. It's not on the - I don't think it's - is it  
 11 on the screen, Jacqui?  
 12 MR. WADDEN:  
 13 Q. You can't get it up, can you?  
 14 MS. GLYNN:  
 15 Q. No, and we did not provide it to our records  
 16 manager because we did not know it was going  
 17 to be referred to today.  
 18 KENNEDY, Q.C.:  
 19 Q. Okay. So, let's just put that aside for a  
 20 second. I'm just going to ask a couple -  
 21 I'll come back to it later, but right now, I  
 22 just want to get some dates, Ms. Elliott.  
 23 I'm trying to establish some dates. So,  
 24 September 28th, 2017 is when the engagement  
 25 letter is accepted or you accept the terms

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1 of your engagement. Is that correct?  
 2 MS. ELLIOTT:  
 3 A. That's the date of the letter, yes.  
 4 KENNEDY, Q.C.:  
 5 Q. Okay. Had you started actually working on  
 6 the file prior to that date?  
 7 MS. ELLIOTT:  
 8 A. I'd have to check, but -- it's possible, but  
 9 I have to check.  
 10 KENNEDY, Q.C.:  
 11 Q. Okay. So, let's just try to get our  
 12 timeframes correct. Now, Commissioners, we  
 13 could have this brought up. I'm just  
 14 referring to dates, but on August 9th, 2017  
 15 is when the Minister wrote the Board of  
 16 Commissioners directing them to conduct a  
 17 review and provide a report of automobile  
 18 insurance. So, August 9th, 2017 is the date  
 19 of that letter. It looks to be  
 20 approximately six or seven weeks later that  
 21 you sign your terms of engagement. Does  
 22 that sound accurate, Ms. Elliott?  
 23 MS. ELLIOTT:  
 24 A. Yes, it does, yes.  
 25 KENNEDY, Q.C.:

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1 Q. So, during that intervening period between  
 2 August 9th, 2017 and September 28, 2017,  
 3 would you have had discussions with the  
 4 Board as to what role would be expected of  
 5 you?  
 6 MS. ELLIOTT:  
 7 A. I believe we had discussions. I don't  
 8 remember them all specifically. I do recall  
 9 they were trying to deal with the taxi  
 10 audit, find resources for that, which is  
 11 something that we would not do. So, I don't  
 12 remember all the discussions, but definitely  
 13 there were some discussions, yes.  
 14 KENNEDY, Q.C.:  
 15 Q. Okay. So, there would have been  
 16 discussions. The written instructions or  
 17 the terms would have been outlined in the  
 18 terms of engagement, correct?  
 19 MS. ELLIOTT:  
 20 A. Yes. We would have had those to write the -  
 21 yes.  
 22 KENNEDY, Q.C.:  
 23 Q. Do you know when you would have been  
 24 provided with a copy of the Terms of  
 25 Reference?

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1 MS. ELLIOTT:  
 2 A. I would have been emailed them by either  
 3 Jacqui or Ryan at some point, but no, I  
 4 don't recall the dates.  
 5 KENNEDY, Q.C.:  
 6 Q. Okay. So, you don't have a specific date  
 7 there. Now, my understanding, my  
 8 recollection is that in 2005, in the Public  
 9 Utilities Board's review in automobile  
 10 insurance in the province, you had some  
 11 involvement then, did you?  
 12 MS. ELLIOTT:  
 13 A. Yes.  
 14 KENNEDY, Q.C.:  
 15 Q. In fact, I think your firm at that point was  
 16 known as Mercer Oliver Wyman. Is that  
 17 correct?  
 18 MS. ELLIOTT:  
 19 A. Yes.  
 20 KENNEDY, Q.C.:  
 21 Q. For the sake of the record though, that is  
 22 the same firm? Oliver Wyman is the -  
 23 MS. ELLIOTT:  
 24 A. I'm the same person, yes.  
 25 KENNEDY, Q.C.:

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1 Q. Were you the principal person involved on  
 2 behalf of Mercer Oliver Wyman in the 2005  
 3 report?  
 4 MS. ELLIOTT:  
 5 A. Some of it, I was; not all of it. I was ill  
 6 and away for part.  
 7 KENNEDY, Q.C.:  
 8 Q. So, who else from Oliver Wyman or Mercer  
 9 Oliver Wyman would have been involved in  
 10 2005?  
 11 MS. ELLIOTT:  
 12 A. Ted Zubulake. I was involved in 2004 and I  
 13 would have had a little gap through the very  
 14 end of December of 2004.  
 15 KENNEDY, Q.C.:  
 16 Q. And is Mr. Zubulake, does he still work with  
 17 Oliver Wyman?  
 18 MS. ELLIOTT:  
 19 A. He just retired.  
 20 KENNEDY, Q.C.:  
 21 Q. Okay. So, you're familiar then with what  
 22 took place in the 2005 Closed Claims Study?  
 23 MS. ELLIOTT:  
 24 A. Yes, yes.  
 25 KENNEDY, Q.C.:

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1 Q. Okay. Have you had involvement in the  
 2 preparation of Closed Claim Studies in any  
 3 other provinces with automobile insurance  
 4 reviews?  
 5 MS. ELLIOTT:  
 6 A. Yes.  
 7 KENNEDY, Q.C.:  
 8 Q. So, which provinces would they have been and  
 9 when would these reviews have taken place?  
 10 MS. ELLIOTT:  
 11 A. Most recently, we would have performed  
 12 reviews for New Brunswick with the reforms  
 13 which were effective July 2013; in Nova  
 14 Scotia for their reform in April 2010. We  
 15 also assisted with Nova Scotia in their  
 16 original minor injury reform and other  
 17 studies related to that. We've assisted in  
 18 Alberta with its product reviews there and  
 19 we have assisted Ontario with its review of  
 20 its product, not necessarily minor injury  
 21 reform but with respect to reforms.  
 22 KENNEDY, Q.C.:  
 23 Q. So, you have a fair degree of experience in  
 24 involvement in automobile insurance reviews?  
 25 MS. ELLIOTT:

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1 A. Yes.

2 KENNEDY, Q.C.:

3 Q. And in the conducting of the closed claims

4 studies?

5 MS. ELLIOTT:

6 A. Yes.

7 KENNEDY, Q.C.:

8 Q. Okay. So, do you remember if the questions

9 that were being asked – I’m still

10 specifically referring to the issue of caps

11 versus deductible. That was an issue in the

12 2005 PUB report in Newfoundland and

13 Labrador. Is that correct?

14 MS. ELLIOTT:

15 A. Yes, it was a consideration, yes.

16 KENNEDY, Q.C.:

17 Q. And how long would you have worked on the

18 Closed Claims Study in the 2004-2005

19 timeframe in Newfoundland Labrador?

20 MS. ELLIOTT:

21 A. Well, in Newfoundland Labrador, there were

22 two studies. There was a Private Passenger

23 Closed Claims Study and then there was a

24 Commercial Vehicle Closed Claims Study. I

25 wasn’t part of the Commercial study. I

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1 believe at that time the Board had retained

2 Bern Fitzpatrick, I think was his name, who

3 facilitated training and the audit and the

4 collection of the data. We would have

5 outlined the data, the information to be

6 collected. There was also a medical

7 personnel that the Board had retained in

8 that timeframe, a doctor, and she would have

9 understood the injury type’s terminology and

10 the framing of injury definitions. So,

11 there were resources that the Board had

12 retained in that process of collecting the

13 data and going through that data.

14 KENNEDY, Q.C.:

15 Q. Okay. So, in terms then of your involvement

16 in this present Closed Claims Study, what

17 was your role in determining how the Closed

18 Claims Study would be conducted, data

19 gathered, things like that?

20 MS. ELLIOTT:

21 A. For the current study?

22 KENNEDY, Q.C.:

23 Q. Yeah, current study.

24 MS. ELLIOTT:

25 A. Well, that is not our area of expertise in

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1 terms of going out and training the claims

2 people that are doing the input, validating

3 it. That is an area that IBC and under the

4 umbrella of GISA, that is their area of

5 expertise, collecting data and validating

6 the data, auditing the data, and that was

7 their role in this exercise to collect and

8 audit and validate the data. So, we did not

9 participate in any manner of collecting the

10 data, training the staff, explaining

11 terminology at all.

12 KENNEDY, Q.C.:

13 Q. So, earlier you referred to the concept of

14 bias and that there was a potential for bias

15 with the two insurers who were excluded.

16 Did it cause you any concern that the group

17 who would be responsible for the collection

18 of the data were also the group who were

19 proposing that there be a cap brought in in

20 the Province of Newfoundland and Labrador?

21 Did that cause you any concern about bias?

22 MS. ELLIOTT:

23 A. Well, the person that was responsible for

24 the collection of data is a statistician. I

25 don’t believe she’s involved in policy. So,

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1 no, that didn’t disturb me. IBC has many

2 employees that are highly technical.

3 They’re dealing with electronic data

4 submission from numerous countries across

5 the country with stat plans. Their

6 expertise, either a service provider for

7 GISA, the General Insurance Statistical

8 Agency, their expertise is data and they

9 have quality edits and that’s the process

10 that they manage. So, no, the fact that

11 there were some – two companies who had some

12 claims on a separate system that they

13 weren’t advised of didn’t make me believe

14 that their skill set for collecting and

15 validating the data was, you know,

16 secondary, no.

17 KENNEDY, Q.C.:

18 Q. So, your answer is that your – the

19 involvement of IBC in this process did not

20 cause you any concern about bias or

21 potential bias?

22 MS. ELLIOTT:

23 A. No, it did not cause me concern that the

24 statisticians working on this were bias.

25 No.

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1 (12:45 p.m.)  
 2 KENNEDY, Q.C.:  
 3 Q. That's not my question though. My question  
 4 was whether or not the involvement of IBC in  
 5 this process, IBC as a whole, the insurance  
 6 industry, caused you a concern about bias?  
 7 MS. ELLIOTT:  
 8 A. No, I was not—they gave me no cause for  
 9 concern that they were training the staff  
 10 how to input the information, to input it  
 11 consistently from company to company, and  
 12 that they were validating it. No, I had no  
 13 concern over that quality of work by the  
 14 statistical people that were involved in the  
 15 process.  
 16 KENNEDY, Q.C.:  
 17 Q. But see, there are more than statistical  
 18 people. We're going to come to this  
 19 shortly, but there are more than statistical  
 20 people involved, aren't there in terms of  
 21 the collection of this data, the  
 22 interpretation of the data, whether or not  
 23 something is a minor injury versus a more  
 24 serious injury? There's a subjective  
 25 element involved on the part of a lot of the

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1 people who are involved in this process,  
 2 aren't there?  
 3 MS. ELLIOTT:  
 4 A. Well, the individual companies were assigned  
 5 the task to, you know, have all the files  
 6 closed in that 12-month period, and it was  
 7 extended, to open that file and fill in  
 8 each, you know, column of data for that  
 9 claimant. So, I'm—that's who did the work.  
 10 Then, there were audits done to make sure  
 11 that that was interpreted and filled in  
 12 correctly. If something was left blank,  
 13 they would go back and ask. And so, that's  
 14 the individuals at the companies completing  
 15 that data exercise. The claims, you know,  
 16 clerks, if you will, doing that.  
 17 KENNEDY, Q.C.:  
 18 Q. Okay. So, it didn't cause you any concern  
 19 about bias?  
 20 MS. ELLIOTT:  
 21 A. Not that claims clerk would create bias, no.  
 22 KENNEDY, Q.C.:  
 23 Q. Were you asked or was part of your  
 24 engagement to participate in discussions  
 25 with the Insurance Bureau of Canada or IBC

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1 in the design of the Bodily Injury Closed  
 2 Claim Study in this case?  
 3 MS. ELLIOTT:  
 4 A. We would have definitely spoken with IBC and  
 5 there is a template which we reviewed, you  
 6 know the data to be collected, and we made  
 7 some changes to that, some additions, so  
 8 that we could respond to the terms of  
 9 reference, yeah.  
 10 KENNEDY, Q.C.:  
 11 Q. But see the Closed Claim Study, if I  
 12 understand it correctly, would be more than  
 13 simply the use of the template. There would  
 14 have had to have been the review of the  
 15 files, the collection of the data in the  
 16 files, the description of the injuries?  
 17 MS. ELLIOTT:  
 18 A. Um-hm.  
 19 KENNEDY, Q.C.:  
 20 Q. The breakdown of the heads of damages?  
 21 MS. ELLIOTT:  
 22 A. Um-hm.  
 23 KENNEDY, Q.C.:  
 24 Q. So, all of that wouldn't have been outlined  
 25 in the questionnaire, would it? The

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1 template that you're discussing.  
 2 MS. ELLIOTT:  
 3 A. Well, certainly, the description of all the  
 4 injuries was there.  
 5 KENNEDY, Q.C.:  
 6 Q. Yes, okay.  
 7 MS. ELLIOTT:  
 8 A. The heads of damage, understanding which—  
 9 what a head of damage means, those  
 10 instructions and explanations were provided  
 11 to the individuals completing the template.  
 12 That was available, and it was a medical  
 13 expert that defined the injury types.  
 14 KENNEDY, Q.C.:  
 15 Q. So, did you discuss with IBC, and if so, who  
 16 at IBC did you discuss the design of the  
 17 Bodily Injury Closed Claim Study?  
 18 MS. ELLIOTT:  
 19 Q. Um-hm, I discussed it with James Wang at  
 20 IBC. He's their statistician. And yeah, we  
 21 had the template. We reviewed it. We felt  
 22 that it provided sufficient description of  
 23 each claimant's information, and it would  
 24 serve to enable us to complete the review,  
 25 the costing of the reforms that are under

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1 consideration.  
 2 KENNEDY, Q.C.:  
 3 Q. Okay. So, now you referred earlier today to  
 4 the fact that there were six big insurance  
 5 companies I think in the province, doing  
 6 business in the Province of Newfoundland and  
 7 Labrador. Is that correct?  
 8 MS. ELLIOTT:  
 9 A. I don't think I said that today, but –  
 10 KENNEDY, Q.C.:  
 11 Q. Okay, maybe it's—it's in your report. Is  
 12 it?  
 13 MS. ELLIOTT:  
 14 A. We do reference the companies.  
 15 KENNEDY, Q.C.:  
 16 Q. Yes.  
 17 MS. ELLIOTT:  
 18 Q. But perhaps that was CUPE's this morning.  
 19 KENNEDY, Q.C.:  
 20 Q. Footnote 1 of page—again, I'm using, Ms.  
 21 Glynn, I'm using the number of the report,  
 22 the Closed Claim Study. Page 1. You'll see  
 23 there's a footnote here, but before we get  
 24 to that, you refer in the, I guess it's the  
 25 fourth paragraph, Ms. Elliott, to the

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1 collection and validation of the data which  
 2 took place from October 2017 to February  
 3 2018.  
 4 MS. ELLIOTT:  
 5 A. Um-hm.  
 6 KENNEDY, Q.C.:  
 7 Q. Did you have any involvement in the  
 8 validation of the data?  
 9 MS. ELLIOTT:  
 10 A. No, and the validation would be IBC checking  
 11 the data, the—each individual claimant  
 12 information. No, no.  
 13 KENNEDY, Q.C.:  
 14 Q. So, then you refer in the next sentence to,  
 15 “The six insurer groups with the highest  
 16 market share of private passenger  
 17 automobiles in Newfoundland and Labrador  
 18 representing 86.7 percent of the provincial  
 19 market share in total.”  
 20 MS. ELLIOTT:  
 21 A. Yeah.  
 22 KENNEDY, Q.C.:  
 23 Q. Page 1 or Footnote 2 then, you refer to  
 24 these companies. TD Insurance?  
 25 MS. ELLIOTT:

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1 A. Um-hm.  
 2 KENNEDY, Q.C.:  
 3 Q. Aviva Insurance?  
 4 MS. ELLIOTT:  
 5 A. Um-hm.  
 6 KENNEDY, Q.C.:  
 7 Q. Intact Insurance, Co-operators Insurance,  
 8 Royal Sun Insurance and Travellers  
 9 Insurance?  
 10 MS. ELLIOTT:  
 11 A. Right.  
 12 KENNEDY, Q.C.:  
 13 Q. And then, I think you refer there's 20  
 14 insurance companies--20 individual companies  
 15 who submitted data?  
 16 MS. ELLIOTT:  
 17 A. Yes.  
 18 KENNEDY, Q.C.:  
 19 Q. Yes.  
 20 MS. ELLIOTT:  
 21 A. So, that umbrella, those six large groups,  
 22 they have several companies within their  
 23 group.  
 24 KENNEDY, Q.C.:  
 25 Q. So, what is your understanding of the

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1 relationship between the Insurance Bureau of  
 2 Canada, these six bigger companies and the  
 3 smaller companies? What's your  
 4 understanding of their relationship?  
 5 MS. ELLIOTT:  
 6 A. I'm sorry, I'm not sure what you're—my  
 7 understanding of their relationship?  
 8 KENNEDY, Q.C.:  
 9 Q. Yes. How does IBC, if they're giving  
 10 direction or they're asking these people to  
 11 cooperate in the preparation of data that—  
 12 what authority—what's your understanding of  
 13 where they get that authority? Are they an  
 14 umbrella group? Are they an advocacy group?  
 15 What is the IBC in terms of its relationship  
 16 with these companies?  
 17 MS. ELLIOTT:  
 18 A. Well, IBC has agreed to participate in the  
 19 collection of this data. The Superintendent  
 20 of Insurance has authority over the  
 21 insurance companies to provide data. In the  
 22 current format, it has been streamlined and  
 23 it's electronic under the Auto Statistical  
 24 Plan, but the Superintendent has authority  
 25 to advise the companies that you must report

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1 data as requested to IBC, the holder, and  
 2 GISA, you know, publishes the exhibits, and  
 3 IBC is their service provider for that. So,  
 4 that's the relationship, that they are  
 5 required, the companies, as requested to  
 6 report data that is deemed necessary. So,  
 7 that's what they do.  
 8 KENNEDY, Q.C.:  
 9 Q. The Insurance Bureau of Canada is not an  
 10 insurance company, is it?  
 11 MS. ELLIOTT:  
 12 A. No, it is not. No.  
 13 KENNEDY, Q.C.:  
 14 Q. Okay, so what is it? What's your  
 15 understanding?  
 16 MS. ELLIOTT:  
 17 A. Well, the Insurance Bureau of Canada is a  
 18 service provider to GISA, the General  
 19 Statistic—the General Insurance Statistical  
 20 Agency. So, they have the computers and the  
 21 mainframes and the technicians that deal  
 22 with this data, manage it, that is reported  
 23 by the insurance companies.  
 24 KENNEDY, Q.C.:  
 25 Q. Have you ever done any work for IBC?

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1 MS. ELLIOTT:  
 2 A. No.  
 3 KENNEDY, Q.C.:  
 4 Q. Have you done any work for the insurance  
 5 companies that are any of those big  
 6 insurance companies that are referred to  
 7 here?  
 8 MS. ELLIOTT:  
 9 A. No.  
 10 KENNEDY, Q.C.:  
 11 Q. So, you're independent of all of them?  
 12 MS. ELLIOTT:  
 13 A. My clients are regulators across the land.  
 14 KENNEDY, Q.C.:  
 15 Q. Yes.  
 16 MS. ELLIOTT:  
 17 A. Yeah.  
 18 KENNEDY, Q.C.:  
 19 Q. Yes. So, there's no connection. That's—and  
 20 I'm not—that's not a criticism. I'm just  
 21 establishing a point here.  
 22 MS. ELLIOTT:  
 23 A. Yeah.  
 24 KENNEDY, Q.C.:  
 25 Q. That you are independent of the insurance

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1 industry itself?  
 2 MS. ELLIOTT:  
 3 A. Um-hm.  
 4 KENNEDY, Q.C.:  
 5 Q. So, when you look then at the other  
 6 companies that we have, and there's a list  
 7 of them in the Superintendent of Insurance  
 8 Report, but of the 20 smaller companies or  
 9 the 20 companies that you refer to, some of  
 10 the bigger companies also either—they are  
 11 doing business in the province, some of the  
 12 bigger companies either own or are involved  
 13 or have some relationship with these smaller  
 14 companies. Is that correct?  
 15 MS. ELLIOTT:  
 16 A. Yes, and some of the companies, if you will  
 17 the Intact Group, would have more than one  
 18 company operating in the province. So, the  
 19 same as TD Insurance would have more than  
 20 one company operating in the province.  
 21 KENNEDY, Q.C.:  
 22 Q. So, would Co-operators?  
 23 MS. ELLIOTT:  
 24 A. They might in Newfoundland. I'm not sure in  
 25 this province, but yes -

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1 KENNEDY, Q.C.:  
 2 Q. Okay.  
 3 MS. ELLIOTT:  
 4 A. Yes, they would possibly.  
 5 KENNEDY, Q.C.:  
 6 Q. Yes. So, the Superintendent--you know the  
 7 report, the Superintendent of Insurance  
 8 Report. I don't need to refer to the  
 9 report, but you know what I'm talking about?  
 10 The Superintendent of Insurance's Annual  
 11 Report lists the insurance companies that  
 12 are doing business in the Province of  
 13 Newfoundland and Labrador?  
 14 MS. ELLIOTT:  
 15 A. Um-hm.  
 16 KENNEDY, Q.C.:  
 17 Q. So, you have these six companies that  
 18 control most of market or 84.6 percent or  
 19 whatever, and then you have smaller  
 20 companies also doing business?  
 21 MS. ELLIOTT:  
 22 A. Um-hm.  
 23 KENNEDY, Q.C.:  
 24 Q. Some of whom are related to the bigger  
 25 companies, correct?

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1 MS. ELLIOTT:  
 2 A. In the context here of these companies that  
 3 were listed, the six main groups, all of  
 4 their entities within their operation were  
 5 included in the reporting. So some very,  
 6 much smaller companies outside of this 86.7  
 7 percent were not included.  
 8 KENNEDY, Q.C.:  
 9 Q. Okay, so the timeframe that has been  
 10 proposed initially was from October 2017 to  
 11 February—no, excuse me, that’s when the  
 12 collection took place. What was the initial  
 13 timeframe that was proposed for the  
 14 collection of the data and then it had to be  
 15 extended, do you remember those dates?  
 16 MS. ELLIOTT:  
 17 A. Yes, so July 1st, so any claim that closed  
 18 completely, regardless of when it occurred,  
 19 the accident occurred, so the claim closed  
 20 between July 1st, 2016 to June 30th, 2017, the  
 21 estimate would either be approximately two  
 22 thousand claimants.  
 23 KENNEDY, Q.C.:  
 24 Q. So that would be a 12-month period.  
 25 MS. ELLIOTT:

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1 A. Yes.  
 2 KENNEDY, Q.C.:  
 3 Q. Yeah, and so then it had to be expanded  
 4 because the two thousand files that you were  
 5 looking for couldn’t be—what was the  
 6 problem, sorry, there wasn’t enough files or  
 7 –  
 8 MS. ELLIOTT:  
 9 A. Correct, that’s what we were advised, yeah,  
 10 they weren’t meeting the target with that  
 11 window of time.  
 12 KENNEDY, Q.C.:  
 13 Q. So who determined then to extend the  
 14 timeframes by, I think you said a few months  
 15 either way?  
 16 MS. ELLIOTT:  
 17 A. IBC would have done that.  
 18 KENNEDY, Q.C.:  
 19 Q. Did they consult you on that?  
 20 MS. ELLIOTT:  
 21 A. No, I was not aware of it until I received  
 22 the file in February of 2018 or March or  
 23 April.  
 24 KENNEDY, Q.C.:  
 25 Q. Is that something that you feel you should

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1 have been consulted on?  
 2 MS. ELLIOTT:  
 3 A. I was surprised to find out that they hadn’t  
 4 consulted me, but I guess they didn’t and so  
 5 be it, yeah.  
 6 KENNEDY, Q.C.:  
 7 Q. Well I don’t—is it as simple, though, Ms.  
 8 Elliott as “so be it”, I mean, you’re the  
 9 person who is going to be interpreting the  
 10 data, correct?  
 11 MS. ELLIOTT:  
 12 A. That’s correct.  
 13 KENNEDY, Q.C.:  
 14 Q. So that the way that the data is collected  
 15 is important to the process that you were  
 16 going to utilize, is that correct?  
 17 MS. ELLIOTT:  
 18 A. Yes, and let me rephrase, when I said “so be  
 19 it”, they had already done and there was,  
 20 you know, that’s what I meant that when I  
 21 found out it had already been decided, but  
 22 yes, and so we looked at that to understand  
 23 why it had been extended because the  
 24 expectation was that in the 12-month window  
 25 we would have gotten close to that target

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1 and sometimes there are, you know, bad data  
 2 gets excluded, this and that, and you get  
 3 less in your target for a variety of  
 4 different reasons, you know, and again we’re  
 5 getting less than the target because we’re  
 6 excluding two companies, but you know, we  
 7 had been adamant that we wanted, you know,  
 8 two thousand claims, we wanted a good sample  
 9 size in our discussions with James, and he  
 10 indicated that, you know, he wanted to get  
 11 the two thousand for us and that he felt it  
 12 was just adding on, you know, an additional  
 13 month or whatever was needed for each  
 14 company, outside the window, to get that  
 15 target was very important, so he took that  
 16 step.  
 17 KENNEDY, Q.C.:  
 18 Q. Do you agree with me that IBC should have  
 19 consulted you prior to taking that step?  
 20 MS. ELLIOTT:  
 21 A. I would think in perhaps hindsight maybe  
 22 they would have told us, I don’t know why he  
 23 didn’t, but, yeah, everybody’s communication  
 24 style is different. He didn’t, and, yeah.  
 25 KENNEDY, Q.C.:

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1 Q. Okay, now you say we were adamant about two  
 2 thousand files, so that's Oliver Wyman, I'm  
 3 assuming, when you say "we"?

4 MS. ELLIOTT:

5 A. Ted Zubulake and myself on our phone calls  
 6 with James Wang.

7 KENNEDY, Q.C.:

8 Q. Now do you keep, like when you have  
 9 conversations like that, do you keep notes  
 10 of those phone calls?

11 MS. ELLIOTT:

12 A. We would have a follow-up email to confirm  
 13 this is, you know, what we asked for, like  
 14 for example, that we wanted a gross of 2500  
 15 deductible or confirmed that this would be  
 16 the window, the 12 months, yes, there would  
 17 be a follow-up email, yeah.

18 KENNEDY, Q.C.:

19 Q. And the only reason I ask you that, as  
 20 lawyers, we take a lot of notes. Do you  
 21 keep a running, like diary or do you  
 22 document the steps you take when you're  
 23 working on a file like this? Do you do a  
 24 daily documentation?

25 MS. ELLIOTT:

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1 A. No, but we would communicate by email, a  
 2 follow-up.

3 KENNEDY, Q.C.:

4 Q. So then when did you first become aware that  
 5 there was a potential problem with two of  
 6 the data provided by two if the insurance  
 7 companies or was that something you found  
 8 out?

9 MS. ELLIOTT:

10 A. I would have been reviewing the data and  
 11 looking at how many companies or the  
 12 percentage of claims that were outside of  
 13 the 12-month window to understand that, and  
 14 it was through that exercise that two of the  
 15 companies had a higher proportion and so  
 16 that caused me to ask IBC to investigate  
 17 that, to understand it more fully, and  
 18 that's when they came back and explained the  
 19 situation.

20 KENNEDY, Q.C.:

21 Q. So who made the decision to exclude those  
 22 236 files, is it?

23 MS. ELLIOTT:

24 A. I did.

25 KENNEDY, Q.C.:

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1 Q. You made that, and again, could you explain  
 2 to the Board why you decided to exclude  
 3 those 236 files?

4 MS. ELLIOTT:

5 A. If we had included those files, there would  
 6 have been a proportionately more minor  
 7 claims, not the larger older claims that  
 8 didn't get transferred, and so in our  
 9 costing exercise, if we have more minor  
 10 claims it would present a larger savings  
 11 than I think would be as accurate as you can  
 12 get with a sample of data, so I think it  
 13 would bias a study to say that there was,  
 14 like a bigger savings from doing a minor  
 15 injury cap than might be the case, so I  
 16 didn't want to overestimate and say you'll  
 17 have this big savings and because of these  
 18 two companies having a larger proportion of  
 19 minor claims, of smaller claims.

20 KENNEDY, Q.C.:

21 Q. In the closed claims studies that you had  
 22 been involved in in the past, and you  
 23 referred to a number of different provinces,  
 24 I think Nova Scotia and New Brunswick,  
 25 Alberta, I think some involvement in

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1 Ontario, had you encountered this problem  
 2 where you had to exclude files because of  
 3 potential bias?

4 MS. ELLIOTT:

5 A. Not this particular problem, no, I don't  
 6 recall this particular one.

7 KENNEDY, Q.C.:

8 Q. Okay, had you run into problems of bias in  
 9 other studies or the data provided to you in  
 10 other studies in other provinces?

11 MS. ELLIOTT:

12 A. I don't recall anything specific. It  
 13 definitely is something that we would look  
 14 at when we get a sample of data, we'll look  
 15 at the data to see what the average, you  
 16 know, you're dealing with the closed files,  
 17 look at the average severity amount for  
 18 those files and make sure it reconciles to  
 19 aggregated industry data, so we would go  
 20 through those steps to, as best we can to,  
 21 you know, believe that there is no bias in  
 22 it. I'm sure over, you know, going back a  
 23 number of years, 2013 I think we worked on  
 24 Nova Scotia, I can't remember all the  
 25 specifics, but we definitely would look at

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1 the data to ensure, as best we can, that  
 2 there's no bias in the data.  
 3 KENNEDY, Q.C.:  
 4 Q. But surely if you had been involved in a  
 5 previous closed claims study where  
 6 approximately ten percent of the files were  
 7 excluded, that's something you would  
 8 remember, isn't it?  
 9 MS. ELLIOTT:  
 10 A. You give me too much credit. I do so much  
 11 work that I wouldn't say that I necessarily  
 12 would, but I don't recall having to exclude  
 13 two companies like this in the past.  
 14 KENNEDY, Q.C.:  
 15 Q. Okay, well just wait now, Ms. Elliott, let's  
 16 just work our way through this, so it's not  
 17 about giving credit, it's about trying to  
 18 find out what happened, so you have  
 19 testified in front of the equivalent, either  
 20 a public utilities board or the equivalent  
 21 in other provinces, correct?  
 22 MS. ELLIOTT:  
 23 A. Many times.  
 24 KENNEDY, Q.C.:  
 25 Q. Have you ever testified in a situation where

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1 approximately 10 percent of the files  
 2 collected had to be excluded for potential  
 3 bias?  
 4 MS. ELLIOTT:  
 5 A. Not that I recall, no.  
 6 KENNEDY, Q.C.:  
 7 Q. Again, wouldn't you recall that?  
 8 MS. ELLIOTT:  
 9 A. As I say, it's possible that I don't, but I  
 10 stand to be corrected, so –  
 11 KENNEDY, Q.C.:  
 12 Q. Okay, so you would agree with me, wouldn't  
 13 you, that this is a pretty serious situation  
 14 here that occurs, when 10 percent of your  
 15 files are excluded as a result of potential  
 16 bias?  
 17 MS. ELLIOTT:  
 18 A. Well, in terms of, I think another context  
 19 might be how large is the sample that we  
 20 have and the sample that we have is the  
 21 1,741, it's larger than the sample that I  
 22 have for the Nova Scotia study that we did  
 23 for the reforms that were modified in 2010.  
 24 It's larger than the sample that we had for  
 25 New Brunswick where they implemented changes

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1 in 2013, so in the context of having a good  
 2 size sample, I'm happy with that. So it  
 3 would have been nice to have the full  
 4 sample, all the companies, not exclude two,  
 5 definitely, but I think the sample size is  
 6 reasonable.  
 7 KENNEDY, Q.C.:  
 8 Q. And again, maybe we're talking about  
 9 something different and I apologize if I'm  
 10 not making myself clear. It's not the  
 11 sample size that causes me concern, it's the  
 12 bias that leads or the finding or the  
 13 potential bias that leads to the exclusion  
 14 of the files.  
 15 MS. ELLIOTT:  
 16 A. Right, so a company has an operation, they  
 17 acquire another firm and they run off some  
 18 claims on the old company system, the big  
 19 ones that are there, and all the new ones go  
 20 under the new system. They forgot about  
 21 this old system when they were doing this  
 22 study, that there was a separate, that  
 23 they're no longer on the new mainframe, if  
 24 you will, and so the data that we got missed  
 25 these other big files that were closed on a

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1 separate system. And so, we said, "hmm, I'm  
 2 not happy with that, you two companies are  
 3 out." That was my decision and I felt that  
 4 that improved, you know, our belief that the  
 5 data was not biased, that it was a  
 6 reasonable source of information.  
 7 KENNEDY, Q.C.:  
 8 Q. Who were these two companies?  
 9 MS. ELLIOTT:  
 10 A. Umm –  
 11 KENNEDY, Q.C.:  
 12 Q. I'm not sure that the, is the witness  
 13 looking for someone to give her a go ahead?  
 14 CHAIR:  
 15 Q. She's a presenter and I just think she's  
 16 recalling.  
 17 KENNEDY, Q.C.:  
 18 Q. No, she looked—did you look for someone just  
 19 then for permission to answer that question?  
 20 MS. GLYNN:  
 21 Q. We discussed this yesterday and I think  
 22 that's what Ms. Elliott was just confirming,  
 23 that yes, those two pieces of information  
 24 can be released.  
 25 MS. ELLIOTT:

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1 A. Yes, I did ask Jacqui yesterday if I could  
 2 state the companies' names and she said yes,  
 3 so, it was Metro and L'Union, companies  
 4 which fall under Intact and RSA.  
 5 KENNEDY, Q.C.:  
 6 Q. So could you say that again, please? Which  
 7 two were they?  
 8 MS. ELLIOTT:  
 9 A. It would be under Intact and RSA because of  
 10 their two acquisitions, separately, yes.  
 11 KENNEDY, Q.C.:  
 12 Q. What were the two companies? One you said  
 13 was Metro?  
 14 MS. ELLIOTT:  
 15 A. Metro and L'Union, I believe, were the two  
 16 acquisitions which were acquired by Intact  
 17 and RSA, respectfully, and so therefore,  
 18 Intact and RSA in entirety I threw out.  
 19 KENNEDY, Q.C.:  
 20 Q. So Intact and RSA in their entirety, Intact  
 21 in its entirety?  
 22 MS. ELLIOTT:  
 23 A. Because I did not, well and that reduced the  
 24 sample size, as stated, but yes, we wanted  
 25 to feel comfortable that the database that

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1 we were using did not present any bias, so  
 2 we excluded those two companies.  
 3 KENNEDY, Q.C.:  
 4 Q. So six of the companies which –  
 5 MS. ELLIOTT:  
 6 A. No, no, not six, of the 20 –  
 7 KENNEDY, Q.C.:  
 8 Q. No, just if I could ask my question, please,  
 9 six of the companies that represent 86.7  
 10 percent of the provincial market share are  
 11 listed in footnote 2. Two of those  
 12 companies, Intact and RSA you excluded their  
 13 documentation?  
 14 MS. ELLIOTT:  
 15 A. No, please.  
 16 KENNEDY, Q.C.:  
 17 Q. Okay.  
 18 MS. ELLIOTT:  
 19 A. These are groups, these insure groups, so  
 20 within the insured group would have separate  
 21 sub-companies, so Intact has more than one  
 22 company operating in the province, so the  
 23 company that would be Intact Insurance as  
 24 opposed to Novex Insurance, which would also  
 25 fall under the Intact Group. So Intact

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1 Insurance which acquired Metro and the data  
 2 was falling within Intact was excluded, and  
 3 the same with RSA, it's one group.  
 4 KENNEDY, Q.C.:  
 5 Q. So when the IBC came forward with this  
 6 information, they intended for you to use  
 7 it, didn't they?  
 8 MS. ELLIOTT:  
 9 A. Well they didn't realize that that was the  
 10 problem.  
 11 KENNEDY, Q.C.:  
 12 Q. Who didn't realize?  
 13 MS. ELLIOTT:  
 14 A. IBC when they provided the file to us.  
 15 KENNEDY, Q.C.:  
 16 Q. Should they have realized, in your opinion,  
 17 that there was a problem?  
 18 MS. ELLIOTT:  
 19 A. I don't know, I mean, as I say, we get the  
 20 data and then we assume that the case  
 21 adjustor who is completing it has completed  
 22 all the rows accurately, they validate that,  
 23 and that's IBC's role and then they get the  
 24 aggregate data and they look at that as  
 25 well, but in my review, you know, we just

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1 looked at it, perhaps differently, and just  
 2 asked the questions until we found, you  
 3 know, an explanation that we thought  
 4 explained why these two companies had a  
 5 higher percentage outside this 12-month  
 6 window, and felt that it would be best to  
 7 exclude the data for those two individual  
 8 entities to avoid the possibility of bias  
 9 and if we had included them, as I said, it  
 10 would cause the percentage of savings for  
 11 the reform to be too high.  
 12 KENNEDY, Q.C.:  
 13 Q. Okay, so now let's go, if we can jump ahead  
 14 in your report, Ms. Elliott, it's page 15,  
 15 Ms. Glynn, under "Final Comments", it's  
 16 heading six. You will see in the third line  
 17 there, "We have relied upon the IBC for a  
 18 validation and accuracy of this database of  
 19 1,741 claimants." So you're relying upon  
 20 IBC, is that correct?  
 21 MS. ELLIOTT:  
 22 A. Yes, to complete each of the rows, the  
 23 columns, the data elements, yes, accurately.  
 24 KENNEDY, Q.C.:  
 25 Q. Okay, we go down a little bit further in the

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1 next paragraph in the fourth line, you will  
 2 see, “As this NL 2018 CCS sample, includes  
 3 all claimants closed over the noted period  
 4 from 18 insurers representing 74 percent  
 5 market share.” So now you’ve gone from 86  
 6 percent of the market share when we started  
 7 this, you’re now down to 74 percent of the  
 8 market share.  
 9 MS. ELLIOTT:  
 10 A. Correct.  
 11 KENNEDY, Q.C.:  
 12 Q. Okay. “We expect that in aggregate it  
 13 fairly represents the current distribution  
 14 of injury types and of costs of claims  
 15 closed in this province.” What do you mean  
 16 when you say “We expect”, you use the word  
 17 “expect” that an aggregate, it fairly  
 18 represents, what do you mean by that?  
 19 MS. ELLIOTT:  
 20 A. Well, you know, every year is different, you  
 21 could have a severe winter and different  
 22 severities if injuries and injuries are  
 23 random, I mean, we don’t have, some years  
 24 there are people that are severely injured,  
 25 paraplegics, and some years they are not, so

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1 it’s a random sample for this time period  
 2 and we believe that it reasonably reflects,  
 3 you know, the time period. If you took a  
 4 sample, you know, five years from now, it  
 5 could be different, but we think for the  
 6 time period that it reasonable reflects the  
 7 current accidents that occurred in the time  
 8 period.  
 9 KENNEDY, Q.C.:  
 10 Q. You go on to state, “However, we note that  
 11 some of the segments presented in this  
 12 report include a very small number of  
 13 claimants; thus, we caution against placing  
 14 undue reliance on the various averages and  
 15 statistics presented in this report.” What  
 16 do you mean by that?  
 17 MS. ELLIOTT:  
 18 A. Uh-hm. Okay, well there are some examples  
 19 where there might just be one injury type or  
 20 two or three noted, sorry, a claimant with a  
 21 particular injury and that only occurred a  
 22 handful of times in the study, so the more  
 23 severe injuries or death or that, that are  
 24 noted, and there aren’t very many of those,  
 25 so in an injury type of these 4,000 injury

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1 types that were collected—sorry, 4,000  
 2 injuries that were reported among the sample  
 3 size, if it was only reported a handful of  
 4 times, the average for that little group  
 5 could be biased, you could be too high, too  
 6 low, it’s not very large, so that was our  
 7 reference. So as you go through the  
 8 appendices we show the averages paid under  
 9 the various heads of damage and we show for  
 10 each injury type, whether you have this  
 11 injury only, this injury and some other  
 12 injury or not that injury at all, and what  
 13 those distributions and costs were. So if  
 14 there’s an injury type listed, and they are  
 15 only listed five times out of the 4,000  
 16 other injuries that were listed, that would  
 17 be a very small number, and so we just  
 18 wanted to caution the reader that if there  
 19 is a very small number, you know, not to  
 20 place undue reliance upon that.  
 21 KENNEDY, Q.C.:  
 22 Q. Okay, if we go to the next page now, heading  
 23 7, “Distribution and Use” and the only  
 24 question I have or explanation I see there,  
 25 in the last sentence you say, “This report

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1 should not replace the due diligence on  
 2 behalf of any such third party.” Again,  
 3 what do you mean by that?  
 4 (1:15 p.m.)  
 5 MS. ELLIOTT:  
 6 A. Well, we’re providing the advice to the  
 7 Board with this report. We do not expect—  
 8 may I think about that answer to you?  
 9 KENNEDY, Q.C.:  
 10 Q. Sure, we’re going to be back here in the  
 11 morning anyway, so you can have the night to  
 12 think about it.  
 13 MS. ELLIOTT:  
 14 A. I will, thank you.  
 15 KENNEDY, Q.C.:  
 16 Q. Okay, if we can move to the next heading,  
 17 let’s go to, excuse me, No. 8,  
 18 “Consideration of Limitations”. And this is  
 19 at least now the second, if not the third  
 20 time you’ve stated, “For our review, we  
 21 relied on data and information available  
 22 from IBC”, do you see that?  
 23 MS. ELLIOTT:  
 24 A. Uh-hm.  
 25 KENNEDY, Q.C.:

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1 Q. "Without independent audit".  
 2 MS. ELLIOTT:  
 3 A. Uh-hm.  
 4 KENNEDY, Q.C.:  
 5 Q. So now you've added the qualifier "without  
 6 independent audit". Why did you include  
 7 that qualifier or descriptor, ever how I  
 8 would describe it, "without independent  
 9 audit", what is the point you are making  
 10 there?  
 11 MS. ELLIOTT:  
 12 A. That would be a common phraseology that we  
 13 would use and it's just to clarify we did  
 14 not audit the data. We did not go in and  
 15 check the data in any manner.  
 16 KENNEDY, Q.C.:  
 17 Q. Okay, so there was no audit on your part.  
 18 MS. ELLIOTT:  
 19 A. No.  
 20 KENNEDY, Q.C.:  
 21 Q. There was no—do you know if IBC performed  
 22 any type of audit?  
 23 MS. ELLIOTT:  
 24 A. Yes, that's my understanding that they were  
 25 validating the data, checking, yes.

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1 KENNEDY, Q.C.:  
 2 Q. Because we'll come to that later, but I  
 3 thought that IBC said they didn't have  
 4 access to the files. We'll come to that a  
 5 little later.  
 6 MS. ELLIOTT:  
 7 A. Okay.  
 8 KENNEDY, Q.C.:  
 9 Q. Do you remember that comment though, IBC  
 10 saying that they didn't, in their  
 11 instructions to users, saying they didn't  
 12 have access to the files themselves?  
 13 MS. ELLIOTT:  
 14 A. Well many of the files could be electronic,  
 15 but my understanding is that they were  
 16 validating the data.  
 17 KENNEDY, Q.C.:  
 18 Q. Okay, well let's not, I won't—  
 19 MS. ELLIOTT:  
 20 A. My understanding is they had a sample of  
 21 data sent to them and that they were  
 22 validating the sample.  
 23 KENNEDY, Q.C.:  
 24 Q. If we could look at a document,  
 25 Commissioners, that's entitled "IBC Notes to

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1 Users", it would have been on the website, I  
 2 think, just after the Closed Claim Study.  
 3 Okay, if we can now go to—and there's two  
 4 numbering systems here, Ms. Glynn, so I'm  
 5 going to need you to go to the second, page  
 6 3, under "IBC, BAC Notes to Users", that's  
 7 about 10 pages into the document. Okay,  
 8 should be the next page, yeah, okay. So you  
 9 look at that. Have you  
 10 MS. ELLIOTT:  
 11 A. Yes, yes.  
 12 KENNEDY, Q.C.:  
 13 Q. Okay, if you go to paragraph 7, which again  
 14 is page 3 of 4 of that document, do you have  
 15 that document? Paragraph 7, "Despite IBC's  
 16 best effort to ensure the data integrity  
 17 before accepting claimant cases into the  
 18 master file, this is not an audit process."  
 19 Have you seen that comment in the past?  
 20 MS. ELLIOTT:  
 21 A. Okay.  
 22 KENNEDY, Q.C.:  
 23 Q. Have you seen that comment?  
 24 MS. ELLIOTT:  
 25 A. No, not—I would have not read that.

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1 KENNEDY, Q.C.:  
 2 Q. Okay, so you haven't seen that, and my only  
 3 question is you hadn't seen that in the  
 4 past.  
 5 MS. ELLIOTT:  
 6 A. Uh-hm.  
 7 KENNEDY, Q.C.:  
 8 Q. So were you aware of IBC's position that  
 9 this is not an audit process, that what  
 10 they, despite their best efforts to ensure  
 11 data integrity, this is not an audit  
 12 process?  
 13 MS. ELLIOTT:  
 14 A. It was my understanding that they were  
 15 checking a sample of files to make sure that  
 16 the individuals completing it were  
 17 completing the file, collection process,  
 18 accurately.  
 19 KENNEDY, Q.C.:  
 20 Q. Okay, well again, that's what they say  
 21 there, so is there something that I'm  
 22 missing? Am I misinterpreting when a line  
 23 is "This is not an audit process"?  
 24 MS. ELLIOTT:  
 25 A. Not to my knowledge, no.

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1 KENNEDY, Q.C.:

2 Q. Let's go to the next line, "IBC had no

3 access to any supporting documentation or

4 paper files." Have you seen that comment

5 before?

6 MS. ELLIOTT:

7 A. It may be possible that the files are all

8 electronic, I don't know that step.

9 KENNEDY, Q.C.:

10 Q. Yeah, but that's not what they say there,

11 they say they had no access to any

12 supporting documentation, disjunctive or

13 paper files, so that's not your

14 understanding?

15 MS. ELLIOTT:

16 A. My understanding was that they were

17 providing instructions to the companies how

18 to complete the data, answering any

19 questions that arose in the completion of

20 it, and doing a sample check.

21 KENNEDY, Q.C.:

22 Q. Would you agree with me that subject to

23 correction by someone at some point, that

24 contrary to your belief there was no

25 independent audit conducted in relation to

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1 these files?

2 MS. ELLIOTT:

3 A. Well I agree with you that that's what that

4 indicates, yes.

5 KENNEDY, Q.C.:

6 Q. Does that cause you some concern?

7 MS. ELLIOTT:

8 A. Well, I think it merits confirmation from

9 IBC more fully, their process that they went

10 through, but, yeah, based on the fact that

11 they've done this many times before and my

12 understanding is that they do explain to the

13 people that are filling in the files, what's

14 to be done, you know, like some faith in

15 that process.

16 KENNEDY, Q.C.:

17 Q. Okay, let's come back though to the comment

18 at page, if I could go back to the Closed

19 Claim Study under Heading 8, "Consideration

20 of Limitations", so you see "we relied on

21 data and information available from IBC

22 without any independent audit." So you

23 didn't do an audit.

24 MS. ELLIOTT:

25 A. That's correct.

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1 KENNEDY, Q.C.:

2 Q. My question then was, that led to your

3 comment that you understood IBC to do an

4 independent audit?

5 MS. ELLIOTT:

6 A. Yes, and obviously stand to be corrected

7 with what they said in their notes, it was

8 my understanding that IBC was, and possibly

9 wrong, but that IBC was managing the

10 collection and the validation of the data.

11 KENNEDY, Q.C.:

12 Q. But it would involve some independent level

13 of sampling or it would involve a more

14 objective analysis, wouldn't it, than what

15 you're talking about there?

16 MS. ELLIOTT:

17 A. Well, I think it would be appropriate to

18 perhaps answer your question after

19 discussion and more clarification with IBC

20 on what was done. So perhaps my

21 understanding of what they did is blended in

22 with what I understood they had done in the

23 past and should be confirmed, to be fair.

24 KENNEDY, Q.C.:

25 Q. Well in the five minutes we have left here

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1 today, and let's just try to clarify a

2 couple of terms. When you refer to

3 independent audit in page 17 of your Closed

4 Claim Study, what are you referring to?

5 What does an audit mean to you in the

6 context that you use it there?

7 MS. ELLIOTT:

8 A. In the context used there is that we have

9 not looked at the data in terms of here's

10 the information associated with this

11 claimant and how that information was then

12 transferred into the row of information, the

13 record, to be collected for that claimant.

14 We have not audited it, checked it,

15 validated it.

16 KENNEDY, Q.C.:

17 Q. Okay, so then I maybe interpreted or

18 misinterpreted you to say then that although

19 you didn't do it, IBC did it, so that gave

20 you some confidence in the procedure

21 utilized.

22 MS. ELLIOTT:

23 A. Yes.

24 KENNEDY, Q.C.:

25 Q. So if IBC didn't do what you thought they

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1 did, that is a major concern, isn't it?

2 MS. ELLIOTT:

3 A. Well I think it would be fair to make sure

4 we get more clarification from IBC before I

5 would want to confirm that there were no

6 checks done.

7 KENNEDY, Q.C.:

8 Q. No. There's two scenarios, Ms. Elliott.

9 MS. ELLIOTT:

10 A. Uh-hm, I understand that.

11 KENNEDY, Q.C.:

12 Q. One is they did an audit which would

13 alleviate a concern and give you a sense of

14 comfort or confidence, correct?

15 MS. ELLIOTT:

16 A. Yes, and I think—but it would still be fair

17 to confirm with IBC exactly what was done.

18 KENNEDY, Q.C.:

19 Q. Wouldn't it have been fair for you to have

20 done that yourself? Wouldn't you be the

21 person to ensure that there had been audits

22 done, Ms. Elliott?

23 MS. ELLIOTT:

24 A. Yes, I would think that, that was my

25 understanding that IBC had, through the

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1 process of collecting and explaining and

2 spot checking data, that that was done.

3 KENNEDY, Q.C.:

4 Q. So if it was done, it would give you

5 confidence, correct?

6 MS. ELLIOTT:

7 A. Yes.

8 KENNEDY, Q.C.:

9 Q. Is that correct? Sorry.

10 MS. ELLIOTT:

11 A. Yes.

12 KENNEDY, Q.C.:

13 Q. Okay, if it wasn't done, it would cause you

14 concern?

15 MS. ELLIOTT:

16 A. Well I think it's something that I need to

17 explore, yes.

18 KENNEDY, Q.C.:

19 Q. Well, no, it's, with all due respect, Ms.

20 Elliott, I've given you two scenarios. If

21 there was an audit done, you would have

22 confidence.

23 MS. ELLIOTT:

24 A. Yes, if the files are given and nobody

25 checked or nobody answered any questions or

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1 nobody helped them complete it, they were

2 just left on their own, not disturbed until

3 they sent the file in, yes, that would cause

4 me concern, but that's not my understanding

5 of how the process worked.

6 KENNEDY, Q.C.:

7 Q. But see, we're both, you and IBC, you may

8 have a different understanding of the term

9 "audit", but I would suggest to you that

10 when you used the term "audit", it means

11 more than simply someone having a cursory

12 review of the files, doesn't it? It means

13 someone who has attempted to ensure that the

14 data which is being provided to you is

15 accurate?

16 MS. ELLIOTT:

17 A. Yes, and I do know that when IBC receives

18 the data from the company that they do go

19 through steps of checking the data, yes,

20 that's my understanding.

21 KENNEDY, Q.C.:

22 Q. Okay, we'll come back to that. So now,

23 again you state that "We have reviewed the

24 data for reasonableness and consistency. We

25 have no audited or otherwise verified this

Page 200

1 data", which is what you're saying.

2 MS. ELLIOTT:

3 A. Uh-hm.

4 KENNEDY, Q.C.:

5 Q. And part of the reason you wouldn't have

6 done that is because you assumed that IBC

7 had done it, correct?

8 MS. ELLIOTT:

9 A. Yeah.

10 KENNEDY, Q.C.:

11 Q. "It should also be noted that our review of

12 data may not always reveal imperfection",

13 that's sort of a general comment, isn't it?

14 MS. ELLIOTT:

15 A. Uh-hm.

16 KENNEDY, Q.C.:

17 Q. "We have assumed that the data provided is

18 both accurate and complete." That's a

19 pretty big—or that's an important statement,

20 isn't it?

21 MS. ELLIOTT:

22 A. Yes.

23 KENNEDY, Q.C.:

24 Q. Yeah, because as an expert, an actuary, and

25 we'll come to this tomorrow in terms of what

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1           you do, but as an actuary, you are provided  
 2           with factual data and you make certain  
 3           assumptions which leads then to your report,  
 4           correct?  
 5   MS. ELLIOTT:  
 6   A.     Right, we received the data from IBC under  
 7           the understanding that IBC has reviewed that  
 8           data for reasonableness or whatever process  
 9           of checks and balances that they have, yeah.  
 10   KENNEDY, Q.C.:  
 11   Q.     You go on to say, and we can probably end  
 12           with this and we'll pick up there tomorrow,  
 13           "The results of our analysis are dependent  
 14           on this assumption."  
 15   MS. ELLIOTT:  
 16   A.     Sure, uh-hm.  
 17   KENNEDY, Q.C.:  
 18   Q.     So the collection of the data is important  
 19           process, part of the process.  
 20   MS. ELLIOTT:  
 21   A.     Yes.  
 22   KENNEDY, Q.C.:  
 23   Q.     The ensuring that the data has been  
 24           collected, I don't know, is fairly the word,  
 25           what word would I use to describe the

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CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript of the 2017 Automobile Insurance Review hearing, heard on the 4th day of June, 2018 before the Board of Commissioners of Public Utilities, 120 Torbay Road, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's this 5th day of June, 2018

Judy Moss

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1           collection of data? Does it need to be  
 2           thorough, completely thorough, fair, a fair  
 3           representation?  
 4   MS. ELLIOTT:  
 5   A.     Well, we want the, you know, depending upon  
 6           the purpose of the data, how it's being  
 7           used, in this exercise if they inaccurately  
 8           reported the territory where the car was  
 9           garaged, that wouldn't matter in the process  
 10          of reviewing minor injury caps or  
 11          deductibles. What we would like is to  
 12          understand that the injury types are fairly  
 13          and accurately reported because that's  
 14          important to this process, and there are  
 15          some key data elements that are important,  
 16          more important than others, such as where  
 17          the car is garaged.  
 18   KENNEDY, Q.C.:  
 19   Q.     Okay, thank you. Commissioners, this might  
 20          be an opportune time to break.  
 21   CHAIR:  
 22   Q.     So we'll adjourn and reconvene at 9:00 a.m.  
 23          tomorrow morning.  
 24  
 25

A				
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