

Hearing Transcript

2017 Automobile Insurance Review

June 6, 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

Paula Elliott, Oliver Wyman

Campaign to Protect Accident Victims

Colin Feltham
Jerome Kennedy, Q.C.

Consumer Advocate

Dennis Browne, Q.C.
Andrew Wadden

Insurance Bureau of Canada (IBC)

Amanda Dean
Kevin Stamp, Q.C.
Terry Rowe, Q.C.

Spinal Cord Injury NL

Thomas Fraize, Q.C.
Lara Fraize-Burry
Michael Burry

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1 (9:00 A.M.)

2 CHAIR:

3 Q. Good morning, everybody. I guess, we'll

4 pick up where we left off, Mr. Kennedy.

5 KENNEDY, Q.C.:

6 Q. Yes, thank you, Chair. Ms. Elliott,

7 yesterday we were talking about the

8 collection of data and you would agree with

9 me that the importance – that the

10 methodology of collecting that data is very

11 important?

12 MS. ELLIOTT:

13 A. Yes, and if I could have the opportunity to

14 expand upon my response yesterday, if you

15 would allow me that.

16 KENNEDY, Q.C.:

17 Q. I know, Chair, it's an informal hearing. I

18 don't know how you approach that, but, I

19 mean, normally I'd prefer to ask the

20 questions and get answers to my questions as

21 opposed to the witness coming in and trying

22 to expand upon something she said yesterday.

23 I know you said it's an informal process.

24 CHAIR:

25 Q. It is an informal process and I think there

Page 2

1 were some outstanding issues yesterday that

2 Ms. Elliott had said she was going to go

3 back and reflect on, so she can have the

4 opportunity from our perspective, yes.

5 MS. ELLIOTT:

6 A. So a couple of issues arose yesterday. One

7 was with regards to the exclusion of two

8 individual companies, their data, and

9 whether I recalled such an occurrence

10 previously, and as I stated, I couldn't

11 recall, and part of the reason why I can't

12 recall all the specifics of things happening

13 as such before is that we deal with so many

14 rate filings data every day, and it's very

15 typical for items on what we review to find

16 some sort of error in the data and the

17 information is resubmitted or corrected, so

18 it's a very common occurrence the data is

19 checked and that process occurs regularly.

20 So I, therefore, cannot remember every

21 occurrence, but that said, I did go back to

22 the most recent closed claims study that the

23 data was collected and this was for New

24 Brunswick, and in that case there were some

25 data that was submitted that had to be

Page 3

1 excluded as well. So yesterday, I could not

2 remember, so I had to go back and check

3 that. So it is not unusual. Secondly, in

4 terms of the instructions that are provided

5 by IBC, I would have read those last fall

6 and didn't recall them all specifically as

7 you were questioning me yesterday and wanted

8 to check and review them and refresh my

9 memory. So the instructions that are

10 provided by IBC, they are an outline of what

11 is collected and they also describe the

12 quality checks and the validation process

13 that they would do. IBC has completed these

14 similar studies in the past. I have used

15 the data collected by IBC, and as I had

16 stated yesterday, I prepared reformed

17 costing studies in other provinces and the

18 findings that I had presented in those

19 studies had shown to hold and be valid, and

20 that was based upon the data that IBC

21 provided and collected and would have

22 validated and checked in the same format as

23 they have done here. Then refreshing my

24 memory, re-reading the instructions provided

25 by IBC under – if we could have the IBC

Page 4

1 instructions put on the screen, please, and

2 on page 5 of 18 on the pdf counting, which

3 is also page 5 and it's Item 5, the

4 timeline, IBC describes the timeline and

5 they do describe their process. IBC had a

6 training session for the staff. They had

7 three training sessions, in fact. They do a

8 rigorous data check, they get a sample of

9 files that they review. They are constantly

10 in touch with the companies answering

11 questions, explaining the data to be

12 collected, and then when the data is finally

13 collected, they take several weeks to review

14 and validate that data again, the master

15 file, and after they've completed their

16 review, then it is provided to us. So when

17 we receive the data from IBC, it's our

18 understanding that they have reviewed,

19 validated, checked, made sure the

20 individuals that are completing the data

21 understand the instructions. That said,

22 yesterday we went to Item 7, and I'm going

23 to go to page 13 of the filing – of the

24 instruction, I apologize. Item 4 first, IBC

25 explains that in October of 2017, they had

Page 5

1 three training sessions for 40 staff that
 2 were completing the data collection process,
 3 and then in Item 5, they describe the
 4 various items that they go through for their
 5 data quality checks before accepting it, and
 6 then rolling down to Item 7 in terms of the
 7 audit, there are a couple of items in here,
 8 and I think it's important to reference (b),
 9 (c), and (d) first.
 10 KENNEDY, Q.C.:
 11 Q. Excuse me, Madam Chair. I just need some
 12 clarification here. I know that we were
 13 given the opportunity to ask questions to
 14 presenters. Well, normally with asking
 15 questions there would be an answer and a
 16 question. This witness has now taken 10
 17 minutes this morning to give – she's not
 18 answering questions, she's not even
 19 answering the questions I asked yesterday.
 20 I just want to get the procedure down here.
 21 It would seem to me that I should be allowed
 22 to ask the questions, she would answer, and
 23 then if she needs to clarify, fair enough.
 24 That's not what she's doing now. She's
 25 starting to go into the report. She should

Page 6

1 have done this yesterday when she did her
 2 presentation, I'm suggesting to you, so that
 3 we can ask the questions. If not, we're
 4 going to be here forever because I suggested
 5 today the length of time for examination.
 6 This doesn't seem to me to be the way that
 7 it should proceed from a logical and a
 8 commonsense perspective.
 9 CHAIR:
 10 Q. Mr. Kennedy, this is our process. This is
 11 our process.
 12 KENNEDY, Q.C.:
 13 Q. Yes, it is.
 14 CHAIR:
 15 Q. Ms. Elliott is here to provide clarification
 16 on her reports, five reports that she's –
 17 KENNEDY, Q.C.:
 18 Q. But we're also entitled, Chair, we're also
 19 entitled to a level of procedural fairness.
 20 CHAIR:
 21 Q. Absolutely, I understand the level –
 22 KENNEDY, Q.C.:
 23 Q. And so a level of procedural fairness means
 24 that we have the right to be heard and we
 25 have the right to ask questions and present

Page 7

1 our case.
 2 CHAIR:
 3 Q. Ms. Elliott yesterday was taken to this
 4 document.
 5 KENNEDY, Q.C.:
 6 Q. And I have further questions on it, but –
 7 CHAIR:
 8 Q. Absolutely. Are you almost finished?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 CHAIR:
 12 Q. All right, we'll close it off. Thank you,
 13 Mr. Kennedy. No more interruptions, please,
 14 today.
 15 KENNEDY, Q.C.:
 16 Q. Well, Madam Chair, that's the second time.
 17 Yesterday your tone – okay, if we're going
 18 to get into this – this hearing has to be
 19 fair. We've already been to the Court of
 20 Appeal once.
 21 CHAIR:
 22 Q. Absolutely.
 23 KENNEDY, Q.C.:
 24 Q. And that was over procedural fairness. Your
 25 tone yesterday, with all due respect, Chair,

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1 I thought on a couple of occasions when I
 2 just asked for clarification, was somewhat
 3 uncalled for, and here today now we're
 4 raising issues as to procedural fairness and
 5 now you're saying there's no more
 6 interruptions. I'm not interrupting, Chair.
 7 I'm trying to put forward evidence that you
 8 can consider in making your findings or
 9 whatever it is you're going to do, so are we
 10 going to be allowed to ask questions here or
 11 not.
 12 CHAIR:
 13 Q. Yes.
 14 KENNEDY, Q.C.:
 15 Q. Because if not, there's going to have to be
 16 another argument, there's going to have to
 17 be a transcript, and we may have to break
 18 again.
 19 CHAIR:
 20 Q. You can ask your questions, Mr. Kennedy. I
 21 ask also, though, that you allow Ms. Elliott
 22 to answer in full.
 23 KENNEDY, Q.C.:
 24 Q. Yesterday, Madam Chair, she gave a
 25 presentation.

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1 CHAIR:
 2 Q. Yes.
 3 KENNEDY, Q.C.:
 4 Q. She made the – her presentation was very
 5 short. We started to ask questions, and now
 6 today she comes in trying to present again.
 7 So I just want to know what the procedure
 8 is.
 9 CHAIR:
 10 Q. My understanding this morning Ms. Elliott
 11 was clarifying an answer that she could not
 12 recall yesterday in the document that you
 13 took her to. That’s what I understand she
 14 was doing. If she’s completed - finished
 15 now, she’s finished, and we’re going to
 16 proceed. So if you have questions, just
 17 carry on, please.
 18 KENNEDY, Q.C.:
 19 Q. Yes, I have a lot of questions. Thank you.
 20 CHAIR:
 21 Q. Carry on.
 22 KENNEDY, Q.C.:
 23 Q. Did you speak to anyone from IBC yesterday
 24 after we left here?
 25 MS. ELLIOTT:

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1 A. No.
 2 KENNEDY, Q.C.:
 3 Q. Did you check with IBC?
 4 MS. ELLIOTT:
 5 A. I had no communication whatsoever in any
 6 manner with IBC yesterday.
 7 KENNEDY, Q.C.:
 8 Q. My first question for you today, Ms.
 9 Elliott, was on the importance of the
 10 methodology of collecting data, and you
 11 agree with me that that is important,
 12 correct?
 13 MS. ELLIOTT:
 14 A. Yes, and IBC provided in their document the
 15 steps that were taken in the process of
 16 collecting the data, of training the staff,
 17 explaining the definitions and validating
 18 the data, yes.
 19 KENNEDY, Q.C.:
 20 Q. The data which is collected is the
 21 information that you use, the actuary uses,
 22 to make your factual assumptions, correct?
 23 MS. ELLIOTT:
 24 A. We use the data, yes, for the analysis of
 25 the reformed changes that are under

Page 11

1 consideration, yes, that data is used.
 2 KENNEDY, Q.C.:
 3 Q. My question again – maybe again I’m not
 4 making myself clear. The data that is
 5 provided to you is the data upon which you
 6 make your factual assumptions, is that
 7 correct?
 8 MS. ELLIOTT:
 9 A. Well, what we present are estimates in our
 10 report, so we use the data for our
 11 calculations to present estimates.
 12 KENNEDY, Q.C.:
 13 Q. And I can go to the report, but in a couple
 14 of different reports, Ms. Elliott, you
 15 state, “We have assumed that the data
 16 provided is both accurate and complete”,
 17 correct, you’ve used that term?
 18 MS. ELLIOTT:
 19 A. Yes.
 20 KENNEDY, Q.C.:
 21 Q. Assumed is the term you used?
 22 MS. ELLIOTT:
 23 A. Yes.
 24 KENNEDY, Q.C.:
 25 Q. Then you go on to state that the results of

Page 12

1 your analysis is based upon this assumption,
 2 correct?
 3 MS. ELLIOTT:
 4 A. Yes. There are, as you know, nearly 2,000
 5 data files that were provided, and so we
 6 assume that it is accurate and complete,
 7 yes. We’re not able to check each and every
 8 individual piece of data.
 9 KENNEDY, Q.C.:
 10 Q. So again the assumptions are based upon the
 11 data that’s collected and your
 12 interpretation of the data?
 13 MS. ELLIOTT:
 14 A. I’m an actuary. We use data, we analyze the
 15 data, and in all cases we make assumptions
 16 that the data provided to us is accurate and
 17 complete, and if it is not accurate and
 18 complete, then our report and findings may
 19 be subject to change.
 20 KENNEDY, Q.C.:
 21 Q. Or inaccurate, subject to change or
 22 inaccurate, correct?
 23 MS. ELLIOTT:
 24 A. Well, if we found out, if we could attest
 25 that the data was inaccurate, then we would

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1 be required to do so, but that is not the
 2 case here. We have no evidence that the
 3 data is inaccurate.
 4 KENNEDY, Q.C.:
 5 Q. Well, you do have, and I'm not going to
 6 repeat myself on this, but you know that
 7 approximately more than 10 percent of the
 8 files were excluded from consideration out
 9 of the 1,977 files?
 10 MS. ELLIOTT:
 11 A. That was my decision to exclude it because
 12 older files with larger claims were not
 13 included, and if I had included it, it might
 14 present savings that would be too high and
 15 overestimate what the cost savings would be
 16 with the reform that's under consideration.
 17 KENNEDY, Q.C.:
 18 Q. And you never considered that the way that
 19 evidence was presented to you was done on
 20 purpose, that it might have been done to
 21 over inflate the savings? Did you consider
 22 that?
 23 MS. ELLIOTT:
 24 A. I have no reason to make an assumption that
 25 that would be done.

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1 KENNEDY, Q.C.:
 2 Q. So you referred to the fact that some files
 3 in New Brunswick, issues with some files in
 4 New Brunswick. What percentage of the files
 5 - of the closed claim files considered, what
 6 percentage of the files were problems found
 7 with?
 8 MS. ELLIOTT:
 9 A. It was relatively few files. It was more
 10 individual data elements than a company
 11 specific technical, an old system and a new
 12 system issue. That was the situation with
 13 the acquisitions in this case.
 14 KENNEDY, Q.C.:
 15 Q. Again my question was how many files were
 16 excluded from consideration in the New
 17 Brunswick study?
 18 MS. ELLIOTT:
 19 A. Very few, a handful.
 20 KENNEDY, Q.C.:
 21 Q. So you consider that - when I asked you
 22 yesterday about had you encountered a
 23 situation where up to 10 percent of the
 24 files had been excluded. What you're saying
 25 today is that even though there were very

Page 15

1 few files excluded in the New Brunswick
 2 study, that's a similar situation?
 3 MS. ELLIOTT:
 4 A. No, it's a situation where there was data
 5 identified that had to be excluded after the
 6 fact, and what I was expressing yesterday -
 7 you asked me if I recalled another situation
 8 and I couldn't recall another situation, I
 9 would have to go back and check all my
 10 files.
 11 KENNEDY, Q.C.:
 12 Q. So in terms of the closed claims study
 13 utilized in this case, and we touched upon
 14 it briefly, I wonder if I could have the
 15 terms of agreement or the retainer agreement
 16 that was entered into, if we could have that
 17 brought up, please. I wonder if we could go
 18 to page 2 of that document. Actually, page
 19 3 of the document, thank you. So the only
 20 point I want to touch on on page 3 is that
 21 you make some preliminary findings and
 22 recommendations and you prepare a draft
 23 report, correct?
 24 MS. ELLIOTT:
 25 A. That's correct, yes.

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1 KENNEDY, Q.C.:
 2 Q. Does the draft report substantially change
 3 from the preliminary report, or is it
 4 basically the same?
 5 MS. ELLIOTT:
 6 A. There was one change. In our draft report,
 7 we had not included the premium impact. We
 8 had presented percentage reduction, and the
 9 Board staff said that they thought it would
 10 be helpful to present the percentage
 11 reduction on a premium basis, that it would
 12 be more helpful to the reader, so we
 13 included that table in the report.
 14 KENNEDY, Q.C.:
 15 Q. If we could go to the previous page, please,
 16 and this is the terms of your engagement
 17 letter dated September 28th, 2017. The top of
 18 the page, it says - I guess, we call it the
 19 scope of service, "To participate in
 20 discussions with the Insurance Bureau of
 21 Canada in the design of a bodily injury
 22 Closed Claim Study and prepare a report
 23 summarizing the data collected in this
 24 Closed Claim Study". So did you participate
 25 in discussions with IBC in the design of the

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1 Closed Claim Study?
 2 MS. ELLIOTT:
 3 A. Yes, absolutely. We reviewed every data
 4 element that would be collected, we asked
 5 for additional data elements to be
 6 collected, so we wanted to make sure all the
 7 information that we required for our
 8 analysis would be available. So, yes, we
 9 were very specific.
 10 (9:15 A.M.)
 11 KENNEDY, Q.C.:
 12 Q. At one point yesterday, and I forget, but
 13 someone was questioning you, Ms. Elliott,
 14 and at one point I think you made some
 15 comment about predicting – I don't know if I
 16 got the terminology right, but something
 17 about predicting the future, it's very
 18 difficult to predict the future?
 19 MS. ELLIOTT:
 20 A. We forecast it.
 21 KENNEDY, Q.C.:
 22 Q. So really that's what actuaries do, you're
 23 trying to forecast something that's going to
 24 take place in the future, aren't you?
 25 MS. ELLIOTT:

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1 A. In terms of pricing, we're often forecasting
 2 what we think the required premium would be,
 3 yes.
 4 KENNEDY, Q.C.:
 5 Q. And you're dealing with actuarial science, I
 6 would suggest to you, or would you agree
 7 with me, deals with probabilities, not
 8 actualities?
 9 MS. ELLIOTT:
 10 A. Well, looking forward, it's the probability
 11 and looking past, it's the actual.
 12 KENNEDY, Q.C.:
 13 Q. Okay. Now I would also assume you will
 14 agree with me that the actuarial method,
 15 like any forecast, is not infallible?
 16 MS. ELLIOTT:
 17 A. They are estimates. As I said earlier, we
 18 are calculating estimates.
 19 KENNEDY, Q.C.:
 20 Q. And I would again suggest that you would
 21 agree with me that the validity of your
 22 conclusions or your assumptions depend upon
 23 the soundness of the facts from which you
 24 proceed?
 25 MS. ELLIOTT:

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1 A. That would apply to all our work that we do,
 2 whether it would be for this study or any
 3 other study. Yes, the data, the quality of
 4 the data is important.
 5 KENNEDY, Q.C.:
 6 Q. And the method that you utilize is only as
 7 sound as the assumptions on which it is
 8 based, would you agree with me on that
 9 statement?
 10 MS. ELLIOTT:
 11 A. Would you repeat that, please?
 12 KENNEDY, Q.C.:
 13 Q. Yeah, the method that's utilized by the
 14 actuary is only as sound as the assumptions
 15 upon which it is based?
 16 MS. ELLIOTT:
 17 A. Well, they are connected and they are
 18 independent, but they're both important.
 19 KENNEDY, Q.C.:
 20 Q. I want to now go to the actual Closed Claim
 21 Study itself, if we could have that brought
 22 up, please, and I want to start with the –
 23 let's start with page 1 of the report. I'm
 24 not going to go through this in detail,
 25 we've already talked about this, but this is

Page 20

1 basically the background information in
 2 terms of the collecting of the data, is that
 3 correct?
 4 MS. ELLIOTT:
 5 A. Yes, it's an introduction of what we were
 6 asked to do and the data that IBC provided
 7 for us, yes.
 8 KENNEDY, Q.C.:
 9 Q. In the first – or the second full paragraph
 10 after the two points there, the second
 11 sentence, "Oliver Wyman collaborated with
 12 the Insurance Bureau of Canada to design a
 13 detailed bodily injury claim and Closed
 14 Claim Study". Is there anything else you
 15 want to add in terms of the collaboration
 16 that took place other than what you've
 17 described here so far?
 18 MS. ELLIOTT:
 19 A. No, it was an outline of the data in an
 20 Excel template that would be collected, and
 21 we reviewed it, asked for additional
 22 elements. That was the process, we went
 23 back and forth talking about the timeline of
 24 when the data would be collected. As we
 25 stated yesterday, there was a 12 month

Page 21

1 window from July 1st, 2016, to June 30th,
 2 2017, of claims closed in that timeframe.
 3 KENNEDY, Q.C.:
 4 Q. So then the IBC, as you've stated here, they
 5 manage the collection of the data and
 6 compile and validate the data. Now I asked
 7 you yesterday, and I didn't really – I don't
 8 think I got an answer, but I'll try it
 9 again. In terms of who the IBC is, or what
 10 kind of group they are, Insurance Bureau of
 11 Canada, what's your understanding of where
 12 they get the authority to work with you in
 13 terms of doing this Closed Claim Study? Are
 14 they an advocacy group, an umbrella group?
 15 MS. ELLIOTT:
 16 A. Well, they have -
 17 KENNEDY, Q.C.:
 18 Q. What is it they do?
 19 MS. ELLIOTT:
 20 A. They're multi-pronged. IBC I'm sure can
 21 speak better describing it than maybe I can,
 22 but IBC is a service provider for the
 23 General Insurance Statistical Agency and so,
 24 they're tasked with collecting data as
 25 required by the Superintendent of Insurance.

Page 22

1 So, the Superintendent of Insurance has the
 2 authority to direct companies to submit data
 3 and IBC is the service provider, the
 4 technician. They -
 5 KENNEDY, Q.C.:
 6 Q. And they are the – sorry, sorry, Ms.
 7 Elliott.
 8 MS. ELLIOTT:
 9 A. Yes, and they – in addition to that task or
 10 element of being a data collector and
 11 creation of the exhibits that compile that
 12 data and present it, they also have member
 13 companies and IBC would be a lobby group for
 14 the insurance industry. Another third area
 15 that falls under the IBC umbrella is the –
 16 it's referred to as vehicle identification,
 17 vehicle rate group collection. So, they
 18 manage the process – again, it's data that
 19 they manage that segment for the industry as
 20 well. And they may do other things, but
 21 that's my general understanding; those three
 22 main areas.
 23 KENNEDY, Q.C.:
 24 Q. Now, in terms then of the timeframe involved
 25 here, do you remember in 2005 how long it

Page 23

1 took or how long was involved in the
 2 preparation of the Closed Claims Study?
 3 MS. ELLIOTT:
 4 A. Gosh, I'd only be guessing if you asked me
 5 how long something took in 2005; a couple of
 6 months, but I don't know off the top of my
 7 head.
 8 KENNEDY, Q.C.:
 9 Q. Okay. I now want you to go to – if we could
 10 have the letter of the PUB – it's a letter –
 11 excuse me one second now. It would be under
 12 correspondence, Ms. Glynn, on the PUB
 13 website. It's a letter dated April 6, 2018
 14 from the Board Secretary, Ms. Blundon, to
 15 Mr. Feltham of Roebothan, McKay & Marshall.
 16 If we could have that letter brought up,
 17 please?
 18 MS. GLYNN:
 19 Q. Sorry, I was looking at Ryan's train, he had
 20 it up before Sara did (phonetic). Is this
 21 the correct document, Mr. Kennedy?
 22 KENNEDY, Q.C.:
 23 Q. Yes, it is. If we could go to the next
 24 page, please? If I could just ask you now,
 25 if you look at the top line, "the Closed

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1 Claims Study in particular is a significant"
 2 – second sentence – "significant undertaking
 3 requiring the collection of data in the
 4 industry – from industry and normally
 5 requires nine months to complete." Do you
 6 agree with that statement? Is that
 7 accurate?
 8 MS. ELLIOTT:
 9 A. Sorry, could we scroll up? I'm not really
 10 familiar with this letter at all.
 11 KENNEDY, Q.C.:
 12 Q. It's a letter that's on the PUB website.
 13 It's – there were letters going – it's
 14 correspondence from Board Secretary, Ms.
 15 Blundon, to my colleague, Mr. Feltham, and
 16 it's dealing with scheduling of the
 17 Automobile Insurance Review and it refers to
 18 the fact that a Closed Claims Study, on the
 19 second sentence or the top of that page,
 20 second page, "normally requires nine months
 21 to complete". Is that an accurate
 22 statement?
 23 MS. ELLIOTT:
 24 A. The process of collecting the data and then
 25 the validation of the data and then the

Page 25

1 review of that data certainly nine months is
 2 not unusual for that timeframe and it also
 3 depends on the amount of data that's to be
 4 collected, the target timeframe, but to say
 5 from the beginning of when you start to
 6 collect until you've completed it, nine
 7 months is not an unreasonable amount of time
 8 to estimate.
 9 KENNEDY, Q.C.:
 10 Q. And the first sentence simply says
 11 "considering the work to be done by June
 12 30th, 2018, the timelines are tight for
 13 everyone involved, including the Board."
 14 Did you feel that the timelines were tight
 15 here in terms of the preparation of your
 16 Closed Claims Study?
 17 MS. ELLIOTT:
 18 A. There were no – we were given sufficient
 19 time -
 20 KENNEDY, Q.C.:
 21 Q. Okay.
 22 MS. ELLIOTT:
 23 A. - from when the data was provided to us to
 24 complete our review, yeah.
 25 KENNEDY, Q.C.:

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1 Q. If we could now go to the IBC Notes to Users
 2 and was brought up earlier by Ms. Elliott,
 3 and I'm going to go to some of the points
 4 that you were going to refer to. That would
 5 be the document that was up IBC Notes to –
 6 yeah, that's the document there. There's
 7 two different page levels here. So, we need
 8 to go to page three of the second part of
 9 the document, page 3 of 4, IBC Notes to
 10 Users. Okay. Just if you stop at paragraph
 11 6.
 12 MS. GLYNN:
 13 Q. Paragraph 4?
 14 KENNEDY, Q.C.:
 15 Q. Yeah, one – yeah, let's start with paragraph
 16 4. That's fine. You see in paragraph 4,
 17 there's reference to how the IBC starts the
 18 process. Paragraph 5, "IBC performed
 19 rigorous data quality checks". Did you have
 20 any involvement, as the actuary, in
 21 determining the data quality checks that
 22 would be utilized?
 23 MS. ELLIOTT:
 24 A. No, that's IBC's statisticians' area of
 25 expertise. We don't do that, no.

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1 KENNEDY, Q.C.:
 2 Q. Okay. If we could go now to paragraph 6?
 3 The fourth sentence down, fifth sentence
 4 down, Ms. Elliott, the last – you'll see
 5 "due to the rigorous timeline set for this
 6 study", do you see that?
 7 MS. ELLIOTT:
 8 A. Um-hm.
 9 KENNEDY, Q.C.:
 10 Q. Now, do you agree that it was a rigorous
 11 timeframe set for this study?
 12 MS. ELLIOTT:
 13 A. Well, it was rigorous, but manageable. It
 14 clearly was completed.
 15 KENNEDY, Q.C.:
 16 Q. Okay. Now, if we go to paragraph 7, this
 17 was the – IBC states "is not an audit
 18 process; had no access to any supporting
 19 documentation". They then state "users are
 20 cautioned in their interpretation of the
 21 data in the master file, especially as the
 22 injury profiling not be understood and
 23 reported in a consistent manner across all
 24 reporting companies". That's a caveat or
 25 it's a – would you agree that it's a – it's

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1 telling people to be careful?
 2 MS. ELLIOTT:
 3 A. Well, it's a – and it's referenced there,
 4 referencing the 35 injury types and
 5 depending upon whether an injury might be a
 6 WAD 1 or a WAD 2 or some other
 7 characterization. That is their reference;
 8 making sure that interpretation of a report
 9 when they're reviewing it, what one person
 10 might think is an injury – fits in the
 11 industry description in one case might go
 12 from WAD 1 to WAD 2 or some possibility like
 13 that.
 14 KENNEDY, Q.C.:
 15 Q. Okay. So, that's one – and we'll come to
 16 some of those later.
 17 MS. ELLIOTT:
 18 A. Um-hm.
 19 KENNEDY, Q.C.:
 20 Q. Then if I could just have you look at D,
 21 "the reported minor injury in New Brunswick
 22 and Nova Scotia is based on retrospective
 23 judgment of the reporting staff and may not
 24 be consistent against – across all reported
 25 companies and with respective regulations

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1 applicable". Again, the same type of issue,
 2 isn't it?
 3 MS. ELLIOTT:
 4 A. Um-hm.
 5 KENNEDY, Q.C.:
 6 Q. So, there's a subjective element involved,
 7 would you agree with me?
 8 (9:30 a.m.)
 9 MS. ELLIOTT:
 10 A. And IBC was very clear with us that we asked
 11 to collect that data for Nova Scotia, New
 12 Brunswick for the claimant that they're
 13 reviewing, whether it would have met the
 14 minor injury definition in those provinces
 15 and IBC was very clear that they could not
 16 provide validated data for that element, and
 17 so, we agreed that please collect it and we
 18 understand that it would not be validated,
 19 yeah.
 20 KENNEDY, Q.C.:
 21 Q. So, essentially, IBC gave guidance or
 22 instructions to the people who were – the
 23 adjusters, whoever went through the files?
 24 MS. ELLIOTT:
 25 A. They gave training, yes.

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1 KENNEDY, Q.C.:
 2 Q. Okay. Did you give any guidance or
 3 instructions as to what should be done from
 4 an actuarial perspective?
 5 MS. ELLIOTT:
 6 A. That's not an actuarial role to collect data
 7 and work with claim paper or claim files.
 8 So, no, I was not involved in the collection
 9 or validation, training, in any manner
 10 whatsoever.
 11 KENNEDY, Q.C.:
 12 Q. Okay. So, basically, would you agree with
 13 me that the giving of guidance or
 14 instructions to individuals at the insurance
 15 companies who were completing the template
 16 is not the same as an audit or spot check?
 17 MS. ELLIOTT:
 18 A. Correct. It is not an audit that they're
 19 spot checking. They are available to take
 20 phone calls, answer questions, train. They
 21 check samples. They had the ability to
 22 validate that data when it comes in. They
 23 have their own internal data, IBC, to
 24 validate different segments of the data in
 25 an electronic fashion. So, IBC is very

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1 skilled at this. They are the collector of
 2 all the data that is submitted by the
 3 companies. They go through a very rigorous
 4 process. Numerous times IBC writes pages
 5 and pages of information on data quality
 6 issues, what has been rejected from
 7 exhibits. They are the expert in this
 8 field. That was their task. It was not my
 9 task to do it.
 10 KENNEDY, Q.C.:
 11 Q. Again, my question was quite simple though;
 12 that it's a – not the same as an audit or a
 13 spot check, correct?
 14 MS. ELLIOTT:
 15 A. You're correct. They do a very rigorous –
 16 it's not a spot check. They have data and
 17 electronic means to check.
 18 KENNEDY, Q.C.:
 19 Q. You seem to be very – look very favourably
 20 upon the process utilized by the IBC.
 21 MS. ELLIOTT:
 22 A. I'm neutral on it. That is their
 23 responsibility. That was the task that they
 24 were given.
 25 KENNEDY, Q.C.:

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1 Q. And I'm having a little bit of difficulty –
 2 you know, you're saying how good a job
 3 they've done. Yet 236 files were excluded.
 4 How do you reconcile the two?
 5 MS. ELLIOTT:
 6 A. I think you – in terms of excluding the two
 7 companies' files and really, it's kind of a
 8 shame if you think of it because people
 9 collected all that data, did all that work
 10 and I said "no, I'm not using it. Out."
 11 And the reason why we did that is because
 12 they missed some files, not that what they
 13 provided was incorrect. It was incomplete
 14 and so, we – I made the decision to exclude
 15 that data from our study. So, it wasn't an
 16 issue of the data being wrong that was
 17 provided. It was incomplete and for that
 18 purpose, those two companies were excluded.
 19 KENNEDY, Q.C.:
 20 Q. Okay. So, it's not wrong, yet the documents
 21 or the data that's provided could result in
 22 skewed data?
 23 MS. ELLIOTT:
 24 A. Yes, because it was incomplete. Yes, that's
 25 right.

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1 KENNEDY, Q.C.:

2 Q. Okay. So, you maintain that the IBC gave

3 rigorous instructions and training?

4 MS. ELLIOTT:

5 A. Um-hm.

6 KENNEDY, Q.C.:

7 Q. Yet 236 files were incomplete. Again, how

8 do you reconcile it?

9 MS. ELLIOTT:

10 A. That the files were not complete. Those 236

11 files were not incomplete. Additional files

12 should have been provided and that was not

13 provided.

14 KENNEDY, Q.C.:

15 Q. Would you agree with me, Ms. Elliott, that

16 the whole purpose of an audit is to ensure

17 that the instructions and guidance given

18 were properly followed on a consistent

19 basis?

20 MS. ELLIOTT:

21 A. Well, I think what's important and how I

22 viewed it was that IBC has a role to

23 validate and check the data and whether it's

24 for a Closed Claims Study like this or the

25 Auto Stat Plan data that is collected, that

Page 34

1 is their role. That is their area of

2 expertise. IBC does not go out and audit

3 the data that's collected for the Auto Stat

4 Plan. That's been collected since the

5 1950s. It is all done digitally and they

6 have very sophisticated tools. This is

7 their area of expertise; reviewing and

8 validating that data, and they use their

9 expertise in this case as well.

10 KENNEDY, Q.C.:

11 Q. Okay. I appreciate your answer, but I'm

12 going to ask my question again. Would you

13 agree with me that the whole purpose of an

14 audit is to ensure that the instructions and

15 guidance given were properly followed on a

16 consistent basis?

17 MS. ELLIOTT:

18 A. Well, we do know that IBC did go and do

19 training sessions with the staff three times

20 and in that process, I would only assume,

21 and perhaps IBC can answer this, but they

22 would be explaining and reviewing hands-on

23 individual files, how the work should be

24 done. And yes, it's correct that IBC did

25 not take the master file, get all the data

Page 35

1 collected from them in February and then fly

2 out to this province and go to the offices

3 and check files. That process, as you refer

4 to as an audit, was not done by IBC nor

5 myself.

6 KENNEDY, Q.C.:

7 Q. Okay. Again, perhaps I'm not making myself

8 clear. I'm asking a general question about

9 the purpose of an audit, as opposed to what

10 took place in this case. Would you not

11 agree with me that the whole purpose of an

12 audit is to ensure that the instructions and

13 guidance given were properly followed on a

14 consistent basis?

15 MS. ELLIOTT:

16 A. Yes, but there are other means of checking

17 that things are followed on a consistent

18 basis.

19 KENNEDY, Q.C.:

20 Q. Which we'll come to right now.

21 MS. ELLIOTT:

22 A. Okay.

23 KENNEDY, Q.C.:

24 Q. That's a very good point. So, let's now

25 look at the 2005 Closed Claims Study that

Page 36

1 was utilized in Newfoundland and Labrador.

2 So, you've indicated that you were involved

3 in – there were two closed claims studies in

4 2005. There was the Private Passenger

5 Vehicle and Commercial Vehicles. You were

6 involved in the Private Passenger Vehicle

7 Closed Claims Study, correct?

8 MS. ELLIOTT:

9 A. Um-hm, yes.

10 KENNEDY, Q.C.:

11 Q. We talked about yesterday that the cap and

12 deductibles were one of the key issues that

13 were looked at back in that same review in

14 2005. Now, I wonder if we could have the

15 2005 PUB Report brought up. You've got to

16 go – do you know where it is, so that you

17 folks can find it on the – you got to go

18 into, I think -

19 MS. GLYNN:

20 Q. We have it.

21 KENNEDY, Q.C.:

22 Q. Wow! Thank you very much, Ms. Glynn.

23 STAMP, Q.C.:

24 Q. Even without an audit there, Mr. Kennedy.

25 KENNEDY, Q.C.:

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1 Q. Anticipated my question. Okay. So, let's
 2 look at this document. If we could now go
 3 to page 3 of this report? And again, I
 4 assume, Ms. Elliott, that you were given
 5 notice that we were going to be referring to
 6 this report. You've had an opportunity to
 7 review it, have you?
 8 MS. ELLIOTT:
 9 A. Well, it's a very big report, so I did not
 10 have time to read the entire report from
 11 beginning to end, but I'm sure we'll manage
 12 it.
 13 KENNEDY, Q.C.:
 14 Q. Well, if you need time, just let us know.
 15 But, if we could look first at page 3 under
 16 the heading – under the chapter
 17 "Introduction". Again, I just want to point
 18 out – okay, page 3. It would be Section
 19 1.3, okay. Keep going, please. Yeah, just
 20 on December 7th, you see "the Government
 21 provided additional direction". The second
 22 sentence, "Government directed the Board to
 23 provide an analysis based on caps and
 24 deductibles ranging from 2500 to 15,000 at
 25 \$2500 intervals, as well as a \$4,000 cap,

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1 similar to in place number." My only point
 2 is that what was being looked at in 2005 is
 3 similar to what's being looked at in 2017-
 4 18. Is that correct?
 5 MS. ELLIOTT:
 6 A. Similar.
 7 KENNEDY, Q.C.:
 8 Q. Okay. Yeah, we're looking at caps and
 9 deductibles, okay. If we could now go to
 10 page 5? Now, see if you have any memory of
 11 this, Ms. Elliott. You may or may not.
 12 Under the heading 1.5.4 at page 5, you see
 13 here "the Terms of Reference were issued in
 14 October 2004. The Closed Claims Study was
 15 well underway and it and other related
 16 studies were completed by January 2005." Do
 17 I understand that or do you have any
 18 recollection as to whether or not you had
 19 actually commenced a closed claims study
 20 prior to the Terms of Reference being
 21 issued?
 22 MS. ELLIOTT:
 23 A. I have no recollection of the specific
 24 timing, no. I can't speak to that.
 25 KENNEDY, Q.C.:

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1 Q. Okay. If we could go to page 10 under the
 2 heading "2.2.1 Automobile Insurance
 3 Newfoundland and Labrador: Industry
 4 Structure". It indicates in 2003 there were
 5 51 automobile insurance companies operating
 6 in Newfoundland and Labrador. You see that?
 7 MS. ELLIOTT:
 8 A. Yes.
 9 KENNEDY, Q.C.:
 10 Q. Now, the fact that there were more
 11 companies, did that make the Closed Claims
 12 Study more difficult, less difficult or did
 13 it matter in any way?
 14 MS. ELLIOTT:
 15 A. There would have been more companies to
 16 train and so, the more people involved, more
 17 companies involved, the less consistency you
 18 may have in the data that's collected. So,
 19 I would say when there are more people
 20 involved, the process is harder to manage as
 21 a generalization.
 22 KENNEDY, Q.C.:
 23 Q. If we could now go to page 17 under the
 24 heading 3.2? So, there's reference now to
 25 the individual or the consultants that were

Page 40

1 involved. The first consultant involved was
 2 Mercer, Mercer Oliver Wyman. "The Board
 3 also engaged the services of an insurance
 4 consultant," -- you mentioned this gentleman
 5 yesterday, -- "Mr. Bern Fitzpatrick, who
 6 with his previous prior experience in the
 7 industry was able to serve as a primary
 8 liaison with the insurance industry." What
 9 was your understanding of what Mr.
 10 Fitzpatrick did in that Closed Claims Study?
 11 MS. ELLIOTT:
 12 A. Training, available to answer questions,
 13 checking the data. I'm working on memory,
 14 but we were not involved – my firm was not
 15 involved in the actual collecting of the
 16 data, yeah.
 17 KENNEDY, Q.C.:
 18 Q. In terms of your collaboration with the IBC
 19 in this case, did you deem it appropriate or
 20 fit to suggest that perhaps we can use an
 21 insurance consultant similar to 2005?
 22 MS. ELLIOTT:
 23 A. No, I did not make that suggestion. We were
 24 familiar with IBC, working with IBC in
 25 collecting data for Nova Scotia and New

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1 Brunswick most recently, yeah.
 2 KENNEDY, Q.C.:
 3 Q. Okay. If we continue in that page, "The
 4 Board also engaged the services of a medical
 5 consultant, Dr. Sue Rideout-Vivian, who,
 6 with a specialty in occupational medicine,
 7 advise the Board on medical issues arising
 8 from the studies." I think you referred
 9 yesterday to a medical consultant. Did you,
 10 in your collaboration or under your terms of
 11 engagement, in terms of collaborating with
 12 IBC, did you make the suggestion that a
 13 medical consultant should be retained as it
 14 was in 2005?
 15 MS. ELLIOTT:
 16 A. I spoke with the medical consultant expert
 17 who was retained by IBC when I went over the
 18 injury definitions, the 35 injury
 19 definitions. So, I had a phone call with
 20 that person for this study.
 21 KENNEDY, Q.C.:
 22 Q. So, 2005 there was an independent expert
 23 retained by the Board?
 24 MS. ELLIOTT:
 25 A. Correct.

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1 KENNEDY, Q.C.:
 2 Q. And this particular Closed Claim Study
 3 there's a medical expert retained by IBC, is
 4 that what you're saying?
 5 MS. ELLIOTT:
 6 A. I don't know her employment arrangement.
 7 Maybe she's an employee of IBC. I'm not
 8 sure, but certainly paid by IBC in some
 9 manner or another.
 10 KENNEDY, Q.C.:
 11 Q. Yes.
 12 MS. ELLIOTT:
 13 A. Yeah.
 14 KENNEDY, Q.C.:
 15 Q. But in 2005, Dr. Sue Vivian--Rideout-Vivian
 16 was an independent medical consultant
 17 retained by the Board?
 18 MS. ELLIOTT:
 19 A. Yes.
 20 KENNEDY, Q.C.:
 21 Q. Is that your understanding?
 22 MS. ELLIOTT:
 23 A. Yes, that's correct.
 24 KENNEDY, Q.C.:
 25 Q. So, you didn't suggest in this particular

Page 43

1 case that you might want to use a medical
 2 consultant similar to how it was done in
 3 2005?
 4 MS. ELLIOTT:
 5 A. Oh, I don't—anything regarding medical
 6 definitions, interpretations, that is not my
 7 area of expertise.
 8 KENNEDY, Q.C.:
 9 Q. No.
 10 MS. ELLIOTT:
 11 A. So, whoever is collecting the data, and
 12 understanding that and defining the
 13 injuries, needs to know that. That's not
 14 what I do or claim to have any understanding
 15 of that. In this case, there was a medical
 16 professional that was retained by the Board.
 17 In the case of IBC, they had a resource in
 18 terms of the injury definitions and
 19 interpretation of that information. Yeah.
 20 KENNEDY, Q.C.:
 21 Q. I'm not saying that's what you do, but one
 22 of your terms of engagement here was to
 23 develop a Closed Claim Study to collaborate—
 24 you've indicated you collaborated with IBC.
 25 So, in order to insert a level of

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1 independence, did you consider recommending
 2 that an independent medical consultant be
 3 utilized as was utilized in 2005?
 4 MS. ELLIOTT:
 5 A. No, I didn't make that recommendation.
 6 KENNEDY, Q.C.:
 7 Q. Okay.
 8 MS. ELLIOTT:
 9 A. No.
 10 KENNEDY, Q.C.:
 11 Q. And you do agree with me that that's an
 12 important issue because if you're
 13 determining whether or not it's a whiplash 1
 14 or 2, minor knee injury, major knee injury,
 15 minor back injury, major back injuries,
 16 there are very subjective interpretations
 17 involved there, aren't there?
 18 MS. ELLIOTT:
 19 A. Well, there were definitions provided, and
 20 what we're really looking for is consistency
 21 in that interpretation. So, having one
 22 person do the training and explain what
 23 those definitions mean, that's what's
 24 important to me. Having as best possible
 25 consistent data collected by the companies

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1 participating in the study, so that when we
 2 have an analysis, we know if it's, you know,
 3 this injury type 1, it's consistently
 4 collected, the second injury collected. So,
 5 that's more important to me, that
 6 consistency, but it's difficult. Everybody
 7 is an individual and when they read the
 8 file, the medical file, and file in the
 9 report.
 10 KENNEDY, Q.C.:
 11 Q. Okay. We'll come back to that shortly. The
 12 next comment, "Finally, the Board engaged
 13 the services of an accounting firm, NKHK
 14 Chartered Accountants, to ensure consistency
 15 and compliance by insurance companies
 16 regarding data collection." You were aware
 17 of that, were you not, in 2005, that NKHK
 18 had been involved?
 19 MS. ELLIOTT:
 20 A. Yeah.
 21 KENNEDY, Q.C.:
 22 Q. They performed an audit? Correct?
 23 MS. ELLIOTT:
 24 A. Well, in that case, yes, it's described as
 25 an audit, but it would be validation and

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1 checking of the data, yeah, and –
 2 KENNEDY, Q.C.:
 3 Q. Okay. We'll come to the terms they use
 4 shortly.
 5 MS. ELLIOTT:
 6 A. Yeah.
 7 (9:45 a.m.)
 8 KENNEDY, Q.C.:
 9 Q. So, did you in terms of your terms of
 10 engagement, your previous involvement in the
 11 2005 Closed Claim Study, did you suggest or
 12 recommend that a firm of chartered
 13 accountants should be engaged to ensure an
 14 appearance of independence?
 15 MS. ELLIOTT:
 16 A. No, I did not make that recommendation for
 17 an appearance of independence.
 18 KENNEDY, Q.C.:
 19 Q. Okay. Well, let me take away the
 20 "appearance of independence. To ensure
 21 independence?
 22 MS. ELLIOTT:
 23 A. I didn't make the recommendation.
 24 KENNEDY, Q.C.:
 25 Q. Okay.

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1 MS. ELLIOTT:
 2 A. No.
 3 KENNEDY, Q.C.:
 4 Q. Did you even consider any of these
 5 recommendations as similar to what was
 6 utilized in 2005?
 7 MS. ELLIOTT:
 8 A. As I expressed, no, I did not. We
 9 understood that IBC has completed these
 10 Closed Claim Studies before. They are the
 11 experts at collecting data and were going to
 12 participate in the study and assist in
 13 collecting the data.
 14 KENNEDY, Q.C.:
 15 Q. Okay. So, now let's go to page 18 of this,
 16 the next page of this document. Under the
 17 chart that you see there, there's reference
 18 to the fact that the information requested
 19 is for a three-year period from July 1st,
 20 2001 to June 30th, 2004?
 21 MS. ELLIOTT:
 22 A. Yeah.
 23 KENNEDY, Q.C.:
 24 Q. Do you know why a three-year period was
 25 chosen in 2005? Did you have any

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1 involvement in that?
 2 MS. ELLIOTT:
 3 A. Well, the period of time--this is a
 4 different selection process. So, I there
 5 were—yeah, there was 6,000 files. So, this
 6 was sort of a preliminary listing of the
 7 files, and then, from there, we stratified
 8 that data to make sure that we were getting
 9 a random sample. That was in that study.
 10 In the current study, our approach was to
 11 take all the files that were closed over a
 12 certain window of time. One of the things
 13 that we want to make sure in any study is
 14 that we're getting a sample that is random,
 15 credible, and in this current study we asked
 16 for all the files over a certain period of
 17 time that were closed. It was a different
 18 approach in that study where we took a
 19 larger time period, a larger number of
 20 files, and then, tried to make sure we would
 21 take a random sample from that number and
 22 make sure that the distribution was
 23 representative.
 24 KENNEDY, Q.C.:
 25 Q. My question though was did you recommended

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1 that the three-year period be utilized in
 2 2005?
 3 MS. ELLIOTT:
 4 A. I'm sure I would have been part of that
 5 decision, yes.
 6 KENNEDY, Q.C.:
 7 Q. Okay. As opposed to 12 months in this
 8 particular Closed Claim Study?
 9 MS. ELLIOTT:
 10 A. Yes, we did not—it was a different approach
 11 in that study than this approach, yeah.
 12 KENNEDY, Q.C.:
 13 Q. Then, as you just indicated, there were 6100
 14 files from which Mercer selected a
 15 proportional random sample for each
 16 participating insurer?
 17 MS. ELLIOTT:
 18 A. Yeah, um-hm.
 19 KENNEDY, Q.C.:
 20 Q. Why did you do that in 2005 as opposed to
 21 the process that you utilized in 2017 and
 22 '18?
 23 MS. ELLIOTT:
 24 A. Well, for ourselves it was really the first
 25 Closed Claim Study that we had completed or

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1 for myself. We wanted to make sure that we
 2 were managing the process of which files
 3 would be provided to us as opposed to the
 4 companies deciding which files. So, and
 5 that it was a proper proportional random
 6 sample, so that we didn't get files all from
 7 the City of St. John's or we didn't get
 8 files for everybody that drove a Honda or
 9 anything like that. So, we wanted to manage
 10 that process to make sure that the
 11 distribution was random and that was the
 12 approach that we took at that time.
 13 KENNEDY, Q.C.:
 14 Q. The next paragraph, page 18, the second
 15 sentence, "In addition, the Board held
 16 information sessions and weekly conference
 17 calls with participating insurance companies
 18 to clarify any issues or concerns
 19 surrounding the completion of the
 20 questionnaire." Do you know if any such
 21 step was taken in this present Closed Claim
 22 Study?
 23 MS. ELLIOTT:
 24 A. There was, yes. I mean, that is really in
 25 reference to understanding how the data was

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1 to be collected and completed. And
 2 absolutely, my understanding is IBC held
 3 three training sessions and was available
 4 for phone calls to explain it.
 5 KENNEDY, Q.C.:
 6 Q. Okay. Again, I'm not asking what IBC did.
 7 MS. ELLIOTT:
 8 A. Oh.
 9 KENNEDY, Q.C.:
 10 Q. My question was are you aware whether as in
 11 2005 the Board held information sessions and
 12 weekly conference calls with participating
 13 insurance companies? Not what IBC did.
 14 MS. ELLIOTT:
 15 A. Oh.
 16 KENNEDY, Q.C.:
 17 Q. Do you know if the board did?
 18 MS. ELLIOTT:
 19 A. I do not believe they Board did that in this
 20 circumstance.
 21 KENNEDY, Q.C.:
 22 Q. Okay.
 23 MS. ELLIOTT:
 24 A. That IBC was doing that.
 25 KENNEDY, Q.C.:

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1 Q. Let's go to the top of page 19. "The
 2 questionnaires were completed on site by the
 3 participating companies and the data
 4 collected was provided in electronic format
 5 to the Board. The electronic data"—
 6 "claimant data was reviewed for accuracy and
 7 compliance by the Board with the assistance
 8 of the insurance consultant, the actuary and
 9 NKHK." Obviously, that didn't take place
 10 with this current Closed Claim Study?
 11 MS. ELLIOTT:
 12 A. IBC was fulfilling that role.
 13 KENNEDY, Q.C.:
 14 Q. Yes.
 15 MS. ELLIOTT:
 16 A. Yeah.
 17 KENNEDY, Q.C.:
 18 Q. So, basically, the independent consultants
 19 that were utilized in 2005 which included an
 20 insurance—a retired insurance adjustor, a
 21 firm of chartered accountants and a medical
 22 consultant were all filled by IBC in this
 23 present Closed Claim Study, is that what
 24 you're saying, to the best of your
 25 knowledge?

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1 MS. ELLIOTT:
 2 A. Effectively, yes.
 3 KENNEDY, Q.C.:
 4 Q. Yes.
 5 MS. ELLIOTT:
 6 A. Yeah.
 7 KENNEDY, Q.C.:
 8 Q. Let's now go to—I want to go to page 21.
 9 I'm almost finished with my references to
 10 this. The—I should—excuse me, for record, I
 11 should indicate then at the top of page 19
 12 of the Board's report in 2005, page 19, that
 13 a total of 1369 claimant records were
 14 detailed. Page 19, just before 3.3. Okay,
 15 so –
 16 MS. GLYNN:
 17 Q. Right to the top, Sara.
 18 KENNEDY, Q.C.:
 19 Q. Yes.
 20 MS. GLYNN:
 21 Q. There you go.
 22 KENNEDY, Q.C.:
 23 Q. A total of 1369 claimants' records.
 24 MS. ELLIOTT:
 25 A. Excuse me.

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1 KENNEDY, Q.C.:
 2 Q. That's correct, is it? Your recollection.
 3 MS. ELLIOTT:
 4 A. Well, I mean it says it there.
 5 KENNEDY, Q.C.:
 6 Q. Okay.
 7 MS. ELLIOTT:
 8 A. So, I will assume it's right.
 9 KENNEDY, Q.C.:
 10 Q. You have no reason to dispute it?
 11 MS. ELLIOTT:
 12 A. No.
 13 KENNEDY, Q.C.:
 14 Q. Okay. So, in this particular case we have a
 15 12-month study that's expanded for several
 16 months on either side with a total of 1977
 17 Closed Claim Studies reduced by 236 to,
 18 what's that? Seventeen forty-one.
 19 MS. ELLIOTT:
 20 A. Correct, um-hm.
 21 KENNEDY, Q.C.:
 22 Q. In the 2005 study we have over a three-year
 23 period, 6100 files from which 1369 are
 24 chosen?
 25 MS. ELLIOTT:

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1 A. Um-hm, um-hm. Correct.
 2 KENNEDY, Q.C.:
 3 Q. Okay. Let's now go to page 21. And I want
 4 to ask you this question. The Board's
 5 comments at page 21, "While there was
 6 general support for the methodology employed
 7 in conducting the Closed Claim Study, there
 8 were suggestions for further improvement.
 9 For example, some participants suggested the
 10 study team would have benefitted from the
 11 involvement of a lawyer in addition to the
 12 medical consultant." Do you see that?
 13 MS. ELLIOTT:
 14 A. Um-hm.
 15 KENNEDY, Q.C.:
 16 Q. Now, would a lawyer who is familiar with how
 17 files are closed and how injuries are
 18 classified, the heads of damages, do you
 19 think that that would add anything to a
 20 study like this or is simply you're
 21 satisfied that IBC did what had to be done?
 22 MS. ELLIOTT:
 23 A. I think, I mean, it's hard to say that more
 24 resources is an assistance in completion of
 25 a study, and extra expertise would not help,

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1 but that said, it's my understanding that
 2 given IBC has done so many of these at this
 3 point in time that they would have the
 4 expertise to assist regarding any questions
 5 that arise.
 6 KENNEDY, Q.C.:
 7 Q. Okay. Then the Board says, "Based on what
 8 the Board heard, it is clear that the Closed
 9 Claim Study methodology and results were
 10 sounds and reliable." Did you believe in
 11 2005 and do you believe today that the
 12 results of the Closed Claim Study and the
 13 methodology used were sound and reliable?
 14 MS. ELLIOTT:
 15 A. I have no reason to look back and believe
 16 that they weren't not.
 17 KENNEDY, Q.C.:
 18 Q. Okay. Page 28. You'll see here at the
 19 second paragraph, "The Board's use of the
 20 medical consultant in the medical mapping of
 21 injury types was accepted as a refinement to
 22 previous work including the New Brunswick
 23 study where actuaries completed the injury
 24 mapping." When there's reference there to
 25 "injury mapping," do you have any

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1 understanding as to what the Board is
 2 talking about there?
 3 MS. ELLIOTT:
 4 A. Yeah. So, there we're looking at which
 5 injuries would be grouped together to meet a
 6 definition. So, we refer to injury mapping
 7 and I don't believe we use that term in this
 8 current report that we prepared, but that
 9 would be the terminology, that you want to
 10 take different injury definitions and map it
 11 to a legislative definition.
 12 KENNEDY, Q.C.:
 13 Q. So, in terms of injury mapping, you did not
 14 review any of the files that had been
 15 reviewed by the various insurance company
 16 personnel?
 17 MS. ELLIOTT:
 18 A. I'm sorry, which study are we talking about?
 19 KENNEDY, Q.C.:
 20 Q. The 2018, '17 and '18 study.
 21 MS. ELLIOTT:
 22 A. That I did not review –
 23 KENNEDY, Q.C.:
 24 Q. Review any of the files themselves, the hard
 25 files, hardcopies of the files?

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1 MS. ELLIOTT:
 2 A. No, I did no audit.
 3 KENNEDY, Q.C.:
 4 Q. Okay. So, when someone at the insurance
 5 company described an injury as a whiplash 1
 6 –
 7 MS. ELLIOTT:
 8 A. Um-hm?
 9 KENNEDY, Q.C.:
 10 Q. - you basically proceeded on the basis that
 11 it was a whiplash 1?
 12 MS. ELLIOTT:
 13 A. Well, they would have their file, their
 14 medical reports, and the information that's
 15 provided in that report would enable them to
 16 complete the bucket. Yes, you know, WAD 1
 17 or maybe it was a WAD 2 or 3, and they would
 18 indicate that within the injury types.
 19 Yeah.
 20 KENNEDY, Q.C.:
 21 Q. Are you aware or have you ever seen any
 22 medical reports whereby opinions from
 23 doctors, whether they be family consultants—
 24 family practitioners or experts, where they
 25 refer to a whiplash 1, 2, 3, or 4?

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1 MS. ELLIOTT:
 2 A. Well, I do no medical work. I don't review
 3 claim files. So, the answer to that would
 4 be no. I am aware of the summary definition
 5 of a WAD 1, but no, I don't work with claim
 6 files, don't work with medical experts.
 7 KENNEDY, Q.C.:
 8 Q. Okay.
 9 MS. ELLIOTT:
 10 A. So, no.
 11 KENNEDY, Q.C.:
 12 Q. Do you know if the insurance personnel at
 13 these companies in this particular Closed
 14 Claim Study simply subjectively determined
 15 whether an injury fit, for example a
 16 whiplash 1, 2, 3 or 4, or whether they went
 17 to the medical letters, the letters from the
 18 family practitioners or the other doctors to
 19 seek their guidance as to what the injury –
 20 MS. ELLIOTT:
 21 A. I'm pretty sure they had the medical records
 22 because there are notes in the Closed Claim
 23 Study database where there is some
 24 descriptions of some of the injury types and
 25 why they might not be certain without

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1 further research whether it met the minor
 2 injury definition in Nova Scotia and New
 3 Brunswick. So, based on those notes, which
 4 were provided, it was clear to me that they
 5 were reading the files and making reference
 6 to medical information in the file.
 7 KENNEDY, Q.C.:
 8 Q. So, would it have not been appropriate, do
 9 you think, for you to go back and review
 10 some of those files –
 11 MS. ELLIOTT:
 12 A. No, I –
 13 KENNEDY, Q.C.:
 14 Q. - or to suggest that an independent auditor
 15 go back and review some of those files?
 16 MS. ELLIOTT:
 17 A. Well, no. Certainly not for me because
 18 that's not my area of expertise. I do not
 19 read medical files. I don't interpret them,
 20 I don't handle claims. So, no, it would not
 21 be appropriate for me to go. It's not my
 22 area of expertise.
 23 KENNEDY, Q.C.:
 24 Q. Did you suggest having regard to your terms
 25 of engagement and your collaboration with

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1 IBC that that would be a prudent and
 2 appropriate step in the circumstances of
 3 this case to ensure the integrity of the
 4 data collected?
 5 MS. ELLIOTT:
 6 A. Well, the responsibility that was undertaken
 7 by IBC was to ensure that the data--that
 8 they validate it, checked it. Were there to
 9 answer any questions; to train the staff.
 10 That was the role that they played. They
 11 are the experts in this. They've done this
 12 before, relied upon on their data collection
 13 process in a similar format previously for
 14 studies that have been accepted and adopted
 15 in other provinces and have stood--my
 16 findings have stood the test of time.
 17 KENNEDY, Q.C.:
 18 Q. Your findings have. "Your findings have
 19 stood the test of time"?
 20 MS. ELLIOTT:
 21 A. Yes.
 22 KENNEDY, Q.C.:
 23 Q. What does that mean?
 24 MS. ELLIOTT:
 25 A. That means that findings that I presented in

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1 my report, a similar report to this, have
 2 been referenced and used by many actuaries
 3 since they were published. In regard to
 4 Nova Scotia and in New Brunswick, the
 5 percentage changing costs with regards to
 6 the reforms that were made. So, we made
 7 estimates for those provinces for the
 8 superintendents, they were provided, there
 9 were hearings on those findings. And my
 10 reports and our findings have been used in
 11 reference by many actuaries in their rate
 12 filings.
 13 (10:00 a.m.)
 14 KENNEDY, Q.C.:
 15 Q. Okay. So, in conclusion on this point, as
 16 we move towards the conclusion of the
 17 comparison of the two studies, there were no
 18 independent--and when I say independent, I'm
 19 talking about outside IBC. There were no
 20 independent reviews of the Closed Claim
 21 Study data as took place in 2005 with—to an
 22 insurance person, a medical consultant or a
 23 chartered accounting firm, is that correct?
 24 MS. ELLIOTT:
 25 A. In 2005, IBC was not involved directly. And

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1 in this recent study, IBC was fully engaged
 2 in the study, yeah.
 3 KENNEDY, Q.C.:
 4 Q. Are you aware of whether or not there was
 5 any independent oversight of the data
 6 provided by participating insurers on behalf
 7 of the Board? Well, do you know if there
 8 was anyone?
 9 MS. ELLIOTT:
 10 A. I'm not aware if that's -
 11 KENNEDY, Q.C.:
 12 Q. Okay.
 13 MS. ELLIOTT:
 14 A. To my knowledge, no.
 15 KENNEDY, Q.C.:
 16 Q. So, you assumed, and I think you've
 17 indicated this on a number of occasions, you
 18 assumed that the data provided you by the
 19 IBC was, quote, "accurate and complete,"
 20 closed quote?
 21 MS. ELLIOTT:
 22 A. That is a very common assumption that I make
 23 in my work day in and day out that the data
 24 provided to us is reliable and accurate by
 25 the party providing it to us, yes.

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1 KENNEDY, Q.C.:
 2 Q. So, would you agree with me that it is
 3 important though as opposed to simply the
 4 IBC performing this task, for an independent
 5 person, whether it be an auditor or the kind
 6 of consultant we've talked about, to compare
 7 the company input for consistency and
 8 reasonableness?
 9 MS. ELLIOTT:
 10 A. Well, part of the validation and checking
 11 that IBC would go through would lend
 12 themselves to that, but I will not disagree
 13 that a process where there is more checking
 14 and validation, of course it's always good,
 15 so I certainly cannot say that doing more
 16 checks is not a good thing or not
 17 appropriate, but I do have confidence in the
 18 data that was provided to me based on the
 19 history of IBC's work and their area of
 20 expertise.
 21 KENNEDY, Q.C.:
 22 Q. Do you know or can you confirm whether
 23 anyone involved in the current process,
 24 other than the individual insurers, had an
 25 access to the closed files?

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1 MS. ELLIOTT:
 2 A. Sorry?
 3 KENNEDY, Q.C.:
 4 Q. We went to this yesterday and I can bring it
 5 up for you, IBC’s Note to Users, please?
 6 And if we could go to, again, it’s that
 7 second part of the document, paragraph 7,
 8 “Despite IBC’s best effort to ensure that
 9 data integrity before accepting claimant
 10 cases into the master file, this is not an
 11 audit process, IBC”—this is my question for
 12 you, “IBC had no access to any supporting
 13 documentation or paper files.”
 14 MS. ELLIOTT:
 15 A. Right, so they were not in the physical
 16 office of each of the insurers looking at
 17 the paper file and doing, as you referenced,
 18 a physical audit.
 19 KENNEDY, Q.C.:
 20 Q. And you certainly had no access to these
 21 files. So the only people who would have
 22 accessed the files, themselves, would have
 23 been the insurance personnel, whether there
 24 were adjusters, statisticians, whoever was
 25 reviewing the actual files?

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1 MS. ELLIOTT:
 2 A. It’s the company’s document, it’s like –
 3 KENNEDY, Q.C.:
 4 Q. So, do you or anyone else involved in this
 5 process have any way to tell whether the
 6 insurers were consistent in their completing
 7 of the data requests on each closed file?
 8 MS. ELLIOTT:
 9 A. Within a company, my understanding is that
 10 there would be a small number of people that
 11 would be, you know, maybe 2 to 5 people out
 12 of 40 people trained, that are trained to
 13 complete these files. And that enables
 14 consistency within a company. But that
 15 said, then the next company it would, that
 16 group of people are trained, so I think
 17 within an entity there would be good
 18 consistency and like anything, when you go
 19 to the next entity, there may be some
 20 differences. I can’t speak to that, but if
 21 there are going to be differences, it would
 22 be amongst the company, as opposed to within
 23 the company.
 24 KENNEDY, Q.C.:
 25 Q. In 2005, the different consultants and the

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1 Board itself, it appears, had access to the
 2 data in the files, is that correct?
 3 MS. ELLIOTT:
 4 A. Well they were physically there, yes.
 5 KENNEDY, Q.C.:
 6 Q. Yes. So do you or are you aware of anyone
 7 else in this present process, has any way of
 8 knowing whether the data reported on each
 9 file could be supported by documentation in
 10 the closed files?
 11 MS. ELLIOTT:
 12 A. Well if you went and opened the paper file,
 13 if you hopped on a plane and flew to the
 14 office and opened the paper file, then you
 15 would be doing a physical audit and you
 16 could check.
 17 KENNEDY, Q.C.:
 18 Q. But you’re the one who is making the
 19 assumptions on the data provided, so
 20 shouldn’t you, as an actuary and having
 21 regards to your term of engagement, ensure
 22 at a minimum that someone is checking other
 23 than the proponent, IBC themselves?
 24 MS. ELLIOTT:
 25 A. No. IBC is a manager, an expert of

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1 collecting and managing data. They are a
 2 service provider for the Superintendent of
 3 Insurance offices, that is their role, so
 4 that’s their area of expertise, that’s what
 5 the company does, so that’s not my, you
 6 know, our role in this, and that’s what
 7 their role was, and is, and that’s what they
 8 did. They stated that they checked,
 9 validated, trained the staff that was
 10 collecting it.
 11 KENNEDY, Q.C.:
 12 Q. And you accept that just absolutely?
 13 MS. ELLIOTT:
 14 A. Yeah, and as I’ve said, they have done this
 15 in the past, they are the expert, they
 16 collect data since the 1950s or earlier on
 17 industry data, they validate it, they reject
 18 data, they are the experts at this. I’ve
 19 used the data that’s been provided by IBC in
 20 the past. I’m repeating myself, but it’s
 21 the same answer. I accepted the data
 22 provided to us. I accepted that they
 23 completed checks and validation of the data.
 24 KENNEDY, Q.C.:
 25 Q. They are also an advocacy organization for

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1 the insurance industry which is a proponent
 2 for the bringing in of the cap, correct?
 3 MS. ELLIOTT:
 4 A. Just because we're doing an analysis of what
 5 a cap or a deductible or whatever is
 6 decided, this is a process of a calculation
 7 that we are providing for the Board as we
 8 are asked to.
 9 KENNEDY, Q.C.:
 10 Q. You're aware of different kinds of biases,
 11 though, it's not a fact that people are
 12 intentionally skewering data, but there are
 13 institutional biases, there are biases that
 14 can come into play as a result of the job
 15 that you do, do you agree with me? You're
 16 aware of these things?
 17 MS. ELLIOTT:
 18 A. Well I'm politically aware of biases, of
 19 course. My focus is on and my thinking
 20 process is on whether any data is biased
 21 when I do my analysis. It's not my opinion
 22 to assume that IBC or any other party is
 23 being biased in asked to provide information
 24 data.
 25 KENNEDY, Q.C.:

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1 Q. But you are assuming that IBC is unbiased.
 2 MS. ELLIOTT:
 3 A. They've given me—I understand that they are
 4 a lobby group for the industry, I understand
 5 that clearly, and changing a product such
 6 that a cap is introduced, as it is in other
 7 provinces, Alberta and Nova Scotia and New
 8 Brunswick and PEI, and there are different
 9 reforms in Alberta, we can go on and on,
 10 that does not make IBC or any other entity
 11 in my mind biased because of a product
 12 regime change.
 13 KENNEDY, Q.C.:
 14 Q. No, but true independence, I would suggest
 15 to you or would you agree with me, Ms.
 16 Elliott, doesn't assume unbiased, if that's
 17 a word or bias, you're just, you're down the
 18 road, down the middle of the road.
 19 MS. ELLIOTT:
 20 A. I'm sorry, I'm down the middle of the road.
 21 KENNEDY, Q.C.:
 22 Q. But you're not. You're suggesting that they
 23 are unbiased.
 24 MS. ELLIOTT:
 25 A. Me? I beg your pardon?

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1 KENNEDY, Q.C.:
 2 Q. You're suggesting that they are unbiased,
 3 you are accepting that they are not biased
 4 in the collection of their data.
 5 MS. ELLIOTT:
 6 A. Well, I do not believe that the individuals
 7 that work in a company, the claim's
 8 adjuster, has any intention other than to
 9 fill that form in as to the best of their
 10 ability, that they're not filling it in and
 11 saying "ha, let me just give this wrong data
 12 to Elliott so that her study will be wrong",
 13 that is not how I think. I believe that the
 14 people filling in the form are doing it to
 15 the best of their ability; that's what I
 16 believe, that the individual that's hired,
 17 they go home at 4:00 at night to their kids.
 18 They're not filling in that form to try to
 19 be biased.
 20 KENNEDY, Q.C.:
 21 Q. But if you don't check it, how do you know
 22 that?
 23 MS. ELLIOTT:
 24 A. I beg your pardon?
 25 KENNEDY, Q.C.:

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1 Q. If you don't have checks done on that, if
 2 you don't have –
 3 MS. ELLIOTT:
 4 A. There were checks, there were checks and
 5 validation of the data. We spoke about
 6 that.
 7 KENNEDY, Q.C.:
 8 Q. Okay, we'll deal with this later. Would you
 9 agree with me that with any Closed Claim
 10 Study the assignment of the types of injury
 11 and the amount of compensation paid by
 12 category of damage is based upon the
 13 adjuster who reviewed that claim's file?
 14 MS. ELLIOTT:
 15 A. Yes, they've reviewed it, they have that
 16 information, an assessment was made by the
 17 adjuster in negotiation most likely with a
 18 lawyer, legal counsel for these bodily
 19 injury claims and amounts were determined
 20 for lost wages or future lost income,
 21 medical costs, various, if you will, hard
 22 damages and then a cost estimate would be
 23 for the non-pecuniary, the pain and
 24 suffering award, so –
 25 KENNEDY, Q.C.:

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1 Q. It's based upon the judgment of the adjuster
 2 who reviewed the file, correct?
 3 MS. ELLIOTT:
 4 A. They know how much is paid, that's not a
 5 judgment amount.
 6 KENNEDY, Q.C.:
 7 Q. Well, we'll come to that in a second. So
 8 you don't agree with, but let me just repeat
 9 it again, it's an important statement. Do
 10 you agree with me that as with any Closed
 11 Claims Study of this nature, the assignment
 12 of the type of injury and amounts of
 13 compensation paid by category of damage is
 14 based upon the judgment of the adjuster who
 15 reviewed that claim file?
 16 MS. ELLIOTT:
 17 A. In some claimant files I believe that the
 18 information will be very clear, and in other
 19 files, there would be more judgment
 20 required, yes, that would be my
 21 understanding.
 22 KENNEDY, Q.C.:
 23 Q. Now we talked about the involvement of IBC
 24 and as a proponent for the cap, all of the
 25 insurance companies that are involved in

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1 this review or providing information in
 2 relation to the Closed Claims Study, you
 3 know that they're also proponents of minor
 4 injury cap, aren't they?
 5 MS. ELLIOTT:
 6 A. Well, actually –
 7 KENNEDY, Q.C.:
 8 Q. Aviva, Intact, you're aware of that.
 9 MS. ELLIOTT:
 10 A. I don't actually know, I don't speak to them
 11 that way to find out. A reform change is
 12 going to change the cost element of the
 13 product. If you wanted sort of a one-time
 14 change, right, we're in this regime and we
 15 go to this regime and it costs a little bit
 16 less, but then life carries on. Costs
 17 increase, that's not the end of the story.
 18 The profit element is not changing in this
 19 discussion here, that is the component that
 20 of course would be most important to the
 21 company and to both consumers and insurers,
 22 any mechanism that stabilizes cost is
 23 important and certainly if your premium
 24 increases because costs are going up, that's
 25 a concern to consumers as well as insurers.

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1 So I'm not aware of all the company's
 2 position on reform changes.
 3 KENNEDY, Q.C.:
 4 Q. Okay, well let me ask you this, is it your
 5 understanding or do you have any knowledge
 6 that we have two other, Intact and Aviva are
 7 going to be presenting here, Co-operators
 8 are going to be presenting here. Do you
 9 have any knowledge or understanding that
 10 these insurers who provided data for the
 11 Closed Claims Study are in favor of capping
 12 victims' claims to general non-pecuniary
 13 damages? Are you aware of that?
 14 MS. ELLIOTT:
 15 A. I have not read any position papers the
 16 insurers. That said, whenever you introduce
 17 a cap on a product, it does stabilize costs
 18 to the extent that whether you're a consumer
 19 or an insurer, you like costs to be stable,
 20 I think that they would be likely in favour
 21 of that, but I have not read anything that
 22 told me that for certainty.
 23 KENNEDY, Q.C.:
 24 Q. So would it be fair for me to say that the
 25 data that you have assumed to be complete

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1 and accurate for the purpose of making the
 2 findings in your report had been provided by
 3 parties who want to impose a minor injury
 4 cap?
 5 MS. ELLIOTT:
 6 A. I mean, you're expressing that they want to
 7 have a minor injury cap, I'm not disagreeing
 8 with that. The fact that they have the data
 9 and need to provide the data to us, that's
 10 just, there's no way around that, but I
 11 don't believe that the individuals that are
 12 completing, the adjuster, you know
 13 completing it has any bias in filling out
 14 the form.
 15 KENNEDY, Q.C.:
 16 Q. Okay, we'll hear some evidence on that
 17 later. I want to now move into the last
 18 couple of areas that, hopefully it will be
 19 fairly quickly. So we have the claimant
 20 file, have you ever seen the claimant file
 21 that would be in the insurance company, have
 22 you seen one?
 23 MS. ELLIOTT:
 24 A. Oh yeah, uh-hm.
 25 KENNEDY, Q.C.:

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1 Q. So there would be, I'm assuming, letters
 2 back and forth between lawyers and
 3 adjusters?
 4 MS. ELLIOTT:
 5 A. Uh-hm.
 6 KENNEDY, Q.C.:
 7 Q. There would be medical reports?
 8 MS. ELLIOTT:
 9 A. Yes.
 10 KENNEDY, Q.C.:
 11 Q. There could be charts from massage
 12 therapists, physiotherapists, chiropractors,
 13 all of that would be in the file.
 14 MS. ELLIOTT:
 15 A. Yeah.
 16 (10:15 a.m.)
 17 KENNEDY, Q.C.:
 18 Q. There would be a claim's letter presented by
 19 a lawyer.
 20 MS. ELLIOTT:
 21 A. Uh-hm.
 22 KENNEDY, Q.C.:
 23 Q. There would be responses.
 24 MS. ELLIOTT:
 25 A. Uh-hm.

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1 KENNEDY, Q.C.:
 2 Q. There would be heads of damages outlined in
 3 the letter.
 4 MS. ELLIOTT:
 5 A. Yes.
 6 KENNEDY, Q.C.:
 7 Q. There would be non-pecuniary damages for
 8 pain and suffering, general damages, an
 9 amount claimed, correct?
 10 MS. ELLIOTT:
 11 A. Uh-hm.
 12 KENNEDY, Q.C.:
 13 Q. You've seen this. Then there would be, it
 14 could be broken down further into
 15 housekeeping and maintenance, future care,
 16 cost of future care, diminished earning
 17 capacity, loss of future income, things like
 18 that, they would be broken down in the file.
 19 MS. ELLIOTT:
 20 A. Yes.
 21 KENNEDY, Q.C.:
 22 Q. Are you aware though or have you seen any
 23 claimant files where there would simply be a
 24 global settlement where the lawyer and the
 25 adjuster would simply agree upon a figure

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1 without breaking it down to the heads of
 2 damages?
 3 MS. ELLIOTT:
 4 A. Yes, and my understanding is and I have
 5 worked at insurance companies, so an
 6 adjuster when setting, estimating how much
 7 will be paid, they will take into
 8 consideration the injuries of the claimant,
 9 of course, determine what they think is,
 10 what the costs would be based on the
 11 information available to them, their work
 12 history, employment, medical needs, and so
 13 when they're setting a reserve, they are
 14 breaking down the costs into the various
 15 buckets, if you will, the heads of damage to
 16 make an estimate of what that reserve will
 17 be, so when you get the phone call, the
 18 adjuster will, you know, they might have an
 19 opening number but as time passes and the
 20 letters and the correspondence proceed, they
 21 have information to finesse their estimate
 22 of how much they're going to have to pay,
 23 and that information is what the adjuster
 24 does to make an estimate. Then the lawyers
 25 are involved and there's a negotiation

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1 process and in many cases, as you have said,
 2 there will be an agreement on an amount. So
 3 the adjuster then knows what they've put in
 4 a case reserve estimate, maybe it's 100,000,
 5 but maybe in negotiation they agree to 110
 6 with a lawyer or maybe they agree with
 7 90,000 with a lawyer. So they know how they
 8 derive the 100,000 in their worksheet under
 9 the various heads of damage. But the final
 10 agreed amount with a higher or lower number,
 11 so now they have a job of going back and
 12 reallocating amongst the heads of damages,
 13 so yes, I'm aware that there can be a final
 14 global number, everybody shakes hands and
 15 says, okay, this is how much we agree to and
 16 it wasn't a discussion when you said okay,
 17 we're going to settle on a 110, even though
 18 the adjuster thought it would be 100, now
 19 the exercise is to go back and reallocate
 20 that.
 21 KENNEDY, Q.C.:
 22 Q. And that's done by the adjuster, they're
 23 deciding the amount of non-pecuniary damages
 24 for pain and suffering, they're making that
 25 assessment.

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1 MS. ELLIOTT:
 2 A. Sure, based on the information provided in
 3 the file. So they have an estimate of what
 4 the number will be and sometimes it's going
 5 to be higher or lower in the final global
 6 number that's agreed on.
 7 KENNEDY, Q.C.:
 8 Q. But that number that's in the file by the
 9 adjuster is not one that has necessarily
 10 been agreed upon by a lawyer as to a
 11 specific amount for non-pecuniary damages?
 12 MS. ELLIOTT:
 13 A. Oh, no, I understand that, that's my point
 14 that the adjuster in making their estimate,
 15 what they believe they're going to pay on
 16 the file with the back and forth
 17 negotiations, they're narrowing that number
 18 down, what they believe it will be.
 19 KENNEDY, Q.C.:
 20 Q. So when the file is actually completed, the
 21 adjuster has been, then breaks it down into
 22 the figures under the heads of damages,
 23 correct?
 24 MS. ELLIOTT:
 25 A. Yes.

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1 KENNEDY, Q.C.:
 2 Q. So that would be a highly or there would be
 3 a high degree of subjectivity involved in
 4 that, wouldn't you agree with me, Ms.
 5 Elliott?
 6 MS. ELLIOTT:
 7 A. No, it could be proportionately revised or
 8 some numbers are fixed. It's pretty clear
 9 what somebody's wages are.
 10 KENNEDY, Q.C.:
 11 Q. Yeah, but I'm talking about non-pecuniary
 12 damages now and non-pecuniary damages in
 13 terms of the pain and suffering.
 14 MS. ELLIOTT:
 15 A. Right, well then that's one number that's
 16 entered.
 17 KENNEDY, Q.C.:
 18 Q. Yeah, but the numbers entered, that may not
 19 be a number that's agreed upon at the end of
 20 the day.
 21 MS. ELLIOTT:
 22 A. We are entering the number that's agreed
 23 upon at the end of the day. We are entering
 24 the number that is finally paid, settlement
 25 closed.

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1 KENNEDY, Q.C.:
 2 Q. But that could include, as we've talked
 3 about, an amount for pain and suffering, an
 4 amount for housekeeping, maintenance, future
 5 care, loss of future income, all of which
 6 are outlined, can be outlined in a letter
 7 and discussed among the adjuster and the
 8 lawyer.
 9 MS. ELLIOTT:
 10 A. Uh-hm, but I beg to differ that the wages
 11 that that person earns, the medical bills
 12 that they've incurred, they're pretty –
 13 KENNEDY, Q.C.:
 14 Q. Special damages I'm not concerned about, I'm
 15 talking about the loss or the future loss of
 16 income, loss of competitive advantage,
 17 things like that, there are notional or
 18 there are figures put on those.
 19 MS. ELLIOTT:
 20 Q. Uh-hm, right, and the adjuster in the
 21 negotiation process has a clear idea in
 22 their mind of what they're going to pay
 23 under each of the heads of damages, they've
 24 calculated that, that is their area of
 25 expertise, but at the end of the day a final

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1 number in some cases and agreed upon, that's
 2 more as you referred to it as a global
 3 number.
 4 KENNEDY, Q.C.:
 5 Q. Yeah, so I guess my only point on this is
 6 that even in the cases where this type of
 7 settlement occurs or even if it doesn't
 8 occur, we don't know or there is no
 9 assurance that the allocations match the
 10 claimant's lawyer's settlement breakdown of
 11 the heads of damages. There's no guarantee
 12 that there's coordination between what the
 13 adjuster thinks it will settle for under the
 14 heads of damages, and what the lawyer agreed
 15 to.
 16 MS. ELLIOTT:
 17 A. Each file, you know, what paper they have in
 18 it, it would depend, but I would state that
 19 the bodily injury adjusters are very
 20 familiar with the heads of damages and what
 21 they're paying and what they're negotiating
 22 in each case and would be able to, based on
 23 their judgment, make an allocation. So yes,
 24 they would be required to make some
 25 assessment, but they're familiar with these

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1 files.
 2 KENNEDY, Q.C.:
 3 Q. Okay, if we can go to the closed claim, I'm
 4 into my last couple of questions for you.
 5 Ms. Elliott, if we go to the Closed Claims
 6 Study of April 19, 2018, you have a number
 7 of numbers, a number of charts attached to
 8 your report, correct? Appendix A-1, 2, et
 9 cetera. Now does your report indicate the
 10 number of complainants who are over the age
 11 of 60 when the matters were settled?
 12 MS. ELLIOTT:
 13 A. We would have the information, I'm just
 14 going back here, we would be able to
 15 identify age. I'm sorry, is your question
 16 do we know the age of the claimant?
 17 KENNEDY, Q.C.:
 18 Q. Yeah.
 19 MS. ELLIOTT:
 20 A. Yes, we know the date of birth, yeah.
 21 KENNEDY, Q.C.:
 22 Q. Okay, do you know which chart that would be
 23 in where you break them down in terms of
 24 percentages?
 25 MS. ELLIOTT:

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1 A. I don't know, no, not off the top of my
 2 head. There are so many.
 3 KENNEDY, Q.C.:
 4 Q. Okay, let's look at page, if we look at page
 5 A(2), Appendix A(2).
 6 MS. ELLIOTT:
 7 A. Yes, it's there, the age.
 8 KENNEDY, Q.C.:
 9 Q. Okay, so the number of people and you know,
 10 a rough calculation indicates to me that
 11 it's approximately 15 percent of the
 12 claimants were over the age of 60, does that
 13 sound right? Just look at the numbers
 14 there.
 15 MS. ELLIOTT:
 16 A. Sure.
 17 KENNEDY, Q.C.:
 18 Q. So a lot of these complainants or excuse me,
 19 claimants, would have no other claims other
 20 than general pain and suffering because a
 21 lot of them don't work, correct? They're
 22 retired, a lot of people are retired at that
 23 age.
 24 MS. ELLIOTT:
 25 A. Some would be, yes.

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1 KENNEDY, Q.C.:
 2 Q. Okay, so really their claim, a claim of a
 3 person—or let me just keep going, if you
 4 actually look at the claimants over the age
 5 of 65 and then they're more likely, not
 6 guaranteed to retire, but 90 percent of the
 7 claimants appear to be over the age of 65,
 8 does that sound approximate, accurate?
 9 MS. ELLIOTT:
 10 A. Sure, uh-hm
 11 KENNEDY, Q.C.:
 12 Q. Okay, so for those claimants over the age of
 13 65, they're rear ended, they're in an
 14 accident, pain and suffering, their claim is
 15 going to be mostly for pain and suffering.
 16 MS. ELLIOTT:
 17 A. Uh-hm.
 18 KENNEDY, Q.C.:
 19 Q. So that person who might receive, in a minor
 20 injury, that might receive 20, 25, \$30,000
 21 today would receive \$2,500 if a cap of
 22 \$2,500; \$5,000 if there's a cap of \$5,000,
 23 correct?
 24 MS. ELLIOTT:
 25 A. I'm not under the impression that there was

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1 a cap of \$2,500 under consideration, we
 2 didn't cost that.
 3 KENNEDY, Q.C.:
 4 Q. Okay, \$5,000?
 5 MS. ELLIOTT:
 6 A. I don't know what the decision will be, but
 7 we costed estimates of \$5,000, \$7,500 and
 8 \$10,000.
 9 KENNEDY, Q.C.:
 10 Q. Okay. But if it was \$5,000, that's what
 11 they would be entitled to.
 12 MS. ELLIOTT:
 13 A. There's no distinguishing in the process of
 14 the age of the claimant. The issue is the
 15 minor injuries that have been suffered by
 16 that claimant and if the claimant would meet
 17 the minor injury definition, that amount
 18 would be capped in the costing exercise. It
 19 does not matter the age of the claimant for
 20 the pain and suffering award.
 21 KENNEDY, Q.C.:
 22 Q. But what I'm suggesting to you is that there
 23 would be, they're not working, so loss of
 24 income, a lot of these people wouldn't be
 25 working, so loss of income or loss of future

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1 income wouldn't come into consideration.
 2 MS. ELLIOTT:
 3 A. Well, we don't need to look at that. We're
 4 not costing a reduction in their loss of
 5 income.
 6 KENNEDY, Q.C.:
 7 Q. Okay. Let's also look at in Appendix (2),
 8 it appears that 55.8 percent or something
 9 like that, 56 percent, 57, 58 percent of
 10 claimants are female.
 11 MS. ELLIOTT:
 12 A. Uh-hm.
 13 KENNEDY, Q.C.:
 14 Q. That there are a number of claimants who are
 15 7 percent, are between the ages of 15 and
 16 20.
 17 MS. ELLIOTT:
 18 A. Uh-hm.
 19 KENNEDY, Q.C.:
 20 Q. Three percent were under the age of 15.
 21 MS. ELLIOTT:
 22 A. Yes, so we've provided this information so
 23 you'd have a sense of the distribution by
 24 age or gender or whether they're married or
 25 not.

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1 KENNEDY, Q.C.:
 2 Q. At page—and my last question, I think, I
 3 have to come back to the one on due
 4 diligence yesterday, page 4 of your report.
 5 MS. ELLIOTT:
 6 A. This report?
 7 KENNEDY, Q.C.:
 8 Q. Yeah, the Closed Claims Study, page 4.
 9 Okay, stop right there. There's a statistic
 10 here somewhere, I'm just trying to find it,
 11 that 90 percent of the claimants were 100
 12 percent not at fault, do you see that? Is
 13 that there somewhere?
 14 MS. ELLIOTT:
 15 A. Yes.
 16 KENNEDY, Q.C.:
 17 Q. Yes, okay, so 90 percent of the claimants
 18 were deemed 100 percent not at fault; in
 19 other words, that they did not contribute to
 20 the accident, for example, could be rear
 21 ending, could be, whatever reason, they had
 22 not contributed.
 23 MS. ELLIOTT:
 24 A. Yeah, passenger in the car, yeah.
 25 KENNEDY, Q.C.:

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1 Q. Yeah, so those 100 percent who are not at
 2 fault, if a cap was brought in, then they
 3 would be subject to the cap for a minor
 4 injury, correct? Even though they're not at
 5 fault.
 6 MS. ELLIOTT:
 7 A. Yes, that's correct, yes.
 8 KENNEDY, Q.C.:
 9 Q. Now yesterday, I'm trying to remember where
 10 the due diligence, there was a comment, it
 11 might be in conclusions, and you said we'd
 12 come back to it, you wanted to think about
 13 it. Page 16 of the Closed Claims Study,
 14 this was the comment about the third
 15 parties, yeah, "This report should not
 16 replace the due diligence on behalf of any
 17 such third party." First, who is the third
 18 party or third party you are referring to;
 19 and secondly, what do you mean by the
 20 comment "should not replace due diligence"?
 21 MS. ELLIOTT:
 22 A. This is a standard wording that we would use
 23 in our reports and the reference is that
 24 we're preparing this for our client, the
 25 Board, and we are not—and this is for the

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1 Board's use and we've made this a public
 2 document but we are not providing this
 3 report for someone to rely upon it and say,
 4 oh gee, the insurance industry is going to
 5 change and I'm going to go buy stock or sell
 6 stock because I think something is going to
 7 change or in any manner whatsoever to use
 8 this report for any other purpose than what
 9 it is intended for, for the Board's use in
 10 their –
 11 KENNEDY, Q.C.:
 12 Q. So you're not suggesting that the Board
 13 shouldn't rely upon your report without
 14 performing due diligence?
 15 MS. ELLIOTT:
 16 A. This report is provided for the Board's use.
 17 We do not want a third party to go and, as
 18 my example would be to, you know, buy stock
 19 or sell stock because they think something
 20 might occur from what they've read from my
 21 report.
 22 KENNEDY, Q.C.:
 23 Q. Okay. Thank you very much, Ms. Elliott. I
 24 don't have any further questions today.
 25 CHAIR:

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1 Q. Thank you, Mr. Kennedy. Mr. Gittens?
 2 MR. GITTENS:
 3 Q. Yes, the Board usually breaks at 11, I
 4 wonder if there's any appetite for breaking
 5 now? It's up to you, I can proceed, I just
 6 wanted to make sure.
 7 CHAIR:
 8 Q. Can you fill a half hour gainfully and then
 9 we can break at 11? Would that –
 10 MR. GITTENS:
 11 Q. Not a problem, that's easy.
 12 CHAIR:
 13 Q. Okay, we'll go with our original plan.
 14 MR. GITTENS:
 15 Q. Ms. Elliott, I thank you for your immense
 16 patience so far, but I'm afraid I have to
 17 start now. From the questioning of Mr.
 18 Kennedy, it's pretty obvious, I would think
 19 that we have a certain concern about the
 20 involvement of the IBC in the gathering of
 21 this data, would you say you gathered that
 22 from his questioning?
 23 MS. ELLIOTT:
 24 A. That?
 25 MR. GITTENS:

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1 Q. That IBC is solely in control of the
 2 gathering of the data here.
 3 (10:30 a.m.)
 4 MS. ELLIOTT:
 5 A. IBC facilitated the collection of the data
 6 and you have a concern with that, yes, I
 7 understand that.
 8 MR. GITTENS:
 9 Q. Okay, good. And in your testimony, you
 10 acknowledge that IBC is also a lobby group
 11 for the insurance industry and the people
 12 providing, the companies providing the data
 13 also have a parallel interest or a similar
 14 interest to what IBC has in terms of the
 15 outcome of these proceedings or the ultimate
 16 implementation of a cap? You may not have
 17 read it, but I think you understand that
 18 that is in fact what's, if it's not the
 19 elephant in the room, it is the room.
 20 MS. ELLIOTT:
 21 A. Right, I'm aware that they would likely, I
 22 have not read it, but I'm aware of what
 23 you're saying and why they would likely want
 24 a cap, yes.
 25 MR. GITTENS:

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1 Q. Okay, so we got past that. The collection
 2 of the data, as I understand from your
 3 testimony, was that you were looking for
 4 2000 files to be able to do the analysis you
 5 were asked to do.
 6 MS. ELLIOTT:
 7 A. That would be an ideal number for us, yes.
 8 MR. GITTENS:
 9 Q. Okay. And what about 50 files, would that
 10 have done your –
 11 MS. ELLIOTT:
 12 A. That would have been insufficient.
 13 MR. GITTENS:
 14 Q. Insufficient. So, 1000 files. I'm just
 15 trying to get a sense of where it becomes of
 16 concern to you.
 17 MS. ELLIOTT:
 18 A. Well, 1500 would be—typically we're working
 19 with 1500 files in these closed claim
 20 studies. So, more is better.
 21 MR. GITTENS:
 22 Q. More is better, but 1500 would be, not your
 23 cut off point, but you'd be able to do 1200,
 24 but you wouldn't have the degree of
 25 confidence, I guess is the way to express

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1 that.
 2 MS. ELLIOTT:
 3 A. Well, I mean, we have 1741 files that we
 4 work with and were satisfied that that was a
 5 sufficient number, yes.
 6 MR. GITTENS:
 7 Q. Okay, you were satisfied it was a sufficient
 8 number. So, we have 1700 files, sufficient
 9 number. So you are able to say your degree
 10 of confidence is not as much as it would be
 11 if it was 2000, but it's somewhat—you're
 12 still able to –
 13 MS. ELLIOTT:
 14 A. I'm satisfied that the sample size is
 15 sufficient for the analysis we're doing,
 16 yes.
 17 MR. GITTENS:
 18 Q. Now, from the process you have described,
 19 from the questioning of Mr. Kennedy, I
 20 gather that you take the view that your job
 21 was to do the analysis, notwithstanding the
 22 fact that there was an indication to
 23 documentation that you were to collaborate
 24 with the IBC in designing the study.
 25 MS. ELLIOTT:

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1 A. Right. So, in our reference to that point
 2 is that IBC wasn't to go out to collect the
 3 data and then say, oh, here's what we got
 4 for you. That we would, before they went to
 5 collect the data, that we would make sure it
 6 would encompass all the information that we
 7 required to do the cost estimates that we
 8 were asked to get.
 9 MR. GITTENS:
 10 Q. So, you ensured that the data points would
 11 be there, it would be collected and brought
 12 back to you.
 13 MS. ELLIOTT:
 14 A. Yes.
 15 MR. GITTENS:
 16 Q. Alright. As Mr. Kennedy indicated during
 17 the course of his questioning, the study was
 18 not as, I would suggest to you, as rigorous
 19 or as independent as the 2005 study. He
 20 suggests that in this study, you didn't have
 21 an independent medical examiner; you didn't
 22 have an independent audit by an accounting
 23 company; you didn't have an insurance
 24 adjuster looking over the shoulders of the
 25 data collection and you didn't have the

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1 Board taking a weekly phone call with the
 2 process to ensure things were going in the
 3 appropriate way.
 4 MS. ELLIOTT:
 5 A. Right, and that said, the flip side is that
 6 we have entity that is an expert in data
 7 collection and review and quality checks
 8 that were managing the collection process
 9 and had done it before, several times. So,
 10 in this case we had experts doing it, if you
 11 will.
 12 MR. GITTENS:
 13 Q. In-house experts.
 14 MS. ELLIOTT:
 15 A. IBC, they are the data collection agency for
 16 the superintendent's office. And they were
 17 doing the study, collecting the data and
 18 they are experts at it.
 19 MR. GITTENS:
 20 Q. Okay, but you see, where I have a little
 21 problem is this, you indicate that you had
 22 discussions with them; you indicated the
 23 data points you wanted gathered; they have
 24 the expertise and the ability to do this.
 25 They've done it many, many times in the

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1 past, but at the end of the day, the stuff
 2 they gave you, you still had to say, hold
 3 on, there's two companies here, 300 files
 4 that geez, I can't use, I shouldn't be
 5 using.
 6 MS. ELLIOTT:
 7 A. It's not that the files that they gave were
 8 not usable, they were additional files that
 9 were missing. And as a result of that, we
 10 took out the entirety of the data for those
 11 two companies. So, there's a little
 12 difference between saying the data that was
 13 provided by the two companies was erroneous;
 14 it was incomplete.
 15 MR. GITTENS:
 16 Q. I never said it was erroneous.
 17 MS. ELLIOTT:
 18 A. No, no, and I'm making it clear –
 19 MR. GITTENS:
 20 Q. I said you couldn't—you felt, at the end of
 21 the day you shouldn't use that as part of
 22 the process.
 23 MS. ELLIOTT:
 24 A. Correct.
 25 MR. GITTENS:

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1 Q. Yet, on many, many occasions you keep
 2 telling the Board that IBC is the cat's
 3 pyjamas. I think that's a very old
 4 expression, but it was just the best thing
 5 in terms of data gathering. They're done
 6 this so many times; they're experts in their
 7 area. They're really hunky dory!
 8 MS. ELLIOTT:
 9 A. Yeah, well I guess, maybe I'm hunky dory too
 10 because I was the one that addressed this
 11 issue and made the decision to exclude
 12 because there was missing information,
 13 missing files, not that the data quality
 14 provided was erroneous, they did not collect
 15 data from the separate old system that was
 16 not part of the ongoing operation. And due
 17 to digging and asking questions, this was
 18 uncovered and so the data for those two
 19 companies was excluded.
 20 MR. GITTENS:
 21 Q. But Ms. Elliott, if you hadn't identified
 22 that and asked those questions and
 23 challenged that data, that would have been
 24 part of the study.
 25 MS. ELLIOTT:

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1 A. Well, you're right and I'm sure there's
 2 probably errors we've all made in our life
 3 and we don't even know that we've made them,
 4 but in this particular case, you know, what
 5 I do is check information. I don't, as I
 6 said, we don't audit the data, but we
 7 certainly review it, make sure that we have
 8 a good understanding and comfort with the
 9 data. I do many, many checks that are not
 10 articulated in our report. And whether I do
 11 that for rate filing review or any other
 12 matter, I dig and I dig and I ask questions
 13 and things get uncovered. But that's not to
 14 say that I find everything, you know. I
 15 don't want to express that.
 16 MR. GITTENS:
 17 Q. Okay, so first of all—I'm sorry, I didn't
 18 mean to cut you off. If I understand you
 19 correctly, despite all the, let's call them
 20 checks and balances, that the IBC says it
 21 had or it applied in this particular case,
 22 all the training it gave to all these
 23 people, all these three sets of training
 24 sessions, despite all of that, but for you
 25 diligence on this matter, you realized that

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1 that data was not complete and would have
 2 skewed the results.
 3 MS. ELLIOTT:
 4 A. Correct, it would have made the savings
 5 higher than I believe it would be otherwise.
 6 MR. GITTENS:
 7 Q. And –
 8 MS. ELLIOTT:
 9 A. But we want to make—I want to make sure that
 10 I'm clear. This is a separate issue from
 11 the quality of the data that's completed row
 12 by row for each claimant. That's what they
 13 were checking and validating. The companies
 14 were asked, give us every file that is
 15 closed in this window of time. And as it
 16 happened, they missed some because they're
 17 on a separate system.
 18 MR. GITTENS:
 19 Q. I understand that's their story, but you can
 20 understand from our perspective the fact
 21 that –
 22 MS. ELLIOTT:
 23 A. I'm sorry, that's not the "story", that is
 24 the fact.
 25 MR. GITTENS:

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1 Q. Okay, that—how do you determine that's the
 2 fact?
 3 MS. ELLIOTT:
 4 A. Because I know it was companies in runoff
 5 that were in a separate system. I know that
 6 from rate filings that they were merging the
 7 entities and the runoff and the data that's
 8 presented, that that is plausible and
 9 appears completely correct to me and answers
 10 why I thought there was a problem because of
 11 this. So, that said, that is separate issue
 12 from saying that the data that they give us,
 13 the row by row and the completion of it,
 14 that IBC did not provide appropriate
 15 validation and check of that data in a
 16 rigorous manner. The fact that some other
 17 files over here, separate from Intact's
 18 regular operation were missed is a separate
 19 issue from IBC. They were not aware of that
 20 being over there.
 21 MR. GITTENS:
 22 Q. From your perspective, that is, on other
 23 words, a benign mistake on their part, as
 24 opposed to a deliberate mistake. That's the
 25 way I understand you to be saying.

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1 MS. ELLIOTT:
 2 A. Yes, I do not believe that was intentional
 3 in any manner.
 4 MR. GITTENS:
 5 Q. The odd thing about it is that that
 6 particular mistake, if it had not been
 7 discovered, would have resulted a mistake in
 8 their favour for the introduction of the
 9 cap.
 10 MS. ELLIOTT:
 11 A. Well, I don't know if you want to say "their
 12 favour" because if, let's just be
 13 hypothetical here, if we said the percentage
 14 savings reduction in costs would have been
 15 30 percent if we included that data, but in
 16 fact, it was only 20 percent, and the
 17 government decided to implement the cap and
 18 the Board said, okay Ms. Elliott, I'm going
 19 to refer to your report and you said the
 20 saving was 30 percent. All you companies
 21 you have to reduce your costs by 30 percent
 22 and in fact, it's only 20 percent. So, it's
 23 really not in their favour to do that
 24 because they would have to reduce their
 25 premium much lower than really what would

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1 emerge as the actual saving. So, in fact,
 2 no, it is not in their favour.
 3 MR. GITTENS:
 4 Q. But by that time the cap would have been
 5 imposed.
 6 MS. ELLIOTT:
 7 A. Yes, and the premiums would have been
 8 reduced lower than what would actually be—
 9 what we'd expect the actual costs to be.
 10 So, it's not in their favour.
 11 MR. GITTENS:
 12 Q. I see. In terms of the selection of this
 13 data, the files, my understanding from you
 14 was that you requested 2000 closed files for
 15 a one year period.
 16 MS. ELLIOTT:
 17 A. Our estimate was that over that one year
 18 period there would be approximately 2000
 19 claimant files.
 20 MR. GITTENS:
 21 Q. Right. And that was for every file that was
 22 closed by these companies during that period
 23 to get to that 2000 number.
 24 MS. ELLIOTT:
 25 A. Correct.

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1 MR. GITTENS:
 2 Q. What mechanism was in place to ensure that
 3 they gave you all the files for that period,
 4 or that they gave IBC all the files for that
 5 period?
 6 MS. ELLIOTT:
 7 A. I cannot speak to that. They were asked -
 8 MR. GITTENS:
 9 Q. So, you don't know if, for one reason or
 10 another, any of these companies held back
 11 any files for that period?
 12 MS. ELLIOTT:
 13 A. I wouldn't be aware of anyone doing -
 14 MR. GITTENS:
 15 Q. You wouldn't be aware. Are you aware of any
 16 mechanism that IBC had in place to ensure
 17 that they got all the files from these
 18 companies?
 19 MS. ELLIOTT:
 20 A. I mean, other than the instructions were
 21 very clear, that all files closed in this
 22 period of time are to be provided, that
 23 would be clear instructions and as we
 24 discussed yesterday, the target was 2000
 25 files. And you know, each year is a little

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1 different, how many files are closed and
 2 they felt it required to expand that 12
 3 month window in order to meet the 2000
 4 target. I guess we were pretty firm, we
 5 wanted 2000 when we had our discussion. So,
 6 they went that route, but do I know that,
 7 you know, an adjuster said, I'm not going to
 8 do those and left them on the floor and
 9 didn't do it? I wouldn't know that.
 10 MR. GITTENS:
 11 Q. Okay, so the fact of the matter then, there
 12 hasn't been, to your satisfaction or any way
 13 that you can verify that the instructions
 14 that you gave were followed to the T. We
 15 know there were 300 that you had to discard,
 16 but in addition to that you have no
 17 mechanism of knowing that the basic
 18 instruction of all the files for that period
 19 should be part of the study.
 20 MS. ELLIOTT:
 21 A. Right. I mean, we had a target number and
 22 so, I mean, they either have to go back into
 23 June of 2016 and May 2016 to get the number.
 24 It wasn't that they said oh here, give us
 25 what you have for 12 months and then you're

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1 done. They had a target number to achieve.
 2 So, I'm not sure what the purpose would be
 3 to not give us what they had in the 12
 4 months and then do other ones to get the
 5 target number. It's the same amount of
 6 hours and work, you know, to provide the
 7 files.
 8 MR. GITTENS:
 9 Q. Okay, but the reality is when you were
 10 speaking so confidently about the fact that
 11 the adjuster who was or the person that was
 12 trained to take the information from the
 13 file and put it into the matrix that you had
 14 created had no reason to be biased one way
 15 or the other. That doesn't cover the issue
 16 of whether they chose for whatever reason
 17 not to include a certain number of files,
 18 yeah.
 19 (10:45 a.m.)
 20 MS. ELLIOTT:
 21 A. Yeah, they had a target number to provide,
 22 each company was given a number that would
 23 add up to the 2000 files.
 24 MR. GITTENS:
 25 Q. Okay, and these, so let's go back a couple

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1 of months and get them those. What's wrong
 2 with that?
 3 MS. ELLIOTT:
 4 A. Well, your -
 5 MR. GITTENS:
 6 Q. I'm just giving you a hypothetical.
 7 MS. ELLIOTT:
 8 A. I'm not aware that there claims staff would
 9 make that decision, you know, that -
 10 MR. GITTENS:
 11 Q. We can—these types of decisions can be made
 12 on an individual basis, but they can also be
 13 systemic. As you can tell, we have a high
 14 level of suspicion of what the IBC does.
 15 That's a fact. So, I'm saying to you -
 16 MS. ELLIOTT:
 17 A. Yes, you're asking me a hypothetical
 18 question, did anyone go in and make sure
 19 that, I guess, just say they hid files and
 20 didn't include them and did anyone check
 21 that, that they did such a thing? No, I'm
 22 not aware they were asked to provide it. If
 23 they didn't, I mean, I wouldn't know -
 24 MR. GITTENS:
 25 Q. And these folks would never lie. So, based

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1 on that presumption, you can move forward
 2 and say, well, I'm sure they gave me
 3 everything they had. Isn't that the basis
 4 on which you're moving forward?
 5 MS. ELLIOTT:
 6 A. Yes, we asked for a sample of 2000, we got
 7 almost 2000 and yes, that's -
 8 MR. GITTENS:
 9 Q. Let me see if I'm getting you accurately
 10 there. Because I thought you asked for a
 11 sample of 2000 from a 12-month period.
 12 MS. ELLIOTT:
 13 A. That's correct.
 14 MR. GITTENS:
 15 Q. But what they gave you was a sample close to
 16 2000 from an extended period. And if I
 17 understood your testimony earlier, then
 18 didn't check with you to tell they were
 19 extending the period of time.
 20 MS. ELLIOTT:
 21 A. Right. IBC knew that we were very clear, we
 22 wanted 2000 files, claimant files. And they
 23 took the initiative, if you will, to make
 24 sure that they delivered on that as best
 25 possible. So, in my mind 1977 is close

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1 enough to 2000 and they did do so by adding
 2 on additional months until that target was
 3 met. They might have had to go back -
 4 MR. GITTENS:
 5 Q. But they didn't tell you that they had added
 6 on a number of months until they had given
 7 you the files.
 8 MS. ELLIOTT:
 9 A. That's correct.
 10 MR. GITTENS:
 11 Q. So, they went about this without consulting
 12 with you—I would have thought it would have
 13 been a reasonable email, reasonable phone
 14 call, "hey Paula, we can't make the 2000, we
 15 might have to go back to May and perhaps
 16 even April", but that never happened.
 17 MS. ELLIOTT:
 18 A. No, I found—yes, that's—my knowledge of it
 19 was when I received the data file.
 20 MR. GITTENS:
 21 Q. And you didn't figure that was odd? You
 22 didn't figure that was -
 23 MS. ELLIOTT:
 24 A. I picked up the phone right away and asked
 25 why.

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1 MR. GITTENS:
 2 Q. Oh, you felt it was odd enough to inquire
 3 immediately.
 4 MS. ELLIOTT:
 5 A. Well, it wasn't what I was expecting. And
 6 so when I opened the file and looked at it,
 7 I picked up the phone and they explained it
 8 to me.
 9 MR. GITTENS:
 10 Q. At the end of the day then, Ms. Elliott,
 11 when the dust settles on all of this, the
 12 concluding statement is that you asked for
 13 data files—this was put into the hands of
 14 the IBC entirely. They were responsible. I
 15 know you think they're the cat's meow.
 16 That's the proper expression, they're the
 17 cat's meow, in terms of data gathering and
 18 so on for the insurance industry. And you
 19 relied on that, but there has been no
 20 independent audit of this data that would
 21 put in you in the position of being
 22 completely confident both of its accuracy
 23 and its completeness.
 24 MS. ELLIOTT:
 25 A. It is the same, you're right, what you

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1 described and it's the same process that was
 2 followed for the Nova Scotia closed claim
 3 study and for the New Brunswick closed claim
 4 study where we relied upon that data and
 5 completed similar studies for those
 6 superintendents of each of those two
 7 provinces. Yes, so that is the process.
 8 MR. GITTENS:
 9 Q. Because it's was a similar process used by
 10 others doesn't mean it was right process. I
 11 mean, you're telling me of a consistently—we
 12 would be consistently wrong or consistently
 13 inadequate in terms of what it is you're
 14 trying to do here, the level of confidence.
 15 MS. ELLIOTT:
 16 A. Well, I understand what you're saying, but
 17 my test of reasonableness is that our
 18 finding that we calculated based on the data
 19 provided by IBC in a similar format of
 20 collecting and validating and checking, our
 21 estimate has proven to be reasonable in the
 22 data that has emerged in those provinces.
 23 And you know, I take—it gives me confidence
 24 in the process and yes, so IBC has done this
 25 before; I've been satisfied with it. They

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1 did it again this circumstance and I'm
 2 satisfied with it. Albeit, they extended
 3 they period of time, a couple of months to
 4 add in more files to get the 2000 target and
 5 albeit that in hindsight we discovered to
 6 companies has issues with, sort of, off site
 7 run off, older files, companies that—and I
 8 chose to exclude it.
 9 MR. GITTENS:
 10 Q. And no audit of them by any independent
 11 body?
 12 MS. ELLIOTT:
 13 A. Similar to the Nova Scotia/New Brunswick
 14 situation, yeah.
 15 MR. GITTENS:
 16 Q. I'll just touch on this question because you
 17 relied now on saying that your figures have
 18 been validated or justified in the Nova
 19 Scotia and New Brunswick situations. And
 20 Mr. Kennedy had brought you to the issue of
 21 the Newfoundland experience back in 2005.
 22 Is it your position as well that the figures
 23 that you or your company produced back then
 24 have been also validated in the years that
 25 followed?

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1 MS. ELLIOTT:
 2 Q. Yeah, well so in that case we have or in
 3 this case, in Newfoundland, we have the
 4 deductible. And the deductible is a little
 5 more problematic to estimate in some ways.
 6 There is an erosion factor. We had hoped
 7 that there would be larger percentage
 8 savings with the deductible. And it has
 9 shown that there was pretty limited impact
 10 of the deductible.
 11 MR. GITTENS:
 12 Q. Let me see if I can translate what you just
 13 said. Are you saying that you guys got it
 14 wrong in 2005? That's what I'm hearing, but
 15 I'm hearing it in actuarial speak.
 16 MS. ELLIOTT:
 17 A. Well, maybe we didn't get it wrong, maybe
 18 the system changed and there was more
 19 erosion and more inflation of claims that we
 20 anticipated. So, yeah, it was a difficult
 21 one, but in hindsight when we look back, and
 22 a deductible is a little different because—
 23 and when we say erosion, there's an
 24 inflation, there's an incentive to offset
 25 that deductible and to the degree that that

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1 happens is very hard to predict what
 2 consumer behaviour might be. So, looking
 3 forward to reflect consumer behaviour in
 4 such a regime is very difficult.
 5 MR. GITTENS:
 6 Q. Okay, let me just—one more step on that. I
 7 gather you're saying to some effect, not
 8 that you were wrong, but that you didn't get
 9 it right before the fact that there was a
 10 deductible as opposed to a cap. And you
 11 know, it's hard to really tell what results
 12 come from that. Is that what I'm hearing?
 13 MS. ELLIOTT:
 14 A. A cap is cleaner, a cap is cleaner, here in
 15 this number.
 16 MR. GITTENS:
 17 Q. Right and the deductible was more difficult
 18 to figure out what the figures would be in
 19 the future years.
 20 MS. ELLIOTT:
 21 A. Yes.
 22 MR. GITTENS:
 23 Q. Okay. But in fact, those future years, that
 24 mistake, that—not mistake, if you don't like
 25 that word—that differential between what you

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1 expected and what in fact happened resulted
 2 in the insurance companies making quite
 3 larger profits in the 2003, 2004, 2005, 2006
 4 and 2007 years.
 5 MS. ELLIOTT:
 6 A. No, I beg to differ.
 7 MR. GITTENS:
 8 Q. Okay. That's what I want to hear.
 9 MS. ELLIOTT:
 10 A. Because if we said that there might and I
 11 don't remember the number, a reduction in
 12 costs of 10 percent because of a 2500
 13 deductible, and in fact, there were no—and
 14 so companies had to reduce their rates for
 15 that. The Board ordered you have to reduce
 16 your rates for this deductible and in fact,
 17 there was no reduction in costs. The
 18 companies did not win with that, but the
 19 opposite.
 20 MR. GITTENS:
 21 Q. I see. Companies didn't win, but the public
 22 definitely lost.
 23 MS. ELLIOTT:
 24 A. You say increased profits.
 25 MR. GITTENS:

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1 Q. Because they didn't get the reduction in
 2 their premiums that was promised -
 3 MS. ELLIOTT:
 4 A. No, I'm sorry, you're not understanding me.
 5 I said that the companies would be required
 6 to reduce their premiums by the 10 percent.
 7 So, the Board would say there should be, we
 8 anticipate and I'm hypothetically saying 10
 9 percent, there will be a reduction in costs
 10 because of this deductible. And therefore
 11 you companies need to reduce your rates to
 12 reflect this 10 percent reduction that's
 13 anticipated. And so that would flow through
 14 to the premium immediately with reform, but—
 15 so the consumer gets the lower premium, but
 16 a year or two passes and that reduction
 17 doesn't materialize. And so the consumer
 18 got the lower rate, but the companies didn't
 19 get the lower cost. So, I'm not sure about
 20 the winner or loser, but -
 21 MR. GITTENS:
 22 Q. So, do I understand you to be saying as a
 23 consequence of what happened in 2005, the
 24 Newfoundland consumer got a lower rate, but
 25 the companies did not have an opportunity to

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1 reduce their costs to the extent you
 2 expected?
 3 MS. ELLIOTT:
 4 A. Well, it's not so much that they got to
 5 reduce their costs. The costs didn't emerge
 6 as low as expected with the deductible.
 7 MR. GITTENS:
 8 Q. Okay, so they didn't have -
 9 MS. ELLIOTT:
 10 A. The premium was reduced.
 11 MR. GITTENS:
 12 Q. The cost didn't raise as much as was
 13 expected or would it raise more?
 14 MS. ELLIOTT:
 15 A. The cost didn't reduce. Because of the
 16 deductible we would expect a reduction cost
 17 and that didn't materialize, but at the same
 18 time the companies were required to reduce
 19 their premium to reflect the anticipation
 20 that the costs would go down.
 21 MR. GITTENS:
 22 Q. Okay. So, we'll get to those and the
 23 numbers later, I guess. There's something I
 24 just didn't quite understand and this is
 25 just to help educate me, I think. You were

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1 talking about, when you did the taxi study
 2 and so on, everything seemed to be dependent
 3 on the year of the event.
 4 MS. ELLIOTT:
 5 A. Right, the accident year.
 6 MR. GITTENS:
 7 Q. The accident year.
 8 MS. ELLIOTT:
 9 A. Yes.
 10 MR. GITTENS:
 11 Q. Let's pick a year, 2012, there were so many
 12 events in 2012, you were able then to
 13 calculate the premiums that were paid in the
 14 year 2012 and you were able to say there
 15 were X number of events in 2012, but you
 16 didn't care—I use that word loosely—when
 17 those claims settled. It could have been
 18 2012, '13, '14, '15, by six years out, you
 19 felt most of them would have been, but -
 20 MS. ELLIOTT:
 21 A. That's an accident year, yes.
 22 MR. GITTENS:
 23 Q. So, it struck me that the assessment that
 24 was being done, recall that apples, they
 25 were the apples, the year of the event, 2012

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1 had—I don't remember the number now—three
 2 hundred and something events, whatever it
 3 might have been. When we come to the closed
 4 case study, you say well, I really don't
 5 care what year the event occurred. I only
 6 care about, for this year that I'm picking,
 7 should have been a 12 month period, that 12
 8 month period for that year, I only care
 9 about what file closed in that year.
 10 MS. ELLIOTT:
 11 A. That's correct.
 12 MR. GITTENS:
 13 Q. And that file could have started in 2012; it
 14 could have started '13, '14, '15, '16, '17.
 15 So, if you picked '16 as the year, I think
 16 June of one to—July of one to June 30 of the
 17 other, you got that year, but it was the
 18 year in which the claim settled and those
 19 claims could have come from any years. Just
 20 explain to me please why, if there's not
 21 inconsistencies here, I'm sure there is, I
 22 just don't understand.
 23 MS. ELLIOTT:
 24 A. Sure. So, it is called a closed claim
 25 study, so we want closed claims.

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1 MR. GITTENS:
 2 Q. I may have missed that word, but go on.
 3 MS. ELLIOTT:
 4 A. And that's integral to it. So, we're
 5 looking for a period of time when the claims
 6 are closed and, of course, the claim will
 7 close within this window of time, but we
 8 don't know when the claim occurred. We're
 9 just trying to get a sample of claims that
 10 are closed and we're trying to get as
 11 current as possible, a sample of claims that
 12 are reflecting the current environment, of
 13 how much is being paid. So, that's why we
 14 would look for closed claim sample. What
 15 you referred to earlier is typically
 16 referred to as rate making data when we look
 17 at a particular year, what accidents
 18 occurred in that year and how much will they
 19 ultimately cost. And then we take that year
 20 and try to project it forward for pricing
 21 purposes. What would that be from 2012, what
 22 would that look like, those same claims and
 23 projected forward, what would the cost level
 24 be in 2018 and 2019. So, we're dealing with
 25 sort of a set, claims that occurred in a

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1 certain date and then projecting them all
 2 forward.
 3 MR. GITTENS:
 4 Q. Okay, so you're projecting them forward for
 5 different years. The basis for the premiums
 6 that will paid in that year would be not
 7 related to these files that were closed.
 8 MS. ELLIOTT:
 9 A. These are completely differently things,
 10 completely different things.
 11 MR. GITTENS:
 12 Q. Completely different, got you, okay. I plan
 13 to just go through the report, a couple of
 14 points in the report, Madam Commissioner, I
 15 don't know if you would like me to continue.
 16 I can tell you I will be five or ten minutes
 17 or give you the opportunity now, I can go
 18 on.
 19 CHAIR:
 20 Q. Let's take our break.
 21 (BREAK – 11:00 a.m.)
 22 (RESUME – 11:30 a.m.)
 23 CHAIR:
 24 Q. Back to you, Mr. Gittens, carry on.
 25 MR. GITTENS:

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1 Q. Thanks you, Madam Chair. I'm going to refer
 2 you now, Ms. Elliott, to your report and I
 3 just want to touch a couple of items in
 4 there that frankly I don't understand and
 5 I'm sure you can give explanations to
 6 prevent me from going off in the wrong
 7 direction. You've already indicated in your
 8 introduction that you had those issues with
 9 the percentages of the files that were
 10 brought to you that you turned away. And
 11 you indicated in the course of the data
 12 collection process, page 1, introduction,
 13 second to last paragraph, "the target total
 14 was allocated proportionately amongst the
 15 insurers based on market share". And then
 16 you indicate that in the course of the data
 17 collection process, 12 months was
 18 insufficient and then you indicated later on
 19 that you rejected, in the next page, page 2,
 20 second paragraph, "due to its higher
 21 distribution of claimants with more recent
 22 accident dates, this was caused by system
 23 issues that prevented the reporting of
 24 claims with older accident dates". I think
 25 we've already massaged that enough to know

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1 that you're saying that the more recent
 2 files would have resulted in a lower cost.
 3 MS. ELLIOTT:
 4 A. Typically claims that are closed more
 5 recently would be easier, smaller files.
 6 MR. GITTENS:
 7 Q. Right. And as a result of your
 8 determination, 236 of those ones weren't
 9 accompanied by older files.
 10 MS. ELLIOTT:
 11 A. That's correct.
 12 MR. GITTENS:
 13 Q. You decided to leave that out.
 14 MS. ELLIOTT:
 15 A. The sample from those two companies was
 16 incomplete.
 17 MR. GITTENS:
 18 Q. Right. So, in terms of the proportion that
 19 you had started off with, you said—as I said
 20 in the previous paragraph that you had
 21 broken it down proportionately amongst the
 22 insurers based on market share by dropping
 23 those two. You simple ignored that and kept
 24 the proportion as it was, is that correct?
 25 MS. ELLIOTT:

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1 A. Well, we used the data that was submitted by
 2 the other companies, yes.
 3 MR. GITTENS:
 4 Q. Yes. So, their proportion of, when you have
 5 let's say, 1977 files, they represent—each
 6 of those other companies represented a
 7 particular proportion of that 1977.
 8 MS. ELLIOTT:
 9 A. Right. The mass changes, there's no way
 10 around that.
 11 MR. GITTENS:
 12 Q. Okay, so then you changed it to take their
 13 number of files in proportion to the 1741.
 14 MS. ELLIOTT:
 15 A. Um-hm.
 16 MR. GITTENS:
 17 Q. So, in fact, this report as a whole now
 18 doesn't reflect the entire population of
 19 files for that year period.
 20 MS. ELLIOTT:
 21 A. It represents a market share, 74 percent.
 22 MR. GITTENS:
 23 Q. Seventy-four/seventy-five percent.
 24 MS. ELLIOTT:
 25 A. Yes, um-hm.

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1 MR. GITTENS:
 2 Q. And I take it, the next statement is rather
 3 obvious, your feelings are that even using
 4 75 percent of the population as opposed to
 5 100 percent of the population doesn't change
 6 your results materially.
 7 MS. ELLIOTT:
 8 A. Correct, I'm satisfied with the sample size,
 9 yes.
 10 MR. GITTENS:
 11 Q. Somehow I knew we would get there. Let's
 12 move on, just wanted to touch a couple of
 13 other things. Now, if you go to page 5, it'
 14 the number 3, accounts paid. I was looking
 15 at the general damages stated as the second
 16 item in that list of 57.3 million.
 17 MS. ELLIOTT:
 18 A. Um-hm.
 19 MR. GITTENS:
 20 Q. That tells us that then as a result of these
 21 closed claims that span the period of about
 22 14 months, around 2016 when they were closed
 23 that the general damages paid out, I guess,
 24 was 57.3 million. Am I getting that right?
 25 MS. ELLIOTT:

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1 A. Correct.
 2 MR. GITTENS:
 3 Q. Okay, but we are not able to correlate that
 4 with the cost of the associated premiums
 5 that were paid for those particular files or
 6 that particular year because the years that
 7 you calculate are based, as we said earlier,
 8 what I called apples –
 9 MS. ELLIOTT:
 10 A. I'm sorry, let me interrupt here. There's
 11 not premiums associated with this. This
 12 could be a passenger in the car, a
 13 bicyclist, a pedestrian, not every claimant
 14 pays a premium.
 15 MR. GITTENS:
 16 Q. Okay.
 17 MS. ELLIOTT:
 18 A. So, it's not an issue of associating the
 19 amounts paid to claimants regardless of how
 20 they're involved in this accident, event to
 21 premiums that they—they may not even be
 22 drivers, you know. So, there's no
 23 discussion here of premiums in any manner
 24 whatsoever.
 25 MR. GITTENS:

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1 Q. So, my question that follows from that is,
 2 where is there, in the report, and I'm sure
 3 it's there, I just can't figure it out, some
 4 correlation between the fact that it costs
 5 the industry 57.3 million, let's say 2016
 6 was the year, is that –
 7 MS. ELLIOTT:
 8 A. That's fine, sure.
 9 MR. GITTENS:
 10 Q. June 1, 2016 to—July 1, 2016 to June 30,
 11 2017, let's call that year.
 12 MS. ELLIOTT:
 13 A. Um-hm.
 14 MR. GITTENS:
 15 Q. Is there a corresponding cost to the
 16 insurance—I'm sorry, is there a
 17 corresponding income to the insurance
 18 industry for that period that we could find
 19 here?
 20 MS. ELLIOTT:
 21 A. This is not an exercise to match apples to
 22 apples of these claims that were closed in
 23 this period of time. The purpose of this
 24 exercise is to get a sample of claims that
 25 were closed in a window of time. And then

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1 to review that sample to say if you
 2 received—you were involved in a bodily
 3 injury claim and you received compensation
 4 for your injuries that occurred, what were
 5 those compensations and how would they
 6 change if there was a cap or deductible
 7 applied. It is not a pricing exercise. It
 8 is completely separate. There's no
 9 discussion here of equating what may be a
 10 pedestrian or bicyclist receive for an
 11 injury, an event they were in with the
 12 premium that the driver might have paid.
 13 There's no equation here. It's not done.
 14 MR. GITTENS:
 15 Q. Okay, so if we—and I have to admit, I am as
 16 guilty as the next uninformed person, when I
 17 look to see whether the industry is
 18 profitable or not, I take a year and I say,
 19 well in that year, they had—they earned X
 20 number of dollars in premiums. They also
 21 earned money that they invested through—
 22 those premiums were invested and they earned
 23 money on that investment. And that's the
 24 income. And being as simpleton, I then look
 25 up and say, well gee, for that year, what

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1 did it cost them to run this business?
 2 MS. ELLIOTT:
 3 A. Yes, I understand your question and what
 4 you're trying to understand, but this report
 5 is a description of the data that was
 6 collected. We also provide other reports
 7 regarding the profit for the industry. And
 8 we will get to discussing that, but there's
 9 no premium discussion here. There's no
 10 discussion on profit or anything of that
 11 nature in this. So, your questions
 12 regarding profit and premium are—I have no
 13 answers for you with regards to this
 14 document.
 15 MR. GITTENS:
 16 Q. Fair enough, that's to clarify in my own
 17 mind, thank you. Moving on. So, therefore
 18 in this report, if I refer to revenues, I'm
 19 referring to apples, the premiums and this
 20 really is oranges, this is the costs. I'm
 21 trying to compare apples to oranges and
 22 that's a no go.
 23 MS. ELLIOTT:
 24 A. This is a description of a closed claim
 25 study, the data that was collected, the

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1 sample data.
 2 MR. GITTENS:
 3 Q. Okay, if you would move to the next page,
 4 please, page 6. And at the bottom of page 6
 5 you make a footnote that says, "Non-
 6 pecuniary costs, often commonly referred to
 7 as pain and suffering were also provided on
 8 a gross of deductible basis". Could you
 9 please explain?
 10 MS. ELLIOTT:
 11 A. Sure, right now the system in Newfoundland
 12 is that a \$2,500.00 deductible would apply
 13 to the non-pecuniary award. And so we
 14 asked—so every claimant who would have an
 15 award, more than 2,500 should first have—
 16 maybe their award was \$3,000.00 for pain and
 17 suffering, so \$2,500.00 would be deductible,
 18 they would be paid 500.
 19 MR. GITTENS:
 20 Q. Right.
 21 MS. ELLIOTT:
 22 A. So, what we ask for in the sample of data is
 23 that we wanted to know, there could be an
 24 example where a claimant was only awarded
 25 \$1,000.00 for pain and suffering—so we

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1 wanted to know what the amount would be
 2 before the \$2,500.00 deductible was taken
 3 off. So, we refer to that as to the gross
 4 before you take the 2,500 off and then after
 5 the 2,500 was off.
 6 MR. GITTENS:
 7 Q. So, all the figures you've used here have
 8 presumed essentially, if we word it another
 9 way, that the claimant received that 2,500.
 10 The claim itself was –
 11 MS. ELLIOTT:
 12 A. I've received information that says this is
 13 the amount of money paid to the claimant and
 14 it would, in all cases, have a \$2,500.00
 15 deductible. And we also asked how much the
 16 award would have been without the deductible
 17 because it's possible someone would have
 18 been awarded a thousand dollars and ended up
 19 receiving zero because the deductible would
 20 have applied. So, we ask for those two
 21 numbers.
 22 MR. GITTENS:
 23 Q. Okay. So, the figures you use in this
 24 report, you got to work with me here, I'm
 25 not the brightest guy. I'm trying to figure

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1 this out. The figures you use in this
 2 report include the \$2,500.00 deductible.
 3 When you use fifty three point whatever
 4 million in pain and suffering –
 5 MS. ELLIOTT:
 6 A. Is net as a deductible.
 7 MR. GITTENS:
 8 Q. 57.3.
 9 MS. ELLIOTT:
 10 A. Is net of the deductible.
 11 MR. GITTENS:
 12 Q. So –
 13 MS. ELLIOTT:
 14 A. It's what was paid to claimant, net. They
 15 received the money, they take the deductible
 16 off.
 17 MR. GITTENS:
 18 Q. Right.
 19 MS. ELLIOTT:
 20 A. So, if the award was \$5,000.00, they take
 21 2,500 and the claimant is given 2,500 and
 22 that's the amount that we would use here.
 23 MR. GITTENS:
 24 Q. So, this does not factor in to your
 25 calculations that every injured person in

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1 this province who collected an award gave
 2 either the government or the insurance
 3 companies \$2,500.00 before they could start
 4 even taking anything out.
 5 MS. ELLIOTT:
 6 A. I'm sorry, it takes into account the amount
 7 that was paid to the claimant. The regime
 8 in this province is that there's a
 9 deductible across all claimants of \$2,500.00
 10 deductible. So, we reflected the amount
 11 paid to the claimant.
 12 MR. GITTENS:
 13 Q. Okay. Moving on. I will be jumping now to
 14 page 13. And my learned friend, Mr.
 15 Kennedy, did deal with this, but as I go
 16 through to summarize, the third to last
 17 paragraph, the last line does say, and
 18 you're referring now to the numbers that you
 19 referenced in New Brunswick and Nova Scotia
 20 and you say "we provide the following
 21 summary of the responses which were not
 22 verified by IBC".
 23 MS. ELLIOTT:
 24 A. That's correct.
 25 MR. GITTENS:

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1 Q. And your intention in that was to suggest
 2 what, I'm not quite sure.
 3 MS. ELLIOTT:
 4 A. To make sure that it was clear that that
 5 data element, IBC was unable to verify it.
 6 That was my intention.
 7 MR. GITTENS:
 8 Q. Okay, that they were unable to verify or
 9 that just never verified it.
 10 MS. ELLIOTT:
 11 A. That they were unable to verify that data,
 12 that's what I'm saying.
 13 MR. GITTENS:
 14 Q. Okay, so what level –
 15 MS. ELLIOTT:
 16 A. It's not verified. I'm stating what was
 17 collected.
 18 MR. GITTENS:
 19 Q. Um-hm.
 20 MS. ELLIOTT:
 21 A. And so you have that information and it is
 22 not verified, validated by IBC.
 23 MR. GITTENS:
 24 Q. Okay, so you would have gotten that
 25 information from outside of IBC?

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1 MS. ELLIOTT:
 2 A. No, it was in the closed claim study sample.
 3 It was collected, filled in by the adjuster.
 4 I mean, filling in the role of data that's
 5 collected and they're unable to verify that
 6 information.
 7 MR. GITTENS:
 8 Q. Okay, so that is the same as what we have
 9 here.
 10 MS. ELLIOTT:
 11 A. What do you have here?
 12 MR. GITTENS:
 13 Q. In this report that you used from IBC.
 14 MS. ELLIOTT:
 15 A. No, it's a completely—I'm being very clear
 16 and IBC was very clear in Item No. 7 of
 17 their instructions that we referred to
 18 earlier today. That was one of the items
 19 listed by IBC that they were unable to
 20 validate or verify that data. And I
 21 referenced it here as well so the reader is
 22 aware of that.
 23 (11:45 a.m.)
 24 MR. GITTENS:
 25 Q. Is this data any different than the data

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1 that—the data in Nova Scotia and New
 2 Brunswick any different than the data that
 3 you received from Newfoundland.
 4 MS. ELLIOTT:
 5 A. Well, this is different, we're asking—this
 6 is not what injury did that claimant have.
 7 We're asking the adjuster to look at this
 8 file and assess if this claimant had this
 9 injury in the province of Nova Scotia and
 10 the province of New Brunswick, separately,
 11 would they meet the minor injury definition.
 12 It's a judgment request that we wanted to
 13 know what their opinion was. And so they
 14 filled it in, either they knew it or they
 15 didn't know it or whatever and IBC is unable
 16 to validate their responses because it's
 17 based on the judgment of the adjuster
 18 filling that in.
 19 MR. GITTENS:
 20 Q. I see. So those adjusters, the ones that
 21 did the study in the Newfoundland data –
 22 MS. ELLIOTT:
 23 A. Yes.
 24 MR. GITTENS:
 25 Q. Was IBC able to verify that information?

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1 MS. ELLIOTT:
 2 A. I don't understand your question, sorry.
 3 MR. GITTENS:
 4 Q. You just told me, if I understood you
 5 correctly, and it could be a
 6 misunderstanding, I have a tendency to do
 7 that sometimes, but you indicated that the
 8 information that was put in by the adjusters
 9 or whoever in New Brunswick and Nova Scotia,
 10 that IBC had, IBC did not do any exercise,
 11 didn't verify that information, they gave it
 12 essentially raw without a verification
 13 process?
 14 MS. ELLIOTT:
 15 A. Sorry, IBC collected or managed the
 16 collection, the training, the validation,
 17 the verification of the data.
 18 MR. GITTENS:
 19 Q. In New Brunswick and Nova Scotia?
 20 MS. ELLIOTT:
 21 A. Yes, and here in Newfoundland.
 22 MR. GITTENS:
 23 Q. All right.
 24 MS. ELLIOTT:
 25 A. And in this province for this Closed Claim

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1 Study, we asked for additional information
 2 which was not asked for in the two other
 3 studies, and one piece of that information
 4 was would the adjuster believe that the
 5 claimant, with its attributes and the
 6 injuries that were suffered by that
 7 claimant, would they meet the New Brunswick
 8 definition of a minor injury, and the same
 9 for Nova Scotia. It was a judgment
 10 question. Some of those people may not even
 11 be familiar with all the details in Nova
 12 Scotia and New Brunswick, so it was a
 13 question that we asked knowing full well it
 14 would be kind of a soft information that
 15 came back, and we wanted to emphasize that
 16 it wasn't validated or verified by IBC. IBC
 17 said it in their instructions, we've said it
 18 here to make sure it's very clear it is not
 19 verified or validated.
 20 MR. GITTENS:
 21 Q. Okay, and it has a large component of
 22 judgment by the person who inserted it?
 23 MS. ELLIOTT:
 24 A. And it's not used directly in the study for
 25 our calculations.

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1 MR. GITTENS:
 2 Q. Got you, all right then. Moving on then to
 3 page 15, it's fair to say then, Ms. Elliott,
 4 that based on what you've said so far and
 5 the way you made your final comments on page
 6 15, that we can say a number of things.
 7 Number 1, you relied on the IBC for the
 8 collection, completeness and accuracy of the
 9 information entirely?
 10 MS. ELLIOTT:
 11 A. Yes, they were responsible for collecting,
 12 yeah.
 13 MR. GITTENS:
 14 Q. Right. Secondly, that IBC did not bring to
 15 your attention that it expanded the
 16 timeframe or that it had companies that did
 17 not have full information, the information
 18 was incomplete? They did not bring that to
 19 your attention before submitting that
 20 information to you?
 21 MS. ELLIOTT:
 22 A. Yes. Certainly, I have no email or
 23 recollection of being told that there would
 24 be an expansion to collect the target that I
 25 requested, the 2000, but they took the

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1 initiative to achieve that goal.
 2 MR. GITTENS:
 3 Q. I understand, and I'm not going to go into
 4 it in detail, just a summary, and the third
 5 thing we can say is if you had not detected
 6 that discrepancy, that missing information,
 7 it would have skewed your results in an
 8 inappropriate way?
 9 MS. ELLIOTT:
 10 A. It would have – I believe, yes, it would
 11 have presented a slightly higher percentage
 12 savings than we otherwise calculated.
 13 MR. GITTENS:
 14 Q. Okay, we'll move on, I don't want to
 15 belabour it. Then we get to the appendices
 16 that you have here, and the very first
 17 appendix, A1, and this is just a question
 18 because I just don't know and it's curious.
 19 Looking at the listing that you give for
 20 Appendix A1, you have years of loss. You
 21 start at 2002 and you go to 2017. Maybe
 22 it's just a typo, I don't know, but why is
 23 2003 and 2004 missing from that table? Is
 24 there a rationale?
 25 MS. ELLIOTT:

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1 A. There are no claims that closed during the
 2 window of time that were from those accident
 3 years.
 4 MR. GITTENS:
 5 Q. I don't know, but don't you find that odd?
 6 I mean, you had claims closed that started
 7 in 2002, you had one there. You had claims
 8 closed in 2005 that started in 2005, but for
 9 some year no claims started in 2003 and
 10 2004?
 11 MS. ELLIOTT:
 12 A. No, it's, I mean, really quite thin. I
 13 mean, there's one from 2002.
 14 MR. GITTENS:
 15 Q. Yeah.
 16 MS. ELLIOTT:
 17 A. So I don't find that odd. You're going back
 18 – I don't know what that is, 14, 13 years
 19 that we didn't have a claim closed that was
 20 that old.
 21 MR. GITTENS:
 22 Q. For a two year period? I'm just saying it
 23 strikes me as odd that you had one from
 24 2002, but nothing from '03, nothing from
 25 '04, and then in '05 you had three; '06,

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1 three; '07, six; and '08, five, and then you
 2 start the bigger numbers because you're
 3 getting closer.
 4 MS. ELLIOTT:
 5 A. Uh-hm.
 6 MR. GITTENS:
 7 Q. And –
 8 MS. ELLIOTT:
 9 A. And that would be expected that the bulk of
 10 the claims will fall within 2013 to 2015.
 11 MR. GITTENS:
 12 Q. That makes sense, but the absence of the '03
 13 and '04, I just found curious, but you're
 14 telling me there isn't any particular
 15 explanation, just the figures fell that way?
 16 MS. ELLIOTT:
 17 A. Yes, that's what I'm telling you.
 18 MR. GITTENS:
 19 Q. That's fair, no argument. My final
 20 question, and this actually is just for –
 21 not personal reasons, but just very curious
 22 to note, Appendix A5, because as any lawyer,
 23 I always want to know whether or not I
 24 provide value for my clients, and I note in
 25 your Appendix 5, you ask was there legal

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1 representation, you know, did the person
 2 have legal representation and there was a
 3 "yes" by 1,426 people, and there was no
 4 legal representation for 315, but, in fact,
 5 that turns out to be about 82 percent of the
 6 people had legal representation and about 18
 7 percent didn't. Is that correct, am I
 8 reading that correctly?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 MR. GITTENS:
 12 Q. Okay, and then when you look at the
 13 settlements, you notice that the people who
 14 had lawyers received 95 percent of the
 15 settlements as opposed to the 18 percent who
 16 didn't, and they appear to have only
 17 received about 5 percent of the settlement,
 18 is that correct?
 19 MS. ELLIOTT:
 20 A. 94 and 6 percent distribution on the non-
 21 pecuniary amount, and then on the total
 22 distribution –
 23 MR. GITTENS:
 24 Q. Okay, and as I say, this is purely for my
 25 benefit to elucidate me, but are you telling

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1 me that those figures say that if you have a
 2 lawyer, you get about 15 percent better
 3 result; 82 percent with lawyer where they
 4 collected 95 percent of the settlement, and
 5 those 18 percent who didn't have lawyers
 6 only collected 4 percent, 5 percent?
 7 MS. ELLIOTT:
 8 A. No, I'm not making any inference. We're
 9 just stating those that had legal
 10 representation, what percentage that had
 11 legal representation and how those costs
 12 were allocated amongst the heads of damages,
 13 and those that didn't. This is not - in
 14 this particular segment of data, we're not
 15 looking at the injury types for those
 16 claimants with or without, so I don't think
 17 it would be an appropriate inference to
 18 connect the dots and say, gee, if you have a
 19 lawyer, you're going to get more money than
 20 if you don't.
 21 MR. GITTENS:
 22 Q. You don't distinguish between the – in
 23 either category, you didn't distinguish
 24 between the type of injury?
 25 MS. ELLIOTT:

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1 A. Well, of course, I can't. It's only so much
 2 data there, 35 injury types. It's not
 3 possible to show it all here.
 4 MR. GITTENS:
 5 Q. Right, all it's saying there is 80 percent
 6 of the people who had lawyers got 95 percent
 7 of the claim?
 8 MS. ELLIOTT:
 9 A. Yeah.
 10 MR. GITTENS:
 11 Q. And the 18 percent that didn't have lawyers
 12 got 5 percent of the total payouts?
 13 MS. ELLIOTT:
 14 A. That's what it tells us.
 15 MR. GITTENS:
 16 Q. I admitted at the start that I was looking
 17 at that from the perspective of, gee, that
 18 tells me I have some value, but thank you
 19 very much for assisting me in that regard.
 20 Thank you, Commission.
 21 CHAIR:
 22 Q. Thank you, Mr. Gittens. Mr. Fraize.
 23 FRAIZE, Q.C.:
 24 Q. Yes, I have a few questions. I'm going to
 25 pick up where you made a statement before

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1 the break. You said that insurance
 2 companies did not win. I think you made
 3 that statement. Do you agree, whether we're
 4 talking about a cap or a deductible, it's
 5 the victim that loses?
 6 MS. ELLIOTT:
 7 A. Well, I don't –
 8 FRAIZE, Q.C.:
 9 Q. It's the victim that's affected?
 10 MS. ELLIOTT:
 11 A. The context there was with respect to
 12 answering about profit, you make more money,
 13 and that was a separate issue, right, and
 14 it's not about –
 15 FRAIZE, Q.C.:
 16 Q. I agree, but what we're talking about –
 17 MS. ELLIOTT:
 18 A. There's no winner, and I will not use that
 19 term in terms of a claimant. They're
 20 injured and it's a terrible event that they
 21 go through, and the idea is not that they're
 22 a winner or not a winner. It's a terrible
 23 event, they're injured and they need to be
 24 compensated appropriately. I don't have an
 25 opinion on claimants winning or not.

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1 FRAIZE, Q.C.:

2 Q. No, no, I'm just making a comment. It just

3 came out in our discussion. So what we're

4 talking about here on one side is the value

5 of the claims, the resulting higher

6 premiums, but yet whether we're talking

7 about a deductible or we're talking about a

8 cap, it's the injured party that's affected?

9 MS. ELLIOTT:

10 A. Yes, and there currently is a deductible in

11 the province that applies to every injured

12 victim.

13 FRAIZE, Q.C.:

14 Q. Now as you can probably see, my view on this

15 hearing is a little different from my

16 colleagues view. Now do you not agree that

17 we've created two types of situations; a

18 person injured in an automobile accident,

19 and a person, say, injured in a building, a

20 slip and fall, same injury, but in the

21 automobile side we're trying to – we have a

22 deductible right now, and now it seems like

23 the insurance companies want a cap, but on

24 the other side there is no restriction. Am

25 I correct?

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1 MS. ELLIOTT:

2 A. Well, I'm not aware of a restriction on a

3 slip and fall of a cap that would occur.

4 FRAIZE, Q.C.:

5 Q. Let's assume I'm right, okay. So we've

6 created two. Now some of the victims do not

7 have insurance. I mean, they're not drivers

8 and so forth, they could be walking down the

9 street.

10 MS. ELLIOTT:

11 A. Yeah, pedestrians, bicyclists.

12 FRAIZE, Q.C.:

13 Q. And be hit by a car, or they could be in a

14 wheelchair and hit by a vehicle. So the

15 lower rates will not affect them. They are

16 affected by what we're doing here today

17 because at the end of the day the cap was

18 put in place, their injury is capped at a

19 certain value, whatever that definition is.

20 Now in your study, let me ask you this

21 question. One of the things we mentioned

22 when we started this, did you take a look at

23 what caused the accidents, was it drinking,

24 was it –

25 MS. ELLIOTT:

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1 A. I'm sorry, this study – the document that

2 we're referring to is a Closed Claim Study

3 of information collected for the claimant.

4 It is not a look at, you know, whether the

5 accident occurred because it was a drunk

6 driver.

7 FRAIZE, Q.C.:

8 Q. So the question was never asked?

9 MS. ELLIOTT:

10 A. The event occurred, and we asked the

11 question whether they - the degree of fault,

12 but not what caused it, whether it was an

13 icy road, drunk driver. All those possible

14 issues are not asked what causes the

15 accident, we're looking at the claimants and

16 what injuries they suffered and how much

17 they were paid in this data that's

18 collected.

19 FRAIZE, Q.C.:

20 Q. So if I may characterize what you're saying,

21 the question was never asked what the cause

22 of the accident was for your purposes?

23 MS. ELLIOTT:

24 A. No, an accident happened and – it happened,

25 yes.

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1 FRAIZE, Q.C.:

2 Q. Now one question on this 2,000 claimant file

3 selection process. Am I correct in saying

4 that when you received the 2,000, they would

5 be all the claims for that period of time?

6 MS. ELLIOTT:

7 A. That was the target.

8 FRAIZE, Q.C.:

9 Q. No, no, but were they all the claims for

10 those insurance companies?

11 MS. ELLIOTT:

12 A. Yes, so we asked for all the claims that

13 were closed in that window, that 12 month

14 window, every claim that was closed and all

15 the claimants, you know, associated with

16 that claim closed in that window. That was

17 the request and our estimate was that would

18 bring about 2,000 files.

19 FRAIZE, Q.C.:

20 Q. So I'm clear on this, the problem was when

21 you had the 12 months, there were not 2,000

22 claims settled in the 12 months?

23 (12 P.M.)

24 MS. ELLIOTT:

25 A. Right, this is – yes.

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1 FRAIZE, Q.C.:

2 Q. Now going back to 2005, the previous time we

3 had this discussion about insurance rates,

4 it strikes me there seemed to be more

5 safeguards then as to data than there is

6 now. There was an independent insurance

7 adjuster, there was an independent medical

8 person, and there was an accounting firm.

9 Why didn't we have it this time?

10 MS. ELLIOTT:

11 A. Well, I mean, I'll repeat what I've answered

12 earlier, IBC is the service provider for the

13 Superintendent of Insurance. They collect

14 the data from all the insurers. That is

15 their role, their area of expertise. They

16 have done this before. They agreed to

17 facilitate this exercise again of collecting

18 the data. Their role was to manage, train

19 the staff, validate it, check it, and they

20 did it in the past and they did it again.

21 It's simply that.

22 FRAIZE, Q.C.:

23 Q. But why was it done back in 2005? Why was

24 it necessary to have the doctor independent

25 and the –

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1 MS. ELLIOTT:

2 A. IBC wasn't – I don't remember the specifics,

3 that would be hard for me to recall, but I

4 think the process was just managed

5 differently at that time, and IBC wasn't

6 part of our interaction with them. They

7 hadn't done that previously, to my

8 knowledge, so –

9 FRAIZE, Q.C.:

10 Q. Now back to the data once again. What I'm

11 trying to get my mind around, a lot of

12 claims are settled with a lump sum.

13 MS. ELLIOTT:

14 A. Uh-hm.

15 FRAIZE, Q.C.:

16 Q. Usually they're the smaller claims.

17 MS. ELLIOTT:

18 A. Uh-hm.

19 FRAIZE, Q.C.:

20 Q. The adjuster – even though the lawyer may

21 provide a claim in components, the adjuster

22 provides a lump sum payment.

23 MS. ELLIOTT:

24 A. The adjuster will work through the heads of

25 damages in estimating. They have to set

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1 reserves in their system and they have to

2 work through the components of the amount

3 that will ultimately be paid, and so they

4 just don't ball park a number, they work

5 through –

6 FRAIZE, Q.C.:

7 Q. I'm not suggesting they'll ball park. I'm

8 saying they receive an offer to settle. Then

9 they come back and say, well, we'll give you

10 a global amount of this, whatever this

11 amount is. How do we know how that's

12 reflective? I may think it's broken down a

13 certain way, but the adjuster provided a

14 global amount. Maybe he put it all in pain

15 and suffering as opposed to dealing with

16 housekeeping and some loss of income. How do

17 you safeguard that?

18 MS. ELLIOTT:

19 A. Right. Well, you know, we are relying upon

20 the adjusters, that they have been trained

21 and they diligently want to complete this

22 accurately, that they would have their

23 worksheets to understand the amount that

24 they estimated that they were going to pay,

25 and how those estimates were built up to the

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1 total according to the various heads of

2 damages, and that they would use that

3 information. They would know the person's

4 income, they would know what medical

5 treatments that they have, what the future

6 loss of income that might be expected, and,

7 of course, the aggregate total amount that

8 is being paid out.

9 FRAIZE, Q.C.:

10 Q. Would I be correct, do you think I would be

11 correct to say that the auditors that – or

12 these accountants that were used back in

13 2005 would have looked at the individual

14 files to see what the settlement amount was,

15 and what component pain and suffering was?

16 MS. ELLIOTT:

17 A. I suspect that they would have, yes.

18 FRAIZE, Q.C.:

19 Q. So they would have gone into the files to

20 make sure that what's identified as pain and

21 suffering was, in fact, the amount? They

22 probably did a mini-audit.

23 MS. ELLIOTT:

24 A. I suspect that would have been –

25 FRAIZE, Q.C.:

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1 Q. Or would they have checked all the files?
 2 MS. ELLIOTT:
 3 A. Sure, yeah, of course.
 4 FRAIZE, Q.C.:
 5 Q. They could have checked all the files?
 6 MS. ELLIOTT:
 7 A. All the files, no. I thought you meant all
 8 of the file when they get it, but not all
 9 the files.
 10 FRAIZE, Q.C.:
 11 Q. No, no, the function of the accountants at
 12 the time presumably would be to look at the
 13 file to see the amount that's put in for
 14 pain and suffering was, in fact, the amount
 15 that was reflected in the negotiations, I
 16 assume?
 17 MS. ELLIOTT:
 18 A. I assume too.
 19 FRAIZE, Q.C.:
 20 Q. Okay. Now the medical professional that was
 21 used back in 2005 was employed by the Board?
 22 MS. ELLIOTT:
 23 A. She's contracted by the Board.
 24 FRAIZE, Q.C.:
 25 Q. Yeah, but we don't have that right now. We

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1 don't have an independent medical person
 2 contracted by the Board, correct?
 3 MS. ELLIOTT:
 4 A. Correct.
 5 FRAIZE, Q.C.:
 6 Q. So whatever – what we've got now is we don't
 7 have those safeguards we had before, the
 8 independent medical person, the so-called
 9 independent adjuster, and the accountants
 10 who did the audit. One further question.
 11 As you probably can see, we're more
 12 concerned with the victim's situation
 13 because the insurance policy is there to
 14 provide protection to a victim that's
 15 injured by the insured. Going back to one
 16 of the comments we started with, would I be
 17 correct to say it wouldn't have been too
 18 difficult to find out what the causes of the
 19 accidents were if it was asked in the
 20 beginning? Would that be a fair statement?
 21 MS. ELLIOTT:
 22 A. I don't know that information is always –
 23 it's probably somewhere in the file. I'm not
 24 sure, but as far as I know that data is not
 25 captured readily the cause of the accident,

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1 but I'm sure within paragraph of some
 2 description, it is in there.
 3 FRAIZE, Q.C.:
 4 Q. From a victim's side, we have to look at
 5 what causes the accident. Sometimes we got
 6 to control what the cause was. It's
 7 speeding? Is it drinking? Is it people not
 8 being attentive? If we could control that
 9 presumably we reduce the accidents and
 10 thereby reduce the premiums, presumably?
 11 MS. ELLIOTT:
 12 A. Well -
 13 FRAIZE, Q.C.:
 14 Q. Or is that a sticky wicket to go down?
 15 MS. ELLIOTT:
 16 A. No, I mean, it would be – there are – we're
 17 looking at accidents that have occurred and
 18 the costs that are paid out. That is the
 19 focus of the work and data was collected and
 20 then analyzed to estimate if a reform change
 21 was to occur.
 22 FRAIZE, Q.C.:
 23 Q. For the purpose of reducing premium?
 24 MS. ELLIOTT:
 25 A. Correct. It was not an exercise – and I'm

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1 not saying that it's not a good exercise –
 2 to look at whether it's road safety or drunk
 3 driving or any other attribute or change
 4 that could affect a reduction in severity of
 5 injuries or the number of accidents that
 6 occur. They would all be good things to
 7 happen. But that is outside of the review
 8 of a technical actuarial exercise that I'm
 9 doing.
 10 FRAIZE, Q.C.:
 11 Q. Those are all our questions. Thank you.
 12 CHAIRPERSON:
 13 Q. Thank you, Mr. Fraize. IBC, Mr. Stamp.
 14 STAMP, Q.C.:
 15 Q. Yes, thank you, Madam Chair. Ms. Elliott,
 16 today in particular, you spoke a bit about
 17 the role of IBC or the several roles of IBC
 18 and yesterday, at times there was discussion
 19 about GISA and IBC. Could you just explain
 20 the distinction between GISA and IBC?
 21 MS. ELLIOTT:
 22 A. Well, IBC would be a service provider. So,
 23 they're contracted by GISA. So, GISA is the
 24 General Insurance Statistical Agency where
 25 regulators are a part of that board and the

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1 superintendents of insurance have mandated
 2 that auto insurance data is collected and
 3 each insurer must report that data and GISA
 4 manages the format of the Auto Stat Plan and
 5 IBC is the employed contracted through GISA
 6 to provide that service.
 7 STAMP, Q.C.:
 8 Q. So, GISA would be entirely independent of
 9 IBC?
 10 MS. ELLIOTT:
 11 A. Yes, they are separate, yes.
 12 STAMP, Q.C.:
 13 Q. Right, and I looked at the website a little
 14 bit yesterday evening, just to get a sense
 15 of it, and I see, as you say, that it's the
 16 regulators, I guess, who are in the various
 17 provinces, Alberta I think, Ontario -
 18 MS. ELLIOTT:
 19 A. Atlantic.
 20 STAMP, Q.C.:
 21 Q. - New Brunswick, Atlantic region for sure,
 22 some of the territories.
 23 MS. ELLIOTT:
 24 A. Yeah.
 25 STAMP, Q.C.:

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1 Q. Their regulators are, I guess, this is who -
 2 MS. ELLIOTT:
 3 A. A part of GISA.
 4 STAMP, Q.C.:
 5 Q. - GISA is working for supposedly?
 6 MS. ELLIOTT:
 7 A. Yes, not the public insurance companies, BC,
 8 Manitoba, Quebec.
 9 STAMP, Q.C.:
 10 Q. Sure, right. And in fact, I actually saw
 11 that one of the directors of GISA is
 12 actually a - Mr. O'Brien I believe his name
 13 is, he's actually a board member of the
 14 Public Utilities Board here in Newfoundland,
 15 I believe.
 16 MS. ELLIOTT:
 17 A. Okay.
 18 STAMP, Q.C.:
 19 Q. You don't know Mr. O'Brien, I take it? I
 20 don't either, but -
 21 MS. ELLIOTT:
 22 A. No, I'm not aware of who's on the board, no.
 23 STAMP, Q.C.:
 24 Q. So, this is the - he's, I think, a former
 25 superintendent of insurance here, Mr.

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1 O'Brien, I believe.
 2 MS. ELLIOTT:
 3 A. I'm not aware, but -
 4 STAMP, Q.C.:
 5 Q. But that's the role that -
 6 MS. ELLIOTT:
 7 A. Sure.
 8 STAMP, Q.C.:
 9 Q. These are the regulators. This is the
 10 organization that they control?
 11 MS. ELLIOTT:
 12 A. Yes.
 13 STAMP, Q.C.:
 14 Q. To assist them?
 15 MS. ELLIOTT:
 16 A. Yes.
 17 STAMP, Q.C.:
 18 Q. And somehow GISA, on their behalf, engages
 19 IBC from time to time to provide data? Is
 20 that -
 21 MS. ELLIOTT:
 22 A. It's on a regular ongoing basis. It is not
 23 time to time, but it's - they manage the
 24 collection of all the data which is a
 25 massive amount of data that companies

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1 report.
 2 STAMP, Q.C.:
 3 Q. This is GISA now you mean?
 4 MS. ELLIOTT:
 5 A. No, IBC manages the process of collecting
 6 and validating and checking all this data
 7 that comes from all the companies across the
 8 country on behalf of GISA.
 9 STAMP, Q.C.:
 10 Q. And I had looked as well at GISA governance.
 11 It said somewhere along the way, I thought,
 12 that Ernst and Young, that accounting firm,
 13 their role was to oversee IBC's service
 14 delivery to GISA. Do you know that that's
 15 the case?
 16 MS. ELLIOTT:
 17 A. Yes, yeah, that's true.
 18 STAMP, Q.C.:
 19 Q. Okay. So, when GISA data is examined or you
 20 see GISA data, that's that data that's held
 21 and collected for this statistical agency
 22 who are the regulators?
 23 MS. ELLIOTT:
 24 A. Correct.
 25 STAMP, Q.C.:

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1 Q. Okay. Now, I want to come back to the
 2 instruction, the 2017 instruction. I know
 3 you spent a lot of time on it already, but I
 4 just want to try and clarify some things in
 5 my mind about all of that. So, you said,
 6 for example, that last fall you had seen
 7 this document, I think?
 8 MS. ELLIOTT:
 9 A. Yes.
 10 STAMP, Q.C.:
 11 Q. And by the document, I mean the one that's –
 12 perhaps we can show the – not the note, but
 13 the preceding part. Yes, that's it there.
 14 Does that show up on your screen, Ms.
 15 Elliott?
 16 MS. ELLIOTT:
 17 A. Yes.
 18 STAMP, Q.C.:
 19 Q. Okay. So, that's the – that's what I call
 20 the Closed Claim instruction?
 21 MS. ELLIOTT:
 22 A. Yeah.
 23 STAMP, Q.C.:
 24 Q. And so you saw that last fall?
 25 MS. ELLIOTT:

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1 A. Um-hm.
 2 STAMP, Q.C.:
 3 Q. And the Oliver Wyman role was to assist in
 4 the design of this document?
 5 MS. ELLIOTT:
 6 A. Yes. We would have, in all fairness,
 7 reviewed the draft and provided comments,
 8 yeah.
 9 STAMP, Q.C.:
 10 Q. Sure, right. And so, one of the things that
 11 you did, of course, as you say, was you
 12 provided comments, looked at the draft, but
 13 actually asked for additional information,
 14 additional data to be collected?
 15 MS. ELLIOTT:
 16 A. Correct.
 17 STAMP, Q.C.:
 18 Q. And we talked about the Nova Scotia and New
 19 Brunswick definition issue.
 20 MS. ELLIOTT:
 21 A. Um-hm.
 22 STAMP, Q.C.:
 23 Q. We'll come to that a little bit later. But
 24 that was part of what you saw as might be
 25 helpful to you in your role?

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1 MS. ELLIOTT:
 2 A. Yeah.
 3 STAMP, Q.C.:
 4 Q. So, I want to just come to the sample size
 5 and reporting issues and so on, page 5 of
 6 that, page 5 of the paper document. That's
 7 it there, yes. So, item number three. So,
 8 what – first of all, I could ask you this,
 9 Ms. Elliott. How did the number 2,000 come
 10 up? Was that because that was what would
 11 result – that was what the result would be
 12 for any given year or did you look for 2,000
 13 and say where I can find 2,000?
 14 MS. ELLIOTT:
 15 A. Well, we know how many claims occur on
 16 average in a year.
 17 STAMP, Q.C.:
 18 Q. Right.
 19 MS. ELLIOTT:
 20 A. We have an approximation of how many
 21 claimants there would be per claim. So, we
 22 can do the math to figure out approximately
 23 if we had every single claim in the province
 24 on average how many claimants we would have.
 25 We also know that there'd be some companies

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1 for a variety of reasons, resources or
 2 whatever, that may not be able to
 3 participate, and that there are – sometimes
 4 the data that's provided might be erroneous
 5 or it's rejected or – so, you're not going
 6 to get all the claims that could possibly be
 7 in the province in that window of time. So,
 8 we said well, 2,000, we'd be quite happy
 9 with that volume of claimant data and that
 10 would be credible for our purposes.
 11 (12:15 p.m.)
 12 STAMP, Q.C.:
 13 Q. And that 2,000, if I understand what you've
 14 been saying, that 2,000 is an approximation
 15 of what the closed claims are in any given
 16 year?
 17 MS. ELLIOTT:
 18 A. Right.
 19 STAMP, Q.C.:
 20 Q. Is that more or less what you're saying?
 21 MS. ELLIOTT:
 22 A. Yes.
 23 STAMP, Q.C.:
 24 Q. Okay. And so, when you picked July 1
 25

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1 through June 30th, overlap the two years, but
 2 you're looking for – you took a 12-month
 3 period and said “we want all of the claims –
 4 we look at all the claims that are closed in
 5 that year, all of them”?
 6 MS. ELLIOTT:
 7 A. Right. We wanted the most recent sample we
 8 could get. So, we put – picked a cut-off
 9 date and a window of time that we thought
 10 we'd get a sample of that size.
 11 STAMP, Q.C.:
 12 Q. Right. And then in – and you knew from your
 13 experience, I suppose, that those claims
 14 that closed in that period of time we just
 15 spoke about, July to June '16-17, that a lot
 16 of those claims would come out of certain
 17 specific years because of the way claims
 18 typically settle?
 19 MS. ELLIOTT:
 20 A. Correct.
 21 STAMP, Q.C.:
 22 Q. That was your understanding or expectation?
 23 MS. ELLIOTT:
 24 A. Um-hm.
 25 STAMP, Q.C.:

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1 Q. So, my understanding is then that, you know,
 2 there's no guess work here. It's 2,066
 3 claims closed in that period of time? I'm
 4 sorry, in 2000 – they closed in -
 5 MS. ELLIOTT:
 6 A. Well, this is an approximation of what would
 7 be, yes, for that period of time.
 8 STAMP, Q.C.:
 9 Q. Yeah. But, you're looking at GISA data and
 10 it's, I guess, some kind of a GISA 2016 data
 11 piece and it says that 2,066 BI claims,
 12 private passenger BI claims, closed in 2012.
 13 MS. ELLIOTT:
 14 A. Yes.
 15 STAMP, Q.C.:
 16 Q. And that's again -
 17 MS. ELLIOTT:
 18 A. No, no. Occurred in 2012.
 19 STAMP, Q.C.:
 20 Q. Oh, I'm sorry, yes, of course, occurred in
 21 2012. And typically, as you say, about –
 22 that's about the number that you'd see each
 23 year? That's a typical rough approximation?
 24 MS. ELLIOTT:
 25 A. Yeah, give or take, yeah.

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1 STAMP, Q.C.:
 2 Q. And am I also correct then that your
 3 understanding is that about 2,000 close a
 4 year?
 5 MS. ELLIOTT:
 6 A. Yes. I mean, yes, the industry is not
 7 growing that rapidly or the number of
 8 either. It's a bit of a decline in the
 9 frequency rate but that's the last couple of
 10 years.
 11 STAMP, Q.C.:
 12 Q. There is that rough balance?
 13 MS. ELLIOTT:
 14 A. Yeah, it's a good approximation of how many
 15 claims there would be, yeah.
 16 STAMP, Q.C.:
 17 Q. Now, and so, given that your understanding
 18 was that there'd be about 2,000 claims that
 19 would close in a 12-month period, you worked
 20 from that and that number in your mind was a
 21 sufficient, I guess, data size, sample size
 22 to make you comfortable with your
 23 conclusions?
 24 MS. ELLIOTT:
 25 A. Correct.

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1 STAMP, Q.C.:
 2 Q. And even lower than that, as it turns out.
 3 So, you took the 2,066. Now, did you decide
 4 that we should apply a 1.2 ratio to, I
 5 guess, aggregate that -
 6 MS. ELLIOTT:
 7 A. To a claimant basis.
 8 STAMP, Q.C.:
 9 Q. - number of claims to claimants?
 10 MS. ELLIOTT:
 11 A. That's an estimate and the data provided
 12 what the actual number was, which I think
 13 was 1.22 or 1.21, but we ballparked. We'd
 14 know if you had 2,000 claims that that would
 15 include approximately 20 percent more on a
 16 claimant basis.
 17 STAMP, Q.C.:
 18 Q. Sure. And so, you were certainly satisfied
 19 that the 1.2 ratio was a proper application
 20 to the 2,066? Is that right?
 21 MS. ELLIOTT:
 22 A. Yeah.
 23 STAMP, Q.C.:
 24 Q. Which would give you by this calculation
 25 2479 claimants?

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1 MS. ELLIOTT:
 2 A. Yeah.
 3 STAMP, Q.C.:
 4 Q. That would have claims closed in that year?
 5 MS. ELLIOTT:
 6 A. Right. That would be in that range to
 7 expect it, yeah.
 8 STAMP, Q.C.:
 9 Q. And as I understood the instructions, you
 10 wanted all aspects of a claim to close to
 11 make it – to be considered a closed claim?
 12 MS. ELLIOTT:
 13 A. Yes.
 14 STAMP, Q.C.:
 15 Q. So, if there was three, you know, claimants
 16 in a car, for example, you wanted all three
 17 to be done with before you'd consider it
 18 closed?
 19 MS. ELLIOTT:
 20 A. Right.
 21 STAMP, Q.C.:
 22 Q. So, you were sending, I guess, instructions
 23 essentially to IBC to give to the insurers
 24 "go and take that 12-month period, July to
 25 June, and gather up all of your closed

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1 claims for that period"?
 2 MS. ELLIOTT:
 3 A. Correct.
 4 STAMP, Q.C.:
 5 Q. And so, given that we have, I think, six
 6 insurers, essentially six insurers -
 7 MS. ELLIOTT:
 8 A. Groups, yes.
 9 STAMP, Q.C.:
 10 Q. Groups, yes – who were working – who were
 11 involved in this process who had 93.5
 12 percent or something, then the expectation,
 13 I presume, is that their relative
 14 involvement in those closed claims is going
 15 to match their involvement in the industry
 16 generally?
 17 MS. ELLIOTT:
 18 A. Yes, yes, it's proportional, yeah.
 19 STAMP, Q.C.:
 20 Q. So, then what was done was the 2479 was
 21 multiplied by the 93 percent for the six
 22 insurer groups?
 23 MS. ELLIOTT:
 24 A. Um-hm.
 25 STAMP, Q.C.:

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1 Q. And brings it down to 2320?
 2 MS. ELLIOTT:
 3 A. Um-hm.
 4 STAMP, Q.C.:
 5 Q. You agreed with all of that, I take it?
 6 MS. ELLIOTT:
 7 A. Yeah.
 8 STAMP, Q.C.:
 9 Q. That was perfectly reasonable in your mind?
 10 MS. ELLIOTT:
 11 A. Yeah.
 12 STAMP, Q.C.:
 13 Q. Okay. And then is it reasonable then that
 14 this rough approximation of 15 percent
 15 that'll be data you won't be able to use,
 16 won't get at, lost files, incomplete data?
 17 MS. ELLIOTT:
 18 A. There would be rejections due to quality
 19 issues when IBC would be reviewing it, yeah.
 20 So, that was their ballpark.
 21 STAMP, Q.C.:
 22 Q. And so, that applying that adjustment, that
 23 15 percent adjustment, that meant you were
 24 down to 1972 claims. So, for the number of
 25 insurers you were focusing on, that's the

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1 people who were going to open the files and
 2 do the work? Those six insurers, when you
 3 took out what would be – might be lost files
 4 and so on, they should have something in the
 5 order of 1972 closed files?
 6 MS. ELLIOTT:
 7 A. Right. So, that's how the target of 2,000
 8 was approached, yes.
 9 STAMP, Q.C.:
 10 Q. Right. And then when I read the rest of
 11 this paragraph, the last sentence in
 12 particular of that same paragraph that does
 13 that adjustment with 15 percent, it says "if
 14 the actual reported number of claimants is
 15 significantly below this expected target,
 16 IBC would ask participating companies to
 17 report additional claimant files to fill the
 18 gap". So, I mean, I understand you had a
 19 lot on your plate. It appears to suggest
 20 that they are going to go somewhere else,
 21 different timeframes, I guess -
 22 MS. ELLIOTT:
 23 A. Yeah.
 24 STAMP, Q.C.:
 25 Q. - to fill the gap that might exist if they

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1 don't find 1972?

2 MS. ELLIOTT:

3 A. Right. And it could be – yeah, you know,

4 you could have a year perhaps where it was a

5 mild winter and there are fewer claims.

6 STAMP, Q.C.:

7 Q. Sure.

8 MS. ELLIOTT:

9 A. And so, IBC certainly, you know, achieved or

10 tried to achieve collecting the 2,000

11 claimant files and they took an approach,

12 you know, to do that. They had a job to do

13 and they went about and did it.

14 STAMP, Q.C.:

15 Q. So, as they noted in the report that you

16 would have seen in the fall of 2017, this is

17 what they would do? They would go – they

18 would expand outside the designated period?

19 MS. ELLIOTT:

20 A. Um-hm.

21 STAMP, Q.C.:

22 Q. Because the designated period would only

23 give 1972?

24 MS. ELLIOTT:

25 A. Um-hm.

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1 STAMP, Q.C.:

2 Q. So, they expanded outside it. I don't know

3 which way they went, either way, I suppose.

4 And it was there that you encountered, in

5 your mind, concern with the two companies,

6 the data that was maybe going to be

7 misleading in some way?

8 MS. ELLIOTT:

9 A. Right. So, I guess two things. One is IBC

10 didn't call me up, email me and say "hey, we

11 have to go outside the 12-month window" and

12 we would have said "oh, okay" if they had,

13 but they didn't and I didn't realize that

14 until I received the data, but okay, because

15 we had been, you know, pretty firm that we

16 want this solid full sample. And so, that

17 was fine, but in the process of that, we did

18 then segment the data by month of closure

19 and saw the matrix of each company and how

20 many they reported in each month and then

21 assessed how many were outside the 12-month

22 window and that's where two companies struck

23 me as being proportionately higher than the

24 other companies and that caused me to ask

25 the question.

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1 STAMP, Q.C.:

2 Q. And I'm very interested in that and it may

3 be slightly ahead of where I was hoping to

4 be at the moment, but I will come to that

5 certainly. But, I mean, the period of time

6 that they were directed to use, July 1 to

7 June 30th '16-17, that did not have enough

8 data in it to give you the 2,000 you'd asked

9 for?

10 MS. ELLIOTT:

11 A. As it happened.

12 STAMP, Q.C.:

13 Q. As it happens, sure, of course.

14 MS. ELLIOTT:

15 A. Yeah.

16 STAMP, Q.C.:

17 Q. But, and then so, to give you the data that

18 you'd asked for, to bring it to the 2,000 or

19 whatever that number is going to be, they

20 had to go outside of the designated period,

21 did they not?

22 MS. ELLIOTT:

23 A. Right, the window.

24 STAMP, Q.C.:

25 Q. There's nowhere else to get it, is there?

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1 MS. ELLIOTT:

2 A. No.

3 STAMP, Q.C.:

4 Q. No. So, they went, as you say – I don't

5 know which way they went, either side, they

6 did something.

7 MS. ELLIOTT:

8 A. Earlier, older files.

9 STAMP, Q.C.:

10 Q. Earlier period.

11 MS. ELLIOTT:

12 A. Yeah.

13 STAMP, Q.C.:

14 Q. So, they went back to like what – so, they

15 had July 1 to June 30th, so they what, did

16 June maybe?

17 MS. ELLIOTT:

18 A. The bulk of it was adding on May and June,

19 the bulk.

20 STAMP, Q.C.:

21 Q. Okay, sure.

22 MS. ELLIOTT:

23 A. There was a few earlier months, but the bulk

24 of it was May and June.

25 STAMP, Q.C.:

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1 Q. So, they – instead of starting in July 1st,
 2 they had to act back to June 1st, 2016 and
 3 then if that wasn't enough, go back to May?
 4 MS. ELLIOTT:
 5 A. Right.
 6 STAMP, Q.C.:
 7 Q. So, that's what they did. They extended
 8 outside the timeframe that you had directed
 9 them to use because they had to do that to
 10 get the data. They did it. This is when
 11 the situation occurred. And so, although
 12 they didn't pick up the phone and call, they
 13 certainly told you or certainly you had
 14 approved that they would go outside to get
 15 the data if they needed to?
 16 MS. ELLIOTT:
 17 A. Yeah. If they had said that they were going
 18 to do that, I would have agreed. I wouldn't
 19 have objected.
 20 STAMP, Q.C.:
 21 Q. There's nothing mischievous about it though,
 22 is there?
 23 MS. ELLIOTT:
 24 A. No, no.
 25 STAMP, Q.C.:

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1 Q. No. So, and they had said here, "that's
 2 what we'll do. We'll actually go outside
 3 that period to get it, if we need to?"
 4 MS. ELLIOTT:
 5 A. In hindsight, reading it, yes.
 6 STAMP, Q.C.:
 7 Q. Sure, of course. And look, I understand
 8 you've read a lot and you've been asked a
 9 lot in this time. I don't expect you to
 10 remember everything. But that was there.
 11 So, now come back to the point you made. I
 12 think you mentioned two companies maybe
 13 yesterday, Metro and Union I think you said,
 14 and those companies had been acquired and
 15 their, I don't know, data processing or
 16 record keeping or whatever you call that had
 17 been changed?
 18 MS. ELLIOTT:
 19 A. Yes. An old system where claims that were
 20 still running off were there and then some
 21 newer claims were on the acquiring company's
 22 system. So, they were really running two
 23 systems.
 24 STAMP, Q.C.:
 25 Q. Right.

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1 MS. ELLIOTT:
 2 A. And so, the data that came to you, as you
 3 said, when they gave you the – I think it's
 4 somebody said it's 230 or 36 or something –
 5 data pieces, you know, claims, claimants, I
 6 guess, that were identified, those 236, they
 7 were from Metro and Union?
 8 MS. ELLIOTT:
 9 A. No. The ones that we excluded were a
 10 combination of Intact and RSA.
 11 STAMP, Q.C.:
 12 Q. But you used the RSA and Intact data, did
 13 you not?
 14 MS. ELLIOTT:
 15 A. No, no, because – so, let's take Metro, for
 16 example.
 17 STAMP, Q.C.:
 18 Q. Sure.
 19 MS. ELLIOTT:
 20 A. Metro was acquired by Intact and they rolled
 21 all the new policies that were written onto
 22 the Intact system, but when they acquired
 23 the company, which I think might have been
 24 2013 or I don't remember specifically, but
 25 there could have been a claim from say 2010

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1 and that claim stayed on the old Metro
 2 system and so, when they were reporting for
 3 this, they were only using the Intact system
 4 and that old claim was not part – wasn't
 5 made part of the sample, even though it
 6 could have closed for Metro in the window of
 7 time. But because it was on this other
 8 system, it didn't get captured.
 9 STAMP, Q.C.:
 10 Q. But I had understood you to say that RSA
 11 independent, for example – and we aren't
 12 particularly talking about RSA, but just
 13 using RSA for an example, but RSA, of
 14 course, had an obligation to deliver a
 15 certain number of files, closed files data?
 16 MS. ELLIOTT:
 17 A. That were closed in that -
 18 STAMP, Q.C.:
 19 Q. Because they were – based on the percentage?
 20 MS. ELLIOTT:
 21 A. Yeah.
 22 STAMP, Q.C.:
 23 Q. And that percentage, whatever it was,
 24 required them to deliver, you know, of the
 25 2,000 files, they may have had to deliver

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1 300 for argument sake. And of that 300,
 2 let's say some of the Metro files were 20.
 3 I'm just picking these numbers out of my
 4 head. I don't know anything about it. But
 5 so, when the 20 files were looked at, did
 6 you discard the 20?
 7 MS. ELLIOTT:
 8 A. No, all, all Intact, because it came to us
 9 as – in this case, Intact and Metro are
 10 together; that was acquired. So, all Intact
 11 files are – that's the main system that
 12 they're running. They have a few files on
 13 their old system that were never transferred
 14 onto the new Intact system.
 15 STAMP, Q.C.:
 16 Q. Yes.
 17 MS. ELLIOTT:
 18 A. And they were not included. And as a
 19 result, even though it could have been
 20 closed in our 12-month window, they were not
 21 included.
 22 STAMP, Q.C.:
 23 Q. I understood that, yeah.
 24 MS. ELLIOTT:
 25 A. Yeah. So, I can't just include the ones

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1 that Intact did report, even though they
 2 could have been reported each individual
 3 file accurately. Their sample from Intact
 4 was incomplete and therefore I had to
 5 eliminate all of Intact.
 6 STAMP, Q.C.:
 7 Q. And what you said was there's nothing wrong
 8 with the data they supplied. It was
 9 accurate. It just was you wanted more data
 10 to balance some of that data?
 11 MS. ELLIOTT:
 12 A. I wanted the complete picture of all the
 13 files closed.
 14 STAMP, Q.C.:
 15 Q. So, again, I'm not sure if I – if I'm clear
 16 on this. So, I mean, you had to know how
 17 much of that data was Metro, did you, when
 18 you saw that material, in Intact and Metro
 19 situation?
 20 MS. ELLIOTT:
 21 A. Well, I didn't have it to know it, so I
 22 couldn't tell you.
 23 STAMP, Q.C.:
 24 Q. Well, what was it about the data that you
 25 saw?

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1 MS. ELLIOTT:
 2 A. They had too high a proportion outside the
 3 12-month window.
 4 STAMP, Q.C.:
 5 Q. So, overall, Intact material comes in.
 6 Let's say it's 200 or something claims data
 7 points that come into you and you say "this
 8 looks to me there's a higher percentage of
 9 more recent claims here than elsewhere"?
 10 (12:30 p.m.)
 11 MS. ELLIOTT:
 12 A. They had a higher proportion outside the 12-
 13 month window.
 14 STAMP, Q.C.:
 15 Q. Okay, okay. So, you looked at – that's what
 16 you identified? Those files that came from
 17 outside the 12-month window?
 18 MS. ELLIOTT:
 19 A. Yeah.
 20 STAMP, Q.C.:
 21 Q. Did you know they were Metro, for example?
 22 MS. ELLIOTT:
 23 A. I didn't know what they were at the moment
 24 when I identified this oddity up through
 25 investigation.

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1 STAMP, Q.C.:
 2 Q. So, when you identified – sorry, sorry, I
 3 didn't mean to interrupt you.
 4 MS. ELLIOTT:
 5 A. Well, through investigation then we could
 6 identify.
 7 STAMP, Q.C.:
 8 Q. Yeah, because there's a dialog and then you
 9 understand what's happening. So, then let's
 10 assume, just picking these numbers
 11 arbitrarily, that Intact had supplied 300
 12 claims data, you know, pieces. Because of
 13 the skewing where they had included some
 14 more recent claims, you took the entire
 15 Intact data out of your study?
 16 MS. ELLIOTT:
 17 A. Yes.
 18 STAMP, Q.C.:
 19 Q. And the same thing happened with RSA?
 20 MS. ELLIOTT:
 21 A. Yes.
 22 STAMP, Q.C.:
 23 Q. Okay. I was – okay, I understand that now.
 24 And that led you to 1741?
 25 MS. ELLIOTT:

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1 A. Right.
 2 STAMP, Q.C.:
 3 Q. And still 1741 from a statistical
 4 perspective, you had no concerns, no
 5 reservations that that would be a suitable
 6 sample?
 7 MS. ELLIOTT:
 8 A. Correct.
 9 STAMP, Q.C.:
 10 Q. Yeah. And am I right as well, yesterday
 11 that you said that that sample, 1741 in
 12 Newfoundland, was actually bigger than the
 13 sample in Nova Scotia when you did the work
 14 over there for the Closed Claims Study?
 15 MS. ELLIOTT:
 16 A. Right, for the costing of the minor injury
 17 reform changes, yeah.
 18 STAMP, Q.C.:
 19 Q. Right. Similar thing that was going on
 20 there as is going on here now?
 21 MS. ELLIOTT:
 22 A. Um-hm.
 23 STAMP, Q.C.:
 24 Q. So, the study in Nova Scotia, you had a
 25 smaller sample than 1741 and the same in New

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1 Brunswick? Is that what you said?
 2 MS. ELLIOTT:
 3 A. Um-hm. Yes, that's correct.
 4 STAMP, Q.C.:
 5 Q. And would it be – maybe you have a better
 6 idea. I mean, I know the populations of
 7 those provinces is bigger than Newfoundland.
 8 Would that stand to suggest that the private
 9 passenger, I don't know, cohort in those
 10 provinces is likely bigger as well?
 11 MS. ELLIOTT:
 12 A. Oh, they are bigger in both provinces than
 13 Newfoundland.
 14 STAMP, Q.C.:
 15 Q. Okay.
 16 MS. ELLIOTT:
 17 A. Yes.
 18 STAMP, Q.C.:
 19 Q. So, even though they had a bigger private
 20 passenger cohort in both provinces, a number
 21 less than 1741 was perfectly adequate for
 22 your statistical review and your analysis in
 23 those provinces?
 24 MS. ELLIOTT:
 25 A. Right and let me be clear here with that.

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1 So, that was the data that we had to work
 2 with, the actual minor injury reform
 3 costing. In addition, we had other data
 4 collected in those studies which were—so,
 5 there were more filed, but with respect to
 6 the comparable number, the similar type
 7 work, there were just—there were fewer in
 8 Nova Scotia and New Brunswick that what we
 9 have here.
 10 STAMP, Q.C.:
 11 Q. Right.
 12 MS. ELLIOTT:
 13 A. Yeah.
 14 STAMP, Q.C.:
 15 Q. But still represented a proper sample?
 16 MS. ELLIOTT:
 17 A. Oh yeah, yeah. We did the work.
 18 STAMP, Q.C.:
 19 Q. So, the percentage or the ratio, whatever
 20 way you describe that, of data to private
 21 passenger in Nova Scotia and New Brunswick,
 22 you had a better sample in Newfoundland
 23 proportionately or by ratio -
 24 MS. ELLIOTT:
 25 A. Yes.

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1 STAMP, Q.C.:
 2 Q. - than you did with those provinces, and as
 3 you say, that you were perfectly content
 4 that that gave you a very adequate sample to
 5 study and respond to?
 6 MS. ELLIOTT:
 7 A. That's correct.
 8 STAMP, Q.C.:
 9 Q. Now, you've mentioned any number of times
 10 about the question about the comparison or
 11 the request that claims examiners here
 12 completing this questionnaire, delivering
 13 the data, would make some indication as to
 14 whether they were of the view that the Nova
 15 Scotia and/or New Brunswick definition would
 16 apply?
 17 MS. ELLIOTT:
 18 A. Well, if that claimant would meet the
 19 definition.
 20 STAMP, Q.C.:
 21 Q. Right.
 22 MS. ELLIOTT:
 23 A. Yes.
 24 STAMP, Q.C.:
 25 Q. Right. And I just want to turn if I can to—

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1 it's page 10 of the paper piece. And I'm
 2 looking for Question Number 30. Do you see
 3 that, Ms. Elliott?
 4 MS. ELLIOTT:
 5 A. Yes.
 6 STAMP, Q.C.:
 7 Q. Okay. So, is this one the questions you
 8 asked to have added?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 STAMP, Q.C.:
 12 Q. This is essentially your question?
 13 MS. ELLIOTT:
 14 A. Um-hm.
 15 STAMP, Q.C.:
 16 Q. And you've already explained that the answer
 17 you were going to get was likely going to be
 18 soft?
 19 MS. ELLIOTT:
 20 A. Um-hm.
 21 STAMP, Q.C.:
 22 Q. I think you used the word "soft" maybe,
 23 meaning not terrifically reliable perhaps?
 24 MS. ELLIOTT:
 25 A. Right. There'd be—and as the responses are

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1 shown, it's either yes, they're sure,
 2 they're—no, it definitely isn't, or they
 3 don't know.
 4 STAMP, Q.C.:
 5 Q. Don't know, right.
 6 MS. ELLIOTT:
 7 A. Um-hm.
 8 STAMP, Q.C.:
 9 Q. And I'm looking at this and that was the
 10 choices that any one claims examiner looking
 11 at his file or her file, they had to answer
 12 this question, and if they didn't know, the
 13 idea would be to mark, "I don't know." The
 14 discussion below the question is
 15 interesting. It says, "This is a
 16 hypothetical question asking for an after-
 17 the-fact judgment whether the claimant would
 18 be determinative having a minor injury in
 19 the scenario if the claimant would be
 20 adjusted under the New Brunswick/Nova Scotia
 21 Regulations based on a closed claim file for
 22 a claimant in Newfoundland and Labrador."
 23 And then, you give, or the system gave, the
 24 questionnaire gave a –
 25 MS. ELLIOTT:

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1 A. A link.
 2 STAMP, Q.C.:
 3 Q. What do you call that? A –
 4 MS. ELLIOTT:
 5 A. A link.
 6 STAMP, Q.C.:
 7 Q. A link, yes. Thanks. A link for--how to
 8 get to that question?
 9 MS. ELLIOTT:
 10 A. To get there.
 11 STAMP, Q.C.:
 12 Q. Or how to get to that study I suppose, or
 13 how to get to that regulation, regulation of
 14 course. And then, it said even more
 15 direction, it said, "The underlying claim
 16 file may not provide sufficient information
 17 for a claim adjustor to make this
 18 determination. Reporting companies are
 19 cautioned not to answer this question with
 20 yes or no unless there is evidence on the
 21 file to support this judgment. Otherwise,
 22 please answer this question with 'Do not
 23 know.'"
 24 MS. ELLIOTT:
 25 A. Correct.

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1 STAMP, Q.C.:
 2 Q. So, that was the instruction that the people
 3 who had the files opened on their desks –
 4 MS. ELLIOTT:
 5 A. Um-hm.
 6 STAMP, Q.C.:
 7 Q. They got to Question Number 30, the last
 8 question that they had to fill out, they had
 9 to figure out, well, now looking at all of
 10 this, and looking at that definition for
 11 Nova Scotia and looking at the definition
 12 for New Brunswick, they had to figure out,
 13 can I answer that question?
 14 MS. ELLIOTT:
 15 A. Um-hm.
 16 STAMP, Q.C.:
 17 Q. The choice was, "Yes, I can answer it,"
 18 "Yes, it would apply," or "No, it wouldn't
 19 apply," or –
 20 MS. ELLIOTT:
 21 A. I don't know.
 22 STAMP, Q.C.:
 23 Q. - "I don't know the answer"?
 24 MS. ELLIOTT:
 25 A. Um-hm.

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|--|--|
| <p>1 STAMP, Q.C.:</p> <p>2 Q. That was the choice, okay. Excuse me, Madam</p> <p>3 Chair. I just want to check my notes.</p> <p>4 CHAIR:</p> <p>5 Q. Yes.</p> <p>6 STAMP, Q.C.:</p> <p>7 Q. Thank you. Ms. Elliott, there's been quite</p> <p>8 a lot of criticism about what's been alluded</p> <p>9 to, I suppose really, you know, what--it</p> <p>10 sounds a bit like there's an allusion to</p> <p>11 insurance companies being dishonest, and I</p> <p>12 know my friend, Mr. Kennedy, and Mr.</p> <p>13 Gittens, you know, they've got a tent set up</p> <p>14 on the grassy knoll, but my question is, did</p> <p>15 anybody do an audit in Nova Scotia or New</p> <p>16 Brunswick when that data was done over</p> <p>17 there?</p> <p>18 MS. ELLIOTT:</p> <p>19 A. No, not to my knowledge, no.</p> <p>20 STAMP, Q.C.:</p> <p>21 Q. So, tell me this, you did say as well, after</p> <p>22 the fact, in hindsight, looking back at what</p> <p>23 you had studied and what the information was</p> <p>24 and the report that you gave, how it had—I</p> <p>25 think you said it stood the test of time.</p> | <p>1 MS. ELLIOTT:</p> <p>2 A. Right. So, the same individual that managed</p> <p>3 the collection and validation process on</p> <p>4 behalf of IBC for Nova Scotia and New</p> <p>5 Brunswick was managing Newfoundland.</p> <p>6 STAMP, Q.C.:</p> <p>7 Q. Okay.</p> <p>8 MS. ELLIOTT:</p> <p>9 A. So, we have continuity and knowledge of</p> <p>10 experience in it. You know, and just</p> <p>11 because something was completed before,</p> <p>12 doesn't mean that we always believe that it</p> <p>13 will be, you know, perfect again because we</p> <p>14 were happy before, but we were happy before</p> <p>15 and that gives me some confidence. It</p> <p>16 doesn't mean that going forward we'll—any of</p> <p>17 us will never make a mistake, but anyway,</p> <p>18 that said, experience doing it, satisfied</p> <p>19 that the data that we used for the analysis</p> <p>20 which is similar in the situation, has</p> <p>21 resulted as the data has emerged that it</p> <p>22 supported our findings.</p> <p>23 STAMP, Q.C.:</p> <p>24 Q. Yes.</p> <p>25 MS. ELLIOTT:</p> |
| <p>Page 198</p> <p>1 Maybe that's what you said. In other words,</p> <p>2 the conclusions that were reached proved to</p> <p>3 be valid?</p> <p>4 MS. ELLIOTT:</p> <p>5 A. Correct.</p> <p>6 STAMP, Q.C.:</p> <p>7 Q. Is that what that meant?</p> <p>8 MS. ELLIOTT:</p> <p>9 A. Yes.</p> <p>10 STAMP, Q.C.:</p> <p>11 Q. So, who did you—how do you look at that</p> <p>12 backwards now and say that's—"I can make</p> <p>13 that sort of observation," in Nova Scotia</p> <p>14 and New Brunswick for example?</p> <p>15 MS. ELLIOTT:</p> <p>16 A. I'm sorry, your question is how do I –</p> <p>17 STAMP, Q.C.:</p> <p>18 Q. What's the process in your mind to look back</p> <p>19 and say, "I'm quite happy that the outcome</p> <p>20 in Nova Scotia and New Brunswick reveals</p> <p>21 itself to be, you know" –</p> <p>22 MS. ELLIOTT:</p> <p>23 A. Okay, sure.</p> <p>24 STAMP, Q.C.:</p> <p>25 Q. - "What I had observed was accurate"?</p> | <p>Page 200</p> <p>1 A. And so, on that basis, I have no concern. I</p> <p>2 mean, if we had collected data for Nova</p> <p>3 Scotia and collected data for New Brunswick,</p> <p>4 and we found that it was a nightmare, it was</p> <p>5 all wrong, and our analysis was wrong, yeah,</p> <p>6 I'd be worried using the—you know, working</p> <p>7 with the same person again, but that wasn't</p> <p>8 my experience. I worked with them. I</p> <p>9 believe they did their role, you know,</p> <p>10 effectively. They did it for Nova Scotia;</p> <p>11 did it for New Brunswick. Happy and</p> <p>12 confident with what was provided, and the</p> <p>13 same person is providing it here in the same</p> <p>14 role. So –</p> <p>15 STAMP, Q.C.:</p> <p>16 Q. Ms. Elliott, did the data that was asked for</p> <p>17 in Nova Scotia and New Brunswick, include an</p> <p>18 assignment of a category of injury like we</p> <p>19 have here?</p> <p>20 MS. ELLIOTT:</p> <p>21 A. Yes, yes.</p> <p>22 STAMP, Q.C.:</p> <p>23 Q. The same sort of approach was followed?</p> <p>24 MS. ELLIOTT:</p> <p>25 A. Yeah, um-hm.</p> |

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1 STAMP, Q.C.:

2 Q. The identification of some, you know, class

3 1 or 2 or whatever –

4 MS. ELLIOTT:

5 A. Right, WAS 1, WAS 2. Yes, all of the

6 different –

7 STAMP, Q.C.:

8 Q. Right.

9 MS. ELLIOTT:

10 A. Yeah.

11 STAMP, Q.C.:

12 Q. So, the same approach was taken over there,

13 and the people in Nova Scotia, the claims

14 people in Nova Scotia, just as they did

15 here, they were tasked with trying to

16 identify or record –

17 MS. ELLIOTT:

18 A. Identical task, yes. Yeah.

19 STAMP, Q.C.:

20 Q. - for the data for you, what that injury -

21 MS. ELLIOTT:

22 A. Yeah.

23 STAMP, Q.C.:

24 Q. - what their impression was of that injury?

25 MS. ELLIOTT:

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1 A. Yes.

2 STAMP, Q.C.:

3 Q. So, no one went into those offices with a

4 warrant for example and investigated this

5 stuff? It was done by the internal

6 investigators, the internal claims managers?

7 MS. ELLIOTT:

8 A. Yes, the people that are familiar with the

9 files and trained to complete this template

10 of data, yeah.

11 STAMP, Q.C.:

12 Q. Sure, okay. So, that being the case, what

13 we have here is, I mean, and it's been, you

14 know, repeated I guess over and over, that

15 there's been some sort of bias, some sort of

16 misleading effort on the part of insurers to

17 give you the data that they want you to

18 have, but since the data that you were given

19 was all of the closed claims for that

20 period, I mean there's no option as to what

21 to give you. It was every claim?

22 MS. ELLIOTT:

23 A. That was the purpose that—that's what the

24 instructions said. "You will provide every

25 claim closed in that period of time with

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1 this target of 2000 files," yes.

2 STAMP, Q.C.:

3 Q. And so, did you looking at—looking ahead

4 when you were doing the work in Nova Scotia

5 and New Brunswick, did you see—were you

6 apprehensive of bias?

7 MS. ELLIOTT:

8 A. No, no, I'm not. You know, as I tried to

9 express, I believe that they take their

10 stack of files and the individual does their

11 best to fill it in.

12 STAMP, Q.C.:

13 Q. Yes.

14 MS. ELLIOTT:

15 A. And you know, they complete their day and

16 they come back and do it again until they're

17 –

18 STAMP, Q.C.:

19 Q. And after the fact, in New Brunswick and

20 Nova Scotia, now that you can look back at

21 it somewhat, was anything about what was

22 provided to you in the way of data, is there

23 any suggestion that it had any bias within

24 it?

25 MS. ELLIOTT:

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1 A. No, I have no—if I had any inclination that

2 the data was biased, I assure you I would

3 have spoken up.

4 STAMP, Q.C.:

5 Q. Sure.

6 MS. ELLIOTT:

7 A. And I had no inclination, no—of that

8 whatsoever in those, for Nova Scotia, New

9 Brunswick or here in Newfoundland. Yeah.

10 STAMP, Q.C.:

11 Q. Okay. That's all I have. Thank you, Madam

12 Chair.

13 CHAIR:

14 Q. Thank you, Mr. Stamp. Mr. Browne?

15 BROWNE, Q.C.:

16 Q. Yes, thank you, Chair, Commissioners. Just

17 on a point of clarification, Ms. Elliott, if

18 we can go to the introduction of your report

19 on page 1, the introduction, it says, "The

20 Board of Commissioners of Public Utilities

21 Newfoundland and Labrador, the Board has

22 been directed to review the impact on rates

23 of a monetary cap on claims for non-economic

24 loss of minor/mild injuries and the

25 implications of such a cap for claimants,

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1 and to review the impact on rates of
 2 continuing with the current deductible or
 3 increasing the deductible.” So, these were
 4 parts of your mandate?
 5 MS. ELLIOTT:
 6 A. Yeah.
 7 BROWNE, Q.C.:
 8 Q. Correct?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 BROWNE, Q.C.:
 12 Q. Okay. Now someone asked concerning the
 13 schedule there with all the dates--you’ll
 14 find it at Appendix A1. So, Appendix A1,
 15 someone asked concerning 2002, two thousand—
 16 why 2003 and 2004 are not there. Are you
 17 aware that the deductible did not come into
 18 effect? It was announced by government in
 19 2004 and came into effect shortly
 20 thereafter, the 2004/2005 period. Would
 21 that be one reason that 2002, 2003, 2004
 22 were not included?
 23 MS. ELLIOTT:
 24 A. No, that wouldn’t be why. It would just be
 25 because there were no claims that were

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1 closed in this 12-month window that occurred
 2 back in 2003 or ’04.
 3 BROWNE, Q.C.:
 4 Q. But if the legislation didn’t go retroactive
 5 to –
 6 MS. ELLIOTT:
 7 A. Well, there were still claims that occurred
 8 in those years.
 9 BROWNE, Q.C.:
 10 Q. There was still claims that occurred?
 11 MS. ELLIOTT:
 12 A. Yes, but that would mean that they—there was
 13 no deductible applied to the pain and
 14 suffering award. That’s what that would
 15 mean.
 16 BROWNE, Q.C.:
 17 Q. So, from the perspective of those who
 18 presented the evidence, could that have been
 19 a consideration in their minds, perhaps
 20 erroneously as you maintain it might be,
 21 that the deductible did not come into effect
 22 until 2004, and therefore, the—what they
 23 looked at and what they presented was from
 24 2004, forward?
 25 MS. ELLIOTT:

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1 A. No, they were not given instructions to look
 2 at 2004, forward, or any particular year.
 3 They were given instruction to provide all
 4 claims closed in the 12-month window
 5 regardless of the year or occurrence. Yeah.
 6 BROWNE, Q.C.:
 7 Q. In terms of the 2005 report, the report was
 8 from July 1, the survey period, July 1, 2001
 9 to June 20—to June 30th, 2004. It’s a three-
 10 year period.
 11 MS. ELLIOTT:
 12 A. Right.
 13 BROWNE, Q.C.:
 14 Q. And the survey numbers were 1369, and you
 15 focused on a one-year period between 2016
 16 and 2017 and came up with a number of 1741.
 17 Is there any significance in that, that the
 18 2005 report was over a three-year period and
 19 this was over a one-year period?
 20 MS. ELLIOTT:
 21 A. Well, we were looking at that time to draw
 22 in first an initial sample, the 6000-odd
 23 files, and then, make sure that our
 24 distribution that we would take from that
 25 initial sample was a good representation by

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1 area, not just, you know, the City of St.
 2 John’s, but the whole province and the
 3 distribution by age. So, we wanted to make
 4 sure that the claimant database that we had
 5 was a proper representation of the whole
 6 province, and we followed that approach at
 7 that time. So –
 8 BROWNE, Q.C.:
 9 Q. But in terms of the 12 months versus the 36
 10 months, would the 36 months be more watered
 11 down? Your sampling seems to be more
 12 condensed in a 12-month period and theirs is
 13 over –
 14 MS. ELLIOTT:
 15 A. Yes, and in that case, I mean, in this case
 16 here, we took the approach that let’s ask
 17 essentially for everything in that 12-month
 18 window. And when you do that, well, if you
 19 ask for everything, then that is a proper
 20 representation for the province. You don’t
 21 have to then stratify it to make sure that
 22 it is random. Whereas in the prior study,
 23 we took several years, and then we wanted to
 24 make sure that it was a random sample.
 25 That’s how we did it. We just changed the

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1 approach.
 2 BROWNE, Q.C.:
 3 Q. Ms. Elliott, yes, thank you. No one has
 4 asked, but it's somewhere there in the
 5 record, your credentials, but can we put
 6 some of this on the record? Can you tell us
 7 how you started in this business and give
 8 some of your personal history in reference
 9 to this matter?
 10 MS. ELLIOTT:
 11 A. Sure, gosh. I've been working for—I have
 12 over 40 years' experience. I'm a fellow of
 13 the Canadian Institute of Actuaries. I'm a
 14 fellow of the Casualty Actuarial Society.
 15 I've been with Oliver Wyman or its
 16 predecessors for over 20 years, and my focus
 17 as a consulting actuary has been in the
 18 automobile insurance aspect for prompting
 19 (phonetic) casualty companies. Prior to
 20 that, I was employed with insurance
 21 companies in senior roles in pricing
 22 departments, finance departments. So, my
 23 background is P&C. I'm –
 24 BROWNE, Q.C.:
 25 Q. Your studies and your actuarial studies have

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1 taken you to how many provinces?
 2 MS. ELLIOTT:
 3 A. I provide consulting services to
 4 Newfoundland here, of course; to Nova
 5 Scotia, both the Board and the
 6 Superintendent. We provide services to the
 7 Attorney General Office in New Brunswick,
 8 and also to the Superintendent of Insurance
 9 in New Brunswick. We provide services to
 10 both the Minister of Finance Office in
 11 Alberta and the Board, the rate-making board
 12 in Alberta. We've provided services for,
 13 gosh, about 30 years to, my colleague as
 14 well, who since or recently retired, to
 15 Ontario, the Financial Services Commission.
 16 So, for myself for over 20 years and the
 17 account with our company for over 30 years.
 18 We provide services to the Saskatchewan
 19 Government. They have a regulatory panel
 20 that reviews the rates for the—Saskatchewan,
 21 government run. And we provide services to
 22 the British Columbia Utilities Commission
 23 who oversees the rates for ICBC. We review
 24 those rate filings, too.
 25 BROWNE, Q.C.:

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1 Q. So, you've been across the country?
 2 MS. ELLIOTT:
 3 A. Yeah.
 4 BROWNE, Q.C.:
 5 Q. And testifying in proceedings such as these?
 6 MS. ELLIOTT:
 7 A. Yes.
 8 BROWNE, Q.C.:
 9 Q. Just by way of clarification, the Insurance
 10 Bureau of Canada, and data collection, and
 11 we've talked about GISA, the Insurance
 12 Bureau of the Canada. Is there to your
 13 knowledge annually statistics coming from
 14 insurance companies here to the Insurance
 15 Bureau of Canada or to GISA? Are they
 16 providing statistics?
 17 MS. ELLIOTT:
 18 A. Yes, and all—every policy and every claim
 19 that occurs for automobile insurance is
 20 reported in a set format, referred to it as
 21 the Auto Stat Plan. That—every automobile
 22 premium and claim is reported in a set
 23 format to the IBC as a service provider for
 24 GISA which is acting on behalf of the
 25 Superintendent of the province to collect

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1 this data. So, there's not a premium that's
 2 paid or a claim that occurs that is not
 3 required to be reported to GISA.
 4 BROWNE, Q.C.:
 5 Q. So, all these, but--yet, the Insurance
 6 Bureau of Canada comes to the insurance
 7 companies here to get the close study
 8 information. Do they in fact have a
 9 semblance of that information already,
 10 previously?
 11 MS. ELLIOTT:
 12 A. No, so the Auto Stat Plan collects
 13 information that is more related to pricing
 14 the premium. So, the driver record, of
 15 course accidents are reported. So, various
 16 rating variables associated with that
 17 premium are reported. In this case, for
 18 these types of studies, we are looking at
 19 the injury types which is not reported to
 20 IBC. So, in the—on a regular ongoing basis.
 21 So, that's why this is done on a special ad
 22 hoc basis, to look at the claimant data and
 23 what injuries were suffered and how much was
 24 paid under the head of damage. In the
 25 claims that are reported regularly to IBC

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1 ongoing, that reflects how much was paid,
 2 what the reserve was. So, the basic
 3 information, but not the descriptive
 4 information about the claim.
 5 BROWNE, Q.C.:
 6 Q. More of a general nature.
 7 MS. ELLIOTT:
 8 A. Yes.
 9 BROWNE, Q.C.:
 10 Q. Okay, thanks for that clarification. Now I
 11 think my colleague might have a few
 12 questions or if you don't, have I asked them
 13 already?
 14 MR. WADDEN:
 15 Q. Just a couple of points for clarification.
 16 And Paula, just to understand, again I think
 17 I mentioned this yesterday, we come to this
 18 from a perspective of we, at the end of the
 19 day have to give an opinion as to what is
 20 probably best for the consumer after we've
 21 heard all of the evidence. We just want to
 22 make sure we're clear on what you're saying
 23 in your report, okay, and that we have
 24 properly interpreted all of your comments.
 25 The introduction, page 1 of this report, I'm

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1 just trying to reconcile a couple of
 2 statements here and this may have something
 3 to do with a couple of insurers being
 4 removed from your calculations at the end of
 5 the day, but I guess it's the second
 6 paragraph from the bottom, the biggest
 7 paragraph on the page, second sentence, "The
 8 six insurer groups with the highest market
 9 share of private passenger automobiles in
 10 Newfoundland and Labrador" and then in
 11 brackets you have (representing 86.7
 12 percent), so that you're talking about six
 13 insurer groups representing 86.7 percent of
 14 the market share in the province, right?
 15 MS. ELLIOTT:
 16 A. Yeah.
 17 MR. WADDEN:
 18 Q. Can we bring up the, I'm just trying to
 19 determine which statement is accurate, the
 20 IBC February 2018 submission, there's two
 21 main submissions from IBC. I guess the
 22 first was February 2018, I'm not talking
 23 about the instruction document now. Great,
 24 page 3 of 17, there you go, perfect. Under
 25 "Consumer Outcomes", the second paragraph

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1 there, it says "There are few insurance
 2 options. Currently the top four insurers in
 3 Newfoundland and Labrador comprise 87
 4 percent of the market", so I guess I'm
 5 assuming those two statements are trying to
 6 make the same point. I'm just trying to
 7 figure out is it four insurers that comprise
 8 around 87 percent of the market or is it six
 9 insurers that comprise 87 percent of the
 10 market.
 11 MS. ELLIOTT:
 12 A. Uh-hm.
 13 MR. WADDEN:
 14 Q. And I appreciate you didn't write this IBC
 15 document, Paula, I just thought maybe you
 16 might be able to help me out.
 17 MS. ELLIOTT:
 18 A. Right, no, I'm sorry I can't answer
 19 specifically. I do know for our report how
 20 the 86.7 percent was calculated, IBC
 21 provided that to us, but I can't speak to
 22 what their differences are here, how they're
 23 grouping companies, I don't know.
 24 MR. WADDEN:
 25 Q. Okay, but the information in your report

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1 rather referring to the six insurers, you
 2 derive that from information provided by
 3 IBC?
 4 MS. ELLIOTT:
 5 A. Yes, based on the certain year for this
 6 closed claim sample, the distribution that
 7 they had available for the companies, yeah.
 8 MR. WADDEN:
 9 Q. Okay, and look, I'm not sure anything turns
 10 on it, but frankly I'm just trying to
 11 determine which statement was right.
 12 MS. ELLIOTT:
 13 A. Yeah, no, sure.
 14 MR. WADDEN:
 15 Q. Go to page 4 and we're back to the Closed
 16 Claims Study now, the fourth page. I'm
 17 splitting hairs here now, Paula.
 18 MS. ELLIOTT:
 19 A. Okay.
 20 MR. WADDEN:
 21 Q. About six or seven points down, "virtually
 22 all of the claimants, 99.8 percent were
 23 involved in accidents that occurred in
 24 Newfoundland and Labrador", that remaining
 25 minute percentage, I'm assuming, would that

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1 be vehicles insured, like Newfoundland
 2 vehicles insured under policies here in
 3 Newfoundland that were perhaps travelling
 4 outside the province?
 5 MS. ELLIOTT:
 6 A. Yes.
 7 MR. WADDEN:
 8 Q. That's what that would be, okay. That's
 9 fine. The next page, page 5, "The cost
 10 associated with external claim handling
 11 costs, allocated loss adjustment expenses,
 12 were also collected." So these external
 13 claim handling costs, I presume, vary from
 14 company to company?
 15 MS. ELLIOTT:
 16 A. Yes.
 17 MR. WADDEN:
 18 Q. Okay. Notwithstanding some insurers would
 19 utilize outside entities more than others,
 20 are all the insurers, at least the ones that
 21 were involved in this study, doing that?
 22 MS. ELLIOTT:
 23 A. Yes, it would be very typical, and this
 24 would include legal fees, so in a bodily
 25 injury claim normally there's outside

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1 counsel that they have, so all those costs—
 2 or they have an outside adjuster, yeah.
 3 MR. WADDEN:
 4 Q. Okay, so the external claims handling costs
 5 wouldn't just include us using outside
 6 adjusting firm, it would also include the
 7 firm you use as your service provider?
 8 MS. ELLIOTT:
 9 A. Yeah.
 10 MR. WADDEN:
 11 Q. Okay. Let's go to the next page, page 6,
 12 last paragraph, there's that number again,
 13 1741 claimants, only 11 claimants did not
 14 receive non-pecuniary award. Is there any
 15 explanation of that? I'm just trying to
 16 understand why that would be. Is it because
 17 it was perhaps a minor claim and they just
 18 settled for some special damages or
 19 something like that?
 20 MS. ELLIOTT:
 21 A. Likely, yeah, I don't know why it would show
 22 zero, but, yeah.
 23 MR. WADDEN:
 24 Q. Back up at the top of that page, I'm sorry
 25 for skipping this, when you look at the

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1 costs for general damages awards, the non-
 2 pecuniary number being net of the
 3 deductible, obviously. That 43.9, is it
 4 anywhere in the report, I'm not sure that I
 5 missed it, what the distribution is of that
 6 amongst the insurers? That's a cumulative
 7 number for those six insurers, right, those
 8 groups?
 9 MS. ELLIOTT:
 10 A. This is all aggregated, yes, all companies,
 11 yeah.
 12 MR. WADDEN:
 13 Q. Okay, is that something that's in the
 14 report, how it's distributed amongst those
 15 groups?
 16 MS. ELLIOTT:
 17 A. No, we did not provide any data that would
 18 indicate how that varies or is distributed
 19 amongst insurers, no, it's an aggregated
 20 study.
 21 MR. WADDEN:
 22 Q. Okay. I appreciate it's an aggregated
 23 study. Do you have any recollection, and I
 24 know you spent a number of months on this,
 25 as to whether one insurer was paying

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1 proportionately more than another insurer
 2 would be?
 3 MS. ELLIOTT:
 4 A. We didn't—I have no recollection because I
 5 didn't do it. We did not review any of the
 6 data in the context of who is paying more,
 7 do you get more if you're with, you know,
 8 Intact versus Royal or anything from that
 9 perspective, no.
 10 (1:00 p.m.)
 11 MR. WADDEN:
 12 Q. Okay. Can we go to page 13 of the document?
 13 Under the heading "Payments under Section
 14 B". "Insurers were asked to report medical
 15 rehabilitation costs and disability income
 16 costs pertaining to auto no fault, Section
 17 B. For the majority of claimants, 87
 18 percent, these items were reported as
 19 unknown." What do you mean there?
 20 MS. ELLIOTT:
 21 A. Well, you could have a claimant who is a
 22 driver of another vehicle and they're suing,
 23 you know, this first party here, and what
 24 was sought was what benefits were collected
 25 under accident benefits from this claimant

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1 on its own benefits, Section B? But that
 2 information isn't necessarily available in
 3 the file that you have when you're
 4 defending, you know, your insured.
 5 MR. WADDEN:
 6 Q. Okay.
 7 MS. ELLIOTT:
 8 A. So we asked them and that was what came
 9 back.
 10 MR. WADDEN:
 11 Q. Okay. Just a couple of more questions,
 12 Paula. So much has been made through
 13 various questioning so far in this
 14 proceeding as to issues that may be related
 15 to data collection or rather from where and
 16 how the data was procured. And clearly
 17 Oliver Wyman producing these reports, this
 18 one in particular, worked with IBC and I
 19 guess GISA to get the data that they needed.
 20 MS. ELLIOTT:
 21 A. Well, yes, an employee of IBC that is a
 22 service provider for GISA, yeah.
 23 MR. WADDEN:
 24 Q. My question is simple: is there somewhere
 25 else you could have gone to get it?

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1 MS. ELLIOTT:
 2 A. Well, of course there always is, but would
 3 there be another better, faster alternative
 4 with the skillset and knowledge base readily
 5 available? No. But could the Board have
 6 said well we're going to go find an adjuster
 7 who knows how to do this and collect it,
 8 we're going to find these people and line
 9 all of that up? Of course that's possible,
 10 but who was the best readily available
 11 knowledge based, that was clearly IBC.
 12 MR. WADDEN:
 13 Q. Right, and I appreciate, I think you said
 14 earlier, to paraphrase you, "It's not an
 15 actuarial role to collect data", I think is
 16 what you said.
 17 MS. ELLIOTT:
 18 A. Correct.
 19 MR. WADDEN:
 20 Q. Right, okay. Would another way to achieve
 21 receiving the data that you did receive
 22 would have been to actually go to the
 23 insurers, the groups yourselves and do that?
 24 MS. ELLIOTT:
 25 A. Me?

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1 MR. WADDEN:
 2 Q. It's not something Oliver Wyman does, I get
 3 that. Is that something you would ever do
 4 in a study of this nature or –
 5 MS. ELLIOTT:
 6 A. No.
 7 MR. WADDEN:
 8 Q. Okay.
 9 MS. ELLIOTT:
 10 A. Not me, no. Actuaries don't go and fill in
 11 Excel templates and, no, that's not what we
 12 do.
 13 MR. WADDEN:
 14 Q. And the only other thing I wanted to ask you
 15 about, Mr. Kennedy was asking you yesterday
 16 some questions in relation to the six
 17 insurers and then RSA and Intact having
 18 acquisitions, two lots of data being
 19 dropped, and Mr. Stamp today, as well, was
 20 asking questions around and I'm trying to
 21 get clarification, I have to apologize, I'm
 22 still not entirely clear on it. So I just
 23 want to make sure I understand, and I went
 24 back and I looked at the transcript from
 25 yesterday, is that something that's

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1 available to bring up, Jacqui? I'm only
 2 bringing it up just to refer you to
 3 yesterday, I'm just trying to get a clear
 4 sense of what happened, right. I'd be going
 5 to page 181 where Mr. Kennedy was
 6 questioning Ms. Elliott. Okay, 181, great.
 7 You can go down to about line 14, you said,
 8 "Metro and L'Union, I believe are the two
 9 acquisitions that were required (sic.) by
 10 Intact and RSA respectfully and so
 11 therefore, Intact and RSA in its entirety I
 12 threw out." And I think you said something
 13 similar to that today.
 14 MS. ELLIOTT:
 15 A. Uh-hm.
 16 MR. WADDEN:
 17 Q. And then Mr. Kennedy kind of reaffirmed what
 18 your answer was. When you go down to line
 19 8, he said, "No, if I could just ask my
 20 question, six of the companies that
 21 represent"—sorry, I'm on page 181 now, at
 22 line 8, "six of the companies that represent
 23 86.7 percent of the provincial market share
 24 are listed in footnote 2. Two of those
 25 companies, Intact and RSA, you excluded

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1 their documentation?" And you said, "No",
 2 and then you go on and give some more
 3 explanation, so maybe the best way to do it
 4 is just by way of specific example. Here's
 5 what I'm trying to get, okay, I apologize
 6 the question is a bit long, but I wanted to
 7 give you some preamble so you know what I'm
 8 getting at. So we know that Metro and
 9 L'Union were acquired by Intact and RSA,
 10 respectfully, and you say you threw out all
 11 the data from RSA, but for example, we know
 12 RSA owns many companies, brokerages, et
 13 cetera, they own Johnson and Unifund here,
 14 so did you look at data from Johnson and
 15 Unifund?
 16 MS. ELLIOTT:
 17 A. Okay, the companies—maybe if I can help
 18 explain to be clear.
 19 MR. WADDEN:
 20 Q. Yes, go ahead.
 21 MS. ELLIOTT:
 22 A. For example, Intact in this province, the
 23 Intact Group, my recollection is they at
 24 least write under the name of Novex
 25 Insurance and Intact Insurance and they are

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1 part of the Intact Group, so the issue was
 2 only with the company under the name of
 3 Intact Insurance Company. That company—and
 4 each company has a three-digit identifying
 5 number, so the data that we collect doesn't
 6 say Intact in the row, it says 167 is Intact
 7 and there's another number, 731 for Royal,
 8 so we're able to identify Intact only as
 9 opposed to Novex Insurance, which are both
 10 under the Intact Group umbrella and only
 11 Intact Insurance data was removed in
 12 entirety, the same with Royal Insurance
 13 which would write under different names here
 14 in the province. Only the company under
 15 Royal Insurance was removed because it had
 16 the acquisition, so the individual company,
 17 so there were, to start off with in the
 18 database, there were 20 individual companies
 19 with their own unique three digit
 20 identifying code and two of those, so we're
 21 left with 18, two of those companies were
 22 removed in entirety.
 23 MR. WADDEN:
 24 Q. Got you, okay. So the baby didn't get
 25 thrown out with the bathwater is what you're

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1 telling me.
 2 MS. ELLIOTT:
 3 A. Yeah, we're left with 18 companies. We
 4 started with 20, we're left with 18, yeah.
 5 MR. WADDEN:
 6 Q. Okay, that's fine, Paula, thank you.
 7 BROWNE, Q.C.:
 8 Q. Thank you very much.
 9 CHAIR:
 10 Q. Thank you, Consumer Advocate and Mr. Wadden.
 11 COMMISSIONER OXFORD:
 12 Q. No questions.
 13 CHAIR:
 14 Q. Okay, and I have no questions. Thank you,
 15 Paula.
 16 MS. GLYNN:
 17 Q. Madam, I would suggest if we could take a
 18 five-minute break for Ms. Elliott to switch
 19 gears before we start with the next report.
 20 CHAIR:
 21 Q. It's 1:10. We'll hear Paula's presentation
 22 and go to questions in the morning, is that
 23 the suggestion?
 24 MS. GLYNN:
 25 Q. We can discuss that as well. Her

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1 presentation may take a bit longer, so
 2 that's something that we can discuss at the
 3 break, but I would suggest a five-minute
 4 break to discuss further matters.
 5 (BREAK 1:09 P.M.)
 6 (RESUME 1:12 P.M.)
 7 CHAIR:
 8 Q. So, Ms. Glynn, can you –
 9 MS. GLYNN:
 10 Q. So, Madam Chair, we have, with the agreement
 11 of all the parties, agreed that we would
 12 adjourn for today and reconvene tomorrow
 13 morning at 9:00 and start with Ms. Elliott's
 14 presentation at that point. Mr. Gittens
 15 does have a matter that he would like to
 16 discuss with the panel.
 17 MR. GITTENS:
 18 Q. Just indicating to the commission, please,
 19 that we understand Ms. Elliott is starting
 20 with the third report tomorrow morning and
 21 we plan to have another lawyer assist in the
 22 examination, the questioning of Ms. Elliott,
 23 I wanted to advise the Board of that for
 24 tomorrow morning, and also that we would be
 25 distributing the documentation that that

1 person will be utilizing tomorrow morning—
 2 this afternoon, I'm sorry, as soon as we
 3 leave here. I have it here now, but my
 4 phone won't let me send it out for some
 5 reason. So as soon as I get back to my
 6 office I'll have that done.

7 CHAIR:

8 Q. Fair enough, thank you, Mr. Gittens. Okay,
 9 we're adjourned, we'll see you in the
 10 morning at 9:00 a.m.

11 MR. FELTHAM:

12 Q. Excuse me, Madam Chair, just one more thing
 13 in terms of housekeeping, the order of
 14 questioning, it's our understanding that for
 15 that particular report that Mr. Gittens in
 16 referring to having co-counsel to assist on,
 17 that we would prefer to adjust the order of
 18 questioning between the Campaign and APTLA
 19 so that APTLA proceeds first on that issue,
 20 just for that report, is that's acceptable
 21 to the Board.

22 CHAIR:

23 Q. That's acceptable.

24 MR. GITTENS:

25 Q. Satisfactory here.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript of the 2017 Automobile Insurance Review hearing on the 6th 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, Newfoundland and Labrador this 6th day of June, 2018.

Judy Moss

1 CHAIR:

2 Q. No objections? Good, thank you.

3 MS. GLYNN:

4 Q. Thank you.

5 Upon conclusion at 1:15 p.m.

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