

(9:05 a.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: Just a few preliminary points. First of all I'd like to introduce the Board members to you. On my left is Gerard Martin, Q.C., and on my right is Donald Powell. Both are Commissioners with the Board. My name is Fred Saunders, I will be the Panel Chair for this hearing. There are some staff members in the room. First of all I'd like to introduce Dwanda Newman, who is Board Counsel, and sitting next to her is Barbara Thistle. Barbara is the Assistant Board Secretary. I'll leave it to Ms. Newman to introduce the people sitting on her right. And in the back of the room we have Robert Byrne, who is a Director of Regulatory and Advisory Services, Donald Seaward, who is Compliance Auditor, and Doreen Dray, who is our Economic and Financial Analyst.

The purpose of the hearing this morning is to consider an application by Facility Association to seek, who are seeking approval of an overall increase in automobile insurance rates for private passenger class of business of 41.3 percent and in the commercial class of business of 48.3 percent. I'll leave it to Ms. Newman to deal with the matter of the statutory authority that the Board has in response or in respect of this matter and to indicate that notices were published in accordance with the Act and the regulations.

MS. NEWMAN: Thank you, Mr. Chairman. Good morning Commissioners Powell and Martin and everyone else today. I would like to introduce before I start two people to my left, you may see them here. It's Mr. Ted Zubulake and Ms. Paula Elliott. They did prepare the actuarial report on behalf of the Board and they'll be assisting me throughout this proceeding, through a better part of it, in any event.

I can confirm that an application was received from Facility Association by the Board on September 9th. A notice of this application was published and a pre-hearing conference was held, an order issued out of the pre-hearing conference scheduled this hearing to start today on December 11th, and notice of this hearing was published in newspapers throughout the province beginning on November 23rd, 2002. I can confirm that the Board has authority to hear this matter under the provisions of The Automobile Insurance Act, The Insurance Companies Act and The Public Utilities Act.

I would reference Order AI-29 wherein the Board did establish this proceeding and the date and rules of procedure which will be used throughout this proceeding and which I may refer to at times where necessary. I would also reference Order AI-30 whereby the Consumer Advocate was added as an Intervenor to this proceeding and some of the dates set out in the earlier order were amended. I can confirm for the Board that there have been no other intervenors, though the Board has received several letters of comment which have been entered onto the record and will form part of the body of evidence. I can also confirm that the Board has received several requests for an opportunity to make public presentations and the Board has scheduled Tuesday the 17th at 9:00 a.m. for these presentations to be heard. And that's the lot for that, I think.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, thank you, Ms. Newman. Just a couple of other items that I'd like to note starting off. The proceedings are being transcribed, recorded and transcribed. I think transcripts will be available, I'm going out on a limb here, I forgot to check this before I came in, but usually in the late evening of the sitting day.

MS. NEWMAN: Ten o'clock.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes. And they are delivered to the parties?

MS. NEWMAN: Usually by email and I think the next morning the hard copy is available to counsel.

MR. SAUNDERS, PRESIDING CHAIRMAN: Hard copies are available, okay. We have ... we are introducing new hours. Anyone who was here before the Board before, I know Mr. Stamp and Mr. Whalen were, we sat in the mornings and the afternoons, and I guess it gets to the point where the afternoon sittings become somewhat draggy on us anyway and I'm sure that everyone feels that effect, so we've introduced, we introduced these hours in a previous hearing with Newfoundland Power. We've staggered it a bit and I think probably the influence for staggering the break times was caused by some of the members of the panel who smoke and probably that will suit some of the people in the audience as well, but we're going with sitting at nine o'clock to 1:30 p.m. with two breaks, one at 10:30 approximately and one at 12:00 noon approximately, each for 15 minutes, and we'd like to keep to that 15 minutes if we can, and I guess we should be able to unless there's some matter that comes

up that has to be dealt with in the breaks and, if so, you can inform the Clerk and we'll certainly accommodate that.

The record of the proceedings of course will be handled by the Board's Secretary and we would ask that parties who are filing documents, to file a sufficient number of copies for the three panel members, Board Counsel, press and the Applicant and Intervenors. I had nothing else to add to that except now to ask parties to introduce themselves and I think we'll commence with the Applicant.

MR. WHALEN, Q.C.: Thank you, Mr. Chairman. My name is Norman Whalen and with me is Kevin Stamp. We have with us as well from Facility Association, David Simpson and Jill Hepburn, and from Eckler and Partners, Brian Pelly, who will be our witness this morning. Thank you, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Thank you.

MR. O'FLAHERTY: Good morning, Mr. Chairman. My name is Peter O'Flaherty.

MR. SAUNDERS, PRESIDING CHAIRMAN: Good morning, Mr. O'Flaherty.

MR. O'FLAHERTY: Good morning. I appear as the Consumer Advocate in this hearing with David Goodland to assist and good morning Mr. Commissioner, Mr. Commissioner Powell and Mr. Commissioner Martin.

MR. SAUNDERS, PRESIDING CHAIRMAN: Thank you. Are there any preliminary matters that we have to deal with?

MS. NEWMAN: Yes, Mr. Chairman. I did want to mention that several information requests have been exchanged and answered in anticipation of this hearing and hopefully these requests will assist the panel in moving this matter forward expeditiously.

(9:15 a.m.)

There is one outstanding information request and it was made by FA to the Board and I'm hoping to have this answered by the end of the day today or certainly by tomorrow morning.

In addition, there are two information requests that the Board put to Facility Association some time ago which have, I understand, been entered informally. I think it's PUB-11 and 12, we don't have an official answer to. I wonder if we could get something for the record there. I also note that Information Request CA-6, which was put by the Consumer Advocate to Facility Association, I think generated some exchange between the two actuaries perhaps which has been documented in part in the response that was filed with the Board. I wonder if we could have a more complete documentation of that, including the documents that were provided, any emails that were exchanged, that sort of thing?

In addition, I also note for the record that there's been a Notice of Motion filed and I understand from the parties that they are prepared to speak to this this morning, and the motion was filed by the Consumer Advocate.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay. Anything else, Ms. Newman?

MS. NEWMAN: No, that's all.

MR. SAUNDERS, PRESIDING CHAIRMAN: Alright. If it's satisfactory then to all the parties, we'll commence with you, Mr. O'Flaherty, in terms of what you might have to say in support of your motion.

MR. O'FLAHERTY: Thank you, Mr. Chair. Mr. Goodland will be taking that motion.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr. Goodland.

MR. GOODLAND: Good morning, Mr. Chairman and Commissioners. On a preliminary point in relation to the motion, the motion was filed yesterday, December 10th. My understanding is that there would normally be a two-day notice period prior to a motion being argued in front of this Board. Ms. Newman has discussed this with all counsel this morning and my understanding is that the parties have agreed to abridge the two-day waiting period and that will allow us to proceed with the, with brief submissions on that motion this morning. I assume that my understanding is correct on that point.

MS. NEWMAN: Agreed.

MR. WHALEN, Q.C.: That's correct.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, carry on.

MR. GOODLAND: Mr. Chairman, on December 3rd, 2002, this year, the Consumer Advocate filed its pre-filed evidence with the Board and one of the parties on whose behalf the Consumer Advocate filed evidence was the Seniors Resource Centre of Newfoundland and Labrador whose spokesperson, Joan Marshall, we expect to attend and adopt her pre-filed evidence in due course. The evidence of the Resource Centre is set out in the, in her pre-filed evidence, and I don't propose to review that again this morning. It's fairly clear on the record what the concerns of the Resource Centre are.

On December 3rd as well the Consumer Advocate's office filed a request for further information in the form of questions CA-1 through to CA-5, and on the 6th of December a response was provided by Facility Association, a response ... actually the information requested by the Consumer Advocate dealt with ten questions in all. The ones I propose to deal with this morning in this motion will be questions two to five. Question, the response to question one is not an issue given the ... the Consumer Advocate will not be taking an issue with question one given the response filed by Facility, and the responses filed in relation to questions six through ten, we are still, the Consumer Advocate's office is still considering the responses and discussing the responses with our own expert, so in due course, should this become an issue, the response to question six through ten, we would reserve our right at that time to bring a further motion to compel further or better responses if necessary, but until the hearing unfolds and until we further confer with our expert, we will not be in a position nor do we intend to make submissions on those responses this morning, so my comments are limited to questions and responses 2.0 through to 5.0.

Mr. Chairman, the ... under The Insurance Companies Act, and in particular Section 98(2) of that act, there is created a mandatory obligation on Facility Association to provide a contract of automobile insurance to owners and licenced drivers who but for the plan would be unable to obtain that insurance. That's in loose terms what Section 98(2) suggests or states. It's a mandatory requirement. Coverage, therefore, we would submit, must be available more than just in the notional or theoretical sense and must

be, on a practical level, be available to all parties who must avail of it. The Board in fact at the end of its, at the end of the day in its disposition must ensure that from a practical perspective coverage is available. One of the potential user groups that we have identified who must avail of insurance being placed through Facility Association is the, are certain seniors within the province, and, as indicated, Ms. Marshall, on behalf of her association, has said all but that in her pre-filed evidence.

The crux of my submission is as follows, Mr. Chairman. Before the Board can make an informed decision at the conclusion of the hearing, it must have available, if such information exists, evidence regarding the effect that such sought after increases may have on certain members of the community and if in fact the information exists the Board certainly has the power under The Public Inquiries Act to compel the production of that evidence through viva voce evidence, production of documents, etcetera. That would come pursuant to Section 14 of The Public Inquiries, under The Public Inquiries Act.

We have asked, Mr. Chairman, in our Notice of Motion for the production of information regarding data from Newfoundland and Labrador dealing with seniors who are 50 years of age and older, 65, 70 and 75 years or older, who are presently insured or placed with Facility Association or their insurance is placed through Facility Association.

One of the, and I believe it can be taken judicial note of this morning of course, one of the basic pieces of information a person seeking private automobile insurance must provide to a potential insurer is a date of birth, the age of a person. We believe, therefore, that the information we are seeking is readily available. We note that the information provided in the responses by Facility Association deal with Atlantic Canada numbers and they're considered to be or they're termed as raw data from IBC.

The submission of the Consumer Advocate quite simply, Mr. Chairman, is that if in fact ... we also know that Facility Association is administered on a province-by-province basis. Therefore, it strikes the Consumer Advocate as being that if in fact the data compiled for the Atlantic Canadian Region is given in a general bottom-line number sense, that must be a compilation of four different sources of information, one of the sources being the Newfoundland and

1 Labrador raw data for the number of Facility, for the  
2 number of seniors placed in Facility. It seems to me it's  
3 one plus two plus three plus four will give you your  
4 regional information.

5 What Facility has said in its response to us  
6 regarding the information sought is quite simply that  
7 they do not or it does not possess the information  
8 requested. The Association has not suggested the  
9 information does not exist and I think that's a key  
10 distinction. We know that there are four service carriers  
11 in Newfoundland who have been chosen by Facility to  
12 provide the information or to provide the insurance to  
13 the drivers placed through Facility and it would be my  
14 submission that those insurers must have provided  
15 their information to IBC and in turn to Facility  
16 Association regarding the Atlantic Canadian, so the  
17 Atlantic Canadian numbers could ultimately be  
18 compiled, and therefore it would be my submission that  
19 at least the Board should embark upon an inquiry to  
20 determine if in fact there are Newfoundland numbers in  
21 which ... realistically we can't really see how there  
22 couldn't be in Newfoundland because it is a separate  
23 region under Facility Association. So the question  
24 really becomes the availability of the information and  
25 then if it's available, because we believe it is relevant,  
26 the Board really is obliged to direct disclosure of the  
27 information. Certainly there's been no claim of  
28 privilege, and we believe it is relevant and it will be  
29 relevant to a large percentage or a large group of  
30 persons within the province, those being the people  
31 we've identified by age in our response, in our original  
32 request for answers and then the Notice of Motion.

33 Those, Mr. Chairman and Commissioners,  
34 would be my submissions at this point subject to  
35 questions from the Board and subject to the response  
36 of counsel for Facility.

37 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
38 Thank you, Mr. Goodland. Before we get into any  
39 questions, because I did have one but I think I'd prefer  
40 to hear from the Applicant first.

41 MR. WHALEN, Q.C.: Thank you, Mr. Chairman. Mr.  
42 Stamp will deal with this.

43 (9:30 a.m.)

44 MR. STAMP, Q.C.: Mr. Chairman, Commissioners, the  
45 request for information that is in issue, CA's-2 through  
46 5, is, however, I think, from our perspective, linked

47 directly with the question CA-1 and the response that  
48 we gave in respect to it, and so there may be some  
49 misunderstanding about the information that Facility  
50 has and how it operates.

51 The first question, as you know, asked  
52 whether there existed any guideline or criteria for the  
53 placement of insurance for operators of private  
54 passenger automobiles within the Province of  
55 Newfoundland and Labrador with Facility on the basis  
56 of the age of the operator, and, if so, what were those  
57 guidelines or criterias (sic), and the answer that we gave  
58 of course was that there are no guidelines or criteria for  
59 the placement of insurance for operators within the  
60 province on the basis of the age of the operator.

61 Facility takes everybody that is directed to it.  
62 It does not make any decision as to whether or not it is,  
63 it wants to accept a risk. If the risk is put to it, it  
64 accepts it, so the decision as to who is directed to  
65 Facility is made by somebody other than Facility.

66 Now, the Facility's rates are structured for 20,  
67 I think 24 years of age and under, operators in that age  
68 bracket. Age is a criteria for the pricing of the product  
69 that is sold by Facility or through the mechanism of  
70 Facility, but after that age, after that age there is no  
71 further criteria that Facility maintains in this regard, so  
72 whether a driver is 27 or 77 or 87 or 97, Facility has no  
73 interest in that information, does not require it, does not  
74 form a part of its premium and determination, so the  
75 information that might come with any application is not  
76 information that is required to be delivered to Facility.  
77 One of the things that's also important to recognize is  
78 that these policies are written through service carriers  
79 who operate on contract with Facility.

80 Now, some of the information that is actually  
81 of interest to the Consumer Advocate is interest, I'm  
82 sorry, information rather that is actually supplied by all  
83 insurance companies to the Insurance Bureau of  
84 Canada and the basis for that, I think in fact, may  
85 actually be set out to a limited extent in Mr. Morris'  
86 (phonetic) pre-filed evidence. I'm just trying to see ... I  
87 thought there was reference in it. I don't see it at a  
88 quick glance there, Mr. Chairman, but in any event  
89 insurers are by, are required by law to report  
90 information to the Insurance Bureau of Canada which  
91 is part of the Superintendent's Statistical Plan, so that  
92 is a plan that the Superintendent of Insurance for  
93 Newfoundland and I guess other jurisdictions insists  
94 on being supplied and compiled and maintained and I

1 presume provided to him. That is perhaps the basis of  
2 any information being available to IBC in any instance  
3 along the lines of age groupings, but it doesn't, it isn't  
4 information that Facility has nor which it is interested  
5 in, as I say, except for 24 years of age and beneath that.  
6 So I presume, since the Consumer Advocate has filed  
7 material on the part of the Superintendent of Insurance,  
8 he's aware of these arrangements and the  
9 Superintendent's Statistical Plan and of course I  
10 presume he's aware that the information is no doubt  
11 readily available to the Superintendent if he chooses to  
12 make it available to them.

13 We don't have the information. We  
14 understand that IBC may have information on certain  
15 age bands. Certainly, as I understand it, they don't  
16 coincide exactly with the request made by the  
17 Consumer Advocate, but again that is something that  
18 the Superintendent I'm sure can advise him of and  
19 presumably IBC can advise him of. As you understand  
20 of course, we are not here representing IBC. We  
21 represent Facility Association. So the information that  
22 they sought was not available to us and is not relevant  
23 to us in the course of rate setting and pricing of  
24 premiums.

25 In that regard, Mr. Chairman, I would suggest  
26 to you and to the Commissioners that there is a  
27 question of relevance of the material in any event to  
28 this hearing and I certainly leave it to you to reflect on  
29 that issue, but, in any event, we did have access to  
30 some information and I might just say that the basis on  
31 which it was made available was a request, I believe it  
32 was in Nova Scotia/New Brunswick, where the boards  
33 in those jurisdictions, or one of them, had asked  
34 whether any data was available along the lines that was  
35 produced in our answer, and the data that was  
36 available, which was not asked for by the Consumer  
37 Advocate in this case, but the data that was available  
38 to Facility Association showed three years' activity. It  
39 showed the age groups, that's '99, 2000 and 2001, it  
40 showed the age groups 15 through 24, 25 through 65  
41 and 66 and older, and it showed the number of insureds  
42 in Facility Association in those categories and a  
43 percentage for them and it showed comparative  
44 industry numbers for the full Atlantic Region. So this  
45 chart that has been supplied by Facility in response to  
46 the request by the Consumer Advocate shows the data  
47 that they have, it's data that is relevant to Facility  
48 Association for all four Atlantic Provinces. The  
49 Consumer Advocate is right that it does comprise the  
50 whole of the Atlantic Region, and the industry data is

51 the whole of the Atlantic Region as well. So all we can  
52 say about it is that we have given them all that we have.

53 Now, again I stress, if the information is  
54 required, certainly it is the Superintendent's Statistical  
55 Plan that would presumably have access to it through  
56 his statistical agency which is his appointed agency,  
57 the IBC. It's not our agency. So that's the ... our best  
58 efforts are to provide the information which was not  
59 asked but which may give some general assistance to  
60 the Consumer Advocate on the issues that he was  
61 interested in but it again is all the data that we have  
62 available to us. Thank you.

63 MR. SAUNDERS, PRESIDING CHAIRMAN: Ms.  
64 Newman?

65 MS. NEWMAN: Yes. I'll just make a brief comment to  
66 refer the Board to the regulations pursuant to the Public  
67 Utilities Act, in reference to the response for  
68 information request, which is No. 15 of the regulations,  
69 Section, Subsection (2) says, "Notwithstanding  
70 Subsection (1), a party who is unable or unwilling to  
71 provide a full and adequate response to an information  
72 request shall," (a) is in reference to an objection. (b) is  
73 relevant here. "Where the party contends that the  
74 information necessary to provide a response is not  
75 available, provide a response that sets out the reasons  
76 for the unavailability of the information and provide  
77 that alternative available information as the party  
78 considers would be of assistance to the party  
79 requesting the information." I don't make any comment  
80 on that, just to put it before the panel.

81 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
82 Thank you, Ms. Newman. Commissioner Martin?

83 COMMISSIONER MARTIN: I have no questions, I  
84 have some (phonetic) observations.

85 MR. SAUNDERS, PRESIDING CHAIRMAN:  
86 Commissioner Powell?

87 COMMISSIONER POWELL: No, I have no questions.

88 MR. SAUNDERS, PRESIDING CHAIRMAN: Coming  
89 back then to Mr. Goodland, picking up on a point that  
90 was raised by Mr. Stamp, and that is the issue of  
91 relevance, let me make a short speech, if you like, first  
92 before I get to the question, because there are some  
93 elements of this that concern the Board, because we

1 had seen the written RFIs and responses prior to  
2 coming here of course as part of the pre-filed evidence.

3 This is a unique kind of a situation that we  
4 have in this industry and is unique in respect of the fact  
5 that Facility Association, as we ruled in our last order,  
6 is an association that, I guess to put it simply, is merely  
7 a fund manager, if you like, and I don't think it's  
8 necessary to go beyond that in the way, what I mean  
9 by a fund manager. The insurers are the companies that  
10 are members of Facility, some of whom are designated  
11 as participating carriers and there are four, as you say,  
12 in Newfoundland, I think, to this point, but they don't  
13 come forward to give evidence on matters such as we  
14 have ongoing here today, which is an application by  
15 Facility to increase rates, and speaking for myself, that  
16 leaves something of a hole, if you like, in the process.

17 The Board has always dealt with applications  
18 by the insurance industry for rate revisions fairly  
19 basically on the question or on the, on actuarial  
20 evidence, if you like, as opposed to the issues that the  
21 Consumer Advocate has included in his motion. Now,  
22 that is not to say, however, that the Board is required to  
23 continue that policy. There's been a lot of public  
24 interest in Facility and the rates and so on and it's  
25 difficult to avoid what's been going on in the press and  
26 the commentary that's been made in various media.

27 I guess my concern as Chair of the panel is to  
28 make sure that the information that this Board needs to  
29 be comfortable with the decision it's going to have to  
30 make at the end of the day is made available to us, and  
31 that information goes beyond the actuarial evidence  
32 that has been indicated by both the Applicant and the  
33 Board Counsel as being made available during the  
34 course of the hearing. I think Mr. Pelly is being called  
35 by Mr. Whalen, Mr. Stamp. Mr. Pelly has been before  
36 the Board before and his expertise is in the area of, I'll  
37 call it actuarial science for want of a better word, and  
38 similarly we have an actuarial expert who will be called  
39 as well, and that will put on the record certainly the  
40 numbers attached to this application, to put it simply,  
41 but there are other matters that concern the Board at  
42 this stage in terms of how Facility ends up, as Mr.  
43 Stamp just said, with the consumers out there who are  
44 left with no other resort but to come to Facility to  
45 obtain insurance. How that process works is of interest  
46 to the Board, and I don't know if I need to say anything  
47 else at this stage in terms of our concern, I guess to say  
48 that I was somewhat disappointed in a way that other

49 evidence wasn't being called by the Applicant in this  
50 regard.

51 I think it's necessary to go beyond the  
52 actuarial support, if you like, for the application. I think  
53 it's necessary to put on the record how Facility  
54 functions in relation to the industry, how these  
55 decisions are made, if you like, by the participating  
56 carriers, by the brokers who get involved in deciding  
57 whether or not a person is going to be insured in the  
58 regular market or to be insured in the grey market or to  
59 be insured by Facility, and I think that information is  
60 necessary to complete the ball of knowledge, if you like,  
61 that we need to have to be comfortable in coming to a  
62 decision on this application, not unlike the way in  
63 which we deal with public utility companies, on rate  
64 applications or applications for approval of capital  
65 expenditures.

66 Normally there are no, I'll say no restrictions  
67 but there are some, but basically it allows the Board, the  
68 parties appearing before the Board, to get into the, let's  
69 say, factors that influence capital budget expenditures  
70 and factors that influence cost, and I think one of the  
71 factors that we're talking about here in relation to the  
72 way in which Facility operates is the decision-making  
73 process that takes place within the industry amongst  
74 the members of Facility, the brokers and so on.

75 So I throw that out without asking for any  
76 comment because I think if we've exhausted the  
77 questions that I'd like to break now and come back in 15  
78 to 20 minutes hopefully and render a decision on the  
79 motion. Before doing so, I want to give Mr. Goodland  
80 a chance to make any final comment.

81 MR. GOODLAND: Thank you, Mr. Chairman. Very  
82 briefly, the counsel for the Facility Association has  
83 made several suggestions that the information would  
84 be readily accessible or available by the Consumer  
85 Advocate through the Office of the Superintendent.  
86 The only comment I would make on that point is  
87 certainly that the Superintendent is not represented by  
88 the Consumer Advocate and I want, with respect I  
89 would submit that the Board should be cognizant of  
90 that if in fact comments are made from time to time in  
91 that regard by counsel for Facility.

92 In relation to the relevance Mr. Stamp raised,  
93 I note in the New Brunswick hearings there was,  
94 actually in the decision of the Board in New Brunswick,  
95 the issue was deemed relevant. Actually, when the

1 hearing was in progress, the Board in New Brunswick  
2 requested the Facility Association representative who  
3 was giving evidence to find and disclose the  
4 information requested regarding seniors placed in  
5 Facility and in fact the Facility Association obliged the  
6 Board in that regard and went away and provided raw  
7 data regarding drivers aged 66 and up through to June  
8 of 2002, which in fact we don't have, we don't even  
9 have that before us even on an Atlantic Canadian basis,  
10 Atlantic Canada regional basis.

11 (9:45 a.m.)

12 So certainly the issue is relevant, I believe for  
13 the Board, not only simply because New Brunswick,  
14 because the New Brunswick panel suggested it was  
15 reasonable, but certainly at the end of the day when  
16 you're, when this Board will be invited to assess the  
17 application, the merits of it and so on, one of the issues  
18 that we, I expect the Consumer Advocate to raise, will  
19 be the issue of caps and phase-ins, because of the  
20 impact and effect it may have on certain groups who are  
21 on fixed incomes, etcetera, etcetera, goes to your  
22 comments, Mr. Chairman, regarding the whole ball so to  
23 speak where the symbiotic relationship between FA, its  
24 participants, its participating carriers and the impact  
25 that it has on a consumer generally. To view the  
26 application strictly on the numbers would, as the  
27 Facility Association is inviting the Board to do, I think  
28 would do a disservice to the public at large and not  
29 provide for the best possible outcome that is available  
30 and hopefully which we hope to assist this board in  
31 arriving at.

32 Those would be my comments. I believe the  
33 issue is relevant and I would suggest that the  
34 information is accessible by Facility through its  
35 participating carriers if the request is made. It's not  
36 good enough, we would submit, to try to establish a  
37 corporate veil and not have anyone suggest it should  
38 be lifted. We're suggesting it should be lifted where it's  
39 practical and reasonable to do so. Thank you.

40 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
41 Goodland, thank you. Okay, we'll ...

42 MR. STAMP, Q.C.: Mr. Chairman ...

43 MR. SAUNDERS, PRESIDING CHAIRMAN: I'm sorry.

44 MR. STAMP, Q.C.: ... before you do break ...

45 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
46 Stamp.

47 MR. STAMP, Q.C.: ... I wonder could I respond to a  
48 couple of things that ... some additional information  
49 was introduced in the reply, I suppose, that I think I'd  
50 like to respond to and I think, if I may ...

51 MR. SAUNDERS, PRESIDING CHAIRMAN: I'll have  
52 to give Mr. Goodland a chance to respond to you.  
53 Carry on.

54 MR. STAMP, Q.C.: But I think that, first of all, with  
55 respect to your own comments, I understand the points  
56 certainly that are being made but I think it is, from our  
57 perspective, important ... Facility Association, as you  
58 indicate, is simply, you know, a mechanism or  
59 consortium of insurance companies who must make  
60 available insurance who, to insureds who they don't  
61 like to write in their own book of business themselves,  
62 so they're simply supplying an insurance product. If  
63 they were compelled to do it themselves, they  
64 presumably would do it that way and would price the  
65 product according to the risk that they are taking on.  
66 They do it this way, the product still has to be priced  
67 according to its risk, and that is the issue that's before  
68 this board in the rate application that you now have to  
69 deal with.

70 So there is a difficulty when we don't have the  
71 information that the Board may find interesting, and  
72 this may be something ...

73 MR. SAUNDERS, PRESIDING CHAIRMAN: I  
74 understand ...

75 MR. STAMP, Q.C.: ... Mr. Chairman, that is part of, you  
76 know, a wider-ranging discussion and debate and  
77 maybe a hearing, I don't know, but we don't see it as an  
78 area that we are in a position to provide the information  
79 that the Board may be interested in. We only take all-  
80 comers who are directed to us. We don't have the  
81 ability to insist that a broker do this or that or  
82 something else in terms of person who comes in for  
83 insurance. We don't have any right to insist that a  
84 particular insurance company, although he may be a  
85 member of the Facility Association, that he must  
86 underwrite his insurance risks a certain way, so there's  
87 a real dilemma for us in our position with attempting to  
88 provide the Board the kind of general background  
89 information that may be of interest, and, as I say, it may

1 well be that in another forum, in another way, that may  
2 be material that's of greater interest.

3 With respect specifically to the point raised by  
4 counsel dealing with the New Brunswick application,  
5 there was a request for some sort of informal data that  
6 might be of some value to the, I think, New Brunswick  
7 Board in looking at this issue because, frankly, it  
8 seemed that seniors in New Brunswick were also  
9 equally concerned about the price that they were being  
10 charged for insurance.

11 Facility contacted one of the service carriers in  
12 New Brunswick. It happened to be the one that had the  
13 bulk of the work for Facility in that jurisdiction but it  
14 certainly never had all of it. I forget the proportion that  
15 it carried but it may have been something, you know,  
16 nearing half of the premium, Facility premium in New  
17 Brunswick, and on an informal basis they attempted to  
18 try and generate some information and they did do that,  
19 but, I mean, it's not complete and it's not, perhaps not  
20 even all that substantially reliable, done on a quick  
21 basis for some kind of general indication for the Board  
22 as to what the numbers look like.

23 The data from IBC that we managed to supply,  
24 albeit for four provinces combined, is much more  
25 detailed because it shows all of the Facility policies in  
26 all of the four Atlantic provinces and shows all of the  
27 industry data for those provinces, so in that sense it's  
28 much more complete from the Atlantic perspective than  
29 the information that was made available in New  
30 Brunswick for that particular request in an informal way.  
31 And I might add, Mr. Chairman, that my client did, was  
32 attempting to get somebody, one of the carriers to try  
33 and break the information down and as we left our  
34 offices yesterday that still had not been accomplished,  
35 so it would only be some portion of the work in any  
36 event, if we could get a service carrier to do this and try  
37 and break it down for us, and the largest service carrier,  
38 I think, in Newfoundland perhaps, I'm not sure of the  
39 exact numbers, Mr. Chairman, but I believe has about  
40 one-third of the business. So again you're asking one  
41 service carrier, as was done in New Brunswick, would  
42 give you even less of a comprehensive view of the  
43 thing than does the chart that was actually supplied to  
44 try and give some assistance to the Consumer  
45 Advocate and to the Board as well in this area. Thank  
46 you.

47 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
48 Mr. Goodland, anything final?

49 MR. GOODLAND: (unintelligible) submission is  
50 getting tighter as we go on, Mr. Chairman. The only  
51 thing I would submit or suggest regarding the turn-  
52 around time and the ability to access the information,  
53 it's uncontradicted. We requested the information eight  
54 days ago. In New Brunswick the Facility Association  
55 representative was requested while on the stand on  
56 November 6th to provide the information and on  
57 November 7th he came with, he or she came with the  
58 information, I'm not sure who the representative was,  
59 came with the raw data information for the period  
60 ending June 30th, 2002. It took approximately less than  
61 24 hours and it was information, current information up  
62 to June, pre-dating the hearing date by maybe three  
63 months or so.

64 So in this instance we attempted to give, we  
65 did give the Facility Association as much lead time as  
66 possible and certainly far more time than appears to  
67 have been required, needed in New Brunswick, and my  
68 last comment would be that this is, while Atlantic  
69 Canada data is somewhat useful, this is a  
70 Newfoundland application and the Newfoundland  
71 information would be far more beneficial to the Board.

72 Those would be my comments, thank you.

73 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
74 you. Okay. It's five to 10:00. We'll break for, I'm saying  
75 20 minutes. If it'll be ... if it's going to go beyond that,  
76 we'll certainly let you know through the Board  
77 Secretary. So we'll be back at quarter past ten.

78 (break)

79  
80 (10:45 a.m.)

81 MR. SAUNDERS, PRESIDING CHAIRMAN:  
82 Somebody reminded while we were out that we didn't  
83 get along to opening statements this morning yet, so  
84 we'll give you an opportunity to do that after we've  
85 given you our decision on the motion. The Board has  
86 decided to allow the motion of the Consumer Advocate  
87 and we're satisfied that Facility Association, and I'll use  
88 this word, can facilitate the Consumer Advocate  
89 request through its membership. In terms of the  
90 opening comments that I made, I wanted to add to that  
91 that we would ask the Applicant to produce a witness  
92 from the servicing carrier group and from the broker  
93 group to appear individually or as a panel, if you so



1 desire ... we have, we've had panels of witnesses in  
2 previous hearings and it's helpful in many respects ... to  
3 put on the record how the system works, if you like ...  
4 their participation, if you like, in the, in the progress of  
5 a person, a consumer through the insurance system  
6 ending up in Facility Association. Who makes the  
7 decisions as to how that's accomplished, and we feel  
8 the evidence is necessary to enable the Board to come  
9 to a decision on this application, as opposed to the  
10 narrow issue of the actuarial support, and if it's  
11 possible, Mr. Whalen and Mr. Stamp, if you could  
12 provide us with the names of these witnesses by  
13 tomorrow, say at close of business, which in our case  
14 here is 4:30, if that's possible and as to when you're  
15 going to be calling them, I'll leave that to you to decide  
16 that. We'll get a better feel, probably by the end of the  
17 day tomorrow as to how long the other witnesses are  
18 going to be, so you can make that decision, and of  
19 course, you have to take in, or bear in mind the  
20 schedules of the people that you may wish to call who  
21 represent the servicing carrier group and the, I'll call it  
22 the broker group. So having said that, are there any  
23 questions before we move to opening statements?

24 MR. WHALEN, Q.C.: Mr. Chairman, do you envisage  
25 breaking the hearing up into two hearings?

26 MR. SAUNDERS, PRESIDING CHAIRMAN: Not  
27 necessarily. We believe that the information that can  
28 be brought forward by the servicing carrier and broker  
29 group is essential to complete, if you like, the book of  
30 evidence that we need to come to a decision on this  
31 matter.

32 MR. WHALEN, Q.C.: I don't mean it in that sense, Mr.  
33 Chairman, I mean that we have here actuarial experts.

34 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

35 MR. WHALEN, Q.C.: And it would seem to me that,  
36 unless someone can correct me on this, that their  
37 evidence can be heard and it's not in any way  
38 dependent upon witnesses from the service carrier  
39 groups or brokers groups.

40 MR. SAUNDERS, PRESIDING CHAIRMAN: Right.

41 MR. WHALEN, Q.C.: Or, you know, the issue of this  
42 age thing that we're looking into now.

43 MR. SAUNDERS, PRESIDING CHAIRMAN: Exactly.

44 MR. WHALEN, Q.C.: So is it the Board's intention to  
45 deal with those witnesses ...

46 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

47 MR. WHALEN, Q.C.: And then after that's done, look  
48 at dealing with this other aspect?

49 MR. SAUNDERS, PRESIDING CHAIRMAN: That  
50 would be the cleanest way to do it, Mr. Whalen, I agree.  
51 We deal with the actuarial witnesses now, commencing  
52 when you're ready, and proceed on then to deal with  
53 the other witnesses.

54 MR. WHALEN, Q.C.: And on the other issue of your  
55 order of information, I mean what exactly is it that the  
56 Board expects us to produce? I mean we've provided  
57 what we have, we're attempting to get more information,  
58 does the Board expect us to go out and have somebody  
59 who doesn't have this information, employ people for  
60 days or weeks to start counting up the people over 65?

61 MR. SAUNDERS, PRESIDING CHAIRMAN: I think  
62 what the Board's concern is here is to have someone  
63 available for cross-examination who can answer  
64 questions in relation to how the system works as  
65 between the servicing carriers, the broker, and Facility,  
66 to get that on the record once and for all.

67 MR. WHALEN, Q.C.: And again, Mr. Chairman, and  
68 not ... that's, I see that as certainly beyond what we  
69 anticipated in a rate hearing, and certainly beyond what  
70 we anticipated when we set the dates for this hearing,  
71 so I'm not certain that we're going to be able to get that  
72 completed in the time that you've set, or that we're  
73 going to be able to get the appropriate witnesses  
74 available for the dates set.

75 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I  
76 understand that.

77 MR. WHALEN, Q.C.: How do you propose to deal with  
78 that?

79 MR. SAUNDERS, PRESIDING CHAIRMAN: We  
80 certainly will do all we can to facilitate the matter to a  
81 speedy conclusion, Mr. Whalen, and if ... beyond  
82 sitting on Christmas Eve, we're prepared to, you know,  
83 to accommodate you on any way we can.

84 MR. STAMP, Q.C.: Mr. Chairman, if I may ... just to  
85 seek some clarification because I suppose when we go

1 to ask some broker or servicing carrier, every broker is,  
2 I think, a broker for Facility, and there are, I think, four  
3 or so service carriers, but I recall in the course of the  
4 last hearing, one of the brokers was giving evidence,  
5 and the questions sought to gain access to their direct  
6 business, their mode of operation, you know, the  
7 particulars of their own company affairs, and I remember  
8 quite well the concern that that particular broker had  
9 that he was putting information of a very sensitive  
10 nature to his business into the public domain. The fear  
11 I have is that we ask a broker or servicing carrier to  
12 come and give evidence as to how they do what they  
13 do for Facility, that there is, the concern that they will  
14 have that this somehow, you know, explodes into their  
15 general operations and requires them to disclose  
16 information sensitive to their own business  
17 arrangements.

18 MR. SAUNDERS, PRESIDING CHAIRMAN: I  
19 understand.

20 MR. STAMP, Q.C.: So I don't know what ... if you can  
21 provide any guidance that we can provide to those  
22 people in respect of requesting that they come ...

23 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I can  
24 say this to you then, Mr. Stamp, that we're not  
25 concerned about the financial health, if you like, of the  
26 individual servicing carriers, or any person that appears  
27 in this matter. That really is the Superintendent of  
28 Insurance's concern, and we don't think that it would  
29 be, at least I don't think that would be relevant to the  
30 record in terms of what the financial health is of a  
31 servicing carrier or broker. What we are interested in is  
32 how the system plays out and how a person ends up in  
33 Facility, and I don't know how you can bring in matters,  
34 let's say relating to, or which might be considered as, as  
35 confidential information and I'd certainly be prepared to  
36 say to you now that unless someone can demonstrate  
37 the relevance of questions in that area, I'd be hard put  
38 to allow it.

39 MR. STAMP, Q.C.: Mr. Chairman, that is a help for us  
40 to go back to these people, some of them, and try and  
41 find out who would be available and who would be  
42 willing to participate in this process, but it seems that  
43 when you look at particularly, for example, insurance  
44 companies, I mean there are ... the Superintendent's  
45 documentation suggests over 50 insurers licensed to  
46 write automobile insurance in Newfoundland. There are  
47 a much smaller group, of course, who are doing, as you  
48 probably know, the bulk of that business. Any one

49 individual company has, I guess, its own theory about  
50 the kinds of risks it wants to assume, the kinds of  
51 business it wants to write, and I presume it must  
52 provide direction to its brokers or agents to achieve  
53 that result.

54 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

55 MR. STAMP, Q.C.: And so, you know, once they  
56 decide that a particular applicant doesn't fit their profile,  
57 then I presume the broker, if he cannot find some other  
58 market for that risk, goes to the market of last resort,  
59 Facility Association. That's in a general way how the  
60 process works, of course.

61 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

62 MR. STAMP, Q.C.: But you'd like to know, I'm  
63 wondering if you'd like to know why an insurer says no  
64 to a particular risk because that then becomes, I think,  
65 the kinds of concerns that maybe from, you know, an  
66 insurer's perspective, would be the same kind of  
67 concern that Mr. ... well, the broker who gave evidence  
68 the last time on this topic.

69 MR. SAUNDERS, PRESIDING CHAIRMAN: Uh hum.

70 MR. STAMP, Q.C.: He expressed concerns from his  
71 own brokerage and company portfolio and private  
72 business, I guess, affairs. So it's a real concern, I mean  
73 unless all insurers, you know, are brought into this, and  
74 somehow are, you know, which changes the whole  
75 dynamics of the process and changes the whole thrust  
76 of what we're doing here, it really is only possible for us  
77 to try and, I guess, explain that an insurer has criteria,  
78 and if you don't fit that criteria, it advises its agents and  
79 brokers that they won't accept it, and then what does  
80 the agent and broker do, try and find another place, and  
81 then if not ...

82 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, Mr.  
83 Stamp, maybe the best way to respond to you is to say  
84 this. We believe we need the information and we  
85 believe it can be provided by two able representatives  
86 of the groups that we talked about. If it can't be, and if  
87 the questions that we put forward, and I say "we", the  
88 panel or the Board's solicitor, or the Consumer  
89 Advocate, can't be answered, and we believe are  
90 relevant, then it may be necessary to call more than two  
91 witnesses. The fact of the matter is that we do believe,  
92 and I say this in all sincerity, after reading the volumes  
93 of evidence that have been provided through the

1 questions and so on, and trying to understand the  
2 actuarial evidence, and trying to, if you like, understand  
3 how this Facility Association organization works in the  
4 context of the industry, and many people have  
5 difficulty understanding Facility in terms of its  
6 profitability and all of that. We made a decision on that  
7 a couple of years ago which I thought set that straight,  
8 but maybe everyone didn't read it, but anyway, I can't  
9 help that.

10 MR. STAMP, Q.C.: I read it, Mr. Chairman.

11 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I  
12 believe you did. So what I'm trying to do here, without  
13 belabouring it, is we need some information in terms of  
14 completing the book of evidence to understand how  
15 Facility operates within the industry, and I appreciate  
16 where you're coming from, and all I can say is that if we  
17 get into the area of confidential information, I guess  
18 we'll have to deal with it as it comes up.

19 MR. STAMP, Q.C.: Yes.

20 MR. SAUNDERS, PRESIDING CHAIRMAN: But you  
21 can rest assured that there's nothing that I can think of  
22 in the way of questions that I would have for your  
23 panel or your individuals that you may call, that would  
24 get into that area.

25 MR. STAMP, Q.C.: Well, Mr. Chairman, we understand  
26 your directions and we will do everything we can to  
27 accommodate the request and in the timelines that  
28 you've indicated.

29 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
30 you.

31 MR. STAMP, Q.C.: Okay.

32 MR. SAUNDERS, PRESIDING CHAIRMAN: If that  
33 completes that then we'll move along to opening  
34 statements, and I guess the Applicant should go first,  
35 so who is warmed up and ready to go.

36 MR. WHALEN, Q.C.: Thank you, Mr. Chairman and  
37 Members of the Board, I will be very brief indeed.  
38 We're here again because we believe Facility needs a  
39 rate increase. I think this will become more evident in  
40 how this works as the hearing goes on. We had  
41 anticipated the time available to us and with the fact  
42 that we had already conducted a substantial hearing  
43 before the Board two years ago, and a decision had

44 been rendered that you wrote yourself, Mr. Chairman,  
45 and others, that we probably wouldn't have to go into  
46 a lot of the background detail, but the object of Facility  
47 as a vehicle, and it is just a facility, it is a (inaudible)  
48 that administers risk and funds, is it would like to have  
49 absolutely no members. It's goal is to have zero  
50 participation.

51 Facility as a philosophical group, and the  
52 board of directors is not happy that it has high  
53 participation in Newfoundland. It was the highest  
54 participation rate in Canada for some years, and I think  
55 this year or last year we may have been second. We'd  
56 like to have that number down.

57 We have to have a rate commensurate with the  
58 risk. That we understood was the purpose of this  
59 hearing, and that rate is generally set on a go-forward  
60 basis by actuaries who are professionals skilled in this  
61 area to try to anticipate what the return required is  
62 going to be on a go-forward basis. That was done  
63 quite recently. I understand that reports were filed, the  
64 Board made a ruling, and the passage of time has  
65 shown whether those rates were sufficiently high or  
66 not. It's that kind of a process.

67 From what you've indicated, we're going to go  
68 a little bit beyond that again in this hearing and we're  
69 going to talk about really the underwriting guidelines  
70 and how people get in there, and I can understand there  
71 being a concern that, well, you know, are there more  
72 seniors in this group than there should be. Well the  
73 Atlantic statistics tell us something and now we'll try to  
74 find some carriers that will tell us local statistics as best  
75 we can.

76 And that may be a legitimate concern, and  
77 obviously a concern for the Consumer Advocate, but  
78 it's not something over which Facility has any control,  
79 and we will see that as we go forward. It's something  
80 really more in the domain of the Superintendent of  
81 Insurance and the people who regulate these matters,  
82 and this Board does not regulate those matters. This  
83 Board regulates rate.

84 And the other thing, the point I'd like to make,  
85 and I'm sure we'll hear more of this from others because  
86 I understand some of the chief executives from some of  
87 the senior insurance companies in the province and in  
88 the country really had wanted to come and give their  
89 view before this Board, and there appears to have been  
90 some timing difficulties, is that if Facility has losses, as

1 we know, then the Facility has to call on its members to  
2 fulfil those losses, and come up with the cash, and pay  
3 it, and that money has got to come from the regular  
4 market, so there's issues of cross-subsidization that we  
5 have to look at.

6 And of course, we know that the participation  
7 in Facility in this province is somewhere in the range of  
8 just over four percent, or in the four percent range. In  
9 some provinces of Canada it's below one percent, but  
10 if the people in that four percent range, the high risk  
11 four percent, the Facility group, if they don't cover their  
12 own costs then they have to be passed on to the 96  
13 percent group, and they're consumers as well. They are  
14 simply not the consumers who are really responsible for  
15 that risk. They are not the high risk drivers so I think  
16 this Board and everybody concerned with this issue  
17 should bear that in mind.

18 The real issue is, for this Board, attempting to  
19 ensure that the people who are in Facility from time to  
20 time, are the ones that actually bear the costs of their  
21 involvement, and that it isn't transferred or  
22 downloaded, in Newfoundland's case, to the 96 percent,  
23 and I guess in Ontario's case, it's the 99 percent. They  
24 have much less participation.

25 With that in mind, Mr. Chairman, we will  
26 certainly cooperate and do everything we can to  
27 comply with your directions and get these people and  
28 bring them before you in a time, I guess, that we'll have  
29 to agree amongst ourselves.

30 *(11:00 a.m.)*

31 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
32 you, Mr. Whalen, before moving on to the Consumer  
33 Advocate, you mentioned the timing difficulties in  
34 respect of some of the industry people and I'm aware of  
35 them, we'll do everything we can to accommodate  
36 anyone who wants to come forward to give a statement,  
37 and I guess the difficulty we had with one of the  
38 principles, I guess, that you might be referring to is that  
39 a gentleman wanted to come in to give a statement at  
40 the beginning of this process this morning and it was ...

41 MR. WHALEN, Q.C.: Yes, I think I saw that letter this  
42 morning myself.

43 MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah, and  
44 there's a procedure that we have to try and keep things  
45 running smoothly, and usually comments and

46 statements by individuals comes after the evidence,  
47 because I've always maintained that if you have an  
48 opinion, or if you have a statement to make, you should  
49 at least hear the parties before you make your  
50 statement. Otherwise, I don't put much weight to  
51 statements made before the evidence is in, so it's that,  
52 it's for that reason that we usually hear commentary  
53 from people who want to have a say after the evidence  
54 is heard, so I think it was Mr. Tisdale who wanted to  
55 come in and make a statement and like I said, we'll  
56 certainly do everything we can to accommodate him  
57 and, apart from sitting on Christmas Eve. Now then,  
58 Mr. O'Flaherty, are you ready?

59 MR. O'FLAHERTY: Mr. Chairman, with your  
60 permission, the Consumer Advocate would prefer to  
61 defer an opening statement to the opening of our case  
62 if that's acceptable.

63 MR. SAUNDERS, PRESIDING CHAIRMAN: Indeed,  
64 so Mr. Whalen, Mr. Stamp, are you ready to call your  
65 first witness?

66 MR. WHALEN, Q.C.: Yes, Mr. Stamp will deal with Mr.  
67 Pelly first.

68 MR. SAUNDERS, PRESIDING CHAIRMAN: Good  
69 morning, Mr. Pelly.

70 MR. PELLY: Good morning, Mr. Chairman.

71 MR. SAUNDERS, PRESIDING CHAIRMAN: How are  
72 you?

73 MR. PELLY: Very well, thank you.

74 MR. SAUNDERS, PRESIDING CHAIRMAN: Welcome  
75 back to the province.

76 MR. PELLY: Thank you.

77 MR. SAUNDERS, PRESIDING CHAIRMAN: Would  
78 you take the Bible in your right hand, please? Do you  
79 swear that in the evidence you are about to give, you  
80 will tell the truth, the whole truth, and nothing but the  
81 truth, so help you God?

82 MR. PELLY: I do.

83 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
84 you. Okay, Mr. Stamp.

- 1 MR. STAMP, Q.C.: Thank you, Mr. Chairman, I  
2 circulated copies of Mr. Pelly's CV a little earlier, I don't  
3 know if the Board has received the copies, but I'm  
4 going to ...
- 5 MR. SAUNDERS, PRESIDING CHAIRMAN: We have.
- 6 MR. STAMP, Q.C.: For the purposes of identifying Mr.  
7 Pelly's expertise, and seek in having him declared an  
8 expert, ask him to describe his training and  
9 qualifications and experience for us. Mr. Pelly, please?
- 10 MR. PELLY: I am a Fellow of the Canadian Institute of  
11 Actuaries, a Fellow of the Casualty Actuarial Society,  
12 I have a university education in actuarial sciences, I am  
13 active in the professional activities of the Canadian  
14 Institute of Actuaries, and I have 25 years of relevant  
15 Canadian actuarial practice.
- 16 MR. STAMP, Q.C.: Mr. Pelly, have you given  
17 testimony as an actuary in other jurisdictions?
- 18 MR. PELLY: I have.
- 19 MR. STAMP, Q.C.: Which jurisdictions would they  
20 be?
- 21 MR. PELLY: Alberta, Ontario, Nova Scotia, New  
22 Brunswick, and Newfoundland and Labrador.
- 23 MR. STAMP, Q.C.: And of course, we all know that  
24 you gave evidence as an actuary in a Facility  
25 Association hearing about two years ago, I guess, now,  
26 perhaps?
- 27 MR. PELLY: That's correct.
- 28 MR. STAMP, Q.C.: Right, the, I just have one further  
29 question for you on the items of relevant experience  
30 that you've mentioned in the document you provided to  
31 us. You indicate that you're active in rate making work  
32 and appointed actuary responsibilities, would you just  
33 tell us what appointed actuary responsibilities are?
- 34 MR. PELLY: This is a role carved out by federal  
35 legislation for federally registered insurance companies,  
36 property casualty insurance companies, and life  
37 insurance companies in Canada. It is the role for  
38 actuaries to participate in the financial reporting cycle  
39 for insurance companies in Canada and they offer an  
40 opinion which appears as part of the financial
- 41 statements on the adequacy and the fair presentation of  
42 the actuarial liabilities.
- 43 MR. STAMP, Q.C.: And one final question for you,  
44 Mr. Pelly, are you extensively involved in rate making  
45 work for private companies?
- 46 MR. PELLY: I am.
- 47 MR. STAMP, Q.C.: And for Facility Association?
- 48 MR. PELLY: I am.
- 49 MR. STAMP, Q.C.: That's all the questions I have on  
50 Mr. Pelly's expertise, others may have questions for  
51 him, of course.
- 52 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
53 O'Flaherty?
- 54 MR. O'FLAHERTY: Thank you, Mr. Chairman, the  
55 Consumer Advocate accepts Mr. Pelly's qualifications  
56 and that he is an expert witness in the area of actuarial  
57 science. I would just like to follow up on one point and  
58 that is that Mr. Pelly, do I understand your evidence to  
59 be that you have expertise both in the financial  
60 reporting aspect of actuarial work in the insurance  
61 industry as well as in assisting clients with rate making?
- 62 MR. PELLY: I do have expertise in both areas, yes.
- 63 MR. O'FLAHERTY: Thank you, those are all my  
64 questions.
- 65 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
66 you, Mr. O'Flaherty.
- 67 MS. NEWMAN: I have no questions, I accept that Mr.  
68 Pelly is an expert witness.
- 69 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
70 Martin, any questions?
- 71 COMMISSIONER MARTIN: No.
- 72 MR. STAMP, Q.C.: Mr. Chairman, if I may then, I'd like  
73 to request that Mr. Pelly be declared an expert, an  
74 actuarial expert with special expertise in automobile  
75 insurance rate making work.
- 76 MR. SAUNDERS, PRESIDING CHAIRMAN: Very well.

MR. STAMP, Q.C.: Now, Mr. Pelly, having got that out of the way, I would like to have you tell us, you describe yourself as a Fellow of the Canadian Institute of Actuaries, and a Fellow of the Casualty Actuarial Society, what actually is the work of an actuary?

MR. PELLY: Within the pricing realm, within rate making?

MR. STAMP, Q.C.: Within the realm of the process that we're involved with before this Board on this occasion.

MR. PELLY: A pricing actuary, which particularly in the case of the kinds of lines of insurance we're dealing with here, the principal role 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, and it's a matter of using the experience of the past to build an expectation for the future.

MR. STAMP, Q.C.: And when you build that expectation, how do you describe what the expectation is, how do you come down with an expectation?

MR. PELLY: Well, there are several steps to the process, and we break the component elements of the premiums that we're trying to estimate the requirement for, we break it into its component parts. There are loss parts and expense parts, and in certain circumstances there are profit provisions built in as well. Each of those elements has subcomponents as well, and in each instance we attempt to build an estimate of the expected cost of each of those elements for a future rating period based on the experience of the past, and that involves making adjustments to that historical data to make it relevant in a prospective context.

MR. STAMP, Q.C.: Now, you've indicated, of course, that you are a consulting actuary to Facility Association, how long have you done that work, Mr. Pelly, and in what jurisdictions?

MR. PELLY: I've been active with Facility Association since its inception. I've been its lead pricing actuary since about 1993, 1995, I guess, 1995.

MR. STAMP, Q.C.: And in connection with the rate filing that has been submitted to the Board on this occasion by Facility Association, what was your involvement with it?

MR. PELLY: I am responsible for the document. It was prepared under my supervision and I am here to provide evidence on it.

MR. STAMP, Q.C.: Okay, so the book that you're talking about is the book that is described as Facility Association, Private Passenger and Commercial Vehicles, Rate Programs, Province of Newfoundland and Labrador?

MR. PELLY: That's correct.

MR. STAMP, Q.C.: That is your document?

MR. PELLY: That is my document.

MR. STAMP, Q.C.: And so as you say, your responsibility then is to develop a rate level. I take it Facility Association already has a rate level?

MR. PELLY: There is a current rate level in effect.

MR. STAMP, Q.C.: Alright, and what happens that requires the preparation of this sort of document for submission to the Board? Why is this necessary?

MR. PELLY: Facility Association has an annual review process that they undertake and we're involved in it, to assess the adequacy of current rates in effect in each jurisdiction in which they operate for both private passenger and commercial vehicles. This is an annual cycle that we go through. We work independently as well as in conjunction with Facility Association staff and the various Facility Association committees which facilitate this work. So the process is a recurring process, and a filing arises out of that process in those instances where the committees and the board of directors of Facility Association determine that there is a need, based on all of the work that goes into the analysis on a recurring basis.

MR. STAMP, Q.C.: And when you do this work, and when you prepare this type of application or filing, what is the basis on which you do it? What are you attempting to achieve when you present this particular filing?

MR. PELLY: The objective of presenting the filing in this jurisdiction is to provide an overview of what it is that is being proposed, as well as enough technical documentation for the basis for that proposal to allow

another suitably qualified expert to assess the merits of that work.

MR. STAMP, Q.C.: And Mr. Pelly, I mean if there are, is there a range of possibilities where you could find yourself in doing your analysis and making your selections?

MR. PELLY: Actuarial work typically involves a lot of interpretation and a lot of judgement, and it's natural for different actuaries to potentially hold different views within a reasonable range.

MR. STAMP, Q.C.: And so where do you, where do you propose to be, when you file this document with the Board for these rates, on that reasonable range, as you describe it?

MR. PELLY: I undertake my work on what I will describe as a best-estimate basis. My objective is to build my estimates with notionally a probability of, an equal probability of being high or low, so I am seeking to be in the middle of the road in terms of how I am placing my estimates.

MR. STAMP, Q.C.: And when you are generating your indications and what that filing ought to look like, you, I think you indicate you work with, you work independently, and you work sometimes with Facility Association staff and committees, so what, how does that work?

MR. PELLY: Facility Association staff facilitates some of our work by acting as an interface with servicing carriers who are able to provide some insight and information as well as interface with the committees. Our role is to bring indicated rate level changes, indicated classification relativities, all of the elements that come, that flow naturally from our analysis ...

MR. STAMP, Q.C.: And when you say "indicated", what do you mean particularly by that word?

MR. PELLY: Our best estimate of the requirement for rate level for base rates for differentials, all of the components of a rate program.

MR. STAMP, Q.C.: That's the indicated level?

MR. PELLY: That's the indicated rate program. We bring, our objective is to bring that to the committees for their review. They take that information into

consideration along with their knowledge of local market conditions, their knowledge of emerging issues in their own voluntary books of business, because a lot of these committees are staff, or all of these committees are staffed by volunteers from the regular market, and they make recommendations for rate changes based on both our analysis, and those other criteria, those other considerations that are brought to bear on the decision making process. Ultimately, their recommendations are brought to the Facility Association board of directors who have the final authority to decide in which jurisdictions filings are to be prepared.

MR. STAMP, Q.C.: And just to clarify this point, in the report, in the filing itself, Mr. Pelly, and I'm going to ask you to turn, just for a moment, to the first page of your summary of findings, which is the document that, I guess, is preliminary to the data behind it.

MR. PELLY: I have that.

MR. STAMP, Q.C.: There is on that page and the following page, four charts, two dealing with private passenger and two dealing with commercial, one sets out an indicated average rate level change, and the other sets out a proposed average rate level change. Can you just explain to the Board, please, what these charts are providing?

(11:15 a.m.)

MR. PELLY: This is a fairly high level summary of both what is indicated out of my analysis of experience, and what the Facility Association is proposing in response to that analysis in terms of change in average rate level by coverage, and by territory, with appropriate marginal totals calculated across all coverages and across all territories, and for the province as a whole. In each instance these represent changes in average rate level, individual policyholders that comprise the component coverages, and territories would experience changes in rate level individually that are both above and below that average.

MR. STAMP, Q.C.: And, but this is, in fact, the actuarial indication and the Facility proposed rate in these charts?

MR. PELLY: Proposed rate level change, that's correct.

MR. STAMP, Q.C.: Proposed rate level changes, yes. Okay, now perhaps you can describe for us in a brief

1 way, Mr. Pelly, how generally you approach your work  
2 when you set about to do this filing, prepare this  
3 information.

4 MR. PELLY: Well, we undertake to do our work in  
5 accordance with accepted actuarial practice, and I  
6 assert that the work that we've done is in accordance  
7 with accepted actuarial practice in Canada. The  
8 assumptions we make are intended to be responsive to  
9 the experience in a suitable manner. We take  
10 responsibility for all of the work that we do and the  
11 basis upon which those assumptions are established,  
12 and bring it to this Board for its consideration as  
13 support for the proposed rate level change is before  
14 them.

15 Our work is subjected to a lot of scrutiny. I  
16 submit that it's probably more scrutiny than most  
17 pricing actuary's work is submitted to. First of all, it's  
18 scrutinized internally by more than myself, because we  
19 have more than one actuary work involved, qualified  
20 actuary involved in the work. It's scrutinized by the  
21 Actuarial Committee at Facility Association, which is a  
22 volunteer committee of practicing actuaries in the  
23 voluntary market, the regular market across Canada.  
24 And in due course it's, when filings are made it's  
25 scrutinized by rate regulators and their actuaries in  
26 many jurisdictions across Canada. We have recently  
27 gone through review processes in Nova Scotia and  
28 New Brunswick, which are two of the latest situations  
29 where there was an independent actuarial review, and  
30 those reviews are typical of the processes that we go  
31 through on a recurring basis with these applications.

32 MR. STAMP, Q.C.: Now, what can you tell us about  
33 the methodologies, the assumptions and so on that you  
34 use in generating this filing, and the indications that are  
35 set out in it, how you compare those with the  
36 methodologies and assumptions that you use in other  
37 jurisdictions where you're doing the same sort of work  
38 for Facility Association?

39 MR. PELLY: There is a deliberate effort to make, to  
40 bring consistency to the work that we do. Naturally,  
41 there are circumstances where the particular  
42 assumptions are tailored to the jurisdiction. Certainly,  
43 we want to rely on jurisdictional experience to the  
44 greatest extent possible and reasonable, so subject to  
45 that understanding, we undertake to develop our  
46 indications on a consistent basis across jurisdictions.

47 MR. STAMP, Q.C.: Now, you mentioned you had been  
48 involved in hearings in New Brunswick and Nova  
49 Scotia fairly recently.

50 MR. PELLY: Fairly recently, yes, early November.

51 MR. STAMP, Q.C.: Okay, and were you also involved  
52 in even a more recent process for Facility in another  
53 jurisdiction?

54 MR. PELLY: Earlier this week there was a hearing in  
55 Alberta.

56 MR. STAMP, Q.C.: Alright, and is that completed  
57 now?

58 MR. PELLY: The hearing is complete, it's pending a  
59 decision.

60 MR. STAMP, Q.C.: Okay, is there anything else about  
61 the methodologies, Mr. Pelly, that is important for the  
62 Board to understand?

63 MR. PELLY: Just one thing that I'll highlight.  
64 Although methodology does evolve through time, that  
65 is something that is fairly carefully managed with  
66 Facility Association. Changes to the methodology are,  
67 are introduced after considered study, often in  
68 consultation with the actuarial committee. I can tell you  
69 today that the methodology employed in this  
70 application is substantially unchanged from the  
71 previous application which was dated in May of 2001  
72 which came to this Board. There are some changes in  
73 the methodology, most of those have been highlighted  
74 by the Board's consulting actuary in their report, but I  
75 wouldn't describe any of the changes as being terribly  
76 material to the outcome.

77 MR. STAMP, Q.C.: Alright, can you take us through  
78 the, I guess in a general way then, the scope of this  
79 filing?

80 MR. PELLY: The primary focus for this application is to  
81 address the rate level for private passenger and  
82 commercial vehicles in Newfoundland and Labrador. It  
83 is based on the experience, principally on the  
84 experience reported up to December 31st, 2001, which  
85 you will probably hear me use the acronym, AIX, which  
86 is short form for automobile insurance experience. The  
87 2001 AIX experience reported to 31 December 2001, is  
88 used to establish the overall rate level need and the  
89 components that build that requirement.



1 In undertaking this work we always work with  
2 whatever data we have, and one of the realities of the  
3 process that we go through is that it takes time. We  
4 began the work on this analysis in early June of 2002,  
5 and about six months later we're here, culminating that  
6 cycle, so that's after going through extensive review  
7 processes preliminary to meetings with committees at  
8 Facility Association, meeting with the board of  
9 directors to get approval to file, preparation of the  
10 filing, participation in the pre-hearing information  
11 exchange process, and now with this hearing.

12 MR. STAMP, Q.C.: I'm sorry, Mr. Pelly ...

13 MR. PELLY: So the reality is that time does pass,  
14 information becomes available subsequent to the time  
15 when the original application, the original analysis was  
16 undertaken, and we have to stop responding to the  
17 latest experience at some point in time, and we use what  
18 we have available at the time when we need to use it.

19 MR. STAMP, Q.C.: And Mr. Pelly, when you describe  
20 the fact that this filing is based primarily on the  
21 experience reported, I think you said to the 31st of  
22 December 2001, and you talked about AIX, or that  
23 acronym, data, whose data is that? Where do you get  
24 that data?

25 MR. PELLY: That data is assembled and published by  
26 the Insurance Bureau of Canada in their capacity as the  
27 statistical agent for the Superintendents of Insurance in  
28 all of the jurisdictions across Canada. Facility  
29 Association as an entity is very dependent upon the  
30 Insurance Bureau of Canada as the source for most of  
31 its rate making data, most of the data that I use, so  
32 unlike a lot of the larger voluntary market companies,  
33 they don't really have internal information systems that  
34 allow them to get access to some of their experience,  
35 and part of the reason for that is their structure. Facility  
36 Association operates through its servicing carriers, and  
37 those servicing carriers function on behalf of Facility  
38 Association, but separately from each other. The  
39 consequence being that a portion of Facility  
40 Association experience arises from servicing carrier A,  
41 another portion arises from servicing carrier B. We are  
42 seeking to use the amalgam of that servicing carrier  
43 experience that Facility Association experienced. The  
44 Insurance Bureau of Canada represents the medium by  
45 which we do that.

46 MR. STAMP, Q.C.: And how does the Insurance  
47 Bureau of Canada get the data from service carrier A?

48 MR. PELLY: All servicing carriers and all automobile  
49 insurers in competitive jurisdictions across Canada are  
50 required to participate in the automobile statistical plan  
51 that is approved and maintained by the  
52 Superintendents of Insurance.

53 MR. STAMP, Q.C.: So this, this statistical plan that the  
54 IBC operates is operated for the Superintendent of  
55 Insurance?

56 MR. PELLY: That's correct.

57 MR. STAMP, Q.C.: Among others, Newfoundland.

58 MR. PELLY: They are appointed as statistical agent.

59 MR. STAMP, Q.C.: Okay, so service carrier A, and B,  
60 and C, and whoever else reports the data from their  
61 particular perspective on Facility Association  
62 experience to IBC, and then they somehow assemble  
63 the data and publish it?

64 MR. PELLY: They publish it in printed form, and they  
65 make it available in electronic form.

66 MR. STAMP, Q.C.: And it's the printed in electronic  
67 form data that you then look at to try and break down  
68 and develop your fresh indications.

69 MR. PELLY: That's correct.

70 MR. STAMP, Q.C.: Okay, now in addition to looking to  
71 set new rates or to establish new indications, what  
72 other changes do you contemplate in the Facility, I  
73 guess, pricing structure?

74 MR. PELLY: In this application?

75 MR. STAMP, Q.C.: In this application.

76 MR. PELLY: There are, as a very high level overview,  
77 there are some changes proposed to some rating roles.  
78 There are some changes proposed to minimum  
79 deductibles for physical damages coverages. It's  
80 proposed to implement a new rate group classification  
81 system for Facility Association, new to Facility  
82 Association, but not new to the Newfoundland and  
83 Labrador insurance market, that being the Canadian  
84 Loss Experience Automobile Rating System, or CLEAR  
85 System, and I should also mention that as is always the  
86 case with rate level changes for private passenger and  
87 commercial vehicles, to the extent that there are other

1 classes of vehicles that are dependent upon either  
2 private passenger or commercial vehicles for purposes  
3 of establishing rate, then any approval of a rate level  
4 change for private passenger or commercial vehicles  
5 will have some flow-through effect to those other  
6 classes of vehicles.

7 Specifically, this application is proposing  
8 changes to base rates for private passenger and  
9 commercial. Base rates are the foundation on which the  
10 rate pages that make up part of the application in  
11 Appendix C are based. Those base rates are  
12 established giving consideration to the overall rate  
13 level need, and the rate level effect of any changes in  
14 classification differentials, territorial relationships, the  
15 accident conviction surcharge schedule, which I'll  
16 mention shortly.

17 This application proposes updating the  
18 territorial relationships used for distinguishing rates  
19 between the three rating territories that are used for  
20 private passenger vehicles in Newfoundland and  
21 Labrador. The application proposes updating the  
22 relationships between the various classes and driving  
23 records used for purposes of rating owners,  
24 owner/operators of vehicles for Facility Association.

25 MR. STAMP, Q.C.: On that point, Mr. Pelly, you say  
26 it's designed to reflect classifications of drivers and  
27 vehicle use, could you be a bit more specific about  
28 what that means?

29 MR. PELLY: The classification plan employed by  
30 Facility Association for rating purposes relates closely  
31 to the classification plan established by the  
32 Superintendent's statistical plan, and is, it's not  
33 identical but it's substantially identical to the  
34 classification plan promulgated under the statistical  
35 plan, so in terms of the considerations that go into  
36 establishing a rate level for Facility Association, those  
37 considerations, namely characteristics such as the use  
38 of the vehicle, the age of the operator, the gender, the  
39 marital status, those kinds of considerations are all  
40 contemplated under the statistical plan as approved by  
41 the Superintendents of Insurance.

42 MR. STAMP, Q.C.: And how do those criteria  
43 influence Facility's rates?

44 MR. PELLY: The structure of the rates is established  
45 through a system of multiplicative differentials.  
46 Differentials are just factors that are used to explode the

47 base rate out to a specific rate for an individual rating  
48 cell, be it for a territory, a class, a driving record, a  
49 liability limit, a particular rate group, a particular  
50 deductible, all of those represent dimensions of the  
51 classification process and rating differentials are used  
52 to populate the various rating cells in each of those  
53 dimensions.

54 MR. STAMP, Q.C.: Okay, so for example, the type of  
55 vehicle that you drive will be a feature of your rate?

56 MR. PELLY: In a nutshell, yes.

57 MR. STAMP, Q.C.: And where you live is a feature of  
58 your rate?

59 MR. PELLY: Yes.

60 MR. STAMP, Q.C.: And if you've had accidents or  
61 convictions, that might also be a feature of your rate?

62 MR. PELLY: Yes.

63 MR. STAMP, Q.C.: I presume the number of years, the  
64 number of years that you have had a perfect driving  
65 record is possibly a feature of your rate?

66 MR. PELLY: It is.

67 (11:30 a.m.)

68 MR. STAMP, Q.C.: Now, you've heard, and were  
69 present, I'm sure, for some of the discussion earlier this  
70 morning on the topic of age groups insured in Facility,  
71 and I want to just ask you a bit about that if I can, and  
72 I was trying to explain what I understood to be the  
73 situation, and hopefully you can give it to us in an  
74 evidentiary form, in a more reliable way. First of all,  
75 does Facility Association take into account the age of  
76 an operator in deciding what the rate that that operator  
77 should pay is?

78 MR. PELLY: Only with respect to what is characterized  
79 as youthful operators, which are principal operators to  
80 age 24 and younger. For principal operators aged 24  
81 and above, there is no rating distinction made with  
82 respect to age.

83 MR. STAMP, Q.C.: So you heard me say that, that the  
84 principal operator who is 27, there's ... no distinction is  
85 made between that operator and a principal operator  
86 who is 97 years of age?

1 MR. PELLY: All other things being equal there is no  
2 rating distinction.

3 MR. STAMP, Q.C.: All other things being equal, yes.  
4 And in the process in which you are involved in New  
5 Brunswick and/or Nova Scotia, was there a chart  
6 developed from IBC data to try and show some kind of,  
7 of indication, I guess, of the, where the age groups  
8 were?

9 MR. PELLY: The distribution of business, the  
10 comparative distribution of business between Facility  
11 Association and the industry by age category, yes,  
12 there was.

13 MR. STAMP, Q.C.: Mr. Chairman, I'm not sure if there  
14 is a way of providing, if Mr. Pelly can have a copy of  
15 the information request, does somebody have that that  
16 can show him ... I'm looking particularly at information  
17 request CA-2. I'm sorry, yes, CA-2.0, and the response  
18 to it. If it's any help, Mr. Chairman, to yourself and the  
19 Commissioners, I'm looking for this diagram which is  
20 attached, this chart which is attached to the response  
21 to CA-2.0.

22 MR. PELLY: Curiously enough, it does not appear to  
23 be where I would expect it to be in the binder, unless I'm  
24 ...

25 MR. SAUNDERS, PRESIDING CHAIRMAN: No, it's  
26 not in mine either.

27 MR. PELLY: And I was missing it, my apologies.

28 MR. STAMP, Q.C.: And maybe that helps the panel,  
29 have they located the ...

30 MR. SAUNDERS, PRESIDING CHAIRMAN: No, I  
31 haven't located it ... I've seen it but I haven't located it..

32 MR. STAMP, Q.C.: The reference I have, it's simply a  
33 response to CA-2.0.

34 MS. NEWMAN: There's no exhibit number on the top  
35 portion of it there.

36 MR. STAMP, Q.C.: The top notation is Atlantic  
37 Provinces 1999 - 2001, Vehicle Count by Age Group.

38 MS. NEWMAN: I've got it.

39 MR. STAMP, Q.C.: Assuming we've all located that  
40 document now, Mr. Chairman ...

41 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I  
42 think so. Carry on.

43 MR. STAMP, Q.C.: Mr. Pelly, this chart, perhaps you  
44 can just tell us what this chart shows.

45 MR. PELLY: This is a comparative chart of Facility  
46 Association and all industry experience for Atlantic  
47 Canada with respect to private passenger vehicles. It  
48 presents information broken down by vehicle count  
49 information or exposure data broken down by gender  
50 and by age bands (*phonetic*), for each of the last three  
51 available accident years.

52 MR. STAMP, Q.C.: Okay.

53 MR. PELLY: This was previously described as raw  
54 data, and I believe that description, or that phrase, "raw  
55 data", was coined to reflect the fact that the Insurance  
56 Bureau of Canada has not ... well, as of the other day  
57 when I was last in the office, has not as yet released  
58 this data, and it was provided on an advanced release  
59 basis to Facility Association at their request.

60 MR. STAMP, Q.C.: And we're particularly interested,  
61 I guess, in the age brackets, and there are three age  
62 brackets shown. Can you just tell us the significance of  
63 those brackets, or is there any significance for Facility?

64 MR. PELLY: Well, the three age brackets are for ages  
65 15 to 24, ages 25 to 65, and ages 66 plus. The  
66 significance of the first age bracket is that that  
67 encompasses all that I previously described as youthful  
68 operators.

69 MR. STAMP, Q.C.: And those operators' rates are  
70 partly a reflection of their age?

71 MR. PELLY: Yes, the second age category, ages 25 to  
72 65, and the age category 66 plus, while not being of  
73 relevance in a rating context for Facility Association, I  
74 believe the 66 plus line was drawn partly by the manner  
75 in which the available data was assembled, but also  
76 using age 65 as a break point for notionally identifying  
77 a retirement age, or a senior citizen age.

78 MR. STAMP, Q.C.: Now, so just to take us through, for  
79 example, let's just look at 1999, and let's look at the age  
80 group 66 plus, and I guess we need to look at the

combined numbers for both genders. What does that disclose in terms of Facility Association and industry?

MR. PELLY: Well, if we look at the column with the percentage sign beside the column labelled "both", under the grand heading of Facility Association, in the row identified as 66 plus for the '99 accident year, we see a value of 11.3 percent. That 11.3 percent represents the proportion of vehicles by exposure count, the proportion of Facility Association's, I believe written exposures in the accident year, which are attributable to, I'll call them senior citizens, age 66 plus.

MR. STAMP, Q.C.: Okay, and how many are in that group, in that particular year, in Facility Association?

MR. PELLY: Just over 2,000 vehicles.

MR. STAMP, Q.C.: Okay, so does that then indicate that for all of Atlantic Canada there are 2,086 principal drivers or principal operators whose age is 66 and older?

MR. PELLY: The only correction I need to make to that is ... first of all, clarifying that it's the 1999 accident year, and the correction I need to make is that it's a vehicle count and not necessarily an operator count.

MR. STAMP, Q.C.: Okay, well what does that, does that distinction do ...

MR. PELLY: It's conceivable that one operator, age 66 or above, could own two vehicles, and that would then count as two vehicles in this instance. That's an example of a distinction between those two statistics.

MR. STAMP, Q.C.: Okay, so at least every individual is counted through this mechanism, every person who is 66 and older is counted in this mechanism. They may perhaps ...

MR. PELLY: If they're a principal operator and insured with Facility Association in the '99 accident year.

MR. STAMP, Q.C.: Okay, and then the comparative number that we have for that same age group in the industry generally ...

MR. PELLY: Casting your eyes to the far right-hand side of that same row we see a value of 12.7 percent. What's of significance here, I suppose, is the fact that Facility Association's percentage composition of

vehicles with principal operators aged 66 and above is lower than the industry as a whole.

MR. STAMP, Q.C.: Alright, but coming down to the bottom of the page, there is a further chart showing the three years, FA and industry data, and a further percentage, FA percent of industry. What does the data for 1999 indicate?

MR. PELLY: This could be described as Facility Association's vehicle market share, or written exposure market share in the age 66 and higher category, so what you're seeing here is that Facility Association's market share of this cohort of policyholders is averaging around 1.6 percent over all three of those accident years.

MR. STAMP, Q.C.: So does that mean in a general way, Mr. Pelly, that about 98.4 percent of the 66 and older group are not in Facility?

MR. PELLY: That's what it means.

MR. STAMP, Q.C.: And then the same analysis would occur in respect to 2000 and 2001 as is set out in the various numbers appropriate to that age bracket.

MR. PELLY: And you can see as you look at the comparable statistics by accident year, both in the tables above and the table at the bottom of the page that there's generally good consistency across the years, the relationship holds where Facility Association's component or composition of senior, senior citizen operators is consistently below that of the industry and the market share for age 66 plus operators is fairly steady at around 1.6 percent, and this is an Atlantic Canada statistic.

MR. STAMP, Q.C.: You were involved in the New Brunswick hearing?

MR. PELLY: I was.

MR. STAMP, Q.C.: And do I understand from some of what's been said that there was a concern expressed to the New Brunswick Board on behalf of seniors with respect to Facility rates?

MR. PELLY: Their interest was heightened by the participation of two seniors' associations who registered as, both registered as intervenors to that hearing, and it was certainly understood that the

1 interests of those seniors' groups needed to be part of  
2 that Board's deliberation.

3 MR. STAMP, Q.C.: But as I interpret these results, and  
4 explain to me if I'm wrong, that age group, 66 and older  
5 in Facility, is minuscule.

6 MR. O'FLAHERTY: Mr. Chairman, perhaps, and I  
7 haven't tried, I've attempted at all times not to interfere  
8 with Mr. Stamp's examination of the witness, but I  
9 believe we are in direct and I think actually it would be  
10 more helpful if he asked the question of the witness and  
11 allowed the witness to provide his interpretation, rather  
12 than provide his own and ask the witness if that was  
13 correct, because I think that takes us sort of far afield,  
14 and it's the long way around. Thank you.

15 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes,  
16 thank you, Mr. O'Flaherty, we most times become very  
17 relaxed here in terms of how we achieve, or how we get  
18 at the information, but I think critically you're right, and  
19 Mr. Stamp, I'm sure you'll govern yourself accordingly?

20 MR. STAMP, Q.C.: Yes sir, I will. Mr. Pelly, so what  
21 can you say about these percentages, 1.6, 1.5, 1.7, as to  
22 their significance for that age category overall?

23 MR. PELLY: Well, it clearly represents a very small  
24 percentage of the, of the overall age 66 and higher  
25 principal operators in the region. The active interest of  
26 the seniors' groups in New Brunswick, with all due  
27 respect to those groups, was largely triggered by a  
28 misunderstanding of the role of Facility Association  
29 and how it affects them, but they have a process and  
30 they're entitled to participate in the process, and the  
31 Board wanted to make sure that information was  
32 brought to bear to help them understand the role of  
33 Facility Association in that market.

34 MR. STAMP, Q.C.: And did you sense that the  
35 seniors' groups were broken down one way or the  
36 other? I mean were they one point ... were they the  
37 small percentage that we see indicated for the Atlantic  
38 Region?

39 MR. PELLY: The seniors' groups represented at that  
40 hearing?

41 MR. STAMP, Q.C.: At that hearing.

42 MR. PELLY: They potentially had members both  
43 insured through Facility Association and insured  
44 through the voluntary market, and quite likely had both.

45 MR. STAMP, Q.C.: Now, Mr. Pelly, I'm sorry, you were  
46 just describing, in fact, in terms of, I guess, how you  
47 developed your proposals, the fact that there were, I  
48 guess, classifications, considerations for drivers and for  
49 vehicles and so on in deciding how the rate would be  
50 set up.

51 MR. PELLY: Just continuing in that vein ...

52 MR. STAMP, Q.C.: Yes.

53 MR. PELLY: There are other elements that are being  
54 proposed in this application, and part of what I want to  
55 accomplish here is to make sure that I touch on, at least  
56 at some level, the various component elements that are  
57 being proposed as changes in this application. There  
58 is a package of changes proposed to the accident and  
59 convictions surcharge schedule. This is the schedule  
60 by which the at fault accident record and the conviction  
61 record of principal operators is recognized in the rating  
62 process, and a change is being proposed to this  
63 schedule to fit better with practices in the voluntary  
64 market, to better provide a disincentive in terms of  
65 behaviour modification to operators that are exhibiting  
66 less than ideal practices in terms of being involved in at  
67 fault accidents, or gathering convictions, and part of  
68 the package of changes to the accident and convictions  
69 surcharge schedule is the introduction of a clean driver  
70 discount with respect to private passenger vehicles  
71 only. The clean driver discount is at a level of 10  
72 percent and is intended to apply to those with no  
73 accidents and no convictions on their appropriate  
74 history duration.

75 (11:45 a.m.)

76 The package of changes with respect to the  
77 accident and convictions surcharge schedule is  
78 intended to affect all classes of vehicles and not just  
79 those with respect to private passenger and commercial.

80 MR. STAMP, Q.C.: And what does that mean, Mr.  
81 Pelly, when you say all classes, describing all classes,  
82 of course, and we know that the rate application is  
83 directed at private passenger and commercial, so what  
84 are the classes that would fall outside those two  
85 groups?

MR. PELLY: Well, there are several other classes of vehicles that could be affected by this. Inter-urban trucks, motor homes, motorcycles, just about any class of vehicle that is subject to accident and conviction surcharges in Facility Association's normal rating practices is potentially affected by this change, but the basis for the, the proposed basis for implementation of this change is that it would be implemented for those other classes of vehicles on a basis that is with the intent of being revenue neutral, so given that the overall impact of introducing increased accident and conviction surcharges is to increase revenue. The outcome of applying this change to those other classes of vehicles would be a reduction in the rates for those that are not subject to accident and conviction surcharges, in a manner that is intended to balance that no change in overall rate level for those other classes of vehicles.

MR. STAMP, Q.C.: So in terms of the discount, you're talking about a discount on the one hand and you're talking about a surcharge on the other hand. How do they, how do these two proposals fit within the rate application that you filed generally?

MR. PELLY: Well, with respect to this application, it's an integrated package of change. The accident and conviction surcharge schedule changes are designed to mesh with the proposed introduction of the clean driver discount for private passenger vehicles.

MR. STAMP, Q.C.: This is the link package.

MR. PELLY: It's a linked package, and I should have mentioned as well that one of the things that we're trying to accomplish is to get uniformity in the accident and conviction surcharge schedule and uniformity in the introduction of the clean driver discount across all jurisdictions in which Facility Association operates, so application either has been made or will be made in each of those jurisdictions to seek approval for implementation of this. As it stands today, we've had approval in two jurisdictions so far, Ontario and New Brunswick. New Brunswick's approval implemented, required a modification to the original proposal in that the clean driver discount was increased from 10 percent to 15 percent.

Just proceeding with some of the other issues or changes that are being introduced with this application, there is a minor change being proposed to the formula for calculation of all perils premiums. All

perils coverage is a combination of collision and comprehensive coverage and the formula for calculating that is proposed to change, again primarily to bring some uniformity in practice across jurisdictions.

As a housekeeping matter, there is a proposal to change the specified perils rate group differentials for commercial vehicles to make them the same as comprehensive. I call this a housekeeping issue because we really don't have any data that allows us to support the basis for this change. The data, even on an industry basis just isn't available, it's not published, but the difficulty that we encounter with the current premium structure as currently approved in this jurisdiction is that we can, a situation can arise where the premium for specified perils can exceed the premium for comprehensive when you get to a high enough rate group, and that is counterintuitive, given that specified perils coverage is, in effect, a subset coverage of comprehensive. The intuitive relationship would be that specified perils should cost less than comprehensive. In the current rating group differentials in use for specified perils allow for the possibility that at a high enough rate group you can have a cross over where the two will be reversed. What we're seeking to do is to correct that by imposition of the same set of rate group differentials as used for comprehensive would apply to specified perils.

We're also proposing some increases to the minimum deductibles for collision and for comprehensive. Minimum deductibles are, I suppose you could call it an underwriting rule in the sense that it is the level beneath which Facility Association would not routinely offer coverage.

I mentioned previously that we are proposing the introduction of clear rate groups and rate group differentials for private passenger vehicles, and I should add to that that the proposal is to use the rate groups and the rate group differentials as promulgated by the Vehicle Information Centre of Canada, which is a division of the Insurance Bureau of Canada, to use those as promulgated by VICC without deviation.

These rates anticipate implementation, well the analysis underlying the indications anticipates implementation on the 1st of February, 2003. Mr. Simpson's covering letter to the application which was dated September the 5th, 2002, proposed coincident implementation at February 1st, 2003, but it is, it needs to be recognized that that date is no longer realizable,

so depending upon the timing of this Board's approval, there is a necessary lead time to implementation of a revised rate in order to provide servicing carriers and Facility Association staff with sufficient time to put in place the new rating structure.

MR. STAMP, Q.C.: Just for a moment, Mr. Pelly, you've mentioned this 5 September letter that accompanied the rate filing, what is the, what was the purpose of that letter, can you tell us?

MR. PELLY: That letter was a cover letter to the formal application. It was prepared on, presented on Facility Association letterhead and signed by David Simpson, President and CEO of Facility Association. It was intended to provide an overview summary of what was being proposed in the application. I did help with the preparation of that letter and it's really just a very high level summary of the document which it encompassed.

MR. O'FLAHERTY: Mr. Chairman, can I ask that the Consumer Advocate be provided with a copy of that letter?

MR. STAMP, Q.C.: It's in the copy we have. I don't know if it's not in the other copies. I can certainly arrange to get a copy of that made and ...

MS. NEWMAN: I believe you would have been provided a copy as part of the application. It covers the application.

MR. PELLY: I can confirm that your expert has a copy of it.

MR. SAUNDERS, PRESIDING CHAIRMAN: You will be getting a copy.

MR. O'FLAHERTY: I'm sure it's just a housekeeping issue, but we don't have a copy of it, so ...

MS. NEWMAN: Yeah, okay.

MR. O'FLAHERTY: So we'd appreciate that.

MR. SAUNDERS, PRESIDING CHAIRMAN: Carry on, Mr. Stamp.

MR. PELLY: One final point with respect to the consequence of delayed implementation, given that the indications were developed, assuming a February 1st, 2003, implementation and that we are no longer in a

position to realize that date, one of the consequences of that is that in an environment where claims trends are generally upward, then there is a corresponding understatement of the required rate level for a period, a rating period commencing at a date later than February 1st, 2003, so as time passes, there is an accumulating drag on the adequacy of the rate level that is otherwise being proposed.

MR. STAMP, Q.C.: And does that apply in this particular case?

MR. PELLY: It will necessarily apply in this instance because of the timing of this hearing and the lead time required for implementation of rates in any jurisdiction. Now, Mr. Stamp already took us to pages one and two of the application where there is a summary of the, of the indicated and the proposed changes in average rate level. It's the actuary's job to bring to the Facility Association the indicated portion of that material and it is the role of Facility Association staff in conjunction with the various committees and its board of directors to decide upon the extent to which they should respond to those indications in preparing proposed changes in average rate level for possible submission as a rate application as we have here.

With respect to private passenger vehicles, this is a very high level summary, and I'm reading from pages one and two of the narrative in the application. The indicated change overall in average rate level for private passenger vehicles was an increase of 41.3 percent, and that same magnitude of increase is being proposed with respect to private passenger vehicles.

With respect to commercial vehicles, the overall change in average rate level indicated as plus 47.7 percent, and as you can see at the top of page two, the proposed change in average rate level overall is plus 48.3 percent. To a great extent the proposed changes in average rate level in this instance substantially reflect the indications without any capping or limitations on the movement in the overall average rate level.

There are exceptions that arise to that general statement, specifically with respect to specified perils for both private passenger and commercial vehicles, and with respect to the uninsured auto coverage for commercial vehicles. I can say more on those shortly.

1 I will also mention that the individual  
2 policyholders who may come to be renewed in Facility  
3 Association or through Facility Association as a result  
4 of this proposed rate level change will see changes  
5 both above and below these overall averages. That's  
6 the nature of an average, that it encompasses the  
7 people who will, and counter ... or changes in rate level  
8 both above and below the average. The extent to  
9 which individual policyholders will see changes above  
10 and below the average is a reflection of a response to  
11 the experience of those classifications to which those  
12 individuals are assigned, be it territory, class or driving  
13 record.

14 The next step I would like to take us to ...

15 MR. STAMP, Q.C.: Well, I guess, that's what I was  
16 going to ask you about, are there particularly key  
17 assumptions that drive the rate filing and indications?

18 MR. PELLY: There certainly are key areas in the work  
19 and what I'd like to try and do is to provide an overview  
20 summary of the process that I go through as an actuary  
21 to develop the indicated changes in rate level, and there  
22 are ...

23 MR. SAUNDERS, PRESIDING CHAIRMAN: If I might  
24 interrupt, we had planned to break at 12:00 and if we're  
25 going to go into a ...

26 MR. STAMP, Q.C.: This is a perfect spot, Mr.  
27 Chairman.

28 MR. SAUNDERS, PRESIDING CHAIRMAN: It would  
29 be a good time?

30 MR. STAMP, Q.C.: Yes, it would be.

31 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
32 we'll give us all a breather. We'll be back at 12:15?

33 MR. STAMP, Q.C.: Yes, sir.

34 *(break)*

35 *(12:15 p.m.)*

36 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
37 Stamp.

38 MR. STAMP, Q.C.: Thank you, Mr. Chairman. Mr.  
39 Pelly, you were about to give us some, I guess,

40 discussion on some of the key assumptions or areas  
41 that were important to the rate filing.

42 MR. PELLY: Thank you, Mr. Stamp. I'd like to start  
43 first by talking a little bit about the concept of lost  
44 development. One of the building blocks that we use  
45 for constructing our rate application is the claims  
46 experience, and that claims experience is grouped by  
47 what is termed accident years. This is grouping claims  
48 into cohorts by the year of occurrence of the claim. At  
49 a given point in time the reported incurred amount of  
50 those claims represents the amounts paid to date plus  
51 the then current estimate of the unpaid amounts on  
52 each of those claims individually. Those unpaid claims  
53 amounts are the aggregation of case reserves on a  
54 claim-by-claim basis, so at any given point in time, prior  
55 to when the final claim is closed with respect to a  
56 particular accident year, there remains uncertainty  
57 about the ultimate cost of those claims. As the claims  
58 evolve through time, all of the changes and payments  
59 made with respect to those claims for a particular  
60 accident year continue to be attributed back to the  
61 original accident year, so it's an evolving statistic.  
62 When we do our analysis, in this instance, it was using  
63 the 2001 AIX, so it's using accident year experience  
64 reported up to December 31st, 2001. The latest accident  
65 year in that is the 2001 accident year and that is  
66 reported up to December 31st, 2001, so that is the least  
67 mature, the most immature accident year of the five that  
68 we pulled into our, the major part of our analysis.

69 We need to make provision for the  
70 development of those reported incurred losses to their  
71 estimated ultimate value and that's through an analysis  
72 of lost development. Lost development recognizes that  
73 the current estimates for the case reserves, the unpaid  
74 portion of the individual claims, may be too high or too  
75 low in aggregate to represent the ultimate cost of those  
76 claims, and in addition lost development needs to  
77 recognize that there are some claims that are properly  
78 attributable to the original accident year that in fact are  
79 not yet reported. Lost development encompasses both  
80 the development on known claims and the late  
81 reporting of claims attributable to the original accident  
82 year.

83 In this rate application we do an analysis of  
84 lost development, both with respect to Facility  
85 Association and industry experience. To the greatest  
86 extent possible, we use experience for Newfoundland  
87 and Labrador, but in certain circumstances we have to  
88 look to a broader geographical base and use regional



1 data for Atlantic Canada for certain coverages where  
2 the volumes or the sparsity of the claims experience  
3 necessitates that.

4         These assumptions can be very significant.  
5 For long-tailed lines of business, for lines of business  
6 that take a long time to settle, these development  
7 factors that are used to take a reported incurred loss  
8 amount and estimate its ultimate cost, can be certainly  
9 more than double the value of the reported incurred  
10 losses, so you can try and understand that for some  
11 coverages there's a significant element of estimation.

12 MR. STAMP, Q.C.: And, Mr. Pelly, is there one  
13 particular area of coverage that is most susceptible to  
14 taking a long time to unwind and evolve?

15 MR. PELLY: Probably the two most prone to this are  
16 the bodily injury component of the third party liability  
17 coverage and the accident benefits coverage. In this  
18 jurisdiction, because the first party accident benefits  
19 coverage is not a compulsory coverage, that makes it of  
20 less importance to the overall rate indication in this  
21 instance. Also given the nature of Facility Association,  
22 as is true in all jurisdictions in which Facility  
23 Association operates, a lot of Facility Association  
24 policyholders choose only to buy compulsory  
25 coverages and choose not to buy some of the physical  
26 damage coverages, which again makes third party  
27 liability in this instance a very important and dominant  
28 coverage for Facility Association. So the bodily injury  
29 component of liability is one of these lines where it's  
30 long-tailed and it's an important line for Facility  
31 Association and really for the industry as a whole, but  
32 particularly for Facility Association.

33 MR. STAMP, Q.C.: So that looking at bodily injury as  
34 a portion of third party liability, the other portion being,  
35 I guess, property damage.

36 MR. PELLY: The property damage, third party property  
37 damage component, yes.

38 MR. STAMP, Q.C.: Right. So to the extent that a pretty  
39 critical item in this element of your analysis is third  
40 party liability bodily injury, do I understand that you're  
41 saying that looking at lost development it is trying to  
42 see down the road what the cost will be of a claim  
43 occurring this year?

44 MR. PELLY: Notionally, yes, but we actually work with  
45 the aggregation of all claims associated with a given  
46 year.

47 MR. STAMP, Q.C.: I understand, yes. You're not  
48 looking at an individual claim; you're looking at all the  
49 claims together.

50 MR. PELLY: For a particular accident year.

51 MR. STAMP, Q.C.: And so once a claim is paid and a  
52 release is obtained, for example, then that's a settled  
53 matter, you know exactly what the cost was, but until  
54 that occurs you may have estimates at various levels  
55 and various times as to what somebody perceives a  
56 claim is worth. That's a feature of what the anticipated  
57 cost will be and then you're working with that kind of  
58 data on an aggregate basis to try and figure out how to  
59 assess the real value of those claims going forward.

60 MR. PELLY: To estimate, make an estimate of the  
61 ultimate cost of those claims. It's a natural process in a  
62 bodily injury claim that when an adjuster, who is an  
63 expert in their field and uses all of the available  
64 information of the time they make their estimate of a  
65 case reserve, in aggregate on a line of business like  
66 liability, those case reserves typically prove to be  
67 inadequate, and that is not a reflection of the adjuster  
68 failing to adequately do their work, but rather it's a  
69 reality of the way bodily injury claims emerge and the  
70 reality of the way the settlement process works where  
71 often the claims themselves become more complicated  
72 and subject to more litigation and the cost of those  
73 claims to settle ultimately escalates. A lot of those  
74 factors are not known at the early stages of a life of a  
75 claim, and that's a large part of what gives rise to lost  
76 development on this kind of a line. It's a very  
77 significant assumption. And I should mention that this  
78 particular issue, lost development, is one of the  
79 significant issues that arose in the commentary of the  
80 Board's expert in their review of the filing and I intend  
81 to come back and deal with that in some detail. My  
82 objective right now is just to provide an overview of  
83 some of the concepts of what we're dealing with.

84 MR. STAMP, Q.C.: So this is one of the very important  
85 issues that you had to look at.

86 MR. PELLY: Indeed.

87 MR. STAMP, Q.C.: And it's also one of the important  
88 issues that presumably Mercer's looked at.

MR. PELLY: That's my understanding. The second general area of assumption that I want to touch on is trend. One of the realities of doing rate making is that you're dealing, working with historical data, and we're all familiar with the concept of inflation and there's an aspect of inflation that works in the claims environment as well. If you want, you can call it claims inflation but there is for many lines of business a pattern of change through time in the historical claims experience. One of the objectives of rate making is that it's a prospective exercise. You're trying to build an expectation for a future rating period based on an analysis of historical experience, and so trends are used, trend factors are used as a means of adjusting historical data to make it relevant in a prospective future rating period. We are ... in our methodology we're using fairly conventional regression, statistical regression techniques for analysing histories of industry experience to squeeze information out of the data to build an understanding about what the long-term patterns of change are that that data is giving us evidence of. Wherever possible we're using Newfoundland and Labrador data to make these trend assumptions as relevant to the province as possible.

The magnitude of these assumptions can be very significant. For some of these lines of business the annual rate of change in the cost of claims per vehicle can be, well, I'll take a quick look, certainly up in the ... the bodily injury estimate for private passenger is 7 1/2 percent. So given that we're using a 1991, sorry, 2001 accident year as the latest accident year that we're working with and we're projecting rates to become effective early in 2003 and remain in effect for a year, and the last policy from that will not expire for another year after that, we're talking about a trend duration of about two and a half years from the latest accident year, and a 7 1/2 percent annual trend compounded for two and a half years gives you an idea of the order of magnitude of the adjustments that are possible arising from this particular aspect of the analysis. Once again, the forecast involves a substantial amount of estimation.

MR. STAMP, Q.C.: And, Mr. Pelly, this trend analysis is I guess at kind of a macro level, is it then? You're looking at all of the history, looking at all of the AIX data, to try and develop this trend.

MR. PELLY: We make a practice of using industry experience to develop trend expectations and, as stated in our filing, underlying that assumption is that the

forces affecting the cost of claims, both frequency and severity components of the cost of claims, for the industry as a whole are similarly affecting Facility Association as an entity operating within that environment. Doing trend analysis on industry data presents many challenges in and of itself. Trying to do the same thing on Facility Association data itself would be high impossible.

MR. STAMP, Q.C.: Just to make sure I'm clear on your evidence here, is this discussion on trend, is there a particular aspect of coverages or claims that is, I guess, more, there's a greater concern for trend analysis like there was for lost development?

MR. PELLY: Well, some coverages exhibit a more significant annual trend than others and certainly for those coverages that are the major coverages for Facility Association in terms of premium volume, once again third party liability comes forward. There's been a lot of discussion at the industry level and in, at the, I guess the governmental level in various Atlantic jurisdictions on the rising cost of claims, particularly on the bodily injury component of third party liability. There's been industry studies done and real concern about what's driving the escalation. This application isn't dealing with what's driving it; it's just trying to measure how fast, at what rate these costs of claims are changing through time.

MR. STAMP, Q.C.: If I could ask you this, if there was only one kind of injury, for example, like say there was only minor whiplash injuries, what would be the exercise you're going through with respect to how that minor whiplash injury was paid in 1990 and it's paid in 2000, the same injury?

MR. PELLY: Well, the process we're looking at is we have available to us a history of claims experience going back to 1984 for the industry and we examine, well we start with an examination of all of it, so if we have an estimate of the ultimate cost of claims from a 1990 typical whiplash claim, and whiplash is the only kind of claim that arises as to the context for your question, and we have a history going through successive accident years up to 2001, if the average cost of claims per vehicle transitions through time from 1990 up to 2001 and we use regression techniques to fit a curve to that data so that we can estimate what the historical average annual rate of change is that represents a best fit to that historical data, that's what we're trying to find out. We're trying to use the

patterns of change from the recent history or even the longer history to get the long-term view about how trends are moving in these various coverages to build up our expectation in a rate making context for a prospective rating period.

(12:30 p.m.)

MR. STAMP, Q.C.: And that's really to look at what that minor whiplash injury is worth in 2005?

MR. PELLY: Well, it's, what it's worth for a claim that could arise during the proposed rating period.

MR. STAMP, Q.C.: Yes.

MR. PELLY: So in this instance we're talking about policies that may start becoming effective early in 2003 and the last one, for a one-year period, in that, so the last policy could expire early in 2005, so it could be a 2005 claim that we're talking about and that's what we're trying to forecast.

MR. STAMP, Q.C.: Alright.

MR. PELLY: Now, our curve fitting process involves, I mentioned earlier, the conventional regression techniques, and I just have a few slides so I'm going to be using some of the monitors that are shown around the room to demonstrate the considerations that we go through in regression.

MS. NEWMAN: Before you start, I guess these slides have been provided in hard copy as well and I think ...

MR. STAMP, Q.C.: I'm not sure if this particular one is. Mr. Pelly, can you tell us whether the one that you're about to refer to has been circulated in hard copy?

MR. PELLY: I believe that I saw them being ... I provided a master to Board Counsel earlier today and I believe I did see them being circulated.

MS. NEWMAN: So all ...

MR. STAMP, Q.C.: Alright. We have a package of charts.

MS. NEWMAN: Yeah, and all the charts that you will refer to are included in this package?

MR. PELLY: That's correct.

MS. NEWMAN: And I believe it's been circulated to the panel and all the parties. This will be marked as Exhibit 2, Exhibit BP, is it? BGP-2. BGP-1 would have been the CV.

**EXHIBIT BGP-2 ENTERED IN EVIDENCE**

MR. PELLY: So my purpose here is just to give a sense of what we're looking for when we're doing a regression analysis. First of all let me explain what appears on this graph. The horizontal axis across the bottom of the page are accident years, and what we have is a history in this instance going from the beginning of the experience period of 1984 to a future rating, a future accident year period. In this instance this goes out to 2007 (sic). The vertical axis on the left-hand side is labelled as lost costs. These are dollar figures and this represents, in this instance, the average cost of vehicles, the average cost of claims per vehicle.

MR. STAMP, Q.C.: Mr. Pelly, just to make sure we have the right hard copy chart available to us, do you have a copy of the hard copy?

MR. PELLY: I believe so.

MR. STAMP, Q.C.: And are you able to say whether the chart you've got on the screen now is the first chart on that page?

MR. PELLY: Well, it's the bottom half of that first page.

MR. STAMP, Q.C.: The bottom half.

MR. PELLY: So it's the lower slide on page one of the hand-out, of BGP-2.

MR. STAMP, Q.C.: Yeah. You mentioned going out to 2007, I thought I heard you say.

MR. PELLY: Sorry, 2005.

MR. STAMP, Q.C.: Okay.

MR. PELLY: The red line that appears on this chart represents the history of estimated ultimate lost costs for third party liability bodily injury private passenger vehicles in Newfoundland and Labrador. This is a history that goes up to the 2001 accident year and relatively speaking I think you might conclude that this is exhibiting, even just to the naked eye, a pattern of change through time. It's sloped upwards, it's relatively

1 well-behaved and relatively smooth. What we use is a  
2 regression technique to fit a line of a particular shape to  
3 all or a portion of the history available to us and the  
4 regression technique attempts to make that fit a line of  
5 best fit to the available or to the experience period  
6 chosen. One of the decisions we make in doing  
7 regression analysis is what history we're going to use  
8 for purposes of doing the fit, and in this instance we  
9 chose to start the regression with accident year 1990.  
10 The reason for doing that is, after doing several  
11 successive regression models, we found that the fit  
12 improved substantially by not using the experience  
13 prior to 1990, which if you consider the slope of the line  
14 pre-1990 versus post-1990, there does appear to be a bit  
15 of a shift in the slope of the line. Now, it's possible to  
16 fit a line to the whole history and it's actually a fairly  
17 strongly performing regression, but it was our  
18 conclusion that the quality of the regression, the  
19 quality of the forecast and the statistical measures of  
20 that quality were improved by shortening the  
21 experience period. So the blue line appearing on this,  
22 the blue dotted line appearing on this chart, represents  
23 the fitted, the line of best fit based on the regression,  
24 particular regression model that we selected, and in this  
25 instance the history is of a nature that it's sufficiently  
26 well-behaved that the regression line falls fairly  
27 naturally out of the analysis.

28 Now, if I may, I'll just go onto the next slide.  
29 This presents the same kind of information but with  
30 respect to commercial vehicles, so once again this is  
31 third party liability bodily injury tort, lost cost per  
32 vehicle, and what you can see is there's more volatility.  
33 Again this industry data. We've got a history going  
34 back to 1984 and these statistics are, there's obvious  
35 evidence of them bouncing around more. They do not  
36 follow as natural a pattern as we were able to see for  
37 private passenger vehicles. Nevertheless, the  
38 regression techniques are there and the tools are there  
39 to allow you to try and squeeze information out of the  
40 history that we've got, fit a line that represents the  
41 underlying pattern of change in these lost costs  
42 through time. Now, I mentioned when I was looking at  
43 the private passenger graph that one of the options that  
44 we explore is excluding data points by shortening the  
45 history, but one other consideration that we can bring  
46 to bear on this is excluding data points within the  
47 history, and an example that we've done there is the  
48 1993 accident year data point, which is the peak about  
49 halfway across the graph. We have an objective  
50 statistical test to try and identify outliers (phonetic).  
51 The principle behind that test ...

52 MR. STAMP, Q.C.: What's an outlier?

53 MR. PELLY: It's a data point that doesn't fall naturally  
54 within the pattern of change that's otherwise been, that  
55 the pattern of lost costs that's otherwise been part of  
56 the history, and this statistical test is designed to  
57 identify data points that are sufficiently far off of the  
58 fitted line of regression that it's highly improbable that  
59 they are a normal event in terms of an observed lost  
60 cost, recognizing, or whatever you're fitting. Lost costs  
61 are the estimated ultimate cost of thousands of events.  
62 You got claims taking place, you've got people being  
63 treated for medical conditions. There's all kinds of  
64 events going on that are buried inside of these cost of  
65 claims, and in a single year you can have unusual  
66 events occur. The objective of the test that we perform,  
67 the outlier test that we perform, is to see if the quality of  
68 the regression can be improved by excluding a data  
69 point that is a distortion to that pattern of change so  
70 that it's more noise than it is contributing to an  
71 understanding of how things are changing through  
72 time. So we, in this particular instance, as you can see  
73 here, we did identify a couple of data points that we  
74 excluded. You can tell by where the dotted blue line  
75 crosses one of the vertical hash marks on the chart and  
76 there's no blue dot. Those are the data points where we  
77 excluded the actual data point from the history.

78 MR. STAMP, Q.C.: So there being no blue dot under  
79 that peak, about mid way across the page, that  
80 represents the fact that that red data point at the peak  
81 did not get translated into your regression.

82 MR. PELLY: That's right. It was identified as an outlier  
83 by our regression test and by, we then tested, we re-ran  
84 the regression excluding that data point to see if the  
85 overall performance of the regression was improved,  
86 and indeed in this instance our conclusion was that it  
87 was improved. So I'm including this graph to  
88 demonstrate two things. Number one is the history  
89 doesn't always behave as nicely as we saw for private  
90 passenger vehicles, and, number two, we also go  
91 through a process of identifying whether or not there  
92 are outliers in the history that we're trying to use for the  
93 basis for fitting the curve and test the possibility of  
94 excluding those outliers to see if the regression  
95 improves.

96 Moving on to the next chart, this represents  
97 private passenger third party liability property damage  
98 tort lost costs, and what we have here is arguably an  
99 even harder curve to imagine fitting something to than

1 we saw for either private passenger or commercial on  
2 bodily injury, harder in the sense that over the early  
3 interval we seem to have an upward sloping up until  
4 about 1989. Over the period from 1989 down to, well, I  
5 guess, about 1996, we've got a downward sloping  
6 period, and from 1996 onward, well, 1996 to 1998, it's  
7 flat, and then 1998 onward it starts going up again. The  
8 kinds of curves that we were talking about fitting before  
9 weren't looking like this, so we need to deal with how to  
10 fit a curve, how to build up an expectation for the future  
11 cost of claims when this is the history we've got. Well,  
12 one of the tools we use to do that is to separate lost  
13 costs into component parts. A lost cost is the average  
14 cost of claims per vehicle. The component parts are the  
15 severity and the frequency. The severity is the average  
16 cost of claims, the average cost per claim, and the  
17 frequency is the average number of claims per vehicle.  
18 The product of severity and frequency gives you lost  
19 cost.

20 So if I go to the next chart, which I guess is the  
21 top chart on page three of Exhibit BGP-2, this is the  
22 severity component of private passenger property  
23 damage. Again the left-hand scale is a dollar figure and  
24 the accident years are across the bottom. These are the  
25 severities that underlie that previous graph, and what  
26 you see is a much more natural looking pattern of  
27 change through time, something that lends itself much  
28 better to the process of curve fitting. We go through  
29 the exact same kind of process that I talked about earlier  
30 for bodily injury and try and find a curve of best fit to  
31 this history.

32 And the frequency component is on the next  
33 graph, not quite so nice a fitting curve in the sense that  
34 we have a period where it's maybe gradually rising in  
35 the early interval, going through a period of decline and  
36 then ultimately ending with a period of flattening, but  
37 one of the other variables that we are able to introduce  
38 into the regression analysis is inclusion of an  
39 unemployment variable to capture in the flavour of the  
40 economic cycle and the possible impact of the  
41 economic cycle on the cost of claims or on the  
42 frequency of claims. In every regression that we, every  
43 coverage for which we have to do a trending estimate,  
44 we do test the statistical significance of including an  
45 unemployment variable to capture the influence of the  
46 economic cycle. For most coverages it's not  
47 statistically significant, but for some coverages it is. In  
48 this instance the inclusion of the unemployment  
49 variable gave us a pattern of change in the fitted curve  
50 that you can see follows fairly naturally with the actual

51 historical data that's shown in red on the curve. So part  
52 of the process that we're going through here is trying to  
53 find curves that adequately capture what the available  
54 history is telling us has been happening in claims and  
55 to form a basis for going out along that blue dotted line  
56 into the future.

57 MR. STAMP, Q.C.: Mr. Pelly, are the two charts you've  
58 just most recently talked about, showing the severity  
59 and the frequency, simply a, shown on the earlier chart,  
60 three charts ago, I guess, as an aggregate of this same  
61 information?

62 MR. PELLY: Yes. Frequency and severity combined  
63 gives the lost cost.

64 (12:45 p.m.)

65 MR. STAMP, Q.C.: Right. So you've taken this  
66 irregular looking line three charts ago, which is difficult  
67 to try and develop a regression line to match, broken it  
68 out into some components which were a little easier to  
69 match.

70 MR. PELLY: Exactly.

71 MR. STAMP, Q.C.: And used those components to try  
72 and tell you where a lost cost is going.

73 MR. PELLY: That's right. We end up building a  
74 forecast for the frequency component and the severity  
75 component separately and then combine the two rates  
76 of change that are implied by the component pieces.  
77 And I should mention that on this frequency graph the  
78 left-hand scale in this instance is the number of claims  
79 per thousand vehicles, I think. Just let me verify that.  
80 No. Yes, per thousand, per thousand vehicles.

81 Now finally with respect to trend, I want to  
82 identify that this too, in addition to being an important  
83 determinant of the indicated rate level change, has also  
84 been identified as an issue of some significance in the  
85 review undertaken by Mercer's on behalf of the Board,  
86 and I will again be coming back to my discussion of  
87 Mercer's review at a later point. The trend in the lost  
88 development components that I've just talked about  
89 help build up an expectation for the claims piece of the  
90 forecast, but the premium dollar that policyholders pay  
91 has other component parts as well, because we need to  
92 make provision for the costs, the non-claims related  
93 costs of doing business as a, for Facility Association or  
94 for servicing carriers on behalf of Facility Association.

1 An example of a non-claims related cost would be the  
2 premium tax which is paid as a percentage premium. I  
3 should mention, this was a point of some discussion,  
4 considerable discussion at the last hearing, the  
5 premium tax provision is built into and part of the  
6 premium. It's not separately tracked outside of the  
7 premium dollars, it's collected by Facility Association,  
8 but individual member companies, all of whom are  
9 members (inaudible) Association, have to share in the,  
10 have to share the results of Facility Association and  
11 show their share of Facility Association premiums as if  
12 it were their own, both in terms of financial reporting  
13 and with respect to being responsible for paying  
14 premium tax. So Facility Association itself, while it  
15 does not pay premium tax, the obligation to pay arises  
16 from the premium dollars for Facility Association but in  
17 the hands of the member companies, so it's necessary  
18 to have a provision for premium tax because of that.  
19 Contrast that with something like sales tax, which is  
20 also applicable to automobile insurance premiums in  
21 this jurisdiction. The harmonized sales tax is applied  
22 but it's applied as a charge on top of the premium and  
23 therefore it not embedded within the premium, therefore  
24 there is no provision for HST in the premiums that are  
25 being promulgated here nor in the current premiums.  
26 It's never been a part of the premium base that is part of  
27 this application. Many of the categories of non-claims  
28 related expenses are driven by the relationship that  
29 exists between Facility Association and its servicing  
30 carriers. Those servicing carriers are compensated for  
31 the work that they do on behalf of Facility Association  
32 in accordance with the provisions of the plan of  
33 operation that guides the operations of Facility  
34 Association. So there are certain servicing carrier  
35 allowances set out in the plan of operation, and to the  
36 extent that some of those relate to non-claims related  
37 expenses, those are reflected in this expense provision  
38 that we need to build into the premium forecast.

39 Some other categories of expense would be the  
40 ordering of driving record abstracts. That's not driven  
41 by any contractual relationship with the servicing  
42 carriers but rather what, it's driven by the cost of  
43 actually performing that service, and Facility  
44 Association directs its servicing carriers to order a  
45 DRA, a driving record abstract, on every renewing  
46 policyholder, so they, that cost is real and it gets  
47 incurred on each policy, the consequence of which is  
48 that that needs to be built into the rate level  
49 requirement and ...

50 MR. STAMP, Q.C.: And the purpose of the abstract,  
51 Mr. Pelly?

52 MR. PELLY: It's to identify conviction record based on,  
53 well, I'll call it Department of Motor Vehicles but I'm not  
54 sure of the right government division, records of  
55 convictions, moving vehicle convictions. So to the  
56 extent that something like driver record abstracts needs  
57 to be built into the premium, we base that on recent, an  
58 analysis of recent history of the relationship between  
59 the cost of that kind of claim, that kind of expense  
60 versus premium, and that relationship is used in the  
61 provision for expenses. One feature that is common in  
62 Atlantic Canada is the health levy that is part of the  
63 basis upon which the insurance industry and the local  
64 Ministry of Health have come to a basis for settling up  
65 on the cost providing health care to the victims of  
66 automobile accidents. The health levy process  
67 substantially or completely replaces the subrogation  
68 process that used to be used for passing the cost from  
69 the government health care system through to the  
70 insurers with respect to innocent victims of motor  
71 vehicle accidents. Instead of the subrogation process  
72 there is now an annual levying process and that  
73 levying process is, in this application is treated as a  
74 premium variable expense.

75 Finally, as an expense provision ... actually, I  
76 should verify that it's premium variable. It may not be  
77 premium variable. Now that I've said it, I'd better  
78 correct it. Excuse me for one second. Yes, it was  
79 treated as a premium variable expense so in that respect  
80 it's very much like the premium tax and it's only in the  
81 coverage for third party liability because that is the  
82 component coverage of, to which those levy charges  
83 relate.

84 The final expense component that I want to  
85 comment on is the profit provision. In a voluntary  
86 market setting it's typical that a voluntary market  
87 company will include some target return on equity as  
88 part of or an allowance for realization of a target return  
89 on equity in their indicated rate levels. Under  
90 instruction from the Facility Association Board of  
91 Directors, I have included a zero percent profit  
92 provision in the rates and that has been the practice of  
93 Facility Association in all jurisdictions to date since  
94 inception.

95 Probably the next major component of the  
96 analysis is the recognition of investment income or the  
97 recognition of the time value of money. The reality of

1 the insurance process is that there are time lags  
2 between the various events that occur. Premium is paid  
3 at time zero, certain expenses are paid coincident with  
4 the issuing of the policy and the payment of the  
5 premium, but a lot of other expenses are incurred over  
6 the life of the policy and a lot of the claims are incurred  
7 over years following the actual period of the policy as  
8 those claims are, arise, perhaps were late reported, go  
9 through a settlement process and are ultimately paid  
10 out. The fact that the premium income is substantially  
11 received up front gives opportunity for earning  
12 investment income on the portions of those premium  
13 dollars that are available to be invested during the time  
14 prior to it, their being required for payment of either  
15 claims or expenses. The recognition of investment  
16 income in this application is done on a basis that all  
17 investment income earned on insurance operations is  
18 used to offset claims and expenses. Hence my comment  
19 earlier that it's still on a zero percent profit provision  
20 basis.

21 MR. STAMP, Q.C.: So there are two sources of income  
22 for Facility, the actual premiums paid by the individual  
23 customers and then investment income that is  
24 generated through the holding of those premiums over  
25 time.

26 MR. PELLY: That's correct, and it's on a prospective  
27 basis so it's the expected investment income that will  
28 be, the expected investment income that will be earned  
29 on the cash flow arising just strictly from the insurance  
30 operation. Contrast that with the investment income  
31 that will be earned on the industry capital or the assets  
32 behind the industry capital that has to exist in order to  
33 support the operations of Facility Association. That  
34 investment income is earned in the hands of the  
35 member companies and is not recognized in the  
36 required rate levels. So the indications represent a rate  
37 level at which the premium plus the expected  
38 investment income is just sufficient to meet the  
39 expected losses and expenses in this future rating  
40 period. That's the principal objective of what we're  
41 trying to accomplish in this rate setting process.

42 The next thing I want to touch on is the  
43 territorial analysis that we undertake in the application.  
44 In this instance we base the territorial analysis on 2000  
45 AIX territorial experience. Now you recall that I used  
46 2001 AIX experience when I was talking earlier about  
47 lost development and trend, and the reason for using  
48 2000 AIX is once again an example of us using the data  
49 that was available at the time we did the analysis. This

50 analysis was undertaken in June of this year. At that  
51 time the 2001 AIX exhibits were not available and  
52 accordingly we worked with what we had. Since that  
53 time, 2001 data has become available. We have not as  
54 yet done any analysis on that.

55 The purpose of doing the territorial analysis is  
56 to identify the extent to which individual territories, the  
57 indicated rate level change for individual territories  
58 should be in accordance with the experience, either  
59 higher or lower than the provincial indicated rate level  
60 change. That's what I call a territory deviation, the  
61 extent to which an individual territory is indicated, rate  
62 change needs to be higher or lower than the provincial  
63 indicated rate change.

64 MR. STAMP, Q.C.: And how many territories are there  
65 in Newfoundland for this purpose?

66 MR. PELLY: For private passenger vehicles there are  
67 currently three rating territories. For commercial  
68 vehicles, the three rating territories are combined. Now,  
69 I said rating territories and it's important to understand  
70 that that's a different definition than statistical  
71 territories. There are four statistical territories presently  
72 in Newfoundland and so you can probably conclude  
73 that two of those statistical territories are combined into  
74 one rating territory for purposes of rating in Facility  
75 Association.

76 MR. STAMP, Q.C.: And when you mentioned  
77 statistical territories, what is the significance of that?

78 MR. PELLY: Well, that again is an expression that  
79 arises from the automobile statistical plan as approved  
80 by the Superintendents of Insurance. It has been our  
81 practice and in this application it is our practice to cap  
82 the deviations at a prescribed level to mitigate a  
83 possible over-reaction to the claim experience. Now,  
84 there are credibility procedures built into the analysis.  
85 There's utilization of both Facility Association and  
86 industry experience. It's a fairly long and complicated  
87 analysis that we do, but it's possible that there can be  
88 extreme values that flow from this, potentially because  
89 of a particularly unusual claim, so one of the things we  
90 want to do is to soften that blow even further than has  
91 already been done by the processes that we've used in  
92 the analysis up to that point, and in this instance we  
93 cap the changes in, we cap the territorial deviations at  
94 a level of plus or minus ten percent to promote further  
95 stability in the indications by territory, except for the  
96 two coverages, accident benefits and uninsured

1 automobile, which were capped at zero percent, zero  
2 percent meaning that there will be no deviations by  
3 territory or that the coverages will be uniformly rated  
4 across territories. That's the implication of capping  
5 territory deviations at zero percent. The reason for  
6 doing that is that that is the current practice in Facility  
7 Association, which is a practical reality of how the  
8 market has evolved to date. If you go back to the  
9 origins of the accident benefits coverage in this  
10 province, it was flat rated by the entire market. The  
11 current benchmark that is developed by the Board's  
12 actuary for consideration and utilization by the industry  
13 in setting rates does not directly anticipate territorial  
14 rating of accident benefits. The benchmark ranges are  
15 uniform across territories. For the uninsured  
16 automobile coverage it does make provision for  
17 territorial rating, the benchmark does, but our current  
18 analysis for Facility Association is still flat rated across  
19 territories. That's a reflection of the status quo.

20 (1:00 p.m.)

21 And I should mention that Facility  
22 Association has a practice of following industry  
23 practices as opposed to leading industry practices, and  
24 it's something that we monitor as we go into each  
25 analysis each year.

26 There is fairly strong evidence of a need for  
27 territorial rating on accident benefits, and I draw your  
28 attention to the next slide on the screen. This is  
29 information extracted from the rate application. Most of  
30 these exhibits are actually extracted from the rate  
31 application. In this particular instance I have the  
32 territories identified down the left-hand side of the page  
33 and at the bottom of course we have the province as a  
34 whole. There's a column labelled "Current Relativity"  
35 and a series of ones appearing below that. That's the  
36 Facility Association current relationship in the  
37 premiums as you go from one territory to the next.  
38 They're all the same as the province. There is no  
39 territorial distinction made.

40 MR. STAMP, Q.C.: For this one coverage.

41 MR. PELLY: For this one coverage, being accident  
42 benefits. The experience analysis, based on an analysis  
43 of FA, of Facility Association data and industry  
44 experience, shows that a territorial deviation for the St.  
45 John's, remainder of Avalon Peninsula Territory 1, take  
46 (phonetic) deviation of plus 32 1/2 percent, is justified  
47 based on the analysis of experience, and downward

48 deviations in Territories 2 and 3 are justified on the  
49 basis of analysis of experience, so that overall you still  
50 realize whatever the targeted indicated rate level is, so  
51 these are in balance in the sense that given Facility  
52 Association's distribution of business, if you were to  
53 implement these deviations and increase the Territory  
54 1 accident benefits premium by 32 1/2 percent and  
55 decrease the Territory 2 and 3 accident benefits  
56 premiums by these corresponding percentages, you  
57 would be in balance with whatever the other overriding  
58 change was for accident benefits for the province as a  
59 whole.

60 MR. STAMP, Q.C.: And if you did that of course you  
61 would not be capping at the ten percent plus or minus  
62 that you utilize in the other areas.

63 MR. PELLY: Well, at this point in time this application  
64 does not propose to introduce territorial rating for  
65 accident benefits. I mentioned earlier that this is  
66 something we monitor. When we reach a point where  
67 we feel that the market is starting to do this, then  
68 Facility Association's application, a substantial portion  
69 of the market is doing this, then Facility Association's  
70 application next following will reflect some territorial  
71 rating. At that time I would guess that, given current  
72 practices, we will cap it at some level in order to mitigate  
73 the dislocation inherent in implementing this kind of  
74 change, and again we'll try and remain in balance so  
75 that overall you're not creating a dislocation away from  
76 the indication.

77 MR. STAMP, Q.C.: So the present filing then does not  
78 take into account these indicated deviations.

79 MR. PELLY: That's correct, and this has really just  
80 been provided for notification to the Board of the  
81 existence of this phenomenon and the potential in  
82 future rating applications from Facility Association that  
83 there will be a need of some day to react to this  
84 experience, but it is not being addressed in the current  
85 application.

86 The next component of the application is the  
87 analysis of classification and driving record experience.  
88 I referred earlier to the manner in which the usage of the  
89 vehicle and the characteristics of the principal operator  
90 and even occasional operators are captured in the  
91 rating plan. Well this is in the analysis of the  
92 experience that The Insurance Bureau of Canada  
93 captures in the AIX, broken down by those classes and  
94 driving record selves (phonetic 1420). Once again



we've used 2000 AIX data, the same reason as we, as I described for territorial. The purpose of this process is to estimate differentials which establish relationships between the various classes and between the various driving records. There is a distinction made for rating purposes for private passenger vehicles between urban territories and rural territories, and while I still got this screen up, Territory 1 is deemed to be an urban territory and Territories 2 and 3 are deemed to be rural territories. Part of the analysis process involves reacting to or responding to the experience indications with respect to the class and driving record differentials, but in a tempered manner, and we impose a cap, a limitation on how far we are recommending moving towards the experience indications. For the most part that cap is at a level of plus or minus five percent which means that whatever the current differential is, we are proposing to move towards the new differential to a maximum of plus or minus five percent as an initial indication. New with this filing was the introduction of a higher cap on youthful operator classes. That higher cap was 7 1/2 percent and the objective of increasing that cap was to prevent a more rapid response to the experience and to address at a more rapid pace some of the difficulties that exist in the relationship between Facility Association premiums and voluntary market premiums.

MR. STAMP, Q.C.: What are those difficulties, Mr. Pelly?

MR. PELLY: Well, the situation arises where Facility Association rates become competitive with the voluntary market and it was identified that part of the reason why this could be happening is the fact that we have been constraining the speed that we are responding to the classification experience. Now, that's not the dominant reason for the problem but that is a contributing reason to the problem. The greater reason is the relationship and average rate levels between Facility Association and the voluntary market rate levels. Whenever you have a situation where the Facility Association and voluntary market rate levels are even in the same neighbourhood of each other, let alone counterintuitively positioned one to the other, it doesn't allow for proper functioning of the voluntary market, it creates conflict in the market and really is counter to the normal objectives of a residual market mechanism like Facility Association. Now, after the cap that I just described that applied, there are a series of reasonableness tests that are enforced in the relationships between classes. To give you a sense of the reasonableness tests, we make sure that as

premiums transition from one driving record to the next driving record, that the pattern of change is not contrary to common sense, so common sense would dictate that an individual who is zero years claims free should be subject to a higher premium than somebody who is one year claims free who correspondingly should receive a higher premium than somebody who is two years claims free. That's the intuitive nature of the test that we're applying and we're looking for any situation that arises as a result of everything else we've done up to that point where one of those common sense rules has been violated, and we correct that by merging, and in some cases enforcing a minimum difference between successive categories that ought to be a sensible relationship one to the other.

MR. STAMP, Q.C.: This is not unlike what went on with comprehensive and specified perils you talked about earlier.

MR. PELLY: Similar problem, although that one's not really a transition problem because you don't really transition, naturally transition from specified perils to comprehensive, whereas an individual who is paying "X" dollars this year when they're zero years claims free, all other things being equal and not having an accident in the current year, would expect to get the benefit of being one-year claim free on their next renewal, and it's really not in anybody's interest to have a rating mechanism that does anything other than reward good driving practice by remaining claim free, so the reality is that claims experience is fortuitous. It's subject to all kinds of random events and if you just happen to get an unusual claim in the best driving record category, that can distort the relationship that the experience will tell you is falling out of it. That's the need for these reasonableness tests, to make sure that you don't end up with a counterintuitive flow of premiums as you go from one category to the next. There are also tests applied to the class relationships as well.

The next concept I wanted to touch on briefly was premium drift. Premium drift is a natural phenomenon in the insurance process where the average premium changes through time just naturally out of a shift in the distribution of vehicles or in the distribution of coverages that people are buying, liability limits or deductibles, over time. The most notable example of premium drift is rate group drift, and from one year to the next not only does the fleet of vehicles mature but some vehicles are taken off of the

1 road and some new vehicles are brought into the  
2 insured fleet for the industry as a whole and for Facility  
3 Association and there's a natural evolution that takes  
4 place over time. The magnitude of rate group drift is  
5 driven not only by the (unintelligible) evolution but  
6 also by the manner in which the table promulgated by  
7 the Vehicle Information Centre of Canada is updated  
8 from year to year to recognize the new models that are  
9 introduced into the consuming public and the aging of  
10 the older models. About two years ago the VICC began  
11 a process of changing the manner in which they are  
12 updating their rate group tables from year to year, and  
13 I don't particularly think it's helpful to go into details on  
14 that process right now other than to tell you that the  
15 consequence of that change is that there's a significant  
16 growth in the expected level of premium drift. In other  
17 words, absent any change in premiums actually being  
18 charged on the rate pages, there is an expectation that  
19 some of those physical damage coverages, the  
20 aggregate premium for a typical market insurer on  
21 physical damage coverages will go up by perhaps six,  
22 eight, even ten percentage points a year just because of  
23 the manner in which the fleet evolves and the rate  
24 group tables are updated from year to year. That's an  
25 important element that we need to recognize when we're  
26 doing our rate making analysis because that's a way in  
27 which premium revenue increases without any other  
28 change being made other than updating your rate  
29 group table.

30 MR. STAMP, Q.C.: So it moderates the need for  
31 increases?

32 MR. PELLY: It moderates the need for increases. Now,  
33 I talk a little bit about rate group drift. There are other  
34 elements of premium drift as well and new in this  
35 application we did introduce consideration of limit drift  
36 and deductible drift. Now, all that means is that there is  
37 a, we looked for a pattern of change over time of a  
38 movement towards higher liability limits or higher  
39 deductibles, and wherever we found that there was  
40 evidence of a pattern of change through time, we gave  
41 recognition to that as a source of additional premium  
42 through time as well. For private passenger vehicles  
43 the rate group drift assumption is difficult to quantify.  
44 It's difficult because the circumstances have changed  
45 by virtue of the changes that VICC made a short time  
46 ago. We know that they're significant compared to  
47 what they used to be. They used to be in the order of  
48 two percent per annum and the VICC numbers that are  
49 now being promulgated as industry advisory numbers  
50 are up around ten percent per annum. We have no

51 Facility Association specific source for quantifying,  
52 independently quantifying the magnitude of rate group  
53 drift, and so in this application we have used those  
54 VICC promulgated industry advisory drift assumptions,  
55 but we have a belief that the fleet of vehicles in Facility  
56 Association is not your typical voluntary market or  
57 industry wide fleet of vehicles. In fact there's even  
58 evidence attached to the covering letter to this  
59 application that was prepared by VICC, sorry,  
60 attachments that were prepared by VICC with the  
61 covering letter that show that Facility Association's  
62 fleet of vehicles is comparatively older than what you  
63 would expect if you look outside in the parking lot  
64 today. The intuitive expectation from that would be  
65 that the drift assumption based on an industry basis is  
66 probably too high for Facility Association.  
67 Unfortunately I don't have a means at my disposal to  
68 quantify how much it is too high. So we've used the  
69 industry drift assumptions for rate group and we  
70 believe that they're too high by some amount, but we  
71 don't know by how much. The consequence of using  
72 those over-stated rate group drift assumptions is that  
73 our rate level need on the physical damage coverages  
74 is likely understated. We have dealt with that, not by  
75 making an adjustment to the assumptions, but rather by  
76 considering how the premiums and the rate level  
77 changes end up fitting in with our expectation about,  
78 our expectation of how claims experience is moving  
79 generally, so when we're making decisions about what  
80 to do on the physical damage coverages in going  
81 between the indicated and the proposed, we gave  
82 consideration to the fact that the drift assumptions in,  
83 for rate group are probably leading to an  
84 understatement of the rate level indication, but we can't  
85 quantify the extent, that's the case.

86 (1:15 p.m.)

87 In the meantime, we will be working on  
88 developing an FA specific basis for establishing drift  
89 assumptions at some point in the future.

90 MR. STAMP, Q.C.: And, Mr. Pelly, how was the  
91 information gathered that suggested to you that the  
92 Facility Association fleet of vehicles is different from  
93 the industry fleet?

94 MR. PELLY: Well, I made reference to an exhibit that  
95 was prepared by VICC and was attached to the cover  
96 letter to the filing. That particular exhibit was a  
97 byproduct of the dislocation study that was done  
98 related to the implementation of CLEAR that is also

1 being proposed here. That dislocation study was done  
2 using a specially requested in force file that the  
3 servicing carriers prepared in accordance with  
4 specifications provided by VICC. Beyond that, and the  
5 general impression that I have of the distinguishing  
6 features of Facility Association's fleet of vehicles, I  
7 guess, are anecdotal. It's based on comments made by  
8 servicing carriers who have familiarity with the vehicles  
9 that are actually being insured in the fleet. It's not a  
10 Newfoundland specific impression, it's a general  
11 impression. That's one of the difficulties that led to my  
12 not being able to quantify it.

13 MR. STAMP, Q.C.: So this is a concern that at this  
14 point in time has not really been able to be addressed.

15 MR. PELLY: It's a concern, and I guess my purpose in  
16 bringing it to the Board's attention in this application is  
17 that it's likely to be an area of change when we are able  
18 to bring some information to bear on it going in to the  
19 future. A lot of what we've done so far, that I've talked  
20 about so far are some of the building blocks that allow  
21 us to construct a, or to undertake our analysis of  
22 provincial experience, and that's the next thing I want to  
23 talk about.

24 MR. STAMP, Q.C.: And just before you do that, Mr.  
25 Pelly, these topics that you've been dealing with now,  
26 I mean you started with explaining some of the key  
27 assumptions, I guess, of importance to you in  
28 developing your indications, you talked about loss  
29 development and trend, and some of the other topics,  
30 these other topics after loss development and trend, I  
31 take it are of a lesser magnitude in terms of implications  
32 for the developments?

33 MR. PELLY: The premium drift assumption is  
34 potentially significant within the coverage, but in terms  
35 of the overall rate level requirement, trend and loss  
36 development are dominant. In talking about what I'm  
37 getting into now in the provincial analysis, I'm moving  
38 away from talking about assumptions and more talking  
39 about the methodology.

40 MR. STAMP, Q.C.: Uh hum.

41 MR. PELLY: The provincial analysis utilized 2001 AIX  
42 data, and we used Facility Association and industry  
43 data for Newfoundland and Labrador. We used the five  
44 latest accident years of data and we built up an  
45 expected cost of claims per vehicle using loss  
46 development assumptions, trend assumptions, you

47 know, loadings for, appropriate loadings for loss  
48 adjustment expenses and in the utilization of industry  
49 data we give recognition to the fact that there are  
50 distributional differences between Facility Association  
51 and industry that can give rise to a higher expected  
52 cost of claims and so in trying to utilize industry data as  
53 a basis for setting Facility Association rates, we gave  
54 recognition to distributional differences as well as an  
55 estimate of the higher inherent riskiness of Facility  
56 Association experience.

57 So we have five accident years of Facility  
58 Association data, five accident years of industry data  
59 and they're all projected to ultimate ... or developed to  
60 ultimate and projected to common future average  
61 accident date. The individual accident year values are  
62 weighted together to come up with a single estimate for  
63 Facility Association and for industry and those two  
64 values are credibility weighted giving recognition to  
65 Facility Association experience to the extent that it's  
66 deemed reliable.

67 We compare the results of that projected  
68 ultimate loss cost, weighted average loss cost with an  
69 estimate of the current average weight, in order to  
70 estimate a loss ratio, an expected loss ratio in a future  
71 rating period if we don't make any change to today's  
72 rate. We combined that estimated future loss ratio with  
73 provision for expenses, and a recognition of the  
74 contribution of investment income, and from that we're  
75 able to estimate the required change in average rate  
76 level for each coverage based on a comparison of the  
77 projected loss ratio and the required loss ratio to make  
78 adequate provision for the expenses and recognition of  
79 investment income.

80 Now liability coverage dominates for Facility  
81 Association, I said that earlier. Based on written  
82 premium, or estimated unlevel (*phonetic*) written  
83 premium for private passenger vehicles and for  
84 commercial vehicles, over 80 percent of the premium  
85 arises on the liability coverage, and the liability  
86 coverage typically has the steepest trends, so one of  
87 the things that distinguishes an application from  
88 Facility Association from what you might see on a  
89 voluntary market basis is the fact that it is dominated  
90 by a coverage that is subject to steeper inherent trends  
91 than is the case for a typical voluntary market company.

92 Now, I've included a slide here, or actually a  
93 series of three slides to try and demonstrate one of the  
94 features that has arisen over the recent period of time,

specifically to do with bodily injury tort, but to some extent it arises on accident benefits coverage as well, and this is what I've characterized as adverse development ... (inaudible) ... years in the history. This particular chart that's up on the screen right now is the same graph that I actually showed at the very beginning of today, so this has a history and it has the fitted line. When I move to the next graph, I've just removed the fitted line, because I'm really not talking about trending right now, I'm just talking about how the estimate of the ultimate cost of claims changes through time, so I've relabelled this red line as being the line based on the 2001 AIX.

MR. STAMP, Q.C.: This is actual data?

MR. PELLY: This is the history available in Newfoundland and Labrador, bodily injury tort loss costs estimated on a ... just like we did in the trending exercise, it's got a provision to represent the estimated ultimate cost of claims per vehicle. And then finally on the next graph, I've overlaid with the blue line, the information relating to the 1999 AIX estimates, and what's of significance here, I mean you can see the two lines are on top of each other substantially, really up until you get to, well even 1997 and 1998, they're all very close. The first point where you get any significant departure is 1999, so in the 1999 AIX, and this is industry data, the estimate that was made for the ultimate cost of claims has proven to be inadequate by, that looks to be by about \$40. I'm ballparking the numbers here, but that would be about \$40, so that's about an 11 percent deficiency in the original estimate.

Now, 1999 was the least mature accident year, the most recent accident year when we were doing the analysis of the '99 AIX, and it's the most likely to give rise to this kind of problem, but the development on the 1999 accident year that we see here is illustrative of the problem that, in fact, has been experienced in the industry as a whole, and in each player within the industry over the last two or three years. This is the adverse development that has taken place on claims in the, in Newfoundland and Labrador, and indeed across all of Atlantic Canada on the bodily injury coverage, is a reflection of a harsher claims environment, and I've just included this graph to provide some, some illustrative evidence of the existence of that adverse development.

MR. STAMP, Q.C.: Just coming back for a moment, Mr. Pelly, as I recall, you talked about the complication

which creeps into this where we won't achieve likely now any kind of rate implementation by the 1st of February that was contemplated. You had said, I think, that the delay in the implementation could affect the adequacy of the rates. Is this part of that discussion?

MR. PELLY: Not really, that's more a trend issue. The delay causes ... if I were to have known in advance that it wasn't going to be February 1st and instead it was going to be April 1st, then all of my trends would have been longer by two months, and two months worth of trend would have added a little bit of extra rate level onto the rate level requirement. This phenomenon that I've got on this chart is designed to demonstrate that, particularly on this coverage, the way that the world looked in the 1999 AIX compared to the way it looks today, even for the same accident year, the world has deteriorated, our outlook is more pessimistic today, the cost of claims estimate has increased for the same accident year, and that's a reflection of the harsher claims environment that we see, that the industry is experiencing, and that some of these hearings and select committee work that's being done in other Atlantic jurisdictions is part of the focus of those hearings.

Quickly on specified perils, in past applications and in this application we test or examine the relationship between specified perils and comprehensive for two reasons, partly to make sure that there isn't going to be some unintended cross over between specified perils rates and comprehensive, and secondly, to overcome some of the instability that's inherent in the specified perils coverage because it's relatively an unpopular coverage, we don't have a substantial, even on an industry level there's not a huge body of experience there, and it's inherently more unstable, so as a double check on what's coming out of the analysis of specified perils experience, we hold it up against comprehensive, we update the relationships between comprehensive and specified perils, based on that examination, and we went through that process in this application as we have previously.

With respect to the commercial uninsured automobile coverage, we did do an analysis of experience and that, the result of that analysis is throughout the book, but as an overall indicated change in rate level for commercial, that appears at the bottom of page one of the application and the indication is for an increase of 90.2 percent for commercial vehicles. Now that sounds like a pretty big

number, and in ... I guess I'd have to agree that it is a pretty big number, but it's probably worthwhile remembering that the current premium for uninsured automobile is six dollars, so a 90 percent increase on a six dollar premium is about five dollars.

One of the difficulties we had in dealing with the experience in Newfoundland and Labrador is the instability of the available experience and we are proposing an increase of some 216.7 percent on the uninsured auto premium for accident (*sic*), for uninsured automobile in Newfoundland for commercial vehicles, and the basis for that proposal stems from the proposed uninsured automobile premium in New Brunswick which, my memory isn't telling me whether it was approved as filed but it's substantially higher than the current premium in Newfoundland and Labrador.

The reason for doing, relying on an external, or extra-provincial basis for establishing this rate is that the uninsured auto coverage has been in existence in New Brunswick longer than in any other Atlantic jurisdiction. The basic coverages inherent in uninsured automobile are fundamentally the same across all four Atlantic jurisdictions, and so we've gone to a longer history and a bigger statistical base in New Brunswick than we have in Newfoundland and Labrador for commercial vehicles in order to establish a basis for putting forward a rate, and that's the basis for our proposal here.

With respect to the implementation of CLEAR rating, Mr. Chairman, I'm reaching a natural break point very shortly.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, I was wondering about that.

MR. PELLY: I thought you might.

MR. SAUNDERS, PRESIDING CHAIRMAN: Carry on.

MR. PELLY: I'm trying to get there. With respect to the implementation of CLEAR, or the Canadian Loss Experience Automobile Rating System, we are proposing implementation on a combined CLEAR basis, and this means that there is one rate group assignment per vehicle across all coverages that are subject to rate group rating, and in this instance we are proposing there be no rate group with respect to the accident benefits coverage. Pure CLEAR, or the uncombined CLEAR allows for the possibility of having a different

rate group associated with collision coverage as opposed to comprehensive coverage. The reason for proposing combined CLEAR, which eliminates that possible distinction is partly driven by the systems limitations of some of the servicing carriers, but it's also fairly widely used and has been, is being proposed in all jurisdictions in which Facility Association operates, is currently in use in Ontario and New Brunswick, has been approved for use in Prince Edward Island, Alberta, Yukon, Northwest Territories and Nunavut, and is pending approval in Nova Scotia and this jurisdiction, all on this basis, and if I missed a jurisdiction, I apologize, I tried to get them all.

The slide that I've just put up on the screen is taken from the attachments to the cover letter for the application. This is a graphical representation of the dislocation associated with implementing CLEAR, when ... the premium dislocation associated with implementing CLEAR on a revenue neutral basis, so giving recognition to the impact on all coverages and using Facility Association's in force business as of December 2000, what you can see in this graph is that there is a concentration around the middle being in the slight decrease, the minus five to zero percent cell, and fairly tightly concentrated around that highest bar in the middle. In fact, what we see in this instance is that over 96 percent of the vehicles, if you were to actually add up the heights of these bars, will experience dislocation in the range of plus or minus 15 percent, assuming revenue neutral implementation of CLEAR, so this is apart from any other rate level change being proposed in this application. Revenue neutral, in the sense that any premium increases that arise from implementing CLEAR are offset by corresponding decreases for other vehicles from implementing CLEAR. So we view this as being very well concentrated around a narrow band. We would put forward that there is no need for steps to be taken to mitigate excessive policyholder dislocation, and I would just offer the observation that in Ontario, the first regulator to really actively grapple with the issues associated with implementing CLEAR, their practice is to use the threshold of plus or minus 35 percent as being the point beyond which dislocation is considered to be excessive, and for this particular test, approximately 0.33 percent, so about one third of one percent of the number of vehicles, you might describe that as being minuscule, but one third of one percent of the vehicles are subject to this (inaudible) defined extreme dislocation, it's a very small piece.

1 And finally on the accident and convictions  
2 surcharge schedule and the proposed introduction of  
3 the clean driver discount for private passenger vehicles,  
4 we're seeking uniformity across jurisdictions. We're  
5 proposing this is a package change in order to  
6 influence driver behaviour, to reward good driving  
7 behaviour, and to penalize bad driving behaviour, to  
8 collect more premium from those who are exhibiting bad  
9 driving behaviour, and to give some recognition in the  
10 private passenger vehicle fleet to those classes, to  
11 those individuals who have a clean record. If they're in  
12 Facility Association for reasons other than having  
13 accidents and convictions, then the clean driver  
14 discount is trying to give them some relief associated  
15 with being in Facility Association.

16 We openly acknowledge that the proposed  
17 changes to the schedule and the introduction of the  
18 clean driver discount are judgementally based. We  
19 have no data to support this, but the proposal is  
20 predicated on fitting in with the current schedule. It's  
21 designed to bring some uniformity to some of the  
22 varying practices that currently exist between  
23 jurisdictions and we have used a sample distributional  
24 data provided by one of the servicing carriers that was  
25 able to provide it, in order to estimate the rate level  
26 impact of the proposed changes to the schedule and  
27 the introduction of the clean driver discount, and so  
28 that rate level impact has been estimated and in the  
29 application has been recognized as part of, or a  
30 contributor to the manner in which the overall proposed  
31 rate level can be realized, so as a package, if this  
32 package of changes is approved, then there needs to be  
33 less of a premium increase on those drivers that are not  
34 subject to accident and conviction surcharges because  
35 there will be more premium generated from those that  
36 are subject to accident and conviction surcharges.

37 MR. STAMP, Q.C.: Mr. Chairman, I just have two short  
38 questions, I think, I know we're over the time a little bit  
39 if you can ...

40 MR. SAUNDERS, PRESIDING CHAIRMAN: Carry on.

41 MR. STAMP, Q.C.: ... just allow me to ... and that will  
42 finish, I think, these areas at least for our purposes.

43 MR. SAUNDERS, PRESIDING CHAIRMAN: Are the  
44 answers short as well?

45 MR. STAMP, Q.C.: I believe they are, Mr. Chairman, I  
46 hope so.

47 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

48 MR. STAMP, Q.C.: Mr. Pelly, so the discount, for  
49 example, to the extent that looking at the chart that we  
50 introduced showing the data from IBC for the 66 year  
51 and older groups, for those several years in Facility and  
52 in industry, to the extent that there is a senior insured  
53 with Facility in Newfoundland, who has a good driving  
54 record, the discount then would, I presume, what would  
55 the effect be for him or her?

56 MR. PELLY: If they were accident and conviction free,  
57 as the clean driver discount definition allows for, then  
58 they would receive the benefit of the clean driver  
59 discount.

60 MR. STAMP, Q.C.: And I presume anybody in the  
61 insured group will see the discount as well, not just  
62 seniors, but it would affect them as well.

63 MR. PELLY: There's no age distinction in the  
64 application of that rule.

65 MR. STAMP, Q.C.: And one other question for you, in  
66 terms of the discussion about what was regarded by the  
67 Ontario regulator as, I guess, extreme dislocation, was  
68 there any capping imposed in Ontario?

69 MR. PELLY: For Facility Association in its  
70 implementation of CLEAR, there was no capping  
71 applied. There was a small percentage, and my memory  
72 is telling me it's about one and a half percent, but  
73 subject to check, I think it was about one and a half  
74 percent in Ontario, that met, that surpassed the extreme  
75 dislocation threshold, based on the same policy in force  
76 filed (*phonetic*) for Ontario as opposed to  
77 Newfoundland, and the regulator at the time basically  
78 expressed no concern with respect to that small portion  
79 of the fleet being affected in this manner, that they  
80 would not seek to impose the considerable  
81 complication of phasing in and somehow rather  
82 mitigating the, the dislocation impact of implementing  
83 CLEAR.

84 MR. STAMP, Q.C.: That's the answer to that question,  
85 Mr. Chairman, and this is probably a good time for us to  
86 break and I'm presuming it's a good time for the panel in  
87 any event.

88 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, okay,  
89 so we will resume at 9:00 in the morning.

1 MR. STAMP, Q.C.: Yes sir.

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Very well,  
3 thank you very much, gentlemen.

4 *(hearing adjourned to December 12, 2002)*