

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.