

A. I. 8 (2003)

IN THE MATTER OF the *Insurance Companies Act*
R.S.N. 1990, c. I-10, and the *Automobile Insurance*
Act, R.S.N. 1990, c. A-22 as amended, and

IN THE MATTER OF an application by Facility Association for
approval of revised rates to be charged for private passenger and
commercial automobile insurance policies issued through Facility
Association, pursuant to Section 102 of the *Insurance Companies Act*.

BEFORE: G. Fred Saunders,
Presiding Chair

Gerard Martin, Q.C.
Commissioner.

Donald Powell, C.A.
Commissioner.

DATE: April 9, 2003

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Schedule 3	Binder Control
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1.0 The Application

On September 9, 2002 the Board of Commissioners of Public Utilities (“the Board”) received an application, pursuant to section 102 of the *Insurance Companies Act* from Facility Association (“Facility”) for approval of revised rates to be charged to private passenger and commercial automobile insurance policy holders insured by servicing carriers on behalf of Facility in all areas of the Province. The application sought average rate level increases of 41.3% for private passenger policy holders and 48.3% for commercial policy holders. A summary of the rate revisions by category and rating territory is attached as Schedule 1.

In addition, approval is being sought to:

- (a) implement the Canadian Loss Experience Automobile Rating (CLEAR) system;
- (b) introduce an integrated 10% clean driver discount for private passenger drivers;
- (c) increase accident and conviction surcharges;
- (d) change all perils premium calculation for both private passenger and commercial to be 100% of the collision premium plus 100% of the comprehensive premium;
- (e) adopt comprehensive rate group differential factors for specified perils to prevent the specified perils premiums from growing larger than the comprehensive premiums at the higher rate group levels for commercial coverages only;
- (f) change the minimum private passenger deductibles to \$250 for collision coverage and \$100 for comprehensive coverage, to be consistent with industry practice;
- (g) increase the cap on changes in class and driving record differentials for underage drivers from 5% to 7.5%;

- (h) increase minimum deductibles for commercial to \$500 for collision and \$100 for comprehensive and specified perils, to ensure that rate structures are internally consistent; and
- (i) cap the rate for commercial uninsured motorist to a base premium of \$19.

1.1 Notice and Pre Hearing Conference

Public notice of the application combined with a notice of a pre-hearing conference appeared in all major newspapers circulating throughout the province commencing on October 16, 2002. The pre-hearing conference was held on November 5, 2002 at the Board's hearings room and the following parties were present:

Messrs Norman Whalen QC and Kevin Stamp QC for Facility.

Mr. Douglas Connolly representing the Department of Government Services and Lands.

Mr. Michael Kehoe representing the Taxi Operators Network.

The purposes of the pre-hearing conference were to:

1. Identify intervenors and other interested parties.
2. Establish an order of witnesses.
3. Establish an order of cross-examination of witnesses.
4. Establish a protocol and procedure for filing evidence, information requests and other submissions to the Board.
5. Identify distribution lists for the service of documents.
6. Provide focus to the issues.
7. Determine such other matters relevant to the hearing.

Following the pre-hearing conference and on November 7, 2002 the Board issued Procedural Order A.I. 29 (2002 - 2003), attached as Appendix A, establishing the rules of procedure, fixing a schedule of dates in accordance with the above list of purposes for the pre-hearing conference and setting December 11, 2002 as the start date for the public hearing into the application.

1.2 Intervenor

On November 14, 2002 Peter O’Flaherty of the law firm Goodland O’Flaherty wrote the Board advising that he had been appointed, by government, as Consumer Advocate in the matter before the Board and to give notice of his intention to make application for intervenor status.

On November 15, 2002, Mr. O’Flaherty filed an intervenor’s submission and a notice of motion requesting an extension to certain time limits as set out in Procedural Order A.I. 29

(2002 - 2003). Counsel for Facility had no objection to the intervention of Mr. O’Flaherty on the basis that there would not be any delay in the start of the hearing.

On November 22, 2002 the Board issued Procedural Order A.I. 30 (2002 - 2003), attached as Appendix B, granting Intervenor status to Mr. O’Flaherty and amending the schedule of dates fixed by Procedural Order A.I. 29 (2002 - 2003).

1.3 Participants

During the hearing the following witnesses were called:

For the Applicant:	Brian Pelly, FCIA, FCAS, Partner and Consulting Actuary Eckler Partners, Ltd.
	David J. Simpson, M.B.A., FCIP, President and Chief Executive Officer of Facility.
For the Board:	Paula L. Elliot, FCAS, FCIA Principal and Consulting Actuary Mercer Risk, Finance and Insurance Consulting
Subpoenaed by the Board:	Thomas Hickey, Vice President, T.P. Hickey Insurance Limited
	David Anthony, President and Chief Executive Officer, Insurance Corporation of Newfoundland
For the Consumer Advocate:	Winston Morris, Superintendent of Insurance, Department of Government Services and Lands Government of Newfoundland and Labrador
	Bruce Whiffen, Meteorological Support Manager, Environment Canada.
	Sergeant John Hill, Officer in Charge / Traffic Enforcement Unit, Royal Newfoundland Constabulary

Cluney Mercer,
Director of Highway Design and Construction,
Department of Works, Services and Transportation
Government of Newfoundland and Labrador.

Thomas Beckett,
Deputy Registrar of Motor Vehicles,
Department of Government Services and Lands
Government of Newfoundland and Labrador

Joan Marshall,
Acting Chairperson,
Seniors Resource Centre Association.

The following persons appeared and gave presentations on the day set aside for public participation:

Jennifer Power,
Senior Vice President of Operations, Atlantic Region,
CGU Insurance Company of Canada.

Michael Kehoe,
Co-Chair,
Taxi Operators Network

Victoria Harnum,
President,
Advocates For Fair Auto Insurance

Letters of Comment were received from:

Kevin Hutchings,
President and Secretary Treasurer,
Metro General Insurance Corporation Ltd.,
St. John's, NL

Doug Walsh,
Private Citizen,
Holyrood, NL

J.R. (Bob) Tisdale,
President & Chief Operating Officer
Pembroke Insurance Company,
Markham, Ontario.

Allan Burke,
No address given

John Emo,
Chairman, Underwriting and Marketing Commission,
Echelon General Insurance Company,
Mississauga, Ontario.

Felicia M. Salomon,
Senior Vice President & General Counsel,
Lombard Canada Ltd.,
Toronto, Ontario.

2.0 Legislative Framework and Board's Jurisdiction.

Section 97 of the *Insurance Companies Act* creates the Facility Association and subsections 98 (1) and (2) of that *Act* sets out the governing policy of the Province, as follows:

Facility Association continued

97. The unincorporated non-profit association of insurers known as the Facility Association is continued under the name Facility Association.

98. (1) An insurer licensed to transact automobile insurance in the province is a member of the association and shall be bound by the articles and by-laws of the association.

(2) The association shall, in its articles of association or by-laws and in terms not inconsistent with this Act, establish a plan to be known as the Plan of Operation

(a) to provide automobile insurance to owners and licensed operators of automobiles who would be unable to obtain that insurance without the Plan of Operation; and

(b) to provide, in accordance with sections 45.1 to 45.21 of the *Automobile Insurance Act* payment with respect to claims for damages made by persons who are not insured under a contract within the meaning of section 33 of the *Automobile Insurance Act* and who have no other insurance or who have other insurance that is inadequate with respect to the damages claimed,

and shall, in accordance with those articles of association or by-laws and this Act, establish and implement the Plan of Operation and carry out its obligations in the province with respect to that plan.

The Board has been delegated jurisdiction to supervise the rates charged for insurance coverage effected through Facility by virtue of Section 102 of the *Insurance Companies Act* as follows:

Rates

102. (1) The association shall file with the Public Utilities Board the rates that it proposes to charge for automobile insurance placed through the association.

(2) The Public Utilities Board shall deal with a filing under subsection (1) as if it were made under subsection 49(1) of the *Automobile Insurance Act*.

(3) Subsection 49(2) and sections 51, 52, 54, 55, 56, 57 and 58 of the *Automobile Insurance Act* shall apply in connection with a filing under subsection (1).

(4) Where the rates filed in accordance with subsection (1) or the application for a change in rates under section 51 of the *Automobile Insurance Act* have been approved, the Public Utilities Board may investigate the rates charged for automobile insurance placed through the association, and notwithstanding approval of those rates, may order the association to make a change the Public Utilities Board considers appropriate.

(5) A member of the association shall not, after February 1, 1986, charge rates for automobile insurance placed through the association that have not been approved by the Public Utilities Board in accordance with this section.

Pursuant to section 57 of the *Automobile Insurance Act* the provisions of the *Public Utilities Act* RSN 1990, c.P-47 relating to the constitution, powers, procedures and practices of the Board apply to it when hearing applications for rate revisions under section 102 of the *Insurance Companies Act*.

2.1 Automobile Insurance Statutory Requirements

Provincial law requires that all automobiles operated on public highways must carry minimum levels of liability insurance. Licensed auto insurers authorized to transact business in the Province are entitled to decline any risk that does not meet their underwriting guidelines. Facility exists to ensure that automobile insurance is available to every qualified driver who wishes to obtain insurance coverage regardless of risk profile.

2.2 Facility Operations

The primary object of Facility is to ensure the availability of automobile insurance for owners and licensed drivers of motor vehicles who are unable to obtain such insurance in the regular market. Facility is governed by its Plan of Operation, a copy of which is attached as Schedule 2. The Plan of Operation, approved by the Superintendents of Insurance in the nine Provinces and Territories in which Facility operates, sets out its Articles of Association, Operating Principles and Rules of Operation. The Board of Directors is made up of industry executives and broker representatives from across Canada and it is the Board of Directors responsibility, among other things, to appoint servicing carriers from among those member companies applying.

The Public Utilities Board, in Order No. AI 36 (2000 - 2001), found that “...Facility is a non-profit association that operates as nothing more than an administrator of a risk-sharing automobile insurance pool. The servicing carrier companies of Facility underwrite the business risk on behalf of the member companies. Facility carries out an administration function including, *inter alia*, investment of funds, administration of the bank accounts, issuing of reports on the status of funds and accounts, distribution of members profits and issuing assessment notices for members losses incurred.”

3.0 The Hearing

The public hearing commenced, as originally scheduled, on December 11, 2002 and after 12 days of hearings through December and January 2003 concluded with final written submissions on February 6, 2003 and final submissions on February 11 and 12, 2003.

3.1 The Automobile Insurance Industry in Newfoundland and Labrador

3.1.1 David Simpson

During the hearing, Mr. David Simpson, President and CEO of Facility, was called by Facility to provide evidence relating to its operations in Newfoundland and Labrador and in other jurisdictions in Canada. He testified that Facility has operated in this province since 1985 and is currently comprised of the approximately 50 insurers operating in Newfoundland and Labrador who collectively provide automobile insurance to persons who no one insurer individually wishes to write. They are described by the industry as “the high risk group” and, traditionally, the claims and administrative costs associated with them are higher than in the regular market.

Since the last Facility hearing, up to which time the insurance industry did not indicate to their clients that their policies were being placed through Facility, a brochure has been introduced and circulated to clients explaining Facility’s role in the auto insurance industry and Facility is now named on automobile insurance policies. Previously a person could be placed in Facility and not be aware of it. Consequently, the role of Facility within the automobile insurance framework of Newfoundland and Labrador had become something of an enigma to the consuming public.

Mr. Simpson described the automobile insurance industry as being made up of three segments of insurers and that the premiums applicable to the three industry segments are established based on the loss experience results. The three segments can be described as the regular market segment, comprising the low to medium risk drivers, the grey market segment comprising the medium to high risk group and Facility, which is the market of last resort, comprising the high risk group

who cannot obtain insurance in the other two markets. (Note: For the purposes of this order the grey market segment is included in any reference to the regular market segment unless otherwise specified)

There are rules which govern a person's acceptance in either one of the industry segments.

These rules are commonly referred to as "underwriting guidelines" and they incorporate various qualifying factors, for example, age and type of automobile, driving record, the number of accidents, convictions and claims a person may have.

In 2001 the total number of private passenger vehicles insured in Newfoundland and Labrador was 218,192 of which 8,372 (3.8%) were insured through Facility. As well, there were 17,969 commercial vehicles insured of which 408 (2.3%) were placed through Facility.

Mr. Simpson testified that all automobile insurance companies operating in Newfoundland and Labrador are required, by law, to be members of Facility. They are required to share the risk according to a formula based on the portion of the premiums they write in relation to the total premiums written in the Province. The Plan of Operation allows Facility to appoint servicing carriers, of which there are four in this Province, who issue the policies on behalf of Facility. The servicing carrier issuing the policy is named as the insurer. All applications for automobile insurance to be placed through Facility are completed by brokers and agents employed by or on behalf of any of the approximately 50 member companies. The applications must be submitted to one of the four servicing carriers to be audited and checked before a policy is issued. No

person can be refused automobile insurance coverage regardless of the risk, providing they are prepared to pay the approved rates. There are seven servicing carriers appointed in all of Canada and four of them are appointed and approved to operate in this Province. They are:

Insurance Corporation of Newfoundland

Cooperators General Insurance Company

Royal & Sun Alliance Insurance Company of Canada

Unifund Assurance Company

Mr. Simpson stated that Facility has its offices in Toronto and has a staff of 14 supported by approximately 80 industry volunteers from across Canada and local operating committees in every jurisdiction to deal with local issues. The costs of running Facility, including salaries, rent, office supplies etc., are allocated, based on premium volume, among the member companies throughout the nine jurisdictions in which Facility operates.

Servicing carriers enter into operating agreements with brokers. Usually a broker is affiliated with only one servicing carrier and both groups are compensated for their work through a schedule of fees contained in the Plan of Operation. To ensure standardization is achieved Facility issues rules (underwriting guidelines) and approved rates to all servicing carriers and brokers.

The Board heard evidence from three industry representatives who described their involvement in the Newfoundland and Labrador automobile insurance industry.

3.1.2 Jennifer Power

Ms Jennifer Power, Senior Vice-President for the Atlantic Region of CGU Insurance Company of Canada, one of the largest property and casualty insurance groups in the country, in describing her company's operations stated that CGU owns four companies which write \$43 million, or 23% of the automobile insurance sold in Newfoundland and Labrador. CGU operates in this province through a network of brokers and does not maintain an office. She testified that her company is in a loss position based on 2001 results of its Facility business in Newfoundland and Labrador and that current rate levels are inadequate.(Transcript, Jan.14, p 2, ln 1-18). She explained the relationship of the regular and grey markets to the Facility market and emphasized the need for the Board to establish appropriate rate levels so as to provide an environment to enable insurance companies to offer options to its customers. Under cross examination by the Consumer Advocate, Ms Power agreed that underwriting practices in the present market will become much tighter and rates will increase.(Transcript, Jan.14, p.8 and 9)

Ms Power described the automobile insurance product available in Newfoundland and Labrador as being a "tort product" (Transcript, Jan. 14, p 12, ln 27) which carries with it the ability for a person to sue for loss of income, pain and suffering. This differs from the product available in Ontario which she described as a "no-fault product" which eliminates a considerable amount of litigation from the system.

3.1.3 Thomas Hickey

Mr. Thomas Hickey, Vice-President of T.P. Hickey Insurance Limited, gave evidence relating to his involvement in the automobile insurance industry. He has been in the business for 19 years and is a member and executive of several industry associations and organizations. Mr. Hickey stated that his company is strictly a brokerage representing various insurance companies. He explained that it buys insurance for its clients from the insurance companies, some of which it has contractual relationships with. Mr. Hickey stated that as a broker the relationship to Facility is through the servicing carrier with whom they are contracted to place business.

Mr. Hickey, in describing the process of determining whether or not a client gets placed in Facility, stated that his company first determines if the coverage is available in the regular market. If the underwriting guidelines of the regular market insurers, as applied to the application, indicate that the risk precludes coverage being obtained in the regular market, and provided its client is satisfied that no other broker can accommodate him in the regular market, his company will offer its client a rate quote with Facility. If the client accepts the quote he pays the premium which is deposited in a trust account. Within two or three days of receiving the premium from the client, and once the coverage is bound, a temporary liability card is issued to the client. Facility, through its servicing carrier, processes the application and issues a policy to the client through the broker. This ensures that the broker / client relationship is maintained. Mr. Hickey pointed out that his company places emphasis on maintaining long-term relationships with its clients and this contributes to the 50 % retention rate his company enjoys on Facility policy holders once they exit Facility.

In testifying on the reasons people end up in Facility, Mr. Hickey emphasized that each case is different and that the length of the relationship that exists between the client and his brokerage contributes considerably to the decision to place the client in Facility. Otherwise the decision to place a client in Facility is strictly governed by the underwriting guidelines. Mr. Hickey suggested that other than accidents and convictions there are many reasons why a person ends up in Facility. For example, they may be a new Canadian having previously driven in a country where the law requires you to drive on the left or it may be a case where the client drives a high risk automobile or “muscle car” e.g. a Stingray. Another reason to place a client in Facility may relate to the fact that they are a new driver or are underage.

Mr. Hickey said that information gathered through a binder control mechanism, similar to that which is in place in some other provinces, would be useful to all the stakeholders in this province as it would provide valuable information on the reasons why people get placed in Facility. In addition, he felt it would make brokers more conscious of their decision to place a person in Facility and serve as an analytical tool to address specific problems.

In respect of the present rates he felt that the rates in the regular market had “caught up” to the Facility rates for some coverages and this was a difficult environment in which to operate since, in some cases, the Facility rate for high risk drivers is lower than the regular market rate. This also presents a problem to the grey market insurers whose rates are designed to attract the best of the worst drivers from the Facility market.

Mr. Hickey in explaining how people get out of Facility testified that policies come up for review 60 days before renewal time. At that time the clients' profile is examined to determine if a change in circumstances has occurred that would allow the client to be moved out of Facility. If such a change has occurred it may be possible to move the client to the grey market and then in the following year, providing the experience continues to improve, move them to the regular market.

In response to questions from Facility Counsel, Mr. Hickey described the dilemma faced by the automobile insurance industry in Newfoundland and Labrador in attracting more insurers to the market. The reasons for this, he stated, stretch far beyond the provincial boundaries and relate to economic conditions worldwide. In a tight market environment insurance companies will opt to pull out and invest in other, more lucrative markets. He suggested there is very little opportunity to compete with the larger markets because the local insurance market is very small, by comparison and, therefore, offers fewer opportunities for growth.

While still under questioning by Facility Counsel and, later by the Consumer Advocate, Mr. Hickey stated that Facility's role in the automobile insurance structure in this province is not very well understood by consumers. He believes this can be attributed to the fact, as he has observed, that people are primarily concerned with the level of premium they have to pay for insurance and not with who, in the structure, is providing the coverage beyond the broker representative. He informed the Board, however, that the name "Facility" now appears on all documents his company provides to its clients.

3.1.4 David Anthony

Mr. David Anthony, President and CEO of Insurance Corporation of Newfoundland (ICON), an insurance company and a servicing carrier for Facility was called and gave evidence on the role of a servicing carrier in the automobile insurance structure of Newfoundland and Labrador. Mr. Anthony is also President and CEO of Anthony Insurance Incorporated, an insurance broker. Mr. Anthony has been in the business of insurance for 30 years and his company has existed since 1962. He is a member of and has served on the executive of several industry associations and organizations.

Presently, ICON sells insurance through Anthony Insurance, its only broker, which is exclusive to ICON. Mr. Anthony stated as a servicing carrier for Facility, ICON has contracts with eight brokers and that if there was an opportunity for Anthony Insurance to contract with other insurers it would do so.

In respect of Facility business Mr. Anthony explained that ICON supplies Facility underwriting manuals and application forms to its brokers. The applications bear the name “Facility Association”.

ICON, the servicing carrier, does not make any underwriting decisions regarding who goes in or out of Facility. The application, when completed by the broker is forwarded to ICON who audits it for correctness and obtains a driver abstract from Motor Registration and a claims history from Auto Plus, a service provided by the Insurers Advisory Organization. If the application is correct

and the driving record and claims history are in accordance with the information supplied on the application a policy is issued through the broker. At the same time ICON supplies the broker with any brochures or other information the customer should be aware of.

Mr. Anthony testified that at month end a list of written policies is sent to each broker showing its Facility activity for the previous month. The list contains a summary of the premium amounts, commissions and taxes. The broker remits a cheque to ICON and it is deposited in a central clearing bank account. The funds are then transferred to Facility who manages the main Facility account and invests the funds on behalf of the members. In the event of a Facility claim ICON settles on behalf of Facility and issues a claim cheque.

Administratively, and for the purpose of recovering commissions and fees from the Facility business, reports are forwarded monthly and when approved by Facility a cheque is drawn by ICON on the Facility clearing house account. Facility forwards a participation report to its members monthly showing each members share of the total automobile insurance market for the previous month as well as the amount of Facility business written. At the end of the year, in accordance with the Plan of Operation approved by the Superintendent of Insurance, any surplus or deficit remaining in the Facility accounts after all claims, commissions, and expenses are paid out are distributed to, or assessed against, the members based on their share of the total automobile insurance market in Newfoundland and Labrador.

Mr. Anthony explained that the turnover of clients in Facility is in excess of 50 % and this adds to the cost of handling the business. His company regards Facility business as an opportunity to groom a relationship with a client so that when they move out of Facility they will continue to maintain their business with ICON and Anthony Insurance.

Regarding the decision as to who gets placed in Facility, Mr. Anthony stated that the brokers make that decision based on their interpretation of the underwriting guidelines of the insurers they represent. The broker is also cautious in ensuring that the risks they are proposing are distributed as evenly as possible among the insurers they represent so as to avoid loading high or low risk drivers on one particular insurer.

In relation to why drivers are placed in Facility, Mr. Anthony stated that it is unfortunate that the binder control register discussed at the last hearing and again during this proceeding has not been adopted for use in this province. He suggested it would be of value in future hearings if such a mechanism were put in place as it would lead to a more informed discussion on the type of driver being placed in Facility. In the meantime, he stated that a person gets placed in Facility for one or more reasons which the industry uses to assess the risk involved. Different underwriting guidelines exist among insurers and the criteria varies from company to company. He doubted, for example, that seniors get placed in Facility for reasons of age alone. He suggested that age may be a determining factor when combined with other reasons which may be as simple as the length of the relationship between the client and the company. Insurers strive to develop and maintain long-term business relationships with their clients since renewal business comes with lower administrative expense.

On the question of cross subsidization, Mr. Anthony stated that cross-subsidization does occur in that when setting rates for the general or regular market you start with an expected ROE, determine the anticipated expenses and calculate the required premiums. He testified that “If Facility rates in their own right aren’t adequate to cover the losses of Facility through the mechanism of picking up this loss, it gets transferred down to the general market, and then it becomes subsidized” (Transcript, Jan.15, p.10, ln 14 - 17). He explained that if the Facility business results in a surplus the reverse is achieved. Mr. Anthony agreed that over the past 17 years the regular market has benefitted by an amount equal to 2.5 % of the written premium in Facility ((Transcript Jan.15, p 11, ln 51).

The tight market conditions experienced over the recent past, according to Mr. Anthony, has caused insurers to become more selective in writing new business because of the increased possibility of incurring a loss. He stated that when these conditions exist “you tend to sort of turn the tap off until you get to where you are comfortable with the rate...” (Transcript, Jan. 15, p 12, ln 41) He described 2001 as the worst underwriting year most companies have ever had in Newfoundland and Labrador. As a result, he said, rates in the regular market have increased 30 % to 40 % over the last 24 months. He stated that you have to try very hard to protect the book of business you have and that translates into increased rates and tightening the underwriting guidelines resulting in an increased population in Facility and the grey market.

In response to the Consumer Advocate's questions relating to the impact of claims costs on profits Mr. Anthony stated that ICON's claims in 2001 were 9% higher than in 2000 and in 2002 the increase was 12 % higher than in 2001. He added that these increases are mainly attributed to a higher incidence of soft tissue injuries.

On further questioning by the Consumer Advocate, Mr. Anthony said that because of recent rate increases the automobile insurance market in this province is beginning to stabilize after a period of four years without any increases in rates. This, he said, gives rise to another problem that approval of this Facility application will alleviate and that is the regular market rates have gotten too close to the Facility rates. When that situation exists, he explained, it is possible for high-risk drivers to be paying less for their insurance than drivers in the regular market.

Mr. Anthony disagreed with the Consumer Advocate's suggestion that a poor investment climate went together with poor profit opportunities. He stated that when the investment climate is good it makes it easier for the companies to attain ROE and, this, he suggested is ultimately of benefit to the consumer.

Mr. Anthony was asked if there was any mechanism in place to inform Motor Registration Division of cancellations of mandatory insurance. He explained that a system was in place some years ago but it was discontinued by Motor Registration when it was found that they had difficulty coping with the volume of cancellation notices. He described the experience as an "unmitigated disaster" (Transcript, Jan. 15, p 50, ln 75).

The Board believes that compilation of statistical information relating to insureds placed in Facility would provide useful information for future hearings and aid in the Board's regulatory supervision of the rates of Facility.

The Board will order Facility to commence gathering statistical information at the same time as the rates resulting from this Order are implemented and in the form, generally, as indicated in the attached Schedule 3 which may be amended by the Board from time to time.

3.2 Evidence of the Consumer Advocate's Witnesses

3.2.1 Winston Morris

Mr. Winston Morris, Superintendent of Insurance, testified that one of his responsibilities is to ensure that all automobile policies issued by insurers in the province contain the mandatory minimum coverages prescribed by the *Automobile Insurance Act, R.S.N., 1990 c. A-22*. He pointed out that it is an offence under the *Highway Traffic Act* to operate, or being the owner of a vehicle, to allow another person to operate any motor vehicle on the highway in this province unless there is in force with respect to the motor vehicle a valid policy of insurance in the form prescribed by the *Automobile Insurance Act* and approved by the Superintendent of Insurance.

Mr. Morris described the automobile insurance industry in the province and stated that Facility is required under section 103 of the *Insurance Companies Act* to provide information and financial statements to the Superintendent as may be required from time to time.

In commenting on “profits” generated by Facility’s operation in Newfoundland and Labrador and in other jurisdictions, Mr. Morris stated that it was his understanding, despite the fact that Facility’s rates make no provision for profit, their operations in this province have generated profits in most of the years it has operated here.

Counsel for Facility argued that “There may well be differing views as to the implications for profitability based on the present legislation, and whether that legislation, properly interpreted prohibits member companies from directing Facility Association to, from time to time, file for rates which include a profit component.” (Facility Argument, p.34). He went on to argue that in the present application and in all previous applications which have been filed by Facility, rates have been proposed on an intended breakeven basis and the revenue generated is only intended to cover the operating expenses of Facility and the direct expenses of its members.

The Consumer Advocate submitted that “...a zero profit provision is a requirement of the existing legislative scheme for automobile insurance in the province...” and “...that, under provincial law, consumers who are required to obtain auto insurance through the Facility Association mechanism are entitled to purchase that product at a price established by calculating the level of rates required to cover only the claims and expenses that will be incurred by Facility Association, with no profit provision.” (Consumer Advocate Argument, p. 18)

The proposed rates which are based on anticipated future events may or may not generate a profit for the members of Facility. That is a risk assumed by the industry.

The Board, in its Order AI 36 (2000 - 2001), ruled on the matter of Facility's surpluses and deficits and concluded that Facility is a non-profit association that operates as nothing more than the administrator of a risk-sharing automobile insurance pool.

The general consensus at the hearing was that the format of the financial statements, copies of which were filed by Facility in this hearing, is that there is an element of confusion among the parties respecting the day-to-day operations of Facility and its mandate to act as an administrator of the premiums collected by its member companies.

The Board will require Facility, in future rate revisions, to separate its financial statements reflecting on the one hand, its internal administrative revenues and expenses and, on the other, the results of its activities as manager of its members pooled funds.

3.2.2 Bruce Whiffen

Mr. Bruce Whiffen, Meteorological Support Manager with Environment Canada, was called as a witness by the Consumer Advocate to place on the record an analysis of the climatological data relating to the winter of 2000 - 2001 in the St. John's area. Mr. Whiffen concluded that during that winter St. John's broke its all-time record for total snowfall and that there was an abnormally high frequency of winter storms and record accumulation due to lower rainfall and colder temperatures than normal resulting in reduced snowmelt and consequent record snow depth.

3.2.3 Sgt. John Hill

Sgt. John Hill, Officer in Charge of the Traffic Enforcement Unit of the Royal Newfoundland Constabulary (RNC) at St. John's, testified that he maintains records of all motor vehicle accidents in the St. John's area. He concluded that during the winter of 2000 - 2001 there was an increase in the number of motor vehicle accidents reported to the RNC and that there was a correlation to be drawn between the poor driving conditions caused by the weather and the number of accidents.

Sgt. Hill testified under cross-examination that during 2001 there were 3901 accidents reported within the Royal Newfoundland Constabulary area of the North East Avalon and that 790 of those drivers were charged with operating a motor vehicle without having the mandatory insurance coverage in effect at the time of their involvement in the accident.

Sgt. Hill testified that he has noticed a decrease in traffic accidents following public announcements of traffic check points and other public awareness campaigns carried out by the Royal Newfoundland Constabulary.

3.2.4 Cluney Mercer

Mr. Cluney Mercer, Director of Highway Design and Construction, Department of Works, Services and Transportation gave evidence relating to the inventory of public roads in the province, the percentage of paved roads and the classification of roads.

3.2.5 Thomas Beckett

Mr. Thomas Beckett, Deputy Registrar of Motor Vehicles, Department of Government Services and Lands testified with respect to the number of drivers and vehicles that are licensed to operate on the highways in Newfoundland and Labrador. He stated that there are 226,292 private passenger vehicles, 89,598 commercial vehicles and approximately 350,000 drivers registered.

Under cross-examination, Mr. Beckett stated that there is no mechanism in place to enforce the mandatory insurance requirements except for those vehicles and drivers who are subjected to highway check points or are stopped for violations of the Highway Traffic Act.

3.2.6 Joan Marshall

Mrs. Joan Marshall, Acting Chairperson of the Seniors Resource Center Association of Newfoundland and Labrador, provided statistics on the population of senior citizens in the province and commented on the difficulties some seniors would encounter if Facility rates were allowed to increase. She agreed, however, that seniors responsibilities were similar to those of younger drivers and that there should be no price discrimination, based on age.

The evidence presented by Facility in response to the Consumer Advocate's Request For Information #2.0 and the evidence contained in Information # 4 filed during the hearing relating to the demographics of people in Facility discloses that for persons age 50 and over, a disproportionately smaller percentage are insured through Facility than in the regular market. Mr. Hickey and Mr. Anthony both stated that they had not seen any indication that people were being placed in Facility solely as a result of age.

3.3 Presentations by the Public

Three persons responded to the Board's invitation to the public to avail of the opportunity to make a presentation on Facility's rates.

3.3.1 Jennifer Power

Ms Jennifer Power, Senior Vice-President for the Atlantic Region of CGU Insurance Company of Canada, gave evidence which the Board dealt with elsewhere in this order in the section headed "The Automobile Insurance Industry in Newfoundland and Labrador".

3.3.2 Victoria Harnum

Ms Victoria Harnum, President, Advocates for Fair Auto Insurance, testified that the aim of her Association, which has been in place since 1999, is to educate the public on how insurance works. Ms Harnum stated that she is involved in research and education with the Association and has determined that "...a lot of drivers do not even know they are placed in this high risk group." (Transcript, Jan. 14, p. 16, ln 12).

It was Ms Harnum's opinion that the public has a right to know if they're in Facility and why they are there and "There has to be a clear written criteria as to how a driver becomes a high risk driver, how long they will be considered a high risk driver and what they need to do to get out. All we ask is for the insurance industry to be fair, accountable and open." (Transcript, Jan. 14, p. 16, ln 60)

Ms Harnum summarized her efforts to date to convince government, the auto insurance industry and the regulators to initiate reforms to make insurance more affordable and the industry more accountable.

3.3.3 Michael Kehoe

Mr. Michael Kehoe, Co-Chair of the Taxi Operators Network, described his experiences with the automobile insurance industry. Mr. Kehoe has been involved in the taxi business for about ten years as a driver, owner and operator. He described the Taxi Operators Network as an unincorporated facilitative agency of volunteers who are trying to improve the lot of the taxi industry. He stated that they work closely with Hospitality Newfoundland and Labrador, the Cruise Ship Authority, the Airport Authority, the taxi owners and the City of St. John's. He also described the Network's involvement with the Environmental Industries Association, the Conservation Corps of Newfoundland and Labrador, the Department of Works, Services and Transportation and the City of St. John's to reduce greenhouse gas emissions through a program called "Smart Taxis Encourage Environmental Respect". The Network also has a project with the Independent Living Resource Council to promote the accessibility of taxis for wheelchair passengers and has established a committee to focus on women in the taxi industry.

Mr. Kehoe testified that many of his Network's members and others in the taxi industry are barely making ends meet and that they are concerned about the increases being sought by Facility. He described the difficulty encountered by members of his industry in their efforts to get out of Facility once they are placed there. Mr. Kehoe stated that taxi fares are regulated by

the City of St. John's and the City also determines the number of taxis that can be operated and the regulations relating to driver conduct and vehicle condition.

3.4 The Actuarial Evidence

3.4.1 Rates - General

In proposing rates, Facility, on behalf of its members, seeks to recover claims and administrative costs but makes no provision for profit. After all premiums, claims costs, administrative costs, and interest are accounted for, any surplus is distributed among the member companies in accordance with a formula based on each company's portion of the total industry volume written. By the same formula, any deficit is assessed against the member companies (See Article V of the Plan of Operation approved by the Superintendent of Insurance). To the end of 2001, after 17 years of operation in Newfoundland and Labrador, Facility has a cumulative surplus of approximately 2.5% of total premiums written without an adjustment for inflation.

Rates in the regular market are established through a benchmark system which is subject to this Board's approval and supervision. The benchmark system has been in place since the Board was given responsibility to regulate automobile insurance rates, and is actuarially based on loss experience in the regular market. The system provides for a range of rates with minimum and maximum parameters. Within the prescribed range the Board grants approval without further actuarial justification. Insurers who wish to operate outside the prescribed range are required to actuarially justify the rates they propose to charge. The actuarial process employed to determine rates in the regular market is similar to the process in place for Facility rates. The differences to

be found in the rates of Facility and the regular market are primarily influenced by the differences in claims costs and the profit margin built into the regular market rates.

The Board, having considered the evidence and arguments submitted in support of and contrary to the Facility proposal, has the obligation, acting judicially, to determine which rates will best reflect the future cost of automobile insurance provided through the Facility mechanism.

3.4.2 Actuarial Judgement

The challenge in setting prospective rates is to reach a decision which reasonably anticipates the future. In reaching this determination the Board relies on the opinions of actuarial experts as to the reasonable expectation for the future based upon an analysis of past events. Given the amount of judgment involved in actuarial decisions it is not unusual to have differing expert opinions. When that occurs, as it does in this matter, the Board must decide what actuarial evidence best anticipates future realities and thus, future rates.

Mr. Pelly testified that the principal role of a pricing actuary is to use available experience from the past to build an expectation for the future with respect to the costs that relate to the coverages being provided under the automobile policy. (Transcript, Dec. 11, p.14, ln 17 - 24). He further stated that the structure of the rates is established through a system of multiplicative differentials which are factors that are used to explode the base rate out to a specific rate for an individual rating cell, be it for a territory, a class, a driving record, a liability limit, a particular rate group or deductible and that all of those rating cells represent dimensions of the classification process.

The differentials are then used to populate the various rating cells in each of the dimensions.

(Transcript, Dec.11, p.18, ln.57 - 66)

Actuarial analysis begins with estimates of the ultimate claims cost reserve which is made up of amounts already paid plus additional amounts that are predicted to be paid out in future. These reserves are then subjected to the application of loss development factors to account for the potential increase or decrease in claims cost over time. These loss development factors can be significant and result in substantial increases in incurred losses especially in bodily injury claims.

Following the application of loss development factors, trend factors are applied to the loss costs as a means of adjusting the historical data to make it relevant to a future rating period. Trend factors, which the actuary will use to build an understanding of the long-term patterns of change, can also have significant impact on future rates.

The Board heard evidence from two actuaries, Mr. Brian Pelly of Eckler Partners Ltd on behalf of the applicant and Ms. Paula Elliot of Mercer Risk, Financial and Insurance Consulting who was called as a witness by Board Counsel. While both actuaries recommended significant increases in Facility rates there was a wide difference of opinion as to the level of rates appropriate for Facility for the period commencing February 1, 2003. Both actuaries relied upon the data provided by the Insurance Bureau of Canada (IBC) and while the data was not audited it was found by both to be reliable.

The Board attaches a high degree of credibility to the analysis, projections and judgments employed by both Mr. Pelly and Ms. Elliot and accepts that where they differ in the results is a matter of interpretation of the data or a reflection of their actuarial judgment, or both. For example, whether to use annual or half-yearly data, five or ten years history, separate analysis of bodily injury and property damage or an unemployment variable is an individual actuarial judgment. The process being prospective precludes a final assessment of the judgment employed by the actuaries until future events become history. For the present application and its numerous components it remains for the Board to make its own judgments on the various proposals of Mr. Pelly and the recommendations of Ms. Elliot based on the evidence and arguments submitted at the hearing.

In selecting loss development factors Mr. Pelly stated you are trying to “decide on a balance between stability and responsiveness”. He went on to explain that “stability” is looking to the longer term, or taking a longer term view, and “responsiveness” is being more responsive to the latest experience. (Transcript,. Dec.12, p.2, ln 71 - 84)

In determining rates, Mr. Pelly explained that he predicts claims for each year of occurrence by applying loss development factors to existing reserves. These factors reflect inadequacies in the reserves as a result of both inaccurate reserving and unreported claims. The first step in the calculation of these loss development factors is the determination of the number of years of experience to be included in the analysis. Once the period is determined an actuary may exclude a historical data point within the period if it is determined to be an outlier. An outlier is a data

point which is not representative or characteristic of future expectations. An actuary may exercise his judgment to exclude an outlier from the calculation of data point averages in determining the particular loss development factor at each interval.

The differences in analytical and statistical methods used in the judgments of the two actuaries result in recommended rate levels that are substantially different as shown by the following table:

<u>Coverage</u>	<u>Facility Proposed Rate</u>	<u>Mercer Recommended Rates</u>
<u>Private Passenger</u>		
(average all territories combined)		
Third Party Liability	+51.7 %	+31.5 %
Accident Benefits	+13.8	+15.7
Uninsured Auto	+45.8	+43.1
Collision	- 5.5	- 10.1
Comprehensive	- 14.1	- 17.3
Specified Perils	- 20.5	- 34.4
Overall	+41.3 %	+24.4 %

Commercial *

(average)

Third Party Liability	+59.2 %	+38.4 %
Accident Benefits	- 12.3	- 13.0
Uninsured Auto	+216.7	+ 90.2
Collision	+20.4	+ 19.0
Comprehensive	- 18.4	- 18.9
Specified Perils	- 43.9	- 48.8
Overall	+48.3 %	+30.7 %

* commercial is the same for all areas of the Province

In his argument, (p.5 & 6) Counsel for Facility translated the percentage differences between the two actuarial opinions into dollar value differences based on 2001 on-level premium values of \$11,400,000 for private passenger and \$623,000 for commercial vehicles. Applying the percentage increases proposed by Mr. Pelly to these on-level premium values results in an increase of \$4,708,200 for private passenger and \$301,000 for commercial vehicles. A total increase of \$5,009,200. Using Ms. Elliot's recommended percentage increases, on the other hand, results in increases in on-level premiums of \$2,781,600 for private passenger and \$191,000 for commercial vehicles. A total increase of \$2,972,600. The difference is primarily made up of the difference between the two actuaries resulting from the method of selection of private passenger loss development factors.

3.4.3 Accident and Conviction Surcharge

Facility seeks approval of changes to the Accident/Conviction Surcharge Schedule which will result in increases to the surcharges. The new schedule will apply to all classes of private passenger and commercial vehicles as set out in the application.

The changes to the Accident/Conviction Surcharge Schedule are proposed as an integrated revenue neutral package with the Clean Driver Discount. The integrated package is proposed uniformly throughout all jurisdictions in which Facility operates and is intended to influence driver behaviour.

While the Board acknowledges that Facility seeks to have uniformity across all the jurisdictions in which it operates the Board will not base its decision solely on this objective. Facility must provide sufficient evidence and justification for all of its proposals.

Facility admits that this proposal is not actuarially justified but is rather judgementally based. Evidence was adduced to show that the surcharges are calculated as a percentage of the premium which means that where the premium is increased, as Facility has sought to do here, the absolute dollar amount of the surcharge will increase proportionally.

The Board finds that there was insufficient evidence to justify the changes to the Accident Conviction Surcharge Schedule proposed by Facility. The Board believes that the current surcharges are adequate to discourage poor driving and properly allocate loss costs.

The Board will not accept the proposal to change the Accident/Conviction Surcharge Schedule.

3.4.4 Private Passenger Loss Development Factors

There are two basic differences between Mr. Pelly's proposals and Ms. Elliot's recommendations in respect of their loss trend development methodologies. They are:

1. The selection and exclusion of outliers; and
2. The use of straight average versus weighted average.

3.4.4.1 Outliers

Mr. Pelly explained that his report was prepared on a “best estimate basis” (Transcript, Dec. 11, p.15, ln.23) seeking to fix indications at the middle of any range. He said that if a particular data point was not characteristic of what is expected to occur in a future period then it was appropriate to exclude it from the selection. He acknowledged that identifying an outlier is a judgmental process in which actuaries routinely engage and in his selection of loss development factors for private passenger bodily injury and accident benefits coverages he made a judgment to exclude certain data points he deemed to be “outliers”. All of the data points selected by Mr. Pelly were low.

Ms. Elliot disagreed with this approach and stated that she would only exclude a data point if it could be shown to have been a mistake or error. It is this difference of opinion in the selection of loss development factors for private passenger bodily injury coverage that constitutes 70 % of the difference between Mr. Pelly’s rate proposals and Ms. Elliot’s recommendations.

Ms. Elliot found the bodily injury loss development factors selected by Facility to be relatively high and was concerned that Facility did not provide its rationale for the years (data points) that it excluded from its selection. Ms Elliot also noted that in each case where Facility did not select the five-year average, it selected an average that excludes the year(s) with the lowest development factor which has the effect of increasing the average loss development factor which, in turn, results in a correspondingly higher rate level indication. The factors selected by Facility were primarily based on its loss development experience in Newfoundland and Labrador

as published in the Facility 2001 AIX development exhibits compiled and published by the Insurance Bureau of Canada. For those coverages where the Newfoundland and Labrador data was not deemed to be sufficiently credible Facility used its loss development experience in the Atlantic region and the industry overall.

For collision and comprehensive coverages Facility selected loss development factors equal to the average of the factors that had been experienced over the last five years which Ms. Elliot found to be reasonable.

The Board is not satisfied that the applicant has provided sound reasons for the identification and elimination of certain low data points in the development of the loss trends for private passenger bodily injury and accident benefits coverages. The Board finds the recommendation of Ms. Elliot to be more reasonable and balanced than the approach taken by Facility.

The Board will not accept the private passenger bodily injury and accident benefits loss development factors proposed by Facility and will require Facility to develop loss development factors without the exclusion any data points.

3.4.4.2 Average

As pointed out by the Consumer Advocate in argument (Consumer Advocate written argument p.30) Mr. Pelly used the straight or arithmetic average of the factors experienced over the previous five years of data. Ms. Elliot on the other hand recommended the use of a weighted

average which, she claimed, would give greater emphasis to the most recent loss experience and proportionally lesser weight to the older experience. Both actuaries acknowledged that either approach is actuarially acceptable.

The Board will accept the arithmetic average employed by Mr. Pelly.

3.4.5 Private Passenger Trend Selection

Following the development of historical loss costs by accident year to their anticipated ultimate value a trend factor is applied to determine how costs are likely to change in the future policy period. There are a number of issues to be determined in the calculation of loss trend.

3.4.6 Number of Years of Historical Data

The number of years of historical data to be used determines the pattern of change over time. Ms. Elliot recommends the use of a ten year period for the analysis of bodily injury trend, a ten year period for the analysis of property damage coverages severity trend and a five year period for the analysis of property damage coverages frequency trend. The periods adopted by Mr. Pelly in developing loss trend vary from coverage to coverage and extend back in the case of severity as far as 1984 for certain property coverages. The Consumer Advocate argued that either approach is an acceptable actuarial practice (Consumer Advocate written argument p.32) but he favours the approach adopted by Ms. Elliot which he describes as straight forward and consistent and more responsive to recent data. Mr. Pelly testified that the use of periods of inadequate duration exposes the risk of very significant shifts and fluctuations moving from one year's analysis to the

next. One of the methods of measuring the adequacy of a regression is the use of statistical tests which he pointed out resulted in his model showing superior results to Ms. Elliot's model in every case examined.

The Board will accept the number of years of historical data adopted by Mr. Pelly for the development of loss costs by accident year and believes their adoption will reduce the risk in moving from one year's data to the next.

3.4.7 Private Passenger Unemployment Variable

Mr. Pelly used an unemployment variable as a surrogate to determine if a correlation exists between an economic cycle and claims experience. He testified that "...every coverage for which we have to do a trending estimate, we do test the statistical significance of including an unemployment variable to capture the influence of the economic cycle" (Transcript, Dec. 11, p 29, ln 64) He believed there was an intuitive explanation and justification for the use of that variable in the analysis of certain coverages. He suggested that in times of high unemployment drivers may use their vehicles less frequently resulting in a correspondingly lower frequency of property damage. He explained that the unemployment variable is not statistically significant for most coverages but when tested in developing property damage frequencies for private passenger trend in this instance he found it "...gave us a pattern of change in the fitted curve..." (Transcript, Dec. 11, p 29, ln 71).

Ms. Elliot objected to the use of the unemployment variable and stated at page 16 of her report that its effect is rather dramatic. She explained that the decline in the unemployment rate variable has the effect of increasing the estimated frequency trend, and as a result increases the indicated rate level. She also did not recommend the use of the unemployment variable in this application because "...it's dependant upon a forecast provided by another source, and in this case, the Conference Board of Canada, and if that source is perhaps wrong in its projections, then the estimate of the future costs will be wrong, and this is a big unknown to enter into the model..." (Transcript, Dec. 19, p 3, ln 26).

The Consumer Advocate argued that the unemployment variable should not be considered by the Board in this application because unemployment rates are at historically low levels in the St. John's area and at chronic high levels in other areas of the province adding a degree of uncertainty and unreliability to the calculation of loss trends.

Counsel for Facility, in his final submission, argued that the whole of the actuarial process is itself nothing more than a forecasting exercise and that Ms. Elliot's objection to the use of the unemployment variable is weakened by the fact that she used the same approach in her reports to the Board concerning the 2002 and 2003 benchmark rates for the regular market.

The Board is satisfied that the use of the unemployment variable is reasonable given that it is an acceptable actuarial practice which was verified as being relevant by Mr. Pelly's statistical analysis.

The Board will accept the use of an unemployment variable as proposed by Facility as proposed by Facility.

3.4.8 Private Passenger Annual and Half-Year Data

In discussing the use of annual versus half-year data Mr. Pelly suggests that the small number of vehicles in the total insured fleet in Newfoundland and Labrador makes it impractical to use half-year data in constructing regression models. He suggests that if half-year data is used it becomes necessary to incorporate seasonality as an added feature into the model. This creates a seesaw pattern and requires more sophistication in the model. He also believes this adds "noise" and uncertainty, raises concerns with the credibility or reliability standard, and causes the model to become less stable. He stated that in the Ontario market he would use half-year data because the size of the market justifies it but in Newfoundland and Labrador, because of the relatively small market size, the effect of using half-year data is to add distortion and randomness in the way the experience unfolds. (Transcript, Dec. 12, p.10, ln.6 - 11)

Ms. Elliot believes that the use of half-year data adds a degree of precision to the trend analysis and permits the data to be scrutinized more closely to determine if aberrations have occurred that should be considered for the purpose of projecting future trends. She confirmed, however, that the use of half-year data does not in and of itself have an effect on the actual findings for the annual trend rates.

The Consumer Advocate supported the use of half-year data and suggested that the Board must decide if the half-year data permits a more in-depth and precise analysis thus producing a more responsive and accurate projection of the trend.

The Board is satisfied that the use of half-year data in this relatively small market would raise the issue of uncertainty in the projected results and have little impact on the private passenger rates proposed by the applicant.

The Board will accept the use of annual data.

3.4.9 Private Passenger Comprehensive Trend Frequency

The flat frequency trend for comprehensive coverage as determined by Mr. Pelly and depicted in Exhibit BGP #3 - 24 results from his judgment that the generally downward frequency trend which is evident for the period 1990 to 1996 will not continue to decline indefinitely. He points out that the trend frequency is essentially flat from 1996 to 2001 and that this suggests a bottom to the earlier declining trend. As argued by Facility Counsel, Mr. Pelly could not fathom continuing a projection of declining frequencies beyond historical levels, lower than ever recorded in the history of this coverage, when the recent six years discloses a general flatness.

Ms. Elliot suggests that Mr. Pelly's approach is unreasonable and she supports the regression analysis based on the period 1990 to 2001 which indicates a negative trend for the future period despite the relatively flat trend resulting from an analysis of the period 1996 to 2001.

The Consumer Advocate argued Mr. Pelly's judgmental selection of a flat frequency trend is unsupported by the evidence and makes no sense, intuitively. He submits that on the evidence the Board should not endorse this selection decision as it completely ignores the data and results in an increase in rates.

The Board believes that applying actuarial judgment to historical trend analysis requires something more than the use of the statistics, regressions and projections based purely on the data. The role of the actuary is broader and when attempting to establish rates for the future requires the data to be interpreted with a degree of common sense and a keen awareness of present and future economic and social events.

The Board will accept Mr. Pelly's selection of a flat frequency trend as reasonable in this instance.

3.4.10 Private Passenger Unallocated Loss Adjustment Expense

In respect of the unallocated loss adjustment expense (ULAE) factor of 1.093 used by Mr. Pelly it is noted that a more current factor became available prior to the start of the hearing. The Board is not convinced that the new factor of 1.082 indicates a sufficient difference to require the re-working of the relevant calculations. The Board believes that the data available to the applicant at the time the application was prepared is better left intact in respect of cut-off dates unless a significant adjustment would result from its use. Data becomes updated at various times during the year and the Board, for the purposes of this proceeding, does not think it to be efficient to

continue to incorporate more current data, the result of which may impede the process to the point that it becomes unfair to all of the parties and imposes an unreasonable delay in the process.

The Board will accept the Unallocated Loss Adjustment Expense factor for private passenger coverages used by the applicant and based on the data available at the time the application was filed.

3.4.11 Private Passenger All Perils and Deductibles

Facility sought approval to:

- (a) change the all perils premium calculation for private passenger to be 100% of the collision premium plus 100% of the comprehensive premium; and
- (b) to change the minimum private passenger deductibles to \$250 for collision and \$100 for comprehensive coverage, to be consistent with industry practice.

The Consumer Advocate recommended the approval of these proposals.

The Board will accept Facility's proposals to calculate the private passenger all perils premium to be 100% of the collision premium plus 100% of the comprehensive premium; and the change to set the minimum private passenger deductibles to \$250 for collision and \$100 for comprehensive coverage.

3.4.12 Private Passenger Credibility Standard

Mr. Pelly, in answer to a question from the Consumer Advocate focusing on credibility and whether or not to analyze bodily injury and property damage experience on a separate or combined basis, acknowledged that the separate analysis employed by Ms. Elliot has merit. For the purposes of this application, however, the two were combined. Mr. Pelly cautioned that to change to a separate analysis would require re-visiting the full credibility standard and re-assessing the inherent riskiness involved. He maintained that in order to split the third party liability into two factors, i.e. bodily injury and property damage, would require the building up, over time, of some of the values that are used for the balance of credibility. (Transcript, Dec. 13, p.30, ln 50 - 67). He agreed to study the use of a bifurcated approach as recommended by Ms. Elliot.

The Board will accept a bifurcated approach in determining a credibility standard for bodily injury and property damage data but will not require its use in the present application. In preparing future rate revisions, Facility will be required to separate the bodily injury and property damage data for the purposes of calculating the credibility standard.

3.4.13 Private Passenger CLEAR (Canadian Loss Experience Automobile Rating)

CLEAR is the rating system currently used by many insurers to rate own damages coverages of collision, comprehensive and specified perils as well as accident benefits. It replaces the MSRP (Manufacturer's Suggested Retail Price) system which only considered the new vehicle purchase price as the determining criteria for rate group assignment. CLEAR considers a number of

factors such as new vehicle price, damageability and susceptibility to theft to name a few in determining the appropriate rate group category. Under CLEAR a vehicle can have one rate group designation for collision and a different one for comprehensive or specified perils.

Facility proposes to implement CLEAR on a combined rate group basis as promulgated by the Vehicle Information Centre of Canada (VICC), with one rate group assignment per vehicle applicable to collision, comprehensive and specified perils coverages. Accident benefits will not be subject to rating by rate group.

In preparing the filing Facility used the services of VICC to assess the policyholder impact of the changes, based on the December 2000 policy in-force files prepared by the Newfoundland and Labrador servicing carriers. Based on these in-force files, VICC's dislocation analysis determined the distribution across the vehicle population of the magnitude of the premium changes resulting from a revenue-neutral implementation of combined CLEAR as described above. The revenue-neutral objective means that, overall, the individual premium increases resulting from this change approximately offsets the individual premium decreases, all other things being equal. Based on this analysis no steps were deemed necessary by Facility to mitigate excessive policy holder dislocation, and accordingly, Facility proposed full implementation with no capping or phase-in procedures.

Off-balance factors were provided by VICC to apply to the current system's physical damage base premiums to restate them to a combined CLEAR basis while accounting for the rate level impact of the change to VICC CLEAR rate group differentials, all in a manner consistent with

the revenue-neutral objective. For this purpose, the off-balance factor for comprehensive is assumed to apply to specified perils.

CLEAR has been approved for use by Facility in all other jurisdictions in Canada and has been adopted for use in the regular market in Newfoundland and Labrador. The industry in some jurisdictions has not carried out full implementation.

Ms. Elliot found the proposed introduction of CLEAR rate groups by Facility to be reasonable. However, she recommended a more current in-force file, the imposition of caps and a phase-in of the proposed changes. Mr. Pelly disagreed with these proposals stating that the cost would outweigh the benefits and that the number of vehicles subject to extreme dislocation would only approximate 25, or one-third of one percent of the Facility market.

Mr. Anthony was of the view that CLEAR was a very fair mechanism and since it did not apply to third party liability coverage the impact on the Facility market would be low.

The Consumer Advocate recommended that the implementation of CLEAR be subject to the completion of a more recent policy in-force file.

The Board believes that implementation of CLEAR will result in standardization of practices and procedures as well as statistical information gathering for the Facility market. The arguments of the Consumer Advocate to complete a more current in-force file and Ms. Elliot to impose caps and phase in the implementation of CLEAR are not persuasive in the circumstances as the Board

finds both suggestions would have little significant benefit for the consumer and would impose unnecessary costs.

The Board will accept Facility's proposal to implement CLEAR.

3.4.14 Clean Driver Discount

Facility seeks approval for an accident/conviction free discount (Clean Driver Discount), which discount will apply to Private Passenger Vehicles only. The proposed discount is 10% and is available where:

- 1) The regular or frequent driver of the vehicle has had no convictions in the preceding thirty-six months. If this driver has had either a minor, major, or serious conviction he or she will not be eligible for this discount; and
- 2) Where the vehicle has not been assigned any at fault accident in the preceding 60 months.

Facility has proposed the Clean Driver Discount together with the change to the Accident/Conviction Surcharge schedule. Mr. Pelly testified that this package is intended to influence driver behaviour and will bring uniformity across all the jurisdictions where Facility operates. Facility has made or will make application to implement the same changes across all jurisdictions. The Discount has been approved in Ontario and New Brunswick, however, in New Brunswick it was approved at 15% rather than the 10% sought by Facility.

Facility admits that this discount is not actuarially justified but rather is a judgmental proposal which is intended to influence driver behaviour. While the Clean Driver Discount is not actuarially justified it has been subjected to off balance factors to ensure that it is revenue

neutral. That is, the premium reductions which will result from the introduction of the discount will be recovered by other changes to rates, including the increase in rates for those who would have been subject to the amended Accident Conviction Surcharge. Since the two proposals have been presented as a revenue neutral package any changes to the proposed Clean Driver Discount without other changes may have an impact on the overall revenue of Facility.

Both Facility and the Consumer Advocate argued that the introduction of a Clean Driver Discount may have behaviour modification effects. The Board believes that good driving should be encouraged and poor driving discouraged. However, the Board does not accept the submissions of either the Consumer Advocate or Facility with respect to the amount of the discount.

The Consumer Advocate suggests that the Clean Driver Discount should be set at five percent rather than the ten percent proposed by Facility. Facility has sought an increase in rates based on the anticipated loss costs. However, it may be argued that good drivers are not contributing proportionally to these increasing loss costs and therefore should not be subject to the same premium changes. The Board finds that a discount of ten percent is insufficient to recognize this correlation and will therefore establish a Clean Driver Discount of 20%. The Board believes that a 20% Clean Driver Discount will further encourage good driving habits.

The Board acknowledges that one of the objectives of Facility is to have uniformity across jurisdictions. However, the Board notes that the New Brunswick Board has recently required that

Facility implement a discount of 15% while Ontario approved a 10% discount. Therefore Facility must deal with the administration associated with a lack of uniformity in discounts in any event

The Board acknowledges a larger Clean Driver Discount will result in lower premiums than has been estimated for those that are eligible for the discount. This may cause Facility to collect less revenue than was estimated. However, the Board notes that evidence presented on rate level impacts was limited to a sample distribution taken from only one servicing carrier's portfolio of Facility risks.

Based on the evidence the Board is not satisfied that the rate level impacts would be significant and therefore will not require further rate adjustments to reflect the 20 percent Clean Driver Discount. However, in Facility's next filing any proposed changes to discounts or surcharges will be required to be supported by particulars of the premium effects.

The Board will accept a Clean Driver Discount but will fix it at 20% subject to the eligibility criteria set out in the application.

3.4.15 Private Passenger Class and Driving Record Differentials

The differentials proposed by the Applicant to establish relationships between the various classes is intended to address the problem of regular market rates becoming competitive with Facility rates. Mr. Pelly stated that the new differentials will allow for a maximum of plus or minus 5 % as an initial indication for all mature classes and for all driving records except for younger driver classes which are proposed to be capped at plus or minus 7.5%, subject to further refinement.

Ms. Elliot found the method adopted by Facility to implement this change to be reasonable and the Consumer Advocate recommended its approval.

The Board will accept the private passenger class and driving record differentials as proposed by the Applicant.

3.4.16 Commercial General

The commercial component of Facility represents 5.2 % of the total Facility market segment.

The

total on-level premiums for accident year 2001 was \$12, 023,000 of which \$623,000 was for commercial vehicles. The rate increase proposed by Facility to the commercial premium is 48.3 %, or \$301,000. The Board's actuary recommended an increase of \$191,000, or 30.7 %, a difference of \$110,000. A summary of the rate revisions by category is attached as Schedule 1. As with the private passenger rate increases, there is a wide difference of opinion between the two actuaries with respect to the appropriate level of commercial rate increase required for Facility for the period commencing February 1, 2003. Both actuaries relied upon the data provided by the IBC and while the data was not audited it was found by both to be reasonable.

The differences in the approaches taken by the two actuaries within the commercial segment are mainly in respect of their impact on loss trend rates. It is noted that because of the relatively small on-level premium in the commercial segment of the Facility market the total value of all of the differences are less than the value associated with even the most minor difference in the private passenger segment.

3.4.17 Commercial Loss Development Factors

In his evidence, Mr. Pelly, on behalf of Facility, provided a number of charts to illustrate his analysis of the loss development factors used to project commercial rates. The selections and exclusions adopted by him appear to be logical and reasonable in the circumstances. Ms. Elliot had a difference of opinion regarding the outliers excluded by Mr. Pelly but maintained her position that she was not prepared to exclude outliers from her development of loss development factors.

The exclusion of outliers for the purpose of loss development is at the discretion of the actuary and is an accepted approach in actuarial practice based on the premise that data which is clearly unrepresentative of past experience should not be relied upon to project future loss costs.

The Board will accept Mr. Pelly's analysis of the commercial loss development factors as fair and representative of future claims costs.

3.4.18 Commercial Trend Selection

Following the development of historical loss costs by accident year to their anticipated ultimate value a trend factor is applied to determine how costs are likely to change in the future policy period. There are a number of issues to be determined in the calculation of loss trend.

3.4.19 Commercial Annual and Half-Year Data and Seasonality

A major difference between the two approaches arises as a result of the use of annual data by Mr. Pelly and his opinion, based on his regression analysis, that the winter of 2000 - 2001 was not unusual. Ms. Elliot disagreed, and testified that the winter of 2000 - 2001 produced inflated statistics and using half-year data demonstrates the implication of seasonality resulting in her exclusion of that experience from her analysis. She did not, however, carry forward her exclusions into the trend analysis for other commercial coverages including third party liability physical damage, accident benefits or collision coverages.

Mr. Pelly stated that there was a lack of support for the theory that the winter of 2000 - 2001 was unusual since it did not impact in a similar way on the private passenger statistics and, Ms. Elliot did not recommend an adjustment in the private passenger trend to reflect that fact.

Furthermore, Facility argued that since the evidence of Sgt. John Hill did not include any separate analysis of accidents involving private passenger and commercial vehicles during that period the impact on the commercial vehicle segment could not be confirmed.

It was also argued by Facility that loss costs, when analyzed in half-year components, did not match the half year periods when driving conditions are most severe.

The Consumer Advocate argued that the Board should accept the approach used by Ms. Elliot and exclude the half year data points she recommended based on the winter of 2000 - 2001 being the worst in history for this area.

The Board has rejected the use of half-yearly data in respect of private passenger trend analysis for the reasons put forward by Mr. Pelly in that it raises the issue of uncertainty in this relatively small market and adds randomness and distortion to the data. For the same reasons the use of half-yearly data in the commercial trend analysis is rejected.

The Board will accept the analysis and results based on the use of the annual data obtained by Mr. Pelly in establishing the projections applicable to the calculation of rates for commercial bodily injury, property damage and collision.

3.4.20 Commercial Flat Frequency Trend

In his analysis of commercial property damage and collision Mr. Pelly chose to adopt a flat frequency trend based on a pattern shift he recognized occurring in the recent 6 and 8 year periods, respectively. It was his judgment that this was an indication that different trends were developing and the earlier downward trends in both models had bottomed out. He also testified that his regression model actually suggested an increasing frequency for collision but he was not ready to embrace the forecasting of an increase.

As in the section dealing with private passenger, the Board agrees that the recent 6 to 8 year history indicates a cessation of the earlier downward trend.

The Board will accept the flat frequency trend adopted by Mr. Pelly to project commercial property damage and collision rates.

3.4.21 Commercial Unallocated Loss Adjustment Expense

The difference of opinion related to this particular expense is in respect of the more current data becoming available after the Facility application was filed. For the same reasons as contained in the private passenger section of this order the Board does not intend to require the applicant to use the updated factor.

The Board will accept the Unallocated Loss Adjustment Expense factor for commercial coverages used by the applicant and based on the data available at the time the application was filed.

3.4.22 Commercial Uninsured Automobile Coverage

The evidence presented by Mr. Pelly in support of the increased rate of \$19 for this coverage indicated that he relied on the New Brunswick experience since the Newfoundland and Labrador experience was inadequate and unstable. The Consumer Advocate opposed the rate increase for this coverage and suggested the Board should not set the rate in excess of rate level need.

The Board in past benchmarks has used alternate sources of data, in particular in relation to changes to accident benefits coverage, when Newfoundland data has been insufficient or does not adequately reflect new benefits payments. The use of New Brunswick data therefore, in respect to the commercial uninsured motorist coverage, is acceptable until the Newfoundland data is sufficient to stand on its own or to be used on a weighted basis with the New Brunswick data.

The Board will accept the rate of \$19 for commercial uninsured automobile coverage.

3.4.23 Commercial Specified Perils

The Applicant proposed that specified perils base premiums be set by reference to the proposed comprehensive base premiums. There were no contrary viewpoints expressed by other parties.

The Board will accept the establishment of the specified perils base premiums by reference to the proposed comprehensive base premiums.

3.4.24 Commercial All Perils

Facility proposes to revise the all perils premium calculation to be 100 % of the collision premium and 100 % of the comprehensive premium. The current proportions are 100 % of the collision premium and 95 % of the comprehensive premium. Ms. Elliot found this proposal to be reasonable and the Consumer Advocate did not oppose its approval.

The Board will accept the Applicant's proposal to revise the commercial all perils premium calculation to be 100 % of the collision premium and 100 % of the comprehensive premium.

3.4.25 Commercial Specified Perils Rate Group Differentials

Facility proposes to adopt comprehensive rate group differential factors for specified perils to prevent the specified perils premiums from growing larger than the comprehensive premiums at the higher rate group levels. The Consumer Advocate recommended approval of the proposal.

The Board will accept Facility's proposal to adopt the commercial comprehensive rate group differential factors for commercial specified perils.

3.4.26 Commercial Deductibles

Facility proposed to increase the minimum deductible to \$100 for comprehensive and specified perils and to change the base deductible to \$500 for collision, comprehensive and specified perils. Mr. Pelly indicated that this change would have no impact on the rates and was merely a housekeeping change. The Consumer Advocate recommended approval of this change.

The Board will accept the change of the minimum deductible to \$100 for commercial comprehensive and specified perils and to change the base deductible to \$500 for commercial collision, comprehensive and specified perils.

3.4.27 Commercial Accident Benefits Coverage

Commercial accident benefits coverage is rated at the same level across all three rating territories. Mr. Pelly stated, however, that, subject to the regular market's adoption of a territorial rate for accident benefits there is a strong indication that the next Facility application for rate revisions will address the accident benefits on a territorial basis with a capping mechanism to mitigate the dislocation that may occur. Accident benefits coverage is not mandatory in the province and represents a very small portion of the written premium.

The Board will accept the revisions to commercial accident benefits coverages as proposed.

4.0 Implementation Issues

Both Mr. Pelly and Mr. Simpson testified during the hearing that should the Board not accept the filing in its entirety as submitted, Facility will require 105 days from the date of the order of the Board to implement any revisions to the rates directed by the Board.

In addition, Facility asked that the rates be recast for trend to reflect the delay in implementation of new rates beyond the original date contemplated in the filing. Ms. Elliot acknowledged that the recasting of the rates would be reasonable in the circumstances. The Consumer Advocate, in his argument, agreed that any rate approval should reflect the impact of an implementation date later than originally contemplated by the applicant.

It is anticipated that the earliest possible effective date which can now be achieved will be August 1, 2003, bearing in mind that the revisions to the filing required herein will need to be reviewed by the Board's actuarial consultants prior to final approval.

The Board will allow Facility to recast the proposed rates to reflect the impact of the earliest possible implementation date it can reasonably achieve, having regard for the additional time that will be necessary to have the revisions, arising from this Order, reviewed by the Board's Consulting Actuary and a subsequent Order issued.

4.1 Costs

The Consumer Advocate was appointed by the Lieutenant Governor in Council on January 6, 2003. While the appointment was said to take effect on November 13, 2002, the amendment to the Automobile Insurance Act under which the appointment was made was not passed until December 16, 2003. Therefore it may be argued that the Consumer Advocate was not officially appointed until December 16, 2003.

Counsel for Facility Association argued that because the appointment was not filed pursuant to the *Statutes and Subordinate Legislation Act* RSN 1990, c.S-27 it was not a valid appointment. Irrespective of the effective date of the appointment of the Consumer Advocate pursuant to the *Automobile Insurance Act*, Mr. O'Flaherty was granted intervenor status in this matter on November 22, 2002 with the consent of Facility as set out in A.I. No. 30 (2002-2003). Therefore the Board finds that he was a party to the action and therefore is entitled to seek an award of costs.

The Board has the discretion under subsection 90(1) of the Public Utilities Act to award costs to any party. The Consumer Advocate has asked the Board for an order of costs. The Board finds that the Consumer Advocate's participation in this hearing was valuable and contributed to a full examination of the issues and therefore that he is entitled to reimbursement of his costs.

The Board will make an award of costs to the Consumer Advocate, excluding those fees and disbursements which have been or are subject to reimbursement pursuant to the amendments to the *Automobile Insurance Act*.

The Board will fix an amount for those costs upon being presented with an invoice of the fees and disbursements of the Consumer Advocate, excluding the amount that has been claimed or paid pursuant to the terms of the *Automobile Insurance Act*.

In addition, the Board, pursuant to section 90(2) of the *Public Utilities Act*, will require Facility to pay all the expenses of the Board arising from or in any way connected with this matter, including all the fees and expenses of the Consumer Advocate incurred pursuant to the *Automobile Insurance Act*.

5.0 The Order

IT IS THEREFORE ORDERED THAT:

- 1. Facility shall file for the Board's review, revised private passenger rates consistent with its application, incorporating the following:**
 - a. The loss development factors used in deriving the rates for private passenger bodily injury and accident benefits shall be established:**
 - i without the exclusion of any data points;**
 - ii using the proposed five year arithmetic average.**
 - b. The loss trends used in deriving the rates for private passenger coverages shall be calculated as proposed by Facility in its application using:**
 - i the number of years of historical data included in the regression;**
 - ii annual accident year data rather than accident half-year data;**
 - iii the unemployment variable in applying the regression model for collision and property damage tort-frequency;**
 - iv a frequency trend of zero for comprehensive .**
 - (c) The unallocated loss adjustment expense factor proposed by Facility in its application shall be used in determining the rates.**
 - d. The all perils premium shall equal 100% of the collision premium plus 100% of the comprehensive premium as proposed.**

- e. **Minimum deductibles shall be \$250 for collision and \$100 for comprehensive coverage, as proposed.**
 - f. **CLEAR rate groups shall be introduced on a single combined rate group basis applicable to collision, comprehensive, and specified perils as proposed.**
 - g. **A Clean Driver Discount of twenty percent (20%) shall be offered subject to the proposed eligibility criteria.**
 - h. **The class and driving record differentials shall be implemented as proposed.**
- 2. All other private passenger rates not affected by the foregoing are to be resubmitted as originally filed**
- 3. Facility shall file for the Board's review, commercial rates consistent with its application, based on the following:**
- a. **The loss development factors used in deriving the rates shall be established as proposed by Facility;**
 - b. **The loss trends used in deriving the rates shall be calculated as proposed by Facility;**

- c. **The unallocated loss adjustment expense factor proposed by Facility in its application shall be used in determining the rates;**
- d. **The rate for uninsured automobile at nineteen dollars (\$19.00), is accepted as proposed by Facility;**
- e. **Specified perils base premiums shall be established by reference to the proposed commercial comprehensive base premiums, as proposed by Facility;**
- f. **All perils premium calculation shall be revised to equal the sum of 100% of the collision premium plus 100 % of the comprehensive premium, as proposed by Facility;**
- g. **Comprehensive rate group differential factors shall be adopted for specified perils, as proposed;**
- h. **The minimum deductible for comprehensive and specified perils shall be one hundred dollars (\$100.00), as proposed by Facility;**
- i. **The base deductible for collision, comprehensive and specified perils shall be changed to five hundred dollars (\$500.00), as proposed by Facility;**
- j. **The accident benefits coverages shall be revised as proposed by Facility.**

4. The trend factors for all coverages shall be recast to reflect the impact of the later implementation date on the trend factors for all coverages.
5. The implementation date of the rates shall be no earlier than August 1, 2003.
6. The proposed revisions to the Accident/Conviction Surcharge Schedule for all coverages are denied.
7. Upon the implementation of the revised rates flowing from this Order, Facility shall cause to be collected information as detailed in Schedule 3 to this Order, which Schedule may be amended by the Board from time to time.
8. In its next rate revision, Facility shall:
 - i. provide financial statements which show its internal administrative revenues and expenses independent of the results of its activities as manager of its members pooled funds;
 - ii. separate the bodily injury and property damage experience data for the purposes of calculating its rate level need.
9. Facility shall pay the costs of the Consumer Advocate in an amount to be fixed by the Board, which will exclude those fees and disbursements which have been or are subject to being reimbursed pursuant to the amendments to the *Automobile Insurance Act*.

10. The Consumer Advocate shall provide the Board with a detailed statement of his costs by the 30th of April, 2003.

11. Facility shall pay all the expenses of the Board arising from or in any way connected with this matter, including all the fees and expenses of the Consumer Advocate incurred pursuant to the *Automobile Insurance Act*.

Dated at St. John's, Newfoundland and Labrador, this 9th. day of April 2003.

G. Fred Saunders,
Presiding Chair

Gerard Martin, Q.C.,
Commissioner.

Don R. Powell,
Commissioner.

G. Cheryl Blundon,
Board Secretary.

Schedule 1

Summary of Rate Revisions

Facility Association

Summary of Proposed Rate Changes

Filed 6 September, 2002

Private Passenger Proposed Average Rate Level Changes							
Rating Territory	Liability	Accident Benefits	Uninsured Auto	Collision	Comprehensive	Specified Perils	All Coverages Combined
1 (004)	+60.5%	+13.8%	+45.8%	-1.3%	-12.1%	-22.8%	+51.6%
2 (005, 007)	+38.4%	+13.8%	+45.8%	-12.0%	-19.7%	-20.6%	+28.1%
3 (006)	+54.0%	+13.8%	+45.8%	+5.4%	-1.8%	-4.1%	+37.7%
All	+51.7%	+13.8%	+45.8%	-5.5%	-14.1%	-20.5%	+41.3%

Commercial Proposed Average Rate Level Changes							
Rating Territory	Liability	Accident Benefits	Uninsured Auto	Collision	Comprehensive	Specified Perils	All Coverages Combined
1 (004)	+59.2%	-12.3%	+216.7%	+20.4%	-18.4%	-43.9%	+48.3%
2 (005, 007)	+59.2%	-12.3%	+216.7%	+20.4%	-18.4%	-43.9%	+48.3%
3 (006)	+59.2%	-12.3%	+216.7%	+20.4%	-18.4%	-43.9%	+48.3%
All	+59.2%	-12.3%	+216.7%	+20.4%	-18.4%	-43.9%	+48.3%

Schedule 2

Facility Association Plan of Operations

FACILITY ASSOCIATION

Plan of Operation

Revised June 2002

Note: This copy of the Plan of Operation incorporates all amendments made since the Plan of Operation was last consolidated in 1995. Facility Association Members and Insurance Regulators, in all jurisdictions where Facility Association operates, have approved these amendments and they have been noted in past bulletins.

Regulatory approval is required for recent housekeeping amendments, such as the name change from IBC to IICC and the inclusion of the new territory Nunavut. These amendments will be included in the next Mail Vote Bulletin and will be incorporated in the next consolidated version.

FACILITY ASSOCIATION

Plan of Operation

A. Articles of Association

B. Operating Principles

PART I - General

PART II - Servicing Carriers

PART III - Brokers

PART IV - Risk Sharing Pool

Appendices

Wherever appropriate herein the expression “broker” shall be deemed to include “brokerage”, “agent” and/or “agency”, the expression “brokerage” to include “agency” and the expression “his” to include “her”, “its” and/or “their”.

(Revised June 2002)

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ARTICLES OF ASSOCIATION

ARTICLE I – ORGANIZATION

1. The name of this organization shall be the “Facility Association” (hereinafter referred to in these Articles of Association and the Operating Principles as the “Association”). It shall have its central office in such place within Canada as the Board of Directors (hereinafter referred to in these Articles of Association and Operating Principles as the “Board”) may from time to time determine.
2. The fiscal year end of the Association shall be as determined from time to time by the Board.

ARTICLE II – OBJECTS AND POWERS

1. The object of the Association shall be to ensure the availability of automobile insurance for owners and licensed drivers of motor vehicles who may otherwise have difficulty obtaining such insurance.
2. The Association may operate in any Province or Territory in Canada (hereinafter referred to as “jurisdiction”) where the legislation so permits or requires.
3. Where permitted or required by legislation and authorized by resolution of the Board the Association may operate a plan in connection with claims arising with respect to uninsured or unidentified motorists.
4. Where permitted by legislation and authorized by a majority of members in a jurisdiction the Association may operate a risk sharing pool in such jurisdiction.

5.
 - (a) Where authorized by a majority of the votes of members in a jurisdiction and by resolution of the Board of Directors the Association shall operate a risk sharing pool or catastrophic claims fund to facilitate the due payment of statutory accident benefits to persons entitled thereto pursuant to the Ontario Insurance Act from a specified insolvent insurer that is subject to a winding-up order pursuant to the Winding-up Act R.S.C. 1985, c. W-10 as amended.
 - (b) Such pool or fund shall, as reasonably required by the insolvent insurer's liquidator, lend monies to the liquidator, or make guarantees to enable the liquidator to borrow monies, so as to ensure the prompt payment and administration of all such accident benefit claims.
 - (c) The Association may require that the administration of claims be undertaken by such member or members as proposed by the liquidator as the President and Chief Executive Officer may determine and may set such reasonable reporting requirements as the President and Chief Executive Officer may determine to be appropriate under the circumstances, following consultation with the liquidator.
6. The Association may establish, operate or participate in such programs, initiatives or activities and participate in such insurance industry programs, initiatives or activities as the Board may from time to time authorize in connection with the effective operation of the automobile insurance industry in a jurisdiction.

ARTICLE III – MEMBERSHIP

1. Every insurer licensed to write automobile liability insurance in any jurisdiction in which the Association is qualified to operate shall be eligible to be and remain a member of the Association and shall become a member by operation of law or by subscribing to these Articles of Association and the rules and directives adopted pursuant thereto.
2. Except as otherwise specifically provided, a group of insurers under either one ownership or common management shall constitute a single member for the purposes of these Articles of Association. A group of insurers under either one ownership or common management, but not both, may elect to be treated either as separate members or a single member for the purposes of termination of membership in the event such member discontinues writing automobile insurance in a jurisdiction.
3. In the event that an insurer is merged with another insurer or there is a consolidation of insurers, the continuing insurer shall receive and be responsible for the assessments of each insurer merged or consolidated until the proportionate share of each such merged or consolidated insurer as established by its writings prior to such merger or consolidation has been determined and paid; provided, however, that the continuing insurer may be relieved from such obligations if another insurer has agreed to assume such obligations in a manner satisfactory to the Board.
4. In the event a member discontinues writing automobile insurance in a jurisdiction, it shall continue to pay assessments until its proportionate share established by its writings prior to discontinuance of business has been determined or fixed by the Board and paid; provided, however, that if the automobile business of an insurer discontinuing the writing of automobile insurance in the said jurisdiction has been

purchased by, transferred to or reinsured by another insurer the latter shall receive and be responsible for the assessments of the former until the proportionate share of the former as established by its writings prior to such transfer has been determined and paid, unless another insurer has agreed to assume such obligation in a manner satisfactory to the Board.

ARTICLE IV – VOTING RIGHTS OF MEMBERS

1. Voting by members at an Annual General or Special meeting, or by mail, shall be based on the member's total volume of voluntary automobile third party liability direct written premiums for the latest available full calendar year in all jurisdictions in which the Association has operated during such year and shall be computed on the basis of one vote for the initial \$1 of such premium and one vote for each additional full \$5,000,000 of such premium.
2. If the Board determines that any matter to be determined at any meeting of members affects only one jurisdiction, or if it is determined by resolution passed at any such meeting of members that such is the case, such matter shall be voted upon only by members operating in such jurisdiction.

Voting by members operating in such jurisdiction shall be based on each member's total volume of voluntary automobile third party liability direct written premiums for the latest available calendar year in that jurisdiction, and will be computed on the basis of one vote for the initial \$1 of such premium and one vote for each additional full \$5,000,000 of such premium.

ARTICLE V – PARTICIPATION RATIOS AND SHARING

1. For the purpose of determining participation in Association business there shall be four classes of business:
 - (a) private passenger non-fleet non-pool automobile business;
 - (b) all automobile business other than that included in (a) or transferred to a risk sharing pool;
 - (c) business transferred to a risk sharing pool other than a pool or fund established pursuant to Section 5 of Article II;
 - (d) all uninsured or unidentified motorist claims and all amounts expended in connection with a pool or fund established pursuant to Section 5 of Article II.

At the end of each fiscal year, profit or loss for each class of business shall be determined separately for each accident year in each jurisdiction in accordance with accounting procedures approved by the Board. Calculations for an accident year shall include all policies earned during such calendar year. Profit shall be credited or distributed to each member and loss shall be charged against each member in accordance with the member's appropriate participation ratio determined in the manner hereinafter set forth in this Article V.

2.
 - (a) All of the data necessary to comply with any of the distribution procedures shall be reported to the Statistical Agency by each member.
 - (b) In order to facilitate proper identification of eligible risks and proper rating of risks each member is required to participate in any underwriting information tracking system operated on behalf of the automobile insurance industry by the Insurance Bureau of Canada or other contracted entity in any jurisdiction in which such member operates and to report to the

Insurance Bureau of Canada or such other contracted entity all information as required by such system.

- (c) The Association and each of its members shall take all reasonable steps to ensure that all information provided by members to the Insurance Bureau of Canada or such other contracted entity in connection with any such underwriting information tracking system is at all times maintained separate, distinct and apart from any information provided by members pursuant to any statistical plan or plans mandated by the legislation of any jurisdiction.
 - (d) The Association and each of its members shall take all reasonable steps to ensure that any information collected by the Insurance Bureau of Canada or such other contracted entity pursuant to such underwriting information tracking system is at no time permitted to fall into the custody or control of any “institution” within the meaning of the *Ontario Freedom of Information and Protection of Privacy Act* or any successors or amendments thereto, or of any similar legislation in any other jurisdiction.
3. (a) With respect to all business in Class 1 (a), participation ratios will be as follows:
- (i) in each jurisdiction in which a risk sharing pool is not in operation at any time during the year, other than the Northwest Territories, Nunavut and Yukon, each member will be liable for that proportion of private passenger non-fleet non-pool Association experience that its respective “voluntary private passenger non-fleet third party liability direct earned car years” less three times the member’s “voluntary private passenger non-fleet third party liability direct earned car years” for business designated in the Automobile Statistical Plan as Classes 08, 09, 10, 11, 12, 13, 18 and 19 bears to the relevant provincial or territorial total of all such car years for all members for such jurisdiction;

- (ii) in each jurisdiction in which a risk sharing pool is in operation at any time during the year, other than the Northwest Territories, Nunavut and Yukon, each member will be liable for that proportion of private passenger non-fleet non-pool Association experience that its respective “voluntary private passenger non-fleet third party liability direct earned car years” bears to the relevant provincial or territorial total of all such car years for all members for such jurisdiction;
 - (iii) in the Northwest Territories, Nunavut and Yukon each member will be liable for that proportion of private passenger non-fleet non-pool Association experience as set out in (i) and (ii) above except that the ratio to be used shall be that of the member’s “voluntary private passenger non-fleet third party liability direct earned car years” in all jurisdictions in which the Association was operating during that year to the totals of such amounts for all members in all jurisdictions;
- (b) With respect to all business in Class 1 (b), participation ratios will be as follows:
 - (i) in each jurisdiction, other than the Northwest Territories, Nunavut and Yukon, each member will be liable for that proportion of Association experience on automobile business other than that included in 1(a) or transferred to a risk sharing pool that its respective “all other voluntary automobile third party liability direct earned premiums” bears to the relevant provincial or territorial total of all such premiums for all members for such jurisdiction;
 - (ii) in the Northwest Territories, Nunavut and Yukon each member will be liable for that proportion of Association experience on business other than that included in 1(a) or transferred to a risk sharing pool as set out in (i) above except that the ratio to be used shall be that of the member’s “all other voluntary automobile third party liability direct earned premiums” in all jurisdictions in which the

Association was operating during that year to the totals of such amounts for all members in all jurisdictions;

- (c) With respect to all business in Class 1(c), participation ratios will be as follows:
- (i) with respect to 50% of such amount in the proportion that the member's total "voluntary private passenger non-fleet third party liability direct earned car years" is of the total of all such car years for all members for such jurisdiction; and
 - (ii) with respect to the other 50% of such amount on the basis of the proportion that the total earned third party liability car years with respect to risks ceded by such member to the risk sharing pool is of the total of such cars ceded by all members for such jurisdiction.
 - (iii) any directions necessary for the restating of sharing on the above basis from January 1, 1993 may be authorized by the Board.
 - (iv) with respect to members that are Servicing Carriers in such jurisdiction at the time of the commencement of operation of a risk sharing pool such members with respect to the period ending with the completion of the first full calendar year of operation of the risk sharing pool or such shorter period as may be determined by the Board having regard to the date of commencement shall share on the basis set out in paragraph (i) above as to 100% and the shares of the other members shall be adjusted accordingly. Thereafter all members shall share on the basis set out in paragraphs (i) and (ii).
 - (v) the sharing calculation for any period may be based upon estimated figures and such calculations shall be adjusted appropriately as soon as the actual figures become known.
- (d) With respect to all business and all amounts expended in connection with business in Class 1(d) each member will liable for that proportion of such amounts that its total voluntary automobile third party liability direct earned premium bears to the total of all voluntary automobile third party liability direct earned premium for all members for such jurisdiction.

4. (a) Each member shall be liable for all costs or expenses not chargeable to the allocated experience of any class of business in the proportion of the member's (i) "voluntary private passenger non-fleet third party liability direct earned car years", and (ii) "all other voluntary automobile third party liability direct earned premiums", as specifically hereinafter defined in (b), to the totals of such direct earned provincial and territorial amounts for all members for the current calendar year.
- (b) For the purposes of such allocation as described above, "voluntary private passenger non-fleet third party liability direct earned car years" and "all other voluntary automobile third party liability direct earned premiums" shall be as defined below:
- (i) "voluntary private passenger non-fleet third party liability direct earned car years" shall be the number of private passenger automobile third party liability car years which are coded as private passenger non-fleet automobile under the Automobile Statistical Plan earned by the member in each jurisdiction for the calendar year ending December 31 of the specific accident year's experience being distributed, excluding such Association car years.
- (ii) "all other voluntary automobile third party liability direct earned premiums" shall be the total automobile third party liability direct earned premiums as reported by the member to the Statistical Agency, excluding:
- A. the total private passenger non-fleet third party liability direct earned premiums (written either as voluntary business or written through the Association) and
- B. all other automobile third party liability earned premiums written through the Association
- in each jurisdiction during the calendar year ending December 31 of the specific accident year's experience being distributed.
- (c) As soon as possible after the closing date of each month's transactions the Association shall prepare and dispatch detailed statements of accounts to

each member in connection with each class of business. The statements shall combine the net result of the member's own transactions and the member's share of all transactions and shall indicate the date by which settlement is required to be effected between the member and the Association.

- (d) An ongoing system for periodic updating and adjustment of proportionate shares is provided for specifically in the Accounting and Statistical Manual. The Board shall authorize the establishment of transitional provisions for sharing necessitated by the change in the method of sharing from a policy year to an accident year basis and shall have transitional provisions set out in the Accounting and Statistical Manual.

ARTICLE VI – MEETINGS OF THE MEMBERS

1. An annual general meeting of the members shall be held not later than May 31st in each year, at such place and at such hour as may be designated by the Board.
2. A special meeting of the members may be called at any time by the Chairman of the Board. A special meeting shall be called by the Chairman of the Board whenever requested in writing by ten or more members. Notice of a special meeting shall state the purpose thereof and the time and place of holding of such meeting. No action shall be taken at a special meeting for a purpose not stated in the notice of meeting unless such action is approved at such meeting by the affirmative vote of a majority of the total votes held by all members.
3. Notice of each meeting of the members of the Association shall be given at least 15 days prior to the date of the meeting by ordinary mail to each member at its office address according to the records of the Association except that notice of a meeting to amend the Articles of Association shall be given in the manner provided above at least 30 days prior to the date of the meeting. Notices of

- meetings at which it is proposed to amend the Articles of Association shall include a copy of the proposed amendments. Notice shall be deemed to have been given at the time it is deposited in a post box or post office for mailing, or delivered to a courier or industry distribution agency for transmission, and the accidental omission to give notice to any member shall not thereby invalidate the proceedings taken at the meeting.
4. Members present in person or by proxy and representing 51% or more of the total votes held by all members shall constitute a quorum at any meeting of the Association. Except as otherwise provided in Article IV, Section 2 of Article VI and Article XVIII, all questions before a properly-called meeting of members where the quorum is present shall be decided by a simple majority of the votes cast in person or by proxy upon such question.

ARTICLE VII – BOARD OF DIRECTORS

1. The affairs and business of the Association shall be managed and controlled by a Board with authority Canada-wide. The Board shall be composed of fourteen directors of whom ten shall be elected or appointed from representatives of Insurers, three shall be elected or appointed from among any persons approved by the Insurance Brokers Association of Canada and one shall be the President and Chief Executive Officer. The ten Insurer representatives shall constitute a representative and equitably balanced cross-section of the automobile insurance industry. Of the three Insurance Brokers Association of Canada representatives one shall represent Alberta and the Territories, one Ontario, and one the Atlantic Provinces. To be eligible to be elected or appointed as a director, a person must be a senior official of a member insurer, elected or appointed as a representative of the Insurance Brokers Association of Canada or the President and Chief Executive Officer.

2. Members of the Board other than the President and Chief Executive Officer shall be elected for a term of two years with approximately one half of the directors to be elected at each annual general meeting.

There shall be a Nominating Committee appointed by the Board to nominate persons for election to the Board prior to each annual general meeting.

In the event of vacancy, the remaining members of the Board shall appoint a person qualified to be a director to hold office until the next annual general meeting, at which time a qualified person shall be elected for any unexpired portion of the original term.

3. At the first meeting of the Board following a meeting of members at which directors are elected, the directors shall elect a Chairman from among their number. The Chairman shall preside at meetings of the Board and perform such other duties as are prescribed by these Articles of Association. The Executive Committee shall appoint a Deputy Chairman of the Board from among the directors.
4. Meetings of the Board shall be held at such places and at such times as the Chairman may direct. Notice of each meeting shall be given to each director at least 24 hours before the time of such meeting. No notice shall be necessary if all directors are either present or have waived or waive notice. Notice may be given in writing or by oral, telephone, telefax or telegraph communication.
5. At any meeting of the Board a quorum shall be seven members present in person. Each member of the Board shall have one vote and, except as otherwise expressly provided, it shall require the affirmative votes of a majority of the directors present at a duly constituted meeting to pass any resolution of the Board. Members of the Board may vote by telephone on any particular resolution being considered by the Board.

6. The Board shall have all necessary power and authority to conduct the affairs of the Association with the exception of those powers specifically reserved for or delegated to others by these Articles of Association. For certainty and without limiting the generality of the foregoing, the Board shall have the express authority to:
- (a) incur or authorize expenses on behalf of and borrow money in the name of the Association;
 - (b) authorize the execution of any contract or agreement on behalf of the Association and designate the person or persons authorized to execute the same on behalf of the Association;
 - (c) establish and maintain standards in the provision of policy and claim services and accounting requirements for Servicing Carriers and members using a risk sharing pool;
 - (d) supervise audits of Servicing Carriers and members for adherence to such standards and the Rules of Operation;
 - (e) appoint such committees and sub-committees as may be deemed advisable from time to time;
 - (f) consider and where deemed advisable approve any proposed amendments to the Operating Principles;
 - (g) authorize the preparation and issuance of procedural manuals, bulletins and other material to members;
 - (h) consider and approve suggested rate changes and rate filings provided however that the Board may specifically delegate any specific part or parts of this authority to the Executive Committee.
 - (i) receive and consider regular reports from any Market Monitoring Committee or Committees and initiate action to respond to concerns identified by such reports.

ARTICLE VIII – ADMINISTRATION

(President and Chief Executive Officer, Committees and Executive Committee)

1. The Board shall appoint an Executive Committee to carry out the duties and functions and to exercise the powers hereinafter specified together with such other duties as the Board may from time to time specifically require of it.
2. The Board shall appoint a President and Chief Executive Officer to carry out the duties and functions and to exercise the powers hereinafter specified together with such other duties as the Board may from time to time specifically require.
3. The Board shall appoint an Audit Committee and an Investment Committee. Such other committees, including a Rules and Rates Committee, an Accounting Committee, an Actuarial Committee, a Claims Committee, a Risk Sharing Pool Procedures Committee, Provincial Operating Committees, Market Monitoring Committees and other committees as may be considered advisable, shall be constituted and appointed as set out in the Articles of Association.
4. The Executive Committee shall have five members being the Chairman and Deputy Chairman of the Board, the President and Chief Executive Officer and, if a member of the Board, the immediate Past Chairman of the board (all ex officio) and one other member of the Board who shall be appointed by the Board so as to ensure representation on the Executive Committee of both Servicing Carrier and non-Servicing Carrier members. If the immediate Past Chairman of the Board is no longer a Board member, the Board shall appoint one other member from the members of the Board.
5. The Executive Committee shall deal with the administration of policy and the conduct of the affairs of the Association between meetings of the Board and shall

report to the Board in connection therewith. All actions and decisions of the Executive Committee shall be subject to review and reconsideration by the Board.

6. The Executive Committee shall have express authority to:
- (a) review and determine applications by Servicing Carriers for write-offs to a maximum of \$100,000.00;
 - (b) review audits of Servicing Carriers and of members and to approve such audits unless they give rise to some material concern in which case they shall be brought before the Board for consideration;
 - (c) monitor the financial performance of the Association, recommend a proposed budget and authorize interim changes thereto and report to the Board regarding any significant changes to or variance from the budget;
 - (d) represent the Association with regulatory authorities of any jurisdiction;
 - (e) review and make representations regarding applications for appointment as a Servicing Carrier;
 - (f) review all relevant factors and make recommendations regarding the termination or other action in connection with a Servicing Carrier;
 - (g) supervise and direct the conduct of any litigation involving the Association;
 - (h) consider and determine all matters concerning premises, equipment and facilities utilized or employed by the Association;
 - (i) consider and, where deemed advisable, approve proposed or suggested changes to the Rules of Operation;
 - (j) consider and make appointments to all committees where Board approval or appointment is not specifically required;
 - (k) appoint a Provincial Operating Committee in each jurisdiction where the Association has or is scheduled to become operational. Each Provincial Operating Committee will be composed of four members representing insurers operating in that jurisdiction, including representation from both Servicing Carriers and non-Servicing Carriers, and two representatives from the organizations representing brokers in that jurisdiction. Members

of these Committees may from time to time be invited to attend meetings of the Board. Provincial Operating Committee members shall be appointed for such terms as are established from time to time by the Executive Committee;

- (l) appoint a Market Monitoring Committee in any jurisdiction or jurisdictions in which it is deemed advisable to do so;
 - (m) review and make recommendations to the Board with respect to recommendations contained in reports from committees, staff, professional advisors or such other sources as the Board may direct;
 - (n) make recommendations regarding the appointment of a President and Chief Executive Officer;
 - (o) select and appoint a Deputy Chairman of the Board;
 - (p) review and determine any appeal by a broker, company or Servicing Carrier regarding an appointment of a broker or company to a Servicing Carrier.
7. The Executive Committee shall adopt its own procedures regarding meetings and communications but all decisions shall require the affirmative votes of a majority of the members of the Executive Committee.
8. A Market Monitoring Committee shall adopt its own procedures regarding meetings and communications but shall report to the Board on a regular basis.
9. The President and Chief Executive Officer shall manage, direct and supervise the daily operation of the Association, the Risk Sharing Pool and the Uninsured or Unidentified Motorist programs operated by the Association. The President and Chief Executive Officer shall have general authority over the engagement, discharge and supervision of staff, the expenditure of approved budgeted funds and for ensuring that directions from the Board and the Executive Committee are followed. The President and Chief Executive Officer shall direct the engagement and use of consulting support staff and facilities and shall be the initial contact

- person between the Association and others. Subject to the provisions of Section 6(d) of this Article VIII the President and Chief Executive Officer shall have authority to communicate and negotiate with regulatory bodies, and to make commitments as authorized by the Executive Committee.
10. For certainty and in addition, and without limiting the generality of the foregoing, the President and Chief Executive Officer shall have express authority:
- (a) to review and determine applications by Servicing Carriers for write-offs to a maximum of \$25,000.00 where recommended for approval by a Provincial Operating Committee;
 - (b) to make appointments and reassignments of brokers to Servicing Carriers in accordance with the Operating Principles;
 - (c) to consider and approve changes to the Rules of Operation where such changes are clerical in nature or are required due to approved amendments to the Articles of Association or the Operating Principles;
 - (d) to determine and give notice that a member is no longer an exempt member under the provisions of Article XII;
 - (e) in a situation of emergency, and upon consulting or using reasonable efforts to consult with at least one other member of the Executive Committee, to exercise any authority of the Executive Committee on an interim basis, any such action to be reported to the Executive Committee at the first reasonable opportunity;
 - (f) to carry out such other duties as are expressly delegated to him by the Board or the Executive Committee.
11. A vacancy in the membership of any Committee shall not impair the ability of the Committee to continue in operation as long as more than 50% of the membership of the Committee remains in office. Any such vacancy shall be filled as soon as is reasonably practicable.

ARTICLE IX – SERVICING CARRIER APPOINTMENTS AND ALLOWANCES

1. Pursuant to the Operating Principles the Board shall designate, from among the eligible members applying, those members of the Association who are authorized to act as Servicing Carriers. Additional Servicing Carriers may be designated as necessary. The Board shall provide for the establishment of the scope, terms, standards and compensation applicable to the services to be provided. Servicing Carriers so designated must meet the eligibility requirements for Servicing Carriers. It is desirable to designate one or more Servicing Carriers from each of the types of marketing methods, provided each is qualified to handle Servicing Carrier responsibilities in an efficient manner.

2. Servicing Carriers shall be reimbursed for servicing Association business on the following basis:

- (a) For operating costs excluding claims expenses, the following percentage of written premiums:

Ontario 9.9%; Other jurisdictions 9%; plus

A service fee equal to the following percentage of written premiums:

Ontario 0.9%; Other jurisdictions 1.0%; plus

The actual costs of Driver Record Abstracts, as well as an amount to defray the costs of obtaining Prior Carrier Reports, such amount to be as from time to time determined by the Board; and

- (b) For claims expenses, both allocated and unallocated, the following percentage of earned premiums:

Ontario 9.1%; Other jurisdictions 10%

The rates of reimbursement are predicated on an earned/incurred loss ratio as follows:

Ontario 61.7%; Other jurisdictions 67.5%

The rates will be adjusted retroactively in accordance with the formula described in the Accounting and Statistical Manual, Chapter 8, which, on average, increases (decreases) the rate by 0.5% for each 5% of increase (decrease) in that loss ratio.

“Loss Ratio” refers to losses only, does not include loss expense or I.B.N.R. and is computed by policy year and by jurisdiction.

- (c) For the purpose of this section the term “written premiums” shall mean direct written premiums including commissions.
3. The Board at its sole discretion may offer or allow a Servicing Carrier reimbursement in whole or in part for specific extraordinary expenses incurred in qualifying for, continuing as or ceasing to be a Servicing Carrier. Such expense must be explained and supported in such detail as is required by the Board, must in the judgment of the Board be significantly in excess of the normal additional expense expected to be incurred by the Servicing Carrier and must actually be incurred before reimbursement may be allowed.
4. The Board at its sole discretion may authorize reimbursement to Servicing Carriers of normal insurance business losses incurred in connection with Association business. Such normal business losses shall be as defined and designated by the Board but shall not include any loss or expense incurred as a result of fraud or dishonesty on the part of the Servicing Carrier’s claims personnel (including but

not limited to independent adjusters), and in the event of any loss or expense of this nature the Servicing Carrier shall hold the Association harmless from and reimburse it for any such loss or expense incurred by the Association.

5. In the event that a Servicing Carrier is found liable, or agrees, to make payment to the Association of any amount as damages or compensation for any breach by such Servicing Carrier of any of its obligations to the Association, it will not be entitled either as a Servicing Carrier or as a member to share in the benefit of such payment.

ARTICLE X – ELIGIBILITY OF RISKS

1. To be eligible for insurance through the Association **in any jurisdiction** a risk shall be insured for at least the statutory minimum automobile coverage in the jurisdiction concerned, in accordance with the Rules of Operation.
2. In addition, in any jurisdiction in which the Association is operating a risk sharing pool into which a risk is eligible for transfer, such risk shall be eligible for coverage in the Association other than through such risk sharing pool only if it is a “Residual Market Risk”.

A RESIDUAL MARKET RISK is a risk which includes coverage in connection with:

- (a) any motor vehicle that is not a Private Passenger Vehicle; or
 - (b) any Private Passenger Vehicle with respect to which an insurer to whom an application has been made to insure the risk is authorized at law to decline to issue or refuse to renew a contract of insurance in respect of such risk.
3. Notwithstanding the provisions of section 2, the Association shall advise brokers during the period to the commencement of operation of a risk sharing pool in a particular jurisdiction that no renewals will be issued by a Servicing Carrier with

respect to non residual market risks after commencement of the operation of a risk sharing pool save and except where a broker foresees a problem in placing such risks in a regular market.

In such cases the broker may make an application to the Association for a direction to the applicable Servicing Carrier to continue to issue renewals in connection with non residual market risks in his portfolio for the account of the Association with respect to risks scheduled for renewal within a period not to exceed three months.

The Association may refuse to give such direction or may make it subject to such conditions, terms and limitations or for such shorter period as it deems advisable in order that the problem be corrected as soon as possible.

Any such application must be made prior to the commencement of the period for which the direction is sought and may only be made prior to the expiration of six months after the commencement of operation of a risk sharing pool in the jurisdiction.

A broker making such application must attend before a committee designated by the Board to consider and determine such applications and to consider what steps should be taken to prevent any further problems in connection with ensuring that such risks are placed in the regular market.

The renewal offer shall be clearly and conspicuously marked with notice that the insured can obtain insurance through the regular market. If the renewal is not refused or cancelled by the insured within 90 days of the renewal date the Servicing Carrier will send a second notice directly to the insured advising of the availability of coverage in the regular market. Any such coverage will not be renewed a second time and the appropriate procedure complied with upon such non-renewal as required by any applicable contractual or legislated provisions.

4. A risk for which coverage has been provided through the Association at a Discounted Tier rate for a total of two consecutive years since the date on which this Section becomes effective shall not be renewed by the Association for a further term unless an application is first made to an insurer and is refused by that insurer on a basis authorized by law.

5. Despite Section 2 of Article X and Section 4(a)(ii) of Article XI, if on the date on which this Section becomes effective a risk is in a risk sharing pool operated by the Association but is a Residual Market Risk as then defined, such risk is entitled to subsequent renewal or renewals with the same insurer for a term or terms not exceeding one year, and on each such renewal shall remain in the risk sharing pool provided that in the term immediately preceding renewal no condition has arisen as described in the Surcharged Tier or Basic Tier comprised in the Association's approved rating criteria.

ARTICLE XI – RISK SHARING POOL

1. The purpose of a risk sharing pool is to assist members in the provision of automobile insurance to certain owners or licensed drivers through the members' normal production facilities and their normal binding arrangements and to provide for the sharing of such risks.

The risk sharing pool (hereinafter called the "Pool") shall initially be restricted to Ontario members and Ontario business but the operation of the Pool or of a similar pool or pools in other jurisdictions may from time to time be authorized by the affirmative vote of members operating in such jurisdiction.

2. Where any word or expression not defined herein is defined by the regulatory authority for the jurisdiction concerned such definition shall apply herein. The following definitions shall apply for the purposes of Article X, Article XI and Part IV of the Operating Principles.

- (a) Dispatch Date: The date on which a transfer notification can be established to have left a member's Canadian head office, or the office designated by the member for that jurisdiction, for delivery to the Pool.

- (b) Jurisdiction: A province of Canada, the Northwest Territories, Nunavut or Yukon.

- (c) Private Passenger Vehicle:

A motor vehicle listed in the Private Passenger Rate Group Tables contained in the Manual of Rules and Rates and used for pleasure, commute or business. Business use does not include use as driver training vehicles, funeral vehicles, courtesy cars, vehicles held for sale or used for demonstrating or testing or any use listed in the Commercial or Public Sections of the Manual of Rules and Rates, even though Private Passenger rates are used to determine the premium;

but excluding any vehicle while in transit from a point of purchase to a permanent location where one of such points is within a jurisdiction in which the Pool is in operation and further excluding any vehicle insured as part of a fleet, synthetic fleet or group plan unless such vehicle is individually rated in accordance with rates filed with the applicable regulatory authority and is coded as a private passenger non-fleet automobile under the Automobile Statistical Plan.

Note: Any vehicle classified as a recreational vehicle, for example, an antique vehicle, a motor home or a motorcycle, is not eligible for placement in the Pool.

- (d) Residual Market Risk: a risk as defined in Article X.
 - (e) Voluntary private passenger non-fleet third party liability direct earned car years: as defined in Article V, Section 4(b)(i).
3. The Association hereby establishes a Pool, into which members are entitled to transfer, subject to the provisions hereinafter set out, the applicable percentage of any risk that satisfies the Eligibility Requirements.

The initial start up costs of the Pool or any subsequent risk sharing pool shall be borne by such of the members and on such basis as the Board may decide is appropriate.

The Board shall determine and declare the date upon which the Pool or any other risk sharing pool shall commence operation in any jurisdiction.

4. (a) The following are the requirements for a risk to be eligible for transfer to the Pool:
- (i) The vehicle is a Private Passenger Vehicle; and
 - (ii) The risk is not eligible for insurance through the Association as a Residual Market Risk as defined in Article X; and

- (iii) The member has followed all appropriate classification and rate procedures and has requested previous-insurer report(s) and driver record abstract(s); and
 - (iv) The risk is insured against Third Party Liability for at least the statutory limit; and
 - (v) The premiums charged by the member to the insured for those parts of the insurance that are transferable to the Pool are in accordance with its approved premiums for such risk.
- (b) A risk purportedly transferred to the Pool which was not eligible for transfer at that time due to a failure to comply with one or more of requirements (i), (ii) or (iii) due to an intentionally incorrect classification or rate will be considered ineligible for transfer, the purported transfer shall be deemed to be invalid and all claims, expenses and receipts or credits will be for the account of the submitting member. This provision shall not apply to a risk in relation to a specific term of transfer where a period ending the later of 24 months from the date of such transfer or 2 months after the first audit of the member following such transfer has expired.
- (c) A risk purportedly transferred to the Pool in connection with which there has been a failure to comply with one or more of the requirements with respect to previous-insurer report(s) or driver record abstract(s) shall be dealt with as set out in the Risk Sharing Pool Procedures Manual in accordance with provisions established by the Board from time to time.
- (d) If it is determined that a company is not ordering the appropriate reports, or has adopted a practice which fails to provide for proper compliance with its obligations, the company will be dealt with as an exception and a further investigation, or, where determined by the President and Chief Executive Officer to be appropriate, a full audit will follow.
- (e) Where it is decided that a full audit of all risks transferred by the member is appropriate the costs of the audit will be billed to the member.
- (f) Where such investigation or audit demonstrates to the satisfaction of the Executive Committee that there has been a general failure to order the

required reports on time the expense allowance referred to in subsection 6(b) to the member will be reduced by two percentage points for a period of six months.

- (g) Flagrant or continued failure to comply with these obligations could result in a directive to the member to remove all risks from the Pool. This penalty would only be applied after a follow-up review by the President and Chief Executive Officer and the Executive Committee, and referral to the Board.

5. In respect of an eligible risk that a member wishes to transfer to the Pool:

- (a) The member may provide whatever coverages and limits it deems appropriate.
- (b) During the first 12 months of operation of the Pool any risk transferred will be transferred as to 100% for the period that it is in force during that 12 month period. Thereafter all transfers and all risks previously transferred and in force will be 85% for the account of the Pool and 15% for the account of the member.
- (c) The applicable percentage of all coverages provided by the member shall be transferred, subject to the following limitations:
 - (i) The maximum transferable limit in respect of Third Party Liability shall be the applicable percentage of \$2,000,000 (two million dollars) or as from time to time determined by the Board.
 - (ii) Transferred basic All-Perils or Collision coverage shall be subject to a minimum deductible of the applicable percentage of \$100 (one hundred dollars) or as from time to time determined by the Board.
 - (iii) Transferred basic Comprehensive or Specified-Perils coverage shall be subject to a minimum deductible of the applicable percentage of \$50 (fifty dollars) or as from time to time determined by the Board.
 - (iv) The maximum transferable limit in respect of “Family Protection coverage” shall be the applicable percentage of \$2,000,000 (two million dollars) or as from time to time determined by the Board.

- (v) Other transferred endorsement coverages shall be subject to the maximum limits and minimum deductibles that are from time to time determined by the Board.

Members may write coverage in excess of these limitations but such coverage and all expenses and liabilities in connection therewith will be for the member's own account.

6. In respect of each risk being transferred to the Pool:

- (a) The premium actually charged by the member to the Insured net of any premium payment service charges charged to the Insured shall be the transfer premium in respect of each coverage provided that it is as approved by the regulatory authority concerned for the coverage and the applicable limit or deductible.
- (b) The member shall be entitled as a result of the transfer of premium to an expense allowance in an amount equal to a percentage of the written premium applicable to the transferred coverages, such percentage for use during a calendar year to be calculated on the basis set out in the Accounting and Statistical Manual using the base information employed to calculate the expense factor included in the member's rate filing with respect to private passenger vehicle coverage last approved by the applicable rate approving body for the jurisdiction in which the Pool is operating prior to August 31st of the year immediately prior to the calendar year in which the transfer is made. The Board shall from time to time establish a maximum percentage of premium for such expense allowance and if the calculation of the member's expense allowance percentage is higher than such percentage, then the percentage established by the Board as a maximum shall be used.
- (c) Each member shall provide to the Association written details of the component amounts of the expense factor included in the rate filing to be

used for the purposes of this calculation, such information to be provided in the form from time to time set out in the Accounting and Statistical Manual and such information being certified by the member's actuary. The member shall and hereby does authorize the release to the Association by the rate approving body of information in its possession in connection with the member's expense factor.

- (d) Such allowance is to settle all expenses incurred by the member including acquisition costs, operating costs and loss adjustment costs, but not including premium taxes and professional fees (such professional fees to be stipulated in the Facility Association "The Pool" Claims Guide with compensation to be as therein directed).
 - (e) In this section the word "member" shall mean "insurer" and the provisions of this section 6 shall apply to each insurer of a group of insurers separately.
7. In respect of an eligible risk that is "new" to the member – i.e., a new policy or a new (additional) vehicle:
- (a) If the required transfer notification by form, disc or tape is dispatched to the Pool no later than fifteen days after the commencement date of the period of insurance concerned, the transfer effective date shall be the said commencement date and there shall be no prejudice to the member's right to recover from the Pool in respect of a claim that arises within the period but prior to dispatch of the transfer form.
 - (b) If the required transfer notification is dispatched to the Pool more than fifteen days after the commencement date of the period of insurance concerned, the transfer effective date shall be the day following the date of dispatch of the notification and the transferred premium shall be pro-rata of that applicable to the period of insurance provided by the policy.
8. In respect of an eligible risk that is a "renewal" to the member:

- (a) If the required transfer notification is dispatched to the Pool no later than the commencement date of the period of insurance concerned, the transfer effective date shall be the said commencement date.
 - (b) If the required transfer notification is dispatched to the Pool later than the commencement date of the period of insurance concerned, the transfer effective date shall be the day following the date of dispatch of the transfer notification and the transferred premium shall be pro-rata of that applicable to the period of insurance provided by the policy.
- 9. In respect of all other eligible risks that are transferred to the Pool in mid-term the transfer effective date shall be the day following the date of dispatch of the transfer notification and the transferred premium shall be pro-rata of that applicable to the period of insurance provided by the policy.
- 10. Satisfactory evidence sufficient to establish the “dispatch date” for the purposes of sections 7 and 8 above shall be as determined from time to time by the Board.
- 11. A member may not in a calendar year in any jurisdiction in which the Pool is operating, transfer to the Pool any risk where such transfer would constitute a transfer by it in such calendar year of voluntary private passenger non-fleet third party liability direct written car years in excess of the number of such car years equal to 5% of its total voluntary private passenger non-fleet third party liability direct written car years for such jurisdiction in the immediately preceding calendar year provided that:
 - (a) any purported transfer in contravention of such restriction shall be ineffective and the risk shall remain solely for the account of the member purporting to effect the transfer unless authorized as hereinafter set out;
 - (b) a member may apply to the Board for approval of transfers in excess of such limit. Such approval may be given retroactively and in such form as the Board deems advisable.

12. Any risk transferred to the Pool within the first fifteen days after the commencement date of the period of insurance with respect to which a claim is incurred during such fifteen day period and any risk with respect to which a claim is incurred while such risk is within the Pool must remain within the Pool and may not be withdrawn by the member until at least the date of the first renewal following the incurring of such claim. Members may withdraw other risks transferred by them to the Pool in accordance with the procedures set out in the Risk Sharing Pool Procedures Manual.
13. Where the termination of the operation of the Pool is authorized by a majority of the members in a jurisdiction in which such pool is in operation, the Board shall determine and declare:
 - (a) the date or dates after which a risk or risks or any renewal thereof shall no longer be allowed to be transferred to the Pool.
 - (b) the date or dates upon which a risk or risks must be withdrawn from the Pool.
 - (c) any procedure to be followed and any notifications to be given in connection with the termination of the operation of the Pool.
 - (d) the date upon which and the conditions under which the “exit” program as set out in the Manual of Rules and Rates be brought into effect.

ARTICLE XII – INSURANCE POLICIES

1. Each member shall ensure that any owner or licensed driver of a motor vehicle applying to it for automobile insurance is able to obtain automobile insurance either through issuing such insurance itself for its own account, issuing such insurance itself and placing it in a risk sharing pool where in operation or, where applicable, seeing that an application for such insurance is directed to enable coverage to be written through the Association by a Servicing Carrier.

Where, in a jurisdiction in which a risk sharing pool into which the risk can be transferred is being operated by the Association, an application received by a Servicing Carrier in connection with a risk that does not qualify as a Residual Market Risk, the Servicing Carrier shall instruct the submitting agent or broker to submit such application to one of the members with whom such agent or broker has the voluntary market contract or agreement and such agent or broker shall forthwith submit the application to such member.

In the event that such agent or broker does not have a voluntary market contract or agreement such agent or broker, unless otherwise authorized by the provisions of the Plan, shall immediately direct the applicant to an agent or broker who does not have a voluntary market agreement for submission of an application as herein before provided. In the absence of any agreement to the contrary this shall not result in a sub-agency or sub-brokerage relationship being created.

2. The Servicing Carrier shall be named as the Insurer on all automobile insurance policies and binders it issues on behalf of the Association.
3. No policy shall be issued on behalf of the Association in excess of the limitations established in the Plan or Rules of Operation.
4. In section 1 of this Article XII the word “member” shall mean “insurer” and notwithstanding section 2 of Article III the provisions section 1 of Article XII shall apply to each insurer of a group of insurers separately.

ARTICLE XIII – JOINT LIABILITY FOR ASSOCIATION BUSINESS

1. In the event of failure of any member, through insolvency or otherwise, to pay promptly its portion of any loss or expense after the Board shall have made written demand upon the member to pay such loss or expense, the Board shall report the delinquency to all members.
2. If the loss or expense remains unpaid beyond a reasonable period all of the other members, upon notification by the Board, shall promptly pay their respective shares of such loss or expense, each contributing its respective share as provided in Article V with the basis of sharing adjusted to exclude the car years or premiums earned of the member in default. Members having made such contributions shall have the right of recovery therefor against the member in default, provided, however, that the Board may enter into an agreement with any such member in default, or with the legal representative thereof, or, in the case of a member who has or is withdrawing from business in one or more jurisdictions, in connection with prospective shares of loss or expense in future years as to an amount which shall constitute a full settlement of all of the obligations of said member to the remaining members. The Board may authorize the commencement of a representative action to be taken in the name of the Association for the full amount of such unpaid loss or expense.

ARTICLE XIV – INDEMNIFICATION

1. Other than with respect to an action, suit, claim or proceeding by the Association as against a Servicing Carrier, any person or member made a party to an action, suit or proceeding because such person or member served or is serving on the Board, the Governing Committee, the Executive Committee or other committee or sub-committee of the Association, or was or is an officer, member or employee of

the Association, or acts or has acted as a Servicing Carrier pursuant to Article IX of these Articles, shall be indemnified and held harmless by the Association against all costs (including the amounts of judgments, settlements, fines or penalties) and expenses incurred in connection with such action, suit or proceeding; provided, however, that such indemnification shall not be provided in any matter in which the person or member shall be finally adjudged in any such action, suit or proceeding to have committed a breach of duty involving gross negligence, bad faith, dishonesty, wilful misfeasance or reckless disregard of the responsibilities of his office. In the event of settlement of a matter before final adjudication, indemnification shall be provided only if the Association is advised by independent counsel that the person or member to be indemnified did not in counsel's opinion commit such a breach of duty.

2. The costs and expenses of such indemnification shall be prorated and paid for by the members, each contributing in accordance with Article V.

ARTICLE XV – RECORDS AND REPORTS

1. The books of account, records, reports and other documents of the Association shall be open to inspection by any member at such times and under such conditions and directives as the Board shall determine.
2. The books of account of the Association shall be audited at least every twelve months by a firm of auditors who shall be appointed by the members at each annual general meeting.
3. The books of account of Servicing Carriers shall be audited at least once a year by a firm of auditors designated by the Board.

ARTICLE XVI – AUDITING OF MEMBERS

The Association may audit the records of any member relating to the subject matter of the Plan of Operation and may establish what policies, records, books of account, documents and related material it deems necessary to carry out its functions. Such material shall be provided by the members in the form and with the frequency reasonably required by the Association.

ARTICLE XVII – APPEALS

1. Any broker aggrieved with respect to his appointment to a Servicing Carrier, and any Servicing Carrier aggrieved with respect to the appointment to it of a broker, may make a written request to the Executive Committee for specific relief. Any request so received will be considered and answered within 60 days.
2. Any member or Servicing Carrier aggrieved with respect to any action or decision of the Board, Executive Committee, President and Chief Executive Officer or the Association or any Committee thereof, may make written request of the Board for specific relief. Any request so received will be considered and answered within 90 days.

ARTICLE XVIII – AMENDMENTS

1. An amendment to these Articles of Association may be proposed at any time by the Board or by any member. Such amendment may be made at any properly constituted meeting of the members, provided that proper notice of the proposed amendment has been given to the members pursuant to Article VI and provided that such amendment received affirmative votes cast in person or by proxy at such

- meeting representing 51% or more of the total number of votes held by all members.
2. An amendment to these Articles of Association may also be made if the proposed amendment, set out in writing, is sent to each member at its last address of record with the Association and if within sixty days of the mailing of such amendment, signed consents to the amendment are received from members representing 51% or more of the total number of votes held by all members.
 3. An amendment to the Operating Principles may be proposed at any time by the Board, the Executive Committee or by any member.
 4. Where an amendment to the Operating Principles is proposed it shall be considered by the Board at a duly constituted meeting and may be approved in accordance with authorized procedure by the affirmative vote of at least 51% of the members of the Board, to become effective at such time as is designated by the Board or by operation of law.
 5. Where an amendment to the Operating Principles has been approved by the Board notice of such amendment, its effective date or proposed effective date and the reason therefore will be sent to the members within 30 days of its approval by the Board.
 6. Where an amendment to the Operating Principles has been proposed by a member and not approved by the Board a special meeting of members may be called if requested pursuant to Article VI to consider such proposed amendment and such proposed amendment shall become effective if approval is received from members representing 51% or more of the total number of votes held by all members.
 7. The Executive Committee shall have the power to amend the Rules of Operation by resolution at any time and from time to time and the President and Chief

Executive Officer shall have the power to approve amendments thereto as set out in section 9 of Article VIII, such amendments to be effective at such time as is designated or by operation of law. Members shall be advised of all such amendments and the effective date thereof.

ARTICLE XIX – PLAN OF OPERATION AND RULES OF OPERATION

1. The Plan of Operation (hereinafter called “the Plan”) and the Rules of Operation (hereinafter called “the Rules”) shall continue in force as currently constituted in any jurisdiction in which the Association is currently in operation. The Plan and Rules may become effective in any other jurisdiction upon being authorized or required by law at a date or dates to be established by the Board.
2. The Plan shall consist of:
 - (a) The Articles of Association;
 - (b) The Operating Principles
 - Part I - General
 - Part II - Servicing Carriers
 - Part III - Brokers
 - Part IV - Risk Sharing Pool
3. The Rules shall consist of:
 - (a) Accounting and Statistical Manual
 - (b) Manual of Rules and Rates
 - (c) Facility Association Residual Market Claims Guide
 - (d) Facility Association ‘The Pool’ Claims Guide
 - (e) Risk Sharing Pool Procedures Manual
 - (f) Such additional manuals, forms and procedures adopted and approved in accordance with the Plan.

3. With respect to non risk sharing pool business, the Rules shall include provisions establishing the coverages to be afforded, the limits of liability to be made available, the deductible options to be offered, the rating plans and classifications to be used for automobile insurance issued on behalf of the Association, premium payment requirements and commissions to be paid brokers on Association business and, with respect to risk sharing pool business, eligibility requirements, coverage acceptable for transfer, premium on transfer, transfer procedures, mid-term and other changes and claims handling and other expenses and allowances.

The Rules may include such other provisions as the Board or the members may approve as appropriate.

ARTICLE XX – REPRESENTATIVE ACTIONS AND LAW

1. In the event of the failure of a member or a Servicing Carrier to meet any of its obligations under these Articles of Association or under or pursuant to the Operating Principles or the Rules, an action to enforce such obligation may be commenced and prosecuted in the name of the Association which may include the interests of all of the members of the Association. Each member agrees that it will not plead nor rely upon as a defence, and that it will be estopped from pleading or relying upon, the lack of status or capacity of the Association to bring such action in its name or its right to assert and recover claims in the place and stead and on behalf of any or all members or to treat all such claims as a single claim vested in the Association.
2. The interpretation of the contract formed by the agreement between the members to accept and be bound by these Articles of Association, the Operating Principles and the Rules shall be governed by the laws of the Province of Ontario.

OPERATING PRINCIPLES**PART I – GENERAL****SECTION 1 – RATES**

All automobile risks written through the Association by Servicing Carriers shall be subject to the rules, rates, surcharges, minimum premiums and classifications of the Association.

SECTION 2 – EXTRA HAZARDOUS RISKS

If an applicant presents a risk which is greater than that contemplated by the rate established by the Association, the Servicing Carrier shall consult with the Provincial Operating Committee and/or the Rules and Rates Committee for an increase in such rate.

SECTION 3 – COMMISSIONS

The rates of commission on Association business shall be as specified in Appendix C attached to this Plan and forming a part of this Section. The rates set out in Appendix C, or any of them, may be changed from time to time by a resolution of the Board, such change or changes becoming effective at such time as is specified by the Board and in accordance with any applicable legislation.

PART II – SERVICING CARRIERS**INTRODUCTION**

The following Eligibility Requirement and Service Standards are to be used by the Board in its appointment of Servicing Carriers. Other specific requirements and standards are listed in:

1. Articles of Association
2. Rules of Operation
3. Servicing Carrier Contract

Groups of companies under one ownership or common management shall be treated as a single company under these provisions.

SECTION 1 – ELIGIBILITY REQUIREMENTS

- A. To qualify as a Servicing Carrier in a particular jurisdiction a member must be a licensed automobile insurer currently providing service throughout such jurisdiction.

The member must also commit itself to having the capability of properly underwriting, processing and maintaining a level of policy and claim service for all Association risks equal to that rendered in the voluntary market.

- B. If a Servicing Carrier normally services its voluntary market policies from an office not physically located in the jurisdiction, it is acceptable to service its Association policies from that office provided the same level of service is maintained. If a Servicing Carrier does not have claims facilities in the jurisdiction it will be necessary to designate another insurance company or an independent claims adjusting firm to provide some other means acceptable to the Board for the purpose of claims settlement and service.

- C. Commercial Lines Automobile service facilities must be available to Servicing Carriers in order that proper service will be rendered in respect of this class of business.

- D. Companies applying to the Board to be Servicing Carriers may make application to be reimbursed for extraordinary start-up expense. It will, however, be the responsibility of the Board to make the judgments as to what costs are extraordinary and to give due consideration to any extraordinary expense reimbursement applied for.

SECTION 2 – SERVICE STANDARDS

- A. Servicing Carriers must confirm driving records for New Business and Renewals through Driver Record Abstracts and also must confirm classifications and territories to ensure that the proper premium is charged.
- B. Servicing Carriers must issue policies by the expiration date of the 30-day binders. They must issue renewals at least thirty days in advance of their effective dates.
- C. Servicing Carriers must carry out all subsequent policy transactions on a timely basis.
- D. Servicing Carriers must carry out all necessary accounting procedures as outlined by the Rules of Operation.
- E. Servicing Carriers must properly identify the broker in regard to every transaction and make reports by broker to the Association as required.
- F. Servicing Carriers must collect the necessary data to disburse commission payments to brokers and store this data and report same to Revenue Canada, Taxation.
- G. Servicing Carriers must generate the statistical and accounting information in the report format required. The required content and format of these reports are as specified in the Rules of Operation.
- H. Servicing Carriers may, during periods authorized by the Board and upon compliance with such procedures as may be prescribed by the Board and for the purpose of depopulating the Association and after obtaining the approval of the agent or broker concerned, solicit and accept for their own account, rather than as a

Servicing Carrier on behalf of the Association, renewal applications with respect to coverage previously placed through the Association.

- I. Notwithstanding anything contained herein, Servicing Carriers must comply with the requirements of all applicable legislation.

SECTION 3 – WITHDRAWAL AS A SERVICING CARRIER

A Servicing Carrier who wishes to discontinue acting in that capacity shall notify the Board of its intention at least six months in advance of the intended date of discontinuance. The President & Chief Executive Officer will arrange for the re-assignment of brokers appointed to the Servicing Carrier and an orderly procedure for the writing of new and renewal Association business by another Servicing Carrier(s).

Unless other suitable arrangements are approved by the Board, the Servicing Carrier will

- (a) continue all policy service and accounting functions until existing policies expire and
- (b) administer all claims reported on Association policies to their ultimate conclusion, or to the expiry of a period of 60 months following the said date of discontinuance, whichever first occurs. The Board will assume control of claims outstanding beyond 60 months from the said date of discontinuance.

PART III – BROKERS

APPOINTMENTS TO SERVICING CARRIERS

Every licensed broker in a jurisdiction is eligible for appointment to a Servicing Carrier pursuant to this Plan of Operation. Each broker is appointed to only one Servicing Carrier and every effort will be made to ensure that the appointment is to a company operating in the broker's own marketing method. Individual brokers who are part of one brokerage will be appointed in the name of that brokerage to one Servicing Carrier.

Reassignment of brokers appointed to a Servicing Carrier that ceases to be a Servicing Carrier shall be based on the initial procedure for selection of a Servicing Carrier.

The form of application for appointment to a Servicing Carrier is appended hereto as Appendix D.

Each broker is required to complete a Facility Association Broker/Agency Contract with the Servicing Carrier on appointment (including re-assignment).

In appropriate circumstances the Association may authorize the transfer of a broker from one Servicing Carrier to another. In any such case, however, any sums payable to the first Servicing Carrier must be paid before the transfer is completed.

Notwithstanding the above provisions, under circumstances designated by the Board a broker may be appointed to a second Servicing Carrier solely for the purpose of placing risks with certain specific characteristics or servicing requirements. In such case a separate Facility Association Broker/Agency Contract will be completed.

PART IV – RISK SHARING POOL

SECTION 1 – CHANGES AFFECTING A TRANSFERRED RISK

A. INITIAL CLASSIFICATION OR RATING

If, subsequent to the transfer of a risk to the Pool, the member receives information that affects the initial classification and/or rating of the risk (such as an undisclosed use of the vehicle or undisclosed prior claims and/or convictions) and does not cancel the insurance for non-disclosure:

- (1) If the information does not affect the risk's eligibility for transfer, the risk may remain transferred to the Pool provided that the member amends the

premium appropriately and proceeds as stated in item B below – provided however that if the member received the information later than sixty days after the commencement date of the period of insurance, the member may permit the premium to remain unchanged until the expiry of that period of insurance.

- (2) If the eligibility requirement is no longer satisfied, the member shall cancel the transfer effective no later than twenty-one days after the date on which the information came to its knowledge and claim a refund of the transferred premium on a pro-rata basis – except that, if the member received the information later than sixty days after the commencement date of the period of insurance, the member may permit the transfer to remain until the expiry of that period of insurance.

B. MID-TERM CHANGES

Any change of coverage that occurs during the period of insurance, and any other change that affects the premium and/or statistical information previously reported, shall promptly be reported by the member by means of the Premium Transfer Form(s) or other approved method in the same manner as that required by the Automobile Statistical Plan. The occurrence of a claim and/or conviction during the period of insurance is not of itself regarded as requiring a change of premium during that period.

SECTION 2 – TRANSFER FORMS

- A. Members shall complete and submit individual Premium Transfer Forms and Premium Batch Control Forms in respect of all written premiums and refunds, in written, tape, disc or other approved method in accordance with the Risk Sharing Pool Procedures Manual. The individual forms or records shall contain all the applicable statistical information.

- B. Each member's premium forms or records shall be submitted to the Pool by the member's Head Office for Canada or by one office designated by the member for each jurisdiction.

SECTION 3 – SERVICING OF TRANSFERRED RISKS

A member who has transferred a risk to the Pool will provide the same services in connection with administration, payment options, claims investigation and handling and other consumer services and facilities as it would if such risk had been retained by it for its own account.

SECTION 4 – CLAIM PROCEDURES

A. INVESTIGATION AND SETTLEMENT

In respect of every claim on insurance transferred to the Pool:

- (1) It shall be the responsibility of the member concerned to investigate, defend and settle the claim or suit as it would in the absence of the Pool. The Association shall have the right and shall be given the opportunity of associating with the member in the defence of any claim or suit and shall receive the full co-operation of the member.
- (2) The Pool shall contribute to the loss adjustment cost in connection with internal costs and external loss adjustment costs other than professional fees through payment of the amount determined on a basis to be established by the Board from time to time as set out in Article XI, Section 6(b). The member shall be reimbursed in connection with expenses for professional fees on the basis established in the Association Claims Guide.

B. TRANSFER FORMS

In respect of claims on transferred risk:

- (1) Members shall promptly complete and submit individual Claim Transfer Forms and Claim Batch Control Forms by written, tape, disc or other approved method in respect of all claim payments and recoveries and all new reserves and reserve changes in accordance with procedures authorized by the Board and published by the Association. The individual forms shall contain all the applicable statistical information.
- (2) Such claim forms shall be submitted to the Pool by the member's Head Office for Canada or by one office designated by the member for each jurisdiction.

C. LARGE CLAIMS

- (1) When the cost of any one loss on a transferred risk is estimated by the member to reach or exceed such amount as may require reporting pursuant to the provisions of the Facility Association Risk Sharing Claims Guide as a large loss the member shall comply with the procedures set out in the Facility Association Risk Sharing Claims Guide as approved by the Board from time to time.
- (2) When the total amount paid by the member and recoverable from the Pool in respect of one accident exceeds \$100,000.00 or such other amount as may from time to time be determined by the Board it will upon the request of the member be paid such amount by special remittance immediately upon receipt by the Pool of the required information as stipulated in the Risk Sharing Pool Procedures Manual.

APPENDICES

APPENDIX A

**FACILITY ASSOCIATION
MEMBERSHIP AGREEMENT**

The undersigned, in consideration of the mutual promises and undertakings made and given by each member of the Facility Association to each and every other member and of the rights and benefits accruing through the Facility Association, hereby covenants and agrees with each of the other members of the Facility Association:

1. To be and remain a member of the Facility Association subject to the provisions of the Articles of Association of the Facility Association; and
2. To be bound and comply with all the provisions of the Articles of Association, Operating Principles and Rules of Operation of the Facility Association.

It is further acknowledged that this instrument is one of a series of instruments signed individually by members but with the intention that they, together with the Articles of Association, Operating Principles and Rules of Operation, be considered as a single contract.

Dated at the City of _____ this _____ day of _____ 20 ____ in the Province of _____.

_____ CORPORATE SEAL
(Member)

Per: _____
(Signature)

FACILITY ASSOCIATIONAPPLICATION FOR APPOINTMENT AS A SERVICING CARRIER IN

1. Company Name _____
2. Canadian Head Office Address _____
Province _____ Postal Code _____
3. Address of office that will handle Association business for the above jurisdiction:
Province _____ Postal Code _____
4. Company is part of _____ group and, is ☐ is not ☐ under the same control and management.
5. Marketing method presently used: Independent Broker / Agent ☐
Exclusive Agent ☐
Other (specify) _____
6. Latest available annual figures for Automobile insurance written by the Company in the above mentioned jurisdiction:
Premiums \$ _____
No. of risks _____
7. Estimated annual capability as a Servicing Carrier in above jurisdiction:
Premiums \$ _____
No. of risks _____
8. Location of POLICY SERVICE facilities in above jurisdiction (or elsewhere if not in the same jurisdiction):

FOR PRIVATE PASSENGER (non-fleet) POLICIES

Company Name

Address

Province _____ Postal Code

Name & Title of Person in charge

Telephone (Area Code and Number)

FOR ALL OTHER AUTOMOBILE POLICIES

Company Name

Address

Province _____ Postal Code

Name & Title of Person in charge

Telephone (Area Code and Number)

(Continued page 2)

9. Location of CLAIM SERVICE facilities on jurisdiction-wide basis. If to be provided by other than the Company applying for appointment as a Servicing Carrier, please answer Question 10.

Claim Service by Applicant.

Company Name _____

Address _____ Postal Code _____

Name and Title of Person in Charge _____

Telephone Area Code _____ Number _____

10. Alternative CLAIM SERVICE arrangements: give reasons for alternatives, the standards of service expected and attach written agreements and commitments from alternative sources:

11. Does the company applying as a Servicing Carrier meet the eligibility requirements as defined in the Operating Principles?

Yes ☐ No ☐ If no, explain _____

12. Does the company applying have the necessary internal systems, procedures and controls to accurately report to the Facility Association all information in the categories below in accordance with format, frequency and other requirements specified in the Rules of Operation?

	YES	NO
A) Premium Statistics	<input type="checkbox"/>	<input type="checkbox"/>
B) Claim Statistics	<input type="checkbox"/>	<input type="checkbox"/>
C) Claim Reserves	<input type="checkbox"/>	<input type="checkbox"/>
D) Financial		
1) Premiums Written Earned and Collections	<input type="checkbox"/>	<input type="checkbox"/>
2) Accounts rendering and payment	<input type="checkbox"/>	<input type="checkbox"/>

CHIEF EXECUTIVE OFFICER: Signature: _____

Title: _____

Date: _____ 20____

FACILITY ASSOCIATION

The rates of commission on Facility Association non-pool business shall be as follows:

O.P.F. 1

* 1. Private Passenger Vehicles (see Note hereunder):

- a. Class 10/11/12 9 %
- b. Other..... 11 %

Subject to a Maximum Commission of \$200 per vehicle per annum.

- * 2. Motor-Homes.....
 - * 3. Cabin/Home Trailers.....
 - * 4. Other private-type trailers
 - * 5. Camper Units.....
- } If used for pleasure purposes, see “Private Passenger Vehicles”; otherwise see “Other Commercial Vehicles”.
-
- 6. Motorcycles/Mopeds.....
 - 7. All-Terrain Vehicles
Snow Vehicles and
other recreational vehicles.....
- } Including Police/Fire Department vehicles and Commercial use.....7 ½ %

Subject to a Maximum Commission of \$100 per vehicle per annum.

- 8. Long-Haul Vehicles (including trailers)
 - 9. Public Buses
 - 10. Taxis, Limousine Services (incl. airport)
- } 6 %
-
- * 11. Other “Public” Vehicles (including Police/Fire Department vehicles, Funeral vehicles, Buses other than Public Buses, Van Pool, Ambulances) 10 %

Subject to a Maximum Commission of \$200 per vehicle per annum.

* 12. Other Commercial Vehicles (including trailers) 10 %

13. Experience-rated risks, Maximum Annual Fee per vehicle shall not exceed 7 ½ %

* Excluding experience-rated risks.

O.P.F. 2 (“Driver’s policy”) – in accordance with the rating.

O.P.F. 4 (“Garage” risks) 10 %

O.P.F. 6 (“Non-Owned Automobile Liability”) 10 %

- Note:
1. The expression “Private Passenger Vehicles” includes Antique/Classic automobiles, Commercial-Type vehicles that are rated as Private Passenger vehicles and Driving School vehicles (Class 07), but excludes vehicles rated as Commercial or Public vehicles, Fire and Police Department vehicles (Class 53) and Funeral vehicles (Class 75).
 2. For six month policies the cap is 50% of the annual amount shown above.
 3. No other additional fee for Service may be charged.

The base rate of commission on Risk Sharing Pool business must be the standard policy commission base rate that would be applicable if such business had been retained by the insurer for its own account.

APPENDIX C (All Provinces excluding Ontario)

FACILITY ASSOCIATION

The rates of commission on Facility Association non-pool business shall be as follows:

S.P.F. 1

- * 1. Private Passenger Vehicles (see Note hereunder):
 - a. Class 10/11/12 9 %
 - b. Other..... 11 %
- * 2. Motor-Homes.....
- * 3. Cabin/Home Trailers.....
- * 4. Other private-type trailers
- * 5. Camper Units.....
- 6. Motorcycles/Mopeds.....
- 7. All-Terrain Vehicles
Snow Vehicles and
other recreational vehicles.....
- 8. Long-Haul Vehicles (including trailers)
- 9. Public Buses
- 10. Taxis, Limousine Services (incl. airport)
- * 11. Other “Public” Vehicles (including Police/Fire Department
vehicles, Funeral vehicles, Buses other than Public Buses,
Van Pool, Ambulances) 10 %
- * 12. Other Commercial Vehicles (including trailers) 10 %
- 13. Experience-rated risks except those for which the
standard commission rate is lower..... 7 ½ %
- * Excluding experience-rated risks.

continued ...2

<u>S.P.F. 2</u>	(“Driver’s policy”) – in accordance with the rating.	
<u>S.P.F. 4</u>	(“Garage” risks)	10 %
<u>S.P.F. 6</u>	(“Non-Owned Automobile Liability”)	10 %

Note: The expression “Private Passenger Vehicles” includes Antique/Classic automobiles, Commercial-Type vehicles that are rated as Private Passenger vehicles and Driving School vehicles (Class 07), but excludes vehicles rated as Commercial or Public vehicles, Fire and Police Department vehicles (Class 53) and Funeral vehicles (Class 75).

ONTARIO

APPLICATION FOR APPOINTMENT TO A SERVICING CARRIER (PLEASE TYPE OR PRINT)[illegible][illegible][illegible]

Business Telephone

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--	--	--

--	--	--	--

 Fax

--	--	--

--	--	--

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Item 3: RIBO Licence

								Effective Date		Expiry Date													
								Day	Month	Year	Day	Month	Year										

Item 4: Name of your principal Automobile Insurer_____

Item 5: List other Company (ies) with whom you write Automobile Insurance:

Item 6: Have you previously operated as an Insurance Agent or Broker? If so, list the name of the Agency or Brokerage with whom you were associated and the name of its Facility Association Servicing Carrier:

Item 7: Indicate the volume of Automobile premiums written through your Brokerage in the voluntary market.

Check (✓) the appropriate box:

- | | | |
|----|------------------------|----------------------|
| A. | 500,000 or less | <input type="text"/> |
| B. | 500,001 to 1,000,000 | <input type="text"/> |
| C. | 1,000,001 to 2,000,000 | <input type="text"/> |
| D. | 2,000,001 or more | <input type="text"/> |

Item 8: Indicate your Servicing Carrier preference (see the list in the enclosed letter of instruction).

NOTE: Do not indicate Companies not included on the list.

1st choice _____

2nd choice _____

3rd choice _____

I/WE HEREBY APPLY TO THE FACILITY ASSOCIATION FOR BROKERAGE APPOINTMENT

List of Principals & Registered Brokers

Authorized Signatures of designated individual or principal

Date: _____

FACILITY ASSOCIATION

NEW REVISION ☐

CODE

--	--	--

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PLEASE RETURN THIS FORM TO THE FACILITY ASSOCIATION

Schedule 3

Binder Control

Facility Association

Province of Newfoundland & Labrador

Monthly Report of Business Placed With or Renewed Through the Facility Association Mechanism

(To be filed with: Newfoundland & Labrador Public Utilities Board, P.O. Box 21040, St. John's, NL, A1A 5B2)

Agent/Broker _____ Servicing Carrier _____ Month _____ Year _____ Page _____ of _____

Base Information (Columns 1 through 14)

(Enter Required Data In Appropriate Column)

1. Provide Policy Number
2. Identify as New Business (N) or Renewal (R)
3. If Renewal, identify number of years with F.A.
4. Type of Business (see list and enter code)
5. Model Year of Vehicle
6. Vehicle Rate Group Code
7. Principal Operator Age
8. Principal Operator Driving Record
9. Principal Operator Number of Years Licensed
10. Rating Territory Code (004, 005, 006, 007)
11. Statistical Plan Class of Use Designation
12. Actual Number of At Fault Losses
13. Actual Number of Minor Convictions
14. Actual Number of Major Convictions

Type Of Business Codes

(Enter alpha code in column 4)

- a. Private Passenger
- b. Commercial
- c. Public Vehicle
- d. Recreational
- e. Other

Reasons For Placement in Facility Association Codes (Columns 15 & 16)

(Enter Appropriate Numeric Code in Column 15 with any required additional information in Column 16)

1. Material Misrepresentation of Risk
2. Insurance Fraud
3. Prior Premium Payment History
4. Declined By Other Auto Markets In Office
5. No Auto Market In Office Other Than Facility Association
6. Premium Lower Than Other Markets (Identify Markets)
7. Age of Vehicle
8. Age of Operator
9. Type of Vehicle
10. Accident/Conviction History
11. Insurance History Not Available
12. Other (Specify)

	Policy Information			Bus. Type	Vehicle Information		Operator Information			Rating Information					Additional Information	
	1	2	3		5	6	7	8	9	10	11	12	13	14	15	16
1																
2																
3																
4																
5																
6																
7																
8																
9																
10																

On the second business day following month end, all forms for the month just ended are to be submitted to the Newfoundland and Labrador Public Utilities Board

C:\DOCUME~1\MIKEMC~1\LOCALS~1\Temp\[Binder ControlRev1.xls]Sheet1

Appendix A

Order A.I. 29 (2002-2003)

A.I. 29 (2002-2003)

IN THE MATTER OF the *Insurance Companies Act* R.S.N. 1990, Chapter I-10, and the *Automobile Insurance Act*, R.S.N. 1990, c. A22;

AND IN THE MATTER OF an application by Facility Association for an Order of the Board approving an increase in rates charged for private passenger and commercial automobile insurance policies issued through the Facility Association mechanism, pursuant to section 102 of *Insurance Companies Act*.

BEFORE:

G. Fred Saunders
Presiding Chair

Gerard Martin, Q.C.
Commissioner

Don R. Powell
Commissioner

PROCEDURAL ORDER

Facility Association filed an application with the Board of Commissioners of Public Utilities (“the Board”) on September 9, 2002 seeking the approval of the Board for a change in rates to be charged for private passenger and commercial automobile insurance policies insured through the Facility Association mechanism in all areas of the province, to be effective on February 1, 2003.

This proceeding is an application pursuant to section 102 of the *Insurance Companies Act*, which states that sections 49(2), 51, 52, 54, 55, 56, 57 and 58 of the *Automobile Insurance Act* shall apply to Facility Association. The Board received a letter of comment suggesting that subsection 49(2) required the Board, within sixty (60) days of the filing of the rates, to either approve vary or prohibit the rates. However, Facility Association has filed an application seeking a revision to rates that are charged to policyholders insured through the Facility Association mechanism. As such, subsection 49(2) does not apply here and this application for the approval of a change in rates will proceed pursuant to section 102 of the *Insurance Companies Act* and section 51 of the *Automobile Insurance Act*.

Requests for further information were sent to Facility Association on October 2, 2002, October 8, 2002 and October 22, 2002.

Facility Association has not yet provided responses to the October 2, 2002 requests for information but, through counsel at the Pre-hearing Conference, has indicated that they will be in a position to file the information by November 8, 2002.

Notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on October 16, 2002.

On November 5, 2002 a Pre-hearing Conference was held in the Board’s Hearing Room, 2nd Floor, Prince Charles Building, 120 Torbay Road, St. John’s.

The primary objectives of the Pre-hearing Conference, as set out in the Notice, were as follows:

1. Identify Intervenors and other interested parties.
2. Establish an order of witnesses.
3. Establish an order of cross-examination of witnesses.
4. Establish a protocol and procedure for filing evidence, information requests, and other submissions to the Board.
5. Identify distribution lists for the service of documents.
6. Provide focus to the issues.
7. Determine other such matters relevant to the hearing.

Having heard from the Applicant and giving regard to the oral presentation made at the Pre-hearing Conference and the letters of comment filed, the Board makes the following order pursuant to the provisions of the relevant legislation and regulations there under.

THE BOARD ORDERS THAT:

1. As the Board is not satisfied that Facility Association has filed all the matters necessary, the Board requires additional details and information to be filed by Facility Association by 3:00 pm. November 8, 2002, as previously requested and as set out in Appendix “A” to this Order.
2. The schedule of dates and the procedures for the hearing of the Application are as set out in Appendix “B” to this Order.

DATED at St. John's, Newfoundland and Labrador this 7th day of November 2002.

G. Fred Saunders,
Presiding Chair.

Gerard Martin, Q.C.,
Commissioner.

Don R. Powell,
Commissioner.

G. Cheryl Blundon,
Board Secretary.

Appendix “A”

Requests for Information

Private Passenger Automobile

PUB 1.0 Private Passenger-Facility Association Incurred Amount Loss Development Factors:

- (a) Explain why the selected loss development factors for bodily injury are, in general, based on a 3-year average, while for collision and comprehensive, they are based on a five year average.
- (b) The selected loss development factors for bodily injury are significantly higher than your selections in last year’s rate filing based on data as of December 31, 2000. For each interim period, explain any differences in the method used to select the loss development factor in this filing as compared to the last filing.
- (c) Provide support that shows that the increases in bodily injury average incurred amounts during the latest calendar year (last diagonal in the loss development triangles) are not the result of case reserve strengthening.
- (d) Explain why for some interim periods (e.g., 24 to 36 and 60 to 72 months) the selected accident benefits loss development factors are the same as those selected in last year’s filing (i.e., data as of December 31, 2000.)

PUB 2.0 Private Passenger Claim Payment Emergence Percentages:

- (a) In page 11 of the Summary of Findings Section, second paragraph, the following statement is made: “The basis of the selection of the payment patterns is consistent with that of the selection of the loss development factors.” For the Facility Association experience, the claim payment emergence patterns for bodily injury are based on the 5-year average up to 72 months. Explain how the basis for these selections (i.e., 5-year average) is consistent with the basis for the selections of the bodily injury incurred amount loss development factors.
- (b) Provide the rationale for the judgementally selected claim payment emergence percentage for bodily injury after 84 and 96 months.

PUB 3.0 Loss Trends

- (a) The loss trend regression analysis provided in the rate filing show negative trends (i.e., declining patterns) in private passenger automobile claim frequency for the physical damage coverages. Explain why these regression results are ignored.
- (b) How was the unusual winter of 2000/2001 considered in the loss trend selections?

- PUB 4.0 In the selection of the class differentials, explain why the younger driver classes are initially capped at +/-7.5%, while the mature classes and driving records are initially capped at +/-5%. Why are different capping percentages used for these two groups?
- PUB. 5.0 Explain why for certain driver classes and driving record classes, the proposed differential differs from the credibility weighted and capped differential. (For example, the TPL urban driving record 0 capped and credibility weighted differential is 1.356. This is within 5% of the current differential. However the proposed differential is 1.375, a 6.5% increase from the current differential, and in excess of the stated 5% cap for driving records.) Provide the rationale for the selections that are outside of the stated caps for private passenger automobile.
- PUB 6.0 Surcharge Schedule:
- (a) Provide support for the proposed changes to the Accident/ Conviction Surcharge Schedule.
 - (b) Provide support for the proposed discount of 10% for those risks that are accident and conviction free.
 - (c) Provide support for the proposed increase in the maximum accident/conviction surcharge from 200% to 250%. Is this increase in the maximum surcharge reflected in the off-balance factor?
 - (d) How does the current maximum surcharge of 200% relate to the table of current surcharges for convictions and accidents shown on page 2-23 under tab 2 in Appendix A. For example, if a risk has one minor conviction, two serious convictions, and no accidents, the factor shown in the table on page 2-23 is 2.50. How does the current 2.50 factor for this example relate to the current maximum surcharge of 200%?
- PUB 7.0 Provide a further explanation as to how the fixed expense provisions that vary by coverage in the underwriting margin calculations are calculated.

Commercial Automobile

- PUB.8.0 In Section 1, Summary of Findings, the Commercial Automobile indicated (+90.2%) and proposed (+216.7%) rate level changes for uninsured automobile coverage are provided. Further reference to the uninsured automobile coverage in this Section 1 states: “For Uninsured Automobile, it is proposed to cap the Commercial Vehicles’ indication to produce a \$19 base premium in order to be consistent with the New Brunswick Uninsured Automobile proposed base premium, which is currently pending approval.” Explain why the proposed change for this coverage is higher than the indicated rate level. Explain the need for consistency between the Newfoundland and New Brunswick uninsured automobile premiums.
- PUB 9.0 Commercial Automobile Incurred Amount Loss Development Factors:
- (a) In Section 1, Summary of Findings, page 5, it states: “With respect to Commercial Vehicles, the selected Facility Association factors are based on Facility Association Atlantic data except for Uninsured Auto and Specified Perils where Industry Atlantic development assumptions are judgementally adopted.” Confirm that the bodily injury data provided under tab 4 of Appendix B, page 4.2 (loss development section) is for the Newfoundland only, as stated in the title on that page, not the Atlantic Region as referenced on page 5.
 - (b) Provide the rationale for the selected bodily injury loss development factors. Is the basis of the selected factors the Atlantic experience? If yes, please provide this data.
- PUB 10.0 How was the unusual winter of 2000/2001 considered in the loss trend selections?
- PUB 11.0 Please provide Facility Association’s loss experience and expected development for the past two years for claims with an incurred loss and ALAE amounts of \$100,000 or higher as of December 31, 2001.
- PUB 12.0 Please provide paper versions of the AU-25 and AU-26 IBC Exhibits as of December 31, 2001 for Facility Association experience in Newfoundland and Labrador, and the Atlantic Provinces.

Appendix “B”-Item 1.

Schedule of Dates

The following dates are set:

November 2002

Nov. 18	Facility Association files responses to all outstanding information requests
Nov. 18	Motions Day
Nov. 22	Intervenor and Board Pre-filed and Expert Reports are filed
Nov. 28	Lists of Witnesses are filed
Nov. 28	Requests for information on the Intervenor and Board Pre-filed evidence and Experts Reports

December 2002

Dec. 5	Motions Day
Dec. 6	Responses to the requests for information on the Intervenor and Board Pre-filed and experts reports
Dec. 11	Public Hearing to commence

Appendix “A”-Item 2.**Rules of Procedure****Public Record**

1. Unless otherwise ordered by the Board, all documents filed with respect to this proceeding shall be placed on the public record.

Form of Documents

2.
 - (1) Unless otherwise ordered by the Board, the official record of this proceeding will be the original paper copy filed with the Board’s Secretary
 - (2) Every written document filed by a party shall be prepared as follows:
 - (a) Typed, written or printed on 8½” X 11” letter size paper, 3-hole punched for standard binders.
 - (b) Each page shall be numbered.
 - (c) Where reasonable, each line shall be numbered.

Filing of Documents

3.
 - (1) All documents shall be filed with the Board Secretary.
 - (2) Documents may be filed by:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means directed by the Board.
 - (3) Filing is accomplished when the Board receives the submission.
 - (4) All documents shall be date and time stamped when received at the Board’s Office.
 - (5) All documents filed according to the scheduled dates shall be filed no later than 3:00 P.M. on the date stipulated. Documents filed after this time or on a Board holiday shall be considered as filed on the next Board business day.

Revisions to Documents

4. (1) A party may revise any document where new information or information to correct errors on submitted filings becomes available before the completion of the hearing.
- (2) Where all or any part of a document is revised, each revision shall indicate the page(s) revised, the line(s) revised, the number of the revision (i.e. 1st revision), and the date of the revision.
- (3) Where a revision is made to a document, the Board may, upon its own motion or upon the request of another party, after receiving submissions of the parties, make any order in respect of the revisions.

Service of Documents

5. (1) All documents shall be served upon the other parties in this proceeding.
- (3) Parties will appoint one person to receive documents for this proceeding.
- (3) Service may be made as follows:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means ordered by the Board.
- (4) Service will be effective:
 - (a) On the day of delivery, where the document is sent by hand, courier or facsimile.
 - (b) On the date of receipt, where the document is delivered by registered mail.
 - (c) On a date determined by the Board, where service is made by any other means.

Number of Copies of Filings and other Documents

6. (1) Unless otherwise ordered by the Board, parties filing documents with the Board shall adhere to the following guidelines:
 - (a) File with the Board Secretary one original signed copy of each document.
 - (b) Provide 8 copies of the original documents with the Board.
 - (c) Serve one copy of each document upon each party.

Charge for Copies

7. (1) The Board will provide a copy of any document authored by the Board, or its consultants, at no charge.
- (2) Copies of documents originating or authored by a party should be requested directly from the party.
- (3) One copy of the transcript for each day of the hearing will be provided to each party at no cost.
- (4) Copies of the Legislation, Acts, and Regulations can be obtained from the Queen's Printer, viewed at the Board's Main Office, or viewed on the Board's Website at www.pub.nf.ca.
- (5) The Board will charge copy fees for the cost associated with the reproduction of any other document requested by an individual or party in accordance with the applicable legislation.

Electronic Filing

8. (1) To the extent that it is practical every party shall file with the Board an electronic version of all documents filed with the Board in this proceeding. Where a document is filed electronically each individual document shall be converted while in electronic form to "read only" *.pdf format (Adobe Acrobat), still allowing for key word searches and cut and paste functionality.
- (2) Copies of all documentation filed electronically with the Board in this proceeding will be placed on the Board's website, (www.pub.nf.ca) where it will be available for review or download.
- (3) The electronic file will not be an official record for the purposes of this proceeding.

Public Viewing

9. Interested persons may view any or all documents filed in this proceeding at the Board's main offices by contacting the Board Secretary.

Motions

10. (a) Any party that intends to file a motion must do so on a scheduled motion day.
- (b) The Board may hear motions on other than scheduled Motion days upon receiving a request.
- (c) Motions must be filed in writing with the Board and the parties two days before the scheduled Motion day.

- (d) The responding parties must file with the Board and serve upon the parties response briefs to a Motion one day before the Motion day.

Procedures for Presentation of Evidence and Cross-examination of Witnesses

- 11. (a) Pre-filed testimony of all non-expert witnesses and reports of expert witnesses should be adopted upon their taking the stand, and, unless otherwise objected to, will be accepted as evidence.
- (b) Direct examination should be limited to matters set out in the witness's pre-filed testimony. The Board may allow a witness to provide supplementary evidence or may restrict direct testimony where it is redundant with pre-filed evidence.
- (c) Direct evidence may be presented by way of a panel of witnesses. Prior notice must be given to the Board Secretary and the parties. When examining a panel of witnesses Counsel shall put each question to a particular witness on the panel.
- (d) Where co-counsel intend to examine the same witness, prior notice must be given to the Board Secretary and the parties. Only one counsel can examine a witness on a subject matter.
- (e) When presenting a document to a witness one copy will be provided to the witness, 8 copies to the Board Secretary and one copy to each party.

Other

- 12. Unless otherwise ordered by the Board, the rules of procedure set out in *Regulation 39/96* apply in this proceeding to the extent that they are consistent with this Order.

Appendix B

Order A.I. 30 (2002-2003)

A.I. 30 (2002-2003)

IN THE MATTER OF the *Insurance Companies Act* R.S.N. 1990, Chapter I-10, and the *Automobile Insurance Act*, R.S.N. 1990, c. A22;

AND IN THE MATTER OF an application by Facility Association for an Order of the Board approving an increase in rates charged for private passenger and commercial automobile insurance policies issued through the Facility Association mechanism, pursuant to section 102 of the *Insurance Companies Act*.

BEFORE:

G. Fred Saunders
Presiding Chair

Gerard Martin, Q.C.
Commissioner

Don R. Powell
Commissioner

PROCEDURAL ORDER AMENDMENT

On September 9, 2002 Facility Association filed an application with the Board of Commissioners of Public Utilities (“the Board”) seeking the approval of the Board for a change in rates to be charged for private passenger and commercial automobile insurance policies insured through the Facility Association mechanism in all areas of the province, to be effective on February 1, 2003 (the “Application”).

On November 5, 2002 the Board held a Pre-Hearing Conference wherein a representative of the Government of the Province of Newfoundland and Labrador (“Government”) advised that a Consumer Advocate may be appointed to intervene in the Application.

Following the Pre-Hearing Conference the Board issued Procedural Order A.I. 29 (2002-2003) whereby a schedule of dates was established for the Application, including the setting of a motions day for November 18, 2002 and the date for the start of the hearing on December 11, 2002.

On November 13, 2002 the Board received confirmation that the government had appointed a Consumer Advocate to intervene in the Application.

On November 14, 2002 the Board received a notice of motion for intervenor status from the Consumer Advocate.

On November 15, 2002 the Consumer Advocate filed an Intervenor Submission with the Board and a notice of motion requesting an extension to certain time limits as set out in Procedural Order A.I. 29 (2002-2003). This notice also stated that the Consumer Advocate would not be seeking a delay in the commencement of the hearing of the Application.

On November 15, 2002 the Board received correspondence from counsel for Facility Association stating that Facility Association had no objection to the intervention of the Consumer Advocate on the basis that there would be no delay in the start of the hearing.

Receiving no objections to the Consumer Advocate being considered a registered intervenor and the proposed revision to the schedule of dates, the Board makes the following order on the basis of the written submissions.

THE BOARD ORDERS THAT:

1. The Consumer Advocate is hereby granted Intervenor Status in the hearing of this Application.
2. The schedule of dates for the hearing of the Application are amended as set out in the 1st Revision to Appendix “B” – Item 1 attached to this Order.

DATED at St. John's, Newfoundland and Labrador this 22nd day of November 2002.

G. Fred Saunders,
Presiding Chair.

Gerard Martin, Q.C.,
Commissioner.

Don R. Powell,
Commissioner.

G. Cheryl Blundon,
Board Secretary.

Appendix “B” -Item 1.

Schedule of Dates

The following dates are set:

November 2002

Nov. 18	Facility Association files responses to all outstanding information requests
Nov. 18	Motions Day
Nov. 26	Board Pre-filed Evidence and Expert Reports are filed

December 2002

Dec. 2	Requests for information on the Board Pre-filed Evidence and Experts Reports
Dec. 3	Intervenor and Pre-Filed Evidence and Expert Reports are filed
Dec. 4	Lists of Witnesses are filed
Dec. 5	Motions Day and all remaining Pre-Filed Evidence and Experts Reports are filed
Dec. 6	Responses to the requests for information on the Board Pre-Filed Evidence and Expert Reports
Dec. 6	Requests for information on the Intervenor Pre-Filed Evidence and Experts Reports
Dec. 9	Responses to the requests for information on the Intervenor Pre-Filed Evidence and Expert Reports
Dec. 11	Public Hearing to commence