

1 (9:05 a.m.)

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Good  
3 morning. Any preliminary matters, Ms. Newman?

4 MS. NEWMAN: No, Mr. Chairman.

5 MR. SAUNDERS, PRESIDING CHAIRMAN: So, Mr.  
6 O'Flaherty?

7 MR. O'FLAHERTY: Yes, thank you, Mr. Chairman. The  
8 next witness would be Mr. Winston Morris.

9 MR. SAUNDERS, PRESIDING CHAIRMAN: Good  
10 morning, Mr. Morris.

11 MR. MORRIS: Good morning.

12 MR. SAUNDERS, PRESIDING CHAIRMAN: Would  
13 you take the Bible in your right hand, please? Do you  
14 swear that in the evidence you are about to give you  
15 will tell the truth, the whole truth, and nothing but the  
16 truth, so help you God?

17 MR. MORRIS: Yes, I do.

18 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
19 you. Mr. O'Flaherty.

20 MR. O'FLAHERTY: Thank you, Mr. Chairman. Good  
21 morning, Mr. Morris.

22 MR. MORRIS: Good morning.

23 MR. O'FLAHERTY: Can you please state your  
24 occupation for the record, sir?

25 MR. MORRIS: Okay. I'm Assistant Deputy Minister of  
26 Consumer and Commercial Affairs with the Department  
27 of Government Services and Lands.

28 MR. O'FLAHERTY: And are you also the Province's  
29 Superintendent of Insurance?

30 MR. MORRIS: Yes, I am.

31 MR. O'FLAHERTY: Can I refer you to a binder of pre-  
32 filed evidence which should hopefully be next to you,  
33 a blue binder?

34 MR. MORRIS: Right.

35 MR. O'FLAHERTY: I hope everybody else has a copy.  
36 Have you had an opportunity to review the document  
37 which is found under the tab entitled, "Winston  
38 Morris"?

39 MR. MORRIS: Yes, I have.

40 MR. O'FLAHERTY: Now, in your absence on Friday a  
41 replacement schedule was filed to No. 4, Document No.  
42 4, at that tab. I don't know if it's already in that  
43 document. Can you just see?

44 MR. MORRIS: Tab 4?

45 MR. O'FLAHERTY: Yes, at Tab 4.

46 MR. MORRIS: Yes, it is. It says, "Replaced January  
47 10th, 2002 (*sic*)."

48 MR. O'FLAHERTY: Now, was that a document that  
49 was prepared under your direction?

50 MR. MORRIS: Yes, it was.

51 MR. O'FLAHERTY: Now, besides that replacement  
52 schedule and there's some obvious changes to the  
53 narrative of your evidence at the very last paragraph  
54 where it talks about, it talks about that schedule,  
55 besides those changes are you prepared to adopt your  
56 pre-filed evidence as accurate in this matter?

57 MR. MORRIS: Yes, I am.

58 MR. O'FLAHERTY: I hope I was clear on that, Mr.  
59 Chairman.

60 MR. SAUNDERS, PRESIDING CHAIRMAN: You're  
61 saying there's a replacement to Schedule A?

62 MR. O'FLAHERTY: Schedule ...

63 MR. WHALEN, Q.C.: Handed out the last day.

64 MR. O'FLAHERTY: Yes, Schedule 4 ...

65 MR. SAUNDERS, PRESIDING CHAIRMAN: Handed  
66 out last day?

67 MR. O'FLAHERTY: Yes. I don't know if it was ...

68 MR. SAUNDERS, PRESIDING CHAIRMAN: I probably  
69 have it here but I don't see it.

1 MR. O'FLAHERTY: ... replaced in all your material.

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Was that  
3 distributed? It was?

4 MR. O'FLAHERTY: Yes. It may have actually been put  
5 in the book for you by ...

6 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, the  
7 one that's here is the original. Here we are. Good,  
8 thank you. Now we have it.

9 MR. O'FLAHERTY: And counsel has it? Ms. Newman,  
10 do you have a copy of that?

11 MS. NEWMAN: I do have a copy, thank you.

12 MR. O'FLAHERTY: Okay. And my other, the other  
13 point being made by Mr. Morris in his testimony was  
14 that in the last paragraph of the narrative testimony it  
15 deals with that schedule, you'll see, and it talks about  
16 certain of the numbers that have been in the previous  
17 schedule. Obviously those are going to be amended by  
18 whatever changes are made in the schedule as well.  
19 Now, Mr. Morris, before we return to the pre-filed  
20 evidence, you had advised that you are the Province's  
21 Superintendent of Insurance. Can you tell the Board  
22 when you were appointed to that office?

23 MR. MORRIS: In February 1995.

24 MR. O'FLAHERTY: And I realize that you've filed pre-  
25 filed evidence on this point but can you please explain  
26 to the Board briefly what your duties are in that office  
27 as it relates to the regulation of automobile insurance?

28 MR. MORRIS: Okay. We licence insurers who sell  
29 automobile insurance in the province, we licence agents  
30 and brokers who distribute automobile insurance, we  
31 handle any consumer complaints with respect to  
32 automobile insurance, we monitor the financial results  
33 of the four local insurance companies. Most of the  
34 insurers are mainland companies who operate in other  
35 provinces, but we do have four local ones. So that's  
36 generally what we do.

37 MR. O'FLAHERTY: Okay. And what specific pieces of  
38 legislation are most relevant to your duties as the  
39 Superintendent of Insurance as it relates to automobile  
40 insurance?

41 MR. MORRIS: There would be the Automobile  
42 Insurance Act, the Insurance Companies Act, the  
43 Insurance Contracts Act and the Adjusters, Agents  
44 and Brokers Act. Those four are the main ones.

45 MR. O'FLAHERTY: Thank you, Mr. Morris. And  
46 you've indicated that in the course of your duties you  
47 do receive and respond to inquiries from the public  
48 regarding matters of automobile insurance.

49 MR. MORRIS: Yes, we do. We have ... a staff member  
50 handles most of those but some of the complaints come  
51 directly to me as well.

52 MR. O'FLAHERTY: And do your duties and  
53 responsibilities also include the regulation of the  
54 operations of FA as it relates to the residual market  
55 operations of FA in this province?

56 MR. MORRIS: Yes.

57 MR. O'FLAHERTY: Okay. Now, I understand it's  
58 common ground that you were a party before a matter  
59 at this Board that dealt with the causes of certain  
60 surpluses in FA and what, if anything, should be done  
61 with those surpluses?

62 MR. MORRIS: Yes, that's correct.

63 MR. O'FLAHERTY: I believe that hearing was in the  
64 year 2000, or perhaps 1999 and 2000.

65 MR. MORRIS: Sounds right, yeah.

66 MR. O'FLAHERTY: Does that sound about right?

67 MR. MORRIS: A couple of years ago, yeah.

68 MR. O'FLAHERTY: Okay. So is it fair to say that  
69 you've some familiarity with the operations of FA in the  
70 province?

71 MR. MORRIS: Yes.

72 MR. O'FLAHERTY: Can I just ask you to briefly  
73 describe to the Board what the function of FA is under  
74 our provincial legislative scheme as it relates to the  
75 residual market?

76 MR. MORRIS: Sure. Facility Association was set up in  
77 order to provide insurance to those drivers who cannot  
78 obtain insurance through the regular market.

1 MR. O'FLAHERTY: And in this operation as it relates  
2 to the residual market, what is the status of FA under  
3 the legislation?

4 MR. MORRIS: Okay, yes. Facility is legislated as a  
5 non-profit association of insurers.

6 MR. O'FLAHERTY: Can I turn ... can I ask you to turn  
7 to Schedule 4, the replacement Schedule 4?

8 MR. MORRIS: I have it.

9 MR. O'FLAHERTY: And your evidence binder will also  
10 have the original Schedule A in it, will it?

11 MR. MORRIS: Yes, it does.

12 MR. O'FLAHERTY: Okay. Now, by way of  
13 background to these documents, does FA provide  
14 financial information to the Superintendent of  
15 Insurance?

16 MR. MORRIS: Yes, we receive their annual audited  
17 financial statements.

18 MR. O'FLAHERTY: So you receive it in an audited  
19 form annually?

20 MR. MORRIS: Yes, we do.

21 MR. O'FLAHERTY: Okay. And if you look at the  
22 document which is the replacement document ... well  
23 they both have three vertical columns.

24 MR. MORRIS: Yes.

25 MR. O'FLAHERTY: Can I ask you what is the source of  
26 the data in the vertical column?

27 MR. MORRIS: That comes from the Facility  
28 Association's financial statements, audited financial  
29 statements. Now, a number of figures in the first  
30 column came from a report filed, provided to me by  
31 Facility, and the last couple of years I just took out of  
32 their audited statements.

33 MR. O'FLAHERTY: Okay. So the source of all the data  
34 is FA, either their financial statements or a report that's  
35 been provided to you ...

36 MR. MORRIS: Yes, that's correct.

37 MR. O'FLAHERTY: ... as Superintendent of Insurance.

38 MR. MORRIS: Yes, that's correct.

39 MR. O'FLAHERTY: Okay. Have you relied on any  
40 unaudited or interim financial information in preparing  
41 your schedule?

42 MR. MORRIS: No, I did not.

43 MR. O'FLAHERTY: Okay. And this schedule appears  
44 to be up to the end of the year 2001.

45 MR. MORRIS: That's right.

46 MR. O'FLAHERTY: Can you just highlight for the  
47 Board what the differences are between the originally  
48 filed schedule? I hope everybody on the Board has a  
49 copy of that and the replacement schedule which has  
50 been filed.

51 MR. MORRIS: Okay. Under the second column, Net  
52 Result from Operation Profit (Loss), for the year 2001  
53 the original document had a figure of (\$8,660,000).  
54 Their revised document has a figure of (\$8,491,000).  
55 The reason for the difference is that the original  
56 document included an uninsured motorist number  
57 which should not have been included, so that was  
58 corrected, and the other difference is in the third  
59 column, Assessments To/From Members, again the  
60 year 2001, the original document had a figure of  
61 (\$1,527,000), while the revised one has a million,  
62 \$5,588,000, the difference being the original document,  
63 that \$1,527,000 assessment from members was actually  
64 in the year 2002, and the correct number for 2001 was  
65 \$5,588,000. The one ... when 2002 audited statements  
66 become available, there'll be a new net written premium  
67 put in for that year, a new number for operation of profit  
68 and loss and the \$1,527,000 from members will be  
69 included in 2002 year rather than 2001.

70 MR. O'FLAHERTY: Now, I note, and it's not much of a  
71 difference, but there seems to be a difference in the  
72 second last number in the Assessment To/From  
73 Members column.

74 MR. MORRIS: Oh, yes, I'm sorry. The \$4,500,000 in the  
75 old one was changed to four million four hundred and  
76 eighty-three. The four million five hundred was just a  
77 rounded number for that year, but the exact number was  
78 put in the revised document.

MR. O'FLAHERTY: I'm going to bring you to the first of the vertical columns that contains dollar amounts in it, and that's under the heading Net Premiums Written.

MR. MORRIS: Right.

MR. O'FLAHERTY: What does this schedule indicate about the total written premium volume of FA over the course of its operations to the end of 2001?

MR. MORRIS: Okay. Over the period of operation, total premiums written by Facility Association in this province were 197 million and 189 thousand.

MR. O'FLAHERTY: Is that 197 million or ...

MR. MORRIS: 179, sorry.

(9:15 a.m.)

MR. O'FLAHERTY: Okay. So we'll say it's about \$180 million worth of business?

MR. MORRIS: Right.

MR. O'FLAHERTY: And is that the size basically of the FA auto insurance business from inception to December 31, '01?

MR. MORRIS: Yes, in this province, that's correct.

MR. O'FLAHERTY: In this province, okay. Now, I'm going to turn to the next vertical column. That contains dollars amounts in it.

MR. MORRIS: Right.

MR. O'FLAHERTY: And I'm proceeding from left to right. What does this column indicate about the profit or loss picture over that period?

MR. MORRIS: Okay. Over the period of time, I guess, it looks like there's one, two, three, four years where there was a loss, the other years there were profits, and over the entire period the profit was \$22,040,000 of, on Facility's financial statements. Now, there's a number below that, you see, of \$9,855,000. Facility's financial statements do not include premium taxes and health levies on that business, that is paid by their member insurance companies, and that number is a calculation that I have made myself. That's not included in the audited statements of Facility's and that's based on a

four percent premium tax, which is what the rate is in this province, and an estimate of 1 1/2 percent for health levies, and if you deducted that from the financial statements of Facility, \$22 million, I estimate the net profit from operations to be \$12,185,000 over that period, so this will include not only Facility's costs but also their member companies' costs.

MR. O'FLAHERTY: Mr. Morris, I see that figure of nine eight five five, which is reproduced under the last two of the columns as we proceed to the right on the page.

MR. MORRIS: Right.

MR. O'FLAHERTY: So I understand then that that's your number that you've arrived at or your office has?

MR. MORRIS: Correct.

MR. O'FLAHERTY: And do I also understand that number is not a number that is made available or is possible to be made available perhaps by FA?

MR. MORRIS: I know I asked them a number of years ago to provide that number to me and they basically indicated that they didn't do those calculations.

MR. O'FLAHERTY: It's an insurance company calculation.

MR. MORRIS: Right.

MR. O'FLAHERTY: Now, I want to turn now to the final of the columns that contains dollar amounts in it, which is the one furthest to the right on the page, and what does this schedule indicate about the ... well, let me just back up a second. Under the legislation does FA have the power to assess its members for any losses that are incurred on FA business in this province?

MR. MORRIS: Yes, it does.

MR. O'FLAHERTY: And what does this schedule indicate about the distributions to or assessments from members that have occurred over the time period covered by your schedule?

MR. MORRIS: Well, over this period of time there is one, two, three, four years where there is no assessment to or from members. There was two years during this period when there was an assessment from the

1 members, companies paid into Facility, and other years  
2 there was assessment to the members, so in total there  
3 was a net amount paid to members of \$22,577,000, so  
4 that's the amount paid to members, more than what  
5 they've paid in during that period of time, and the  
6 number of that of \$9,855,000, that's my calculation of  
7 what member companies would have paid on behalf of  
8 Facility to government, actual cash payment they  
9 would have made, resulting in a net profit of \$12,722,000  
10 by member companies on Facility business.

11 MR. O'FLAHERTY: And this picture of the financial  
12 results of FA, at least up to the end of 2001, with the  
13 exception of the figures for premium tax and health  
14 levies, these are FA's numbers?

15 MR. MORRIS: Yes, although in that total column ...  
16 yes. Anything other than the \$9,855,000 are FA  
17 numbers, yes.

18 MR. O'FLAHERTY: Okay. I want to turn now to the  
19 issue of the consumers within the province that make  
20 up the population of Facility Association at any given  
21 point in time. In your experience has this been an issue  
22 of concern to consumers?

23 MR. MORRIS: Yes. Many times we get complaints  
24 from consumers complaining that they're placed in  
25 Facility or their rates are very high, sometimes they  
26 don't know they're in Facility and when we investigate  
27 we find out why their rate is high, it's because they are  
28 in Facility, and lots of times they indicate their view  
29 they should not be there, they have no accidents or no  
30 convictions and they complain that they're placed in  
31 Facility for reasons which are unfair.

32 MR. O'FLAHERTY: And I believe there's common  
33 ground on this, and I, because I don't want to go down  
34 into an area there may be any controversy on this,  
35 these are not decisions made by FA. These are  
36 decisions made by the insurers.

37 MR. MORRIS: Yes, they're made by the member  
38 insurance companies, yes, not Facility itself. Facility  
39 has to accept all drivers that are put to them.

40 MR. O'FLAHERTY: So as a result of underwriting  
41 decisions made by members that persons end up in  
42 Facility itself.

43 MR. MORRIS: That's correct.

44 MR. O'FLAHERTY: Okay. Now, is your office aware of  
45 the percentage of persons in FA that may or may not  
46 have a clean driving record in this province?

47 MR. MORRIS: No. Anything our office has would just  
48 be anecdotal evidence, I guess, from, based on  
49 complaints that we receive.

50 MR. O'FLAHERTY: Okay. Can I ask the witness be  
51 shown DJS No. 3, please? I don't know if I provided a  
52 copy of that. Can you look at Illustration 5 or Exhibit 5  
53 under that particular document? What document do  
54 you have in front of you, Mr. Morris, can you just tell  
55 us?

56 MR. MORRIS: Yeah. It's a letter from Facility  
57 Association to Ms. Nancy McNeill, Regulatory Affairs  
58 Officer.

59 MR. O'FLAHERTY: It's the correct document then,  
60 yeah. And Illustration 5 should be a table.

61 MR. MORRIS: Yes, it is.

62 MR. O'FLAHERTY: Okay. Now, prior to its  
63 introduction in evidence at this hearing, was your office  
64 aware of the results for Newfoundland and Labrador  
65 under that table?

66 MR. MORRIS: Not prior to this hearing, no.

67 MR. O'FLAHERTY: And you said you have received  
68 in the past inquiries from members of the public  
69 regarding the issue of being placed in Facility.

70 MR. MORRIS: Yes.

71 MR. O'FLAHERTY: Have any of those related to their  
72 driving record?

73 MR. MORRIS: Oh, sometimes it was related to driving  
74 record, other times it was not, and sometimes ... we  
75 often hear of people having a lapse in coverage in their  
76 insurance for one reason or another, they might have  
77 been away to university or out of the country, lost a job  
78 for a while, didn't have a car for while, those types of  
79 things, and then when they go back to get insurance,  
80 they are put in Facility, they can't get in the regular  
81 market. We have situations where people are a certain  
82 age, they might turn 70, as an example, and find out  
83 they've never, while they never had an accident they're  
84 placed in Facility. They might have an older car and

they're placed in Facility. Sometimes they might have been involved in a few accidents which were no claims made, say not their fault, but couldn't get insurance in the regular market, they'll find themselves in Facility, things like that.

MR. O'FLAHERTY: So those are a sample of the type of inquiries you've received over the years.

MR. MORRIS: Yes.

MR. O'FLAHERTY: Okay.

MR. MORRIS: Now, sometimes we did get inquiries obviously where people did have accidents and were placed in Facility as well.

MR. O'FLAHERTY: Sure, that makes sense as well. Now, I think everybody is trying to grapple with solutions to this particular issue, but just to confirm, this is an issue of concern for your office, is it?

MR. MORRIS: Yes, it certainly is, yes.

MR. O'FLAHERTY: Okay. Can you turn now to another document, which is Undertaking No. 3, I believe, which is the binder control register? I just want to clarify ... it should be in that book as well. I want to clarify a brief point that's arisen in the evidence concerning that.

MR. MORRIS: Do you know what tab that would be under?

MR. O'FLAHERTY: I had it as Undertaking No. 3.

MR. MORRIS: Undertaking 3. Is there a Tab 3?

MR. O'FLAHERTY: That's my memory ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah, it's Undertaking 3.

MR. MORRIS: Undertaking 3, oh, yeah, under "Youth," No. 3. Okay, sorry, I got it.

MR. O'FLAHERTY: Are you familiar with this document or one like it?

MR. MORRIS: Yes, I think I've seen that before.

MR. O'FLAHERTY: This isn't a major point. I just want to clarify that, what involvement, if any, your office has had with respect to the implementation of the use of this document in the jurisdiction of Newfoundland and Labrador.

MR. MORRIS: Sure. The first time I was aware of this was a few years ago when I was in meeting with Facility Association. At that time we were debating the distribution of profits to member companies and I remember Facility, I was advising them that they could not under our legislation pay out a profit to their member companies since they were non-profit, and they had indicated that, well, they were merely paying back to insurance companies what they had paid in, so we had a meeting around that topic to determine what actually were the amounts that were paid in by insurance companies and that could be distributed under the legislation, and at that meeting I was advised by someone at Facility that they were preparing this binder control register for Nova Scotia and New Brunswick, because I think we expressed concern at the time that we thought there may be drivers in Facility who should not be there, and they were doing it for two provinces, I believe on a trial basis, to see if it had any impact on drivers being placed in Facility who probably shouldn't be there, and they said they could do it for Newfoundland as well if we wanted to, so I didn't express any desire to do it or not to do it. Again, they were only doing it for two provinces. As far as I know, they have not implemented it in the other provinces like PEI, Ontario, Alberta and the three territories, but at the time we were undergoing a review and I did not feel a document like this would have any impact on drivers being placed in Facility who should not be there. I thought something more relevant would be, some restrictions, underwriting guidelines such as in place in Ontario, and that's what our select committee had recommended actually. We had a select committee report on the subject.

So we were reviewing the matter and we would determine what would be the appropriate mechanism in this province be put in place in order to prevent drivers going into Facility for reasons which we believe should not be there, and as a result of those consultations, government recently came out with Bill 28 and tabled it in the House of Assembly, which would, provides for the regulation of underwriting guidelines, does a number of things actually in relation to ... it restricts the reasons why an insurer can refuse insurance, so an insurance company, when this bill is passed, if it is in

fact ever is passed, it's tabled in the House but it hasn't been debated yet, so if that bill is passed it would prevent companies from refusing insurance because of things like age, age of vehicle, lapsed coverage, accidents where no claim is paid, tied (phonetic) selling, like refusing insurance because you don't, auto insurance because you don't have, say, a home owner's or life insurance with them, those type of things, and also it provides for disclosure to consumers that they are placed in Facility and why they are placed there and what they would have to do in order to get out of Facility, so those are the provisions that this province has undertaken, which we believe would be effective in preventing drivers from going in Facility who shouldn't be there. And going back to the previous schedule you just showed me, this binder is in place in Nova Scotia and New Brunswick, I believe, and I know in Nova Scotia the percentage of drivers in FA who have no accidents or no convictions is the same as here, so I think that sort of verifies that this binder would have no impact on that.

(9:30 a.m.)

MR. O'FLAHERTY: Okay. So your evidence is then that there are a package of measures that are presently before the House which are intended to address some of the same issues perhaps that the binder control register are at least intended to address in Nova Scotia, New Brunswick.

MR. MORRIS: Yeah. Well, I can't say for sure that that was the intent of this binder control register or if it's just for statistical purposes, I really don't know. I know I inquired when, to the superintendents in Nova Scotia and New Brunswick about this register and were they aware of it, the present superintendents, and what it was used for, and they were not aware that it was being done for their province and hadn't seen it. When this was put in place there was different superintendents in place. I still have contact with one in Nova Scotia from time to time on another project that he was working on, and he indicated to me he was advised at the time by Facility they were putting it in place, but he did not recall seeing the report or what it was used for, so I can't say that that was the purpose of their register or ...

MR. O'FLAHERTY: Well, yes, and that's fair because you didn't create the document anyway, so that's fine. But those are the measures that are presently before the

House in this province at least to address the issues of concern to your office.

MR. MORRIS: Yes.

MR. O'FLAHERTY: Okay. To your knowledge does the bill address the non-profit status of FA in its operation of the residual market?

MR. MORRIS: No, the bill does not address that. The non-profit status remains as it is, the bill does not make any changes in that regard.

MR. O'FLAHERTY: So it's still a break even operation as far as the legislation ...

MR. MORRIS: It's still non-profit.

MR. O'FLAHERTY: Okay. Then let's turn to another topic regarding the writing of FA business in the province. I understand that the Superintendent of Insurance approves the plan of operations for Facility Association in this province.

MR. MORRIS: Yes, that's correct.

MR. O'FLAHERTY: And you've adverted to this in your testimony, FA is not itself an insurer.

MR. MORRIS: That's correct.

MR. O'FLAHERTY: And it doesn't broker insurance either.

MR. MORRIS: No, it doesn't sell the product, no.

MR. O'FLAHERTY: Okay. So it doesn't write it and it doesn't sell it.

MR. MORRIS: Right.

MR. O'FLAHERTY: Okay. Does the plan that you've approved or your office has approved deal with how insurance can be sold or marketed in the province?

MR. MORRIS: Yes, it's sold through the broker network, the same as through regular market, and brokers do receive a commission under the plan of operation, and the insurance is administered by servicing carriers, there are four in this province, and who handle claims and do the administration of the

1 policies, and they receive a fee, servicing fee for doing  
2 that under the plan of operation.

3 MR. O'FLAHERTY: Okay. So it's not written or sold by  
4 FA, it's written or sold by the servicing carriers and the  
5 brokers respectively.

6 MR. MORRIS: Yes.

7 MR. O'FLAHERTY: And that's not on a break even  
8 basis, either of those operations.

9 MR. MORRIS: Well, they receive fees and  
10 commissions. I assume they would at least break even  
11 or probably make money on it. I wouldn't know the  
12 details of that.

13 MR. O'FLAHERTY: I can ask those questions of  
14 witnesses as they appear.

15 MR. MORRIS: Okay.

16 MR. O'FLAHERTY: Thank you. I just want to turn to  
17 another brief topic. Does your office collect statistical  
18 information from time to time regarding the auto rates in  
19 the voluntary market in this province as they compare  
20 to the auto rates in the voluntary market in other  
21 provinces?

22 MR. MORRIS: Well, there's a statistical plan prepared  
23 by the Insurance Bureau of Canada on behalf of all  
24 superintendents, so this document is prepared for all of  
25 us across the country, and so we have access to the  
26 information, not only for our own province but other  
27 provinces as well, yes.

28 MR. O'FLAHERTY: Okay. And do I understand it then  
29 that this is public information?

30 MR. MORRIS: Oh, yes.

31 MR. O'FLAHERTY: Okay. And have you or has your  
32 office conducted inquiries over time on both an  
33 individual insured basis on an, and on an average  
34 premium basis regarding the comparison of  
35 Newfoundland rates, say, to other jurisdictions?

36 MR. MORRIS: Yes, we've done quite a bit of  
37 comparisons there in recent years with the select  
38 committee on auto insurance, when they were in place,  
39 and more recently on our consultation on automobile  
40 insurance that we put out last year, we were doing

41 comparisons, because there's quite a debate as to the  
42 cause of the increasing rates for automobile insurance,  
43 and so we did comparisons with the other provinces,  
44 particularly the other Atlantic Provinces, to determine  
45 what are the rates here compared to those provinces,  
46 yes.

47 MR. O'FLAHERTY: Okay. Can I ask the Clerk to show  
48 Mr. Morris a document, please? Do you have a  
49 document before you, Mr. Morris?

50 MR. MORRIS: Yes.

51 MR. O'FLAHERTY: Are you familiar with that  
52 document?

53 MR. MORRIS: Yes, I am.

54 MR. O'FLAHERTY: And was this prepared by your  
55 office at some point?

56 MR. MORRIS: Yes, it was, and it would have been  
57 taken from the statistical plan which I mentioned to  
58 you, which is prepared by the Insurance Bureau of  
59 Canada on behalf of the superintendents for the, all of  
60 Canada.

61 MR. O'FLAHERTY: Okay. And was this document  
62 provided to me late last week by you?

63 MR. MORRIS: I believe so.

64 MR. O'FLAHERTY: I'd ask to have that marked, please,  
65 as an exhibit, WM No. 1.

66 MS. NEWMAN: WM No. 1.

67 MR. SAUNDERS, PRESIDING CHAIRMAN: WM No.  
68 1?

69 MS. NEWMAN: Uh hum.

70 **EXHIBIT WM-1 ENTERED**

71 MR. O'FLAHERTY: Can you indicate, Mr. Morris, what  
72 specifically are the data sources for the numbers that  
73 are found in these tables?

74 MR. MORRIS: Yeah. The data source would be the  
75 statistical plan prepared by the Insurance Bureau of  
76 Canada on behalf of the superintendents of insurance  
77 for Canada.



MR. O'FLAHERTY: Now, the table at the top is different from the two tables down below. Can you indicate to the Board what these tables are meant to indicate?

MR. MORRIS: Okay. The first table indicates the average earned premium per vehicle for third party liability insurance only in these selected provinces, so that's the average earned premium for all territories. Some provinces have more than one rating territory. Prince Edward Island, for example, has only one, New Brunswick has only one for third party liability. Newfoundland and Labrador, Nova Scotia and Alberta have different rating territories, but this combines all rating territories together, the ...

MR. O'FLAHERTY: And I should clarify this. This is for the voluntary market.

MR. MORRIS: Yes, for the voluntary market, that's correct.

MR. O'FLAHERTY: Okay, in all jurisdictions.

MR. MORRIS: Yes.

MR. O'FLAHERTY: Okay. And then the second two sets of tables down below, what are those meant to indicate?

MR. MORRIS: Okay. Those are comparing our province with Nova Scotia, broken down by territory, Nova Scotia has four territories, we have three, and that indicates that the rates, say, in Territory 1 for the, just take the year 2000, the average earned premium in Territory 1 in Newfoundland was, and that includes the St. John's area, \$598.96, and for Nova Scotia for their Territory 1, which includes Halifax/Dartmouth area, would be \$361.09, so we're quite a bit higher in the St. John's area, say, than the Halifax area.

MR. O'FLAHERTY: Okay. So this is then a comparison of, broken down on a territory basis between these two provinces.

MR. MORRIS: Yes.

MR. O'FLAHERTY: And then the top table is just simply an across the board comparison on the basis of a provincial comparison.

MR. MORRIS: Right.

MR. O'FLAHERTY: Okay. What does this exhibit indicate in general regarding the rates in the voluntary market?

MR. MORRIS: Okay. This indicates that third party liability insurance in the Atlantic Provinces is generally higher in Newfoundland than the other provinces and especially in Territory 1, and we're quite a bit higher than Nova Scotia, as you can see, and we're a bit higher than New Brunswick and we're quite a bit higher than Prince Edward Island, so we have the highest rates for third party liability in Atlantic Canada up to the year 2000.

MR. O'FLAHERTY: Now, I realize that this chart must have been prepared sometime ago. Has this been updated?

MR. MORRIS: No, not since that time, no.

MR. O'FLAHERTY: Okay. Do you have any evidence for the Board as to what the present picture is like?

MR. MORRIS: Not really in the ... all I know is that auto insurance rates are now a major concern in all Atlantic Provinces and I know there is hearings going on in New Brunswick and Nova Scotia as relates to auto insurance rates. We do know rates have increased in this province considerably over the last year or so, but I understand they've also increased considerably in those provinces as well, but I don't have comparisons as to how much they've gone up there as in relation to here. We'll have those eventually but not right now I don't have them.

MR. O'FLAHERTY: So your evidence at this stage, I could probably describe it as anecdotal rather than statistical?

MR. MORRIS: Yes, that's correct.

MR. O'FLAHERTY: Okay. And just to confirm, the time frame covered is up to, it's from 1996 up to the end of 2000?

MR. MORRIS: Yes. I believe that this was completed for the consultation paper we issued last fall. Now, that would have been the last year that we had any data for at that time.

MR. O'FLAHERTY: Okay. So that would have been, in 2002 in the fall you would have, this would have been the chart used.

MR. MORRIS: Yes.

MR. O'FLAHERTY: Okay. I'm just going to turn to another topic, and, Mr. Chairman, I only have a couple of other brief areas.

MR. SAUNDERS, PRESIDING CHAIRMAN: Carry on.

MR. O'FLAHERTY: Now, we've had some evidence at the hearing regarding a topic of cross subsidization between the voluntary market and the residual market.

MR. MORRIS: Yes.

MR. O'FLAHERTY: Are you familiar with that term as it relates to rate making applications?

MR. MORRIS: Yes, I am.

MR. O'FLAHERTY: Okay. Can I ask you in your capacity as Superintendent of Insurance, have you received any inquiries from insurers under your jurisdiction regarding cross subsidization?

MR. MORRIS: Yeah, a couple of insurance companies said to me that if they're assessed, and they were assessed last year by Facility for losses, that they would have to pass those losses on to the regular market and therefore Facility, the regular market drivers would be subsidizing Facility drivers if the rates were not adequate in Facility. Yes, that has been stated.

MR. O'FLAHERTY: Now, I notice from perusing your evidence at the previous hearing that you're somewhat uncomfortable from time to time mentioning the names of specific companies who make inquiries. Are you prepared to say who, what companies inquired about this cross subsidization issue to you or would you rather not?

MR. MORRIS: Not really, I don't think that's relevant really. I'd rather not mention specific company names.

MR. O'FLAHERTY: Fair enough. Were you advised by those persons who did make the inquiries how this cross subsidization, this is really the issue of concern to me, is meant to occur in practice?

MR. MORRIS: Yeah. Well, in my view in looking at the financial numbers over the years ...

MR. O'FLAHERTY: Well, before we turn to that, I'm trying to determine in terms of evidence, have you been given any indication by the persons who did make the inquiries how this was, how this from a practical perspective was meant to occur, how would this cross subsidization work?

MR. MORRIS: No, never got into that, no.

MR. O'FLAHERTY: That you didn't get into that?

MR. MORRIS: No, just a very general short comment, that's all.

MR. O'FLAHERTY: Okay, alright. And I'm sorry I interrupted you. Go ahead. You were testifying as to what your impression was of this.

MR. MORRIS: Okay. Well, if you look at the operation of Facility since its inception, Facility has (phonetic) been profitable. More money has been paid out to companies than has been paid in, so it seems to me that if in fact there is cross subsidization, it would be the other way around. Just take 2001 for example, if companies were paid \$5.5 million based on Facility business that year, you know, if they would have, that money would either be used, I presume, to reduce rates in the regular market because it's money they got coming in, or else paid out to the insurance companies, you know, kept for their own purpose, one or the other. So in the year, say, 1993, when they actually had to pay into the insurance or into Facility Association to cover shortfall, they, and in that year actually added costs on to the regular market insurers, well, I would assume in the other years when they made profits they would have done the same thing and just reduced the cost to the regular market, so all I'm saying is if there is cross subsidization going on, it seems to me that Facility drivers probably have subsidized regular market drivers over the years rather than the other way around, if in fact that's happening.

MR. O'FLAHERTY: Just so the Board can orient themselves to your evidence, you're referring to the third vertical column on the right with the dollar amounts in it?

MR. MORRIS: Oh, yes, that's right.

1 MR. O'FLAHERTY: That's in ...

2 MR. MORRIS: Schedule A.

3 MR. O'FLAHERTY: Schedule A.

4 MR. MORRIS: The revised Schedule A, yes.

5 MR. O'FLAHERTY: Revised Schedule A, okay. So  
6 then to return to my initial inquiry, and I think this is  
7 really all I wanted to ask you about this area, you  
8 haven't seen any evidence as to how this is meant to  
9 happen in practice and your position is that if you look  
10 at the financial results over the long term that in fact it  
11 doesn't appear that it is happening in reality.

12 MR. MORRIS: I wouldn't think so. Also it's been  
13 brought up, I guess, in the previous hearing that your  
14 referred to, that rates are set on a go forward basis and  
15 you cannot take past profits into account, so I assume  
16 if you can't take past profits into account in setting  
17 rates, you don't take past losses, but that's another, I  
18 guess, area here, but ...

19 MR. O'FLAHERTY: Sure, that's another matter for the  
20 Board if they want to look at that. The last topic I want  
21 to turn to now is the issue of capital adequacy. Now,  
22 does your office have any role in the regulation of  
23 capital adequacy in the automobile insurance industry  
24 in this province?

25 MR. MORRIS: Yes, we do.

26 MR. O'FLAHERTY: And do insurers have regulatory  
27 requirements to maintain certain levels of capital?

28 MR. MORRIS: Yes. The minimum requirement for  
29 capital under the present legislation is \$1 million. Bill 28  
30 changes that to \$3 million, which is standard for most  
31 provinces.

32 MR. O'FLAHERTY: So that's the minimum  
33 capitalization of the company?

34 MR. MORRIS: Yes.

35 MR. O'FLAHERTY: And how does that relate to the  
36 amount of insurance business that a particular insurer  
37 is permitted to write?

38 MR. MORRIS: Yeah. Generally an insurance company  
39 can write three times their amount of capital in

40 premiums in general, yes, so it does restrict the amount  
41 of business. Yes, you can't have, say, \$1 million in  
42 capital and write all the business you want. You are  
43 restricted, yes.

44 MR. O'FLAHERTY: And so then we can say, and  
45 without mining too deeply into this area, because, you  
46 know, it's not going to be of huge relevance to the  
47 hearing, so if you have \$3 million in capital you can  
48 write \$9 million in premium ...

49 MR. MORRIS: Yes, generally speaking, yes.

50 MR. O'FLAHERTY: ... business in this province.

51 MR. MORRIS: Yes.

52 MR. O'FLAHERTY: Okay. Of interest to me is whether  
53 or not you've received any complaints from licence  
54 insurers regarding the impact, negative impact of FA  
55 participation on their ability to write insurance in the  
56 province.

57 MR. MORRIS: No, we haven't in doing our  
58 examinations. As I said, we have four local companies  
59 we've examined. It's never been brought to our  
60 attention that Facility business is having a negative  
61 impact on them being able to either reach their capital  
62 requirements or restricting the amount of business they  
63 write. In fact I suppose, as it turned out over the years,  
64 it appears to me that the Facility business has in fact  
65 been a net benefit to insurance companies from a  
66 financial perspective. Also I'm not aware ... we attend,  
67 like, regulator ... on a national basis, I'm not aware that  
68 any regulator has concerns or it has been brought to  
69 their attention that Facility business is having a  
70 negative impact on any company's capital, and, if it  
71 was, if a company came to me and said, look, they're  
72 having, they haven't met their capital requirements  
73 because of Facility business, I'm sure we would take  
74 that into account and I would expect most regulators  
75 would, but I'm not aware that's ever happened.

76 (9:45 a.m.)

77 MR. O'FLAHERTY: Just one moment. I don't have any  
78 further questions for Mr. Morris at this time. Thank  
79 you, Mr. Chairman.

80 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
81 O'Flaherty, thank you. Mr. Whalen or Mr. Stamp?

1 MR. WHALEN, Q.C.: Thank you, Mr. Chairman. With  
2 your permission, Ms. Morris, I'll sort of deal with these  
3 items in reverse order and I'll ...

4 MR. MORRIS: Okay.

5 MR. WHALEN, Q.C.: ... go back to where Mr.  
6 O'Flaherty started. I think it's easier sometimes that  
7 way. You just dealt with the issue of capital adequacy,  
8 and I thought earlier you said there were four local  
9 insurance companies.

10 MR. MORRIS: Yes.

11 MR. WHALEN, Q.C.: These are the companies for  
12 which you are responsible for the capital adequacy of  
13 those, you supervise that.

14 MR. MORRIS: Yes, that's correct.

15 MR. WHALEN, Q.C.: And I take it at one time in the  
16 recent past there were five companies. Highland  
17 (phonetic) would have been one of them.

18 MR. MORRIS: Yes, we would have had, I think, at one  
19 time six or seven, a few years ago, yeah.

20 MR. WHALEN, Q.C.: Now, is there a relationship  
21 between capital adequacy and these rates that we're  
22 seeing here, in other words ...

23 MR. MORRIS: The rates ...

24 MR. WHALEN, Q.C.: The rates, is there a relationship  
25 between those that you sort of have to make enough  
26 money to, or you'll eventually not be capitally  
27 adequate, will you?

28 MR. MORRIS: Sure. You have to make a profit. All  
29 insurance companies have to make a profit to stay in  
30 business, absolutely.

31 MR. WHALEN, Q.C.: And I'll agree with you on that.  
32 Now, I'll just touch briefly with your voluntary market,  
33 third party comparison, WM No. 1. Do you know if the,  
34 what the rate would be, for instance, in Ontario, which  
35 you don't have here? Would that be higher?

36 MR. MORRIS: The premiums in Ontario would ...

37 MR. WHALEN, Q.C.: Third party liability.

38 MR. MORRIS: Yeah. Probably ... they may be about  
39 the same as us, I think, or maybe a little higher, little  
40 lower, I'm not sure.

41 MR. WHALEN, Q.C.: And do you know when you  
42 compare Nova Scotia, New Brunswick, whether their  
43 mandatory minimum coverage, I believe ours is 200,000  
44 ...

45 MR. MORRIS: 200, yeah.

46 MR. WHALEN, Q.C.: Theirs is ...

47 MR. MORRIS: That's the same, generally the ...

48 MR. WHALEN, Q.C.: Theirs is similar.

49 MR. MORRIS: ... same everywhere, yes.

50 MR. WHALEN, Q.C.: And as you referred to a moment  
51 ago, there's been some impetus to try to deal with these  
52 high third party liability rates in this jurisdiction.

53 MR. MORRIS: Yes.

54 MR. WHALEN, Q.C.: And do you know what is the  
55 major cause of that? Is it bodily injury settlement  
56 claims or is it that we have more accidents or what have  
57 you concluded?

58 MR. MORRIS: Well, on the rates ... well, when I  
59 inquired a number of years ago on the reason why the  
60 differences are in those rates, I was basically given  
61 three reasons why the Insurance Bureau of Canada, and  
62 again this was not documented, but one of the reasons  
63 they thought was that the bodily injury settlements in  
64 this province for, say, pain and suffering, were higher  
65 than in other Atlantic Provinces, was one reason,  
66 another reason they gave was that there was more  
67 competition in Nova Scotia and Prince Edward Island,  
68 more companies competing for the business there, and  
69 another reason they gave was this province is the only  
70 province with a minimum benchmark which tends to  
71 keep rates a little higher than the others, so those were  
72 three possible reasons why our rates are higher than  
73 others.

74 MR. WHALEN, Q.C.: And I think efforts are being  
75 made ... do you see it as one of your ... you've noted,  
76 you've indicated that you have a number of roles and  
77 responding to consumer complaints, you indicated as

one of them. Do you see it as one of your roles to get these rates down?

MR. MORRIS: Well, I guess it's the legislators who have the ultimate responsibility for bringing in any legislation which they feel would have an impact on rates and as Superintendent of course my role would be to provide advice, research and that to the legislators as to possible methods of reducing rates, but ultimately it would have to go to the, I guess the House of Assembly if there's deemed that there is a need for any regulatory change. From the competition aspect of it, I guess that's, the private marketplace would look after that, but whether there's a need for a change in the type of product we offer to reduce rates, and that has been a major source of debate over the last year, some provinces, particularly government run, a few government run provinces, do not allow any claims for pain and suffering, so obviously that would reduce claims, reduce costs. Ontario, as an example, they have restrictions on who can get pain and suffering, so that would reduce claims, reduce costs. That is certainly an area of a lot of debate in the last year, whether government should bring in some of those initiatives to reduce claims and reduce costs in the regular market.

MR. WHALEN, Q.C.: So this is what we call the voluntary market and that's a major concern.

MR. MORRIS: Yes.

MR. WHALEN, Q.C.: I guess there's all kinds of things we could look at and it was subject of, I think, an awful lot of public debate and I guess a bit of a media battle last year between the government and the lawyers.

MR. MORRIS: Yes, and I'm sure that will go on for the next little while as well because government has not made any final decisions on that area as yet.

MR. WHALEN, Q.C.: Mr. Morris, you were taken to the Consent, no, it was DJS No. 3 and Illustration 5, and you talked just immediately before that about the fact that you get phone calls, complaints about people who want to know why they were, they're in Facility when they haven't had an accident.

MR. MORRIS: Right.

MR. WHALEN, Q.C.: Now, you're the Superintendent of Insurance and I assume you're familiar with the concept that what insurance companies do is they

insure risk, so they have to try to calculate what the risk is of something happening or whether the risk is so great that, well, we don't want that.

MR. MORRIS: Right.

MR. WHALEN, Q.C.: Okay. And there seems to be a focus on this, that unless you've already got a conviction or you've already had an accident, that you probably shouldn't be in Facility or you're not a risk. Do you subscribe to that theory?

MR. MORRIS: In general. There may be other reasons where a person is risky but I'm not aware of them, but generally speaking in the automobile insurance business and in other insurance, you know, your risk is assessed by, well, what your driving record and your Class 5 in different levels, zero to six, generally speaking, sometimes seven or eight, and your driving record is usually based on the number of accidents you had, any moving convictions you had, those types of things. There's also different categories where there is data put forth, for instance, young drivers up to age 25, there is data provided by the insurance industry shows that those drivers generally have a higher accident rate than drivers over 25, so they're rated accordingly but in the regular market.

MR. WHALEN, Q.C.: But let's talk about what Facility is, which is people where no individual carrier in the market wants to take that alone, so Facility, which is a continuation of the original risk sharing pool and the original Facility Association, spreads that risk among themselves and they take it collectively. That's what the Facility is, correct?

MR. MORRIS: Yes.

MR. WHALEN, Q.C.: Now, you'll recall, I believe, at the last hearing we talked about, by way of an example of a risk, the tow out of the Hibernia structure to the Grand Banks. There was no accident, there was nothing bad about it, it was just a \$5 billion rig being towed out over a very dangerous situation, so that was, there was no accident, there was no conviction, it was just a very, very expensive piece of machinery going to a single place and no single insurance company wanted to carry it, so they came up with a sharing scheme to do it. That's really what this is all about, isn't it, the same concept?

1 MR. MORRIS: I don't know if it's the same concept or  
2 not but it was set up to provide insurance to drivers  
3 who could not obtain it in the regular market. It's our  
4 view people should be able to obtain insurance in the  
5 regular market if there is no indication that they are a  
6 higher risk, and if a person didn't have any accidents or  
7 no convictions of bad driving, it's our view that there is  
8 no reason why they should be refused insurance in the  
9 regular market, and these guidelines, by the way, have  
10 been in place in Ontario for a number of years. They  
11 have rules there which says that you cannot refuse  
12 insurance for these reasons which are not fair to  
13 consumers and are not indications of any evidence of  
14 risk, it doesn't show that they're a high risk driver.

15 MR. WHALEN, Q.C.: Is that why they've developed a  
16 second pool in Ontario?

17 MR. MORRIS: It may be.

18 MR. WHALEN, Q.C.: Because the government has  
19 legislated them out of one so they had to create another  
20 one.

21 MR. MORRIS: It may be.

22 MR. WHALEN, Q.C.: Yeah. But let's just ... I won't  
23 beleaguer this but ... so you're saying that if we have a  
24 16 year old new driver who's got no driving experience  
25 and he, and I'll take a he because I think males might be  
26 more prone to accidents in this risk calculation they do,  
27 has got himself a brand new Stingray, which is, I think,  
28 a \$100,000 muscle car, that somebody should be  
29 obligated to take him, and you would permit that  
30 insurance company to get whatever rate they want to  
31 take that risk.

32 MR. MORRIS: Yeah. They would have a ... they do  
33 right now based on those things and that's reasonable  
34 to do so.

35 MR. WHALEN, Q.C.: So I understand your view,  
36 which is, I guess, an underwriting view, isn't it? That's  
37 an underwriting thing that they would be ...

38 MR. MORRIS: It's a fairness view, fairness to  
39 consumers. Unless someone is, can be shown to them  
40 that they are a high risk driver, they should not be into  
41 a high risk pool.

42 MR. WHALEN, Q.C.: But I take it, and I don't want to  
43 prolong this, you seem to think that you're not a high

44 risk person until you have your first accident. You can  
45 hardly have it till you drive a car.

46 MR. MORRIS: Sure, exactly, and many drivers will tell  
47 you the same thing. What's to say I'm high risk?

48 MR. WHALEN, Q.C.: Well, all I know is somebody  
49 who's raised three sons that every single one of them  
50 had an accident in his first year, so they were all high  
51 risk before they started, I guess.

52 MR. MORRIS: Well, I had four and, three sons and a  
53 daughter. The three sons have never had an accident,  
54 the daughter did in the first month.

55 MR. WHALEN, Q.C.: She made up for it.

56 MR. MORRIS: She made up for it, yeah.

57 MR. WHALEN, Q.C.: Now, these complaints you get,  
58 do you keep a written report of those complaints and  
59 do you report in writing to either the Minister, Facility  
60 Association or the insurance industry?

61 (10:00 a.m.)

62 MR. MORRIS: Well, any complaints we get, we get a  
63 lot of telephone complaints. If we want to follow up on  
64 them, we ask that the complaint be put in writing, so we  
65 keep a file on all of those, so there is a file on written  
66 complaints.

67 MR. WHALEN, Q.C.: But do you provide that  
68 information in to anyone else?

69 MR. MORRIS: No, there's no data. We don't have a  
70 computer program to keep track of those complaints  
71 and what ...

72 MR. WHALEN, Q.C.: How can the industry deal with  
73 them if you don't let them know about them?

74 MR. MORRIS: Oh, I quite often tell them, you know,  
75 these are types of complaints ... in fact, each individual  
76 complaint, the industry does know. The process is,  
77 someone phones us up and they got a complaint about  
78 this, we will say, well, put it in writing, we will write the  
79 company and provide them with a copy of the  
80 complaint, what we write to the company, and we have  
81 it back and forth and at the end of the day, if they can  
82 resolve the complaint, fine. We are an intermediary.  
83 We can't, and we tell the consumer we can't tell the

1 company what to do in those regards, if it's an  
2 underwriting issue or a claims issue, but we will do  
3 what we can to facilitate their complaint and we just  
4 document that all for the companies. The individual  
5 company who's involved is well aware of the  
6 complaints.

7 MR. WHALEN, Q.C.: Now, Mr. Morris, there was  
8 recently an auto industry consultant process that went  
9 on last year, and I think there was about 1,100  
10 responses to the industry, industry wide.

11 MR. MORRIS: Yes.

12 MR. WHALEN, Q.C.: And can you recall how many of  
13 those dealt with Facility?

14 MR. MORRIS: Very few.

15 MR. WHALEN, Q.C.: Six or seven?

16 MR. MORRIS: Probably ... almost all of those  
17 responses related to one issue, pain and suffering.

18 MR. WHALEN, Q.C.: So of 1,100, six or seven dealt  
19 with Facility.

20 MR. MORRIS: Probably. I can't even say that, I don't  
21 know. There was 51 proposals of which one received  
22 just about all the attention. The other 50 received very  
23 little attention. And what happens usually in those  
24 things, unless people are upset with something, they  
25 don't respond, so we can only assume the other  
26 proposals were, a lot of them were fairly well accepted,  
27 I suppose.

28 MR. WHALEN, Q.C.: And other than your concern  
29 about the excessive expenses over revenues of Facility,  
30 have you had any other complaints? I'm talking about  
31 what Facility can do something about, not who goes in  
32 it and who doesn't, which is the market.

33 MR. MORRIS: Yeah.

34 MR. WHALEN, Q.C.: Have you had any?

35 MR. MORRIS: No, no, we've had quite a good  
36 relationship with Facility on those issues over the  
37 years, I think.

38 MR. WHALEN, Q.C.: Now, Mr. Morris, we've heard  
39 from Mr. Simpson about the different insurance

40 institutes, like the Institute of Canada. Are you a  
41 member of the Insurance Institute of Canada?

42 MR. MORRIS: Me?

43 MR. WHALEN, Q.C.: Yes.

44 MR. MORRIS: No.

45 MR. WHALEN, Q.C.: Are you a member of the  
46 Insurance Institute of Newfoundland?

47 MR. MORRIS: No.

48 MR. WHALEN, Q.C.: And what is your background in  
49 the insurance industry? You say you started in this  
50 position in '96, I believe it was.

51 MR. MORRIS: Yes. Prior to that I have no background  
52 in the property insurance industry. I spent seven  
53 years, from '68 to 1975, in the life insurance industry,  
54 and I was a chartered life underwriter at that time, but as  
55 far as automobile insurance, property industry, I've had  
56 no experience in that industry per se.

57 MR. WHALEN, Q.C.: Now, in your role as the  
58 Assistant Deputy Minister ...

59 MR. MORRIS: Yes.

60 MR. WHALEN, Q.C.: ... I think you wear a number of  
61 hats because you're the Superintendent of Insurance,  
62 you're also, say, you focus on consumer complaints. I  
63 guess you're talking about consumer complaints just in  
64 the area of insurance or generally or what's your ...

65 MR. MORRIS: Oh, okay. My role as Assistant Deputy  
66 Minister, I'm, I guess, responsible for regulation of all  
67 financial services, so I'm Superintendent of Pensions,  
68 Superintendent of Credit Unions, responsible for trust  
69 and loan companies, which currently there's none in the  
70 province, and we also have a Trade Practice Division,  
71 so which regulates real estate, mortgage brokers,  
72 automobile dealers, lotteries. We also have a  
73 Residential Tenancy Division handling complaints on  
74 landlord/tenants that comes under me, and we also  
75 have the Registries of Deeds, Companies, Personal  
76 Property, those, so all those areas come under me. I'm  
77 responsible for about 50 odd pieces of legislation and  
78 insurance is part of my responsibility.

MR. WHALEN, Q.C.: So in your various capacities and the various numbers of hats that you have to wear, it seems you have to be responsive to the consumers in a number of areas.

MR. MORRIS: Yes, and that's why our branch is called Consumer and Commercial Affairs, because all consumer complaints find their way to our branch no matter what it's about.

MR. WHALEN, Q.C.: Mr. Morris, you and I have had this discussion in private a number of times, but I think it would be helpful for us to have it here, and that is that it seems that you have a role as Superintendent of Insurance to make sure that insurance companies are solvent, you talked ...

MR. MORRIS: Yes.

MR. WHALEN, Q.C.: ... about before.

MR. MORRIS: Yes.

MR. WHALEN, Q.C.: I would presume that you want to make sure that of that, there's over 50, that the other 48 or 46 or so, which are international or national companies, that they're solvent as well, but I presume you rely on others to, for that.

MR. MORRIS: Yes. Mostly the federal regulator and they report to us and if they indicated that an insurer was, they had problems with it, we would not licence that company here, so any company who is not a Newfoundland company, they want to be licensed here, would have to verify that the primary regulator, usually Federal Government, gives them a clean bill of health, if you like.

MR. WHALEN, Q.C.: And so you have the role as regulator and solvency and you also have the role, it appears, as you've indicated, to see that those rates are kept down, that insurance is affordable in the province.

MR. MORRIS: Yes, absolutely. In general government needs to ensure that consumers can afford insurance rates. I guess auto insurance is one of the few products that government says to the consumers, you have to have this product and you, in this province anyway, you have to buy it from the regular market, so if it's not affordable, consumers certainly complain to government that, look, you're not doing your job, I can't afford these rates, I can't drive the car and so on, so we

have some obligation to try to bring in a product that is affordable to consumers.

MR. WHALEN, Q.C.: So you have a sort of a role that may to some measure conflict, one, to see that an insurance company is solvent, and the other to see that rates are low.

MR. MORRIS: I don't know if it conflicts. I guess it's the same ultimate purpose, is you have to ensure product is available that's affordable and at the same time ... it's no benefit to consumers if a rate is such that it forces insurance companies out of business, so the Public Utilities Board here, they're the ones who set the rates, and when we review the annual statements of a company, if we find out that they are having difficulty in meeting their financial obligations, well, they would either have to come to the Board to seek rate increases or reduce expenses or whatever, to ensure that they're solvent in the long run.

MR. WHALEN, Q.C.: Yeah. As I've indicated to you before, and possibly at the last hearing, but certainly we've talked about this, you know, as a consumer, and I see that you as the Superintendent of Insurance, I rely on you from my point of view primarily to make sure that when I buy insurance from an insurance company, that that insurance company is solvent, because I don't have the time to check that out, but as to the price of the insurance, I rely on myself to shop around.

MR. MORRIS: That's right.

MR. WHALEN, Q.C.: Do you see your roles in that way, that one of your roles is almost mandatory but the other one is not as important?

MR. MORRIS: Well, on the solvency, of course it's critical that insurance companies have the money available to pay claims when they arise. That's what you buy insurance for, and if the money is not there, well then that doesn't benefit everybody, so that's of primary importance, is to ensure the solvency of an insurance company. The complaints, actually most complaints we deal with are relating to underwriting and claims as opposed to rates. Any complaints we get about rates, about insurers, we usually refer them to the Board over here, say, look, that's an issue, we don't regulate the rates of a company, you refer those things to this Board.



1 MR. WHALEN, Q.C.: But surely you don't look to this  
2 Board to see that insurance companies are solvent.

3 MR. MORRIS: No.

4 MR. WHALEN, Q.C.: No. This Board sees that the rate  
5 is fair and reasonable based on actuarial opinion only.

6 MR. MORRIS: Right, and based on their claims and so  
7 on, and if they are, the rates are adequate to pay for  
8 their claims and expenses, there's no reason why the  
9 company should not be solvent.

10 MR. WHALEN, Q.C.: Do you agree that the rate for  
11 Facility should be commensurate with the risk that's  
12 involved?

13 MR. MORRIS: Absolutely.

14 MR. WHALEN, Q.C.: And that drivers should pay  
15 based on the risk?

16 MR. MORRIS: Yes.

17 MR. WHALEN, Q.C.: And that if an increase is  
18 indicated that it should be approved by this Board.

19 MR. MORRIS: Yes.

20 MR. WHALEN, Q.C.: Now, I just want to go, if I can, to  
21 the, your Schedule A to your, and its amendment. I just  
22 want to ...

23 MR. MORRIS: Okay.

24 MR. WHALEN, Q.C.: And I wonder if the witness  
25 could be provided with DJS No. 2? You may have that,  
26 Mr. Morris. I find it great difficulty finding it here on  
27 my desk, so I don't know ...

28 MR. MORRIS: DJS No. 2.

29 MR. WHALEN, Q.C.: It's the ...

30 MR. MORRIS: In this binder?

31 MR. WHALEN, Q.C.: It's basically an update of that  
32 same document that you provided and it was provided  
33 just to help you with it when you get it by ...

34 MR. MORRIS: Yeah.

35 MR. WHALEN, Q.C.: You have it?

36 MR. MORRIS: Yes, I have it, thank you.

37 MR. WHALEN, Q.C.: Now, that was provided by Mr.  
38 Simpson and it's not a lot different than your original  
39 Schedule A and your amended one that you put in  
40 today.

41 MR. MORRIS: Right.

42 MR. WHALEN, Q.C.: Now, what he has done here, and  
43 I want to take you through this, is he's actually, I think,  
44 already made the change that you have made today.

45 MR. MORRIS: Yes, he has.

46 MR. WHALEN, Q.C.: In part.

47 MR. MORRIS: Yeah.

48 MR. WHALEN, Q.C.: But he's added on, I guess,  
49 operations up to September.

50 MR. MORRIS: Right.

51 MR. WHALEN, Q.C.: And what we did was we took  
52 this and we used your same methodology, Mr. Morris,  
53 which was ... and now the new total premiums written  
54 are 198 million.

55 MR. MORRIS: Right.

56 MR. WHALEN, Q.C.: And I'll just deal in millions or  
57 approximate. And there was a claim, so that reduced  
58 your 22 million down to 16, a deficit.

59 MR. MORRIS: A deficit, yeah.

60 MR. WHALEN, Q.C.: Of 5.7.

61 MR. MORRIS: 5.7, yeah.

62 MR. WHALEN, Q.C.: And for your calculation that  
63 you put down in your exhibit, these are the real, the  
64 columns I want to deal with here. Then you came down  
65 with a, at that point, a figure of 9, but I think our figure  
66 was 16.279, and you had 22.

67 MR. MORRIS: I don't think ...

68 MR. WHALEN, Q.C.: You had 22 million there.

1 MR. MORRIS: Yeah, right, and 16.  
2 MR. WHALEN, Q.C.: When you take ... if you take 5.76  
3 ...  
4 MR. MORRIS: Yeah.  
5 MR. WHALEN, Q.C.: ... off, you come down with 16.  
6 MR. MORRIS: Sure, that's including up to September.  
7 MR. WHALEN, Q.C.: Okay?  
8 MR. MORRIS: Right.  
9 MR. WHALEN, Q.C.: Yes. And we used your 5.5  
10 percent premiums.  
11 MR. MORRIS: Right.  
12 MR. WHALEN, Q.C.: And now it's on 198 million.  
13 MR. MORRIS: Right.  
14 MR. WHALEN, Q.C.: And that figure comes out to be  
15 10.9 million, and when we deduct that from the 16 we  
16 get a figure of 5.3.  
17 MR. MORRIS: Sure.  
18 MR. WHALEN, Q.C.: Now, the point which you made,  
19 and I think on which we can agree, is that really for the  
20 purposes of setting these rates, you just said this in  
21 response to a question by Mr. O'Flaherty, we can't look  
22 backwards for profits or losses in setting rates. We  
23 can't claim these losses of 5 million or, you know, for  
24 this Board. Do we agree on that?  
25 MR. MORRIS: Well, the Board has determined ... the  
26 Board has already determined that they will only look  
27 forward, yes.  
28 MR. WHALEN, Q.C.: Sure. This is just a glance in a  
29 rear view mirror to see how ...  
30 MR. MORRIS: Right.  
31 MR. WHALEN, Q.C.: ... and it certainly seems to me ...  
32 now, and also I think you and Mr. Simpson agree on  
33 one thing, which is that there's a figure here of about  
34 5.5 percent that's an expense for health levies and  
35 premiums that are due from Facility to the companies ...  
36 MR. MORRIS: Yes.  
37 MR. WHALEN, Q.C.: ... on a regular ongoing basis.  
38 MR. MORRIS: That's correct.  
39 MR. WHALEN, Q.C.: Now, we can use either one of  
40 these charts and we'll see that for the first three years,  
41 almost four, I'm sorry, for the first four years, if you look  
42 at DJS No. 2, there was, and you have 88 in your  
43 column, yeah ... oh, you've got it in a different year.  
44 Okay, I'm sorry. There was four years where there was  
45 nothing paid, so really the insurance industry was  
46 carrying the whole Facility for that period of time, for  
47 5.5 percent of whatever, because there was no  
48 distribution.  
49 MR. MORRIS: Correct.  
50 MR. WHALEN, Q.C.: Mr. Morris, I thank you for your  
51 help, sir. That's all the questions I have.  
52 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
53 you, Mr. Whalen. Ms. Newman?  
54 (10:15 a.m.)  
55 MS. NEWMAN: Yes. I do have a couple of questions.  
56 The first question I want to ask you has to do with the  
57 premium taxes and the health levies. Are you familiar  
58 with the mechanism by which those particular levies  
59 and the tax get paid, just to explain for us perhaps on  
60 what basis they're charged and who pays them?  
61 MR. MORRIS: Okay. The insurance companies, all  
62 licensed insurers in the province are required to pay to  
63 the Department of Finance actually a four percent  
64 premium tax, and we provide the data every year to  
65 Department of Finance on the amount of premiums each  
66 company has paid and they're assessed a four percent  
67 tax on the total premiums. Health levies are done on a  
68 per vehicle basis and the Department of Health  
69 assesses those to the insurance industry directly to the  
70 companies. I'm not sure exactly what the formula is but  
71 when I did the schedule a few years ago I did a  
72 calculation and it worked out to be about 1 1/2 percent  
73 of premium, so it was a lot easier to calculate it on that  
74 basis than per vehicle, but all of the licensed insurers in  
75 the province have to pay those amounts directly to  
76 government. Facility is not an insurer so Facility itself  
77 doesn't make the payments, the insurance, each  
78 individual insurance company pays that, and in their

total premium volume, if you like, which they provided, provided to us, there's a distribution by Facility, they distribute that, you know, amongst all of the companies in the regular market, so they have to pay their share of this distribution of the premium taxes, because they in fact are the insurers, you know, collectively, so that Facility ... so every individual company pays a share of those taxes to government rather than Facility directly. Now, we've discussed in the past, is that the best way to do it, for instance, should the servicing carrier pay it or whatever, but the current mechanism, all the companies pay it individually to government.

MS. NEWMAN: So you would compile the information and provide the written premium for each insurance company. Is it the ...

MR. MORRIS: Yes, that's reported to us, yes, and we give that to the Department of Finance and they do the assessments over there. We don't in our department make assessments or collect taxes, no.

MS. NEWMAN: Who determines what percentage of the FA premium is attributed to each individual insurance company?

MR. MORRIS: Facility would do that. They would have the breakdown of the volume in the regular market, I guess, again based on the data that we provide, I suppose. I'm not 100 percent sure but I guess ... we do a report every year on the volume of business each company does in the regular market, so based on that Facility, we use those numbers to determine what to apportion to each company operating in this province as well as all the other provinces where Facility operates. I think that's a mechanism used everywhere.

MS. NEWMAN: So Facility Association reports to you with respect to each individual company's premium, share of ...

MR. MORRIS: No, no.

MS. NEWMAN: No, no.

MR. MORRIS: No. Each individual company themselves report to us.

MS. NEWMAN: Okay.

MR. MORRIS: And based on ... we put a schedule together then on the premium volume for the different types of coverages and I assume that's the data Facility uses for the distribution, but I'm not 100 percent sure. Facility would be the best one to ask on that but I think that's what they use.

MS. NEWMAN: And is it broken ... when the information is provided to you, is it broken down for, you know, the voluntary market and the FA premium? Is it separated that way?

MR. MORRIS: Yes. We get, I think, the numbers for the voluntary market, what they, their direct premiums written by each company, yes.

MS. NEWMAN: Okay. And is this similar process followed with respect to the number of vehicles for purposes of a health levy?

MR. MORRIS: We don't provide number of vehicles. I think they get that from Motor Registration, I assume, so I'm not exactly sure how they do that calculation in the Department of Health. I really haven't seen their calculation. It gets handled over there. We really have nothing to do with the assessments, if you like, but when we did the calculations for a number of years, it works out to about 1 1/2 percent.

MS. NEWMAN: With respect to the surplus or the deficit, I understand that FA distributes that to its individual members.

MR. MORRIS: Yes, they do.

MS. NEWMAN: And is that permitted under the Act?

MR. MORRIS: No, in my view it isn't. This is a matter of debate again but I've, the government, not only me, Department of Justice, has said that the current legislation as it stands legislates Facility as a non-profit association and as such they cannot distribute profits to their member companies. They can certainly reimburse them their, any costs that they have, and this is why a few years ago we were trying to come up with what are the costs, and we've deemed that these premium taxes and health levies are certainly costs that individual companies pay on behalf of Facility and they should be reimbursed for those costs and they are, you know, not profits, that's just reimbursement of costs for those two items. Anything over and above that, in our

1 view, would be profit distribution, and under the  
2 legislation it is government's view that's not permitted.

3 MS. NEWMAN: Okay. So does that mean that FA  
4 would be acting contrary to the legislation then  
5 according to ...

6 MR. MORRIS: That's our view, yes.

7 MS. NEWMAN: And has there been any steps taken  
8 to follow up on that at this time?

9 MR. MORRIS: Not at this time. I suppose when Bill 28  
10 is passed, if it is passed, that's going to be debated in  
11 the House next year, I assume, and after that's finally  
12 passed, then government will have to decide are they  
13 going to take any further action with respect to the  
14 distribution of profits over and above reimbursement of  
15 costs, but that would have to be determined at a later  
16 date, I would think.

17 MS. NEWMAN: So Bill 28 then doesn't deal with this  
18 issue either?

19 MR. MORRIS: No. Bill 28, as it is now, keeps Facility  
20 as a non-profit association of insurers, but when Bill 28  
21 comes up in the House for debate I'm sure there'll be  
22 lots of things debated there and this may be one of  
23 them, and we'll have to see what the House of  
24 Assembly decides with respect to the changes to auto  
25 insurance. We've, well, (unintelligible) committees, you  
26 know, they were on the go since 1996, submitted a  
27 report in '98, and there are a lot of issues brought  
28 forward and some legislation has been already put in  
29 place and Bill 28 is the latest thing, and when this is  
30 debated in the House I guess we will then see exactly  
31 what product we're going to end up with and what the  
32 rules will be and after that's over then government will  
33 have to decide what they will do with a number of  
34 things, including the profits that Facility has paid, is  
35 paying out, or whether they will contest that or not.

36 MS. NEWMAN: Okay, those are all my questions.  
37 Thank you very much, Mr. Morris.

38 MR. SAUNDERS, PRESIDING CHAIRMAN: Anything  
39 on redirect, Mr. O'Flaherty?

40 MR. O'FLAHERTY: Yes, just one point. You were  
41 brought to DJS No. 2 by Mr. Whalen, and can I just  
42 bring you to the revised schedule which you filed,  
43 which is Schedule No. 4?

44 MR. MORRIS: Yeah, I have both of those here.

45 MR. O'FLAHERTY: Now, there are some slight  
46 differences in the first vertical column under, which has  
47 dollar amounts in it, under Net Amounts, sorry, Net  
48 Premiums Written. Sorry, I'm a bit logy here this  
49 morning. I'm referring to the first column in DJS No. 2  
50 at the bottom and your schedule. I see there's some  
51 slight differences in the amounts for the years 2000 and  
52 2001.

53 MR. MORRIS: Right.

54 MR. O'FLAHERTY: Can you explain to the Board why  
55 those are different?

56 MR. MORRIS: Sure. For those two years I've put in  
57 the numbers from the audited statements which are  
58 earned premiums instead of net premiums written,  
59 which will be slightly different, and Facility, they put in  
60 the net premiums written in their schedule, so that's  
61 why there is a slight difference in those two years, 2000,  
62 2001, I just took those right off the audited statements  
63 which are earned premiums and not written premiums,  
64 and ...

65 MR. O'FLAHERTY: And those are the statements that  
66 are attached to your evidence in, I think it's numbers 2  
67 and 3. I don't think it's necessary to refer to them, but  
68 ...

69 MR. MORRIS: Okay. Yeah, but that's where they  
70 would have come from.

71 MR. O'FLAHERTY: That's where those figures came ...

72 MR. MORRIS: That's where I got them from, yes.

73 MR. O'FLAHERTY: Yes, that's where those figures  
74 came from, Mr. Chairman. That's all I have on redirect.  
75 Thank you, Mr. Chairman.

76 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
77 Since it's close to 10:30, I think we'll break at this point  
78 and we'll come back and we'll then resume with panel  
79 questions of Mr. Morris. So we'll come back in about  
80 15 minutes. Thank you.

81 MR. O'FLAHERTY: Thank you.

82 (break)

1 (10:50 a.m.)

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
3 Commissioner Powell, do you have any questions?

4 COMMISSIONER POWELL: Thank you, Chair. Yes, I  
5 have a few comments for Mr. Morris. How are you  
6 doing, sir?

7 MR. MORRIS: Good, thank you.

8 COMMISSIONER POWELL: It's been a few years since  
9 I think we've talked.

10 MR. MORRIS: Yes, out in Stephenville, I guess.

11 COMMISSIONER POWELL: Yes, yes, back in the  
12 community college ...

13 MR. MORRIS: Right.

14 COMMISSIONER POWELL: I don't know what it was  
15 called then.

16 MR. MORRIS: Bay St. George Community College.

17 COMMISSIONER POWELL: Yes, I have a couple of  
18 questions that follow up, I guess, from talking to Mr.  
19 Simpson, the Executive Director for the FA, and about  
20 their method of how they go about reporting their  
21 financial results, arriving at the rates themselves, the  
22 principle is pretty simple, the process is sort of  
23 complicated, and I guess if we had a dozen actuaries,  
24 we'd get a dozen different views and have to sort  
25 through and decide the rate, but the concept of non-  
26 profit, what do you mean by, your interpretation of  
27 profit, net (*phonetic*) profit?

28 MR. MORRIS: Sure, okay, the concept of non-profit, as  
29 articulated, I guess, by our own Department of Justice  
30 when I sought a legal opinion on this a number of years  
31 ago, is that a non-profit association itself can indeed  
32 make a profit as long as those profits are used for the  
33 purposes of which the association was set up, but  
34 profits cannot be distributed to members of the  
35 association.

36 COMMISSIONER POWELL: But FA, what business is  
37 FA in?

38 MR. MORRIS: They're in the business of providing  
39 insurance and making sure insurance is available to  
40 drivers who cannot obtain it in the regular market.

41 COMMISSIONER POWELL: You use the word "to  
42 provide insurance".

43 MR. MORRIS: Yeah, they're not an insurer themselves,  
44 they are not an insurance company.

45 COMMISSIONER POWELL: But do they provide the  
46 insurance, or do they provide the direction a  
47 policyholder would go to get the insurance?

48 MR. MORRIS: Yeah, well the servicing carriers for that,  
49 there's four servicing carriers in this province, so the  
50 insurance is actually provided the policy issued by the  
51 servicing carrier, and right now the policy would be  
52 under the name of that servicing carrier. There is  
53 provision in Bill 28 that the name of Facility  
54 Association would be actually placed on the policy, the  
55 pink slip, and the application, so that the driver would  
56 know that they're insured through the Facility  
57 Association mechanism, but the servicing carrier would  
58 then administer that policy, if you like, and make sure if  
59 there's any claims, to process the claims and so on.

60 COMMISSIONER POWELL: But the FA themselves,  
61 they don't provide the coverage, and they don't sell the  
62 coverage.

63 MR. MORRIS: No.

64 COMMISSIONER POWELL: But they just, well what  
65 they do, they facilitate the insurance business amongst  
66 the 50 or 60 people who are licensed to provide that  
67 insurance in the province.

68 MR. MORRIS: Right, the policy is issued under the  
69 name of the servicing carrier which they are for, but  
70 then the results are distributed amongst all 50 odd  
71 companies, not just the servicing carrier.

72 COMMISSIONER POWELL: Looking at the financial  
73 statement, and looking at the process, it just seemed to  
74 be a ... the concept of what they do is fairly simple in  
75 theory, it just seems the reporting of it seems, tend to  
76 make it a lot more complex than what it should be.

77 MR. MORRIS: I agree, it's probably not totally  
78 transparent, yes.

1 COMMISSIONER POWELL: Yes, I guess FA doesn't  
2 conduct any business. According to their objects and  
3 powers and their plan of operations, they shall ensure  
4 the availability of all insurance for owners.

5 MR. MORRIS: Yes.

6 COMMISSIONER POWELL: So why would they be  
7 accounting for the premiums and the loss claims that  
8 they had on their books when that really is the  
9 responsibility of the insurer?

10 MR. MORRIS: Well, I guess the association itself is  
11 certainly an independent legal entity.

12 COMMISSIONER POWELL: Uh hum.

13 MR. MORRIS: Set up under legislation, and that legal  
14 entity has to account for the business, I guess, that's  
15 processed on their behalf by the industry, by the  
16 servicing carriers and whatnot.

17 COMMISSIONER POWELL: This is almost more of a  
18 trust relationship to the insurance industry.

19 MR. MORRIS: It's not set up as a trust, it's set up as a  
20 non-profit association, that's the way it's set up under  
21 the law.

22 COMMISSIONER POWELL: But the business that FA  
23 themselves conduct, diminishes their capacity. There's  
24 no profit built into that, they have no ... I mean all they  
25 do is recover their costs from the insurance industry by  
26 deducting it from their premiums.

27 MR. MORRIS: Yes, I would assume so.

28 COMMISSIONER POWELL: So the association itself,  
29 there is no profit built in because they have no revenue.  
30 They just recover their costs.

31 MR. MORRIS: Yeah, but as I said, an association, they  
32 are permitted to make a profit as an association, as long  
33 as the profits are used for the stated purposes of the  
34 association.

35 COMMISSIONER POWELL: But in fact though, the  
36 FA itself does not have any income. These premiums  
37 are the premiums of the insurance industry.

38 MR. MORRIS: No, well they're income of the  
39 association and they're reported on their audited  
40 statements as income, yes.

41 COMMISSIONER POWELL: I know they're reported on  
42 their statements.

43 MR. MORRIS: As income and expenses, the claims are  
44 reported as claims expense, etcetera, yes.

45 COMMISSIONER POWELL: On behalf of the industry.

46 MR. MORRIS: Yeah, but they're association premiums,  
47 association claims, for that group of policyholders.

48 COMMISSIONER POWELL: Do you know if the  
49 actuaries, when they do the forecasting for the  
50 voluntary market, somewhere when they're setting the  
51 rates for the FA market, do they take into account any  
52 anticipated surpluses or deficits that they may or may  
53 not achieve in the FA market?

54 MR. MORRIS: I don't know for sure. I don't think they  
55 do but I can't say for certain.

56 COMMISSIONER POWELL: Do you have any reason  
57 to think that maybe the voluntary market, you know,  
58 the rates are set with a benchmark, a high and a low,  
59 and the insurers operate within that benchmark, unless  
60 they apply to the Board for reason to go outside of it  
61 and go higher, they have that option. Do you have any  
62 reason to suspect that the insurance providers use the  
63 FA as a mechanism to get outside the benchmark on the  
64 high side?

65 MR. MORRIS: I have nothing to indicate that, I have  
66 seen no data to indicate that.

67 COMMISSIONER POWELL: By placing somebody in  
68 FA they would automatically be outside their  
69 benchmark because it's higher than the voluntary  
70 market, right?

71 MR. MORRIS: In most cases I would assume, yes,  
72 yeah.

73 COMMISSIONER POWELL: Does your department, or  
74 anybody within the province, Consumer Affairs, which  
75 I would think would be appropriate, promote the idea  
76 that within the insurance industry that there is  
77 competition?

MR. MORRIS: I wouldn't say, no, we go out and promote the idea, but if anyone calls us and are concerned about their rate, we would always advise them to shop around and to try to get the best rate for your own circumstances, and that's the message we give, but we don't advertise or have brochures, but we certainly, we get complaints, that's what we always tell consumers, to shop around.

COMMISSIONER POWELL: Do you think it's the policy of government that since there seems to be a concern in the insurance industry, and I think you mentioned something about one of the, I forget what your direct words, but something to the fact that our rates are higher in Newfoundland because of the lack of competition, is that the consumer is not aware that there are ...

MR. MORRIS: No, I didn't mean it in that context. When I inquired a few years ago as to why rates would be higher, say in St. John's than in Halifax, one of the reasons given was that there was more competition in Halifax, and in fact, that there was more companies there. I don't think it's that consumers shop around any more in Halifax than they do here or not. I don't think it's competition from that perspective.

COMMISSIONER POWELL: Do you have any stats to indicate the number of companies that operate in Newfoundland per population versus what's in Nova Scotia?

MR. MORRIS: No, I don't, but I do know there are some companies in Halifax that are not in Newfoundland.

COMMISSIONER POWELL: My understanding is that there are 51 or 52 companies in this province.

MR. MORRIS: Yes, yeah.

COMMISSIONER POWELL: Which would seem to be, you know, reasonable given our population, so that would mean that there would be, you know, quick figures, about 80 or so in Nova Scotia, because I think their population is 800,000.

MR. MORRIS: Yeah, I don't know offhand, but we can certainly get that data, but while there are 50 odd companies, you know, the vast majority of business is done by, say, 10 or 15 companies.

COMMISSIONER POWELL: I understand.

(11:00 a.m.)

MR. MORRIS: Yeah.

COMMISSIONER POWELL: But wouldn't that may be because the consumer is unaware of the other 40 companies, we'll say, because I understand from Mr. Simpson that there are really, there's three ... I think he was talking about FA, but there's basically three type of writers, what they call the independent, the direct writers, and the direct response, which basically are the ones you can phone up, that have no basis here, that especially in the rural parts of the province, who are probably only served by one insurance broker would be unaware of.

MR. MORRIS: Yeah, well the competition and the number of companies, as I said, I'm not aware of the ratio per population, but ...

COMMISSIONER POWELL: Has the government done any studies or anything to, to identify whether the pricing and consumer awareness of options, or availability of options ... do the, your department and the Department of Consumer Affairs inter-react and this ...

MR. MORRIS: They're one and the same.

COMMISSIONER POWELL: Are they?

MR. MORRIS: Yes.

COMMISSIONER POWELL: Okay, so do you think, you haven't given any thought basically identifying that's an item that you should be more aggressive on from a consumer awareness?

MR. MORRIS: In our consultation paper that we put out last year, one of the elements is a recommendation that we be, say, more proactive in consumer education and awareness, and we certainly hope to be able to do that as resources permit. As you know, that activity can be quite expensive but we intend to start discussions with the insurance industry who do some of their own brochures, and we do some, to try to do more in the education of consumers, and awareness of the new bill when it comes out, when it's passed, what the legislation is and what the consumers' options are, and what they should do about insurance. As I said,

1 we do it on a, when consumers phone us, but we have  
2 not done too much in printing brochures and that sort  
3 of thing promoting shop around type of thing, but it's  
4 ...

5 COMMISSIONER POWELL: Have your department  
6 had any discussions with FA in terms of making their  
7 historical data shown in the financial statements more  
8 in line with the forecasting data for rates so both the  
9 department and the regulators and the consumer can  
10 get a better view on the historical cost versus the  
11 forecasting cost?

12 MR. MORRIS: Not really, we don't get too much  
13 involved in forecasting costs in our department, we  
14 deal with the financial, audited financial results, so  
15 when we're monitoring a company, we would look at the  
16 audited financial results, and we do have, require each  
17 company have an actuarial report completed each year  
18 to verify that the reserves are adequate to meet future  
19 claims, and so that's about as far as we go with any  
20 forecasting, and that independent actuarial advice to  
21 us, that yes, this company's reserves are adequate.

22 COMMISSIONER POWELL: Yeah, no, I meant by the  
23 forecasting, the premiums are based on forecasting  
24 costs and market, so therefore the historical costs are  
25 actually what happened, and as I said to Mr. Simpson,  
26 within the industry, for their own internal accounting,  
27 they always want their, the true test of how good their  
28 actuaries are is historically when it's all said and done  
29 ...

30 MR. MORRIS: Yes.

31 COMMISSIONER POWELL: How it works out, and  
32 FA's point of view, in theory, the last dollar in should  
33 equal the last dollar out because they're zero profit, but  
34 when you read your financial statements and look at  
35 the calculations you've done, and we've sort of agreed  
36 now that up to September 2000, it looked like over after  
37 15 or 16 years or so, they have a \$5 million profit, and  
38 Mr. Simpson sort of used the figure of 2 1/2 percent,  
39 and then there's some question whether there's any  
40 factor in there for their risk capital and other things, and  
41 my comment was why should this be so complicated.  
42 I mean why don't the statements that we get reflect all  
43 these costs, and so therefore the question whether the  
44 Facility business, the insurance aspect of it, can stand  
45 on its own, then the actual cost of running the Facility  
46 can stand on its own so ...

47 MR. MORRIS: Yeah, well the insurance, Facility is set  
48 up to run insurance, you know, provide insurance for,  
49 say, these drivers that can't get into the regular market,  
50 so there is a book of Facility business, if you like, with  
51 premiums associated with claims and all of that, and the  
52 cost of administering that, and all that's included in  
53 their audited statements, all on past historical data, and  
54 the only things that are not included are the premium  
55 taxes and health levies, so you know, to get a true  
56 picture, that's why I put in those numbers. They are  
57 also related to Facility business, so you've got to take  
58 into account their past expenses, and even in those  
59 past things, they're still, as you know, in that, those  
60 numbers, reserves for future claims which have not yet  
61 settled, and so while, you know, they're as about as  
62 best you can get for past performance, there are still  
63 some numbers in there which when these claims are run  
64 off over the next four or five years, may need  
65 adjustment the years down the road, and that's just the  
66 nature of the business. There's no, it's not a situation  
67 where you can get an accurate position, I guess, of any  
68 one point in time, say yes, well this is definitely all of  
69 the claims attributed to the policies that are there, so  
70 you're always going to have in this P and C business,  
71 this uncertain number, I guess, as to what the future  
72 claims are going to be, but the audited statements give  
73 numbers to the, I guess, best ability of actuaries and  
74 accountants at that point in time as what they are  
75 expected to be.

76 COMMISSIONER POWELL: Why don't the department  
77 have the insurance premium coming from the total  
78 industry as opposed to the voluntary market and the  
79 FA market separately?

80 MR. MORRIS: The premium tax, you mean?

81 COMMISSIONER POWELL: Yeah, and the health  
82 levies.

83 MR. MORRIS: Yeah, that's the way it was always set  
84 up and we've discussed that in the past, is that the best  
85 way to do it or not, and, you know, it would certainly be  
86 more transparent if the numbers were included in  
87 Facility Association financial statements, but that's the  
88 way it has been operating in all provinces since  
89 inception, so ...

90 COMMISSIONER POWELL: Doesn't that almost tend  
91 to the argument that the department recognizes the total  
92 insurance as one and this portion that happens to be  
93 administered by Facility is just that, it's just being



1 administered, and not part of the total insurance  
2 market?

3 MR. MORRIS: No, it is, as I said, a legislated entity to  
4 make sure insurance is provided for these group of  
5 clients, and this group of clients are certainly Facility  
6 clients, and there is a Facility book of business, and  
7 there is expenses and whatnot associated with that. It's  
8 just been over the years been determined the most  
9 effective way, I guess, efficient way to collect the taxes  
10 and health levies was through the insurance companies  
11 rather than through Facility itself. The other  
12 mechanism would be to have Facility pay those taxes  
13 on business and have them then assess their member  
14 companies for those things, that's another way of doing  
15 it, but it has not been done that way. Whether, which  
16 way is best, I really don't know, more efficient, but  
17 that's the way it's always been done, that's all I can say.

18 COMMISSIONER POWELL: That's all my questions,  
19 thank you.

20 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
21 you, Commissioner Powell. Commissioner Martin?

22 COMMISSIONER MARTIN: I have nothing.

23 MR. SAUNDERS, PRESIDING CHAIRMAN: Just one  
24 question I have, Mr. Morris, your WM-1, which is a  
25 comparison of the average earned premium per vehicle  
26 for third party liability amongst the three or four  
27 Atlantic Provinces, four Atlantic Provinces and Alberta.

28 MR. MORRIS: Right.

29 MR. SAUNDERS, PRESIDING CHAIRMAN: Are you  
30 familiar with the tax structure on insurance in these  
31 other jurisdictions?

32 MR. MORRIS: Somewhat, yes.

33 MR. SAUNDERS, PRESIDING CHAIRMAN: Are these  
34 numbers net of tax, or do they include tax?

35 MR. MORRIS: They would include tax.

36 MR. SAUNDERS, PRESIDING CHAIRMAN: So the  
37 taxes are included in each of the numbers for each of  
38 the other jurisdictions.

39 MR. MORRIS: Yes, I'm pretty certain those would  
40 include taxes, yes.

41 MR. SAUNDERS, PRESIDING CHAIRMAN: So then  
42 unless the taxes are the same in the other jurisdictions,  
43 the comparison is not a fair one, is it?

44 MR. MORRIS: Well, it's fair in, I guess, as it relates to  
45 total cost but the tax structure is different, there's no  
46 doubt about that, and we do have higher taxes than the  
47 other provinces, so there is an element there ...

48 MR. SAUNDERS, PRESIDING CHAIRMAN: Alright,  
49 let me go back then. I understood that what you were  
50 intending to show with this exhibit was the difference  
51 in the premium amongst these five jurisdictions.

52 MR. MORRIS: I should go back a second. I'm not sure  
53 that this does include the taxes to come to think about  
54 it, because this is only the third party liability  
55 component.

56 MR. SAUNDERS, PRESIDING CHAIRMAN: Uh hum.

57 MR. MORRIS: Of the premium, so rather than give you  
58 wrong information, I am not 100 percent sure if that  
59 does include taxes. There may be others in the room  
60 who may know that answer if ... I could find out for you.

61 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, I'd  
62 rather it came from you. If you could undertake to  
63 provide that information.

64 MR. MORRIS: Yes, I certainly will.

65 MR. SAUNDERS, PRESIDING CHAIRMAN: So that  
66 we could have a fair comparison, one jurisdiction to the  
67 other.

68 MR. MORRIS: Yes.

69 MR. SAUNDERS, PRESIDING CHAIRMAN: Either  
70 including the taxes and the taxes should be noted as to  
71 what they are and, or otherwise, to have the chart or the  
72 table shown on WM-1 to exclude the taxes, so that  
73 we're looking at apples compared to apples.

74 MR. MORRIS: I'll certainly provide that because, like I  
75 said, this is one component of the insurance, it's not the  
76 total premium and we do have numbers with total  
77 premiums including taxes. This table may not include  
78 taxes.

79 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MR. MORRIS: But I'm not 100 percent sure and I'll undertake to get that for you and provide it.

MR. SAUNDERS, PRESIDING CHAIRMAN: I did have a question on the binder control register. That would be undertaking number three.

MR. MORRIS: Right.

MR. SAUNDERS, PRESIDING CHAIRMAN: And your comments to Mr. O'Flaherty, I guess it was, as to the reasons why you did not adopt this particular register here in Newfoundland because as I understand and remember, you went on to talk about the concerns of your office in respect of why drivers were ending up in Facility ...

MR. MORRIS: Right.

MR. SAUNDERS, PRESIDING CHAIRMAN: ... for reasons which you seemed to deem not to be adequate.

MR. MORRIS: Right.

MR. SAUNDERS, PRESIDING CHAIRMAN: Would this register have resolved that problem for you in terms of giving you the information that you were seeking? It seems to me it would have, but you would be the best judge of that.

MR. MORRIS: Sure, it might have, but it's not a situation of me say not directing this be done. As I said, this registry was put in place by Facility on their own in two provinces, Nova Scotia and New Brunswick. It wasn't at the request, say, of the superintendents there.

MR. SAUNDERS, PRESIDING CHAIRMAN: No.

MR. MORRIS: And the superintendents up in those provinces were not even aware of it. It seemed that the report was even completed, and if for some reason Facility has not completed for the other provinces, like Alberta, Ontario, or the Territories, or ourselves. They could have done it. It appears to be an internal document, but had it been completed, I suppose, and provided to us, it would have probably given some reasons why drivers were placed there, but it would have done nothing to prevent drivers from being placed in Facility who, in our view, should not be there, and I think the schedule showing that the percentage of drivers in Facility with no actions, no convictions,

This register, you know, wouldn't have no impact on that. It appears it must be an internal document mainly used for Facility for those two provinces, and it would have provided information but ... now whether the superintendents of other provinces get copies and just don't see them, I don't know, but it appears it's not for their use.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, thank you, Mr. Morris. Anything arising? Does anybody want to jump in there?

(11:15 a.m.)

MR. WHALEN, Q.C.: No questions.

MR. SAUNDERS, PRESIDING CHAIRMAN: No questions?

MS. NEWMAN: No questions.

MR. O'FLAHERTY: Nothing arising, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Nothing arising, well thank you very much, Mr. Morris.

MR. MORRIS: Thank you.

MR. SAUNDERS, PRESIDING CHAIRMAN: Do you have any further witnesses, Mr. O'Flaherty?

MR. O'FLAHERTY: No, Mr. Chairman, I don't know in terms of a housekeeping issue if it would be appropriate, and I'm not sure what the Board's procedure is on this, to mark a pre-filed evidence volume as an exhibit or not. The witnesses have adopted the various, you know, evidence.

MR. SAUNDERS, PRESIDING CHAIRMAN: We don't normally mark them.

MR. O'FLAHERTY: Don't mark them, okay.

MR. SAUNDERS, PRESIDING CHAIRMAN: Isn't that true, Ms. Newman?

MS. NEWMAN: Yes, in fact, it is.

MR. O'FLAHERTY: Okay, in that event then, no, that would be the evidence for the Consumer Advocate, thank you very much.

1 MR. SAUNDERS, PRESIDING CHAIRMAN: Very  
2 good, thank you, Mr. O'Flaherty, so we're back to you,  
3 Ms. Newman.

4 MS. NEWMAN: Yes, thank you, Mr. Chairman. I will  
5 be calling two witnesses. Two subpoenas were issued  
6 on Tuesday, the 7th, one for Tom Hickey, and another  
7 for Dave Anthony. I will call Tom Hickey first. I think  
8 he's in the room and available.

9 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
10 Hickey? Would you take the Bible in your right hand,  
11 Mr. Hickey, do you swear that in the evidence you're  
12 about to give you will tell the truth, the whole truth, and  
13 nothing but the truth, so help you God?

14 MR. HICKEY: I do.

15 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
16 you. Okay, Ms. Newman.

17 MS. NEWMAN: Thank you, Mr. Chairman. Good  
18 morning, Mr. Hickey.

19 MR. HICKEY: Good morning.

20 MS. NEWMAN: Thank you for taking the time out to  
21 appear and hopefully shed some light on the situation  
22 here for us. I wonder can you please describe for us  
23 your occupation?

24 MR. HICKEY: I am an insurance broker.

25 MS. NEWMAN: Okay, and how long have you been  
26 an insurance broker?

27 MR. HICKEY: 19 years.

28 MS. NEWMAN: And what are your qualifications for  
29 that position?

30 MR. HICKEY: I've got a Bachelor of Commerce from  
31 Memorial, and I'm also a Chartered Insurance  
32 Professional.

33 MS. NEWMAN: Okay, and I guess there's, a Chartered  
34 Insurance Professional is ...

35 MR. HICKEY: A CIP, it's an insurance designation.

36 MS. NEWMAN: Given by which organization?

37 MR. HICKEY: The Insurance Institute of Canada.

38 MS. NEWMAN: Okay, and I assume there's some  
39 courses and exams.

40 MR. HICKEY: Yes.

41 MS. NEWMAN: And it probably took a number of  
42 years to get that designation I suspect?

43 MR. HICKEY: Yes.

44 MS. NEWMAN: And what company do you work for?

45 MR. HICKEY: I'm Vice-President of T.P. Hickey  
46 Insurance Limited.

47 MS. NEWMAN: And what does T.P. Hickey Insurance  
48 Limited do?

49 MR. HICKEY: We are a property and casualty  
50 insurance broker, so we represent various insurance  
51 companies and place business on behalf of our clients  
52 with those companies.

53 MS. NEWMAN: Okay, so you don't actually offer  
54 insurance, or this company, T.P. Hickey Insurance  
55 Company, does not offer insurance.

56 MR. HICKEY: No, we're strictly a brokerage.

57 MS. NEWMAN: Okay, so by being a brokerage, what  
58 does a brokerage do?

59 MR. HICKEY: A broker places, we buy insurance for  
60 our clients from insurance markets, some of which we  
61 have contractual relationship with, some which we may  
62 not, and basically our job is to provide our insureds,  
63 our clients, with advice about the best way to handle  
64 their insurance requirements.

65 MS. NEWMAN: Okay, so you've been an insurance  
66 broker for about 19 years.

67 MR. HICKEY: Yes.

68 MS. NEWMAN: Okay, over those years have you had  
69 any other involvement in the industry other than with  
70 T.P. Hickey Insurance Limited?

71 MR. HICKEY: I guess I've been involved with the  
72 Brokers Association, I've done two terms as president,

1 I've done two terms on the Insurance Brokers  
2 Association of Canada, numerous committees, you  
3 know, you could say I'm a glutton for punishment.

4 MS. NEWMAN: Well, and you are here, so I guess it  
5 is true.

6 MR. HICKEY: Yeah.

7 MS. NEWMAN: I guess then we could accept that you  
8 have familiarity with your own company's operations.

9 MR. HICKEY: Yes.

10 MS. NEWMAN: And when I say own company, for  
11 future reference it will be T.P. Hickey Insurance Limited,  
12 so I'll just spell that out.

13 MR. HICKEY: Okay, yeah.

14 MS. NEWMAN: And also in the insurance industry in  
15 general with respect to the role of a broker, is that fair to  
16 say?

17 MR. HICKEY: I think that's fair, yes.

18 MS. NEWMAN: Okay, what are your key duties and  
19 functions in your role with your insurance company?

20 MR. HICKEY: Well, as a Vice-President I am  
21 responsible for all of the overall management of the  
22 company on a high level, and as part of that, of course,  
23 over the years growing up, obviously I had experience  
24 more in the front lines as well, so I think I've pretty well  
25 seen most of the aspects of a typical insurance  
26 brokerage operation.

27 MS. NEWMAN: Okay, your company, is it, it's a  
28 brokerage.

29 MR. HICKEY: Uh hum.

30 MS. NEWMAN: How does it relate to Facility  
31 Association, does it have any direct relationship with  
32 Facility Association?

33 MR. HICKEY: Not really, except through the servicing  
34 carrier, who I think we've all discussed these here, so  
35 we would place business with the servicing carrier that  
36 we're contracted to do business, to do the Facility  
37 Association business with.

38 MS. NEWMAN: Okay, so there is a particular servicing  
39 carrier that your company would deal with?

40 MR. HICKEY: Yes,

41 MS. NEWMAN: Only one.

42 MR. HICKEY: Yes.

43 MS. NEWMAN: And do you mind telling us who that  
44 is?

45 MR. HICKEY: I don't think it matters. That would be  
46 Royal Sun Alliance, they are one of the four appointed,  
47 I think, carriers for Newfoundland.

48 MS. NEWMAN: Okay, and would, to your knowledge,  
49 Royal Sun Alliance have other brokers, brokerages that  
50 it would receive FA business through?

51 MR. HICKEY: Yes.

52 MS. NEWMAN: Okay, so your company is not a  
53 member association, a member company of Facility  
54 Association?

55 MR. HICKEY: No.

56 MS. NEWMAN: Okay, and it's not a servicing carrier,  
57 you've already said.

58 MR. HICKEY: No.

59 MS. NEWMAN: And is there a contract in place  
60 between your company and Royal Sun Alliance, the  
61 servicing carrier for your company?

62 MR. HICKEY: Well, it's a standard, yeah, like it's not a  
63 Royal Sun Alliance contract. Facility has a standard  
64 contract which its servicing carrier would use, so we're  
65 merely appointed, you know, Royal Sun, we're  
66 appointed to place our business to Royal, but it's a  
67 Facility Association contract, per se, or an agreement of  
68 how we're going to do business.

69 MS. NEWMAN: Alright, so we've asked for a copy of  
70 a standard form contract.

71 MR. HICKEY: Yes.

1 MS. NEWMAN: Between the servicing carrier and a  
2 broker, and that would be the type of thing that your  
3 company would have executed, okay.

4 MR. HICKEY: Yes, exactly.

5 MS. NEWMAN: Okay, and how did you get to be a  
6 broker for Royal Sun Alliance, what was the process?

7 MR. HICKEY: To be honest with you, that is so long  
8 ago now, I think when Facility was created, you know,  
9 brokers were assigned to servicing carriers. I think we  
10 represented Royal as regular, in a regular market,  
11 voluntary market at the time, so I think logically they  
12 assigned brokers who already wrote for Royal, with  
13 them as a servicing carrier.

14 MS. NEWMAN: Okay, so would your company still  
15 represent Royal Sun Alliance then?

16 MR. HICKEY: Yes, yes.

17 MS. NEWMAN: Okay, but a broker, to your  
18 knowledge, in the industry, can a broker be assigned to  
19 more than one servicing carrier?

20 MR. HICKEY: I'm not sure about that, I don't believe  
21 so.

22 MS. NEWMAN: Okay, but it has never been your  
23 experience.

24 MR. HICKEY: Not my experience, no.

25 MS. NEWMAN: Okay, I wonder if you could describe  
26 for us, I guess I (inaudible) that you're on the front  
27 lines, I guess an insured walks into your office and  
28 says give me some insurance.

29 MR. HICKEY: Uh hum, yes.

30 MS. NEWMAN: I wonder if you could describe for us  
31 how it comes to be that an insured will eventually be  
32 placed in FA and have insurance with a servicing  
33 carrier, so take us from the moment he steps in through  
34 your front doors, and give us as much detail as you  
35 can.

36 MR. HICKEY: Geez, that's a complicated question. Just  
37 on a broad level, an insured would approach us for a  
38 premium estimate or advice on coverage or whatever.  
39 Based on the underwriting manuals provided by the

40 company, and the underwriting guidelines, we would  
41 see how that insured's information, in terms of  
42 convictions or accidents or driving record, or whatever  
43 else, whatever other information, typical underwriting  
44 information would be needed. We would look at that  
45 and look at the markets we represent, and depending on  
46 the circumstances, if it wasn't a situation that we could  
47 buy the coverage with a voluntary market carrier, we  
48 would offer a Facility Association quote.

49 MS. NEWMAN: Okay, so you said that you would  
50 offer them a quote.

51 MR. HICKEY: Uh hum.

52 MS. NEWMAN: So for example, you offer them an FA  
53 quote, what happens after that?

54 MR. HICKEY: If the insured would accept it, there's a  
55 Facility Association application which has to be  
56 completed, which is different from all the other markets,  
57 and following the Facility Association's binder of rules  
58 and rates and regulations, we fill it all out in  
59 conformance with that, submit the application to  
60 Facility, and then the process would begin.

61 MS. NEWMAN: Okay, at the time that an application  
62 is completed, would money be paid to the broker?

63 MR. HICKEY: Yes, yes.

64 MS. NEWMAN: Okay.

65 MR. HICKEY: We would collect that money and it  
66 would go into a trust account, and then at the end of 30  
67 days we would receive, for example, this is, this is  
68 January, so probably a week or two into February we'll  
69 get a statement from Facility showing all the business  
70 that was processed for that money, and by the end of  
71 February we would have to submit all monies received,  
72 less commission, to Facility for that business. So it's a  
73 standard sort of trust arrangement like we would have  
74 with any other insurance company, probably just much  
75 more restrictive.

76 MS. NEWMAN: Okay, so an application would be  
77 submitted to Facility Association and money would be  
78 submitted later according to the usual process.

79 MR. HICKEY: Yeah, it would go into a trust account  
80 which is, you know, which is required by law.

1 MS. NEWMAN: Okay, would the person who applied  
2 for insurance have insurance from the date of  
3 application, or would there be some subsequent notice  
4 that would be ...

5 MR. HICKEY: No, coverage would be bound ... we do  
6 have a binder or registry which we have to keep for  
7 Facility. It's just not as comprehensive as the one that  
8 I think has been circulated, and once the coverage is  
9 bound there's a temporary liability card which forms  
10 part of the application, it's a carbon form. That usually  
11 will be given to the client and the original copy of the  
12 application and immediately sent to Facility. I think it  
13 usually has to be sent within two or three days, I think,  
14 of binding. Once the policy is received by Facility, they  
15 process it through whatever internal means that they do  
16 that, and then an actual policy is issued which is sent  
17 back to the broker, which we would send out to the  
18 client.

19 MS. NEWMAN: So can Facility, once they get the  
20 application, decline the risk?

21 MR. HICKEY: No, they may disagree with the rating,  
22 that's a rating issue, but in terms of declining risk,  
23 Facility accepts all comers, so ...

24 MS. NEWMAN: Okay.

25 MR. HICKEY: That's obviously its role in the industry.

26 MS. NEWMAN: And if they disagree with the rating,  
27 have you had that experience, could you tell us what  
28 would happen?

29 MR. HICKEY: That's a procedural thing where you've  
30 got to determine who is right, is the Facility underwriter,  
31 or the insurance broker who did it. Sometimes it may be  
32 because of non-disclosure of something by the client,  
33 or of course, it could be a human error involved. If  
34 that's the case the broker either has to go back and  
35 collect the additional premium from the insured, or ...  
36 and if that's ... or if the additional premium is then not  
37 acceptable, you know, there'd be some kind of pro-rata  
38 cancellation. It all depends on the circumstances how  
39 something like that would be handled. That's like a  
40 rating issue, a technical issue of rating as opposed to  
41 coverage.

42 MS. NEWMAN: And I assume that's not very common  
43 in any event.

44 MR. HICKEY: No.

45 MS. NEWMAN: Okay, alright, so we have this  
46 temporary insurance put in place and subsequently  
47 formal insurance will be put in place. You said that  
48 money is paid in, for example, in January, and the  
49 commission will be taken out and then sent on to  
50 where?

51 MR. HICKEY: To the servicing carrier.

52 MS. NEWMAN: Okay, and so the servicing carrier  
53 doesn't see the total sum that's paid, they only see it  
54 net of your commission.

55 MR. HICKEY: Well, they actually control the  
56 accounting to the extent that they issue a statement  
57 that shows the total amount, and then they say, okay,  
58 here's how much commission should be deducted, and  
59 then they determine how much we should send them,  
60 so sort of controlled by the servicing carriers, so they  
61 see all the numbers.

62 MS. NEWMAN: Okay.

63 MR. HICKEY: But no, we don't like submit all the  
64 premium to them and then they send the commission  
65 back. It's all handled at the brokerage from that point of  
66 view.

67 MS. NEWMAN: Alright, so a cheque is written out in  
68 the name of the broker, is it, by the ...

69 MR. HICKEY: By the clients.

70 MS. NEWMAN: By the clients.

71 MR. HICKEY: The insured, yes.

72 MS. NEWMAN: Okay, so it is deposited into the  
73 brokers' account?

74 MR. HICKEY: Yes.

75 MS. NEWMAN: The total amount.

76 MR. HICKEY: Yes, plus sales tax and all the other  
77 things.

78 MS. NEWMAN: Okay, and so are you telling us that  
79 the servicing carrier controls that money, or is it the  
80 broker that ...

1     (11:30 a.m.)

2     MR. HICKEY: No, the broker controls the money while  
3     it's held in trust.

4     MS. NEWMAN: Okay.

5     MR. HICKEY: I'm just saying that the servicing carrier  
6     controls all the accounting, per se. Like I pay them  
7     based on their records of what we process, not what I  
8     say ...

9     MS. NEWMAN: Okay.

10    MR. HICKEY: So if I, say I processed a premium at  
11    \$1,000, and they say \$1,200, I'm paying them based on  
12    what they say.

13    MS. NEWMAN: Okay, so they will send to you, if  
14    we're still using our January/February example, they'll  
15    send to you in February, or the end of January, the total  
16    business.

17    MR. HICKEY: Yes, yes.

18    MS. NEWMAN: And also the amount of commission  
19    that you're entitled to?

20    MR. HICKEY: Yeah, they do all that, all the accounting.

21    MS. NEWMAN: And the sales taxes and all of that?

22    MR. HICKEY: We handle all that at the brokerage end.

23    MS. NEWMAN: Okay, and so they account for that  
24    when they're sending you this ...

25    MR. HICKEY: No, no.

26    MS. NEWMAN: Okay.

27    MR. HICKEY: It's all agency billed, I guess is the term  
28    to use, as opposed to insurance companies who might  
29    take premiums directly out of the bank account. This is  
30    all totally handled by the brokerage in terms of the flow  
31    of funds to, whether it should be sales tax or premiums  
32    to the servicing carrier.

33    MS. NEWMAN: Okay.

34    MR. HICKEY: It's actually very similar to the way any  
35    insurance company's agency bill accounting would  
36    work.

37    MS. NEWMAN: Okay, and therein lies the problem as  
38    I am not familiar how any insurance company's  
39    accounting process works.

40    MR. HICKEY: I know, sure.

41    MS. NEWMAN: But I guess it's fair to say that the  
42    brokerage receives the money ...

43    MR. HICKEY: Yes.

44    MS. NEWMAN: ... and pays the balance after taxes  
45    and commission to the servicing carrier.

46    MR. HICKEY: Yes, exactly.

47    MS. NEWMAN: Okay, in terms of the policy itself, you  
48    said that there is an application.

49    MR. HICKEY: Uh hum.

50    MS. NEWMAN: Binding card on the application  
51    process.

52    MR. HICKEY: Yes.

53    MS. NEWMAN: Who actually issues the insurance  
54    policy?

55    MR. HICKEY: The servicing carrier.

56    MS. NEWMAN: Okay, and do you, does it get issued  
57    to you or sent to you for you to forward on to the  
58    insured, or how does that work?

59    MR. HICKEY: You got it, it's sent to the broker who  
60    would then forward it on to the insured.

61    MS. NEWMAN: Okay, so the broker would have all  
62    direct contact with the insured then?

63    MR. HICKEY: Yes.

64    MS. NEWMAN: Okay, so in terms of discussion of the  
65    contents of the policy, the coverages, gathering of  
66    information for the application form, that's all done  
67    through the broker.

1 MR. HICKEY: Yes.

2 MS. NEWMAN: The premium tax and the health levy  
3 that we've spoken about, does the broker have  
4 anything to do with that?

5 MR. HICKEY: The health levy is all handled by the  
6 insurance companies, that's all buried within the  
7 premium.

8 MS. NEWMAN: Right.

9 MR. HICKEY: So we would have no way to deal with  
10 that, even if we wanted to, but the sales taxes and  
11 invoice, a separate invoice ... I should say the insurance  
12 premium tax, because sometimes people get it confused  
13 with HST. The insurance premium tax is a separate  
14 invoice item that is shown on the broker's invoice. It's  
15 not even shown on the Facility policy, per se, so  
16 obviously we have to account that. I don't think  
17 Facility even has a means within the servicing carriers  
18 to do that accounting.

19 MS. NEWMAN: So you, the broker would pay the  
20 premium tax.

21 MR. HICKEY: Yes, well the client pays the premium tax.

22 MS. NEWMAN: Okay, that's billed ...

23 MR. HICKEY: We just collect it.

24 MS. NEWMAN: Okay, so the sales, the client is billed  
25 for the cost of the insurance and sales taxes and a  
26 premium tax?

27 MR. HICKEY: No, the premium tax is a sales tax. I just  
28 refer to it as insurance premium tax because people,  
29 when you call it sales tax, people confuse it with HST,  
30 and it's not HST at all.

31 MS. NEWMAN: Okay, is that something different than  
32 the premium tax we've been speaking of here?

33 MR. HICKEY: Yes, the insurance premium tax per se, at  
34 the insurance company end is, I think, a four percent  
35 charge that's actually buried in the premium. The  
36 consumer doesn't even see that. That's sort of a hidden  
37 tax.

38 MS. NEWMAN: Right.

39 MR. HICKEY: The premium tax we collect as brokers is  
40 a Newfoundland tax that's shown as a separate  
41 disclosed invoice item that's visible, and that's collected  
42 locally here by the broker.

43 MS. NEWMAN: Okay, and what percent is that of the  
44 premium?

45 MR. HICKEY: 15 percent.

46 MS. NEWMAN: Okay.

47 MR. HICKEY: And then that has to be submitted to  
48 government within, I think, 20 days after the month end  
49 of the previous month.

50 MS. NEWMAN: Alright, so in terms of your  
51 commission, can you quantify for us generally what  
52 commission a broker is entitled to?

53 MR. HICKEY: It depends on the line of business. It  
54 varies between six and 11.

55 MS. NEWMAN: Okay.

56 MR. HICKEY: I think if you look at a typical broker, the  
57 average commission probably works out to be around  
58 10 percent I would think.

59 MS. NEWMAN: Okay.

60 MR. HICKEY: 9.5 to 10.

61 MS. NEWMAN: And on FA business?

62 MR. HICKEY: Oh, that's what I'm talking about is FA  
63 business, yeah.

64 MS. NEWMAN: Okay, and is that consistent with the  
65 voluntary market fees?

66 MR. HICKEY: No, that would be lower.

67 MS. NEWMAN: It's lower?

68 MR. HICKEY: Yes.

69 MS. NEWMAN: The percentage is lower?

70 MR. HICKEY: Yes.



1 MS. NEWMAN: When you factor in the actual  
2 premium.

3 MR. HICKEY: Uh hum.

4 MS. NEWMAN: For each policy, which we understand  
5 from the evidence we've heard today would be higher  
6 than the voluntary market.

7 MR. HICKEY: Uh hum.

8 MS. NEWMAN: Would you say that the FA dollar  
9 amounts for commissions are higher or lower than the  
10 voluntary market?

11 MR. HICKEY: It's going to vary substantially by policy  
12 obviously.

13 MS. NEWMAN: Sure, yeah.

14 MR. HICKEY: On an overall basis, the quantifiable  
15 dollar amount may be slightly higher, although the  
16 business is certainly much less profitable to handle,  
17 certainly not a profit centre for any brokerage, I would  
18 think.

19 MS. NEWMAN: Can you please explain why you say  
20 that?

21 MR. HICKEY: I guess if you looked at any, if you did  
22 any research into a brokerage and looked at any  
23 consultant who has done analysis of brokerage  
24 operations, brokerages become profitable by building  
25 relationships with clients, long-term relationships. The  
26 upfront acquisition costs on, particularly automobile  
27 insurance is quite high because you've got to go  
28 through this whole getting an application, get it done,  
29 get it signed, get it approved, sent to ... all this stuff  
30 you sort of go through, so I think the numbers that are  
31 used in the industry as a rule of thumb is it takes about  
32 three years for a client ... to sort of cover all the upfront  
33 acquisition costs before a client becomes profitable, so  
34 if you have a high turnover, and I guess Facility, the  
35 retention rate on a typical Facility policy, at least from  
36 my experience is somewhere in the range of 50 percent,  
37 which means if you had 100 Facility clients in January,  
38 by the end of December 50 of them are still around.  
39 You've lost money on pretty well every client, so  
40 therefore, on that type of basis, it's certainly not a ...  
41 because of that they come, there's a high ratio of  
42 cancellations, whether it's for non-payment or whatever  
43 reason, or they let the policy lapse and then you've got

44 to go through the whole new business thing again, and  
45 again, and again, so it's certainly extremely unprofitable  
46 for a broker, plus there tends to be a much less, the  
47 clients need a lot more hand-holding, there's a lot more  
48 payment issues during the year, etcetera, etcetera,  
49 etcetera, so it's certainly not, you know, a profit centre  
50 for anybody at those commission levels anyway.

51 MS. NEWMAN: I guess that begs the question, well  
52 why do you do it, why do brokers ...

53 MR. HICKEY: Well, you have to. I mean I'd be more  
54 than happy to not have the Facility contract, I can do  
55 quite well without it, but of course, we're providing  
56 automobile insurance, so we have to have something  
57 for those clients, that extremely small percentage that  
58 we can't place in the regular market.

59 MS. NEWMAN: Alright, so we've got our insurance  
60 policy in place, the insured has been notified now,  
61 you've got your money, the servicing carrier has got  
62 their money. What happens if the insured cancels his  
63 policy, who does he let know?

64 MR. HICKEY: He will let the broker know, the broker  
65 will advise the servicing carrier, and depending on the  
66 circumstance, if it's just a regular, if it's a cancellation at  
67 the client's request, they have to provide a signature to  
68 cancel a policy. We will forward that to the servicing  
69 carrier who will cancel the policy based on whatever  
70 tables they use, and return premium will be forwarded  
71 back through the broker and back to the client.

72 MS. NEWMAN: Okay, is there any notification sent to  
73 any government agency such as Motor Vehicle  
74 Registration about a cancellation of insurance?

75 MR. HICKEY: Only in certain commercial vehicle cases,  
76 but not in your regular private passenger insurance.

77 MS. NEWMAN: Okay, would it be possible to do that  
78 in the case of Facility Association, if somebody cancels  
79 their insurance?

80 MR. HICKEY: It would be possible, but it would be a  
81 massive undertaking, mainly because people go in  
82 Facility, they go out of Facility, they change markets,  
83 and every time that happened it would require notice  
84 going, and then they'd get insured again, you'd have to  
85 obviously rescind it, so it's a great idea as a concept  
86 but even forgetting Facility, just even to get the regular  
87 market to do it, there's so much movement of business

1 in insurance that I think it would be a very expensive  
2 undertaking.

3 MS. NEWMAN: Are you saying that, you know, an  
4 insured could cancel his FA policy with T.P. Hickey  
5 Insurance and take it to another broker?

6 MR. HICKEY: Sure, he can do whatever he ... you  
7 know, he's free to insure, do business wherever he sees  
8 fit.

9 MS. NEWMAN: And then he'd go back to FA with  
10 another broker, is that something that's possible?

11 MR. HICKEY: Or he could go to the regular market with  
12 another broker, or he could go out of regular market  
13 with one broker ... you know, it's a competitive market  
14 and the consumer is free to totally do as he pleases, so,  
15 you know, obviously we have no control over that, I  
16 guess is what I'm saying. If someone wants to cancel  
17 their insurance and come back a week later and take it  
18 out again, it's not a smart thing to do, I don't know why,  
19 but I mean they're totally free to waste as much time and  
20 money as they want.

21 MS. NEWMAN: Alright, so if he doesn't cancel his  
22 policy, he keeps it, and unfortunately, if your  
23 predictions were right, he has another accident in FA.

24 MR. HICKEY: Yes.

25 MS. NEWMAN: And here he is, he has an accident, he  
26 comes back, and he calls you because you're the  
27 insurance company as far as he's concerned.

28 MR. HICKEY: Yes.

29 MS. NEWMAN: And he says, I had an accident, what  
30 do I do, what happens from there?

31 MR. HICKEY: The claim is reported to the servicing  
32 carrier who would then be responsible from that point  
33 on for the settlement of the claim. They'd assign an  
34 adjuster, the adjuster would, you know, handle all the  
35 quantum to do with the claim, and you know, the  
36 broker, our role then is limited to advocacy or  
37 education, sometimes people won't understand the  
38 process and they'll phone, and they may have  
39 questions about the process of the claim and we'll help  
40 them with that. In some cases, if the client isn't being  
41 treated fairly in our opinion we'll intercede on their

42 behalf, but we don't get involved with the actual details  
43 of settlement, claims settlement.

44 MS. NEWMAN: Okay, so that seems like it has more to  
45 do with your long-term relationship with the client than  
46 it does with a particular claim that's happening at the  
47 time.

48 MR. HICKEY: Yes, yeah.

49 MS. NEWMAN: Okay, alright, I want to ask a few  
50 questions now on how somebody gets into Facility  
51 Association.

52 MR. HICKEY: Uh hum.

53 MS. NEWMAN: You've been in the room for part of  
54 this hearing to date, and I guess it's been a concern  
55 that's been raised by a number of people. How does  
56 somebody end up in FA? Who makes that  
57 determination?

58 MR. HICKEY: I guess ultimately it's the insurance  
59 carriers. The broker has a role in terms of trying to  
60 figure out what it is, whether or not, establishing  
61 whether or not the client meets the insurance  
62 company's underwriting guidelines, and at that point  
63 then, you know, once that sort of process has been  
64 gone through, you know, then a decision is made, so  
65 it's mostly the insurance companies provide us with an  
66 underwriting manual, and that underwriting manual will  
67 give the guidelines for what they deem is acceptable  
68 business, and that covers off, you know, most of the  
69 time that covers it. Sometimes we'll have referred to the  
70 company for certain cases in which case then they will  
71 make a decision, so that's pretty well it.

72 MS. NEWMAN: So generally would you offer a  
73 particular risk to insurance companies before placing  
74 them in FA, or is that decision made at the brokerage  
75 level?

76 MR. HICKEY: Well, it depends on the circumstance,  
77 like if someone calls me and says, calls the brokerage  
78 and says well I've had three impaired charges in the last  
79 five years. I don't need to waste too much time going  
80 to the regular market to find out.

81 MS. NEWMAN: Right.

82 MR. HICKEY: In other cases where it may be more  
83 grey, it's a matter of how do I interpret a rule, you know,

there's all kinds of things come up, I mean when you're dealing with the public. I mean I've had people, you know, I've had a staff member come in and say there's a guy out at the front desk, he's looking for insurance, he's got a clear record, but he's reeking of alcohol. Now to me, I mean what do you do with someone like that, so, you know, there's cases that come up that always are going to be outside the book.

MS. NEWMAN: Okay, so I understand that you would act for whatever insurance companies you deal with, you have a set of underwriting guidelines?

MR. HICKEY: Yes.

MS. NEWMAN: And what do these underwriting guidelines say?

MR. HICKEY: They will specify things like what kind of, you know, how many tickets or convictions would, you know, be acceptable, or how many accidents, or how recent, or what kind of age of vehicle, you know, all the same sort of, typical sort of underwriting things that insurance companies do. Some are much more specific than others, I mean it varies by insurance company obviously, because every company has its own way that they view as to what their picture of a good client is, so it certainly varies from company to company, and there's not a hard and fast guideline that applies to everybody.

MS. NEWMAN: Okay, so the brokers that work at your company then would be familiar with these guidelines?

MR. HICKEY: Yes.

MS. NEWMAN: And would make a determination as to whether each of these insurers would be willing to insure this particular risk, is that how it works?

MR. HICKEY: Yes.

MS. NEWMAN: And if they found that no insurance company would be willing to insure this particular risk then what happens?

MR. HICKEY: Then they would have to provide a Facility Association quote. I shouldn't say that, not every time, some ... it all depends. Sometimes if the person, if we know that client through another broker and he says, well I'm insured with (inaudible) not Facility, well you're going to tell the client, well it's in

your best interest to stay where you're at. Obviously you're not going to try and sell the person a Facility policy when they're perfectly well taken care of with someone else, so assuming that they don't have coverage somewhere else, you'd offer them a Facility quote.

MS. NEWMAN: Okay, but you said that each of the insurance companies are different.

MR. HICKEY: Yes.

MS. NEWMAN: They have, their guidelines are not all the same.

MR. HICKEY: Yes.

MS. NEWMAN: What are some of the reasons that an insured might be placed in FA that you're familiar with in your experience?

MR. HICKEY: There's, you know, it's a long list, accidents, convictions, speeding, moving violations ...

(11:45 a.m.)

MS. NEWMAN: I'm going to ask you to have a ...

MR. HICKEY: I think that binder registry I've seen floating around has a pretty good ...

MS. NEWMAN: Yeah, let's have a look at that.

MR. HICKEY: Okay.

MS. NEWMAN: It's undertaking number three, it's the binder control register.

MR. HICKEY: The blue binder?

MS. NEWMAN: It's in the blue binder ... green, it's in the green binder.

MR. HICKEY: The green binder?

MS. NEWMAN: And it should be under you ...

MR. HICKEY: Okay, I've got it.

MS. NEWMAN: Number three.

MR. HICKEY: Yeah.

1 MS. NEWMAN: Okay, so we're under column two  
2 there, the explanation in column two, it says reason risk  
3 written through Facility Association.

4 MR. HICKEY: Yes.

5 MS. NEWMAN: There's a list there going from A to N.

6 MR. HICKEY: Yes.

7 MS. NEWMAN: Of potential reasons for a driver being  
8 refused coverage, I guess, with insurers, or being  
9 placed in FA.

10 MR. HICKEY: Yes.

11 MS. NEWMAN: Can you have a look through those  
12 and see that they're all reasons which in your  
13 experience are used?

14 MR. HICKEY: Yes, sure, some of them are more  
15 applicable to commercial than private passenger I  
16 would think, but generally speaking, yeah.

17 MS. NEWMAN: So which ones do you think would be  
18 more applicable to commercial?

19 MR. HICKEY: Particular "I", vehicle use and type.

20 MS. NEWMAN: Okay.

21 MR. HICKEY: Obviously long haul trucking or  
22 something like that.

23 MS. NEWMAN: Courier driver.

24 MR. HICKEY: Yeah.

25 MS. NEWMAN: That sort of thing, okay.

26 MR. HICKEY: But yeah, that's a pretty, that's a pretty  
27 comprehensive list.

28 MS. NEWMAN: Okay, so for example, E, a new driver  
29 in Canada.

30 MR. HICKEY: Uh hum.

31 MS. NEWMAN: Somebody who was new in Canada  
32 they'd be placed potentially in FA.

33 MR. HICKEY: Yeah, like you get people, for example,  
34 coming from England, they're not even used to driving  
35 on the same side of the road here yet so it would seem  
36 to me reasonable that an insurance company might  
37 want to make sure that that person sort of gets used to  
38 the system here before they, you know, that type of  
39 thing.

40 MS. NEWMAN: Right, is there any assessment when  
41 you're ... is there any assessment when you're looking  
42 at this as to whether that driver does pose a risk in  
43 Canada, or is it simply a new driver that's in the  
44 guidelines, they won't accept new drivers in Canada,  
45 therefore, they go to FA? For example, if I understand  
46 your comment with regard to England, getting used to  
47 the right side of the road, but what about if they're  
48 coming from the States?

49 MR. HICKEY: I'm not saying that everybody who is a  
50 new driver ...

51 MS. NEWMAN: Right, yeah.

52 MR. HICKEY: I'm saying it just depends on ... that's a  
53 ... you know, that's the type of thing you would be  
54 looking at there. People from the States tend to be, we  
55 haven't had too much trouble with those, you know. If  
56 you're coming from maybe Indonesia, I don't know, you  
57 know, it varies, I think it depends on the comfort that  
58 the rules of the road are similar, that your situation is  
59 the same, so ...

60 MS. NEWMAN: So there is some assessment then  
61 within, perhaps, at least this item as to whether they do  
62 pose a risk and therefore whether they will be placed in  
63 FA or ...

64 MR. HICKEY: Yeah, well you're going a little past my  
65 expertise now because that's probably the type of thing  
66 we would, that a company would probably have  
67 referred to the company that (inaudible) and then we go  
68 to them and ask them, look, here's the situation, what  
69 do you think, so you'd probably, an insurance company  
70 would be able to answer that question a lot more  
71 accurately than I would.

72 MS. NEWMAN: Okay, but it's helpful to know that  
73 you would call, potentially in those circumstances ...

74 MR. HICKEY: Sure, but ...

1 MS. NEWMAN: Call the insurance company and they  
2 would give you an assessment as to whether they  
3 would accept that risk or not.

4 MR. HICKEY: Yeah, you're trying to use some common  
5 sense and ...

6 MS. NEWMAN: Okay, and similarly for G.

7 MR. HICKEY: Yes.

8 MS. NEWMAN: The age of the driver, if they're a  
9 senior, so if somebody is 65, does that automatically  
10 mean that they're going to FA?

11 MR. HICKEY: No, no, it depends, once again it  
12 depends on the insurance company. Some companies  
13 will just, won't have a thing about it, some companies  
14 will just say refer ... depending on the person, they may  
15 say well we want a medical first depending on the ...  
16 there's all kinds of factors, so it's hard to make a blanket  
17 statement, but there are no doubt some seniors who  
18 end up in Facility.

19 MS. NEWMAN: Okay, and similar for these other items  
20 that aren't so obviously related to risk, location of the  
21 vehicle and insurance history, if somebody came to you  
22 and said, you know, I haven't had insurance last year  
23 but I was insured for 20 years before that, does that  
24 mean that they're automatically in FA or would you call  
25 the insurance company and there'd be potential  
26 coverage?

27 MR. HICKEY: Once again it depends, it really does.  
28 The insurance market, for example, right now is really  
29 tight, so that might be, an insurance company would  
30 look at that more closely. Five or seven years ago it  
31 may not have. Really it varies, there's no hard and fast  
32 rule. I guess insurance companies have their ways of  
33 looking at risk, and I guess that's why they put "refer to  
34 company" in their binder or something like that, and we  
35 will look at that, right.

36 MS. NEWMAN: Okay, so you said that the insurance  
37 market is a bit tight right now.

38 MR. HICKEY: Uh hum.

39 MS. NEWMAN: What effect does that have on the  
40 amount of business that's placed in FA, if any?

41 MR. HICKEY: Obviously when, obviously I'm speaking  
42 in my opinion as a broker. I don't work for an insurance  
43 company so I guess they would have to say this. I  
44 would think when insurance companies perceive  
45 automobile insurance to be unprofitable, they get much  
46 more restrictive. It's like supply and demand. They're  
47 not supplying as much capacity to the marketplace,  
48 therefore they don't want to insure, write as much  
49 business, or they're much more selective on the  
50 business they do write, and when that happens, more  
51 people would end up logically, I would think the  
52 conclusion would be that more people would end up  
53 being placed in Facility in that circumstance.

54 MS. NEWMAN: Okay, are you aware of the fact that  
55 about 60 percent of the people in FA have no accidents  
56 or convictions, does that sound about right to you?

57 MR. HICKEY: I've heard that number, yes.

58 MS. NEWMAN: And based upon your experience in  
59 the industry, do you, have you seen that that's about  
60 the percentage?

61 MR. HICKEY: I've never analyzed it from the point of  
62 view of my own brokerage how much stuff I've seen go  
63 in there, but I've seen the number provided by, you  
64 know, at a hearing, this type of thing, in this  
65 environment.

66 MS. NEWMAN: Right, okay.

67 MR. HICKEY: So I would assume it's correct.

68 MS. NEWMAN: Do you think that that's an acceptable  
69 level, that 60 percent of the people in FA, which we  
70 view as a high risk driver population have no accidents  
71 or convictions?

72 MR. HICKEY: I mean it's sort of, I guess everyone has  
73 got an opinion. I think you'd have to look at it in light  
74 of the fact that that 60 percent, I guess, of the four  
75 percent, which would mean, that's what, 1.2 percent, or  
76 2.4 percent or something, of the total driving  
77 population, and then within that 2.4 percent there's  
78 people with, you've got, for example, I'd like to, you  
79 know, I'm thinking of motor cycles, the typical things ...  
80 you've got all kinds of 17 or 18 year kids insuring  
81 motorcycles, there's a big influx of that stuff every year,  
82 and I would assume there are people in there with  
83 vehicles that are not maintained, that are old, no  
84 inspections are done up, so I don't know if I can say

whether or not 60 percent is reasonable or not, only to say that there is reasons other than accidents and convictions why people are ending up in Facility, so therefore, obviously there's going to be a percentage of the public who don't have convictions, but for other reasons end up there.

MS. NEWMAN: Is there ...

MR. HICKEY: I think that's fairly consistent with a lot of the jurisdictions, so I don't know if it's anything unique to Newfoundland.

MS. NEWMAN: Yeah, that's what I was going to ask you. Apparently in New Brunswick and Nova Scotia they've introduced a detailed binder control register.

MR. HICKEY: Yeah.

MS. NEWMAN: We've seen that, and it requires the brokers or the people placing the insurance to give a reason, a detailed reason for the placement in FA, and then also notify the insured. Do you think ... we don't have that here, do we?

MR. HICKEY: No, in fact it's the first time I've seen it.

MS. NEWMAN: Okay, do you think that might discourage the placement in FA, or do you think it will have any impact at all?

MR. HICKEY: Well, I think it's good from an informational point of view for sure. I think it will make people conscious of making sure that they've actually ... why is this risk going into Facility. I think the underlying structural problems we have in the business have more to do with people going in Facility if it's felt that it's excessive, then you know, the binder control ... I think the binder control registry would be a great tool to analyze ... we don't really know why people are in there right now, everything is anecdotal, it's people's opinion. I don't know if it would significantly reduce the number of people going in there, although it may point, it may be a great tool to point towards, okay, if this, you know, if for some ... if one of those reasons turned out to be a predominant reason, it would give you tools for the industry to say well how can we address this issue, instead of trying to talk in generalities, trying to look at specific problems.

MS. NEWMAN: Okay.

MR. HICKEY: But right now, I mean there's a shortage of capacity for automobile insurance in Newfoundland, and that's what's going to drive people into Facility right now, because of the state of the market as opposed to, you know, a binder control registry.

MS. NEWMAN: Okay, you mentioned that there was a shortage of capacity, what do you mean by that?

MR. HICKEY: Well, I think Mr. Morris mentioned, I think he's responsible directly for the (inaudible) regulation of four or five local companies. The vast majority of the business is controlled by companies who do business either across Canada, and in most cases internationally, so the entire insurance industry is facing a capital crunch in terms of companies have to put up capital to write business, and when it's in areas where it's not profitable, obviously if you're running a business you don't want to do business in areas where it's not perceived as profitable, so therefore, they allocate that capacity to other areas, so I guess as a broker, we've got a problem because fewer and fewer insurance companies want to do business here because of the results so they want to allocate that capital places where it's profitable to do business, so it's sort of like supply and demand to the extent that the less capital is put into Newfoundland auto, the less capacity there is, the less capacity there is, the more problems we're going to have with the price and availability, and then you'll probably see Facility policy counts go up. That's just my opinion, by the way, I'm not an actuary or anything like that.

MS. NEWMAN: So I guess there's, it's a tightening of the market now and a shortage of capacity now, how long has that been in place? Is this sort of a to and fro, or how does this ... how is the market ...

MR. HICKEY: I think if you look historically it tends to go in cycles. This is probably, I think this is the worst bottom cycle in the history of the business and it started pretty well, a lot of people talk about September 11th, but I don't think that's really the factor that's driving automobile insurance per se. There's a whole number of factors, I mean that go well beyond the scope of this that's causing that, but needless to say, right now we've got a situation where the insurance companies are increasing rates, tightening underwriting, everything that goes with what we'd call a hard or a tight market, and I think that's why, you know ... and Facility, if you look at Facility's applying

1 for its large rate increase, so is the regular market,  
2 they're not alone.

3 MS. NEWMAN: Okay. You said that insurance  
4 companies are tightening their underwriting, are there  
5 occasions where an insurance company might have a  
6 rate for a particular piece of business, or a particular  
7 insured, but they aren't willing to write a policy for  
8 them?

9 MR. HICKEY: Sure, I would think according to the  
10 statistical plan, and once again, I think this is just ... I'm  
11 not completely ... I think they have to file rates within  
12 the plan, so they'd have to follow rate, I would think, for  
13 an under aged male who is 17 years old, but just  
14 because they file the rate doesn't mean that they  
15 actually want to write the business, but I think in the  
16 statistical (inaudible) they have to file rates for that, so  
17 ...

18 MS. NEWMAN: Alright.

19 MR. HICKEY: And they have to file rates for, you  
20 know, surcharges for impaired driving and people with  
21 18 speeding tickets, that's all in the rate manual, so  
22 whether or not they want to write that business is  
23 another issue.

24 MS. NEWMAN: Okay, so their underwriting guideline  
25 might say well we don't, you know, we don't touch it,  
26 we don't want it.

27 MR. HICKEY: Yeah, exactly.

28 MS. NEWMAN: Okay, so are those, we've heard  
29 something about the rates for FA on some occasions  
30 being lower than the rates that might be offered in the  
31 voluntary market, are those the occasions where that  
32 might happen?

33 MR. HICKEY: Yes, it's worse, that wasn't the norm for  
34 a lot of years, but what's happened is the regular  
35 market's rates have caught up to, and in some cases  
36 surpassed the Facility's rates in some classes. To the  
37 best of my knowledge on a lot of the lower driving  
38 record classes like zero years to three or four years, in  
39 many cases Facility will be very competitive with or  
40 cheaper than the regular market. For under aged  
41 drivers, under aged males, and under aged females, and  
42 I'm talking about ... when I say under age I'm not talking  
43 about under 23 or 24, but when they're 17 and 18, 19. I  
44 looked at one case that came in our office the other day,

45 someone brought it to my attention, if the Facility rate  
46 was \$2,800, it was, I think like an 18 year old male, I  
47 think licensed for two years with driver training or  
48 something, the rate for the Facility was, I think,  
49 somewhere in the range of \$2,800. The closest regular  
50 market premium we had to that, I think was \$3,200, and  
51 it went up \$5,300, so there was up to a \$1,700 ...

52 MS. NEWMAN: So were those insurers in the regular  
53 market willing to take this insured at those rates?

54 MR. HICKEY: I would highly doubt it. Once again, it  
55 depends on the circumstance, because you're talking  
56 about business relationships as well. I had a long-term  
57 client for 20 years and Johnny gets his license. I don't  
58 think an insurance ... you know, they value loyalty and  
59 clients and long-term relationships just like any other  
60 business, so you might be able to negotiate with the  
61 company on their behalf and say, look, you've already  
62 had him as an under aged driver for years, he hasn't had  
63 any ... and you know, you might be able to do  
64 something, but for someone who had come in off the  
65 street who we have no knowledge of, it may be tougher,  
66 so that's where sort of your ... that's where brokers try  
67 to advocate for clients, but ... and that's where business  
68 relationships probably come into play, like in any other  
69 business.

70 MS. NEWMAN: Okay, Mr. Chairman, I note that it's  
71 come on 12:00 but I'm just about finished with this  
72 witness. I don't know if you'd prefer to have a break  
73 and come back or ...

74 MR. SAUNDERS, PRESIDING CHAIRMAN: How long  
75 do you expect to be?

76 MS. NEWMAN: You're asking a lawyer how long  
77 they're going to talk?

78 MR. SAUNDERS, PRESIDING CHAIRMAN: We might  
79 as well ...

80 MS. NEWMAN: I think probably five minutes or so  
81 but I'll leave it in your hands.

82 MR. SAUNDERS, PRESIDING CHAIRMAN: Five  
83 minutes or so, it's the "or so" that's ... I think we'll break  
84 now and come back in 15 minutes.

85 (break)

86 (12:25 p.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Ms. Newman, you ready to resume?

MS. NEWMAN: Before I do, Mr. Chairman, I did want to make reference to the fact that tomorrow morning is scheduled for the public presentations. We do, in fact, have three people who have indicated that they wish to make public presentations, and they have been scheduled for nine o'clock. Two of them are apparently providing us with a copy of a written version of their presentation. We don't have that yet but we hope to have that ready for circulation to the parties and the panel in the morning. I believe we'll start at 9 a.m. with Jennifer Power, who's the VP with the Atlantic Region of CGU; next would be Victoria Harnum, private citizen; and finally Mike Keough of the Taxi Operators Association. I believe they've all indicated they expect to be around 40 minutes, between 30 and 40 minutes.

MR. SAUNDERS, PRESIDING CHAIRMAN: Thank you.

MS. NEWMAN: Mr. Hickey, thank you for returning. I trust it wasn't too unpleasant. I do have just a couple of questions left for you to answer for me and then of course you'll be subject to some cross-examination.

MR. HICKEY: Okay.

MS. NEWMAN: The first question relates to something that you said earlier, and that was to do with, I can't recall the exact language you used but it was something about structural deficiencies within the industry, something of that nature, if any I think you might have even said. I wondered if you felt that there were any structural deficiencies, and I ask you that question because there's been some suggestion that there is no room for grey market insurers in this jurisdiction and I wonder if you think that they should be, have a role here.

MR. HICKEY: Yeah, I guess by structural deficiency I was talking to some extent about the debate which is going on about what type of auto insurance system we should have. There's that one aspect which is there, and also I think it's, yeah, it's a relevant point, the grey market. I guess by grey market what I'm referring to, there's several insurance companies who specialize in trying to insure the best of the worst, I guess if you want to describe it. They usually are priced between the regular market and the Facility Association and they try and cream out the best of the Facility and they feel

that they can underwrite that properly at a lower price and make it profitable for them. We're in a situation right now, I just gave you an example where in some cases Facility is actually competing with, or in some cases may be substantially more, is more inexpensive than the regular market. Of course when you get into a situation like that, the grey market insurers get squeezed. I think Pembridge is probably the most significant, or Pavco is one of the most significant grey market players here. They went from writing almost nothing here in the mid '90s to, I think, between 5 and \$7 million worth of business in the late '90s when the business was perceived as profitable, there was a spread between Facility and the regular market, and they sort of went in and found their niche and wrote that business. I wasn't here for all the testimony that went on here earlier but, if I recall, I think in the late '90s there was a fairly significant depopulation of Facility. I think it went from, somewhere from 5 percent down to somewhere around 3.6 or something like that. So either way, I think there was a 20, 25, 30, 40 percent reduction in the amount of business in Facility. As a broker, I think I can say with great certainty, that a significant amount of that business went into Pembridge, because that's obviously what their little niche was. They're in a situation right now where, as a broker just talking about the market, they've had a moratorium on new business here, I guess, for at least six months. The year before that they put a quota on new business and they've sort of been gradually withdrawing capacity, so right now they won't take any new business. They're in the midst right now of preparing to file for a rate increase for 2003, and of course obviously they've got concerns because depending on where Facility's rates end up, they don't know whether, based on their actuarial indications, if they're actually going to be able to get back into the market, because if a Facility rate increase isn't substantial enough to get up to the point where they need to be, obviously they don't feel they can make money. I think in the last couple of weeks, I think all the brokers in Newfoundland got a memo from Pembridge that right now they're renewing everything on a six month basis going forward pending the outcome of this hearing because they don't know if they're going to be able to file a set of rates that they can live with. If that happens, they'll withdraw from the market, I would assume sometime this year, depending on the outcome of this hearing. I don't say that as ... I'm not trying to ... I'm just trying to tell you what's going on in the marketplace out there. If that happens, if Pembridge withdraws, of course what will happen is I'm sure at least 80 percent of that business will go back to



1 Facility because that's mostly what they write, so  
2 despite all our efforts, what we're talking about here  
3 today, to try and get Facility depopulated,  
4 unfortunately we may end up in a position depending  
5 on what happens where, despite underwriting rules or  
6 whatever you can try to do (unintelligible) the market,  
7 if there's no markets to write the business, obviously  
8 the amount of stuff that goes to Facility is going to go  
9 up, so when I say structurally we're in a weird sort of  
10 situation where I don't think anyone ever envisioned  
11 that somehow Facility would be so competitive with the  
12 regular market on a number of classes of business, and,  
13 because of that, we're into this type of a strange  
14 situation. I don't know if that is clear or not.

15 MS. NEWMAN: No, that was helpful, yeah. I wanted  
16 to move now to a couple of questions I had on the  
17 turnover that you had mentioned earlier. I think you  
18 said, and I want to have you clarify, that you estimated  
19 the turnover in FA business from year to year was  
20 about 50 percent.

21 MR. HICKEY: Sure.

22 MS. NEWMAN: And that ...

23 MR. HICKEY: Retention, I guess, is probably the best  
24 word to use.

25 MS. NEWMAN: Retention?

26 MR. HICKEY: Retention ratio.

27 MS. NEWMAN: So you've retained 50 percent of ...

28 MR. HICKEY: Yeah.

29 MS. NEWMAN: Okay.

30 MR. HICKEY: On a year to year basis, I mean, actually  
31 if you look at it beyond that, it's actually much worse  
32 than that, but I'm just saying if I had 100 Facility  
33 policies in January 1, December 31 comes along,  
34 probably 50 of those clients will be around and the  
35 following year it'll be 25. It'll keep going down, so on a  
36 two or three year basis you probably actually probably  
37 roll the entire book of business over within a brokerage.

38 MS. NEWMAN: And how is it that somebody gets out  
39 of Facility Association? We've talked a bit about how  
40 they get in there. How do they get out?

41 MR. HICKEY: The policies, the renewal advice is  
42 received from a servicing carrier, and that varies by  
43 servicing carrier, I think. In my case the policies are  
44 renewed automatically about 45 to 60 days in advance  
45 and we'll get a copy of a policy showing what the terms  
46 for the upcoming renewal period will be. At that point  
47 the policy will be reviewed and the circumstances will  
48 be looked at again and ...

49 MS. NEWMAN: By the broker?

50 MR. HICKEY: Yes.

51 MS. NEWMAN: Okay.

52 MR. HICKEY: And we'll decide, okay, we've got a  
53 market now that will write this business, something has  
54 changed in the last year, their impaired charge is now  
55 off the books, it's more than three years old now, the  
56 regular market will take it, for example, or we'll say we've  
57 got a Pembridge, we can sort of get this guy into  
58 Pembridge now, you know, maybe he'll be able to make  
59 his way back into the regular market the following year,  
60 so the policies are reviewed to ensure that, you know,  
61 that they still need to be in Facility.

62 MS. NEWMAN: Okay. So every year a person's policy  
63 with FA would be reviewed?

64 MR. HICKEY: Yes.

65 MS. NEWMAN: And there would be some ...

66 MR. HICKEY: Unless, I mean, if you just put a client ...  
67 I mean, obviously common sense comes back into play  
68 again. If you just got (unintelligible) impaired charges  
69 and they're still all on the books, you don't need to look  
70 at the policy too much to know that he's still going to  
71 stay in Facility, so, you know ...

72 MS. NEWMAN: Alright. So your renewals come out  
73 from FA or from the servicing carrier, you've had a look  
74 at it, and then what happens if you've decided or there's  
75 been an option determined that they could move out of  
76 FA? What's the process then? What do you do?

77 MR. HICKEY: That they could move out of FA?

78 MS. NEWMAN: That they could, yes.

79 MR. HICKEY: We'd send them a notice and say, look,  
80 we've been able to re-market your policy at a lower

1 premium or whatever, maybe it won't be a lower  
2 premium, it could be for coverage reasons, I don't know,  
3 but we've been able to get you out of Facility  
4 Association, here is the process you'll have to go if you  
5 want to, you know, and then it's just a typical, back into  
6 a typical renewal process.

7 MS. NEWMAN: Do FA clients tend to leave the  
8 brokerage more often than other clients? You had  
9 mentioned earlier that there was, cost recovery was  
10 difficult with these FA clients because they ...

11 MR. HICKEY: Well, I mean, yeah, by its very nature,  
12 the very type of client you're dealing with in a lot of  
13 cases, and I don't mean that in a negative way, if you're  
14 paying, you know, really high premiums for insurance,  
15 you know, you're probably going to be constantly  
16 checking around and stuff, so, you know, a lot more  
17 Facility policies are cancelled for non-payment, they're  
18 cancelled for whatever reason, old vehicles are being  
19 sold all the time, they sell the vehicle, they don't want  
20 a vehicle for the winter and then six months later they  
21 buy a car. You know, by the very nature of the  
22 business there's a whole whack of reasons why those  
23 people would have less persistency, I guess, than the  
24 voluntary market.

25 MS. NEWMAN: But they can come out of FA and stay  
26 with you, stay with the broker ...

27 MR. HICKEY: Oh, they could renew, you know ...

28 MS. NEWMAN: ... same broker and be placed with a ...

29 MR. HICKEY: Sure. That could go on for a period of  
30 years.

31 MS. NEWMAN: Okay. And is there a new process  
32 that started at that point in terms of a new application  
33 and a ...

34 MR. HICKEY: When they come out of FA?

35 MS. NEWMAN: Yes, when they come out of FA and  
36 go back ...

37 MR. HICKEY: Yeah. That's like, to the insurance  
38 company that's a brand new client then, a full new  
39 submission would be done up according to that  
40 company's rules and regulations. I should add, the  
41 thing with Facility, like, it's so difficult to do business  
42 with Facility as a broker because it's a real by the book

43 type thing. It's black and white with Facility. That's the  
44 way they have to be because they take all comers, so,  
45 for example, if I get someone who has a policy that  
46 expires today and they don't show up today and pay  
47 the premium, I have to lapse that policy. If they come  
48 in tomorrow, a whole new application has to be done up  
49 again, so, I mean, it's a real, you know, it's an  
50 administrative nightmare, that's for sure.

51 MS. NEWMAN: Alright. My last thing I wanted to ask  
52 you about was the size of the rate increase that's  
53 sought here by FA. Can you speak to, because you're  
54 on the front lines, the brokers are seeing the clients  
55 every day, and can you speak to what the impact would  
56 be of a 40 percent rate increase if it's granted, which can  
57 be even more for some people, I think up to 60 or 80  
58 percent for some people? What do you think the  
59 impact of that will be?

60 MR. HICKEY: Well, obviously it's very difficult and  
61 the, I guess the service staff in brokers' offices are like  
62 the mailman. We don't control the rates but when they  
63 go up we're the ones who are the deliverers of the bad  
64 news, so brokers tend to get an awful lot of flack and  
65 it's hard on staff and no one wants to have to deal with  
66 that, so I guess in a perfect world it'd be great if we  
67 could just get our little two percent or something,  
68 inflationary increase like a lot of other products, and  
69 not have to, but the fact is we're in an industry where,  
70 you know, costs are escalating at an amount that's far  
71 in excess of inflation. It's not just Facility people who  
72 are going through this. When you look at the regular  
73 market over the last two or three years, some companies  
74 put through 25 percent rate increases, so, you know, it's  
75 not just Facility clients. Unfortunately for Facility  
76 clients, you're at a higher rate level to start with, so 40  
77 percent on a higher amount, you know, it's a  
78 devastatingly large rate increase, but the question, as  
79 a broker, so as a broker it makes life tough for us, and I  
80 guess you could argue we get our little windfall  
81 because we're getting a commission on a higher policy  
82 premium, but I can guarantee you once again, I'd gladly  
83 give away my Facility business and forego that extra  
84 commission because of the amount of work that goes  
85 with it. So it's tough but I guess my issue with that  
86 would be, I mean, rates either have to be statistically,  
87 try and do it on some kind of statistical basis. I mean,  
88 where are we to go? I mean, what's the next step if we  
89 decide, well, we're not going to put through a 40  
90 percent rate increase because it's just too expensive? I  
91 mean, you know, what's the next step after that? I  
92 mean, rates have to be what they are. So I guess we

1 can argue about the statistical validity of, you know,  
2 whether it should be 45 or 35 or whatever, but it would  
3 seem to me to be a dangerous precedent to start setting  
4 rates based on whether or not people can afford to pay  
5 them or not. If that's the case, we've got to go back to  
6 the whole structural thing again and say, well, if the  
7 product is just too expensive for people to buy, how are  
8 we going to change it such that they can, and this is a  
9 circle we've been into, arguing about this since 1996, so  
10 I have no answer to that. You know, I can't ... it's  
11 beyond my knowledge. I wish I had it. I'd be a rich  
12 man.

13 MS. NEWMAN: Thank you very much. Those are all  
14 my questions, Mr. Chairman.

15 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
16 you, Ms. Newman. Mr. Stamp?

17 MR. STAMP, Q.C.: Thank you, Mr. Chairman. I don't  
18 have very many questions for you, Mr. Hickey. I think  
19 you've been pretty exhaustive (inaudible) material there  
20 and most of what I would have asked, I think, has been  
21 covered off, but I do want to pick up on, I guess, a few  
22 of the points and certainly one of the more recent ones  
23 that you talked about was this issue of, I guess, what  
24 has been sometimes referred to as a grey market or the  
25 higher risk type of voluntary market insurer, that issue  
26 and this issue of, I guess, the availability of insurers  
27 generally, and you talked about shortage of capital. I  
28 understood you to be saying that in this sort of, I  
29 guess, now, kind of a world market, I guess, for  
30 insurers, insurers will leave if they don't see, I guess, a  
31 reasonable prospect for adequate return on whatever  
32 they are putting into this market. And I just want to ask  
33 you this, in your years as a broker with your company,  
34 have you seen the kinds of things that you're talking  
35 about where, you know, market rationalization has  
36 occurred and insurers have come or gone?

37 MR. HICKEY: Well, certainly the number of insurance,  
38 insurers doing business here has shrunk steadily. I  
39 don't think I can say that's solely a Newfoundland  
40 problem because there has been some consolidation in  
41 the business, but ...

42 MR. STAMP, Q.C.: And has that shrinkage been even  
43 more, even recently?

44 MR. HICKEY: It's more pronounced here. I think the  
45 last time I looked out of the top ten insurance

46 companies in Canada, I think there's only five of them  
47 will even do business here right now, so ...

48 MR. STAMP, Q.C.: And were the other five ever here?

49 MR. HICKEY: Some of them were.

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

51 MR. HICKEY: Some of them will not come here, you  
52 know. As a broker, so we're trying to get contracts,  
53 you approach these guys and they just don't, for  
54 various reasons don't have interest in doing business  
55 here. Certainly in the '70s, I wasn't certainly working in  
56 the business then, thank God, there was pretty well a  
57 market collapse here. That's why we have these local  
58 insurance companies today, is because in the early '70s  
59 pretty well all the capital withdrew from Newfoundland,  
60 said they just didn't see a chance to make a profit, and  
61 that's why you've got ... back then you could start  
62 insurance companies for 100,000 bucks, so that's why  
63 you had a bunch of brokers who basically were forced  
64 to start their own insurance companies to survive.  
65 Now, since then I think there are probably seven or  
66 eight, probably more than that, local insurance  
67 companies. Back then ... very few of those still remain,  
68 at least in local control. And of course if that happens  
69 this time, I think with a \$3 million minimal capital  
70 requirement, I don't think you'll see a lot of people  
71 unfortunately stepping up to the plate to do that this  
72 time, so, you know, it's certainly a very nervous time in  
73 the business. For me as a broker, I think the brokerage  
74 industry and everybody, you know, the amount of  
75 capital and capacity that we're going to have here going  
76 forward, you know, it's just very uncertain right now.

77 MR. STAMP, Q.C.: And I guess in kind of a casual or  
78 informal way as just being in the industry, are you  
79 seeing or hearing concerns expressed by insurers about  
80 situations they face in Newfoundland?

81 MR. HICKEY: Yeah. It's Newfoundland, it's also  
82 Atlantic Canada in general. Certainly the prospects of  
83 getting any new insurance companies to come do  
84 business here right now, I think zero is a fair estimate of  
85 the percentage of that happening. We had ING  
86 withdraw just this fall. They stated that they just  
87 couldn't get their volume up to an amount where it  
88 justified to do business with them. I know of the  
89 regional manager of a major player who had been  
90 summoned to Toronto, I think, four times in the last six  
91 months to justify why he should keep doing business

here. So, you know, it's things that are well outside of Newfoundland and Canada are causing this to happen, like I talked about, you know, and I'm not an expert in it and I can't comment on whether it's all a big ... you know, there's those who says it's a hoax perpetrated by the companies. What they are, publicly traded companies who got shareholders who want ROEs. If they can't get it here, they'll take their capital and move it somewhere else, so it's certainly something that I would dread as a broker for that to happen obviously because ...

MR. STAMP, Q.C.: And just, I know it perhaps is not all that relevant, I guess, in some ways to the process here, but it's been talked about a fair bit and most recently by the last witness more especially, and that's this Bill 28 which I guess has a theory of how the industry should work. Have your views about how well that is going to ... how is it going to improve or worsen, what you see?

MR. HICKEY: I think it's certainly well intentioned, the problem being that, although on the surface it looks great to say, okay, here's some minimum requirements sort of to get people into Facility in the name of fairness. The problem with it is that you have to look at, this is a private industry and you have to look at what, if you're running a business, how will you behave when something like that is imposed on you. My fear is that the reaction will be let's take everything to the lowest common denominator ... and I would hazard to say that there are many, many clients in the regular market right now who could be in Facility but probably aren't because they've been insured with their insurance company for 20 years and therefore just because you had two or three claims in the last few years, out of loyalty, you know, they're not going to dump you in Facility. What's going to happen, I fear, with insurance companies, if they're given a minimum set of underwriting guidelines, it's going to take all the ability to select risk and be able to deal with clients based on relationships and they're going to go through their client list and say, okay, well, we've got this guy and actually technically he can go in Facility now, he's below that threshold. So while perhaps we've got to take more people who, now we're told we can't, all the ones that we can, we're going to dump them all in there because we can get them off the books because we were down to the lowest common denominator, so, you know, it's great to bring in these regulations in a vacuum, but you got to look at we've got a free market here and you got to look at people who are going to

say, well, it's my capital risk and I'm going to behave in a way that I can protect that capital, so I think it's a very dangerous thing and I fear that in the environment we're in right now, I can't imagine, I cannot comprehend a worse time to do it, because you've got companies who are barely staying here as it is because of the environment, so rather than try and make the market more appealing to bring companies in, we're actually doing things that's going to make it more difficult, so as a broker I fear for that from a self-serving reason because I want to have insurance companies to place business with my clients, so I'm not trying to be an advocate for anything here. I'm just trying to talk about the realities of doing business and what I think will probably happen.

(12:45 p.m.)

MR. STAMP, Q.C.: And just since we have the benefit of having you here, do you see these measures that are being proposed as sort of cost saving measures, for example?

MR. HICKEY: No. I can't imagine where they would save costs. I just can't imagine any scenario where they're cost saving, no. No, there is none.

MR. STAMP, Q.C.: So if that's the motivation, you don't think that's going to be achieved?

MR. HICKEY: No. I don't think it has anything to do with costs. It has more to do with the perceived level of fairness.

MR. STAMP, Q.C.: And just to come back again on this issue of the, I guess the availability of insurers in the market and what's happening, you've talked a bit about Pembroke or Pavco. Is that the same company or is that ...

MR. HICKEY: Yes, Pavco, yeah, the same company.

MR. STAMP, Q.C.: And you talked about, I guess, what they are currently doing. You say you understand they're looking at readying a rate filing themselves, but whether they will make that, I presume you're saying, depends on what the outcome of this will be.

MR. HICKEY: Yes, if Facility doesn't get an adequate rate increase, I don't think I'm out of line to say that, 98

1 percent probability they'll probably withdraw from the  
2 market.

3 MR. STAMP, Q.C.: Well, that issue, Mr. Hickey, I  
4 mean, there appears to be a bit of a problem in that, and  
5 let's just forget for a moment and ignore for the time  
6 being how any of us might agree or disagree about  
7 what the implications really are for this association  
8 being declared to be not for profit, just let's leave that  
9 aside, because quite aside from the regulatory  
10 requirements and whatever they provide, Facility  
11 Association makes it a practice, it appears, it has for  
12 some time, to select its indicated rate filings in this  
13 jurisdiction, and I think in every jurisdiction in Canada  
14 that it operates in, on a break even basis, that is to say  
15 it doesn't anticipate generating a dollar of surplus or a  
16 dollar of deficit which will be passed on either way to  
17 its member companies. Now, what does that process  
18 do in your mind to other insurance companies in the  
19 voluntary market, and if it's particular to people like  
20 Pembridge, what does it do to them?

21 MR. HICKEY: I'm not really sure I understand. Do you  
22 just want to rephrase that?

23 MR. STAMP, Q.C.: Well, I presume, and I don't know  
24 what Pembridge's, they're not in the business of social  
25 work, I guess ...

26 MR. HICKEY: Okay.

27 MR. STAMP, Q.C.: ... they're looking to make a profit  
28 on what they do. Facility business does not appear, is  
29 not certainly by design, based upon the actuarial  
30 evidence that we've heard, designed very specifically  
31 not to, designed to achieve break even.

32 MR. HICKEY: Okay.

33 MR. STAMP, Q.C.: So I'm wondering what the design  
34 of the indication of rates for Facility does to the other  
35 insurance companies.

36 MR. HICKEY: Okay. Well, I guess Facility obviously  
37 can file, you know, I would assume ... I'm not an actuary  
38 so I don't claim to have any ... I guess just from a logical  
39 point of view, if Facility is filing its rates, they're  
40 actually filing at a somewhat lower basis than a regular  
41 carrier because they don't have to have the same, I  
42 guess, ROE pressure, so if Facility is, Facility's rates  
43 have to go up, technically Pembridge is trying to  
44 squeeze in there in the middle plus they have to do it at

45 a profit, so in essence they're competing against a non-  
46 profit entity, if you like. I'm not sure if that's, you know  
47 ...

48 MR. STAMP, Q.C.: It sounds very difficult.

49 MR. HICKEY: Yeah, obviously. Well, they had to have  
50 room ... obviously they're trying ... they're not going to  
51 try and write the same level of risk as the ... they  
52 specialize in trying to take the best of Facility out of  
53 there, so they have to have room somewhere between  
54 the regular market and Facility to function, and it's not  
55 just Pembridge, I think there's (unintelligible), there's  
56 another, CGU, (unintelligible), I think Coop actually also  
57 has a high risk writer, so, you know, between the three  
58 of those, they have to have some kind of a niche where  
59 they can squeeze in between Facility and the regular  
60 market to function. If they can't do that, they have no  
61 reason to exist. It's almost like sort of their cause to  
62 exist is sort of legislated out of existence, I guess, if you  
63 want to put it that way.

64 MR. STAMP, Q.C.: Mr. Hickey, you've seen, I don't  
65 know if you've actually seen it, but there's been an  
66 exhibit filed this morning, it's WM No. 1, shows a  
67 bunch of rates in Nova Scotia and other Atlantic  
68 Provinces as compared to Newfoundland, and then it  
69 shows, I guess, a more detailed breakdown by territory  
70 in Newfoundland and in the territories in Nova Scotia.  
71 We've got some questions about what that all means  
72 and I guess we'll have more information on that soon.  
73 But I'm just wondering, for example, you look at 2000, in  
74 the, I guess, what is considered the regular market, the  
75 average earned premium per vehicle in Newfoundland  
76 in that year was four eighty six eighteen, comparable  
77 number in Nova Scotia was two eighty-three twelve.

78 MR. HICKEY: Yeah.

79 MR. STAMP, Q.C.: Well, first of all, this is 2000. Do  
80 you have any knowledge about whether or not that  
81 kind of distinction still persists and what's happening,  
82 do you know, in Nova Scotia in terms of its adequacy  
83 of rates?

84 MR. HICKEY: I don't think it's any secret, in 2001, 2002,  
85 certainly rates went up here significantly. I guess I'm  
86 happy to say in a twisted sort of way, happy to say that  
87 rates have gone up in Nova Scotia a lot faster. I think  
88 they've been hitting 40 percent just last year alone, so  
89 I would assume that the gap has closed considerably.  
90 I think it's fairly, well, it's fairly common knowledge in

1 the industry that the gap has closed considerably. I  
2 don't think I'm ...

3 MR. STAMP, Q.C.: Do you guys have any kind of, I  
4 don't know, industry reports that tell you anything  
5 about, you know, how successful the industry is  
6 operating in Nova Scotia?

7 MR. HICKEY: The one that I subscribe to is called the  
8 Brown Book. It's available, I think it's 10 bucks, you  
9 can order it from anyone, but it provides a breakdown  
10 by line of business by province, by company, with their  
11 results.

12 MR. STAMP, Q.C.: And does it talk about, like, loss  
13 ratios, for example, in Nova Scotia?

14 MR. HICKEY: Yeah, line of business ...

15 MR. STAMP, Q.C.: In the more recent period?

16 MR. HICKEY: Nova Scotia has, based on just my  
17 reading the Brown Book, has got much worse, had  
18 much worse auto results than we have, certainly loss  
19 ratio has been much more excessive.

20 MR. STAMP, Q.C.: One of the other things that has  
21 been talked about was, I guess, people knowing that  
22 they're in Facility, and based upon what we heard in  
23 this hearing and in fact perhaps even more so in the last  
24 hearing that dealt with Facility directly, it appeared that  
25 there was once a view that this would be kept sort of  
26 secretive and people would not be told that they're in  
27 Facility. It was some kind of an adverse implication  
28 perhaps by the fact that you had a Facility policy. That  
29 was the case. I don't know if you can speak to that, but  
30 if it was the case it appears now the view is different.  
31 Everybody should be told fully that they are in it. First  
32 of all, do you know about those two views? Have you  
33 been around that ...

34 MR. HICKEY: I've heard that view. If it did happen in  
35 the past, I don't ... I can only speak for myself.  
36 Everything we do that comes with Facility says Facility  
37 on it. Whether or not people understand when you tell  
38 them they're in Facility is another thing. We've seen  
39 witnesses here on the stand who, you know, police  
40 officers, you know, who didn't really understand  
41 Facility, so it's a complicated issue, and, to be honest,  
42 the regular consumer, except for people who have some  
43 special interest, really don't care about Facility. All  
44 they care about is how much they're paying. So, you

45 know, it's a difficult thing. I mean, the application says  
46 Facility on it. You know, really in the end of the day I  
47 don't think the consumer really cares about Facility. All  
48 they care about is how much they pay. So, I mean, as  
49 a broker I have no opposition to being told ... I have to  
50 clearly tell people, we do that anyway.

51 MR. STAMP, Q.C.: And to your knowledge, you've  
52 been involved in the Brokers Association of  
53 Newfoundland and I guess have had different roles in  
54 the national body as well, do you have any sense of  
55 whether or not brokers generally are opposed to  
56 providing this information or if in fact they generally do  
57 provide it?

58 MR. HICKEY: I would think they generally do provide  
59 it. I can't imagine anyone being opposed to it. It's a  
60 very ... I mean, we're talking about four or five ... I mean,  
61 it's no big deal. I guess the only ones who might have  
62 a problem with it are people ... and luckily we don't have  
63 that problem here. I know in Ontario there's a lot of  
64 brokers, because the market is, withdraw from, all they  
65 have left is Facility as a market, so I don't know if they  
66 want, you know ... but that's not an issue here in  
67 Newfoundland, that's for sure.

68 MR. STAMP, Q.C.: Okay. So in any case in your  
69 company this is disclosed.

70 MR. HICKEY: Sure.

71 MR. STAMP, Q.C.: And whether a requirement is there  
72 for disclosure or not, it doesn't matter, you're disclosing  
73 it in any event.

74 MR. HICKEY: Yes.

75 MR. STAMP, Q.C.: One last point I just want to deal  
76 with here, Mr. Hickey, if I can, just to make sure we're  
77 straight on the share the government gets from all this,  
78 which seems to be a pretty good share, and with the  
79 most, with the least risk of all, I guess. They are paid a  
80 sales tax. Now, you describe it as, it's not HST or GST,  
81 it's an insurance ...

82 MR. HICKEY: It's an insurance premium tax.

83 MR. STAMP, Q.C.: ... premium tax. It's effectively a tax  
84 on the sale.

85 MR. HICKEY: Yes.

1 MR. STAMP, Q.C.: So let's say, for example, if a  
2 premium is exactly \$1,000, then there is a 15 percent, is  
3 that right ...

4 MR. HICKEY: Yes.

5 MR. STAMP, Q.C.: ... tax on the ...

6 MR. HICKEY: The base premium, so ...

7 MR. STAMP, Q.C.: ... base premium ...

8 MR. HICKEY: ... if your premium was \$1,000, it's what,  
9 \$150 tax.

10 MR. STAMP, Q.C.: So you bill your customer, your  
11 client, I guess \$1,150 ...

12 MR. HICKEY: Yes.

13 MR. STAMP, Q.C.: ... for the \$1,000 policy.

14 MR. HICKEY: Yes.

15 MR. STAMP, Q.C.: You send \$150 to the Government  
16 of Newfoundland for the sales tax.

17 MR. HICKEY: Yes.

18 MR. STAMP, Q.C.: And then, as you say, you do the  
19 accounting with your service carrier and you send in,  
20 based upon its demand, I guess, to you, as you've  
21 described, the \$1,000 net of your approved commission.

22 MR. HICKEY: Yes, and it's actually, I guess we have a  
23 tax on a tax.

24 MR. STAMP, Q.C.: Well, how is that, you mean?

25 MR. HICKEY: Well, because there's four percent  
26 premium tax built into the premium and then they  
27 charge 15 percent tax on the premium ...

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

29 MR. HICKEY: ... so I guess the effective tax rate is  
30 actually somewhere over, probably, what, 19.8 ...

31 MR. STAMP, Q.C.: Over 19 or something, yeah.

32 MR. HICKEY: Yeah.

33 MR. STAMP, Q.C.: So when the ... one of the issues I  
34 wanted to ask you about, so when the premium actually  
35 is set, when the \$1,000 is, you know, you find out from  
36 you either looking at, you have charts or manuals or  
37 rates or whatever you have to look at, that's \$1,000, that  
38 has in it, already buried in it the four percent.

39 MR. HICKEY: Yes.

40 MR. STAMP, Q.C.: And it has in it the levy for health  
41 services, I guess ...

42 MR. HICKEY: Yes.

43 MR. STAMP, Q.C.: ... or whatever that's referred to as.

44 MR. HICKEY: Yeah.

45 MR. STAMP, Q.C.: And then on top of all that you pay  
46 the 15 percent on the 4 percent, on the 1 1/2 percent and  
47 on the basic premium that the insurance company is  
48 going to get.

49 MR. HICKEY: Yes.

50 MR. STAMP, Q.C.: Right. So and then when the  
51 money flows through, as I think you indicated, when it  
52 flows through to the service carrier and onto Facility,  
53 then somehow the member companies, I presume, pay  
54 the 4 percent ...

55 MR. HICKEY: Yes.

56 MR. STAMP, Q.C.: ... and the 1 1/2 percent afterward.

57 MR. HICKEY: Yes.

58 MR. STAMP, Q.C.: Do you know what the tax rate is  
59 on this sort of product in, for example, Nova Scotia?

60 MR. HICKEY: Geez, I don't know. I know a study was  
61 done. We have the highest tax in North America.

62 MR. STAMP, Q.C.: Oh, is that right?

63 MR. HICKEY: I don't think there's anyone close.

64 MR. STAMP, Q.C.: Okay. That's all I have, Mr. Hickey.  
65 Thanks for your help.

66 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
67 you, Mr. Stamp. Mr. O'Flaherty?

1 MR. O'FLAHERTY: Thank you, Mr. Chairman. Good  
2 morning, Mr. Hickey.

3 MR. HICKEY: Good morning.

4 MR. O'FLAHERTY: Mr. Hickey, you understand that  
5 my job is to, along with my partner, is to represent the  
6 consumers who are potentially affected by this rate  
7 filing and the requested rate increase that's before the  
8 Board?

9 MR. HICKEY: Yes.

10 MR. O'FLAHERTY: And these are the rate increases  
11 that you have described as devastatingly large rate  
12 increases?

13 MR. HICKEY: Yes.

14 MR. O'FLAHERTY: Would you agree that it's fair to  
15 say that consumers who are insured through the FA  
16 mechanism in this province do care about those rates  
17 charged through FA?

18 MR. HICKEY: Yes.

19 MR. O'FLAHERTY: And they therefore have an  
20 interest in the operations of FA in the province.

21 MR. HICKEY: They have an interest to the extent of  
22 what they pay and nothing else.

23 MR. O'FLAHERTY: Okay. And would you also agree,  
24 I just want to sort of set the, if I understand some of the  
25 things we might agree upon, would you also agree that  
26 whether or not you believe that it's reasonable or the  
27 industry believes it's reasonable, that consumers are  
28 entitled by law in this province to have that aspect of  
29 the market operated on a non-profit basis?

30 MR. HICKEY: Sure. I don't know if they're entitled to  
31 it. That's what ... that's the way it's set up, sure.

32 MR. O'FLAHERTY: I just want to talk briefly about the  
33 structure of a brokerage and that's where you started  
34 your testimony today.

35 MR. HICKEY: Okay.

36 MR. O'FLAHERTY: I take it there are different types of  
37 brokerages within the Province of Newfoundland and  
38 Labrador.

39 MR. HICKEY: No. A broker is a broker, but different  
40 brokers will have different, contracts with different  
41 companies, so, you know, all brokers aren't alike in  
42 terms of the product that they can offer, let's put it that  
43 way.

44 MR. O'FLAHERTY: Sure. I was thinking of the  
45 distinction between independent brokers ...

46 MR. HICKEY: Okay, sure.

47 MR. O'FLAHERTY: ... and tied (phonetic) brokers.

48 MR. HICKEY: Okay, yeah. Like, there's independent  
49 brokers, then there would be what you might want to  
50 call a direct writer like Coop who are all company  
51 owned, so they won't (phonetic) offer choice amongst  
52 various companies. That's sort of the main difference  
53 between a broker and a direct writer, I guess, if you  
54 want to call it.

55 MR. O'FLAHERTY: So does the organization that you  
56 represent, represent both the independent brokers and  
57 the direct writers?

58 MR. HICKEY: No.

59 MR. O'FLAHERTY: So which group do you represent?

60 MR. HICKEY: I'm an independent broker, so we're  
61 independent ... Brokers Association.

62 MR. O'FLAHERTY: Now, how many of the 50 or so  
63 auto insurers does your brokerage represent?

64 MR. HICKEY: Six, I think.

65 MR. O'FLAHERTY: And is there any way to tell the  
66 Board on average how many of the 50 or so auto  
67 insurers the average independent broker represents?

68 MR. HICKEY: Geez, I don't know.

69 MR. O'FLAHERTY: What do you think would be a  
70 reasonable estimate?

71 MR. HICKEY: It really varies and it varies from year to  
72 year. Certainly there's brokers who have contracts with  
73 eight, you know, could be eight, ten, it could be down  
74 as low as two, it all depends on, you know, the  
75 particular state of the market and the year and that  
76 broker's plans.



MR. O'FLAHERTY: How common is it for an independent brokerage to represent only two of the auto insurers in the province or three of the auto insurers in the province?

MR. HICKEY: I couldn't say. It's certainly not unheard of. I mean, one year they might have two, another year they might have four. I mean, it all depends.

MR. O'FLAHERTY: Thank you. How many members does your organization have?

MR. HICKEY: I think 17 or 18.

MR. O'FLAHERTY: There's 17 or 18 independent brokerages in the province.

MR. HICKEY: Yeah.

MR. O'FLAHERTY: Now, you did mention direct writers, and I'm going to just use round numbers, okay, Mr. Hickey, because, you know ...

MR. HICKEY: Sure.

MR. O'FLAHERTY: When I look at the evidence that's been placed before the Board, it appears that the size of the total market for auto insurance in the province is somewhere between 180 million and 200 million a year.

MR. HICKEY: Yeah.

MR. O'FLAHERTY: Is that a reasonable figure?

MR. HICKEY: Sure, yeah.

MR. O'FLAHERTY: How much of that volume of business, and that's by premium dollars, right.

MR. HICKEY: Sure, yeah.

MR. O'FLAHERTY: How much of that business is handled through independent brokerages?

(1:00 p.m.)

MR. HICKEY: Geez, I'm not sure. The last time I looked, I mean, I know, I think nationally it's in the range of, I think, 70 ... of course there's a difference between just pure automobile. I would think it must be 70 percent.

MR. O'FLAHERTY: About 70 percent, okay. So then depending on the size, whether it's 180 million or 200 million. So the volume of market that you're competing for among the independent brokers is somewhere in the 130 to \$140 million worth of business?

MR. HICKEY: That's the amount ... we compete with the direct writers, so we're all competitors. Our particular channel has that amount of business, but, you know, we'd like their business too.

MR. O'FLAHERTY: Okay, I understand, no problem.

MR. HICKEY: Okay. So we're all competitors. There's no ...

MR. O'FLAHERTY: No, and that's a good point. Okay, that's a good point. And now the most recent evidence that we have concerning FA, and I appreciate these may be, these are unaudited figures, but it appears that they're looking at somewhere in the range of 18 to \$20 million last year of the business, the auto business in the province.

MR. HICKEY: The total volume, okay, sure.

MR. O'FLAHERTY: So they have about somewhere, just rough figures now, it looks like they have almost ten percent of the premium volume from last year.

MR. HICKEY: Yes, yeah.

MR. O'FLAHERTY: And you're expecting that to go higher.

MR. HICKEY: It could depending on how all of this plays out, sure.

MR. O'FLAHERTY: Some of the factors that you've adverted to in your evidence are the exiting of Pembroke, Pavco and the tightening of the market ...

MR. HICKEY: Right.

MR. O'FLAHERTY: ... and the capacity issues going to drive more people into it.

MR. HICKEY: Yeah.

MR. O'FLAHERTY: So the atmosphere, as you see it, or going forward, is one in which ...

MR. HICKEY: Sorry, go ahead.

MR. O'FLAHERTY: Okay. Is one in which it's more likely than not that the FA market share will grow rather than shrink.

MR. HICKEY: Depending on what happens here. Just based on my experience, and I don't have statistics to back this up, it's, strangely enough, it seems to me that when Facility rates get really high, it gets depopulated, I guess the reason being because the regular market sees the opportunity to write business profitably so therefore more business comes out, so it's sort of counter-intuitive to that extent and I don't think anyone's got numbers to say if rates go up 40 percent how much business will come out of Facility, so the premium volume, of course there's also a big difference between the premium volume share Facility has and, like, the number of people and vehicles who are in there, because obviously the rates are higher on a per vehicle basis.

MR. O'FLAHERTY: Okay. I was more dealing, I guess, on a very high level at this stage, so I was going to get into that ...

MR. HICKEY: Okay, sure, yeah, okay.

MR. O'FLAHERTY: ... in terms of the size of the pie that we're talking about here.

MR. HICKEY: Yeah, yeah, yeah.

MR. O'FLAHERTY: So FA's portion of the market is somewhere in the range of ten percent of total premium volume.

MR. HICKEY: Yeah.

MR. O'FLAHERTY: I want to explore with you the notion that this is not a piece of the business that independent brokerages are interested in. In fact I believe your testimony was that given your druthers you wouldn't have anything to do with it. Can you just tell me, you mentioned that you represent Royal Sun Alliance as your servicing carrier. Do you also represent them in the normal course of business?

MR. HICKEY: Yes.

MR. O'FLAHERTY: Okay. Well they're a good example then. And is the business that you conduct for Royal

and Sun Alliance, is that conducted on the basis of an underwriting manual?

MR. HICKEY: Yes.

MR. O'FLAHERTY: That they have published?

MR. HICKEY: Yes.

MR. O'FLAHERTY: And is the servicing carrier business also conducted on the basis of an underwriting manual?

MR. HICKEY: Yes, to the extent for the purpose of calculating a rate. Of course a little different with Facility because they're going to accept all the risk, so it's not an issue of acceptance with Facility. It's more of a procedural issue ...

MR. O'FLAHERTY: It's a calculation issue.

MR. HICKEY: Yeah.

MR. O'FLAHERTY: But they do have a manual as well. We've seen it in evidence here.

MR. HICKEY: Oh, sure, yeah, the ... yeah, yeah.

MR. O'FLAHERTY: Okay. So they both have a manual. And is the ... you've said already the accounting is, your words, were very similar to other insurance companies' business between FA and the regular market.

MR. HICKEY: The accounting is, would be identical, yeah.

MR. O'FLAHERTY: Okay. Are there special personnel hired to handle your FA business?

MR. HICKEY: In my size brokerage, I don't need to have a specialized person, just because of our volume, but in larger brokerages, yes.

MR. O'FLAHERTY: In larger brokerages where?

MR. HICKEY: They would have ... yeah, they would have to have, because it's so different from the regular market. It's not an accounting issue, it's more of a procedural issue.

1 MR. O'FLAHERTY: Do you mean in this province there  
2 are brokerages that have people who do only FA  
3 business?

4 MR. HICKEY: I can't testify to that as a ... I'm almost  
5 positive, yeah, sure.

6 MR. O'FLAHERTY: Okay.

7 MR. HICKEY: If they don't, I'd be surprised.

8 MR. O'FLAHERTY: Okay, alright. Do you have special  
9 training for FA business?

10 MR. HICKEY: That would come from the servicing  
11 carrier. You know, they would give us bulletins,  
12 manuals, everything else, the training required to  
13 ensure that we're conducting business properly.

14 MR. O'FLAHERTY: Okay. Are the same individuals,  
15 front line individuals for your brokerage, are they the  
16 ones who deal with both the FA business ...

17 MR. HICKEY: Yeah, they'd have to because you could  
18 have a client who's got regular market requirements and  
19 Facility, so you don't want to have to ...

20 MR. O'FLAHERTY: No, that makes sense, that makes  
21 sense to me. And is your business computerized?

22 MR. HICKEY: Uh hum.

23 MR. O'FLAHERTY: And are both these lines of  
24 business or types of business done by computer?

25 MR. HICKEY: Unfortunately, Facility we can't because  
26 they have their own application which is slightly  
27 different from a regular market application, so with the  
28 regular line of business, a client comes in, we can just,  
29 you know, do the boom, boom, boom, boom, it all goes  
30 into computer, it's uploaded electronically, blah, blah,  
31 blah. With Facility it's still the same way it was 20 years  
32 ago. You know, you've got to write an application out,  
33 record the binder, who you gave it to, photocopy it or  
34 do whatever you want to do, create a file, send it up, so  
35 it's a much more manual process.

36 MR. O'FLAHERTY: Okay. Is that one of the factors  
37 that contributes to the added expense of processing  
38 Facility business?

39 MR. HICKEY: Yes.

40 MR. O'FLAHERTY: And is that an improvement that  
41 Facility Association, through its members, I guess,  
42 could bring to bear on this equation?

43 MR. HICKEY: That could be, yeah.

44 MR. O'FLAHERTY: Have you as an independent  
45 broker brought that concern to Facility?

46 MR. HICKEY: We've talked to Facility about it. Well,  
47 the servicing carriers, because as a broker I wouldn't  
48 deal with Facility directly, yeah.

49 MR. O'FLAHERTY: So you have a relationship,  
50 business relationship with the servicing carrier as a  
51 voluntary market insurer ...

52 MR. HICKEY: Yeah.

53 MR. O'FLAHERTY: ... but also as a servicing carrier.

54 MR. HICKEY: Yeah, but they're two different things.  
55 Dealing with the servicing carrier and Facility business  
56 is not the same because as soon as you go to a  
57 servicing carrier you're talking about Facility. Okay,  
58 what does Facility's book say? Boom, that's it, it's a  
59 black and white, here's the way we do things. There is  
60 no real negotiation as a normal business relationship  
61 while we negotiate with the carrier.

62 MR. O'FLAHERTY: And what's the person called that  
63 you contact at a servicing carrier? Is that an  
64 underwriter?

65 MR. HICKEY: Or it could be an underwriting ... it  
66 depends on the servicing carrier, I would think, how  
67 they organize internally.

68 MR. O'FLAHERTY: Okay. And I don't want to ...

69 MR. HICKEY: It would just be like an underwriting  
70 manager probably ...

71 MR. O'FLAHERTY: Okay, an underwriting manager.

72 MR. HICKEY: ... or an underwriter, same as ...

73 MR. O'FLAHERTY: Okay, fine.

74 MR. HICKEY: Yeah.

1 MR. O'FLAHERTY: So does that underwriting manager  
2 have the responsibility to deal with your inquiry both  
3 with respect to voluntary market and Facility business?

4 MR. HICKEY: You might want to ask a servicing carrier  
5 about some of these things. Just, I'll do my best.

6 MR. O'FLAHERTY: Sure. In your own experience, do  
7 you speak to the same individual?

8 MR. HICKEY: No. Well, it depends on the company  
9 once again. In my case, no, they've got totally separate  
10 Facility people and ... at the insurance company and it's  
11 only, they only deal with Facility, they don't deal with  
12 regular market stuff at all.

13 MR. O'FLAHERTY: Okay, so you do have a different  
14 person there.

15 MR. HICKEY: Yeah, yeah.

16 MR. O'FLAHERTY: But from your perspective, it's the  
17 same individual making the phone call at your end.

18 MR. HICKEY: At my end, yeah.

19 MR. O'FLAHERTY: Okay, and the main distinction so  
20 far is that one of the areas of business appears to be  
21 computerized and the other one appears to be manual.

22 MR. HICKEY: That's one small element of it, yes.

23 MR. O'FLAHERTY: Okay, well, I think, let's just look at  
24 the average commission rates that are charged on the ...  
25 go back to the high level picture of the industry. On  
26 the \$140 million worth of business which is the  
27 voluntary market.

28 MR. HICKEY: Yes.

29 MR. O'FLAHERTY: What's the average premium?

30 MR. HICKEY: Geez, I'm not sure of that figure, the last  
31 number I've got now. I would think ... and once again,  
32 it varies substantially depending on the territory and  
33 everything else. In Newfoundland right now I would  
34 think the average premium must be somewhere in the  
35 range of \$800 to \$900, maybe \$1,000, depending on what  
36 territory (inaudible), right.

37 MR. O'FLAHERTY: Sure, I was more thinking what was  
38 your average commission rate being charged by  
39 independent brokers first of all?

40 MR. HICKEY: By independent brokers, I can't, I won't  
41 speak for myself here because that's obviously a  
42 contractual relationships.

43 MR. O'FLAHERTY: Sure, yeah.

44 MR. HICKEY: I think it's fairly common knowledge that  
45 for regular market auto business, the rates are between  
46 10 and 12 1/2 percent, depending on the line of  
47 business, like some classes, like some classes, like  
48 under age drivers have lower commission rates than  
49 regular ...

50 MR. O'FLAHERTY: Okay, and is it your  
51 understanding, and I know you're not a direct seller ...

52 MR. HICKEY: Yeah.

53 MR. O'FLAHERTY: But is it your understanding that  
54 the rates are roughly similar for the direct sellers for  
55 their voluntary market business?

56 MR. HICKEY: I really would have no knowledge of  
57 that.

58 MR. O'FLAHERTY: Okay, you don't know that answer,  
59 okay.

60 MR. HICKEY: Yeah.

61 MR. O'FLAHERTY: So then you've indicated that the  
62 rates for FA are 6 to 11 percent and the average is about  
63 10 percent?

64 MR. HICKEY: I would think nine to 10 percent would  
65 probably be a good average, yeah.

66 MR. O'FLAHERTY: Can I just refer you to a document  
67 which is the, in the plan of operations at Appendix C,  
68 and I don't know if you have that ... perhaps with the  
69 help of Ms. Blundon.

70 MR. HICKEY: Okay.

71 MR. O'FLAHERTY: There should be an appendix to  
72 that particular document.

73 MR. HICKEY: Okay.

1 MR. O'FLAHERTY: A series of appendices, one of  
2 which I'm ...

3 MR. HICKEY: Appendix C?

4 MR. O'FLAHERTY: Yes.

5 MR. HICKEY: Okay.

6 MR. O'FLAHERTY: I believe this is the most recently  
7 approved plan of operations and does this set out the  
8 commission rates that applicable for ...

9 MR. HICKEY: Sure.

10 MR. O'FLAHERTY: ... the payment to brokers for  
11 Facility Association business?

12 MR. HICKEY: Yeah, that looks like it.

13 MR. O'FLAHERTY: Okay.

14 MR. HICKEY: I haven't look at the document in years,  
15 but that looks ...

16 MR. O'FLAHERTY: Yeah, I just want to bring the  
17 Board ...

18 MR. HICKEY: Yeah, that looks fairly accurate.

19 MR. O'FLAHERTY: So this is a matter which is  
20 approved by Facility Association, and then by the  
21 different superintendents of insurance in the various  
22 provinces.

23 MR. HICKEY: Yes, yes.

24 MR. O'FLAHERTY: Okay, and I believe the appendix  
25 that's relevant here is Appendix C, all provinces  
26 excluding Ontario, do you have that one? I think if you  
27 keep turning the pages, you'll ...

28 MR. HICKEY: Oh, I see what you're saying, yeah, sure,  
29 okay.

30 MR. O'FLAHERTY: Okay, and this talks about for  
31 private passenger vehicle, Class 10, 11, and 12, is 9  
32 percent, and all other classes are ... sorry, 9 percent, and  
33 all other classes are 11 percent.

34 MR. HICKEY: Yes.

35 MR. O'FLAHERTY: Okay, and then there's some  
36 different rates of commission which are payable on  
37 different vehicles.

38 MR. HICKEY: Sure, yeah.

39 MR. O'FLAHERTY: Alright, so then I take it then that  
40 the rates of commission which are chargeable for your  
41 voluntary market business ...

42 MR. HICKEY: Uh hum.

43 MR. O'FLAHERTY: Are roughly the same as the rates  
44 of commission which are chargeable for Facility  
45 Association business.

46 MR. HICKEY: Somewhat higher.

47 MR. O'FLAHERTY: Which one is higher?

48 *(1:15 p.m.)*

49 MR. HICKEY: All of them, the regular market ...

50 MR. O'FLAHERTY: No, which of the two parts of the  
51 market are higher?

52 MR. HICKEY: The regular voluntary market pays  
53 higher commission rates than the Facility market.

54 MR. O'FLAHERTY: Okay.

55 MR. HICKEY: Higher commission percentage.

56 MR. O'FLAHERTY: Higher commission percentages,  
57 okay, and there's been, and I don't want to revisit this  
58 in any great detail, but there was another hearing which  
59 dealt with the causes of surpluses, and also what  
60 should be done with surpluses from FA.

61 MR. HICKEY: Yeah, you're beyond my realm of ... I  
62 wasn't involved with that hearing.

63 MR. O'FLAHERTY: Okay, but I believe one of the  
64 points which was being made was that there was a  
65 percentage, because the premiums on average were  
66 higher in Facility, there was actually a greater net  
67 benefit to brokers.

68 MR. HICKEY: That was argued and I completely  
69 disagree with it.

1 MR. O'FLAHERTY: Sure.

2 MR. HICKEY: Okay.

3 MR. O'FLAHERTY: Okay, yeah.

4 MR. HICKEY: Yeah, okay, now I remember.

5 MR. O'FLAHERTY: That's no problem.

6 MR. HICKEY: Sure.

7 MR. O'FLAHERTY: I don't think it's a huge issue for  
8 this particular hearing, I'm just trying to explore the  
9 issue that when you said it was much less profitable to  
10 do the FA business in the province. Has this been  
11 studied by your association?

12 MR. HICKEY: Yes, to the extent that, well I shouldn't  
13 say it's by our association, there's been numerous  
14 consultants hired to analyze brokerage operations  
15 everywhere, and the handling and profitability of  
16 business is one of the issues, and I think it's a part of ...  
17 any business wants to figure out what it costs to do  
18 business because obviously that's, if you don't know  
19 what it costs you to do business, how can you ever  
20 make a profit. I certainly can say with great confidence  
21 that based on the labour, just the physical man hours it  
22 requires to handle Facility business, that there is, from  
23 my (inaudible) there's no incentive. I think if what  
24 you're sort of getting at is, is there an incentive for us  
25 to place Facility business because on a \$4,000 Facility  
26 premium we get X percent versus a lower rate.

27 MR. O'FLAHERTY: No, that's not where, and I'll only  
28 stop you because we're ...

29 MR. HICKEY: I'm not understanding your question.

30 MR. O'FLAHERTY: Well, I'll only stop you because  
31 we're a little pressed for time.

32 MR. HICKEY: Sure.

33 MR. O'FLAHERTY: I might give you an example, okay,  
34 in the business that I'm involved in ...

35 MR. HICKEY: Yeah.

36 MR. O'FLAHERTY: We sometimes think of doing real  
37 estate as a part of the business that we ... it's not as  
38 profitable as say, doing rate hearings before the PUB.

39 MR. HICKEY: I hear you.

40 MR. O'FLAHERTY: Okay, alright.

41 MR. HICKEY: Geez, an honest lawyer.

42 MR. O'FLAHERTY: So, but we don't have any  
43 statistical basis for us, ourselves, to say that. This is  
44 the impression that we have and we share as partners.

45 MR. HICKEY: Yes.

46 MR. O'FLAHERTY: Are we talking about the same  
47 thing here, that in your brokerage business you have  
48 an impression that this is much less profitable business,  
49 but you don't have any statistical evidence to indicate  
50 that?

51 MR. HICKEY: I know it's less profitable, I just don't  
52 know by how much.

53 MR. O'FLAHERTY: Okay.

54 MR. HICKEY: How about that for ...

55 MR. O'FLAHERTY: That's fine, that's fine.

56 MR. HICKEY: Okay.

57 MR. O'FLAHERTY: In any event, do you agree that by  
58 law you are required to make Facility business available  
59 to consumers?

60 MR. HICKEY: Yes, yes, sure.

61 MR. O'FLAHERTY: Okay.

62 MR. HICKEY: Yeah.

63 MR. O'FLAHERTY: And can I just ask you, and before  
64 I turn to some underwriting issues, I just want to ask  
65 you, were you around, and I know we're about the same  
66 age, were you around before insurance was mandatory  
67 in this province, automobile insurance?

68 MR. HICKEY: I'm not old enough to know if I would  
69 have cared, so I can't say, I'm not sure.

70 MR. O'FLAHERTY: Do you know if the number of  
71 independent brokerages grew as a result of the, sorry,  
72 the implementation of mandatory insurance in the  
73 province?

- 1 MR. HICKEY: I really don't know that.
- 2 MR. O'FLAHERTY: Okay, would you be prepared to  
3 agree with me that the fact that there is mandatory  
4 automobile insurance in the province contributes to the  
5 industry that you're involved in?
- 6 MR. HICKEY: Sure, that's fair.
- 7 MR. O'FLAHERTY: Okay, yeah, would you also agree  
8 that when you are describing your business with FA as  
9 much less profitable, you're comparing that to your  
10 regular business in the voluntary market.
- 11 MR. HICKEY: Yes, of course.
- 12 MR. O'FLAHERTY: Okay, now I want to look at some  
13 underwriting issues very quickly now, because I know  
14 that we're a little pressed for time today. I took from  
15 your evidence that the driving record of an insured, and  
16 by which, by that I mean both the number of accidents  
17 at fault FA may have had, and also in any convictions  
18 or moving violations they may have had.
- 19 MR. HICKEY: Yes.
- 20 MR. O'FLAHERTY: Is the primary underwriting criteria  
21 that's found in these underwriting manuals in your  
22 brokerage (inaudible).
- 23 MR. HICKEY: No, I wouldn't say it's a primary thing,  
24 it's just that that's the item which has the most variance  
25 and implications, to the extent that, okay, they had an  
26 accident but was it ... they need to define exactly for  
27 every year, how many years ago an accident was. If  
28 there was a conviction, was it one, was it two, was it  
29 three, was it four, what type they were, so just by it's  
30 nature it takes up a lot of time.
- 31 MR. O'FLAHERTY: Okay. When you were asked by  
32 Board counsel to talk a little bit about underwriting, on  
33 both occasions the first thing that you mentioned was  
34 the driving record of the individual.
- 35 MR. HICKEY: Yeah.
- 36 MR. O'FLAHERTY: Would it be fair to say that that's  
37 going to be one of the first inquiries that's going to be  
38 made of a person calling looking to place business  
39 through your office?
- 40 MR. HICKEY: Sure, because it certainly drives the  
41 premium calculation, it's tied to that, sure.
- 42 MR. O'FLAHERTY: Alright, and is it the case that  
43 coverage or insurance is often declined to consumers  
44 on the basis of their driving record?
- 45 MR. HICKEY: By the regular market, yes.
- 46 MR. O'FLAHERTY: By the regular market, yes.
- 47 MR. HICKEY: Yes.
- 48 MR. O'FLAHERTY: To be specific.
- 49 MR. HICKEY: Yeah, sure.
- 50 MR. O'FLAHERTY: Okay, I want to look at, just briefly,  
51 you've said, you adopted the list that was providing in  
52 undertaking number three as a reasonable  
53 representation of the reasons for which persons are  
54 placed in Facility.
- 55 MR. HICKEY: Sure, yeah.
- 56 MR. O'FLAHERTY: I want to look at the issue of senior  
57 citizens for a moment.
- 58 MR. HICKEY: Sure.
- 59 MR. O'FLAHERTY: Now, I believe your evidence was  
60 that certain insurers in the voluntary market may take  
61 seniors.
- 62 MR. HICKEY: Sure.
- 63 MR. O'FLAHERTY: Regardless of age.
- 64 MR. HICKEY: Not regardless of age, but they don't  
65 necessarily put a minimum age guideline, if you know  
66 what I mean, so maybe they'll take 75, but maybe they  
67 won't if you're 90, you know what I mean, like it's not a  
68 hard and fast ...
- 69 MR. O'FLAHERTY: Okay, and others may require a  
70 medical examination or certificate.
- 71 MR. HICKEY: Some have in the past, yes.
- 72 MR. O'FLAHERTY: Okay, and just in a hypothetical  
73 example, if you're representing, if you're in an

1 independent brokerage, and I'm not asking you about  
2 your own business.

3 MR. HICKEY: I know.

4 MR. O'FLAHERTY: In an independent brokerage that  
5 represents two or three or four insurers and each of  
6 those in the voluntary market either requires a medical  
7 certificate for a senior driver, or else doesn't insure  
8 senior drivers at all, where does that insured go for  
9 business?

10 MR. HICKEY: Are you saying if they all required a  
11 medical?

12 MR. O'FLAHERTY: I think we've accepted that, you  
13 know, that most of the brokerages don't represent all of  
14 the ...

15 MR. HICKEY: Sure.

16 MR. O'FLAHERTY: ... the insurers that are available in  
17 the market.

18 MR. HICKEY: Yeah, okay.

19 MR. O'FLAHERTY: And I also think that it's common  
20 ground that most of the business is done by ten or  
21 twelve companies.

22 MR. HICKEY: Sure, okay.

23 MR. O'FLAHERTY: Is that correct?

24 MR. HICKEY: Yes, oh yeah, definitely.

25 MR. O'FLAHERTY: Okay, let's say that you're a broker.

26 MR. HICKEY: Uh hum.

27 MR. O'FLAHERTY: And a senior citizen comes in but  
28 the companies you represent don't either take seniors,  
29 or else require a medical certificate and your client is  
30 not in a position to ...

31 MR. HICKEY: Where would they go?

32 MR. O'FLAHERTY: Where do they go?

33 MR. HICKEY: In a lot of cases if we have knowledge of  
34 someone who can help them we'll refer them, so I might  
35 phone another ... say, look, Joe, so and so called here,

36 I don't have a market but I understand you write for so  
37 and so and maybe they will, if we had that knowledge.

38 MR. O'FLAHERTY: Okay.

39 MR. HICKEY: You know, you try and do your best to  
40 sort of direct them to somewhere.

41 MR. O'FLAHERTY: Is it possible that some of those  
42 individuals find their way into Facility through either  
43 client loyalty to the same brokerage, or because they're  
44 not referred on to another brokerage?

45 MR. HICKEY: Quite possible because I mean you  
46 wouldn't necessarily know because the market is always  
47 changing, so we don't ... I can't know all the  
48 underwriting rules of every company that I don't do  
49 business with.

50 MR. O'FLAHERTY: Sure.

51 MR. HICKEY: So if someone in our office didn't have  
52 knowledge of something like that, I can't see, they  
53 wouldn't ... or if it's just, for example, a phone in inquiry  
54 where you never really have the conversation with the  
55 person, it may not even go that far, you give them the  
56 rate and just click, so ...

57 MR. O'FLAHERTY: Yeah, okay, no problem, I think  
58 this is fairly speculative anyways, and I appreciate your  
59 frankness.

60 MR. HICKEY: Okay.

61 MR. O'FLAHERTY: Now, you made the statement in  
62 your evidence, and I'm paraphrasing, I was trying to  
63 write it down as quickly as possible.

64 MR. HICKEY: Sure.

65 MR. O'FLAHERTY: That when companies perceive the  
66 market as unprofitable, they are much more selective  
67 with their risks and more persons are therefore placed  
68 in FA.

69 MR. HICKEY: Sure.

70 MR. O'FLAHERTY: Is that the situation that we're  
71 facing today?

72 MR. HICKEY: I think so, yeah.



1 MR. O'FLAHERTY: Okay, and in that sort of an  
2 environment, do issues such as bad credit become  
3 important to a particular client that comes to you?

4 MR. HICKEY: Bad credit only to the extent that it deals  
5 with insurance.

6 MR. O'FLAHERTY: Okay.

7 MR. HICKEY: In other words, if someone comes to me  
8 that they've got cancelled for nonpayment of premium,  
9 right now it's very difficult for us to place that piece of  
10 business.

11 MR. O'FLAHERTY: That's a very good point, and it's  
12 not to do with whether they defaulted on their student  
13 loan ten years ago.

14 MR. HICKEY: Yeah.

15 MR. O'FLAHERTY: It has to be insurance industry  
16 specific.

17 MR. HICKEY: Yeah, as far as I know.

18 MR. O'FLAHERTY: Okay.

19 MR. HICKEY: That's the only guideline I'd ...

20 MR. O'FLAHERTY: Okay, is it fair to say that that is an  
21 important consideration in a tight market?

22 MR. HICKEY: Sure.

23 MR. O'FLAHERTY: And that can drive persons into  
24 FA?

25 MR. HICKEY: Definitely.

26 MR. O'FLAHERTY: Okay, now you've also talked  
27 about, and Mr. Stamp in his questioning pointed out  
28 that some of the issues surrounding capital adequacy  
29 and the capacity in a market are in effect global or  
30 international issues.

31 MR. HICKEY: Uh hum.

32 MR. O'FLAHERTY: Rather than Newfoundland issues.

33 MR. HICKEY: Sure.

34 MR. O'FLAHERTY: Newfoundland and Labrador  
35 issues.

36 MR. HICKEY: Uh hum.

37 MR. O'FLAHERTY: Okay, is it fair to say that the  
38 capital crunch is not only in the auto insurance  
39 industry?

40 MR. HICKEY: No, no, it's probably, it's more in the  
41 auto insurance industry in that because the results  
42 there have been bad, that's the one that they're looking  
43 at, they've got the most problems to allocating capital  
44 to.

45 MR. O'FLAHERTY: Okay.

46 MR. HICKEY: So, no, I mean if an industry has a  
47 capital crunch, they have a capital crunch, it doesn't  
48 really matter why they have it. Where it filters down, I  
49 guess, to our level, is what they decide to do about it.

50 MR. O'FLAHERTY: Okay.

51 MR. HICKEY: And I guess what they decided to do  
52 was try and withdraw capital out of the least profitable  
53 lines, which in a lot of cases becomes automobile.

54 MR. O'FLAHERTY: I think you made the statement that  
55 this is the worst bottom cycle in the history of the  
56 business in your ...

57 MR. HICKEY: Since I've been in the business, and I  
58 think the industry is (inaudible) for 2001 to show that it  
59 was the worst year, I think, in history.

60 MR. O'FLAHERTY: Alright, and are you referring to  
61 the auto business only, or the property and casualty  
62 business?

63 MR. HICKEY: No, the property and casualty business.

64 MR. O'FLAHERTY: Okay, the property and casualty  
65 business.

66 MR. HICKEY: Yeah.

67 MR. O'FLAHERTY: So then this is a property casualty  
68 issue as well as an automobile insurance issue?

69 MR. HICKEY: Sure, yes.

1 MR. O'FLAHERTY: Alright, and the last couple of  
2 years have been very poor years for insurers  
3 internationally, haven't they?

4 MR. HICKEY: Yes.

5 MR. O'FLAHERTY: Okay, and all of these issues are  
6 contributing to the tightening of underwriting rules in  
7 the province?

8 MR. HICKEY: I mean, you know, in my opinion, yes, all  
9 of it, I mean there's obviously local factors, you know,  
10 the local factors are predominant, but this is the  
11 background to it.

12 MR. O'FLAHERTY: Now, are you, if you don't mind  
13 telling me, and if you do, please state as much.

14 MR. HICKEY: Sure.

15 MR. O'FLAHERTY: Do you represent Pembridge and  
16 Pavco business in the province?

17 MR. HICKEY: Yes.

18 MR. O'FLAHERTY: Okay, now you made the statement  
19 on a couple of occasions that they want the best of the  
20 worst, that's what they're looking for.

21 MR. HICKEY: Yes, yeah.

22 MR. O'FLAHERTY: Would that be a fair summation of  
23 who they're looking for?

24 MR. HICKEY: Sure, yeah, yeah.

25 MR. O'FLAHERTY: Does Pembridge's withdrawal, you  
26 know, or threatened withdrawal from the market, does  
27 that coincide with this bottom cycle that we've just  
28 described?

29 MR. HICKEY: We're in the unique situation, I think  
30 that's part of it, and the other part of it is, I can't  
31 remember a time in the past, and I could be wrong, but  
32 I can't remember where the Facility market and the  
33 regular market have become so closely aligned at some  
34 of the bottom driving records, so it's sort of strange  
35 situation. I'm not sure why it is that, you know, we've  
36 got that situation right now. I think there's been some  
37 structural delays in the way rate increases have gone  
38 through, etcetera, etcetera, but if I've got a situation  
39 with these guys because they specialize in that, in

40 trying to get in between the Facility and the regular  
41 market right now, they'd have no, they can't do that, so  
42 therefore they have no reason to do business because  
43 they can't do what they got to do. I don't know if that's  
44 clear.

45 MR. O'FLAHERTY: By means of the operation of the  
46 market, their particular segment has been squeezed.

47 MR. HICKEY: Yes.

48 MR. O'FLAHERTY: Okay, but leaving that aside ...

49 MR. HICKEY: Sure.

50 MR. O'FLAHERTY: ... does Pembridge's withdrawal or  
51 threatened withdrawal from the market also coincide  
52 with this bottom cycle globally that you've talked  
53 about?

54 MR. HICKEY: I can't comment on that because it's not  
55 like they're doing it ... I really don't know because if,  
56 obviously ...

57 MR. O'FLAHERTY: I wasn't, no, I'm sorry, Mr. Hickey,  
58 I don't mean to interrupt you.

59 MR. HICKEY: That's okay.

60 MR. O'FLAHERTY: I wasn't talking about the reason  
61 for it, I'm thinking of the timing of it.

62 MR. HICKEY: Oh, it does coincide, sure, yeah.

63 MR. O'FLAHERTY: In terms of timing?

64 MR. HICKEY: Yes, definitely, yeah.

65 MR. O'FLAHERTY: Alright, and I think it's, I gather  
66 from your evidence that this is another reason, if they  
67 do actually withdraw, this is another reason that FA's  
68 book is likely to grow again next year.

69 MR. HICKEY: Yes.

70 MR. O'FLAHERTY: Okay, and would you also agree  
71 that if Pembridge or Pavco are insuring presently the  
72 best of the worst, that this would have the effect of  
73 putting better risks into FA than presently populate  
74 FA.

1 MR. HICKEY: That could happen assuming ... it all  
2 depends on how much the regular market picks up, you  
3 know, it depends on which way it goes. I mean there's  
4 a whole bunch of factors around that, right, but yeah,  
5 it could certainly be a lot of, a significant portion of  
6 business will fall back into Facility for sure.

7 MR. O'FLAHERTY: Okay, and the business that Pavco  
8 represents is better than the risks that are in FA right  
9 now.

10 MR. HICKEY: We certainly hope so.

11 MR. O'FLAHERTY: Okay, but the risks that are in FA  
12 right now are the ones upon which the rate application  
13 is being brought to the Board.

14 MR. HICKEY: Yes.

15 MR. O'FLAHERTY: And better risks are now going to  
16 populate FA next year if the scenario comes true.

17 MR. HICKEY: That could happen, yes.

18 MR. O'FLAHERTY: Okay.

19 MR. HICKEY: Yeah.

20 MR. O'FLAHERTY: I'm almost finished, Mr. Chairman,  
21 I'm sorry, I ...

22 MR. SAUNDERS, PRESIDING CHAIRMAN: Carry on,  
23 Mr. O'Flaherty.

24 MR. O'FLAHERTY: You mentioned the withdrawal of  
25 ING from the market.

26 MR. HICKEY: Uh hum.

27 MR. O'FLAHERTY: Is ING a grey market insurer?

28 MR. HICKEY: No, no, they are a regular voluntary  
29 market.

30 MR. O'FLAHERTY: Voluntary market insurer.

31 MR. HICKEY: Yeah.

32 MR. O'FLAHERTY: And their stated reason was the  
33 size of the market, in fact, wasn't it?

34 MR. HICKEY: Uh hum, yes.

35 MR. O'FLAHERTY: So they couldn't make money on  
36 such a small market as Newfoundland.

37 MR. HICKEY: No, it was just they have the corporate  
38 philosophy ... they're actually profitable but they have  
39 a corporate philosophy that they want to be a top three  
40 player and they didn't think the market conditions here,  
41 the environment would allow for that, so ...

42 MR. O'FLAHERTY: Okay, so it wasn't as a result of  
43 lack of profitability, it was a result of where they wanted  
44 to position themselves in the market.

45 MR. HICKEY: Yes.

46 MR. O'FLAHERTY: Okay, thank you. In terms of Bill  
47 28, you made some, you gave some testimony with  
48 respect to that. Doesn't Ontario have essentially the  
49 same consumer protection legislation as Newfoundland  
50 has now (inaudible)?

51 MR. HICKEY: Yes, I think it's also, in fact, I think that's  
52 where it was drawn from.

53 MR. O'FLAHERTY: Okay, and are you aware whether  
54 or not that's had a negative impact on availability of  
55 capital in that market?

56 MR. HICKEY: I'm really not, I wouldn't consider myself  
57 qualified to do that, other than what I've been told by  
58 insurance companies. Obviously insurance companies  
59 don't like that, and you know, the market up there is not  
60 in very good shape either so ... but I'm not really  
61 qualified, I don't think, to say if that's the reason or not.

62 MR. O'FLAHERTY: But you saw it as a bad thing for  
63 the Newfoundland market.

64 MR. HICKEY: Sure, because we're not Ontario, and  
65 there's some structure, there's some differences that  
66 have to be realized here.

67 MR. O'FLAHERTY: Right, primarily the size of the  
68 market.

69 MR. HICKEY: No, well, yeah, primarily the size of the  
70 market to the extent that a lot of those reforms which  
71 were enacted (*phonetic*) in Ontario came as part of a  
72 broad package of other reforms, some which were good  
73 for the industry, some which were bad, but it was give  
74 and take and they worked on some tort reform, and  
75 worked on a whole bunch of things and came up with

1 all this stuff. The situation we're in here is it's being  
2 done at a bad time in the market. There is no cost  
3 control mechanisms being put in on the other side, so  
4 there is nothing but a, from an insurance company's  
5 perception anyway, there's a perception that, you  
6 know, it's obviously going to make doing business and  
7 selecting risk even more difficult than it already is ... it's  
8 not profitable so therefore, you know, they're attacking  
9 the core of what they do, which is select risk, so  
10 therefore, you know, there is an underlying implication,  
11 obviously, that that's going to be bad and it may cause  
12 ...

13 MR. O'FLAHERTY: Would you agree with the general  
14 statement that consumer protection legislation is  
15 generally always opposed by participants in private  
16 industry?

17 MR. HICKEY: I think that's fair.

18 MR. O'FLAHERTY: I don't have any further questions  
19 of this witness, Mr. Chairman, thank you for your  
20 patience, Mr. Hickey.

21 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
22 you, Mr. O'Flaherty. It's 1:30. Do you have anything  
23 on redirect?

24 MS. NEWMAN: I don't.

25 MR. SAUNDERS, PRESIDING CHAIRMAN: You don't.  
26 Do you have any questions?

27 COMMISSIONER POWELL: I have a couple of items.

28 MR. SAUNDERS, PRESIDING CHAIRMAN: Are you  
29 going to be very long?

30 COMMISSIONER POWELL: No, not long.

31 MR. SAUNDERS, PRESIDING CHAIRMAN: Is there  
32 any problem in trying to finish with Mr. Hickey this  
33 morning?

34 MR. O'FLAHERTY: There's no problem from my  
35 perspective?

36 MR. SAUNDERS, PRESIDING CHAIRMAN: No  
37 problem? Okay, I'd like to do that so as to not  
38 inconvenience him any more than is necessary, so  
39 Commissioner Powell?

40 COMMISSIONER POWELL: Thank you, sir.

41 MR. SAUNDERS, PRESIDING CHAIRMAN: You're  
42 going to keep it brief, you said.

43 COMMISSIONER POWELL: Yes, oh yes, I'm always  
44 brief. I don't have any questions, I just want a little bit  
45 of clarity, probably questions based more on my  
46 ignorance than anything that's been said.

47 *(1:30 p.m.)*

48 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

49 COMMISSIONER POWELL: You just write business  
50 for Facility for Sun Alliance, or Royal Sun Alliance.

51 MR. HICKEY: Correct.

52 COMMISSIONER POWELL: Would it make any  
53 difference if you were able to place Facility with the  
54 other three carriers?

55 MR. HICKEY: No, because they're all, it's an identical  
56 servicing carrier arrangement, so, you know, the same  
57 terms and conditions would apply.

58 COMMISSIONER POWELL: Okay, so there's no  
59 competition within ...

60 MR. HICKEY: No, no.

61 COMMISSIONER POWELL: When I go in buying  
62 insurance, Facility or ... insurance period, does it make  
63 any difference of the time of the year?

64 MR. HICKEY: No.

65 COMMISSIONER POWELL: Like the beginning of the  
66 year they're starting off from square one, looking at  
67 more business ... then they get back in the year and  
68 they say, gee, we're getting sort of filled up, our risks  
69 are higher?

70 MR. HICKEY: That would only be at play if you were  
71 dealing with an insurance company that had maybe a  
72 capital issue and as the year went by the weren't, they  
73 didn't have enough capital to support additional  
74 writing, so theoretically, I guess, at the end of the year,  
75 if an insurance company had a capital problem and  
76 couldn't take on more business it might matter.

1 COMMISSIONER POWELL: Okay.

2 MR. HICKEY: But I think that's a fairly, I don't know if  
3 that's something that would really be in issue around  
4 here or not.

5 COMMISSIONER POWELL: You haven't experienced  
6 that.

7 MR. HICKEY: No.

8 COMMISSIONER POWELL: Okay, when I come in to  
9 Hickey to get my insurance, does the fact that, or if I  
10 came in my with my 17 year old son's business, does  
11 the fact that he has a family, we've been dealing with  
12 you for 25 years come into play in terms of placing that  
13 young fellow into ...

14 MR. HICKEY: That would depend. It doesn't matter  
15 that you're dealing with me for 25 years, other than the  
16 fact that I could go to the insurance company on your  
17 behalf and advocate, and say look, we've known his  
18 family for this many years, he's responsible, blah, blah,  
19 blah, and then it's up to the insurance company to make  
20 the decision. It doesn't matter to the insurance  
21 company because they're looking at relationships like  
22 anyone else, so I think the reality of it is, if you're a  
23 long-term client and they're comfortable, I think what  
24 the insurance (inaudible) know who they're dealing with  
25 in a lot of cases. I think it's fair to say that you've got  
26 a better chance of getting an accommodation from them  
27 for something they might not do for someone who just  
28 showed up off the street. I think that's a fact of life that  
29 you're going to find in any business, so they may, as a  
30 rule they may say, you know, we prefer not to insure 16  
31 year old males with no driving experience. For a long-  
32 term client they may be willing to look at an  
33 accommodation on something like that, sure.

34 COMMISSIONER POWELL: So if I'm 75 years old and  
35 I've been dealing with Hickey and Sons for the last 35  
36 years, there's a good chance that FA wouldn't be an  
37 option for me if my driving record and everything else  
38 was ...

39 MR. HICKEY: Once again, it all depends, it depends on  
40 the insurance company you're placed with, their results,  
41 the state of the market at the time. I think that's where  
42 you get into the ability of insurance companies to  
43 subjectively look at some things that are grey.

44 COMMISSIONER POWELL: On that application, on  
45 my renewal, if I went from 40 to 50 to 60 to 70 each year,  
46 the policy, you're making the renewal on my behalf.

47 MR. HICKEY: Yes.

48 COMMISSIONER POWELL: The policy comes down  
49 from the insurance company to you to send to me.

50 MR. HICKEY: Yeah.

51 COMMISSIONER POWELL: Would you then, you  
52 look at that ...

53 MR. HICKEY: Yes.

54 COMMISSIONER POWELL: To determine if they  
55 increased my rating beyond what was normal.

56 MR. HICKEY: Sure, yeah.

57 COMMISSIONER POWELL: So you have no reason to  
58 think ...

59 MR. HICKEY: That they ... are you suggesting that like  
60 they would automatically put you into Facility or ...

61 COMMISSIONER POWELL: Yes.

62 MR. HICKEY: No, in fact, I'm really not, just based on  
63 my experience with the number of carriers who write ...  
64 I'm not aware of any one of them who have actively, at  
65 least from my experience, really doing an active calling  
66 of senior citizens ... I don't believe it exists in the  
67 industry, I don't think companies have been doing it.  
68 What happens is something comes up, for example,  
69 sometimes if there's an accident that caused an  
70 investigation and they determined maybe the person's  
71 health, or whatever, for a bunch of reasons, it might get  
72 looked at then, but from my experience, you know, it's  
73 basically if there's not a problem, it gets left alone, so  
74 certainly up to very old ... I think the only, sometimes  
75 once you start seeing older senior citizens, they might  
76 start asking for a medical prior to renewal, that's a  
77 standard thing, but in terms of just an active case,  
78 you're 70 years old, or 75, Facility ... I haven't seen any  
79 sign of that, at least from my experience.

80 COMMISSIONER POWELL: You were saying the, I  
81 come in, I pay my premium and you put that in an  
82 account and at the end of the month, or shortly  
83 thereafter, you get a statement from the insurance

1 company, you cut them a cheque for whatever they  
2 say.

3 MR. HICKEY: Yes.

4 COMMISSIONER POWELL: That statement that you  
5 get from, well you used Royal as an example, does that  
6 include the Facility business on that, or is that a  
7 separate statement?

8 MR. HICKEY: You get a totally separate statement for  
9 Facility business.

10 COMMISSIONER POWELL: From Royal or from  
11 Facility?

12 MR. HICKEY: From Royal directly. They make great  
13 pains to distinct it, it's printed on a different colour  
14 paper and everything else, and ...

15 COMMISSIONER POWELL: So you really don't have  
16 any contact with Facility itself.

17 MR. HICKEY: None.

18 COMMISSIONER POWELL: Other than filling out the  
19 applications for them on behalf of Royal, or Royal on  
20 behalf of Facility?

21 MR. HICKEY: Well, even the applications are  
22 submitted to Royal. Like Facility is completely  
23 separated from the broker. I guess the servicing carrier  
24 would have more dealings with them, but the role of the  
25 broker is mostly the active placement of business for  
26 the consumer and the servicing for the consumer. We  
27 have no contact with Facility at all, other than receiving  
28 manual updates and things like that.

29 COMMISSIONER POWELL: So the computerization of  
30 the data actually is because Royal hasn't provided you,  
31 not because ... not whether ... and it's between Royal  
32 and Facility as opposed to you and Facility, right?

33 MR. HICKEY: Yes.

34 COMMISSIONER POWELL: Okay, competition, you  
35 mentioned that there are fewer people in the market here  
36 now. One of the questions I asked Mr. Morris is that  
37 Newfoundland, we have roughly 50 insurance  
38 providers to 500,000. I mean in the absence of anything  
39 else, it seems to be, you know, fairly competitive, even  
40 though there's a small portion that writes most of the

41 insurance. Do you have any knowledge of how we  
42 would fit in with, per capita with the other Atlantic  
43 Provinces, or right across the country?

44 MR. HICKEY: I can't comment on that, only to say that  
45 our industry here is much more concentrated in terms of  
46 like in automobile insurance, I think the top three  
47 players have 50 percent of the market or more, so what's  
48 left is obviously competed for by, I would have called  
49 it second tier players who aren't quite as big, so I would  
50 think, I'd feel fairly confident in saying that there's  
51 certainly less insurer competition here for our business,  
52 I would think on a per capita basis as well, mainly  
53 because some of the larger companies who could bring  
54 a lot of product and a lot of expertise here aren't here.  
55 There's lots of, there's some smaller line insurers, but  
56 when it comes to automobile insurance, if you look at  
57 the top ten, top twelve companies, I think there's only  
58 five or six that even do business here, so you would  
59 think that we'd like to at least have adequate  
60 representation from the major players because the major  
61 plays add, in my opinion, add stability and add  
62 competition to the marketplace, right.

63 COMMISSIONER POWELL: But why do those three  
64 companies do so much business? Are they better at  
65 promoting themselves, or is the consumer unaware of  
66 the fact that they do have choices?

67 MR. HICKEY: It's been through, because of a  
68 combination of growth and through some acquisitions  
69 of local insurance companies.

70 COMMISSIONER POWELL: But still, if it's a very  
71 competitive market, as you get bigger, sometimes you  
72 get more expensive as opposed to getting cheaper, so  
73 ... as you're aware, the rates are set in the benchmark ...  
74 we approve rates on a low range, a high range. When  
75 your book of rates you get from Royal, do you just get  
76 coverage rates, or do you get a range in there in terms  
77 of ...

78 MR. HICKEY: From, for the Facility manual?

79 COMMISSIONER POWELL: No, just for general  
80 insurance now.

81 MR. HICKEY: Oh, you get a manual which has rates for  
82 all classes, all territories, all driving records.

83 COMMISSIONER POWELL: But do you have a range  
84 for liability insurance? If I come in, you're going to sell

me a policy on the various coverages, liability, collision, comprehensive, and that, do you have a range of rates in there?

MR. HICKEY: No, the rate is just a rate.

COMMISSIONER POWELL: The rate is what the insurance company gave you.

MR. HICKEY: Yeah, so as a broker we'll look at a bunch of different insurance companies or however many we represent for that line of business, and that's where sort of the choice comes in as to a range of rates and coverages.

COMMISSIONER POWELL: You total all that, the coverage I want, and dictate and say I can put you at this for X dollars and that company for X, plus or minus.

MR. HICKEY: Yes, exactly, yes.

COMMISSIONER POWELL: So you don't, so you're not aware of how the company is pricing that product with their posted rates they have already published with the ...

MR. HICKEY: Oh, with the PUB?

COMMISSIONER POWELL: Yes, right.

MR. HICKEY: No, well, I wouldn't be exposed to that.

COMMISSIONER POWELL: So you don't know whether those rates are, they're quoting at the high end of the scale or the low end of the scale, or in between.

MR. HICKEY: Oh, you mean versus like what the benchmark is?

COMMISSIONER POWELL: Yes.

MR. HICKEY: I know versus, I know just from being competitive out in the street. I mean you'll hear what companies ... well, for one thing, for the companies I have, I have their rates, and for those that you don't have, eventually you discover in the competitive process, which companies are cheap and which ones aren't, and how they're positioned, and that sort of tends to work itself out over time.

COMMISSIONER POWELL: Alright, what, have you been following the hearings ... there was some question, there's proposals, I wouldn't say questions, there's proposed in the rate increases of surcharges and discounts for drivers in the FA. Do you have any view on the effectiveness of having a surcharge built into a rate in terms of controlling the people in and out of Facility, or motivated?

MR. HICKEY: In terms of ... I'm not sure of from what perspective.

COMMISSIONER POWELL: We're talking about a surcharge in FA rates for conviction to, on the theory that the ...

MR. HICKEY: Oh, increase the surcharge.

COMMISSIONER POWELL: Yes.

MR. HICKEY: I really wouldn't be qualified to talk about that other than, you know, whatever, if it's actuarially needed, other than to say that ... I don't think I could really add to that. It's, I really don't know.

COMMISSIONER POWELL: You don't know if that would motivate people in terms of their improving their driving record?

MR. HICKEY: Oh, in terms of the behaviour of the consumer ... I don't think that's been ... there's so many factors that govern people's vehicle driving. It's hard for me to ... I'd just be guessing, I don't think I'd have ... I don't know if ...

COMMISSIONER POWELL: Would you, explaining to somebody why their rate has gone from \$2,500 to \$3,500, and saying well, because you had a conviction, we have to put this surcharge on of 200 percent.

MR. HICKEY: Oh, I see, okay.

COMMISSIONER POWELL: Yeah.

MR. HICKEY: Yeah, well certainly that's going to, you know, impact that person. That's certainly using the stick instead of the carrot, that's for sure, but, you know, I think that goes for any insurance, I mean because it's not just Facility, I mean rates are going up with the regular market too, so you know, it's ... I don't know how effective, you know, surcharging people, I don't think when they're behind the wheel if they're

1 thinking, if I get this ... they think about the cost of their  
2 insurance after something happens, unfortunately, in a  
3 lot of cases, I think, and not before, but I really don't ...  
4 you know, I'm really just speculating, I don't think I  
5 could add anything meaningful to that.

6 COMMISSIONER POWELL: One final question, what  
7 determines if a broker can write for an insurance  
8 provider?

9 MR. HICKEY: A regular carrier?

10 COMMISSIONER POWELL: Yes.

11 MR. HICKEY: It depends on your mix of business,  
12 your size, what that carrier's objectives are, and the  
13 territory you're in, do you write good business to start  
14 with, can you produce profitable business for that  
15 insurance company, there's a whole range of factors.

16 COMMISSIONER POWELL: So would you as a broker  
17 make application to all the insurance providers to write  
18 coverage for them, or would you just select the ones  
19 that you ...

20 MR. HICKEY: Oh, you mean when it comes to actually,  
21 for me to form a contractual relationship, or placing  
22 business for my clients?

23 COMMISSIONER POWELL: There's 50, say there's 50  
24 insurance providers right now, you have a contractual  
25 arrangement with Royal.

26 MR. HICKEY: Uh hum.

27 COMMISSIONER POWELL: The other 49, can you  
28 write business for them if you ...

29 MR. HICKEY: Well, I'm a broker so I would write for ...  
30 like I've got 10, 8 or 10 other markets besides Royal, and  
31 they would be primarily for ... I'm talking about regular  
32 automobile business now.

33 COMMISSIONER POWELL: Uh hum.

34 MR. HICKEY: You'd have to have a contractual  
35 relationship in most cases to do business with those  
36 companies, so a broker can't just say well, geez, I  
37 noticed that Company XYZ is competitive, I think I'll  
38 send an app over to them and see if they'll take it. It  
39 doesn't work like that. You have to have a contract in

40 place with binding authority and everything else before  
41 you can do business, so it's not like an open market?

42 COMMISSIONER POWELL: So who initiates that?  
43 Would that be the insurance provider looking for  
44 brokers like you to represent them?

45 MR. HICKEY: It goes both ways.

46 COMMISSIONER POWELL: Would that have any  
47 impact on the lack of competition since where the top  
48 three has most of the business because there's not  
49 enough independent brokers out there promoting the  
50 other insurance providers.

51 MR. HICKEY: No, it's more a case of the last few years,  
52 and right now that the companies are just not confident  
53 that they can come in here and do business profitably  
54 because of all the things we've been talking about here,  
55 so for example, I think most of us as brokers have  
56 approached lots of companies over the years and  
57 they've all got their own reasons why they don't want  
58 to do business here.

59 COMMISSIONER POWELL: And what about the 48  
60 who are here that are not, that have such a small  
61 portion of the market?

62 MR. HICKEY: Well, a lot of those guys, you've got to  
63 remember that they may have business here for other  
64 reasons. For example, they may have a national  
65 program for an employer who has a bunch of  
66 employees in Newfoundland, so they cover those  
67 employees but they have no desire to actually come in  
68 here on a full basis and do business, so there's all kinds  
69 of factors that would justify or would explain why  
70 there's that many markets here, okay.

71 COMMISSIONER POWELL: Thank you.

72 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
73 thank you, Commissioner Powell. Commissioner  
74 Martin?

75 COMMISSIONER MARTIN: I have no questions.

76 MR. SAUNDERS, PRESIDING CHAIRMAN: No  
77 questions, I have no questions, thank you, Mr. Hickey.

78 MR. HICKEY: Thank you. Ms. Newman?

79 COMMISSIONER POWELL: Any ...



1 MR. SAUNDERS, PRESIDING CHAIRMAN: Pardon?

2 COMMISSIONER POWELL: Any rebuttal?

3 MR. SAUNDERS, PRESIDING CHAIRMAN: Oh,  
4 anything arising, I'm sorry.

5 MR. O'FLAHERTY: Nothing arising from the Consumer  
6 Advocate.

7 MR. SAUNDERS, PRESIDING CHAIRMAN: Nothing  
8 arising?

9 MS. NEWMAN: Nothing arising, no.

10 MR. SAUNDERS, PRESIDING CHAIRMAN: Nothing  
11 arising, so we're at the end of the morning, or the  
12 afternoon now, I guess it is.

13 MS. NEWMAN: Uh hum.

14 MR. SAUNDERS, PRESIDING CHAIRMAN: When we  
15 resume in the morning we'll be commencing with the  
16 public presentations.

17 MS. NEWMAN: Yes, and thereafter we will resume  
18 with the next witness that I propose to call which is Mr.  
19 Anthony.

20 MR. SAUNDERS, PRESIDING CHAIRMAN: And Mr.  
21 Anthony will ... do we have any idea when that will be  
22 ... that will be late morning, I would assume, if your  
23 timing estimate is right.

24 MS. NEWMAN: Yes, I expect sometime around quarter  
25 after 11:00, 11:30.

26 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

27 MR. WHALEN, Q.C.: Mr. Chairman, what is the  
28 process with the people who are coming in? They're  
29 just making presentations, they're not witnesses as  
30 such, are they? What is the ... or are they?

31 MS. NEWMAN: Generally, yes, they are sworn. That's  
32 the normal process unless anybody has any comments  
33 on that. You will have the opportunity to ask them  
34 questions, that's the normal process.

35 MR. SAUNDERS, PRESIDING CHAIRMAN: With oral  
36 presentations they're normally sworn, unless they don't  
37 want to be for some reason.

38 MR. WHALEN, Q.C.: No, no, I was just wondering  
39 whether we'd be questioning.

40 MR. SAUNDERS, PRESIDING CHAIRMAN: Then we  
41 would make the rounds to see if there are any questions  
42 that any of the parties have, and it's a very, usually a  
43 very simple process and it will be helpful if we can get  
44 the presentations circulated in advance of the  
45 commencement of the hearing, so I'll leave that to you,  
46 Ms. Newman.

47 MS. NEWMAN: We'll do our best to get those out as  
48 soon as possible.

49 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
50 thanks very much.

51 MR. STAMP, Q.C.: They won't be available today by  
52 any chance, is that ...

53 MS. NEWMAN: We're not sure, they're trying to get  
54 them to us as soon as possible, we don't have them yet.

55 MR. STAMP, Q.C.: If that was possible by fax or  
56 something, Mr. Chairman, it would be very helpful.

57 MS. NEWMAN: As soon as we have them we'll  
58 circulate them.

59 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

60 MR. WHALEN, Q.C.: Thank you.

61 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
62 you.

63 MR. O'FLAHERTY: Thank you, Mr. Chairman.

64 *(hearing adjourned to January 14, 2003)*

65