

1 (9:10 a.m.)

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Ms.  
3 Newman, what do we have this morning?

4 MS. NEWMAN: Yes. I haven't been told that there are  
5 any preliminary matters, so I guess we can get under  
6 way with our public presentations.

7 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

8 MS. NEWMAN: The first individual present,  
9 presenting this morning is Jennifer Power of CGU.

10 MR. SAUNDERS, PRESIDING CHAIRMAN: Good  
11 morning, Ms. Power. Do you wish to be sworn? Do  
12 you intend to give evidence?

13 MS. POWER: Yes.

14 MR. SAUNDERS, PRESIDING CHAIRMAN: You do.  
15 Can you take the Bible in your right hand, please? Do  
16 you swear that in the evidence you're about to give you  
17 will tell the truth, the whole truth and nothing but the  
18 truth, so help you God?

19 MS. POWER: I do.

20 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
21 you.

22 MS. POWER: I'm just going to start by giving you a  
23 brief history of the CGU Group. CGU Group Canada is  
24 very pleased to present this brief to the Newfoundland  
25 and Labrador Public Utilities Board in regard to the rate  
26 review hearing for Facility Association. CGU Group is  
27 one of the leading property and casualty insurance  
28 groups in Canada. It's a wholly-owned subsidiary of  
29 Aviva TLC (phonetic), a UK based group, one of the  
30 world's largest insurance groups. CGU is committed to  
31 providing an excellent range of products and quality  
32 service to our customers. To fulfill this commitment we  
33 have five (sic) companies operating under our umbrella,  
34 including CGU Insurance Company, Elite Insurance  
35 Company, Scottish and York Insurance Company and  
36 Traders General Insurance Company. These four write  
37 automobile insurance in Newfoundland.

38 MR. SAUNDERS, PRESIDING CHAIRMAN: Ms.  
39 Power, I just wanted to stop you for a moment.

40 MS. POWER: Sure.

41 MR. SAUNDERS, PRESIDING CHAIRMAN: Just to  
42 get on the record what your name and position with  
43 CGU Group is so that ...

44 MS. POWER: You know who I am.

45 MR. SAUNDERS, PRESIDING CHAIRMAN: ... we  
46 know who you are.

47 MS. POWER: My name is Jennifer Power and I'm the  
48 Senior Vice-President of Operations for the Atlantic  
49 Region for CGU Canada.

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

52 MS. POWER: As I said, these four CGU Group  
53 companies write automobile insurance in  
54 Newfoundland and Labrador. Each company writes  
55 business through a broker distribution network, each  
56 targeting a specific segment of personal automobile  
57 insurance. CGU Insurance Company targets the  
58 traditional broker produced business, Elite writes non-  
59 standard automobile business, Scottish and York writes  
60 through a single broker channel and Traders writes  
61 strictly personal line for a variety of employee and  
62 professional association groups.

63 CGU Group was formed in 1998 following the  
64 merger and amalgamation of three companies, General  
65 Accident Assurance Company of Canada, Canadian  
66 General Insurance Group of Canada and Commercial  
67 Union Assurance Company of Canada. In 2000, CGU  
68 Group also acquired the business of Gann (phonetic)  
69 Company of Canada. That gives you a brief  
70 introduction to who we are.

71 In Newfoundland and Labrador, CGU is the  
72 largest automobile insurance writer with writings of  
73 over 43 million and a market share of 23 percent at the  
74 end of 2001. Those are gross written premiums. As  
75 most of us are no doubt aware, insurance is a necessity  
76 in our ever changing world. Operating on the basis of  
77 using the premiums of the many to pay for the financial  
78 losses of the few, it is a mechanism for spreading risk.  
79 The Facility Association serves the purpose of making  
80 automobile insurance available to all who need it when  
81 they cannot get insurance through the regular market.  
82 FA is a non-profit organization, intended simply to run  
83 at a break even loss ratio. The problem we face today  
84 is that there is not enough premium collected by the  
85 Facility Association in Newfoundland to pay for the

1 losses. At the end of 2001, CGU wrote 29 million  
2 regular market automobile business in the Province of  
3 Newfoundland and Labrador with an underwriting loss  
4 of just over 3.5 million. In comparison, CGU's Facility  
5 assessment of 2.2 million resulted in an assessed  
6 underwriting loss of 1.4 million. This is a striking  
7 comparison. The FA business represents less than 10  
8 percent of CGU Insurance Company's regular market  
9 automobile writings, yet the Facility business  
10 represents 40 percent of the total underwriting loss in  
11 2001 for CGU Insurance Company in Newfoundland.  
12 Current premium levels are clearly inadequate to  
13 produce break even loss ratio. We urge the Board to  
14 approve the FA filing it has before it. It is essential to  
15 eliminate subsidization and charge correct premiums  
16 commensurate with the losses.

17 Proper Facility Association rates also provide  
18 an environment which enables carriers to offer options  
19 for the middle market. Without appropriate FA rate  
20 levels, companies will not put their capital at risk in the  
21 middle market where adequate returns will be unlikely.  
22 Should the middle market non-standard automobile  
23 writers leave Newfoundland and Labrador, risks which  
24 previously qualified for these markets will likely end up  
25 in the Facility Association, thus resulting in drivers  
26 paying much more for insurance than they should.  
27 Subsidization would be prevalent, middle market is  
28 basically good for the consumer.

29 Should the FA filing not be approved, CGU  
30 will also seek to file an increase for the regular market  
31 automobile and recoup the underwriting loss of the  
32 Facility Association. Our middle market product, Elite  
33 Vantage Plus, which writes over 5 million in written  
34 premiums in Newfoundland and Labrador, would not be  
35 able to operate at inadequate premium levels.

36 In conclusion, the significant rate increased  
37 filed by the Facility Association is essential to  
38 returning the Facility business to a necessary break  
39 even loss ratio. With the acceleration of third party  
40 liability, primarily bodily injury and accident benefit  
41 loss trends over the past few years, further increases  
42 will likely be necessary to achieve just break even  
43 profitability, and that is my presentation.

44 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
45 thank you, Ms. Power. I don't know if you've had an  
46 opportunity to meet all of the parties here or the  
47 representatives of the parties, but Ms. Newman is the  
48 Board Counsel.

49 MS. POWER: Uh hum, we've met.

50 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr. Stamp  
51 and Mr. Whalen are representing Facility Association.

52 MS. POWER: Uh hum.

53 MR. SAUNDERS, PRESIDING CHAIRMAN: And Mr.  
54 O'Flaherty and Mr. Goodland are representing the  
55 consumer, well, Mr. O'Flaherty is the Consumer  
56 Advocate, and Mr. Goodland is counsel to the  
57 Consumer Advocate.

58 MS. POWER: Okay.

59 MR. SAUNDERS, PRESIDING CHAIRMAN: And there  
60 are others in the room representing the industry and  
61 representing the Superintendent of Insurance and there  
62 are Board representatives in the back of the room. My  
63 name is Fred Saunders, I'm the Chair of the panel, and  
64 this is Commissioner Powell and Commission Martin.  
65 We heard your presentation. Are you prepared to have  
66 questions directed at you from the representatives in  
67 the room?

68 MS. POWER: Certainly.

69 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay. I  
70 think we should start with Board counsel and we'll go  
71 around the room and then with Mr. O'Flaherty. Would  
72 that be acceptable to the parties?

73 MS. NEWMAN: Ms. Power, you had mentioned that  
74 the CGU Group of Companies includes a company  
75 called Elite.

76 MS. POWER: Yes.

77 MS. NEWMAN: And it's a non-standard writer. Can  
78 you please expand upon that?

79 MS. POWER: Elite Insurance Company writes various  
80 products. One of the products it writes in Atlantic  
81 Canada is non-standard automobile. That's the term  
82 that we have for it. It's essentially a mechanism  
83 whereby we will insure risks which would not qualify  
84 for the regular automobile insurance market, yet are not  
85 really Facility Association risks. To give you an  
86 example, Elite Vantage Plus would write underaged  
87 drivers, essentially all classes of insurance. Maybe  
88 someone with a lapse in coverage that wouldn't qualify

1 for the regular market would be written in Elite Vantage  
2 Plus and really wouldn't be a Facility Association risk.

3 MS. NEWMAN: Okay. So you haven't been  
4 participating in this hearing to date but we've been  
5 speaking a bit about a grey market insurer. Would Elite  
6 qualify as a grey market insurer?

7 MS. POWER: Elite Vantage Plus, which is a subset of  
8 the Elite Insurance Company, it's a product of it. Yes,  
9 it would.

10 MS. NEWMAN: Alright. And do you have any  
11 knowledge of why this business can't be written within  
12 CGU Company? Is there a reason why it's done by  
13 another company rather than within the main?

14 MS. POWER: Well, each company is only permitted to  
15 have one rate filing in the Province of Newfoundland  
16 and Labrador, so risks which qualify for the regular  
17 market would be written with CGU Insurance Company  
18 or Traders General or Scottish and York at premium  
19 levels which would be much lower than the Facility  
20 Association. A grey market insurer is intended to  
21 bridge the gap between the regular market and the  
22 Facility Association, thereby charging premiums higher  
23 than the regular market but lower than the Facility  
24 Association commensurate with the risk, the type of  
25 risk.

26 MS. NEWMAN: Would it be possible for CGU to  
27 address the rates, set up of rate structure that would  
28 accommodate this middle ground or this non-standard  
29 risk by, you know, adding surcharges or adding  
30 differentials or anything like that so that you could set  
31 up a structure within that one rate filing that would  
32 accommodate these other risks? Is that possible or ...

33 MS. POWER: It would be fairly difficult. It would  
34 essentially, in some cases, result in good drivers  
35 perhaps subsidizing bad drivers. It would be very  
36 difficult to have one filing intended to cover both  
37 segments, a perfectly good clear risk with previous  
38 insurance coverage, no accident and convictions  
39 versus someone who maybe had a suspension, a lapse  
40 in coverage, it would be difficult from one filing to be  
41 able to charge the appropriate premium for both. That's  
42 why we ... Elite Vantage Plus was introduced about five  
43 years ago. Prior to that, CGU had no mechanism for  
44 writing any of these middle market risks.

45 MS. NEWMAN: When you say it would be difficult,  
46 do you have any knowledge of how it would be difficult  
47 or is that more something in the nature of an actuarial  
48 question?

49 MS. POWER: Yeah, I think they would be better apt to  
50 answer the question. If you go ... if you look at how a  
51 rate is determined for an individual risk, you have a  
52 base rate which is multiplied by various differentials.  
53 What you would be asking me is if we could add  
54 numerous other differentials to charge the appropriate  
55 risk. That may work in some cases, I don't think it  
56 would work in all. I don't ... it's a lot easier to have a  
57 more appropriate base rate for a middle market risk and  
58 then apply the appropriate class, driving record,  
59 deductible, differentials to it than having an  
60 inappropriate base rate, which is intended for the  
61 regular market, and trying to increase that by way of  
62 differentials, but it definitely is an actuarial calculation.

63 MS. NEWMAN: Okay. What is the volume in Elite in  
64 Newfoundland and Labrador, do you know?

65 MS. POWER: I don't ...

66 MS. NEWMAN: Approximately.

67 MS. POWER: It's approximately six and a half million.  
68 That would be at the end of 2002.

69 MS. NEWMAN: You don't know what that would be in  
70 terms of percentage of the market do you or ...

71 MS. POWER: Percentage of the middle market?

72 MS. NEWMAN: Yeah.

73 MS. POWER: Don't know. I could get that information  
74 for you if you want it.

75 MS. NEWMAN: No, that's fine.

76 MS. POWER: Okay.

77 MS. NEWMAN: Something else you mentioned was  
78 about subsidization. I wonder if you could explain how,  
79 what you mean by saying that there would be  
80 subsidization if the full rate is not allowed here?

81 MS. POWER: If the full rate is not allowed, then  
82 companies would be, would have to deal with an  
83 underwriting in the Facility Association. How that

1 underwriting loss fits back into rate structure would  
2 likely cause companies to file a new rate structure,  
3 recouping that underwriting loss in the Facility  
4 Association. If you consider ... the actuarial process is  
5 essentially a perspective out, looking forward trending  
6 look at losses, and you're trying to determine, you're  
7 trying to achieve adequate premium levels today to pay  
8 for the losses of the future. One component of the  
9 actuarial process is to achieve a target return on equity,  
10 and there are three components to the return on equity,  
11 the first being the underwriting profit or the  
12 underwriting return. That would essentially be a  
13 perspective actuarial look at rates. You want to make  
14 sure your premiums pay for the losses of tomorrow.  
15 The two other components both involve investment  
16 income, second being investment income made on the  
17 claims dollars held in reserve, and the third being the  
18 investment income on equity. If we start today with an  
19 underwriting loss in the Facility Association, we  
20 thereby have no equity by which to make investment  
21 income, therefore, in order to achieve that same return  
22 on, target return on equity, one of the other two  
23 components would have to be higher. We can't change  
24 the investment income on claims held in reserve,  
25 therefore, we would have to target a more aggressive  
26 underwriting profit which would result in higher rates.  
27 I don't know if I've confused you but ...

28 MS. NEWMAN: I think I understand but we better go  
29 over it ...

30 MS. POWER: Sure.

31 MS. NEWMAN: ... just to make sure.

32 MS. POWER: Okay.

33 MS. NEWMAN: So what you're saying is that the  
34 losses in FA aren't directly put into the rate structures.

35 MS. POWER: No.

36 MS. NEWMAN: Okay. But what happens is the losses  
37 affect the equity within the company.

38 MS. POWER: Correct, yes.

39 MS. NEWMAN: And therefore the return on equity is  
40 a little lower.

41 MS. POWER: Correct.

42 MS. NEWMAN: And the other return thereby has to  
43 be increased to make up for the lower ...

44 MS. POWER: Exactly.

45 MS. NEWMAN: ... return on equity. Is that correct?

46 MS. POWER: That's correct.

47 MS. NEWMAN: Those are all my questions.

48 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
49 thank you, Ms. Newman. Mr. Stamp?

50 MR. STAMP, Q.C.: Yes, just one question for Ms.  
51 Power, Mr. Chairman. There has been some discussion,  
52 Ms. Power, about, I guess, the cost associated with  
53 servicing carriers, and I guess one of the concerns the  
54 Board is thinking about perhaps may be whether or not  
55 they are somehow overcompensated for the work that  
56 they do on behalf of Facility. I'm sure you realize there  
57 are, I think, four service carriers in Newfoundland. CGU  
58 is not one of them of course. Do you have anything to  
59 say about whether or not in your opinion the service  
60 carriers are overcompensated and to the detriment of  
61 CGU?

62 MS. POWER: I would suggest that they are absolutely  
63 not. It's not as if you have a line up of 50 companies  
64 who want to be servicing carriers. Our Canadian  
65 property and casualty insurance marketplace is a very  
66 competitive one, likely have more competitors on a per  
67 capita basis than anywhere else in the world. In such  
68 a competitive marketplace I can assure you that  
69 companies don't want a servicing carrier, which is  
70 intended to simply service the business, run at a break  
71 even level, to have a competitive advantage by being  
72 paid service fees which are over and above what's  
73 required. The Facility Association, although they only  
74 have four servicing carriers, they assess all of the  
75 premiums for the Facility business to member  
76 companies who are the automobile writers in that  
77 province, so even though you're not a servicing carrier  
78 you are directly impacted by the business written by  
79 the servicing carriers in that you're assessed a  
80 percentage of the premiums and the losses. The  
81 servicing carriers absolutely do not make any money at  
82 being a servicing carrier. The fees paid are simply  
83 those to cover their expenses, and I'm sure if you asked  
84 all of my competitors in Newfoundland they'd have the  
85 same response. In a competitive marketplace we want  
86 to make sure that a servicing carrier has no advantage

1 over us, whether that be in service fees received by the  
2 Facility Association or any other. Because we're a  
3 member of the Facility Association, all automobile  
4 insurance writers in Newfoundland would be very  
5 conscious to ensure that the service fees are simply  
6 adequate to cover their operational expenses.

7 MR. STAMP, Q.C.: That's the only question I had, Mr.  
8 Chairman. Thank you, Ms. Power.

9 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
10 you, Mr. Stamp. Mr. O'Flaherty.

11 MR. O'FLAHERTY: Good morning, Ms. Power.

12 MS. POWER: Good morning.

13 MR. O'FLAHERTY: Unfortunately I have a few more  
14 questions than my friends have had.

15 MS. POWER: That's fine. I'll try to answer them.

16 MR. O'FLAHERTY: Okay. As you know, I represent  
17 the interests of the consumers that are insured through  
18 FA that could potentially be affected by the rate  
19 revision application. I want to ask you first about the  
20 statement at page five of your presentation under the  
21 heading "Analysis," and this is the statement that  
22 "Regular market good drivers subsidizing poor high risk  
23 drivers."

24 MS. POWER: Yes.

25 MR. O'FLAHERTY: Can I ask you if by good drivers if  
26 you mean persons with clean driving records?

27 MS. POWER: That's correct.

28 MR. O'FLAHERTY: And by poor high risk drivers do  
29 you mean persons without clean driving records?

30 MS. POWER: That would be one component, yes.

31 MR. O'FLAHERTY: This is the ... I've seen some letters  
32 actually that have been filed with the Board by other  
33 insurers. I don't know if you want to look at this but  
34 this is a letter from Lombard Canada dated November  
35 4th, 2002, and this is found at the, in the Board's pre-  
36 filed information. I don't know if it's tabbed in any ...

37 MS. POWER: It may not ...

38 MR. O'FLAHERTY: ... handy manner for you.

39 MS. POWER: These are tabbed in date order.

40 MR. O'FLAHERTY: Okay. Do you have November 4th,  
41 2002?

42 MS. POWER: I have November 5th, 2002.

43 MR. O'FLAHERTY: It's a letter from Felicia Salamon  
44 (phonetic), I hope I have that right.

45 MR. SAUNDERS, PRESIDING CHAIRMAN: I think  
46 you may be, she may be into the wrong binder.

47 MS. POWER: You can just maybe tell me ...

48 MR. O'FLAHERTY: Okay. Maybe I'll just read you the  
49 statement.

50 MS. POWER: Yeah, okay.

51 MR. SAUNDERS, PRESIDING CHAIRMAN: The Clerk  
52 may be able to help out there.

53 MS. NEWMAN: I think the Clerk is looking for it, so do  
54 you want to wait a second?

55 MR. O'FLAHERTY: Okay. Well, if she needs to see the  
56 letter then, I guess. I don't want to delay Ms. Power  
57 too much but ...

58 MS. NEWMAN: What's the reference to the letter, Mr.  
59 O'Flaherty?

60 MR. O'FLAHERTY: It's Felicia Salamon's letter to this  
61 board.

62 MS. NEWMAN: Dated?

63 MR. O'FLAHERTY: Dated November the 4th, 2002, and  
64 Felicia Salamon is a person from Lombard Canada, Law  
65 Department of Lombard Canada, sorry, Senior Vice-  
66 President and General Counsel of Lombard Canada, I'm  
67 sorry. Anyway, this is the statement, "Generally this is  
68 because of a customer's poor driving." This is talking  
69 about the issue of cross subsidization.

70 MS. POWER: Okay.

71 MR. O'FLAHERTY: "Generally this is because of a  
72 customer's poor driving record and the attendant risk

1 that this individual be involved in further losses. It is  
2 in everyone's interest to ensure that responsible drivers  
3 who do not cause accidents not be penalized by having  
4 to pay higher premiums to cover the losses attributable  
5 to careless drivers." Do you agree with that statement?

6 MS. POWER: I agree.

7 MR. O'FLAHERTY: And there are other similar letters.  
8 I won't delay it any further. My point is, are you aware  
9 of the population of FA in this province as it relates to  
10 persons with clean driving records?

11 MS. POWER: The population of FA ...

12 MR. O'FLAHERTY: As it relates to persons with clean  
13 driving records.

14 MS. POWER: As I ... I'm not entirely aware of it, no.

15 MR. O'FLAHERTY: Okay. Can I ask then that the  
16 witness be shown the exhibit which is DJS No. 3,  
17 Illustration 5? We've been grappling with this issue as  
18 well during the hearing.

19 MS. NEWMAN: You'll need to refer to Illustration 5  
20 there.

21 MR. O'FLAHERTY: Now, this is an exhibit which was  
22 filed by the Facility Association at the Nova Scotia rate  
23 revision application in October or November of 2002.

24 MS. POWER: Okay.

25 MR. O'FLAHERTY: Have you ever seen this document  
26 before?

27 MS. POWER: No, I have not.

28 MR. O'FLAHERTY: Okay, alright. This indicates that  
29 in the year that your analysis refers to, that is 2001, that  
30 in Newfoundland and Labrador 62.6 percent of the new  
31 business going into FA had a clean driving record and  
32 60.9 percent, if you go to the bottom half of the chart, of  
33 the renewal business had a clean driving record. Now,  
34 I'm wondering if you can reconcile for me the numbers  
35 that are shown here and the argument that somehow  
36 there are good drivers in the regular market subsidizing  
37 poor drivers in this particular market?

38 (9:30 a.m.)

39 MS. POWER: I guess it goes back to the definition of  
40 high risk drivers, and I said that someone with  
41 accidents and convictions would be, depending on  
42 what they were, could be classified as a high risk driver.  
43 I think there are other components which would  
44 classify a risk as a high risk. Those include the  
45 person's previous payment history, it includes years of  
46 insurance, if they had previous insurance, it includes  
47 how long they've been driving, it includes the type of  
48 risk that they would be driving, the type of vehicle, so  
49 absolutely people's driving record forms a component  
50 of the risk but I don't think it's all inclusive of the risk.

51 MR. O'FLAHERTY: Okay. I guess what I'm getting at,  
52 if you look at the bottom half of the chart, it indicates  
53 that 60.9 percent of the persons who are being renewed  
54 in FA, those persons could not have had an accident,  
55 an at fault accident in the previous five years according  
56 to the definition given by Mr. Simpson from FA, so, in  
57 other words, and this point was made by members of  
58 the Board, those persons could not have caused an at  
59 fault accident for which FA would have had a claim in  
60 the previous five years. Now, I think the impression  
61 that I'm being left with sometimes is that (unintelligible)  
62 many many poor drivers in FA which are subsidizing  
63 the good drivers, wouldn't you agree that it appears  
64 that the situation is a little more complex than that?

65 MS. POWER: I guess the only thing I can really speak  
66 to is the fact that 60.9 percent of the risks, the renewal  
67 risks in FA, haven't had an accident or conviction. I  
68 can't link that back to whether or not there's a direct  
69 correlation between those exact drivers and the FA's  
70 loss experience. I can't do that.

71 MR. O'FLAHERTY: Okay. Well, were you aware that  
72 the population in FA of persons with clean driving  
73 records was as high as is indicated by this chart in the  
74 Atlantic Provinces?

75 MS. POWER: I didn't know it was as high but I, as I  
76 said, there are other components of the risk which may  
77 determine a risk fault to the FA market.

78 MR. O'FLAHERTY: Looks like good news for Elite  
79 anyway in terms of a market to sell to.

80 MS. POWER: Perhaps.

81 MR. O'FLAHERTY: Was CGU present in this  
82 jurisdiction ... well, first let me back up. How long has  
83 CGU been writing auto insurance in this jurisdiction?

1 MS. POWER: It's a question that ... well, CGU Group  
2 only came into existence in 1998 but prior to that the  
3 four legacy companies being General Accident,  
4 Canadian General, Commercial Union and Gann may  
5 have each had operations in Newfoundland. I know for  
6 certain that Canadian General has operated in  
7 Newfoundland for many years. I apologize but I can't  
8 give you a definitive answer but I have only been with  
9 CGU for a short time period and I wasn't present  
10 (unintelligible) the three legacy companies, but I can  
11 give that to you if you need it. Canadian General has  
12 operated in Newfoundland for many many years.

13 MR. O'FLAHERTY: Okay. At present your  
14 presentation indicates it's the largest auto insurers,  
15 sorry, the largest auto insurer in this province in terms  
16 of gross premiums.

17 MS. POWER: Correct.

18 MR. O'FLAHERTY: And that market share, would it be  
19 fair to say, was achieved by the acquisition of different  
20 companies?

21 MS. POWER: Yes.

22 MR. O'FLAHERTY: Okay. And this would have been  
23 an intentional strategy, I take it, by CGU Group?

24 MS. POWER: Yes.

25 MR. O'FLAHERTY: And just reading through some  
26 information on your web site, and would it be fair to say  
27 that CGU is a publicly, you know, is a wholly owned  
28 subsidiary of a publicly traded company?

29 MS. POWER: That's correct.

30 MR. O'FLAHERTY: It's a profit driven company.

31 MS. POWER: Correct.

32 MR. O'FLAHERTY: So the decision to come in and  
33 capture the Newfoundland market share was one that  
34 was motivated by making money?

35 MS. POWER: By each of the three legacy, four legacy  
36 companies, yes.

37 MR. O'FLAHERTY: Alright. Would it be correct to say  
38 that the strategy was to pursue increased market share  
39 right across Canada because of the investment climate?

40 MS. POWER: I really can't answer that question, just  
41 because of my short tenure with CGU.

42 MR. O'FLAHERTY: The notion being that the more  
43 premiums you collect, the higher return you can get in  
44 the investment market.

45 MS. POWER: I think the ... I think I can give you a  
46 general answer, and that's the fact that insurance  
47 companies obviously put their capital at risk for a target  
48 return on equity, so any market that they deem to be  
49 suitable to do business in, there's obviously an  
50 opportunity for the target return on equity or the risk  
51 capital.

52 MR. O'FLAHERTY: So they saw an opportunity in  
53 Newfoundland and came here.

54 MS. POWER: Again I can't really answer that because  
55 I wasn't around when that decision was made.

56 MR. O'FLAHERTY: Okay. I'm looking at your 2001  
57 Newfoundland auto results, which is another chart. Did  
58 you prepare this chart?

59 MS. POWER: I did not. It was prepared by our  
60 Actuarial Department.

61 MR. O'FLAHERTY: Okay. Now, is it fair to say that  
62 2001 was the worst year in over two decades in the  
63 Canadian P&C industry?

64 MS. POWER: I think that would be a fair statement.

65 MR. O'FLAHERTY: Okay. So it's not only  
66 Newfoundland in which losses are being suffered.

67 MS. POWER: No. I think you referred earlier to the  
68 utility and rate review board hearing in Nova Scotia and  
69 essentially that review board was tasked with the onus  
70 to determine if the rates being charged were fair based  
71 on the losses, so that's a fair statement. The insurance  
72 industry hasn't been producing good results in Canada.

73 MR. O'FLAHERTY: Is it also not the case that the  
74 major cause of the declining results and the losses in  
75 the P&C industry are actually the declining investment  
76 market?

77 MS. POWER: I don't think that's a fair statement. As I  
78 said before, target return on equity is achieved by way  
79 of three mechanisms, one being the underwriting profit

1 or loss, and, as you referenced, in most jurisdictions in  
2 Canada the insurance industry has been operating at a  
3 loss. In Atlantic Canada the industry has been  
4 operating at a loss for many years. The investment  
5 income obviously forms a component of the return but  
6 it's not all encompassing of the return.

7 MR. O'FLAHERTY: Can I ask that the witness be  
8 shown the document I just gave you, Madam Clerk?  
9 Are you familiar with Egal Mayer (phonetic)?

10 MS. POWER: Egal.

11 MR. O'FLAHERTY: Egal Mayer?

12 MS. POWER: Correct.

13 MR. O'FLAHERTY: Who is Egal Mayer?

14 MS. POWER: He's the President of CGU Group Canada.

15 MR. O'FLAHERTY: Okay. And that's the gentleman  
16 who was going to come here but couldn't, his schedule  
17 wouldn't allow him to come?

18 MS. POWER: He was actually here the first date of the  
19 public presentation in December but he's in the UK this  
20 week.

21 MR. O'FLAHERTY: Okay. I just want you to look at  
22 this document. Have you seen this before?

23 MS. POWER: I have not.

24 MR. O'FLAHERTY: This is on your web site, Corporate  
25 Profile 2001, Message from the President.

26 MS. POWER: Uh hum.

27 MR. O'FLAHERTY: Do you want to just have a look at  
28 it for a sec, familiarize yourself with it?

29 MS. POWER: Okay.

30 MR. O'FLAHERTY: Okay. Can I have this marked,  
31 please, as JP No. 1?

32 **EXHIBIT JP-1 ENTERED**

33 MR. O'FLAHERTY: The statement in the first  
34 paragraph was that, "2001 was the worst year for the

35 Canadian property and casualty industry in over two  
36 decades." We agreed on that.

37 MS. POWER: Yes.

38 MR. O'FLAHERTY: In the second paragraph it says,  
39 "The major cause of this poor result, declining  
40 investment returns." Just a moment ago when I, I asked  
41 you if that was the major cause and you said you didn't  
42 believe it was the case.

43 MS. POWER: That's correct.

44 MR. O'FLAHERTY: Your focus here today is on  
45 underwriting losses, but what I'm trying to indicate here  
46 is that this was a, or trying to ask you is whether or not  
47 at the end of the day isn't this a big picture issue in the  
48 sense that there's an investment decline right across the  
49 board in the P&C industry that's causing all the losses?

50 MS. POWER: And again I say that I don't agree, and I  
51 think at the utility and review board hearing in, held in  
52 Nova Scotia in late 2002, our chief actuary, Carl  
53 (unintelligible), actually went on record as saying that  
54 he didn't agree with this statement either.

55 MR. O'FLAHERTY: So he doesn't agree with the  
56 President.

57 MS. POWER: That's correct.

58 MR. O'FLAHERTY: Okay, fine. I'll pass on then.

59 MR. SAUNDERS, PRESIDING CHAIRMAN: I'm sorry,  
60 Mr. O'Flaherty, what was the mark that we put on this  
61 document?

62 MR. O'FLAHERTY: JP No. 1.

63 MR. SAUNDERS, PRESIDING CHAIRMAN: JP No. 1,  
64 okay.

65 MR. O'FLAHERTY: Would you agree with the point  
66 being made by Mr. Mayer that in this particular market  
67 what's happening now is that the underwriting  
68 practices will become much tighter for the company?

69 MS. POWER: Correct.

70 MR. O'FLAHERTY: And that rates are going to be  
71 raised by the company in the voluntary market?



1 MS. POWER: Correct.

2 MR. O'FLAHERTY: Okay. So those points are correct.  
3 He does make the point that you're going to be  
4 returning to disciplined underwriting and focusing on  
5 premium adequacy. Would you agree with that?

6 MS. POWER: Yes.

7 MR. O'FLAHERTY: Okay. So would you also agree  
8 this is a cycle we're going through right now?

9 MS. POWER: I think insurance, yes, operates in cycles.

10 MR. O'FLAHERTY: Let's look then at DJS No. 2, and I'll  
11 only be a couple of more minutes, Ms. Power. I'll let  
12 you get moving. DJS No. 2 is a statement from Facility  
13 Association.

14 MS. POWER: Okay.

15 MR. O'FLAHERTY: This is a statement of financial  
16 results from '86 to 2002.

17 MS. POWER: Uh hum.

18 MR. O'FLAHERTY: Can I ask you if, and this may be  
19 outside of your knowledge, if CGU had any presence in  
20 the province in the years 2000, 1999, 1998 and 1997?

21 MS. POWER: I can say that we did.

22 MR. O'FLAHERTY: Okay. So is it fair to say ... if you  
23 look at the vertical column on the far right-hand side,  
24 and these are assessments to or payments,  
25 distributions, sorry, distributions to or assessments  
26 from members.

27 MS. POWER: Correct.

28 MR. O'FLAHERTY: Would it be fair to say that CGU  
29 would have enjoyed their proportionate share of these  
30 funds which were paid out in those years by Facility  
31 Association?

32 MS. POWER: We would have been assessed the  
33 premium on (phonetic) the underwriting return, yes, so  
34 it's not within my knowledge that we did but my  
35 understanding of the workings of Facility Association  
36 suggest that we would have been. I can't confirm that  
37 however.

38 MR. O'FLAHERTY: I guess my point is that you're  
39 saying that you've lost money this year, or 2001 ...

40 MS. POWER: Correct.

41 MR. O'FLAHERTY: ... through Facility, and I'm asking  
42 you is it also fair to say that you made money in these  
43 other years if you were present in the jurisdiction?

44 MS. POWER: It would appear, yes.

45 MR. O'FLAHERTY: So did those funds in those years,  
46 do you have any knowledge of whether or not those  
47 funds were, for example, segregated by CGU?

48 MS. POWER: I don't have that knowledge. I can ...

49 MR. O'FLAHERTY: Do you know ...

50 MS. POWER: I can get the information for you.

51 MR. O'FLAHERTY: Okay.

52 MS. POWER: Yes.

53 MR. O'FLAHERTY: That'd be nice.

54 MS. POWER: Okay.

55 MR. O'FLAHERTY: You're aware of course that Facility  
56 actually distributes the money to the persons on the  
57 proportionate share to their percentage of the market in  
58 Newfoundland?

59 MS. POWER: Correct.

60 MR. O'FLAHERTY: Okay. Now, you made the point  
61 that there would have to be a recovery from the  
62 voluntary market because of the claims on your equity  
63 this year.

64 MS. POWER: Could you repeat that, please?

65 MR. O'FLAHERTY: You made the point that if these  
66 rates are not approved, you would have to go back to  
67 the regular market with a rate filing that also included  
68 increased rates because there had been claims made  
69 against your equity, I think you said.

70 MS. POWER: There would be a reduction in equity.

71 MR. O'FLAHERTY: Okay.

1 MS. POWER: Yes.

2 MR. O'FLAHERTY: Would there have been a  
3 commensurate increase in equity in the years that  
4 monies were paid out to CGU?

5 MS. POWER: I would say yes.

6 MR. O'FLAHERTY: Okay. And in those particular  
7 years did CGU use those funds to reduce premiums in  
8 the voluntary market?

9 MS. POWER: I can't say that those funds were used to  
10 reduce. I would assume that those, that assessment  
11 would be used in the target ROE calculation. It would  
12 form a component of the rates but it wouldn't be the  
13 determining factor of the rates, just as a loss wouldn't  
14 be the determining factor of the rates, it would be  
15 included with the target ROE calculation to determine  
16 the rates, but it's not the only factor in either scenario,  
17 2001 or if we chose 1997. It's not the only factor.

18 MR. O'FLAHERTY: I don't want to spend too much  
19 time questioning you about this. Your company of  
20 course understands the legal requirements for FA  
21 participation in the province?

22 MS. POWER: Yes.

23 MR. O'FLAHERTY: Okay. And would have known  
24 that coming in?

25 MS. POWER: Yes.

26 MR. O'FLAHERTY: I don't have any other questions.  
27 Thank you, Mr. Chairman.

28 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
29 you, Mr. O'Flaherty. Commissioner Powell, do you  
30 have any questions?

31 (9:45 a.m.)

32 COMMISSIONER POWELL: Yeah, a couple of items.  
33 Good morning, Ms. Power.

34 MS. POWER: Good morning.

35 COMMISSIONER POWELL: Who sells insurance  
36 through your company in the province?

37 MS. POWER: Which brokers? We sell insurance in the  
38 Province of Newfoundland and Labrador through a  
39 network of independent insurance brokers.

40 COMMISSIONER POWELL: Okay. You don't have an  
41 office like Cooperators and such.

42 MS. POWER: No, we don't.

43 COMMISSIONER POWELL: Just strictly  
44 independents.

45 MS. POWER: Correct.

46 COMMISSIONER POWELL: And do you choose them  
47 or do they choose you?

48 MS. POWER: I guess it's a combination of both. We ...

49 COMMISSIONER POWELL: If I was a broker and  
50 wanted to place insurance through your company, I'd  
51 make inquiries and ...

52 MS. POWER: And we'd have a meeting and determine  
53 if it was mutually beneficial for both of us.

54 COMMISSIONER POWELL: Do you have  
55 representatives throughout the whole province,  
56 Newfoundland and Labrador, or are you just  
57 concentrated, say, in St. John's?

58 MS. POWER: No. We have representatives  
59 throughout the entire province.

60 COMMISSIONER POWELL: You mentioned about the  
61 national competition, from a national perspective. Do  
62 you have any figures, what the number of insurance  
63 providers there are per capita on an average?

64 MS. POWER: I don't but I could provide that to the  
65 Board at a later date.

66 COMMISSIONER POWELL: That would be nice.

67 MS. POWER: Okay.

68 COMMISSIONER POWELL: I've asked others in terms  
69 of question about the lack of competition in  
70 Newfoundland that may affect rates.

71 MS. POWER: So do you just want it on a national  
72 basis or do you want it on a provincial ...

- 1 COMMISSIONER POWELL: Well, we have in the  
2 records that there's approximately 50 insurance  
3 providers in the province for every ... we have 500,000  
4 people, so it's roughly one for every 10,000, granted  
5 there are niches, so I'm just wondering ...
- 6 MS. POWER: How that compares.
- 7 COMMISSIONER POWELL: Yes.
- 8 MS. POWER: Okay.
- 9 COMMISSIONER POWELL: Just sort of a ballpark.  
10 You stated that you have five components, and I think  
11 under examination from the Board's legal counsel that  
12 that is done because you, the company is only allowed  
13 to have one benchmark filing for each company, so  
14 therefore to target different markets and have different  
15 benchmarks, you have to have just different corporate  
16 structure.
- 17 MS. POWER: Correct. We actually have five  
18 companies operating under the CGU Group, only four  
19 of which write auto insurance in Newfoundland and  
20 Labrador, and each of those is, files their own rates  
21 intended to target a specific segment of the insuring  
22 public.
- 23 COMMISSIONER POWELL: And that, the nature of  
24 the regulation here in the province, you do that. If it  
25 wasn't required, it'd probably be less expensive for you  
26 just to have one corporate structure to provide all the  
27 insurance rates ...
- 28 MS. POWER: Correct.
- 29 COMMISSIONER POWELL: Yeah. So there is a cost  
30 by the way you're regulated here in the province.
- 31 MS. POWER: Yes, correct.
- 32 COMMISSIONER POWELL: Is that similar throughout  
33 the country?
- 34 MS. POWER: Yes, it is.
- 35 COMMISSIONER POWELL: So we're not doing  
36 anything different, okay.
- 37 MS. POWER: No.
- 38 COMMISSIONER POWELL: Why is the ... you say  
39 you have four of the five that ... what's the fifth one?
- 40 MS. POWER: The fifth one is Pilot Insurance Company  
41 and they operate only in Ontario.
- 42 COMMISSIONER POWELL: Okay. I'd just like ... Ms.  
43 Power, (inaudible) schedule, BG No. 4? That's the one  
44 with the chart in the right-hand ...
- 45 MS. POWER: I think I have it.
- 46 COMMISSIONER POWELL: This is a chart provided  
47 by Mr. Pelly, the actuary for the Facility, and he did a  
48 comparison of Atlantic Canada and Ontario. It shows  
49 the FA market share and the, and its percentage of the  
50 voluntary market, and what it shows in Ontario, their  
51 rates are, there are fewer people in FA and their rates,  
52 FA rates are much higher in the voluntary market, and  
53 it shows Newfoundland have a higher percentage of  
54 people in FA and our percentage of the voluntary  
55 market is much lower. So sort of indicates that possibly  
56 people in FA that, as the Consumer Advocate  
57 indicated, that are not in the high risk but they're there  
58 because they have no other place to go, so it would  
59 appear to be the challenge for FA, as it operates in  
60 Newfoundland, to be truly high risk is to move to the  
61 right the rates, but also get the population down. In  
62 other words, instead of having four percent of the  
63 insurance population in the province in FA based on  
64 the Ontario model, there should be somewhere around  
65 one percent. So if we were to approve the rates as  
66 presented we would move the line, as the percentage in  
67 the voluntary market, a lot closer to the 300 percent  
68 range as opposed to the 100 percent range now. But  
69 what assurances are there that the depopulation would  
70 take place? And you were explaining you have a  
71 company, Elite, that deals in that middle market, but  
72 what assurances as a regulator can we have that that  
73 would happen?
- 74 MS. POWER: I think, I don't think you would have any  
75 assurances, and I'll give you a couple of reasons, the  
76 first reason being is something you just stated, that the  
77 number of insurance companies operating within  
78 Newfoundland and Labrador would probably, I don't  
79 have the numbers but I guess that the number is much  
80 lower than in other jurisdictions.
- 81 COMMISSIONER POWELL: Lack of competition.

- 1 MS. POWER: Lack of competition, and I think my last  
2 statement I indicated that with the acceleration of third  
3 party liability and accident benefit loss trends, there are  
4 no guarantees that there's going to be a stabilization of  
5 rates, so there's going to be many more companies that  
6 want to put their capital at risk in Newfoundland, and if  
7 I compare, as you have, the percentage of the  
8 population in Facility Association in Ontario as  
9 compared to Newfoundland and Labrador, you also  
10 have to consider that it's a completely different  
11 automobile product, so the pricing of that product is  
12 likely a lot more adequate and accurate for the risks,  
13 whereas in Newfoundland and Labrador it's a  
14 completely different automobile product, so ...
- 15 COMMISSIONER POWELL: Can you explain that ...
- 16 MS. POWER: In Newfoundland ...
- 17 COMMISSIONER POWELL: ... for us novice ...
- 18 MS. POWER: Yeah. In Newfoundland and Labrador  
19 the automobile product is a tort product, which carries  
20 with it the ability for a person to sue for loss of income  
21 due to loss of income, pain and suffering, whereas in  
22 Ontario it's a no fault product which carries with it  
23 thresholds, so there's a lot of litigation which is cut out  
24 of the system. The threshold product operates on the  
25 premise that there is the ability to sue for, I'm trying to  
26 think of the proper phraseology, catastrophic injury.  
27 The problem in Newfoundland and Labrador and in the  
28 other Atlantic Provinces is the fact that insurance  
29 companies' rates are not keeping up with the increasing  
30 trend in bodily injury claims. In Ontario the smaller  
31 bodily injury claims don't ever see their way to  
32 litigation. It's only the catastrophic permanent  
33 disability injuries that go that route, so that the  
34 products are different so the pricing is different,  
35 therefore ...
- 36 COMMISSIONER POWELL: So that chart there really,  
37 the numbers look close but the underlying product  
38 really ...
- 39 MS. POWER: Is very different.
- 40 COMMISSIONER POWELL: ... is not comparable.
- 41 MS. POWER: No.
- 42 COMMISSIONER POWELL: Is those differences  
43 legislative or that insurance company ...
- 44 MS. POWER: That's legislative.
- 45 COMMISSIONER POWELL: Okay. So if I wanted to  
46 buy the Ontario product in Newfoundland I couldn't  
47 buy it.
- 48 MS. POWER: Correct. It's not available here.
- 49 COMMISSIONER POWELL: Okay. That's not within  
50 our purview.
- 51 MS. POWER: The other thing is the average premium  
52 in Ontario is much higher than the average premium in  
53 Newfoundland.
- 54 COMMISSIONER POWELL: Even though the benefits  
55 under a policy could be lower?
- 56 MS. POWER: Perhaps, yes, depending on the ...
- 57 COMMISSIONER POWELL: You're talking, when you  
58 say the average premium, you're talking collision,  
59 liability, comprehensive.
- 60 MS. POWER: Correct.
- 61 COMMISSIONER POWELL: The different components  
62 would be different. When you say premiums, really get  
63 a comparison you got to compare each component,  
64 right?
- 65 MS. POWER: Correct, each coverage.
- 66 COMMISSIONER POWELL: But if I ... if you and I had  
67 similar cars, wanted similar coverage, if you were  
68 buying it in Ontario that would be more expensive than  
69 ...
- 70 MS. POWER: Than regular market in Newfoundland.
- 71 COMMISSIONER POWELL: Regular market in  
72 Newfoundland.
- 73 MS. POWER: Yes.
- 74 COMMISSIONER POWELL: Are you aware in  
75 Newfoundland we have three different territories?
- 76 MS. POWER: Yes.
- 77 COMMISSIONER POWELL: I presume Ontario ...

1 MS. POWER: Have many.

2 COMMISSIONER POWELL: ... have multiple ...

3 MS. POWER: Correct.

4 COMMISSIONER POWELL: Yes, okay. So you can't  
5 really help me to get to the right, lower right-hand  
6 corner.

7 MS. POWER: No.

8 COMMISSIONER POWELL: This chart you have here,  
9 this 2001 Newfoundland Auto Results, is that yours?

10 MS. POWER: That's CGU Insurance Company.

11 COMMISSIONER POWELL: That's CGU.

12 MS. POWER: It's not the CGU Group, it's CGU  
13 Insurance Company.

14 COMMISSIONER POWELL: That's all ...

15 MS. POWER: No, it's just CGU Group.

16 COMMISSIONER POWELL: Oh.

17 MS. POWER: I just chose one.

18 COMMISSIONER POWELL: Oh, okay, okay.

19 MS. POWER: It's the larger writer of automobile  
20 insurance in Newfoundland, of the four.

21 COMMISSIONER POWELL: Okay. So when you said  
22 the largest, so you didn't put your other three together.

23 MS. POWER: No.

24 COMMISSIONER POWELL: So you must have, when  
25 you add them you must have a even greater share.

26 MS. POWER: Well, the difference would be 43 million  
27 is the total written for the group in Newfoundland and  
28 Labrador at the end of 2001.

29 COMMISSIONER POWELL: So that's your four  
30 components.

31 MS. POWER: Correct.

32 COMMISSIONER POWELL: Yes.

33 MS. POWER: 43 million. But the 29 million would just  
34 be the CGU Insurance Company, which would be the  
35 largest writer in the group.

36 COMMISSIONER POWELL: Okay. I think that's my  
37 only questions. Thank you very much.

38 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
39 you, Commissioner Powell. Commissioner Martin? No  
40 questions? Ms. Power, just one question basically.  
41 Are you an actuary, by the way?

42 MS. POWER: I'm not.

43 MR. SAUNDERS, PRESIDING CHAIRMAN: You're  
44 not. You were speaking with some authority there  
45 about actuarial matters. I thought you may have been.

46 MS. POWER: I was a pricing manager in my past life,  
47 so I worked very closely with ...

48 MR. SAUNDERS, PRESIDING CHAIRMAN: At least  
49 you convinced me you were. Okay.

50 MS. POWER: ... with actuaries.

51 MR. SAUNDERS, PRESIDING CHAIRMAN: Any  
52 questions arising from Commissioner Powell's  
53 questions?

54 MS. NEWMAN: None.

55 MR. SAUNDERS, PRESIDING CHAIRMAN: No  
56 questions. Thank you very much, Ms. Power. Now  
57 then, Ms. Newman ...

58 MS. NEWMAN: The next person wishing to make a  
59 public presentation is Victoria Harnum.

60 MR. SAUNDERS, PRESIDING CHAIRMAN: Victoria  
61 Harnum?

62 MS. NEWMAN: She's here today. Ms. Power, I don't  
63 know if you need a few minutes there to clean up.

64 MS. POWER: I'll just be one second shutting down.

65 MR. SAUNDERS, PRESIDING CHAIRMAN: Is Victoria  
66 Harnum in the room? Good morning, Ms. Harnum. Do

1 you wish to be sworn? Are you going to be giving  
2 evidence?

3 MS. HARNUM: Yes.

4 MR. SAUNDERS, PRESIDING CHAIRMAN: Would  
5 you take the Bible in your right hand, please? Do you  
6 swear that in the evidence you're about to give you will  
7 tell the truth, the whole truth and nothing but the truth,  
8 so help you God?

9 MS. HARNUM: I do.

10 MR. SAUNDERS, PRESIDING CHAIRMAN: Would  
11 you state your name and the group that you're  
12 representing? I'm looking at your presentation and I  
13 see that you are founder of the Advocates of Fair Auto  
14 Insurance.

15 MS. HARNUM: That's correct.

16 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
17 Maybe, Ms. Newman, you might, you want to put on  
18 the record Ms. Harnum's background with this group or  
19 how long it's been in existence so we have something  
20 to start with here?

21 MS. NEWMAN: Sure. Ms. Harnum, can you please  
22 explain to us what it is that the Advocates for Fair Auto  
23 Insurance is?

24 *(10:00 a.m.)*

25 MS. HARNUM: We are trying to educate the public on  
26 how insurance works, giving them knowledge.

27 MS. NEWMAN: Okay. And how long have you been  
28 with them?

29 MS. HARNUM: Since 1999.

30 MS. NEWMAN: And what's your role within this  
31 organization?

32 MS. HARNUM: Research and education.

33 MS. NEWMAN: And is it a non-profit, a formal non-  
34 profit association or is it a loose association?

35 MS. HARNUM: It's non-profit, no funding.

36 MS. NEWMAN: And do you have a title within this  
37 organization or ...

38 MS. HARNUM: The President.

39 MS. NEWMAN: And can you just tell us if your, what  
40 your duties would be or what your key functions within  
41 this organization would be?

42 MS. HARNUM: I do the research and write up letters  
43 and go to speak in situations like this on behalf of all  
44 the public, all the drivers.

45 MS. NEWMAN: Okay. So the entire driving  
46 population, okay, alright. And I understand that you've  
47 made a presentation, submitted a formal written  
48 presentation to the Board?

49 MS. HARNUM: Yes, I did.

50 MS. NEWMAN: And you wish to speak to that today?

51 MS. HARNUM: Yes, I do.

52 MS. NEWMAN: I think you can proceed.

53 MR. SAUNDERS, PRESIDING CHAIRMAN: Before  
54 you do, Ms. Harnum, I just wanted to check to make  
55 sure that you were familiar with the people that are in  
56 the room in terms of the representatives of the various  
57 parties. First of all I'll introduce the Board. My name is  
58 Fred Saunders, I'm the Chair of the panel, Commissioner  
59 Powell on my right, Commissioner Martin on my left,  
60 Ms. Newman is counsel for the Board, Mr. Stamp and  
61 Mr. Whalen are representing the Facility Association,  
62 the Applicant in this particular matter, Mr. O'Flaherty is  
63 the Consumer Advocate and Mr. Goodland, seated next  
64 to him, is his counsel. There are others in the room  
65 representing the industry and the Board and the  
66 Superintendent of Insurance Office. So I just wanted to  
67 get on the record with you the group that were present.  
68 So having said that, now you can continue on with  
69 your presentation, Ms. Harnum.

70 MS. HARNUM: First of all, this is, last night I compiled  
71 an actual driver who went from a good driving record to  
72 one accident to the FA without notice. I have copies of  
73 all the policies here. It also compares the rate from  
74 Ontario to Newfoundland, which you were asking  
75 earlier, so I want to get a copy of that.

MS. NEWMAN: Okay. Can you please explain where you got this information?

MS. HARNUM: This is actually from my husband and it shows what happens in a cycle of going through the FA.

MS. NEWMAN: Okay. So it's an example of ...

MS. HARNUM: It's an example of one driver.

MS. NEWMAN: We just have one copy of that, Mr. Chairman. We'll undertake to get another copy of that, and if anybody doesn't have any objections, I guess we'll name that VH No. 1.

**EXHIBIT VH-1 ENTERED**

MS. HARNUM: Okay. I'm here today, like I said, to speak on behalf of the Advocates of Fair Auto Insurance. I'm also speaking on behalf of all the drivers who are unaware that they are considered a high risk driver. Our group has been interested in pursuing fair auto insurance since 1999. We were very pleased with the appointment of the Consumer Advocate for this hearing and we are very happy indeed with Bill 28. We have had the opportunity to read the transcripts thus far and would like to applaud the Board on seeing the relevance of needing to understand why a person is considered a high risk driver. Common sense would tell us that it would be a driver with many accidents, speeding tickets, etcetera. Apparently this is not the case.

There are drivers being placed in the FA due to having one accident of many years of driving accident free. Drivers who turn 65 are being placed here, based only on their age. We also have drivers in FA because they drive older model vehicles. I have even heard of two cases where the drivers were placed in FA for a not at fault accident.

Even though Bill 28 addresses most of our concerns, there are two more that need to be addressed here. They are the profits that the FA does not put back into the formula for the purpose of setting the rates and the way the data is collected without, in our opinion, appropriate auditing. While it's important to understand the job of the actuary, one important point that needs to be given more weight is the fact that the actuary does not verify the numbers supplied to them IBC. These numbers, according to the report published

by the consultant firm, are not audited, and I quote from the front page of this report. "Because there are many companies providing this information and due to our remoteness from individual data elements, it was not practical for us to put in place directly audit or audit like procedures, therefore, we have relied on this IBC data without the benefit of any independent audit." With this in mind, we are supplying you with a copy of an email from Marlene Landry (phonetic), she's an information officer of IBC, which states in part that not all companies report. We do know that all companies are mandated to report but there is no known penalty if they do not report, therefore, the report of the actuary is only as correct as the numbers reported to them. The Board has reported to us that you do not independently verify the numbers but merely pass it on to the actuaries. At the end of the day, we, the drivers, pay the bill, and we have a right to audited numbers that we feel comfortable with.

As you know, your Board took part in the report of the select committee to review the property and casualty insurance industry in Newfoundland and Labrador. This was released in 1998. In this report it was stated that based on many submissions made to the committee, the FA appears to be in the area of the insurance industry which is burdened with problems. We believe that the Board will agree on this statement. The report also goes on to state that the Facility Association was designed as a non-profit organization and therefore any profits realized should be used to reduce insurance premiums as opposed to being shared among its members. They also stated that the FA were currently experiencing considerable profits and therefore common sense dictates that premiums are higher than they otherwise should be and/or individuals are being placed inappropriately with the Facility. I can tell you from personal experience that the second statement is true. There are no public written criterias for placing the insured with the Facility.

Our group believes that the high commission of 15 to 17 percent compared to 6 to 11 percent in the regular market only acts as an incentive for brokers and agents to place drivers into this group. According to the FA's manual, there is also a membership fee that can be charged to the policy holder. I'm not sure if this applies in this province but it is refundable to the member company. This, we believe, is another incentive to place drivers into the FA.

1 We believe from our research that a lot of  
2 drivers do not even know they are placed in this high  
3 risk group. The FA is not even required to supply this  
4 information and so they do not inform drivers. The  
5 conclusion that the select committee came to involving  
6 the FA was to fully regulate the underwriting guidelines  
7 pertaining to the placing of an insured in the Facility.  
8 Another recommendation was for a consumer  
9 representative to be appointed to the FA Board  
10 immediately, the practice of high commission be  
11 discontinued and the amount of commission should not  
12 extend (phonetic) \$100 per vehicle. Many other  
13 recommendations were made in this report but none  
14 have been acted upon thus far that would help the  
15 consumer.

16 Minister Walter Noel has made  
17 recommendations in regards to regulating the FA and  
18 is working on Bill 28. We are hoping this will be passed  
19 in March of this year.

20 The outcome from this large increase will affect  
21 many drivers including our many seniors who have  
22 been placed in this group based merely on their age,  
23 and our low income families based on the age of their  
24 vehicle. People will just stop buying insurance. The  
25 rate for auto insurance both in the normal market and  
26 the FA is reaching such an unreasonable amount that  
27 soon only the very rich will be able to afford it. The  
28 road that we are heading down will lead to an  
29 overburdening of our health system and the welfare  
30 system. We all need to look at the big picture. If the  
31 profits are allowed to be kept and shared among the  
32 members of the FA and the profits not put back into the  
33 setting of the rates, we can expect to see huge rate  
34 increases every year. If the data is collected and  
35 accepted at face value without any kind of auditing,  
36 then this whole system will continue to be an injustice  
37 to the consumer.

38 We realize that regulating is not in your scope  
39 of duties but the Board has an obligation to the public  
40 to ensure that we are not taken advantage of and we  
41 plead with you to consider what you already know  
42 before making your decisions. Our group would  
43 welcome your Board to do your own investigation of  
44 this non-profit organization as to how the data can be  
45 collected in a more reliable way. We realize that the  
46 cost of auditing each company's data is costly, but  
47 based on the government's concern and the public's,  
48 maybe an increase in the Board's budget is warranted.

49 The public has the right to know if they're in  
50 the FA, why they are there. There has to be a clear  
51 written criteria as to how a driver becomes a high risk  
52 driver, how long they will be considered a high risk  
53 driver and what they need to do to get out. All we ask  
54 is for the insurance industry to be fair, accountable and  
55 open.

56 We have learned from the testimony that 62.6  
57 percent of new business in the FA have no accidents or  
58 convictions. We have also learned that the FA is not  
59 happy with such a large group in the FA. There's a  
60 simple answer. Take out the drivers who have no  
61 accidents, no convictions, one or two explainable  
62 option payments, drivers who are 65 and drivers who  
63 cannot afford a new car. We believe that a driver's rate  
64 should be based on their own driving record, not some  
65 statistics that may be unreliable and not verified.

66 In closing we plead with you not to approve  
67 an increase at this time. We plead with you to wait until  
68 the government recommendations are in place. We  
69 plead with you to look for ways to ensure the numbers  
70 collected can be verified by yourselves or another third  
71 party. We also plead with you to look at your Order  
72 No. AI-36 2000/2001 from March 2001 which states in  
73 part that the FA can keep their profits based on  
74 actuary's report. This report was only based on data  
75 supplied by the FA and this data was not audited by  
76 the consultants. Also, the public was not represented  
77 at that hearing and therefore our concerns were not  
78 taken into consideration. We thank you in advance for  
79 considering the public's interest first and foremost.  
80 Thank you.

81 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
82 you, Ms. Harnum. Some of the parties or all of the  
83 parties, I suppose, may have some questions of you.  
84 Are you prepared to ...

85 MS. HARNUM: I think so.

86 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
87 We'll start with the Board counsel, Ms. Newman.

88 MS. NEWMAN: Ms. Harnum, I just have one question  
89 and it has to do with the second last thing you said  
90 whereby you said that the public was not represented  
91 at the last hearing.

92 MS. HARNUM: Yes.



1 MS. NEWMAN: Are you aware that they were, it was  
2 a public hearing ...

3 MS. HARNUM: There was no Consumer Advocate or  
4 ... that's what I meant.

5 MS. NEWMAN: Right, okay. But there was public  
6 notice and people ...

7 MS. HARNUM: Yes.

8 MS. NEWMAN: ... were offered the opportunity to  
9 attend.

10 MS. HARNUM: Yes.

11 MS. NEWMAN: Okay. That's my only question, Mr.  
12 Chairman. Thank you.

13 MR. SAUNDERS, PRESIDING CHAIRMAN: What  
14 hearing are we referring to when we talk about that  
15 hearing, the hearing that dealt with the surplus?

16 MS. HARNUM: Yes.

17 MS. NEWMAN: There was a Consumer Advocate at  
18 that hearing. Were you aware of that?

19 MS. HARNUM: No, I wasn't.

20 MS. NEWMAN: Okay. Well, there was in fact. Mr.  
21 Dennis Browne appeared at that hearing on behalf of  
22 the consumers in the province.

23 MR. SAUNDERS, PRESIDING CHAIRMAN: You had  
24 nothing else, Ms. Newman?

25 MS. NEWMAN: Nothing else.

26 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
27 Mr. Stamp or Mr. Whalen? No questions? Mr.  
28 O'Flaherty?

29 MR. O'FLAHERTY: Just one brief point for the record,  
30 and I don't think it's of major significance, but the, at  
31 the last hearing referred to, I believe the Superintendent  
32 of Insurance was the party and not the Consumer  
33 Advocate. I believe this is the first hearing at which a  
34 Consumer Advocate has been appointed in terms of ...

35 MS. HARNUM: That was my understanding too.

36 MR. O'FLAHERTY: ... in terms of auto rates.

37 MS. NEWMAN: I stand corrected.

38 MR. SAUNDERS, PRESIDING CHAIRMAN: Do you  
39 have any other questions? Oh, Mr. Goodland does,  
40 okay.

41 MR. GOODLAND: I just have one or two quick points  
42 to pursue with this witness. Ms. Harnum, you've  
43 passed the document to Ms. Newman that we have yet  
44 to see. It's regarding an example of, I guess, a situation  
45 unfolding where a person goes from the voluntary  
46 market, insurance market, into the Facility Association?

47 MS. HARNUM: Yes, that's correct.

48 MR. GOODLAND: That's correct?

49 MS. HARNUM: That's correct.

50 MR. GOODLAND: And that person you're using as an  
51 example is who?

52 MS. HARNUM: My husband.

53 MR. GOODLAND: Okay. Can you just explain the  
54 situation for the record?

55 MS. HARNUM: We came from Ontario ... actually I  
56 only have the one copy there, I did it late last night.  
57 We were ...

58 MS. NEWMAN: Do you need a copy of that to look at  
59 right now?

60 MS. HARNUM: Yes, to look at right now. We were  
61 living in Ontario, we had a '92 Astro van, our insurance  
62 for full coverage was \$764 a year. We came from  
63 Ontario, we had a letter showing that he was a driving  
64 record 6, which is the highest.

65 MR. GOODLAND: He being who?

66 MS. HARNUM: My husband.

67 MR. GOODLAND: His name?

68 MS. HARNUM: Wayne Dunphy, sorry.

69 MR. GOODLAND: Okay.

1 MS. HARNUM: Driving record 6, which is the highest.  
2 Then we got insurance with Anthony ...

3 MR. GOODLAND: Driving record 6, the highest being  
4 ...

5 MS. HARNUM: Highest ...

6 MR. GOODLAND: ... the most favourable?

7 MS. HARNUM: Yes.

8 MR. GOODLAND: Okay.

9 MS. HARNUM: Then we got insurance here in  
10 Newfoundland and the cost for a '92 Astro van, same  
11 van, full coverage, was \$879, which is reasonable.  
12 Shortly after that we got a cancellation notice and their  
13 reason, what they said was that they couldn't verify  
14 three years of previous insurance.

15 MR. GOODLAND: They being the Newfoundland  
16 insurer or the insurer in Newfoundland? How long had  
17 your husband been driving?

18 MS. HARNUM: 22 years.

19 MR. GOODLAND: Okay.

20 MS. HARNUM: Without any accidents. Then in  
21 December of '99 he had an accident and at that time we  
22 had a rental and then we got ...

23 MR. GOODLAND: Was this an at fault accident, he  
24 was responsible?

25 MS. HARNUM: No other car involved. It was slippery  
26 roads.

27 MR. GOODLAND: There was no other vehicle  
28 involved?

29 MS. HARNUM: No other vehicle involved.

30 MR. GOODLAND: Okay, so a single vehicle accident,  
31 okay.

32 MS. HARNUM: Single vehicle accident. Then we got  
33 a Grand Am, '89 Grand Am, for, while we were waiting to  
34 get a better one, and the insurance was \$1,221. Then  
35 we got a '97 Astro. The cost was \$1,130. This is very  
36 interesting, we moved to Norman's Cove with the same  
37 van, same coverage, the cost was \$730. We moved  
38 back to Harbour ... we moved to Harbour Grace, the  
39 cost was \$1,899. And then we got a notice saying that  
40 due to his accident he was going to be charged an extra  
41 charge of, and the cost was \$2,546.

42 MR. GOODLAND: And when did you get this notice?

43 MS. HARNUM: We got that in ... it's dated for October  
44 2000, so almost a whole, almost a year since the  
45 accident.

46 MR. GOODLAND: October 2000. And did it indicate  
47 on your notice why the ...

48 MS. HARNUM: Nothing about being in FA or being a  
49 high risk driver. It just says there's an additional charge  
50 because of your accident in December of '99.

51 MR. GOODLAND: And the premium went to \$2,500?

52 MS. HARNUM: Yes. And then, because I'm involved  
53 in this, I called the company direct in Nova Scotia.  
54 They took him out of the FA and the insurance on the  
55 same car went down to, just a second, \$1,144.

56 MR. GOODLAND: So when did you find out you were  
57 in FA, as you put it, or your husband was in FA?

58 MS. HARNUM: Well, I called and asked the agent if he  
59 was in the FA, I was told no.

60 MR. GOODLAND: This is an agent in the Harbour  
61 Grace area?

62 MS. HARNUM: In Bay Roberts.

63 MR. GOODLAND: Bay Roberts, okay.

64 MS. HARNUM: I asked how would I know if he was in  
65 FA. I was told that it would be written on the policy. I  
66 now know from what I've been reading here is that it's  
67 not written on the policy.

68 MR. GOODLAND: It wasn't written on your policy?

69 MS. HARNUM: No, it wasn't written on my policy, and  
70 when we called Nova Scotia, the first question he asked  
71 was why are you in FA. That's how we found out we  
72 were in FA. We thought we were but we had no proof.

1 MR. GOODLAND: Yes. And then you say you went  
2 to a direct seller?

3 MS. HARNUM: Direct ... we went to a direct ... instead  
4 of going through a broker, an agent, we went directly to  
5 the company.

6 MR. GOODLAND: The same company?

7 MS. HARNUM: No.

8 MR. GOODLAND: Okay, a different company.

9 MS. HARNUM: Yes.

10 MR. GOODLAND: And your ...

11 MS. HARNUM: Out of province.

12 *(10:15 a.m.)*

13 MR. GOODLAND: And when did you ... you received  
14 a new premium, new coverage from this other insurer?

15 MS. HARNUM: Yes.

16 MR. GOODLAND: And what time or what was the date  
17 you did that?

18 MS. HARNUM: Probably shortly after we were put in  
19 FA. That was ... the FA was dated October 2000 and it  
20 was in September (sic) 2000 we went with the other  
21 company.

22 MR. GOODLAND: So you ...

23 MS. HARNUM: So we didn't stay in FA very long.

24 MR. GOODLAND: But you said you had only noticed  
25 you were in FA as of October 2000.

26 MS. HARNUM: Yes. When it went ... the next month,  
27 we got the notice that the insurance went up to \$2,546.

28 MR. GOODLAND: In October.

29 MS. HARNUM: We started calling around and within  
30 the next month we went down again. We got out of the  
31 FA through our own means.

32 MR. GOODLAND: And you went down to, you said  
33 around \$1,100 yearly?

34 MS. HARNUM: Yes.

35 MR. GOODLAND: In your position with your  
36 association, have you received feedback from members  
37 of the public regarding the impact that these various  
38 rate increases may have on the people who are  
39 presently in FA, the increases being 40, in excess of  
40 approximately 40 percent or on average in excess of 40  
41 percent for private passenger insurance?

42 MS. HARNUM: Yes, I have. I actually have one story  
43 in particular. It's my brother. Both him and his wife are  
44 in FA. Both of them have one accident each, different  
45 cars. They're professional people. If this goes up to  
46 this high rate, one of the cars they will not be able to  
47 afford to have insurance on.

48 MR. GOODLAND: And what's the general feedback  
49 you're getting from other members of the public or is  
50 there a general feedback?

51 MS. HARNUM: They just won't have insurance. We'll  
52 have more uninsured drivers on the road, more than we  
53 have now.

54 MR. GOODLAND: They'll be my ... they'll be my only  
55 questions. Thank you, Mr. Chairman.

56 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
57 you, Mr. Goodland. I just wanted to correct the record.  
58 I'm surprised that Mr. Stamp and Mr. Whalen not  
59 remembering that Mr. Browne was here during the ...

60 MR. STAMP, Q.C.: Oh, we knew he was here, sir.

61 MR. WHALEN, Q.C.: We knew he was here.

62 MR. SAUNDERS, PRESIDING CHAIRMAN: Oh, I'm  
63 sorry.

64 MR. WHALEN, Q.C.: Oh, yes, we knew he was here.

65 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes. Mr.  
66 Browne represented or acted as the Consumer  
67 Advocate and Mr. Fitzgerald as his counsel during that  
68 hearing that was referred to in Ms. Harnum's  
69 presentation, AI-36 Order.

70 MR. WHALEN, Q.C.: I wasn't sure, Mr. Chairman, if he  
71 wasn't acting for Mr. Morris or ...

72 MR. SAUNDERS, PRESIDING CHAIRMAN: He was ...

1 MR. WHALEN, Q.C.: ... government generally ...

2 MR. SAUNDERS, PRESIDING CHAIRMAN: I'm sorry.  
3 Yes, he was acting for Mr. Morris.

4 MR. WHALEN, Q.C.: Yeah, I think that's the point ...

5 MR. SAUNDERS, PRESIDING CHAIRMAN: As  
6 Consumer Advocate ...

7 MR. WHALEN, Q.C.: ... (inaudible)

8 MR. SAUNDERS, PRESIDING CHAIRMAN: You're  
9 right. He wasn't appearing as Consumer Advocate, so  
10 ...

11 MR. WHALEN, Q.C.: I'm still confused as to the role ...

12 MR. SAUNDERS, PRESIDING CHAIRMAN: I'm still  
13 confused too. You're all right.

14 MR. WHALEN, Q.C.: (inaudible) what we're saying,  
15 Mr. Chairman.

16 MR. SAUNDERS, PRESIDING CHAIRMAN: It's late in  
17 the process here and even Mr. O'Flaherty was correct  
18 too, that you're the first Consumer Advocate to have  
19 appeared on ... yes. I guess I was having difficulty  
20 trying to visualize Mr. Browne in some other role.

21 MR. WHALEN, Q.C.: I think he made a point of it at the  
22 time ...

23 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, he  
24 did.

25 MR. WHALEN, Q.C.: ... some stage in the proceeding.

26 MR. SAUNDERS, PRESIDING CHAIRMAN: I recall  
27 that. Okay, that's clarified, I think it is. Commissioner  
28 Powell, do you have any questions?

29 COMMISSIONER POWELL: Yeah, I just have a couple  
30 of things, Ms. Harnum. Thank you very much for your  
31 presentation. You've obviously been putting a bit of  
32 work into it. You say one of your responsibilities is  
33 consumer awareness?

34 MS. HARNUM: Yes.

35 COMMISSIONER POWELL: How have you been  
36 doing that or how do you propose to do that?

37 MS. HARNUM: Newspaper, talk shows, radio.

38 COMMISSIONER POWELL: That's the interview  
39 newspapers versus advertising.

40 MS. HARNUM: Yes, it's writing letters to the editor so  
41 that ...

42 COMMISSIONER POWELL: You don't have any  
43 funding for a proper consumer ...

44 MS. HARNUM: No.

45 COMMISSIONER POWELL: Have you approached  
46 any government agencies or other ...

47 MS. HARNUM: I tried to but I kind of got a lot of run  
48 around so I gave it up.

49 COMMISSIONER POWELL: Have you talked with the  
50 insurance industry per se?

51 MS. HARNUM: Not regarding funding, no.

52 COMMISSIONER POWELL: Well, as their ... it's in  
53 their best interest, like most large corporations, to have  
54 the consumers quite aware of the products and their  
55 responsibilities. It saves ... I presume they perceive it  
56 would save problems in the marketplace for themselves.  
57 So you haven't approached them about how they can  
58 improve their consumer education in terms of making ...

59 MS. HARNUM: No, but that was one of the  
60 recommendations made in 1998.

61 COMMISSIONER POWELL: Have you ... you haven't  
62 talked to them though.

63 MS. HARNUM: No, I haven't.

64 COMMISSIONER POWELL: This history you gave  
65 with your husband here, he's not a senior citizen, is he?

66 MS. HARNUM: No.

67 COMMISSIONER POWELL: Okay. He doesn't have  
68 any disability or anything like that. He's just, use the  
69 expression, just an ordinary Joe.

70 MS. HARNUM: Right.

1 COMMISSIONER POWELL: Yeah. These dealings  
2 with, before you talked to Nova Scotia, were you  
3 dealing with the same insurance brokerage firm?

4 MS. HARNUM: Yes.

5 COMMISSIONER POWELL: You had a history with  
6 that brokerage firm?

7 MS. HARNUM: Well, we just moved here from Ontario  
8 in '99 so there wasn't ...

9 COMMISSIONER POWELL: Okay. So a short period  
10 of time.

11 MS. HARNUM: Short period, but you can actually go  
12 back on their system and get a driving history. The  
13 person in Nova Scotia went back 12 years and got his  
14 driving history.

15 COMMISSIONER POWELL: Do you know that the  
16 policy that you were placed with, even though a  
17 different brokerage firm in Ontario and Newfoundland,  
18 would be the same insurance carrier?

19 MS. HARNUM: No, it wasn't the same carrier.

20 COMMISSIONER POWELL: It wasn't the same carrier,  
21 different, okay. So where would that history come  
22 from?

23 MS. HARNUM: They have it on their systems. I'm not  
24 sure how ... the insurance ...

25 COMMISSIONER POWELL: That would be the Bureau  
26 (sic) of Canada?

27 MS. HARNUM: Yes, the insurance industry has it on  
28 their system. He was able to go back 12 years on his  
29 computer to look at the driving history.

30 COMMISSIONER POWELL: That's the same process  
31 you were, in your presentation you questioned whether  
32 some of the data was reliable, but in your particular  
33 case they had you going back for 12 years.

34 MS. HARNUM: No, I don't mean that data. I mean the  
35 data when they compile it to use it to get the formula.

36 COMMISSIONER POWELL: Yeah, but you presume  
37 that the history of all the drivers in the country is all  
38 part and parcel of the actuarial process.

39 MS. HARNUM: Correct.

40 COMMISSIONER POWELL: So you said you phoned  
41 a company in Nova Scotia that's a direct seller. How  
42 did you find out about that?

43 MS. HARNUM: On the internet.

44 COMMISSIONER POWELL: So you just went on the  
45 internet looking.

46 MS. HARNUM: Went on the internet and did some  
47 research.

48 COMMISSIONER POWELL: Is that ... we've had  
49 testimony that there's a company that deal with niche in  
50 the marketplaces, there are companies out there for  
51 seniors and various things. Is that a niche company or  
52 is that just a company off the internet?

53 MS. HARNUM: No, they took him out of the FA and  
54 they gave him back his five star rating.

55 COMMISSIONER POWELL: Do you know if they have  
56 any large presence in this province?

57 MS. HARNUM: I don't know if they have an office.

58 COMMISSIONER POWELL: No. They didn't say ...

59 MS. HARNUM: I don't think they're one of the popular  
60 ones, probably not. Like, they're not the top four.

61 COMMISSIONER POWELL: Okay. But they didn't say  
62 to you, gee, that this is super, give me some more of  
63 your friends and I'll give them a call and see if I can ...

64 MS. HARNUM: No, no, no.

65 COMMISSIONER POWELL: Nothing like that.

66 MS. HARNUM: No, nothing like that.

67 COMMISSIONER POWELL: They didn't ask and you  
68 didn't volunteer?

69 MS. HARNUM: No.

70 COMMISSIONER POWELL: Did you suggest to your  
71 brother and sister-in-law, is it?

72 MS. HARNUM: Yes.

1 COMMISSIONER POWELL: Did they call this  
2 company to see if ...

3 MS. HARNUM: Actually, they changed ... the  
4 companies, it seems to me they're always changing  
5 names and they're selling each other policies. I'm not  
6 sure how it all works.

7 COMMISSIONER POWELL: Who ...

8 MS. HARNUM: But they keep changing.

9 COMMISSIONER POWELL: Who, the broker?

10 MS. HARNUM: I think the companies, they're usually  
11 big companies and they have little smaller companies  
12 that sell insurance. They're all under an umbrella.

13 COMMISSIONER POWELL: No, this company you  
14 dealt with in Nova Scotia, you say you got ...

15 MS. HARNUM: It was a popular name.

16 COMMISSIONER POWELL: Yes, but you didn't ... did  
17 you refer your brother and sister-in-law to them to see  
18 ...

19 MS. HARNUM: Yes, I did.

20 COMMISSIONER POWELL: And did they, were they  
21 able to give them a better rate or they said, no, you're  
22 stuck in Facility?

23 MS. HARNUM: Well, they changed their rules and  
24 now they only accept people who are involved in  
25 associations like Teachers Association and those kind  
26 of groups, so ...

27 COMMISSIONER POWELL: Okay. So they're a niche  
28 market ...

29 MS. HARNUM: ... because we're already in, we're  
30 staying in.

31 COMMISSIONER POWELL: Okay.

32 MS. HARNUM: So it's like a group rate.

33 COMMISSIONER POWELL: So you got in before they  
34 closed the door.

35 MS. HARNUM: I got in before they closed the door.

36 COMMISSIONER POWELL: They didn't tell you why  
37 they closed the door?

38 MS. HARNUM: No. Sorry, but they get to choose  
39 who they want in there.

40 COMMISSIONER POWELL: There's no suggestion  
41 they kept the door open till you came and then they  
42 closed it.

43 MS. HARNUM: No, no.

44 COMMISSIONER POWELL: I mean, they didn't realize  
45 you were coming here.

46 MS. HARNUM: No.

47 COMMISSIONER POWELL: So there's no sense of me  
48 calling them up and saying ...

49 MS. HARNUM: No.

50 COMMISSIONER POWELL: The fact that I told them  
51 I'm a commissioner down here, you don't think that  
52 would help either?

53 MS. HARNUM: No, maybe not.

54 MR. WHALEN, Q.C.: Double your rate.

55 COMMISSIONER POWELL: We've heard testimony  
56 from a number of sources, including our last witness,  
57 that, the suggestion that one of the problems in the  
58 province is that we don't have enough competition and  
59 we've also had testimony indicating that this is a tight  
60 market for a number of reasons, and if ... and we're just  
61 dealing with the FA, which is a very small portion of the  
62 Newfoundland insurance market. I think it's roughly  
63 four percent. If they are not increases, and both the  
64 Board actuary as well as the FA's actuary, they've  
65 agreed that there should be an increase. There's  
66 disagreement on the magnitude of the increase. If they  
67 don't get it, that there are people who are writing in the  
68 marketplace now who will cut back or, maybe like your  
69 insurance company in Nova Scotia, narrow their niche,  
70 which by default will force more people into FA, or, as  
71 you suggested, driving without insurance, which while  
72 is against the law, it doesn't give comfort if you're  
73 driving on the road and somebody is coming at you,  
74 wondering whether they got insurance or not. So from  
75 a consumer point of view, doesn't that make you

uncomfortable, there can be fewer people in the marketplace and less competition?

MS. HARNUM: Well, one of the things that was covered in Bill 28 was to take away the ... actually, that's the one for insurance, okay. I think there's a lot of people in there that shouldn't be in there, in the FA.

COMMISSIONER POWELL: But one of the ways to do it, would appear to be from your husband's example, the fact you had a choice, that's how you got out of Facility. I mean, whether the broker made a mistake or ...

MS. HARNUM: I think we were very lucky to get out.

COMMISSIONER POWELL: But it was because you had a choice, that you were able to find somebody else that was in the marketplace.

MS. HARNUM: Because I knew how to. A lot of people don't know how to.

COMMISSIONER POWELL: So if you were going to criticize or make some suggestions from the consumer point of view that you did know, and you say there's a lot of people in the market don't, how can, how could we overcome that?

MS. HARNUM: Public education, either through yourselves or through the Government Service and Lands or through IBC.

COMMISSIONER POWELL: You look upon that as a role of the Board to ...

MS. HARNUM: I'm not sure. Either one. Not me, I don't have the funds.

COMMISSIONER POWELL: But are you actively looking, trying to take initiative to see how we can get over that hump to ensure consumer awareness and letting people know there are choices or alternatives to the invoice just show up in the mail?

(10:30 a.m.)

MS. HARNUM: It's a ... you know, it goes back more than just this increase right now. I mean, there's a lot of problems within the FA, how people get in there, and I think if they didn't have so many people in there, then

all that premiums that they would be making would be put in the regular market and it'd just go around.

COMMISSIONER POWELL: So do you have any suggestions to get those that shouldn't be in FA out?

MS. HARNUM: Have to look at all of them and see who's in there and why they're in there. There should be rules as to why you should be put in there, not because you're 65.

COMMISSIONER POWELL: Thank you very much.

MR. SAUNDERS, PRESIDING CHAIRMAN: Commissioner Martin? No questions? Just one area of questions that I had for you, Ms. Harnum. Your group has been in existence since 1999?

MS. HARNUM: That's correct.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes. How large is your group? You know, to what extent are you representative of, say, other insurers in other parts of the province?

MS. HARNUM: Well, back in ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Or insureds.

MS. HARNUM: ... '99, 2000, I collected 13,000 signatures to have the zones looked at, and so they're back ...

MR. SAUNDERS, PRESIDING CHAIRMAN: This was by way of a petition that you circulated?

MS. HARNUM: Yeah. So, you know, that's my group and there's more besides them. There's ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Do you have a fee or a membership ...

MS. HARNUM: No.

MR. SAUNDERS, PRESIDING CHAIRMAN: ... fee or anything?

MS. HARNUM: No.

MR. SAUNDERS, PRESIDING CHAIRMAN: No, okay. Any questions arising? No questions arising. Okay,

1 I'd like to thank you very much for coming forward, Ms.  
2 Harnum.

3 MS. HARNUM: Thank you.

4 MR. SAUNDERS, PRESIDING CHAIRMAN: We'll  
5 certainly take your presentation into consideration. It's  
6 now 10:30 so are there other presenters that we have  
7 this morning?

8 MS. NEWMAN: Yes, there is one more person, Mike  
9 Kehoe from the Taxi Operators Association.

10 MR. SAUNDERS, PRESIDING CHAIRMAN: Is Mr.  
11 Kehoe present? He is, okay. We'll break now and we'll  
12 come back in 15 minutes and we'll hear Mr. Kehoe.  
13 Thank you.

14 (break)

15 (11:05 a.m.)

16 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Ms.  
17 Newman.

18 MS. NEWMAN: Yes, Mr. Chairman, we have the third  
19 and last public participant here today, Mike Kehoe of  
20 the Taxi Operators Association, and he has provided us  
21 with some documentation which he may be making  
22 reference to. There's three items. I guess we'll mark  
23 them now for ease of reference. One is a December  
24 17th, 2002 letter from Cal LeGrow Insurance Limited.

25 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

26 MS. NEWMAN: To Mary Fitzgerald, we'll call that  
27 MK-1. The other is several documents stapled together  
28 being, covering with an invoice to Mary Fitzgerald,  
29 dated December 30th, 2002, and that will be MK-2, and  
30 the last is similarly an invoice from Cal LeGrow  
31 Insurance to Mary Fitzgerald, dated February 15th,  
32 2002, and that would be MK-3.

33 **EXHIBITS MK-1, MK-2 & MK-3 ENTERED**

34 MR. SAUNDERS, PRESIDING CHAIRMAN: So the  
35 last one was February 15th, you said?

36 MS. NEWMAN: Yes.

37 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
38 Kehoe, how are you?

39 MR. KEHOE: I'm fine, Mr. Chairman.

40 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
41 you.

42 MR. KEHOE: Kind of nervous but ...

43 MR. SAUNDERS, PRESIDING CHAIRMAN: Oh, don't  
44 get nervous. This is not a group that should make you  
45 nervous.

46 MR. KEHOE: Well, in my life as a taxi driver I've been  
47 punched, kicked, groped and told I'm loved, and that's  
48 just by the guys, so I don't feel too intimidated but this  
49 is a process that most ordinary people find intimidating,  
50 so ...

51 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I  
52 understand. First of all, do you wish to be sworn?

53 MR. KEHOE: Yes, sure.

54 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, well  
55 would you take the Bible in your right hand and we'll  
56 get you sworn in. Do you swear that in the evidence  
57 you are about to give you will tell the truth, the whole  
58 truth, and nothing but the truth, so help you God?

59 MR. KEHOE: I do.

60 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
61 you. Would you spell your last name for me?

62 MR. KEHOE: It's K-e-h-o-e.

63 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, and  
64 it's Michael, is it?

65 MR. KEHOE: Yes, it is, yes.

66 MR. SAUNDERS, PRESIDING CHAIRMAN: Alright,  
67 I wanted to just introduce the people in the room to you  
68 in case you weren't familiar with everybody. My name  
69 is Fred Saunders, and I'm the Chairman of the panel,  
70 and I have with me Commissioner Powell on my right,  
71 and Commissioner Martin on my left, and Ms. Newman  
72 is Board Counsel, she's sitting over here with Mrs.  
73 Thistle who is Acting Board Secretary. Mr. Stamp and  
74 Mr. Whalen are representing Facility Association. Mr.  
75 O'Flaherty is the Consumer Advocate and his counsel  
76 is Mr. Goodland, and in the room we have people  
77 representing the industry as well as the consumer ... I'm



1 sorry, the Superintendent of Insurance Office, and we  
2 have two members of staff, Mr. Byrne and Mr. Seaward,  
3 and I guess that pretty well covers all of the people that  
4 are here. Ms. Harnum is here as well. She gave a  
5 presentation earlier. I don't know if you were sitting in  
6 for that, so we'll let you carry on with your  
7 presentation. Do you have any questions you wanted  
8 to ask him in advance?

9 MS. NEWMAN: Mr. Chairman, just to have Mr.  
10 Kehoe, first of all, explain where he got these three  
11 documents that we've just labelled?

12 MR. KEHOE: The three documents are late arrivals into  
13 our life in the insurance industry. They belong to my  
14 mother-in-law, a lady we affectionately refer to as Nan,  
15 lovingly, and I have her permission to use these  
16 documents, and they're a by-the-way type of addition  
17 to what I'm going to be saying here this morning, and  
18 I'm using them as an illustration of how people can be  
19 placed into FA and not know they've been placed into  
20 FA, and also how they can be placed into FA unfairly,  
21 and also that when the placement has been challenged  
22 by somebody who is not afraid to challenge it, and it's  
23 very intimidating, this whole process of challenging ...  
24 I find amongst our own drivers, it's very intimidating,  
25 they're almost afraid to ask why, and oh, I've been  
26 (inaudible), so it's an example of when challenged, the  
27 process can reduce its rates within hours.

28 MS. NEWMAN: Okay, and so these documents are not  
29 provided by you in your capacity as a taxi operator, or  
30 in reference to ...

31 MR. KEHOE: The documents have been reviewed with  
32 members of the taxi operators' network, and it was  
33 encouraged by members of our network to bring it  
34 forward as an example, even though this is not a  
35 commercial undertaking, it's an example of what they  
36 verbally expressed, the frustration of not knowing why  
37 or how they're going into the Facility Association, and  
38 so we decided to build it in to our talk as well. As you  
39 can see by the dates on the documents, they arrived in  
40 ... the originating one is December the 12th of so. I  
41 became involved in this after ... and Nan didn't have  
42 that until January the 5th of 6th, when she returned  
43 from some time with her grandchildren, and brought it  
44 to my attention on the 7th, so it was not strategized, it  
45 was not planned, it just happened late last week, and  
46 it's ongoing today as we speak.

47 MS. NEWMAN: Okay, so you just ...

48 MR. KEHOE: So it was a good example to us of issues  
49 brought forth by Victoria Harnum and by others, and I  
50 must compliment the Board because every night I get  
51 some reading for bedtime, you do a great job in getting  
52 the day's proceedings out, certainly usually by 10:30,  
53 and so I've been looking at what's been happening and  
54 the uncertainty, and Nan is a senior, but it's an example,  
55 I believe, of what's happening, so that's why we  
56 brought that on.

57 MS. NEWMAN: Okay, fair enough.

58 MR. KEHOE: Okay.

59 MS. NEWMAN: And I wonder if you could explain for  
60 us your occupation and your role within the Taxi  
61 Operators Association?

62 MR. KEHOE: For about ten years I've been involved in  
63 the taxi industry as both a car owner and operator, and  
64 as a driver as well. I drive now for a person who owns  
65 several vehicles. On the average, most taxi drivers out  
66 there work, who do it full-time, other than come out ...  
67 some come out on a Friday and Saturday night to get  
68 enough money to buy a case of beer and a pack of  
69 smokes and they go home. Most of the people out  
70 there are what I would call full-time, they do it for a  
71 living. Most of the people I interact with do it for a  
72 living and so the taxi operators' network started in the  
73 year 2000 and what it is, it's an unincorporated  
74 facilitative agency of volunteers. We have no funding  
75 from other sources, and we came together ... and its  
76 membership fluctuates wildly depending on what's  
77 going on. I've had several hundred involved and, you  
78 know, we don't have membership forms, we don't do  
79 anything, it's based on if you want to make things  
80 better, do it. So what we did is we got together and we  
81 started to identify issues where we could improve in the  
82 industry, and as a result of that ... I'm co-chair of that  
83 operation with a lady named Deanne Price (*phonetic*),  
84 and there are quite a number of other people involved  
85 in this, and we hold meetings fairly regularly, and we  
86 decided to identify areas where we could improve, and  
87 so we've structured partnerships.

88 Our approach is non-adversarial, non-  
89 controversial. We are dealing with issues that affect  
90 our lives and partnership with Hospitality  
91 Newfoundland and Labrador, the Cruise Ship  
92 Authority, the Airport Authority, the taxi owners, and  
93 the City of St. John's. We developed and implemented  
94 a skills enhancement and training program for taxi

1 drivers called Taxi Host. That's a 27 hour in classroom  
2 learning experience for drivers and so far approximately  
3 120 drivers have availed of that. We're strengthening  
4 that program now by dealing with other issues related  
5 to this as well.

6 We partnered with the Environmental  
7 Industries Association, with the Conservation Corps of  
8 Newfoundland and Labrador, the Department of Works,  
9 Services, and Transportation, the City of St. John's  
10 again, and others, and I apologize if I leave them out,  
11 but they are ... and we developed what we called the  
12 STEER Project. STEER is an acronym for Smart Taxis  
13 Encourage Environmental Respect. That has a website,  
14 STEER has a website, and we're trying to find ways to  
15 reduce greenhouse gas emissions from our vehicles, try  
16 alternate fuel source vehicles, reduce our fuel costs,  
17 and do a small bit in light fleet vehicles to be able to  
18 deal with the greenhouse gas emissions and at the same  
19 time save ourselves money, become better educated.

20 We have a project with the Independent  
21 Living Resource Council called the Accessible Taxicab  
22 Advisory Committee. Not one out of the 364 taxis in  
23 the City of St. John's, under taxi permits are accessible  
24 cabs. Not one can provide a wheelchair after 12:00, and  
25 this came as a result of one of our members dragging a  
26 person, a very tall heavy-set man who was paralyzed  
27 from the waist down, and the rather embarrassing and  
28 safety issues of dragging him into a taxi and dragging  
29 him out downtown, and he was a visitor to our city, and  
30 it was just unacceptable, so we've come together with  
31 those groups trying to develop a way to get some of  
32 those licenses used for taxi cabs.

33 And finally, I guess, probably ... we have other  
34 projects, but probably the one of, one that ... the  
35 insurance industry has become a project as well, but it  
36 doesn't have an acronym yet. It will, but it's got a few  
37 names put on it, but anyway, the final one that I'll use  
38 as an illustration of what our group is doing, of  
39 volunteers is doing, we have a group called Women in  
40 the Taxi Industry, and we call it the WITTI project, and  
41 we have a WITTI Committee, and we, through working  
42 with groups like the Advocacy Council on the Status of  
43 Women, the Newfoundland and Labrador Organization  
44 of Women Entrepreneurs, so we've met with all of these  
45 people, the Women and Resource Development,  
46 Women's Studies Section at Memorial University,  
47 Women's Policy Office at the Confederation Building,  
48 female taxi drivers and male taxi drivers, we focus on  
49 developing barriers to, of the 700, approximately 700

50 drivers in the City of St. John's alone ... when we started  
51 this fewer than two percent were female, and fewer than  
52 one quarter of one percent of the 364 taxi cab licenses  
53 were owned or controlled by females, and we wanted to  
54 know why, and then we got into the issues of  
55 harassment, and the issues of safety and issues of  
56 training and cars, and this type of thing, and that's an  
57 ongoing project as well that we're involved in.

58 So that's what the Taxi Operators' Network is,  
59 and it's a, it's people who are working to better their  
60 own lives and to better the lives of our customers that  
61 get in our cars. That's what we do.

62 MS. NEWMAN: Before we move on to your  
63 presentation, I just wonder if you could let us know  
64 how in the world you get time to drive a cab if you're  
65 doing all these things?

66 (11:15 a.m.)

67 MR. KEHOE: Well, it's tiring, and it's one of the issues  
68 that brought us here, is that when we became aware of  
69 the issue of the Facility Association and their rate  
70 application for increasing ... prior to that, in the year  
71 2002, I had, at the request ... we have a number of  
72 projects, as you're aware, but at the request of some of  
73 the taxi cab owners in the industry amongst our group,  
74 we were really concerned about the increases that are  
75 going onto our insurance, and many of them are just  
76 hanging on by their proverbial (inaudible) fingernails  
77 out there. A lot of the owners are just trying to survive,  
78 so it came up, so at that point in time we approached, I  
79 approached the Insurance Bureau of Canada, and the  
80 Brokers Association on Ropewalk Lane here in St.  
81 John's, to seek their interest in establishing an  
82 undertaking where we could find ways to reduce our  
83 claims and better our drivers, and become more  
84 involved in the process of what happens out there.

85 We were rejected by both. The Brokers  
86 Association said it's not us essentially, we don't want  
87 to be ... that's not what we do, it's carrier problems,  
88 carriers' issues, and quite frankly, I recall having one  
89 telephone conversation with a Mr. Forgeron  
90 (phonetic), I think his name was, and I had several  
91 phone calls, and my telephone bill shows that where I  
92 made those calls last year, and they had little or no  
93 interest in working with us to do that.

94 So with the other projects that are on the go,  
95 it was, we were aware of it, but we didn't have the

resources or the time to do anything about it, so when this process came up now, and the initial appearance that I came here, I believe if I remember correctly, was somewhere around the 4th of so, or was it October, November, something like that, the first meeting that you had here on this. We were sort of looking in before that, and when we came into the room and there was only Mr. Whalen and Mr. Stamp, two very capable people in their own right, and nobody here for the other side, it set off flags, and we had been lobbying the Province, the Minister ... Minister Noel in particular to become involved in this, and in our view, we had been deflected, we had not got straight answers ... (inaudible) well, we'd like to appoint an advocate but we have to pass an Act to do this, and we said well, hang on here now, this is going to take place with or without the Act. The Board has made it quite clear that they're not going to be ... you know, 12th hour stuff is going to delay this. This issue has to be dealt with, so what are you going to do, and we could get, for a day or two, no answers, so what we did is we wrote the Premier, and we wrote the Ministers involved, and we lobbied them pretty extensively, and then we were going to go in the media with this, and shortly after, and I'm sure completely coincidental and as a normal course of business, it was very good to hear about Mr. O'Flaherty and Mr. Goodland appointed, and we had great disappointment that the Minister did this at a 12th hour. It must be difficult to come into this when the process has already been structured, and I've been reading about the, about the work on the internet, which is a great service, the internet, whoever maintains that internet presence for the Board in its hearings certainly has got to be complimented. It's a tremendous amount of work that must be involved to get that, and every night ... if anybody doesn't want to know, if anybody doesn't know what's going on in this hearing, that's their own fault. All they got to do is go into the internet. This is completely open and I've got to compliment ... any correspondence we've had with Ms. Blundon back and forth, she has been excellent and always worked with us, so we have no problems at all with this process. I got to compliment it, but we were mad with the Minister because the Minister was lolligagging (*phonetic*) us, what we call it. He was dragging along, he wasn't going to do anything, and for a while it looked as though some very skilled people were going to have you to themselves, and we were concerned, so that's why we made the approach to come and tell it like it, from our perspective, so from that process we went ... I came in contact with Victoria Harnum, who is a very, very committed and very

dedicated person in what she's doing, and we started gathering information amongst ourselves, and to find out what was going on, and it was our intention to provide a written document (inaudible), but as we got into it, we realized how much there is in this, and as we got into the tax and the figures, and we're not actuaries, we're cabbies, you know. We're not accountants and we're not lawyers, and we don't have those kind of skill levels, and we no money, we couldn't buy them, so we were dependent on anecdotal evidence.

And people would come to us and say ... one broker who owns 30 taxis, or 35 taxis had come to me and said, I settled ten accidents from December the 13th to now with cash because I didn't want to pay, I didn't want it to reflect on my insurance. And I said well, come on out and let the Board know this, why, and I said what's going to happen if the rates go up? He said I'm just hanging on now, I'm not going to survive. If the rates go up much more I'm going to have to just fold it up and give it up. I said well give me specifics. Well, I don't want to be on the public record of it, you know, and we found that a lot in our industry.

So I'm here not with statistics, I'm going to leave that to the lawyers involved, and to the accountants and the actuaries involved, we're not doing that. I'm talking about people who go out to put a taxi on and a request of a \$3,000 liability and after a year, some of them, I admit, have gone down by \$400, but the issues that we face is that collective grouping of the rating really hurts us.

Because like we have some people out there in the taxi industry, 80 percent of the permits to operate taxis in the City of St. John's, of the 364 licenses, don't confuse the permit to operate with the driver, because on the average there's about two drivers or so per taxi, night and day. 80 percent of the 364 are controlled by an oligopoly. They're a small group of less than five, or somewhere around five people who control 80 percent of the permits. Some of those groups who control 5, 10, 15, 20, 30, 40 taxis do not do ... and this was, and we were, when we first came in here, we said oh, let's go FA, FA is bad. Well, FA is not bad. Quite frankly, without FA, some of these people would not survive. I would rather they did not survive in our industry. They're bulk purchasers. They operate with the proverbial, and I have seen this with my eyes ... briefcases with cash, and that's how they operate, but by doing so, the person out there like Dave, and Steve,

1 and Paul, and Mary, and Shirley, who operate one cab  
2 are getting nailed with a grouping.

3 MS. NEWMAN: Can you please explain this oligopoly,  
4 is this a company that controls ...

5 MR. KEHOE: Yes, the company, one company, and I'll  
6 use this as an example, there's a cap on the number of  
7 licenses that a particular company can control, but I'm  
8 sure you can understand that shareholders can be  
9 similar in all companies, so you can have several  
10 companies controlling a number above the 91. The one  
11 company in town has 91 vehicles on, but it doesn't own  
12 a single car. The company doesn't own one car, it just  
13 controls permits, and it, and it rents the permit out for  
14 \$10,000 per year to an operator. And an operator may  
15 have access to one of those permits, or he may have  
16 access to 25 of the permits, to put spots or cars on.

17 Some of these bulk driving, the bulk groups  
18 that put on 25 cars, are really hurting us, and so our  
19 members have come to us and said, I'm placed in FA  
20 because I'm a taxi driver, or because I own a taxi, but  
21 I've had 15 years of good behaviour and I can't get out  
22 of FA, and a lot of them didn't know they were in FA,  
23 and these are, you know ... the individuals involved in  
24 them, they're reluctant, this is tough, I find this tough,  
25 I'm talking but I find it tough to do this, intimidating.

26 Our concern with FA is that FA appears to be  
27 uncaring, and it appears to be not proactive in finding  
28 ways to keep people out of it. It appears to us to be  
29 saying well you're placed here, so we're here to do you  
30 a favour. You can't get insurance somewhere else, and  
31 they're not saying, well, why are you placed here. You  
32 shouldn't be here, and so our members are coming back  
33 to us and they're telling us that. So we don't have all of  
34 the numbers. The next time these hearings occur, we  
35 will. We weren't prepared for this late fall to get into  
36 details that we, that you're seeing here, and my  
37 apologies. I apologize to the Board that other than  
38 anecdotal, what I'm giving you now, and our  
39 experiences, I don't have numbers for you.

40 I know that 70 percent of the insured, I think  
41 they are policyholders, or policy premiums are, in  
42 Newfoundland for the taxi industry are in FA, and  
43 they're increasing every year, and there's a document  
44 around that the Board has here in its information that  
45 shows that. I think it's somewhere around 74 percent,  
46 the last statistics were. They're up as high 84 and 85 in  
47 New Brunswick, I know, but my concern is that we're

48 just being slipped over there, and we're not given a  
49 chance to be able to work with this.

50 What I would like the Board to do, and the  
51 Board sets rates, I know, and the Board doesn't  
52 determine, and maybe it does, but my understanding of  
53 it, my limited understanding of it, is that you don't  
54 determine how they operate, but there is no  
55 representation on Facility Association, nobody is in  
56 that room to be a fly in the ointment, there's no  
57 dissenting voice that I'm aware of. Nobody establishes  
58 a conscience outside of their profits.

59 We were completely surprised in reviewing  
60 this that the Facility Association, according to a  
61 government release on May the 14th, 2001, it reported  
62 profits of \$22.4 million for the previous four years, and  
63 it paid out \$15.7 million to insurance companies. Our  
64 position on that is not that it shouldn't make money, if  
65 it doesn't make money, it won't exist. I've got no  
66 problems with making money, making money is good.  
67 I need to make money to survive in my business, and  
68 I've got not problems with that.

69 What I have problems with is that I am not  
70 able to find anywhere where they're doing anything to  
71 minimize the people who don't want to be in there, to  
72 reduce the risk, and so that was, that's what, in going  
73 through this, and we got through this, and as late as  
74 last week we met on it again and we talked about it and  
75 said, look, we don't have anything other than to go in  
76 and tell them what it's like, what's happening out here,  
77 what's happening in our insurance industry and just  
78 ask them to bear it in their mind, when their mind is  
79 going in the assessment process, to recognize that  
80 there are people out here on a day to day basis that face  
81 these challenges, and these rates keep going up as a  
82 grouping of 30 percent. On \$3,000, 30 percent is \$900  
83 on liability. That's a lot of money for us to earn.

84 Most drivers out there who do this for a living  
85 are netting somewhere between \$250 and \$400 a week  
86 gross, with no benefit packages at all, no medical, no  
87 coverage by Workman's (*sic*) Compensation. For  
88 purposes of EI, some of them are not covered. For  
89 purposes of EI, some of them are, so it's a very tough  
90 world out there to survive in for cabbies, and we want  
91 you to know that. That's why I'm here, to tell you that.

92 So we were, these were the issues that we  
93 faced out there, and there are others as well, but a lot of  
94 this has been covered very thoroughly by the lawyers

involved. I've been reading it, what's going on, and we can get in and say the same thing and repeat and repeat and repeat, that's not what we're here for. You've already got a lot of that information. Victoria Harnum raised some excellent points that we were concerned about.

And if I may, I would let that bring me to Nan, and the story of how Nan gets FA-ed, okay, and I'll try and cut this as quickly as I can. Everybody loves Nan. Nan's about 70 years old, she has eight children, they're all grown up, and I don't think either one of the children even have a speeding ticket. If you were to look at a model for a Nan, that would be Nan. Nan is my mother-in-law, my wife's mom. About a little less than two years ago, Pop died and Pop had had insurance on his car for somewhere in the area of about 40 years. He had never had a claim, and he had been paying his rates religiously.

When Pop died, Nan lives up in a wooded area, in a bit of an isolated area, and Nan doesn't have a driver's insurance (*sic*), or doesn't have a driver's license. She never got one and she doesn't need one, and, but, but Nan is the kind of lady if you met her, you would love her, but she's nobody's fool. She has raised eight children and she doesn't put up with any foolishness. So she wanted to keep the car, Pop's car, and we said, well, Nan, you don't have driver's license. Well, that's okay, I only to go to the store, and I don't want to be depending on any ... so we went out looking for insurance, and we got insurance by putting my wife, who is also claim-free and in her forties, as the principal driver on the car, and the insurance ... one of the documents that I passed into you this morning, and I have Nan's complete authority to do this this morning. The insurance from February ... or I think it was December, to December of this year, or January the 12th, I'm sorry, of this year ... the insurance that was quoted to her was, including tax was \$1,029.25, and that's what she paid up front. Nan doesn't like to have any bills.

MS. NEWMAN: So you're looking at the February 15th document?

MR. KEHOE: Yes, I'm looking at the February 15th, or the February the 15th, 2002, Cal LeGrow Insurance. She got the insurance through Cal LeGrow Insurance, and in case I forget this, I would like to pay, as well, a compliment to a lady at Cal LeGrow Insurance, called Sonya Edison, who from the 7th or so, or the 8th, has

been working on this file with me, and she's been putting in a yeoman's effort on this. She's be doing ... from her perspective as a worker for Cal LeGrow's, she deserves some recognition. Anyway, that was on February 15th, and the year went by, and then on December the 17th, 2002, she was sent a renewal offer for insurance for the next year, and there was nothing on there saying who was the insurer.

Now, Nan got that on December the 17th, and Nan wasn't in St. John's on December the 17th, she was in Ottawa with her grandchildren, and she got back the first week in January, so she got this information in the first week in January, and the rate went from that amount that I disclosed earlier to you of \$1,000, whatever it was, taxes included, and it's not fair to include tax if the insurance companies don't get that ... Newfoundland Tax it's called, \$895, 15 percent for some reason. \$1,029, so the quote now went on this document dated December the 17th, \$3,563.

MS. NEWMAN: That's on the second page of the document dated December 17th?

MR. KEHOE: On the second page of that document.

MR. STAMP, Q.C.: Mr. Chairman, I just wonder if Mr. Kehoe could tell me again where that other number was he just mentioned, \$800 and something, I think he said?

MR. KEHOE: Yeah, it's on the first page of the document for December ... or dated February the 15th. It shows the new policy, \$895, okay, and the taxes on that were \$134, for a total of \$1,029.25. So in January, although it is dated, the issue is dated on December and it arrived around Christmas time and Nan was out of town, when she came back from a trip visiting the grandchildren, she opened the mail and she almost fell over. Now what had happened last year is one of my daughters legally and rightfully was operating Nan's car, and was turning into her driveway in her home, and a car coming behind ran into her. The car behind had no damage to it. Nan's car, my daughter was operating, and my daughter had a legal right ... nobody ever told her that it was an issue for her to drive this, you know ... the damage was about \$1,100 in damage, and the police, at my daughter's insistence, my wife's insistence, took statements on this. The adjuster involved took statements on this. The insurance companies involved ... the person who ran into my daughter when she was making a turn into the driveway, who left on a 30 kilometer straight stretch of

1 road on a dry day, left a 30 foot skid mark and ran into  
2 my daughter, right up, and is right up against where  
3 she's into her driveway, and he denied that it was his  
4 fault, my daughter had failed to use a signal light, he  
5 said. He had no damage on his car, he was just  
6 denying it.

7 (11:45 a.m.)

8 That was it. We went back to the insurance  
9 company involved, and the insurance company  
10 involved on this particular ... the adjusters came, the  
11 police came, everybody was saying, look, she didn't do  
12 anything wrong here, there's no citations here, you  
13 know, so we went back to the insurance company,  
14 when his own insurance ... when he disallowed his  
15 insurance from paying for Nan's accident, we said to  
16 our insurance company, Dominion of Canada, the  
17 carrier for LeGrow's, here's what happened, Nan needs  
18 her car fixed, what can we do. I can go fix the car myself  
19 on a credit card or whatever I want to do, and we can  
20 look after her claim here. What can we do? I got emails  
21 back from this insurance company, and I do apologize,  
22 I don't have them here today, saying, no, no, no, we've  
23 looked at the whole file, we're going to fix Nan's car,  
24 we're even waiving the deductible, this is how sure we  
25 are that this was not an issue caused by Nan's car.

26 And that was it. They fixed the car, there was  
27 no other discussion, nothing, absolutely nothing. The  
28 only time this raised its head again was when we got  
29 the offer to renew. Nobody said anything, so when I  
30 went back to Cal LeGrow's, when Nan bought it to my  
31 attention on the 7th of January, and I said what  
32 happened, what's going on here, explain this to me, and  
33 they said, well, Dominion of Canada has rated you as  
34 zero because you were, because the car was involved  
35 in an accident, so I explained what happened, and  
36 Legrow's had this in their file. My daughter had left the  
37 police station with her mother, gone to LeGrow's, and  
38 gave a statement to LeGrow's. LeGrow's had this, what  
39 had happened. And they said, well, she's rated as zero  
40 because she was involved in an accident.

41 I said let's look at this accident and what's  
42 going on here. Oh, well, so you've gone ... and then  
43 Dominion says now they're not going to insure her,  
44 they're not going to insure Nan. So hang now, Nan has  
45 eight children, she's a wonderful person, she's really  
46 fussy over how that car is treated and who handles it,  
47 right, why is Dominion not insuring her? Well, because  
48 she was involved ... did they settle the claim? Well,

49 they determined it was 50/50. I said how could they  
50 determine it was 50/50? Look at all the information. If  
51 they had told me that I would have gone and looked  
52 after the claim.

53 Well, you know, that's what they're saying, so  
54 I go back again, so Cal LeGrow's came back to me by  
55 email, I have all of this in email, and if anybody wants to  
56 look at it they're certainly welcome to, and they said to  
57 me, oh wait now, they've looked at it and they said,  
58 yeah, this is not a, the word would be familiar to you,  
59 but it's not a chargeable accident, so all of a sudden  
60 they're saying, oh no, it's not her fault, but we're not  
61 going to insure you anyway because there's an  
62 inconsistency in drivers.

63 Now, that was the first time that happened,  
64 and we were, like on Thursday or Friday last week,  
65 Nan's insurance ran out at midnight on Sunday night,  
66 and today she doesn't have insurance on her car, her  
67 car is parked. I said hang on now, this never rose up  
68 before. If you only want one driver, my wife, with a  
69 clear driving record, with our own four children on that  
70 car, tell us, and we will, you know, deal with that. Give  
71 us the offer. Well no, they're just not going to insure,  
72 Legrow's told me. I said why aren't they going to  
73 insure? They said well they rated you zero, and I said  
74 what did that do? I said where did your quote come  
75 from now, this quote? This is the first time I asked him,  
76 for the \$3,563.85, and forgive me if I'm dragging this out  
77 but it's real life of what's happening right now today  
78 with Facility.

79 And Facility may not be a, Facility may not  
80 even know this exists, I got to compliment ... they may  
81 not even know, this may not be Facility at all. I can't  
82 fault Facility for this. My faulting is that Facility exists.  
83 The insurance, the adjuster says we can't get you  
84 insured, or the broker says, pardon me, we can't get you  
85 insured with other companies because you now have a  
86 rating of zero and you have been refused insurance,  
87 and it's placed through Facility. I said there was  
88 nothing on this when you sent it out about Facility,  
89 nothing.

90 I know about Facility and then I told him how  
91 I knew about Facility ... well, and what was going on  
92 about Facility. Within hours I had another quote that  
93 came back to us again, and perhaps you may want to ...  
94 I apologize because I didn't pass this on. It was an  
95 email from LeGrow's Insurance. They have now  
96 reassessed it again and they've ... while taking off the

comprehensive and the collision, which was \$300 or so, they have now got the rate down to \$1,927.40. That's taxes included.

MS. NEWMAN: What are you referring to, Mr, Kehoe?

MR. KEHOE: I'm referring to an email from Sonya Edison of LeGrow's Insurance to me, dated January the 10th, and I will leave a copy of this with the Board. My apologies, it was overlooked in the other documents here.

MS. NEWMAN: Okay, and you're ...

MR. KEHOE: But it's a new quote.

MS. NEWMAN: It's a new quote?

MR. KEHOE: Yeah, it's the quote as of the 10th of January, and it comes back to us and it says, okay, we'll add on the extra driver here, and now it's gone down to \$1,900, and we had to take collision off to get that down, so here's ... and if you look at the document, the last document, where they offered the quote, collision, I think, was somewhere in the area of \$300 ... where was collision, \$320. We dropped the collision and the comprehensive, which is another \$116, so a total of \$436, and it's now gone down, even with that, down to \$1,900, taxes included.

MS. NEWMAN: So this document will be copied and provided to the parties?

MR. KEHOE: Yes.

MS. NEWMAN: It's MK-4.

**EXHIBIT MK-4 ENTERED**

MR. KEHOE: And my apologies, I do apologize, I missed that on the nervousness of coming up here. So that, so I went back to them again, and I said tell me something in writing here. You've told me verbally that you can get us no insurance anywhere else because we've been placed in FA by Dominion, and Dominion is a participant in Facility Association in the list that I see. Perhaps you may want to correct that for me, but in looking through it, my understanding is Dominion is a participant in Facility Association, the undertaking I'll call it.

I said, so now, not only have they not had any whiplash claim, my daughters, two of my daughters were in the car and didn't go around holding onto their heads saying oh, I'm hurting, pay me, when that accident ... as a lot of people do. There was none of that, it was just let's get this straight and then go on with our lives. They had a claim where they acknowledged by waiving the deductible and everything else prior to that, that they weren't at fault. They have taken this policyholder, my mother-in-law, Nan, and they've placed her in FA, right.

And I said to Nan, I said, Nan, this may be, you know, may become public, how Nan gets FA-ed, and there are some differences here, but the issue is this, Board Members, the issues is this. It was secretive, and if there was a way, and in your power, I would encourage you that anybody who is placed into FA by a broker, or in some other way, that if you have it within your authority, and if you don't, I hope that government monitors this, government will direct that the next time that a quote comes out from a broker is that it clearly say on there that (inaudible) Facility Association and not somebody have to go hunt it down and find out why, and there must be a way, working with FA, to say, hang on, here's the story, FA, because they're in Ontario. I could find nobody locally to talk to. Here's what's going on here. Nan shouldn't be in there. This is not fair. We want you to say, hang on now, carriers, we've looked at this and Nan shouldn't be in here. This is not our file. You take that file. But because there's a conflict between the participant, the insurer who refused to insure her, and their participants, their participation, and I'd like to know what that is, between Dominion of Canada ... she's in there, and it's like the more you ... it's like struggling in quicksand. The more we have struggled and struggled, the deeper we're going.

So up until I came into this meeting this morning, there has been no reply back to my request for alternate insurance. I have been told verbally, but I emailed back when I got this. Go to other carriers. We were told verbally, I was told on the phone, you can't go to another carrier, you're in FA, you've been denied insurance, your rating is zero. So people don't get to see that, and this is what our concern is as well in the taxi industry, is that there seems to be a veil, what do you call that when you get the mouse running around all these little squares trying to get out, whatever that is.

MR. SAUNDERS, PRESIDING CHAIRMAN: A maze.

MR. KEHOE: A maze, thank you, a maze, and this is what ordinary people, you know, who live ordinary lives are facing when they deal with something like FA. FA sort of says, well, you know, we're here for you, but that's not good enough. It's not good enough to go from \$1,029 and then to go up to over \$3,500 when you've done nothing, when you're a victim, and it's not good enough for somebody to say, oh, this is not me, and FA should say this is not me, if FA is going to exist.

So in summary, if I may, from the Taxi Operators' Network position, we would like FA to become aware that there are stakeholder groups out there who would like to work with them to find ways to keep people out of FA and put themselves out of business, but to work with them to reduce claims, reduce accidents, improve driving records. We want to do that, and we would like them working with that to find ways to reward those who are successful in doing all of that. We want FA to notice in this hearing that this has been raised, and I hope that, you know, because FA is in Ontario that the solicitors involved for FA will pass this back to them. We would love to speak to them and work with them or somebody else in the industry to do this, if they want to do that.

We would ask that the Board bear in mind that we find it very confusing. Small time operators in the taxi business are struggling. Increased rates, increased fuel costs, increased parts costs are all hurting us, and we don't have any ability to stop this because if we go down to them they say you've been placed in FA and there's nothing we can do because the Board sets rates, and while I would rather see that government, after the last time when the Board permitted, and I don't understand why that was, so there may be reasons I don't know about, but when the Board permitted the distribution of monies amongst the members, that government should have really grabbed that file, run down over the hill to the Supreme Court of Newfoundland and pursued that, and did not, and I think they were wilfully blind on that, the Minister. I would love to see Messers Whalen and Stamp get more money down in the court and pursue this, and I say this because I have the greatest respect for the reputations of the two gentlemen involved, but government failed on that, I think it should have challenged the Board's ruling and proceed ... and from the Co-Chair of the Taxi Operators' Network, we're saying to government who is

monitoring this here, that you failed on this, and that if you continue to fail and do not appoint a representative to FA, you will let us down on that as well, and if you do not enact Bill 28, that will be let down as well, so we have big concerns.

My deepest apologies, I have gone a lot further than I had intended to, but the opportunity arose, and as you can see by the documentation, the dates on the documentation involved, it wasn't planned that way. It just occurred that way.

MS. NEWMAN: Mr. Kehoe, you had mentioned that you had about 70 percent of the operators in FA, is that what you said?

(11:45 a.m.)

MR. KEHOE: 70 percent of the premiums of the taxi industry are FA, and these are statistics that are provided in documentation, and I think the Board has them there and what they are.

MS. NEWMAN: So it's not something from your knowledge, it's something you gleaned from reviewing the transcript, is it?

MR. KEHOE: No, we haven't gone through any of this, but it's our ... and we have no statistical information in terms of having canvassed, you know, 150 policyholders in our industry and come up with statistics. We don't, quite frankly, have those resources to do that. We may on the next time around, but we don't, and we, like Ms. Harnum's group, have not sought government participation. We are in the process of incorporating and putting structure to ourselves, but we have not defined that.

MS. NEWMAN: Okay, so there are some taxi operators that aren't in FA?

MR. KEHOE: There would appear to be, yes, I'm not aware of one in my circle of contacts.

MS. NEWMAN: Sorry, you're not aware of?

MR. KEHOE: One.

MS. NEWMAN: Oh.

MR. KEHOE: One person.



MS. NEWMAN: Okay, so everybody that you know who is a taxi operator.

MR. KEHOE: Of the 18 that we dealt with on this matter, 18 members, not one of them was out of FA. Three didn't know, so I can't say they were out, and I asked them if they would find out, and they said are you kidding, I'm not going to rock that boat, I got insurance, right, and quite frankly, that's it. They're afraid that if they go back and they cause something, a light to focus on them, they may find something because it's completely arbitrary and capricious. It's basically, well, look what they did with Nan, it's like ... you know, well, no, you weren't at fault for the accident, but now, you know, and this is what the drivers, what our operators are afraid of. They're going to go back and they're going to say, well am I in FA ... well, have a look at this file, I didn't know this, and all of a sudden, bang, so they're not going to rock that boat. They're afraid.

MS. NEWMAN: Okay, have you made any inquiries to find out why you're in FA?

MR. KEHOE: No.

MS. NEWMAN: Personally.

MR. KEHOE: The only information that we ... first of all, there's a reluctance to ask. I was completely surprised at the reluctance to ask. People such as myself and others in this room who have certain levels of experience may ask. Ms. Harnum certainly would ask, and I asked, and when we asked, we got (inaudible). It's the old adage, let the buyer beware, you know, get out there and look ... (inaudible) how you get out. Well, my experience so far in the taxi industry, and it's not a good reflection on us because we certainly have a lot of areas where we can improve ourselves as a group, is that people are afraid to ask, and with consumers that have spoken to in my taxis ... do you know anything about Facility ... what's that? Or, you know, do you drive? Well, yeah, but b'y my insurance rates are gone through the roof. Oh, they went \$2,000 this year. Why? I don't know, and it's ... I said, hello, are you going to ask, and there's a fear of asking, so in that position the Board has, is now aware that, you know, this exists out here, this ... and this is not a reflection on the integrity of the people running FA. Facility Association is there and I'm hoping that they will say, yes, we have an obligation. Not only do we have an obligation to insure, but we have another

obligation, now that we're aware that people are ending up in here because of age, or people are ending up in here unfairly, we have an obligation to work with those groups to get them back out. I hope they will develop some kind of an undertaking to do that.

I'm not slagging FA, you know, if FA is going to exist by government regulation and under the Act, fine, let's work with it, but I don't support the processes where people in our industry, and Nan, end up in FA. And if you don't do about it, something about it as Board members, who will, and so if it gets nothing more than a mention in your report that this is a concern for the Board ... I believe you made a comment earlier on that it's recognized by the Board's actuary and by the actuaries for the FA, that a rate increase is needed, or at least that's what I understood you to say and forgive me if I put words in your mouth. Well that may be necessary, alright, but we've sort of gone, you know, you know, hello, they just took a lot of money out and gave it to themselves, and the purpose of FA is non-profit. I don't know about you, b'y, but when I distribute money to myself (*phonetic*), that's profit, so government fell down on that. The Board didn't. The Board's role as I understand it, is to set rates and to look at all of the information involved. We're just passing on some of the humanity of it all in the hopes that when you're sitting in the privateness of your mind, and you're making your thoughts and your deliberation, you make your decisions that you're going to say, you know, I heard about Nan at FA, and I heard the taxi operator talking at FA, and we've got to be aware that they too are hurting. Not only the insurance industry are hurting, we are hurting, and we're hurting really bad.

MS. NEWMAN: Thank you, I don't have any more questions.

MR. SAUNDERS, PRESIDING CHAIRMAN: Any questions, Mr. Stamp or Mr. Whalen?

MR. WHALEN, Q.C.: Just a few, Mr. Kehoe, just your association, you say you're interested in putting on courses to try to get the ...

MR. KEHOE: I don't know if courses would be the answer on this. Public education, training certainly if there was, if there was a course that could be developed. We're working on that now in the Taxi Host program that I referred to. For example, the issues, some of the issues I raised here today, we're looking at

strengthening Taxi Host to include these, so it was one of the reasons we approached the Brokers Association and the Insurance Bureau, was to say we're developing a skills enhancement and training ... and right now it focuses on customer service, working with persons with disabilities, hazardous driving, you know, these types of issues, local knowledge, and we were saying, we were saying to the insurance industry, we would like to take this and use this as a venue so that if people are going to drive cabs, tell us what we can do ... what makes a difference that will allow them to work with you to reduce claims and reduce their ... that's what our approach on it is, so whether it turns out to be a course of something like that, Mr. Whalen, I don't know.

MR. WHALEN, Q.C.: Okay, but you're, so you've at least made the contact with the Brokers Association and the IBC, and I guess that's something that can be worked on to try, somehow to ... I guess there's a correlation between the rates of accidents at some point in time, or the ages of the cars, or whether you get in or, whether or not a regular market or a grey market insurer will cover taxis. It appears some of them are covered from the statistics we see.

MR. KEHOE: Yes.

MR. WHALEN, Q.C.: Because you said 70 percent, so there's 30 percent that are at least ...

MR. KEHOE: Yeah, there would appear to be that there are 30 percent. I don't have, these are statistics I'm quoting from that I have not investigated, so I don't know if they're accurate, how accurate they are. They're information the Board has.

MR. WHALEN, Q.C.: Okay, now you've indicated that for taxi drivers there's a lot of costs that are going up, there's insurance and theirs repairs and there's a whole bunch of things. I guess at some point in time, taxi drivers as a group must go somewhere to get a rate increase for taxis as well, do they?

MR. KEHOE: The last time a rate increase incurred in the taxi industry, rate increases are done by meter, okay. For example, we're ...

MR. WHALEN, Q.C.: Sorry, by?

MR. KEHOE: By meter, we're regulated in what we can charge you on the meter through the City of St. John's.

MR. WHALEN, Q.C.: Yes, but who decides what the meter rate can be?

MR. KEHOE: The Council at the City of St. John's.

MR. WHALEN, Q.C.: So that's Mr. Wells and the Councillors.

MR. KEHOE: Well, yes, amongst others. The last rate increase was three years ago, and it was a rate increase, the first rate increase that had been granted 11 years as a result of our activities, and it reflected in a net increase of 21 percent over the previous 11 years. There is a limit that the buyer can use in taxis. It's like it's pretty heavy right now.

MR. WHALEN, Q.C.: I must be lost. Are there taxis in Mount Pearl?

MR. KEHOE: Yes.

MR. WHALEN, Q.C.: Are they regulated by Mount Pearl?

MR. KEHOE: They are.

MR. WHALEN, Q.C.: And in Conception Bay South?

MR. KEHOE: It's like the insurance industry, you set a benchmark and everybody seems to jump on it. We set it in St. John's, the first time prior to 11 years, the first time a rate increase occurred was three years ago, and we have not had a rate increase since that, and three years ago it went up 21 percent, and that was the first rate increase in 11 years.

MR. WHALEN, Q.C.: And do they have hearings like this or ...

MR. KEHOE: No, it's political.

MR. WHALEN, Q.C.: Okay.

MR. KEHOE: If you can lobby the councillors, and we were successful, and that wasn't easy ... because a number of the drivers out there don't want to do this, Mr. Whalen. It's like if you were to speak to some of the drivers they would say people can't afford that, because a lot of these drivers, you know, they live in the blocks, or they live up in the Buck or they live down in the Gut, and I'm sorry, these are slang names, but you're looking at Buckmaster's Circle, BMC as we call it,

1 you know where they are, you probably grew up  
2 around them.

3 MR. WHALEN, Q.C.: Oh yes.

4 MR. KEHOE: And a lot of our users are not, they are  
5 not carrying their gold credit cards. They're just  
6 surviving. They don't have money to get cars, many of  
7 our users, and students, and there comes a level where  
8 if we said to them, look, okay, we've got to increase our  
9 fares now to offset this insurance increase, there is a  
10 tremendous amount of reluctance, people might say,  
11 well go get it, but there's a tremendous amount of  
12 reluctance because we live in those areas, to do it.  
13 When we did the rate increase three years ago, the  
14 single biggest objection we had was from within the  
15 industry. Members were deeply concerned that we  
16 would not, that a lot of people would not use us, and  
17 deeply concerned that the sky would fall when we did  
18 this. So if we were to take this increase and go back  
19 again, and gasoline the way it's gone as well, we  
20 haven't done anything on that yet, we would  
21 continuously go back. We've done statistical studies  
22 that are, with the limited resources we have. But in  
23 short answer to your question is that, yes, I would like  
24 to be able to, every time something like this happens, to  
25 pass it on to the consumer, but the politicians at City  
26 Hall, they are not an easy bunch to be able to lobby.

27 MR. WHALEN, Q.C.: No, I can appreciate ... maybe,  
28 Mr. Kehoe, what we should do is get you away from  
29 the politicians and in front of an independent body  
30 such as this, and it might be .... that would probably be  
31 ...

32 MR. KEHOE: I would love ... perhaps ... we've thought  
33 about that, Mr. Whalen, and I would love to do that,  
34 but unfortunately that's not the structure of the Act  
35 that governs us right now.

36 MR. WHALEN, Q.C.: I appreciate that, but fortunately  
37 the City of St. John's is governed by the Province, so  
38 maybe you could talk to Minister Noel. It appears you  
39 had some success in getting this moved along.

40 MR. KEHOE: That's not us, we just were a little  
41 catalyst on the fire, that's all we were.

42 MR. WHALEN, Q.C.: I don't want to take a lot of time,  
43 but one thing you mentioned, I just want to get this  
44 clear. You talked about this consortium or groups that  
45 control a lot of the taxi business. Do you know if

46 insurance is placed through a central office with these  
47 groups or does each individual taxi ...

48 MR. KEHOE: Broker, brokers are called, the term  
49 "broker", that's a car owner. In the industry it's referred  
50 to as a broker.

51 MR. WHALEN, Q.C.: Okay, so the person who owns  
52 the car gets the insurance, but you tell me that, you told  
53 us that two, at least two drivers kind of go on each car.

54 MR. KEHOE: The average per car.

55 MR. WHALEN, Q.C.: But do you know, does anybody  
56 know who that driver might be, or is it random?

57 MR. KEHOE: Random, we are lobbying to improve  
58 that. We would like to work with the industry to say  
59 that if you have a history of poor driving, or we go into  
60 other areas as well but it's not appropriate to bring it up  
61 with the Board, but if you have a history of driving  
62 infractions, perhaps it's better you go do something  
63 else, don't come into our industry, because if the, if the,  
64 if the status quo becomes, from working with the  
65 industry, from working with the insurance industry, if  
66 the insurance industry determines a level of operation  
67 like ... you know, if you've had four driving offenses  
68 this past year, you're going to FA man, and you're  
69 going to the highest rating you can get in FA.

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

71 MR. KEHOE: And if the broker is told that, that's great,  
72 but that doesn't exist right now. What happens is a  
73 broker who ... and a broker, I'm talking about multi car  
74 brokers who determine all of our rates. Let's say they  
75 own 30 taxis, they only own one license, but they  
76 operate 30 taxis under the license of a company that  
77 owns them. They do not put an onus, they have a bulk  
78 policy on that, and there is no go in and get your  
79 driving abstract, bring it down, give it to them before  
80 you become a cabby. It's here are your keys go drive,  
81 and there are people out there, Mr. Whalen, with ... I  
82 would not want my worst enemy to get in with, but  
83 they're dragging us down, and we don't want them, and  
84 what we would like to do is work with the industry to  
85 identify them and put them out.

86 MR. WHALEN, Q.C.: Well, that's an admirable goal.  
87 One of the things that I just want to be clear on, that we  
88 agree on is that Facility doesn't decide who comes into  
89 it. In other words, in the case of your Nan, for example,

1 she had insurance with a, it looks like it was a Canadian  
2 company, probably the oldest Canadian company there  
3 is in the insurance industry, Dominion of Canada, and  
4 they insured her, it looks like, for a couple of years, or  
5 it might have been they insured your wife the first year  
6 and then they insured her. I don't quite know how that  
7 worked, but ... and then ...

8 MR. KEHOE: The policy was on the vehicle and my  
9 wife was listed as a principal driver.

10 MR. WHALEN, Q.C.: Okay, so it was on the vehicle, so  
11 now ... then because it appears it might be this accident,  
12 they said, well we're not prepared to give insurance to  
13 this lady anymore. They didn't say the rate will be this  
14 or that, they simply said we're not going to provide the  
15 insurance. Now, you appreciate that if Facility comes  
16 along, and Facility doesn't have that option with your  
17 Nan, any more than they do with the taxi drivers, the  
18 consortiums of 20 or 30, they have to provide the  
19 insurance, and all they do is say, well here's the rate  
20 that we're going to charge. You follow that?

21 MR. KEHOE: Oh yes, we have no disagreement on  
22 that, Mr. Whalen.

23 MR. WHALEN, Q.C.: Yeah, and in the case of the  
24 insurance, the taxi driver, the taxi driver, that's how he  
25 makes his living, so he needs the insurance. In the case  
26 of your Nan, she says, well if that's the only rate I can  
27 get, I'm not going to drive my car, end of story. Now I  
28 presume when you talked to your broker, and it looks  
29 like you're still doing it, you're looking for alternate,  
30 you're looking for someone else in the regular market to  
31 provide insurance to your Nan.

32 MR. KEHOE: Yes.

33 MR. WHALEN, Q.C.: And one assumes that even with  
34 this rating, if there was what we call a grey market  
35 insurer, or some other level of insurance that are  
36 prepared to provide insurance for this risk area, she  
37 might be able to get that insurance at a rate that's lower  
38 than this.

39 MR. KEHOE: Uh hum.

40 MR. WHALEN, Q.C.: Do you know if that's being  
41 explored?

42 MR. KEHOE: Well, yes, it is. Initially I was told by the  
43 broker that this wasn't an option, and I refused to

44 accept that, and I wrote them and told them I refused to  
45 accept that, and at that point in time, they came back  
46 and they replied to me, and I do have that email here as  
47 well, where they said, well, if Nan had been, if this issue  
48 had not arisen for Nan last year, then we would have  
49 been able to place her in a privately, for ... I'm just  
50 looking for it ... it was a substantial amount, something  
51 around \$1,100 involved, and I do apologize for the mix  
52 up and everything else, but they said to me, if there had  
53 not been an accident, if there had not been an incident,  
54 then we would have put her there, and that's what they  
55 quoted us and that's what they said, so I refused to  
56 accept, and most people ... and Ms. Harnum raised a  
57 good point here, and I reinforce that point, and I say to  
58 you, it's been my experience that most people are  
59 reluctant to take this issue on. For some reason a fear  
60 ... it's a very complicated and, you know, the reasons,  
61 they changed, Dominion changed its position ... initially  
62 Dominion's position was you were involved in an  
63 accident, we settled it 50/50, and there was ... but that's  
64 all we heard, so you're rated zero. Then when I fought  
65 it, Dominion came back and said, okay, yeah, we told  
66 you to get it done, yeah, we've looked at all the  
67 documents, so, you know, it's not your fault that we  
68 settled it 50/50, so it's not chargeable anymore.  
69 However, this new thing came up that said to us, now  
70 there's this matter if we don't know an inconsistency of  
71 drivers. So what we were thinking is why, why have  
72 you never told us this before. If you have an issue at  
73 who drives that car, tell us. So my ... and Facility  
74 Association's role in this, Facility Association appears  
75 to say, oh, new file, now what are the rates, and our  
76 position to you is that Facility has a captive market  
77 placed there by some of its controllers, its directing  
78 minds. Dominion, at least on the website, is one of the  
79 directing minds of what goes on at Facility Association.  
80 That's not good enough, Mr. Whalen. I don't accept  
81 that Dominion, through arbitrary actions, out of Nova  
82 Scotia, can cause a person's rates to go from \$1,100 up  
83 to \$3,500. I refuse to accept that, and I went back to  
84 LeGrow's, and I said I refuse, and LeGrow's said to me,  
85 well there are three other insurers but we can't get you  
86 there because you're in Facility, and you've been  
87 refused, and so the whole thing is like the maze. It's like  
88 ... you know, so Facility are getting Nan's business and  
89 it doesn't deserve it, Mr. Whalen.

90 MR. WHALEN, Q.C.: But is she in Facility or did she  
91 decide not to reinsure?

92 MR. KEHOE: No, they had attempted to put her in  
93 Facility, but we grabbed her back from Facility before

1 she went in through the door. She may be there yet, I'll  
 2 know later on today I suspect. I don't know if there's  
 3 anybody here from LeGrow's today, but she may be  
 4 there. I hope she's not, and if she goes in Facility, then  
 5 we're going to have a good look at the structure.  
 6 Facility is higher, Mr. Whalen. I don't know, perhaps,  
 7 there seems to be an agreement here. Facility is for  
 8 people ... is it, and perhaps I've missed something here.  
 9 Somebody can help me out here, help me understand  
 10 this. She can't get insurance somewhere else.

11 MR. WHALEN, Q.C.: The Facility has to take her.

12 MR. KEHOE: Yeah, Facility has to take you.

13 MR. WHALEN, Q.C.: But you don't have to go in  
 14 Facility if you choose not to drive.

15 MR. KEHOE: Yeah, oh yeah, well that's an option. I  
 16 can leave her up in the woods without her car.

17 MR. WHALEN, Q.C.: No, but I guess that's  
 18 unfortunately what it comes down to, that ...

19 MR. KEHOE: It's not good enough, Mr. Whalen, I  
 20 refuse to accept that.

21 MR. WHALEN, Q.C.: So what you're saying is the  
 22 regular market needs to find ...

23 MR. KEHOE: It's too easy for them to throw people  
 24 into Facility.

25 MR. WHALEN, Q.C.: Okay, and ...

26 MR. KEHOE: That's my whole point here, and they're  
 27 throwing it, and nobody is questioning it, and I'm  
 28 saying to the Board, this going on, and I want you to  
 29 somehow or another, whatever input you can have to  
 30 make this point, that this is unacceptable behaviour by  
 31 Facility, and I'm asking you not to reward them. If I  
 32 knock one percentage point off, if you decide to give  
 33 them a rate, I will have been successful, and I will never  
 34 know it, but in your mind, I hope you recognize, that  
 35 this is happening and they don't deserve Nan's  
 36 business, they don't deserve that rate increase for that  
 37 behaviour.

38 MR. WHALEN, Q.C.: Mr. Kehoe, the document you  
 39 gave us, MK-2, is that ... do you have that in front of  
 40 you, it's the ...

41 MS. NEWMAN: That's the December 30th invoice from  
 42 Cal LeGrow.

43 MR. WHALEN, Q.C.: Yeah, December the 30th, and it  
 44 has the second page, it has in there what looks like a  
 45 policy. It has Mary Fitzgerald, 203 Mount Scio Road,  
 46 St. John's, Newfoundland, and it has a policy number  
 47 and it has an effective date of the 12th day of the 12th  
 48 month ...

49 MR. STAMP, Q.C.: The third page in, Mr. Kehoe.

50 MR. WHALEN, Q.C.: Third page in on the top left, and  
 51 that's when it starts, and it says it expires on the 12th  
 52 day of the 1st month of '03.

53 MR. KEHOE: That's right, we received this yesterday,  
 54 Mr. Whalen.

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

56 MR. KEHOE: I haven't even asked ... my wife and I  
 57 were discussing this last night, and you raise a really  
 58 good point, when we got this, we said, what, what is  
 59 this, where did this come from?

60 MR. WHALEN, Q.C.: Well, it looks like insurance  
 61 coverage.

62 (12:00 noon)

63 MR. KEHOE: Well, it says you've added a person on,  
 64 you've added a driver, and in my discussions with  
 65 LeGrow's, there were no surprises there. The other  
 66 drivers were listed, so my, I'm going to explore as to  
 67 where that came from because we don't know where it  
 68 came from, quite frankly. They added this, nobody said  
 69 to us, now, we're going to charge Nan an extra \$19.55  
 70 because you added a driver. I said what are you talking  
 71 about, you've always known. Where does this come  
 72 from? And I will argue this when I get a chance. I  
 73 called them this morning before I came in, and I was  
 74 told that they were unavailable to discuss it with me, so  
 75 this is completely new, and I submit to you that it came  
 76 about after my start of discussions with them, and it  
 77 was ... while it's dated on December the 30th, 2002, we  
 78 received this yesterday.

79 COMMISSIONER MARTIN: I think I could help out.  
 80 If you looked at the, if you look at the first document, or  
 81 MK-3, it's new declaration, Mary Fitzgerald. If you look

at the document we're looking at now, it's an amended declaration to add a driver.

MR. KEHOE: Yeah.

COMMISSIONER MARTIN: If you look in the upper left hand corner there of MK-2, that's what it would seem to be.

MR. KEHOE: Add driver, yeah. It's as though, well we didn't know the other driver was there, and that's garbage. As a matter of fact, they had the other driver who is Laurie Fitzgerald, her other granddaughter, who will be 25 in less than 30 days, they had her file, they know that she has her own car, that she carries her own insurance, she has a clean driving record, and it was in the file when I called, and they said well, you have Laurie, I said yeah, Laurie is there. Laurie lives with Nan now, she's moved in with Nan because ...

MR. WHALEN, Q.C.: You're dealing with your insurance broker and Dominion to try to get this resolved.

MR. KEHOE: Yes, I am.

MR. WHALEN, Q.C.: Yeah.

MR. KEHOE: My point in all of this is Facility Association's role in this, Facility has got business that it does not deserve to get at a rate, that if I did not challenge it, it would not deserve to have, and if Nan was there and if Nan was like too many old people that I see nowadays, and forgive me, Nan, I don't want to call you old, you're mind is like a knife and you would beat me for that, but there are a lot of people I know who would just take out the cheque book and rather than face no insurance on the vehicle would pay it, Mr. Whalen ... I submit that to you, my experience in dealing with a lot of older people. We've heard numerous stories of scams where they get ripped off, you know. Nan paid this in cash last year when she had it, and it was sent out to her, and if nobody fought this, and a great many of the older people won't, then Nan would have paid \$3,500, and I'm saying to you that Facility Association did not deserve this. When this settles, if I take the second offer today for \$1,900 or whatever it is, she would still be down from \$3,500, and it's not good enough for Facility to take the file and say, okay, here's what the policy is. That's not, that's unacceptable behaviour to sit back and appear as though they're victims and they have to take whoever

they have, and that's not good enough, and I don't want Dominion, who is a directing mind in Facility, to behave like this. That's unacceptable behaviour for the insurer. And I want the broker who would just send this out without going through the file and protecting customer service, to say hang on here, well \$1,000 up to \$3,500, somebody look, what's going on here. Don't just pass it on. So we looked, and we fought, and my position to the Board is, again, is that this is happening and had Nan, as so many people might want to do, accepted this, and it's repetitious but I've got to be repetitious on this, I want this to go in, that I submit to you that although they're not here in front of you today, there are other people this is happening to as well, and they're taking out their cheque book and they're sending it in because they feel they can't fight, they feel vulnerable, so what the Board does with that information, I guess, you know, I ask you to consider it, that's all.

MR. WHALEN, Q.C.: I just want to be clear on who it is, as you say, people have to fight. You will appreciate that any driver deals with a broker, and then that broker has to deal with an insurance company, and I think you'll understand, you've read the transcripts and you've heard some of this stuff, that Facility indicates that they don't really deal with ... the don't want anybody. They would hope that nobody gets sent to Facility.

MR. KEHOE: That's right, but the directing minds, the people who determine how Facility operates, they do ... combined, or the insurance company here is the directing mind of Facility. Now correct me if I'm wrong, Mr. Whalen, because I'm not the sharpest knife in the drawer and I'm definitely not a tall branch on any tree, but from what I've read on the website here is that Dominion is a directing mind, and a key player, and a carrier, with Facility. They are deciding what happened here. They labelled Nan as a big zero, and while they have an input into Facility, it's not good enough for Facility say, oops, we're a separate entity and these are, yeah, they're on the board of directors, whoever they are, but oops, that's not our fault. It is their fault, Mr. Whalen. Dominion has to be more responsible and FA has to take a role to say Dominion, you're a stakeholder here, but don't do this, don't send Nan over here, because Nan should not be here. Somebody, because if Dominion, if nobody challenges Dominion, it's not good enough for FA to say, well, they sent them therefore they must be FA. If they made all of that profit and they distributed it themselves, my

1 submission to the Board is, put an onus on them to  
2 perform, to become more responsible as to how they  
3 get their customers, and I understand from reading the  
4 transcripts here every night, and they do a great job on  
5 that again, I've really got to compliment that. I don't  
6 know how they do it, but they do it, and my  
7 understanding is that old people, older people are  
8 seniors who don't deserve this, they're vulnerable.  
9 Now I don't want them to be vulnerable, Mr. Whalen.

10 MR. WHALEN, Q.C.: So would you suggest that  
11 Facility should refuse to accept them and send them  
12 back?

13 MR. KEHOE: I'm suggesting that when Facility comes  
14 across an issue like this, they should have a response  
15 capability. They should not sit back and say here,  
16 we're victims, we've got to insure you. They should sit  
17 back and when something like this is raised, a broker, or  
18 a carrier, or an individual having to deal with Ontario on  
19 Facility, and that's where you've got to deal, you can't  
20 get them here locally ... it's a time consuming,  
21 demanding, draining job when you've got another life  
22 besides, and it's not good enough for Facility to be way  
23 up there and saying that they're having \$3,500. Yes,  
24 Mr. Whalen, I don't know what the mechanism is but I  
25 would like Facility to develop a capacity and a  
26 capability to respond when Nan is brought to their  
27 attention, to go back to the person who is a directing  
28 mind, and ... the insurer and say, hang on here, this has  
29 been brought back here. We're not going to go from  
30 \$1,100 to \$3,500 because there's something wrong here.  
31 It's been raised. Now there are instances, Mr. Whalen,  
32 where that has to happen, and I'm like you, sir, I'm a  
33 businessman. I want to make money, and if there's  
34 really risk involved in this, then they should pay it, and  
35 I say if they're out there and they're dangerous drivers,  
36 you nail them. You give them \$10,000 a year, I'd rather  
37 see them off the road, they can't afford to do it, but  
38 don't lump Nan in with them.

39 MR. WHALEN, Q.C.: Thank you very much, Mr.  
40 Kehoe.

41 MR. KEHOE: Thank you, Mr. Whalen.

42 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
43 you, Mr. Whalen. It's 10 past 12:00, Mr. O'Flaherty,  
44 should we break now and come back and you can  
45 question Mr. Kehoe?

46 MR. GOODLAND: Mr. Chairman, I was actually going  
47 to have some questions of Mr. Kehoe but based on his  
48 capable presentation and representation of both his  
49 industry and his mother-in-law, I don't think there's  
50 anything I could add by further questioning.

51 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, do  
52 you have questions?

53 COMMISSIONER POWELL: I have a few comments.  
54 Do you want to break first?

55 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I  
56 think we should. We'll break and come back in 15  
57 minutes, and finish with Mr. Kehoe.

58 (break)

59 (12:30 p.m.)

60 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
61 Commissioner Powell?

62 COMMISSIONER POWELL: Thank you, Chair. Mr.  
63 Kehoe, thank you very much for your testimony, it's  
64 nice to hear somebody who has a passion for his  
65 profession. I have some questions, but first of all I'd  
66 like to ... the information you filed, I just want to get  
67 some things clear in my mind because I was sort of, I  
68 lost a little bit, or at least I think I have. The first  
69 premium, MK-3, the \$895 invoice before taxes, it's made  
70 out to Mary Fitzgerald, is that Nan?

71 MR. KEHOE: Yes.

72 COMMISSIONER POWELL: So reading ...

73 MR. KEHOE: We'd never call her Mary, we'd call her  
74 Nan.

75 COMMISSIONER POWELL: Yeah, I've sort of been  
76 there, I appreciate that.

77 MR. KEHOE: Yeah.

78 COMMISSIONER POWELL: Just looking at this  
79 policy, it would appear to me that it was a policy issued  
80 to her for a '95 Toyota and all the various coverages.  
81 Now, does she own that vehicle?

MR. KEHOE: Yes, the vehicle is in her name. It was left to her from Pop's estate. It's been transferred to her name.

COMMISSIONER POWELL: Okay, so there was an insurance policy issued for her and it shows her as the only driver.

MR. KEHOE: Not driver, owner, owner of the vehicle, she doesn't drive, she doesn't have an insurance policy.

COMMISSIONER POWELL: Okay, so she has insurance on this, but she doesn't have a driver's license herself.

MR. KEHOE: That's correct, yeah.

COMMISSIONER POWELL: Okay, so all the rating groups and things like that, I guess we'll have to ask somebody in the insurance industry about that later.

MR. KEHOE: All the ... they were based on, on complete information provided to the broker and to the insurer. There was nothing held from them. You know, my wife is listed as the principal driver on the policy.

COMMISSIONER POWELL: But there's nothing on this policy, or invoice here, to indicate that we're talking about anybody other than Mary Fitzgerald.

MR. KEHOE: That's correct, yeah.

COMMISSIONER POWELL: Okay.

MR. KEHOE: Yeah.

COMMISSIONER POWELL: And Class 1, it says an ideal driver class. There's nothing here to indicate that that would refer to anybody other than Mary Fitzgerald.

MR. KEHOE: Well ...

COMMISSIONER POWELL: Without reading the fine print.

MR. KEHOE: Yeah, I suspect it's probably the structure of the document that's confusing there because as I said at the beginning, and as the insurer knows, and as the broker knows, and as everybody knows, Nan doesn't drive, so therefore, the driver number one would be somebody other than Nan, and ... because she's not a driver, and the person in the files at the

insurance company and the broker, has driver number one as my wife, Rosemary Kehoe, but it's not on these documents, Commissioner Powell, and that's where it's confusing.

COMMISSIONER POWELL: Yeah, okay, they got me confused, okay. Now, let me refer to you, MK-2, which shows a premium, the same time period and everything, it would show a premium of \$1,086, and when I look at this one here, it's, it's an identical policy ... it would appear to be, or an invoice, except that it adds, as a matter of fact, it quotes the same number for policy number and everything and it's, Commissioner Martin said it's in the top left hand corner, it says it's an amended declaration, but it says, '95, occasional driver of vehicle number one, and it comes across, and it gives a different class, it's Class 056, and again, we'll have to ask somebody in the insurance what that is, and it says, refer to vehicle number two, and it adds a premium of \$160 for third party liability and a second one for collision at thirty-one oh two, and then if we flip over to the front page it, it just bills you for a period from December the 30th to January the 1st, which is the expiration date, and being a naive Commissioner, I would take from that that coverage only took place from the 30th of December to January the 12th. Now, do we know ...

MR. KEHOE: This ...

COMMISSIONER POWELL: Would that be your daughter.

MR. KEHOE: This, we received this yesterday.

COMMISSIONER POWELL: Okay, you don't know who that ...

MR. KEHOE: You know, we have questions on this as to where ...

COMMISSIONER POWELL: Okay.

MR. KEHOE: It appears to me, if I were a guessing person, it appears to me that they have added another driver, added a bill for another driver, and if you had the files here, you would see that there are no drivers that they have not known about for a year, so they have added a bill for this period of time, on the appearance of it, and once again, we would have to ask the ... and I haven't had an opportunity, I tried to get them since



1 this arrived yesterday and I haven't been able to  
2 contact them.

3 COMMISSIONER POWELL: Does your wife have her  
4 own car?

5 MR. KEHOE: Yes.

6 COMMISSIONER POWELL: She does.

7 MR. KEHOE: Yes, she does.

8 COMMISSIONER POWELL: And has her insurance  
9 changed since the accident or anything?

10 MR. KEHOE: No, no.

11 COMMISSIONER POWELL: And does your daughter  
12 have her own car?

13 MR. KEHOE: No, she doesn't ...

14 COMMISSIONER POWELL: She doesn't have her own  
15 car.

16 MR. KEHOE: She's listed as a driver on our cars, or our  
17 ...

18 COMMISSIONER POWELL: On your car, but she's not  
19 listed as a driver, as you know, on Mary Fitzgerald's  
20 car.

21 MR. KEHOE: Yes, she was. It's not on the documents  
22 there, but they have it in the file. She provided the  
23 support documentation when ...

24 COMMISSIONER POWELL: She was listed as a driver  
25 on ...

26 MR. KEHOE: She was listed as a driver.

27 COMMISSIONER POWELL: On both your and your ...

28 MR. KEHOE: On Nan's car.

29 COMMISSIONER POWELL: In addition to your wife's  
30 vehicle.

31 MR. KEHOE: Yes, that's correct, yeah.

32 COMMISSIONER POWELL: Okay, okay, they've got  
33 us all confused, and maybe we'll get a representative

34 from the insurance industry later on, and he or she, I'm  
35 not sure who, might be able to explain some of the ... I  
36 was interested in the, from your comments, and some  
37 notes I had made in anticipation of you coming, was  
38 the, the approach the Taxi Association takes to  
39 insurance, assuming that there's a large number, and  
40 getting together and trying to cause a bulk buying, for  
41 lack of a better word, but there is nothing from the  
42 Association itself.

43 MR. KEHOE: It's a work in progress, Commissioner.

44 COMMISSIONER POWELL: Work in progress, okay.

45 MR. KEHOE: We're working on this, but we also deal  
46 with issues like bulk buying of tires, bulk buying of  
47 parts. These are, in the structure, I mentioned earlier in  
48 my remarks about incorporating an entity, we're in the  
49 process of incorporating ... (inaudible) to use our  
50 buying power that we have to take advantage of those  
51 situations, however, we're under no illusions. Using an  
52 entity to bulk buy will not get rid of the trouble that  
53 drives these rates high. That will only happen when  
54 the insurance industry comes on board with us and  
55 helps us identify the trouble and helps us deal with it.

56 COMMISSIONER POWELL: The license ... you're  
57 saying the, to get a fee increase you have to go down  
58 to City Hall, and I presume that if Mount Pearl wanted  
59 a rate increase, they'd have to go to City Hall there, and  
60 it's the same as the City of Corner Brook or Grand Falls.  
61 It's a municipal thing as far as rates?

62 MR. KEHOE: Yeah, and they tend to follow the  
63 workings at St. John's City Hall.

64 COMMISSIONER POWELL: What about the  
65 legislation governing taxis, my getting a license or  
66 being a driver, is that all municipal?

67 MR. KEHOE: That's under the Municipalities Act, the  
68 City of St. John's has the power to be able to regulate  
69 the taxi industry, both in number and quantity and  
70 quality of car, under the taxi bylaw, and under the  
71 Municipalities Act, is the City of St. John's Act, and  
72 under the City of St. John's Act, there are the taxi  
73 regulations, and the taxi regulations, which up until  
74 recently, or still are, I guess in summary I'll put it this  
75 way ... they were 17 pages long and they were very  
76 extensive after building it up over the years. There is  
77 currently a proposal before the City of St. John's,  
78 brought on by some people in City Hall, to reduce that

1 from 17 pages long to 5 pages long. City Hall wants to  
2 get out of the taxi industry in terms of regulating and  
3 having responsibility, to the point that at one point in  
4 time, if you wanted to drive a taxi for me, and came to  
5 me, I would say Commissioner Powell, you have to go  
6 down, and I want you to get a certificate of conduct, of  
7 your conduct from the RNC, and I will take your  
8 certificate of conduct and I will file it with the City, and  
9 I also want you to take a test of knowledge of streets,  
10 so you have to study up a bit for that, from the City,  
11 and you have to pass that, and when you've done  
12 these two things, and you've obtained provincially a  
13 Class 4 driver's license, welcome aboard.

14 The City's position now is they have discarded  
15 the testing, the knowledge of the streets, they just  
16 threw it in the garbage, literally, when I was standing  
17 there one day they dropped it in the garbage, the test  
18 involved, and they've stepped back from enforcing,  
19 although it's still on the books, but their proposal is to  
20 take the requirement that the drivers obtain certificates  
21 of conduct. We lobbied extensively, but it was after the  
22 fact. We didn't know it was coming out, that they were  
23 adopting the policy not to enforce that regulation. We  
24 lobbied to have it. We would rather know ... not to  
25 penalize people who have made mistakes and have now  
26 adjusted their lifestyle and are not a further threat, not  
27 to penalize those people who may have had problems  
28 years ago, and outgrew them ... but if somebody has a  
29 history of being fast with his fists, or has a history of  
30 assaulting young people, or taking advantage of people  
31 under the influence of alcohol or other drugs, we would  
32 rather that when they are told they have to go get the  
33 certificate of conduct, that they might, in their own  
34 mind, say oops, I really don't want to drive a taxi. It  
35 would be a deterrent, and if they do, and if there's no  
36 issue there, and they go get their certificate of conduct,  
37 they would at the very least raise a red flag, that  
38 somebody would say, let's have a discussion on this.  
39 You have five convictions for assault, you're going to  
40 be carrying people who, as I said earlier, would want to  
41 punch, kick, kiss, grope, or tell you that they love you.  
42 You may not be the most suitable for this, so the City is  
43 stepping back from all of that, and in the past year or so  
44 they've made a conscious effort to do this. That's the  
45 City's position on it. They really don't want to be into  
46 the taxi industry.

47 COMMISSIONER POWELL: And the Province?

48 MR. KEHOE: The Province has no position that I'm  
49 aware of here.

50 COMMISSIONER POWELL: So from a point ...

51 MR. KEHOE: I'm sorry, other than regulating the taxi,  
52 the taxi driver's license. You must have a Class 4, I do  
53 apologize on that, and the Province ... the City right  
54 now, if I may touch on that aspect of it, the City  
55 requires that the vehicles get inspected every year, but  
56 in addition to the provincial inspection every year, the  
57 City required a City inspection, to go down and be with  
58 the taxi inspector who works for the Building  
59 Department inspecting joists on a building one minute,  
60 and taxis the next, but that's a different issue, but you  
61 should go down with the taxi inspector, and show them  
62 your car, and show them the taxi inspection certificate  
63 that you got from an accredited garage, so you have  
64 the City's inspection and the Province's inspection.  
65 The City now is proposing to discontinue that, and has  
66 discontinued it, so the City's role now is that, well, the  
67 Province will look after the cars, so we're concerned that  
68 that will further degenerate the quality of the vehicle  
69 out there.

70 COMMISSIONER POWELL: So but to get a Class 4  
71 driver's license, to be able to drive a taxi, what have I  
72 got to do?

73 MR. KEHOE: You do a written test at Motor Vehicle  
74 Registration, that's it.

75 COMMISSIONER POWELL: The fact that I've had five  
76 at-fault accidents and I'm paying \$5,000 a year  
77 insurance, that wouldn't, that has no ...

78 MR. KEHOE: No, if the broker involved asked for an  
79 abstract, and I've never been asked for one that I can  
80 recall, but if the person who owns the car chooses to  
81 ask for it and they pass it on to their insurance  
82 company, then the insurance company will, may raise  
83 red flags. It's not my experience that the insurance  
84 companies have been aggressively, or even  
85 knowledgeably pursuing this. From time to time I hear  
86 about drivers being asked for an abstract, and that  
87 would raise a red flag, but there are quite a number of  
88 drivers I know out there that have never gotten an  
89 abstract. I am aware of drivers out there that have  
90 medical conditions they should not be on the road with.

91 COMMISSIONER POWELL: So, but from a provincial  
92 point of view, I mean they have a Class 4 for taxis, and  
93 there is some entrance requirement, you say, and it's an  
94 examination, but from a public safety point of view, if a

person's been out there having repeated infractions, accidents and things, you would sort of think ...

MR. KEHOE: It may or may not, it's haphazard. I'm sorry, I may have left ... there is no test that, there is no test to get into the taxi industry now. The only requirement is that you have a Class 4 driver's license.

COMMISSIONER POWELL: And they have an examination or ...

MR. KEHOE: Yeah, they have, yeah, they have, I'm sorry, they have a written examination.

COMMISSIONER POWELL: Yeah, but as far as the insurer, our issue with the insurance and driving costs, and it affects all ... and unless a broker wants to follow it through, from the Province's point of view, if you can write that test, we don't care what you're doing.

MR. KEHOE: Go for it.

COMMISSIONER POWELL: So from a public safety point of view, from a consumer's point of view, you're not sure when you get in that taxicab, how good a driver is.

MR. KEHOE: You may have one of the vast majority of people out there who are very competent, skilled, capable people, but you may also too frequently have somebody who is going to put your life at risk.

COMMISSIONER POWELL: So that's another issue that should be taken up with the Minister because I understand from the Director of Insurance there, they look after the consumer ...

MR. KEHOE: Yeah, I mentioned earlier that the Department of Works, Services, and Transportation, has representation on one of the committees, and we're constantly working with the Department. We've attempted to work with Motor Vehicle Registration on this issue, and these things take ... slow. I mean we've been here, when John Cabot pulled up in his boat 500 years ago and hopped on the shore, there was somebody there that said, hey John, hop on the back, man, and two fish and I'll bring you up over the hill. Cabbies have been here for 500 years, but it's taken us a while to get there, so in the two or three years that we've been on the go, these are issues that are on our agenda, but change is hard, you know, when you go out to a broker who insures 30 vehicles. He owns 30

taxis, and you say to him, look, we would like you to participate in a training program for the quality of your drivers. The type of language we get back generally is not conducive to being put before the Board, but these are issues that we're dealing with. We would love the insurance company ... because our challenge here, and I'm not faulting Facility ... our challenge is we want the insurance industry, and have approached them, and so far have been rejected, and we hope that we will be ... to work with us and say we will say to the insurance company, what do you want? How can we do this? Will you participate with us? If it's a driving course, if it's an education course, how can we do this? Let's make this work. So there are ... other than a Class 4 vehicle operator's license, and in theory, a certificate of conduct, because nobody is enforcing that. That would be the only requirements to drive.

COMMISSIONER POWELL: Why do you think the insurance industry is sort of, for lack of a better word, turning a blind eye to the ...

MR. KEHOE: Perhaps it may have been the individuals we contacted, that could have been it. We weren't aware, we hadn't been able to ... although I understand that one of the principals for the Facility was here in town last week, but I mean when you work 10, 12, 14 hours a day now every day, I knew he was here after he was here, but we didn't follow up. I don't know, I'm not sure if anybody ever approached him with this before. I have to be fair to them. Facility is not something I've approached, I haven't approached Facility, until I became aware of it through these hearings, and that they're flesh and blood people, and they live, you know, in Ontario and Nova Scotia, and Mr. Whalen and Mr. Stamp work for them. Facility to me was an abstract, I had no idea at all. I knew what the Insurance Bureau was, and I knew what the brokers were, and that's what we dealt with. We want to get insurance, we go to see Cal LeGrow. We don't know anything about insurance, I mean we're cabbies, you know, we work on getting it from George Street to Bogy Hall Place (*phonetic*), or from George Street out to Dildo, that's what we do.

COMMISSIONER POWELL: Do you have any knowledge about other jurisdictions in other provinces, how taxis, how they deal with insurance? They obviously would have some of the same issues that ...

MR. KEHOE: Yeah, they're ... the cities in other jurisdictions take this over. For the City of Toronto,

1 last year revised its, its management of the taxi industry  
 2 and it developed and implemented an ambassador  
 3 training program for taxi drivers, 380 hours in a  
 4 classroom environment, extensive training. The City of  
 5 London has three years, called (inaudible). The City of  
 6 Oshawa has just made changes, and it's taken  
 7 ownership and it brings groups together, but I'm not  
 8 aware of any representative association, or facilitative  
 9 agency, because there are many people out there, if you  
 10 went out today and said do taxi operators and ... what?  
 11 Or Mike Kehoe, I don't want to anything with him, he's  
 12 mad, he has a big mouth, you know, there are people  
 13 out there who don't deal with us, so I'm not aware, Mr.  
 14 Powell, other than reading on the websites and staying  
 15 in touch through the internet, I'm not aware of a  
 16 proactive involvement by the industry, and that is not  
 17 a fault of the Facility Association.

18 COMMISSIONER POWELL: You don't know if there's,  
 19 in other jurisdictions, that they have special  
 20 arrangements with the insurance industry to, better  
 21 rates and that sort of stuff.

22 MR. KEHOE: In my research on this issue here, I was  
 23 not able to locate where that exists, and I posted it on  
 24 our chat sites, and I had cabbies from the United States,  
 25 Canada, and Australia and everything else get back to  
 26 me on it, but there's nothing that I'm aware of where this  
 27 exists.

28 COMMISSIONER POWELL: So you don't know if  
 29 there's an insurance provider out there who specializes  
 30 in public transportation vehicles and for taxis?

31 MR. KEHOE: There are providers out there. I'm not a  
 32 purchaser of the product right now, and it's a weakness  
 33 that I don't have some of the big brokers here, because  
 34 they share stories of going around Ontario looking for  
 35 carriers, right. There are carriers out there who carry it,  
 36 but it's really getting more and more difficult to find  
 37 them, because right now what's happening is that  
 38 they're just slipped over to FA, who wants this  
 39 problem, you know.

40 COMMISSIONER POWELL: But ...

41 MR. KEHOE: And so the small guys are getting sucked  
 42 in. When FA and the people that deserve, the  
 43 operators who don't care who drives their cars, you  
 44 know, when they get rightfully put into some type of a  
 45 facility, a monitoring facility, or a last resort insurance  
 46 facility like FA, when they go in there, if they went in

47 there, that's okay, I have no problem with that. I am a  
 48 firm believer that having that kind of a danger on the  
 49 road, get them off, and if you've got to insure them, if  
 50 they're \$10,000, you insure them, get them out of this  
 51 industry. My issue with it is when they go in they  
 52 create a vacuum, and the vacuum sucks us in, and of  
 53 the, of the independent brokers that are out there, and  
 54 the little one and two horse operations, they're hurting  
 55 badly because of the behaviour of the group. We're  
 56 trying to find a way to get recognition for good  
 57 behaviour for those people. I'm not aware of anywhere,  
 58 in answer to your question, I'm not aware of any  
 59 brokers or any that specifically in this market, but then  
 60 I go (*phonetic*) that because I just don't have the  
 61 information.

62 (*12:45 p.m.*)

63 COMMISSIONER POWELL: Have you asked your  
 64 broker to scour the insurance industry across the  
 65 country to find out if there is a provider that specializes  
 66 in the ...

67 MR. KEHOE: Yeah, I just got no information back that  
 68 I could bring to the Board as, you know, as direct ... I've  
 69 just got anecdotal, you know, I've called them all, this  
 70 type of ... but I have no direct information I can provide  
 71 you on that.

72 COMMISSIONER POWELL: But you're aware of the  
 73 difference between an insurance broker and an  
 74 insurance provider.

75 MR. KEHOE: I am now.

76 COMMISSIONER POWELL: Okay, can I ask you, you  
 77 don't have to answer this, but what's your status? Are  
 78 you in FA or are you ...

79 MR. KEHOE: No.

80 COMMISSIONER POWELL: ... normal. You're  
 81 voluntary market.

82 MR. KEHOE: I'm on my wife's insurance.

83 COMMISSIONER POWELL: So she's in the voluntary  
 84 market.

85 MR. KEHOE: My wife, my wife ... I am driving for a  
 86 broker who doesn't know if I have 15 violations or not.

1 Now I don't have a parking ticket, alright, but nobody  
2 has ever asked me that I can recall, for this certificate.

3 COMMISSIONER POWELL: So your wife is not listed  
4 as a taxi driver for insurance purposes?

5 MR. KEHOE: I'm not a taxi operator and I don't  
6 maintain operator's insurance. I'm a driver. I'm a person  
7 between the seat and the wheel.

8 COMMISSIONER POWELL: Yeah, okay.

9 MR. KEHOE: I don't buy those policies.

10 COMMISSIONER POWELL: Okay, so you're driving  
11 somebody else's car.

12 MR. KEHOE: Yeah, it was very expensive when I was  
13 there though, and I don't know, to be quite honest with  
14 you, Mr. Powell, I don't know when I was there if I was  
15 in FA or not because I was one of those people I told  
16 you about earlier who was afraid to ask. I didn't want to  
17 rock the boat.

18 COMMISSIONER POWELL: Yeah, it seems like a  
19 strange situation, I mean you would own a normal  
20 license, or I assume you have a Class 4 license.

21 MR. KEHOE: I do, yes.

22 COMMISSIONER POWELL: You stick yourself on,  
23 and a wife who is probably a Class 5 vehicle insurance,  
24 and then you go down and jump in a taxicab, and ...

25 MR. KEHOE: Yeah, and nobody says anything to me.

26 COMMISSIONER POWELL: And yeah ...

27 MR. KEHOE: I guess in theory they should but  
28 nobody does, and this happens a lot of ... just too many  
29 times in our industry, and alone we can't deal with this,  
30 but if the insurance company works with us, we can.

31 COMMISSIONER POWELL: The, you referred to stats  
32 we had, DJS-1 was the one that gave the percentage of  
33 taxi and jittneys and showed that in the year 2001 that,  
34 I think it was 74 percent of the ... the way I read that ...  
35 of taxis are in the FA, and there's 26 percent out there,  
36 and now they may be all on the west coast where all the  
37 drivers are nice and quiet and sane.

38 MR. KEHOE: Yeah, they may be in Branch, I don't  
39 know.

40 COMMISSIONER POWELL: Yeah, but I'm just  
41 wondering, do you have any evidence that those  
42 drivers around here that are not in Facility are all  
43 dealing with the same broker?

44 MR. KEHOE: No.

45 COMMISSIONER POWELL: You know that they're  
46 not, they're scattered.

47 MR. KEHOE: No, I don't.

48 COMMISSIONER POWELL: Okay, so I was just  
49 wondering if there's a broker out there doing a better  
50 job for the taxi business than others, but you don't  
51 know that.

52 MR. KEHOE: I like your questions because the next  
53 time we come before a board in a matter like this we  
54 certainly will have those answers.

55 COMMISSIONER POWELL: Well, I just sort of ... you  
56 try to develop a pattern that maybe that, you know,  
57 give the benefit to the insurance company that maybe  
58 the broker is working on behalf, because they're the  
59 ones that are on the ground, as a broker told us, they  
60 get the good, the bad, and the ugly, in terms of  
61 comments and they, how they go about it.

62 MR. KEHOE: I'm getting disturbing reports back that  
63 the brokers are not aggressively pursuing alternate  
64 sources and Nan's policy experienced that. However,  
65 as not a person who carries taxi insurance, I don't have  
66 direct experience. I'm going on the, and I know she  
67 wouldn't mind me using her name here, Ann Price, my  
68 Co-Chair, who has eight taxis herself, unfortunately  
69 she's not able to be here today, tells me that these are  
70 the issues that she faces, that it's constant struggle  
71 because of grouping to survive.

72 COMMISSIONER POWELL: Well, thank you, sir.  
73 Those are all my questions.

74 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
75 you, Commissioner Powell. Commission Martin?

76 COMMISSIONER MARTIN: I have no questions.

MR. SAUNDERS, PRESIDING CHAIRMAN: Mr. Kehoe, I'm just going back to your opening remarks and I'm just trying to get a fix on your status in the taxi industry. You mentioned being in the business for ten years.

MR. KEHOE: Uh hum.

MR. SAUNDERS, PRESIDING CHAIRMAN: As an owner/operator?

MR. KEHOE: I've been both.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MR. KEHOE: I started off as a driver, meaning that a person owned the car and I drove in the nighttime for him. He would go home at 4:00, I'd come in a 4:00 and I'd work until 4:00 the next morning, and then he'd come back in, as a driver. Then I occupied a permit, a spot if you want, at a taxi company using one of their permits for a little over a year. I put my own car on and I had insurance on that car, but I didn't question as to where it came from because I didn't have the knowledge level I have now. I just assumed you had to take what you could get. I assumed that the broker involved was doing a good job for me. I won't assume that again. And then I decided that it wasn't worth it because most of these independent operators out there are just surviving. They're working anywhere from 72 to 100 hours a week in their car, and that's 100 hours a week that they're out there ... six, twelve hour days, sometimes they're going 14 and 16. The lifestyle of some of these is they come in on Friday at 12:00 in the night, and they go home 6:00 and Saturday morning. Now nobody can convince me that that's safe, and but that's what they've got to do to survive. They've got to make their money on a Friday and Saturday night downtown off George Street, and that's how they survive. So I had that period of time, and I decided I didn't want that lifestyle, and so I sold my taxi. I didn't have a license to sell, a permit, so I just cancelled the insurance involved on it, and then I went back as a driver with another person and I fluctuate. I'm not into one, I don't tie into one car. For example, on Friday and Saturday night I drove for two different people. On New Year's Eve I drove for a company up in CBS, so I'm sort of a hire-a-taxi. They trust me that I'm going to a good job for them, I'm not going to endanger their cars, I'm not going to endanger ... some of them don't care, quite frankly, they just want me to give them, at the end of the shift, give them their 50 or 100 bucks, that's all

they care. They don't ask me anything. Here's the keys, you know, you're Mike, you've been out there in the industry for a long time, here's your keys. They don't know if I have violations or not. Nobody asks.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, so presently you're a driver and you drive for several different brokers.

MR. KEHOE: Yes, that's right, yes.

MR. SAUNDERS, PRESIDING CHAIRMAN: You explain what's taken place in respect of the City and the Province, but more particularly the City in respect of the relaxation, if you like, of the requirements for taxi drivers, and taxi automobiles, and I guess to sum up what I think you said, is there has been a relaxation and that you may see these regulations that have been in place being rescinded, at least they're not being enforced, is that a fair conclusion?

MR. KEHOE: Yeah, there is a proposal brought before City Council by some of the officials of City Hall, who do not want to be in the taxi industry.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. KEHOE: That amendments be made to the taxi bylaws, and I can't go into all of the details but some of the issues I covered earlier, so they brought this on and it was an attempt to slip it through with nobody seeing it. I am a member of the Taxi Committee of the City of St. John's, and I was appointed there a short while ago, and Ann is as well, and when we came across this we saw it as a devolution of the quality of the driver and a quality of the car, an attempt to get out from the industry and pass it over to somebody else, to the industry. There's no real structure in our industry, so really nobody, it would be individuality, so there is, there is a proposal to drastically amend the bylaws of the City of St. John's, the taxi bylaws and up until now the proposal has been bogged down at the committee stage because we've been asking, you know, questions like what will the impact be on the quality? What will the impact be on the driver? What do you mean when you don't want to collect these, you know, these things? What do you mean you're going to trust the company to get the certificate of conduct? What do you mean that, you know, that the company (inaudible) control the taxis, they said I want to go out and put advertising on my cars, and they don't want any questions from the City, but our proposal to the City

1 was paint them all City of St. John's, or paint them all a  
2 colour that, you know, becomes recognized around the  
3 world, so that if they get off the plane at the airport and  
4 they get in with a very competent, skilled, capable  
5 driver, who gives them an enjoyable trip to the hotel,  
6 and they're in and they say, wow, these taxis are all ...  
7 that's what our thing is ... paint them and there's benefit  
8 and that kind of stuff. And the City says, no, no, we  
9 want ... now the car owners can look after this. So if the  
10 car owner goes out to a brewer tomorrow, or in the  
11 extreme, somebody who sells condoms, I don't know,  
12 and work an advertising package with them, the City's  
13 position is go for it, so I don't know how you'd feel, but  
14 if somebody came in, if you came in here day after day  
15 and all of a sudden somebody comes in and says, well  
16 your work environment right now, and Joe's Pizza is  
17 over here, you know, and Billy's hotdogs are down  
18 here, you say I've got to work in this environment, so  
19 the drivers are thinking, hang on for a second now, I  
20 don't want to be driving a pickle for Pizza Pickles  
21 (*phonetic*), so the City's position is ... up to now you  
22 can't do that, but the City's position is, hey, you want  
23 to do it, the industry says it wants it, go do it, so these  
24 are issues that we face in an ongoing basis.

25 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
26 Kehoe, what do you think the impact would be in on  
27 insurance rates by the removal of these requirements  
28 that the City had in place? In other words, where  
29 there's no effort made by the City, let's say, to screen  
30 drivers or to inspect taxis ...

31 MR. KEHOE: They won't help us, Commissioner.

32 MR. SAUNDERS, PRESIDING CHAIRMAN: It won't  
33 help, no.

34 MR. KEHOE: As a matter of fact, it will leave us, and  
35 justifiably so, quite correctly so, it will leave us open to  
36 increased rates, and if I were an insurer, I too would  
37 look very dimly on that, and I too would be, would  
38 make moves to increase rates because of that.

39 MR. SAUNDERS, PRESIDING CHAIRMAN: On at  
40 least two occasions during your presentation you've  
41 made reference to efforts made by you, I think by you,  
42 and maybe others ...

43 MR. KEHOE: Our group, yes.

44 MR. SAUNDERS, PRESIDING CHAIRMAN: Your  
45 group, to get together with the industry, the insurance

46 industry, with a view to finding out what you as an  
47 industry can do to improve your lot so as to, let's say,  
48 qualify for lower rates.

49 MR. KEHOE: Uh hum.

50 MR. SAUNDERS, PRESIDING CHAIRMAN: And  
51 you've spoken about that in a way that indicates to me  
52 anyway, that you haven't meet with a lot of success.

53 MR. KEHOE: No, no, initially have not.

54 MR. SAUNDERS, PRESIDING CHAIRMAN: To whom  
55 have you spoken?

56 MR. KEHOE: There were two people involved. I went  
57 ... and the names now, this is a year ago, I don't recall  
58 the names, but I visited the offices of the Insurance  
59 Brokers, I believe it's called, Association. It's on  
60 Ropewalk Lane, and perhaps the industry people may  
61 know that, and I spoke on the telephone with a, I don't  
62 recall the individual with enough surety to be able to  
63 name him, the broker, and essentially, I have the notes  
64 home in my files, in my computer files, and essentially  
65 it was this is not our issue. And then I called the  
66 Insurance Bureau of Canada, and ... several times, and  
67 I have the notes of where ... and my telephone bills  
68 show where I called them, and to get in touch with a  
69 Mr. Forgeron, and I had a brief conversation with Mr.  
70 Forgeron explaining what we wanted to do, and Mr.  
71 Forgeron was going to get back ... he never got back,  
72 and then I called again, and he never returned the calls,  
73 so how many times can you be told. So these were the  
74 only two, and we had no knowledge, I had no  
75 knowledge at this, when this was going on, and most of  
76 our brokers had no knowledge, and I submit to you  
77 some still don't, that Facility, what Facility was, or you  
78 know ... when we got the document, like Nan did, there  
79 was nothing on there that says this is Facility  
80 Association, and what Facility Association is, so I  
81 didn't, you know, when we finally find out about  
82 Facility, and I cannot fault Facility in any way in this  
83 matter, they have not been approached by us to deal on  
84 this issue. Okay, I have approached the companies  
85 involved, and the association involved. I did speak  
86 with one of the senior people at a company on  
87 Kenmount Road on this matter as well, how we could  
88 do this, but Facility are not at any fault in this at all,  
89 they have not been approached and to my knowledge  
90 they may not even be aware that we exist, although  
91 some of their directors should know we exist. So we've  
92 been busy on a whole range of issues, Commissioner,

1 and the only thing that sparked this is when I, as I said  
 2 earlier in my talk, I came in here one day and I saw  
 3 yourselves, and I saw Mr. Whalen and Mr. Stamp and  
 4 a couple of people I didn't recognize, and the counsel,  
 5 and I saw nobody else, and I heard Mr. Connolly from  
 6 the Province saying that, in a very noncommittal way,  
 7 that we might be here, and even with your  
 8 encouragement to, look, if you're going to ... forgive me  
 9 if I paraphrase you wrong, if you're going to do it, do it.  
 10 Come on, we've got business to do here, if you're going  
 11 to do it, do it, and at that point in time we became very  
 12 interested because we said oops, the proposal is 40  
 13 percent, and if one of our brokers pays \$100,000 a year  
 14 for his insurance, that's \$40,000 more if they got it, or  
 15 \$20,000.

16 (1:00 p.m)

17 Ann was telling me, I believe, that she pays in  
 18 the area of \$20,000 a year for her cars. 20 percent on top  
 19 of that for public liability is going to be \$4,000. That's  
 20 a lot of money, and that's just Ann. So that's what  
 21 sparked it, Commissioner, and I must be fair to the  
 22 insurance industry. While we weren't successful in  
 23 those approaches, there has not been proactivity with  
 24 us since this. This motivated us and this process is  
 25 excellent. I think it's a tremendous service to the  
 26 consumer and the consumer wants to come in, they  
 27 should follow what's going on on the website and make  
 28 themselves known and step forward. Otherwise they  
 29 lose all gripping rights, simple as that.

30 MR. SAUNDERS, PRESIDING CHAIRMAN: Very  
 31 interesting. Okay, are there any questions arising? Do  
 32 you have anything further, Ms. Newman?

33 MS. NEWMAN: Yes, I do, Mr. Chairman, just a couple  
 34 of quick questions. Your daughter that was involved in  
 35 the accident, who was driving Nan's car, does she  
 36 reside with Nan?

37 MR. KEHOE: No, she resides with me.

38 MS. NEWMAN: Okay, and that hasn't changed over  
 39 the course of time?

40 MR. KEHOE: No, she's still there. There was another,  
 41 a granddaughter of Nan's who has moved in with her  
 42 recently, Laurie her name is, and Laurie will be 25 on  
 43 February the 10th, and it's included in some of the  
 44 correspondence there. Laurie has been on file with the  
 45 insurance broker from day one when she said I'm going

46 to bring Nan back and forth in her car, but Laurie has  
 47 her own car and her own insurance and a clean driving  
 48 record, and if you knew these kids, there are not, you  
 49 know, hot rod kids, these are just kids that go back and  
 50 forth to school, or wherever, they go to work, Laurie  
 51 does, so they're there, and it complicates it a bit for the  
 52 insurance company. It's like, ooh, you know, they don't  
 53 own the car and they're driving the car, but at some  
 54 point in time, somebody has got to recognize that hey,  
 55 look, they've got, you know, four or five years driving  
 56 too, and there's no issues here, and if you only want my  
 57 wife to drive the car, say so, but they would not say  
 58 that, Ms. Newman. Nobody will come back and say to  
 59 us, we do not want somebody under 25 driving this car.  
 60 They charged us for the policies, the endorsements,  
 61 and they knew this was the risk, so this should be no  
 62 surprise to them.

63 MS. NEWMAN: So Laurie was residing with your  
 64 grandmother when you initially, when the initial policy  
 65 was taken out then?

66 MR. KEHOE: No, when the initial policy was there, no,  
 67 but my daughter was listed as a person who would be  
 68 from time to time operating the car.

69 MS. NEWMAN: And then after that time, Laurie  
 70 moved ...

71 MR. KEHOE: Laurie moved in and when she does,  
 72 there was a file, there was a file at the broker and I'm  
 73 assuming the insurer got that, I don't know, that Laurie  
 74 is there ... my daughter would not, and does not drive  
 75 the car now, like she used to. Laurie fills that role for  
 76 Nan now generally, so yes, there was a complication  
 77 there, but it's not been a hidden complication, it's been  
 78 ... if there's a problem with that, please tell us and we  
 79 will adjust it for you, but they said, oops, sorry, you're  
 80 gone to Facility, and it was like Facility took a couple of  
 81 big suction cups and put on us and we're trying to pull  
 82 back out of it. We haven't been able to get out of it yet,  
 83 Ms. Newman.

84 MS. NEWMAN: When the renewal was sent to Nan in  
 85 December of last year now, and the rates were  
 86 dramatically higher, was a brochure, a Facility  
 87 Association brochure included with that?

88 MR. KEHOE: She didn't know and until I asked the  
 89 question after January the 7th of LeGrow's, nobody  
 90 mentioned it even existed and it's not there in any of the  
 91 correspondence. Nobody knows it's there.



1 MS. NEWMAN: Thank you, Mr. Kehoe, that's all my  
2 questions.

3 MR. SAUNDERS, PRESIDING CHAIRMAN: Any  
4 further questions, Mr. Whalen?

5 MR. WHALEN, Q.C.: No, Chairman.

6 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
7 O'Flaherty.

8 MR. GOODLAND: I just have one ...

9 MR. SAUNDERS, PRESIDING CHAIRMAN: Or Mr.  
10 Goodland, I'm sorry.

11 MR. GOODLAND: Thank you, Mr. Chairman, I just  
12 have one brief issue arising. Mr. Kehoe, you referred in  
13 response to the Commissioner's question, or you made  
14 reference to a rate increase of 40 percent?

15 MR. KEHOE: Well, we didn't know where it was going,  
16 okay, the rates that were on the street were like  
17 anywhere from, I believe, 20 to 60 percent, there wasn't  
18 any truth in that, but we used it as an example, but even  
19 20 percent will hurt us badly.

20 MR. GOODLAND: Okay, maybe you can comment,  
21 because in the filing of the Applicant, the overall rate  
22 increase for third party liability, for instance, is 59  
23 percent for commercial vehicles. First off, are you aware  
24 if commercial vehicles are grouped, if taxis are grouped  
25 into the commercial vehicle class?

26 MR. KEHOE: No, I've been told they are by a broker  
27 but I have nothing in writing to that.

28 MR. GOODLAND: And that's the extent of your  
29 knowledge?

30 MR. KEHOE: That's the extent of my knowledge. We  
31 haven't been able to find out, I've asked.

32 MR. GOODLAND: The rate increases, the rate  
33 increases at the proposed level by the Applicant of on  
34 average, 59 percent, can you offer some comment as to  
35 the impact that may or may not have on ...

36 MR. KEHOE: Well, I can give you, I can relate to you  
37 a conversation I had this morning at about 9:00 when I  
38 pulled off the road and got on my cell phone on my way  
39 in here, and I called one of the brokers involved, his  
40 name is Mooney Newell (*phonetic*), Albert Newell his  
41 name is, and he has, I think, somewhere, and I'm not  
42 sure but I believe around 35 vehicles, somewhere in  
43 that area there, and we were discussing it, and we had  
44 discussed it before, and I said what will be the impact  
45 on you if there's a rate increase, you know, and he said  
46 I'm just hanging on now. I said if we go 20 percent or  
47 30 or 40 percent, what's it going to do. He said I'm  
48 going to take cars off. He said it could possibly shut  
49 me down, and you know, he didn't, you know, I asked  
50 him if he wanted to come in but he was on other issues  
51 as well, but I've given his name for the Board, you  
52 know, if there is a verification issue, please go ahead,  
53 but he told me that he will shut some of his, he'll take  
54 his vehicles off, and that will mean that a lot of our  
55 members won't be working, and that will mean that bills  
56 won't get paid and other things won't happen, but most  
57 of drivers are, are ... a great many of our drivers are  
58 there because they like the work and they enjoy the  
59 work, they like the interaction, they like customer  
60 service, but we have drivers there who, while they are  
61 excellent drivers and excellent customer service people,  
62 they do not have tremendous abilities to go other  
63 places in terms of market, so that will hurt them, that will  
64 hurt them.

65 MR. GOODLAND: And that was his response when he  
66 felt the range could be in the 20 to 40 percent range,  
67 okay.

68 MR. KEHOE: Yeah, shut down, I'll have to shut some  
69 cars down, I'll have to take some off.

70 MR. GOODLAND: And ...

71 MR. KEHOE: Can't afford to run them.

72 MR. GOODLAND: There is just one other point  
73 regarding your MK documents, exhibits, and in  
74 particular MK-1, I believe Mr. Powell brought you to  
75 these documents. You may or may not know the  
76 answer to this, but do you have MK-1 in front of you?

77 MR. KEHOE: I don't know if they're listed, can you tell  
78 me what that document is, Mr. Goodland?

79 MR. GOODLAND: It's the December 17th, 2002, letter  
80 to Mary Fitzgerald.

81 MR. KEHOE: Okay, yes, the Cal LeGrow Insurance  
82 with the total of \$1,029.25 on it?

1 MR. GOODLAND: Yes.

2 MR. KEHOE: Okay, I have that.

3 MR. GOODLAND: That's fine, actually I was a little  
4 confused as to the documentation, I'm going to leave  
5 that issue. Thank you, Mr. Kehoe, that will be my only  
6 issue.

7 MR. KEHOE: One final point, if I may, and I just want  
8 a quick bounce of that, the insurance rate there, the  
9 taxes on this of 15 percent, and it says Newfoundland  
10 Tax, and somewhere along the line I'm trying to  
11 understand where that all came from, but I hope  
12 somewhere that you look around and say, you know,  
13 by this one policy there's a huge increase for the  
14 government on this as well, and I sort of question as to  
15 if you add up all of those dollars involved, there must  
16 be one huge amount of money going into government  
17 as a result of this, and we're concerned about that, we  
18 don't like that.

19 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
20 you, Mr. Kehoe, just before you leave, this document  
21 here showed up in the break. This is a copy of an email,  
22 I guess, is it?

23 MS. NEWMAN: Yeah.

24 MR. SAUNDERS, PRESIDING CHAIRMAN: Did you  
25 want to label that?

26 MS. NEWMAN: Well, we ... MK-4.

27 MR. SAUNDERS, PRESIDING CHAIRMAN: It was  
28 labelled as MK-4?

29 MS. NEWMAN: Yes.

30 MR. SAUNDERS, PRESIDING CHAIRMAN: I see it  
31 now.

32 MR. KEHOE: I think at the bottom, is that the one at  
33 the bottom of the email where they give a quote, what  
34 it would be for Nan if she had not been placed in FA by  
35 the Dominion's actions, I believe that's at the bottom of  
36 that one, Commissioner, you may see if it's that one or  
37 not, I don't have it open, but at the very bottom it says  
38 that if things had continued on, the rate would have  
39 been, was it around \$1,200 or something like that.

40 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I see  
41 that there, a total of \$1,392 (*phonetic*).

42 MR. KEHOE: So it's a reflection in terms of what the ...  
43 it's not a reflection on FA's personality, its people, but  
44 it's a reflection on what the process can do.

45 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, I'd  
46 like to thank you, Mr. Kehoe, as well as I'd like to thank  
47 Victoria Harnum and Ms. Power who appeared earlier  
48 for your contribution to the process. You've been very  
49 helpful and informative and when we get to our  
50 deliberations we will certainly take into account all that  
51 you've said. Whether or not we can do much about it  
52 remains to be seen, but in any event, you will hear from  
53 us when we release our order at a later date. Thank you  
54 again for your help.

55 MR. KEHOE: I thank you for the opportunity, it's been  
56 an excellent eye-opening experience. Thank you very  
57 much for that, and particularly for Ms. Blundon, she's  
58 been super to work with. I don't know, I've never met  
59 the lady but I tell you one thing, she's really  
60 professional, she's an excellent lady.

61 MR. SAUNDERS, PRESIDING CHAIRMAN: I will  
62 certainly pass that on to her.

63 MR. KEHOE: Okay, thank you very much.

64 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
65 you. Now, Ms. Newman, where are we?

66 MS. NEWMAN: We have one more witness to call,  
67 Mr. Dave Anthony. My direct examination will  
68 certainly take longer than the time that we have left  
69 today, but we're proceed and get done what we can.

70 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, if  
71 Mr. Anthony is prepared, then we should start, I guess.

72 MR. ANTHONY: Sir, I'll stay all day.

73 MR. GOODLAND: Mr. Chairman, just one point before  
74 we commence questioning of Mr. Anthony. It's dealing  
75 with the undertakings filed, and I guess, an index of the  
76 undertaking that we received from the Board yesterday.  
77 There appear to be at least five undertaking that we  
78 have not yet received. Some of them may be relevant to  
79 the questioning of Mr. Anthony, for instance,  
80 undertaking number six of Mr. Simpson and  
81 undertaking number seven of Mr. Simpson, as an

1 example, dealing with documents involving service  
2 carriers and their relationship with the brokers and their  
3 relationship with FA. I'm just wondering the status of  
4 those undertakings.

5 MS. NEWMAN: Yes, I did, Mr. Chairman, speak with  
6 Counsel for FA, and apparently the documents are just  
7 about ready and they were going to provide them to us  
8 tomorrow. I don't know if they could provide them first  
9 thing in the morning.

10 MR. WHALEN, Q.C.: We'll try to get them this  
11 afternoon. Could we get a copy of that as well. It  
12 probably is even emailed to us, the list that you're  
13 reading from.

14 MS. NEWMAN: It was, yes, emailed to you yesterday,  
15 yeah, but we can get a ..

16 MR. WHALEN, Q.C.: I guess the red is the ones that  
17 are not provided, is that right?

18 MS. NEWMAN: Yes, so we'll get a copy to you before  
19 you leave this afternoon and then hopefully we'll have  
20 the documents tomorrow morning.

21 MR. GOODLAND: So the red ones are the, are the ...  
22 the highlighted red ones are the ones that haven't been  
23 provided to date, and they will be provided before  
24 questioning tomorrow, I assume?

25 MR. WHALEN, Q.C.: Yeah, we will endeavour to do  
26 that, I think we can accomplish that.

27 MR. GOODLAND: And we're looking at number six,  
28 seven, nine, ten, eleven ...

29 MR. WHALEN, Q.C.: Six, seven, nine.

30 MR. GOODLAND: Ten and eleven, all undertakings  
31 from Mr. Simpson, my understanding is.

32 MR. WHALEN, Q.C.: And I think all the others have  
33 been complied with.

34 MR. SAUNDERS, PRESIDING CHAIRMAN: And  
35 there's one from Mr. Morris as well that came up  
36 yesterday.

37 MR. WHALEN, Q.C.: Okay, thank you for ...

38 MR. SAUNDERS, PRESIDING CHAIRMAN: And a  
39 couple more that appeared this morning, I think.

40 MR. WHALEN, Q.C.: Yes, I think some actually did  
41 this morning from the ...

42 MS. NEWMAN: Jennifer Power.

43 MR. WHALEN, Q.C.: Jennifer Power agree to get some  
44 things, I think, for Commissioner Powell.

45 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, so  
46 are you ready to proceed?

47 MS. NEWMAN: I am ready to proceed, Mr. Chairman,  
48 if the witness can be sworn.

49 MR. SAUNDERS, PRESIDING CHAIRMAN: I assume  
50 we're breaking at 1:30?

51 MS. NEWMAN: Yes, I am prepared to break at 1:30 and  
52 come back in the morning. I doubt that we'll get this  
53 witness done if we proceed on today.

54 MR. SAUNDERS, PRESIDING CHAIRMAN: I'm sure  
55 we won't get this witness finished this morning.

56 MR. STAMP, Q.C.: I guess Mr. Anthony was anxious  
57 to try and see if he could possibly be finished today,  
58 and I don't know if that's in the realm of possibility at  
59 all, but I don't know.

60 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, we'd  
61 certainly be willing to discuss that, I don't know what  
62 everyone's schedule is.

63 MR. ANTHONY: If I could just add, because I was  
64 instructed, I guess, last week, it would be probably  
65 Thursday afternoon and then Friday and then Monday,  
66 and then today, and I guess as you can appreciate, this  
67 has taken quite a bit of time away from the office for me  
68 and I have attended most of the sessions because I've  
69 got a great interest in it, so I'd appreciate any  
70 understanding you could give in that regard, it would  
71 be appreciated for sure.

72 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, well  
73 let's start with you then, Mr. O'Flaherty, what's your  
74 game plan for this afternoon?

1 MR. O'FLAHERTY: I'm prepared to stay. There is  
2 some, you know, obvious difficulty with not having all  
3 the documents here in front of us.

4 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

5 MR. O'FLAHERTY: But if, perhaps what we could do  
6 is, you're going to take a break at some point, I would  
7 take it, for lunch or something.

8 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes,  
9 certainly.

10 MR. O'FLAHERTY: So maybe then counsel could find  
11 out if those documents could be available, but I have  
12 no difficulty in staying through to accommodate Mr.  
13 Anthony.

14 MR. SAUNDERS, PRESIDING CHAIRMAN:  
15 Gentlemen?

16 MR. WHALEN, Q.C.: Yes, sure.

17 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, any  
18 problem with the ... yes, Commissioner Martin has a  
19 previous engagement that is 3:00, I think you said.

20 COMMISSIONER MARTIN: 3:00.

21 MR. SAUNDERS, PRESIDING CHAIRMAN: So we can  
22 go for an hour at this point in time. Do you think you'd  
23 be finished your direct in an hour?

24 MS. NEWMAN: Yes, Mr. Chairman, I suspect I'll be  
25 finished my direct. I just don't know if counsel is going  
26 to be in a position to ...

27 MR. SAUNDERS, PRESIDING CHAIRMAN: Well,  
28 there's another reason, I guess, not to conclude it  
29 today, with all due respect to Mr. Anthony's concerns,  
30 and that is the questions that are outstanding in respect  
31 of the undertakings.

32 MS. NEWMAN: Yes.

33 MR. ANTHONY: I can certainly be here in the morning.

34 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
35 then why don't we do that, let's go till quarter past 2:00  
36 and we'll resume in the morning with whatever is left.  
37 Okay, do you want to take the Bible in your right hand,  
38 Mr. Anthony? Do you swear that in the evidence

39 you're about to give, you will tell the truth, the whole  
40 truth, and nothing but the truth, so help you God?

41 MR. ANTHONY: I will.

42 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
43 you, okay, Ms. Newman.

44 MS. NEWMAN: Thank you. Good afternoon, Mr.  
45 Anthony, and again, thank you for being so patient  
46 with our process here. Can you please explain what  
47 your occupation is for us?

48 MR. ANTHONY: My name is David Anthony, I am  
49 President and CEO of Insurance Corporation of  
50 Newfoundland, an insurance company and a servicing  
51 carrier for Facility Association, which I believe is the  
52 main reason why I've been asked here today. I am also  
53 President and CEO of Anthony Insurance Incorporated,  
54 an insurance broker.

55 MS. NEWMAN: And can you please describe your  
56 training and experience?

57 *(1:15 p.m.)*

58 MR. ANTHONY: I've been in this business, I started  
59 thinking about that the other day, and I'm starting to  
60 feel old, but I've been in the business nearly 30 years.  
61 I've worked in everything. I started in filing when I was  
62 15 and I worked in every nook and cranny of it over my  
63 career. I am a Fellow Chartered Insurance Professional.  
64 I have some university education, and I've had, I guess,  
65 over the years, many management training courses and  
66 specialized insurance courses with some other  
67 insurance companies.

68 MS. NEWMAN: Okay, and do you have any  
69 involvement with the industry in general?

70 MR. ANTHONY: I have been a member, well I am a  
71 member of the Insurance Institute of Canada. I've  
72 served on the Board of the Insurance Institute of  
73 Newfoundland. I have served on the board of the  
74 Insurance Bureau of Canada, Atlantic Committee. I was  
75 very involved, I guess, in the debate with IBC with  
76 regards to no-fault or tort reform, the last couple of  
77 years. I have served on the committee on behalf of IBC  
78 with regards to underwriting issues concerning  
79 property, oil tank, things of that nature, so most  
80 committees I've been involved with one time or another.

1 I have appeared at the PUB before on rate hearings a  
2 number of years ago.

3 MS. NEWMAN: So it certainly sounds like you're well  
4 qualified to speak to certain aspects of the insurance  
5 industry then.

6 MR. ANTHONY: Some people might say I'm a wealth  
7 of useless information, but I don't know. I guess we'll  
8 find out.

9 MS. NEWMAN: So you say you're President and CEO  
10 of the Insurance Corporation of Newfoundland.

11 MR. ANTHONY: Right.

12 MS. NEWMAN: And that's an insurance company.

13 MR. ANTHONY: Yes.

14 MS. NEWMAN: And as well you're President and CEO  
15 of Anthony's Insurance?

16 MR. ANTHONY: Yes.

17 MS. NEWMAN: And that is a broker.

18 MR. ANTHONY: Yes.

19 MS. NEWMAN: Can you please describe how these  
20 two companies interact, if they do at all?

21 MR. ANTHONY: Insurance Corporation of  
22 Newfoundland is an insurance company. We sell, we  
23 sell insurance through our brokerage operation. At the  
24 moment our single broker in the regular market is  
25 Anthony Insurance, and with Anthony Insurance its  
26 single company is Insurance Corporation of  
27 Newfoundland. That is not to say from time to time  
28 they would not have contracts with other insurers such  
29 as if, you know, we get an opportunity and there's an  
30 influx of grey market insurers, I can assure you, we'll be  
31 chasing one of them down to have a contract, and  
32 that's the interrelationship between the two.

33 MS. NEWMAN: Okay, so would that qualify then as,  
34 we've heard some talk about tied sellers.

35 MR. ANTHONY: Not in the strict sense, you know, we  
36 do operate as an insurance company with, as for  
37 instance, with Facility Association, or what we're here  
38 for, we have contracts with eight brokers, so we

39 certainly deal with numerous brokers on a Facility level  
40 as a servicing carrier, and in the general market, right  
41 now we've elected, we have had over the years,  
42 contracts with other agents/brokers, I guess, as was  
43 explained this morning. It's a relationship arrangement,  
44 common goals, if we were to find fit tomorrow that  
45 would meet our strategic plan, it's something we would  
46 entertain, so it's not that we're structured in a way that  
47 we can't. It's at the moment we've chose not to.

48 MS. NEWMAN: So ICON Insurance, if I can call it that,  
49 is that appropriate?

50 MR. ANTHONY: That's the easiest way to refer to it,  
51 yeah.

52 MS. NEWMAN: So ICON Insurance is a servicing  
53 carrier for FA.

54 MR. ANTHONY: Correct.

55 MS. NEWMAN: And is it also a member company of  
56 FA?

57 MR. ANTHONY: Yes, it is.

58 MS. NEWMAN: Okay, but Anthony Insurance  
59 wouldn't be because it's a broker, is that correct?

60 MR. ANTHONY: It's a broker.

61 MS. NEWMAN: Okay, can you, you, as you said, sat  
62 through much of this proceeding and you're aware that  
63 we've had Tom Hickey, who is a broker, come and  
64 testify as to what a broker does.

65 MR. ANTHONY: Uh hum.

66 MS. NEWMAN: I wonder if you can take us from that  
67 point in time whereby the broker has sent you an  
68 application for FA insurance and sent you a cheque.

69 MR. ANTHONY: Okay.

70 MS. NEWMAN: Actually, doesn't send you a cheque  
71 right away, sometime later, but can you please take us  
72 from that point where you're getting an application and  
73 tell us how the money flows, the policy flows, and then  
74 we'll move from that to an actual claim and what's done  
75 there, but first let's start on the application process.

MR. ANTHONY: Okay, I'll start probably from the very beginning and work through. We supply the brokers who we have contracts with, with Facility applications. These are applications supplied by the Facility. Facility name is now shown on all applications so when an insured sees one, signs it, it's quite identifiable what it is. We provide the brokers with a rate manual, an under ... what's called an underwriting manual, but in a true sense, it's more of a rate, a rate manual.

I think it's been made quite clear here, the Facility Association, the servicing carriers, we do not make any underwriting decisions per se as to what goes in or out of Facility. We simply service the business we receive, so we provide the brokers with those tools, and then the brokers sell insurance on behalf of companies they may represent, and out of that we see business flow into us as a servicing carrier for say, Broker A for reference. We take the application that's received, we basically audit it for correctness, is the risk rated correctly, is the class assigned correctly, is the driving record assigned correctly, is the application complete in every detail. Facility is very black and white. Everything has to be completed and completed in detail.

We'll order abstracts from Motor Registration in all cases. We can also go into Auto Plus, which is a service provided by the IAO, which links a lot of member companies together which will provide, and I think this was referred to somewhat this morning by someone. That's a service that, that most companies, but not all participate in. It's a voluntary thing. I think Mrs. Harnum made some reference to it this morning. We can go in there and that will give us the actual driver's experience by that particular insurer. So for instance, if you were to come to me and say I had been insured, and I'll use Dominion because that was the name up around this morning, I was insured with Dominion of Canada, and here is my policy number, we could go in through the system, key in that number, and that will give us their history for you for the period of time they had you insured, because Motor ... the abstracts are very brief in details, and it's rather unfortunate because I think as the Constabulary officer who was here the other day stated, there's a lot of material given to Motor Registration, and they chose not to do anything with it, so you know, basically an MVR will say John Doe had an accident on such and such a date, here's the amount and the amount of damage is not really relevant because it's just an estimate that's made at the scene, and you know,

someone might look at something and say it's \$2,000 when in actual fact it's \$5,000 or \$500. It's very, it's a very inaccurate tool, but ... and then if it's not disclosed on the application, we will go to the broker and query to ask him to contact their client to find out the details of the accident. The policy, if necessary, the driving record is amended. Let's say we have an application that comes in and says there's no at-fault accidents, and we discover that there certainly was, and we'll re-rate that policy in accordance with the manual as to what it should be.

The broker is advised, they have then to deal with their customer, and their customer has an option. The customer can accept the new rating and go on with the policy as it is, or they can elect to request the policy be cancelled and it would be cancelled pro-rata, and it would be cancelled at the original rate, and then they can go and shop somewhere else, and I have seen instances in my lifetime where I saw ... one in particular, I'll never forget, one individual went to five brokers, one after the other, wouldn't ... not declaring accidents, and his misfortune, he happened to go to five brokers we were servicing carrier for, so by the time he got to the third or fourth, the name was fairly fresh, but that does happen, and ...

MS. NEWMAN: So you audit the application and ...

MR. ANTHONY: We audit for ... like I say, we audit for completeness to make sure it's correct and that it matches the underwriting manual we've been provided with by the Facility as far as driving record, class, surcharges, things of that nature.

MS. NEWMAN: And if, once it's all found to be fine, then what's the next step?

MR. ANTHONY: The next step then, we would issue the policy, provide the policy back to the broker. It is the broker's clients, they're not our clients. The broker then would distribute the policies out to their customers with whatever information they normally provide in their own behalf.

MS. NEWMAN: So you wouldn't provide a copy of this FA brochure that's ...

MR. ANTHONY: We supply supplies to the brokers and, to the best of my knowledge, they are sent out with the policies to their clients. We don't mail ... as a servicing carrier we have in this process very little

1 interaction with the client. The brokers own, and it's  
2 important to realize who owns the client. These people  
3 are clients of the broker. They're not clients per se of  
4 the servicing carrier as to who owns the business, so  
5 the line of contact is always with the broker.

6 MS. NEWMAN: So your client would be the broker.

7 MR. ANTHONY: Uh hum.

8 MS. NEWMAN: And you provide the broker in bulk  
9 periodically, I guess, these brochures, is that how it  
10 works?

11 MR. ANTHONY: Yes, we do. When they need a  
12 supply, we provide them to them. When we run low,  
13 we'll request same from Facility.

14 MS. NEWMAN: Okay. And in your role as President  
15 and CEO of Anthony's Insurance, which is a brokerage,  
16 are you aware of whether the brokers are sending out  
17 these brochures with the policies, the FA policies that  
18 are issued?

19 MR. ANTHONY: We are now. This is something fairly  
20 new. Actually personally I wasn't even aware of the  
21 brochure until the hearing the other day, so when I  
22 went back, not having seen it, I made a query and we  
23 have been sending them out but very recently.  
24 However, the applications and the policies state quite  
25 clearly that it's Facility and I know as a brokerage we've  
26 made a practice for years of making sure it's clear to  
27 people that they are going into substandard or Facility  
28 market, and we refer to it as an alternate market Facility.

29 MS. NEWMAN: So you would send, ICON, would  
30 send the application, the policy back to the broker, and  
31 it's got stamped on it FA.

32 MR. ANTHONY: Uh hum.

33 MS. NEWMAN: And is that it, you're done with ...

34 MR. ANTHONY: We're done through the accounting  
35 ... those policies are issued, are captured in a computer  
36 system and by way of a ledger and monthly we produce  
37 what's called a bordereau (phonetic), which basically is  
38 a listing of policies ...

39 MS. NEWMAN: It's called, sorry, a what?

40 MR. ANTHONY: Called a bordereau. Don't ask me to  
41 spell it.

42 MS. NEWMAN: Okay. Bordereau.

43 MR. ANTHONY: It's basically a ledger but in the  
44 industry the vernacular is bordereau, and that would  
45 list by policy number, by name, it would show the  
46 commission amount due to the broker, because  
47 depending on the rating of the business, as we've seen,  
48 there's various commissions, so it would show the  
49 commission amount, show the net premium amount.  
50 We provide that to the broker at month end. So let's  
51 take at the end of January we're getting close, the end  
52 of January we will run this. This is run on a monthly  
53 basis at month end. We will provide that to the broker,  
54 usually the first few business days of the following  
55 month. The net amount, net of commission, is due to  
56 us at the beginning of the following month, i.e. 30 days.

57 MS. NEWMAN: Okay. So what would be on this in  
58 terms of the money?

59 MR. ANTHONY: It would show the gross, it would  
60 show the policy number, it would show generally the  
61 effective date, it would show the name the policy was  
62 issued under, it will show the commission rate, it will  
63 show the gross premium and the net premium and  
64 sometimes they may show the difference, well, show  
65 gross commission and net premium, usually three  
66 columns.

67 MS. NEWMAN: And that's the broker's commission?

68 MR. ANTHONY: Yeah.

69 MS. NEWMAN: And what about taxes, does it show  
70 that?

71 MR. ANTHONY: We don't collect ... Facility service  
72 carriers have no dealings with taxes outside of course  
73 of the four percent premium tax which is built into the  
74 rate, and that's not shown separately. That would be  
75 included in the gross and the net premium on the  
76 bordereau. So we supply that to the broker and, like I  
77 said, on a 30 day account basis they will remit a cheque  
78 to us. Those cheques are put into an account we have  
79 specifically set up for Facility Association, referred to  
80 as Facility account, and all monies are deposited in that  
81 account from the various brokers when we receive their  
82 payments. That's basically a central clearing account  
83 that's kept at zero balance. The funds are transferred

1 from there to Facility main account where they manage  
2 their affairs, manage those funds and no doubt invest  
3 to earn income. If we had it sitting in an account down  
4 here on a daily basis, of course, it wouldn't earn any  
5 income. And that is basically the flow. It's not overly  
6 ... can seem to be complicated but it's not an overly  
7 complicated process. I mean, we receive the  
8 application, we audit it for correctness and we correct  
9 anything that's in error or if we find an abstract, we  
10 issue the policy, provide it to the broker, on a monthly  
11 basis we produce a premium bordereau, a premium  
12 register, if you like, that shows key information as  
13 required. 30 days from that, 30 days from the month  
14 end that's related to, we receive payment from the  
15 broker for the gross amount less the commission that  
16 they were due and we deposit that in the bank account.

17 MS. NEWMAN: Okay. So that's on the broker side.  
18 Now can we get into a bit more detail on how the  
19 money is transferred back and forth between the  
20 servicing carrier, ICON and FA?

21 *(1:30 p.m.)*

22 MR. ANTHONY: Well, the only ... okay, well, the only  
23 monies that come back, I guess, the other way, and if  
24 you're going to ask me questions related to claims  
25 separately ...

26 MS. NEWMAN: Separately, yeah, later.

27 MR. ANTHONY: But there's only really two areas. One  
28 would be when we're settling claims we issue claims  
29 cheques on the Facility account, there would be monies  
30 transferred back in for that, and I guess the only other  
31 piece is on a monthly basis when the month is  
32 complete, we will as a servicing carrier, which has been  
33 covered off here, we earn commission revenue for  
34 handling the Facility business. There's a policy and a  
35 service fee and a claims fee. There's a form that we  
36 complete which would show the premiums, the gross  
37 written premiums, will show earned premiums. We  
38 complete that documentation on a monthly basis. We  
39 submit that to Facility Association for approval. Once  
40 we receive that back approved we will issue the cheque  
41 for that and we pay, that's when we pay ourselves.

42 MS. NEWMAN: Okay. So that comes out of that  
43 account, that ...

44 MR. ANTHONY: Yeah.

45 MS. NEWMAN: ... clearing house account.

46 MR. ANTHONY: But we only, the cheque is only  
47 issued after it's been approved by Facility Association.  
48 We just ... we cannot issue the cheque to ourselves.

49 MS. NEWMAN: Okay. And that covers the  
50 commission, the servicing carrier commission that we  
51 spoke of.

52 MR. ANTHONY: Yes.

53 MS. NEWMAN: What about the premium tax and the  
54 health levy, where does that come from?

55 MR. ANTHONY: The premium tax and the health levy  
56 are picked up in our own books as a non-servicing  
57 carrier. Like, when ... the general market ... I guess  
58 we've (unintelligible) that section of it. Then the  
59 question becomes how do the member companies do  
60 their accounting, okay, and if I could probably touch on  
61 that and I think I'll be able to answer the other question  
62 if I have it right. As we provide all the data to Facility  
63 on a monthly basis as a servicing carrier, so do the  
64 other three carriers in Newfoundland, and through that  
65 are developed reports for the gross premium written in  
66 Newfoundland on a monthly basis, okay. On that basis  
67 all the member companies who write auto insurance in  
68 Newfoundland share in the 100 percent a month, which  
69 will be the final total from all four servicing carriers, and  
70 every month we receive what's called a member  
71 participation report, okay, and that would show the  
72 gross numbers, premiums and losses, for the month  
73 concerned, and would show our participation  
74 percentage. For argument's sake, you know, keep it  
75 somewhat simple. Let's say the premium is \$1 million,  
76 okay, and our ...

77 MS. NEWMAN: Are we talking about ...

78 MR. ANTHONY: ... which is a ...

79 MS. NEWMAN: ... voluntary market or FA premium?

80 MR. ANTHONY: Well, on the participation report the  
81 amount put through a participation report that month as  
82 a premium is \$1 million total, okay.

83 MS. NEWMAN: That includes FA and voluntary  
84 market.



MR. ANTHONY: That is ... no, that is strictly what has been placed in Facility Association, okay.

MS. NEWMAN: By that particular servicing carrier?

MR. ANTHONY: By all four servicing carriers. Like I say, that's the 100, that's the big number for the province.

MS. NEWMAN: Okay.

MR. ANTHONY: Okay. Let's for the sake of round numbers again, let's use 10 percent and let's say ICON's share as a member company is 10 percent, or let's say ABC Company share is 10 percent rather than get into specific companies.

MS. NEWMAN: And this share is based upon the total premiums in the entire market?

MR. ANTHONY: Yes. In other words, it's their share of the entire market ...

MS. NEWMAN: The insurance market, not the FA market.

MR. ANTHONY: Insurance market, period.

MS. NEWMAN: Okay.

MR. ANTHONY: Alright. Owned ... regular business, the total. So they would receive, they would have the book on their own records 10 percent of the \$1 million, okay. Their share of the total would be 10 ...

MS. NEWMAN: FA business.

MR. ANTHONY: Of FA business, 10 of the million. So they book on the premium side \$100,000, okay. Let's assume that the losses totally for the 100 percent for the month involved, it's also \$1 million, keep it really straightforward, and again ABC Company's participation ratios remains 10, 10 is the common number. They would also book on the claim side 10 percent of the million is losses, okay, and that's how the Facility numbers get pulled down into the member company's results.

MS. NEWMAN: And that would be shown on this monthly member participation report.

MR. ANTHONY: Well, the monthly participation report which is provided by Facility, shows the total numbers for the province for Facility business written by all servicing carriers and in that report it also reflects what the particular insurance company's participation rate is for the province, and one is a product for the other, and we do pay the, and we do pay, it's only an issue of clarification, is the health levy and the premium tax, and that gets paid ... to be quite frank with you, I had that right in my mind but it's over there somewhere, so, if you wouldn't mind, I could, I'd like to check on that and I could comment on that in the morning.

MS. NEWMAN: Okay, that would be helpful.

MR. ANTHONY: Just rather than be sure, because it's, like, I said, it's there and now it's gone.

MS. NEWMAN: Yeah. It sounds like it is a little bit complex, so in the morning we'll come back to the issue of how it is that the premium tax and the health levy get paid.

MR. ANTHONY: Who pays it.

MS. NEWMAN: Right.

MR. ANTHONY: Yeah.

MS. NEWMAN: So we're back then, I think, if I didn't get lost along the way, to FA and the servicing carrier and how the money is passed back and forth.

MR. ANTHONY: Uh hum.

MS. NEWMAN: And I understand that there's this clearing account.

MR. ANTHONY: Uh hum.

MS. NEWMAN: And the servicing carrier would pay out to itself after approval by FA a commission.

MR. ANTHONY: Right.

MS. NEWMAN: For writing the policy.

MR. ANTHONY: Correct.

MS. NEWMAN: And other than that the money would be given to FA to be held in a pool, is that how it works?

MR. ANTHONY: Well, how it gets transferred to their central account, which presumably is held in Ontario, whether that's one account or they split it to, for different investment accounts because there'd be short term money requirements, because there's daily money going out for payment of claims and then there's longer term requirement, so whether it's one account or some different accounts, I wouldn't have knowledge of that. We have an account as a servicing carrier here which we put the funds in, the premium, receipt of premium monies from our brokers, and that gets transferred to the main Facility account.

MS. NEWMAN: So my next question then is what about the cost of adjusting claims and paying claims, investigating claims, how does that work?

MR. ANTHONY: Okay. Well, as part of the commissions we receive, we receive an amount based on the earned premium written for the year. From those proceeds it's our responsibility to handle all claims on behalf of Facility Association that we have written as a servicing carrier. We handle claims from beginning to end, we settle them, we make payments. We can recover, covered off in the plan of operation, which I know has been touched on here, legal fees over \$10,000. We can receive special payment for those because they're usually very one of situations. But generally all the costs of handling claims are our own, and of course it's ... you know, we go into that every year really not knowing what kind of a year we're going to have, if we have an unusually severe year claims wise, we're going to be a lot busier and a lot more expensive. There are adjustment provisions based on loss ratio, if it's worse than was expected, and again if it's better than expected, and from time to time there have been adjustments on that both up and down, I believe, and for that, and so we're compensated for that. We do, because we are a servicing carrier, we've elected to be one, and because we have to handle these claims and we have a responsibility ... if we cease to be a servicing carrier tomorrow, we stopped writing business, we are obligated to run the claims out that we have for 60 months, for five years, at our cost, which would mean we'd have a cost with no associated revenue coming back in. Because of that, we have, we set up a reserve on our own books for that liability. I can't say if all servicing carriers handle it this way, but this is the way that we've done it. We feel it's good corporate governance. We have an exposure, we have a cost. So that in fact takes some capital out of the picture for us as a servicing carrier to write regular business.

MS. NEWMAN: So the compensation, I guess, if you'd call it that, for all of the claims handling is paid up front in that 30 day period after with the rest of the commission.

MR. ANTHONY: Uh hum.

MS. NEWMAN: Is that correct?

MR. ANTHONY: Correct.

MS. NEWMAN: So there's one commission, a one time commission and that's it.

MR. ANTHONY: Yeah. And, like I said, if we cease to be a writer tomorrow and it is covered off in the plan of operation, there is a requirement that we provide the claim service for 60 months. In other words, we handle the run off of the business and, like I said, we do in our books then, which would be really unique to a servicing carrier, we do have a liability to run this business off for the period and we set up a reserve for that eventuality should it ever happen.

MS. NEWMAN: So then is there anything else that comes out of this money that's forward onto FA other than your commission? What about the claims cost?

MR. ANTHONY: Well, the claims cost, like I said, we receive a commission to handle the claims. The claims cost, okay, I see where you're ... the actual dollar amount, let's say we have a collision claim, we're repairing somebody's car. The value of that, and let's say it's a \$1,500 repair, we would issue a cheque, a Facility Association cheque, for that repair out of the Facility account.

MS. NEWMAN: So not the shared account, this account, clearing house account that you have?

MR. ANTHONY: Yes.

MS. NEWMAN: It's out of that account.

MR. ANTHONY: Yes.

MS. NEWMAN: This FA account within ICON.

MR. ANTHONY: Yeah. And that's ... (unintelligible) any monies come back, that would be the other instance where money would have to come in to make that account whole every day, okay. It could be a

1 bodily injury claim, could be a, you know, significant  
2 payment. We issue Facility, as a Facility servicing  
3 carrier on the policies we service and on policies we  
4 have claims on, those cheques would come out of that  
5 account, and again the total amounts then on those are  
6 picked up in the monthly participation report I referred  
7 to earlier.

8 MS. NEWMAN: You're only one of four servicing  
9 carriers. If you got a really big pay-out, is there ever a  
10 time when there's some money that comes back to you  
11 from other servicing carriers?

12 MR. ANTHONY: No.

13 MS. NEWMAN: Like, your FA account is just not  
14 adequate to cover this big claim?

15 MR. ANTHONY: Well, no, it would always be  
16 adequate because it's a central clearing account.  
17 Facility would have sufficient funds at all times to look  
18 after that.

19 MS. NEWMAN: When you say Facility, it's the  
20 Facility account with ICON would always have  
21 sufficient funds.

22 MR. ANTHONY: No. Facility account within Facility.  
23 They would transfer money from the Facility account  
24 for Facility that we've transferred up the line. They  
25 would transfer sufficient funds back into the ICON  
26 Facility account.

27 MS. NEWMAN: Okay. So you would notify them,  
28 ICON would notify them of this ...

29 MR. ANTHONY: Generally we don't. I'm not sure ... it's  
30 not unusual when you have, say, an ultra large amount  
31 to where you would let them know, because there's  
32 cash management things that occur, I'm sure, at Facility.  
33 I mean, this money doesn't sit in an account earning no  
34 interest, so they would have, that would be invested,  
35 and, you know, they have a lot of, I'm sure they have a  
36 lot of short term money management things so they can  
37 earn some interest on that, and they would, they may  
38 have to arrange to do that. I'm not knowledgeable of  
39 that so I can only surmise, but that's not unusual.

40 (1:45 p.m.)

41 MS. NEWMAN: Okay. I just want to clarify in my  
42 mind, and might have to do something about the late

43 hour of the day, but the cheque that you would write to  
44 pay a claim, whether it's \$1,500 or \$1.5 million, is that a  
45 cheque that comes, is drawn on the FA account with its  
46 pooled funds from the four service carriers or is it a  
47 cheque that's drawn on the account that you  
48 mentioned, which is a clearing account within ICON for  
49 FA?

50 MR. ANTHONY: That's the account it'd be issued  
51 from, that one.

52 MS. NEWMAN: The ICON account.

53 MR. ANTHONY: Yes.

54 MS. NEWMAN: Okay. I know ...

55 MR. ANTHONY: And the cheques actually would  
56 show Insurance Corporation of Newfoundland, Facility  
57 account, is what's on the cheque.

58 MS. NEWMAN: Okay. But there's never been a time  
59 when FA has funnelled money back into ...

60 MR. ANTHONY: No, no, no, never flows ... it always  
61 flows that way.

62 MS. NEWMAN: Okay.

63 MR. O'FLAHERTY: Mr. Chairman, I don't mean to  
64 interrupt my friend. I don't know if my body has  
65 become conditioned to breaking at 1:30 but I'm  
66 wondering if I might just step out of the room, no  
67 disrespect to Mr. Anthony, for just one moment, and I'll  
68 be back shortly.

69 MR. SAUNDERS, PRESIDING CHAIRMAN: By all  
70 means.

71 COMMISSIONER POWELL: And I'll join him.

72 MS. NEWMAN: Could we go off the record then  
73 perhaps for five minutes?

74 MR. SAUNDERS, PRESIDING CHAIRMAN: We'll take  
75 a five minute break if you want. I think that would be in  
76 order. I wouldn't want to have any accidents.

77 (break)

78 MR. O'FLAHERTY: Thank you, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
Carry on, Ms. Newman.

MS. NEWMAN: Okay. We were talking about these accounts, and just to finish that point off, I understand, and you can correct me if I've got a misunderstanding, that there is a zero balance in your, in the ICON FA account on a monthly basis.

MR. ANTHONY: Almost on a daily ...

MS. NEWMAN: Almost on a daily basis, okay.

MR. ANTHONY: On a daily basis. Yes, you are correct.

MS. NEWMAN: So that when you write a cheque on that account, then there must be some money that fulfills that ... if there's insufficient ...

MR. ANTHONY: Yes, I presume there's a mechanism within the bank, then they would transfer, they would request funds from the central account to come back down, but our account is strictly zero balance. We put funds in, it moves up, as would ... you know, there's a ... there will be an account for ICON, there would be an account for Royal Sun Alliance, there'd be an account for Unifund, account for Coop. We would all individually have monies going into their account and that would get transferred up to the central account, let's call it central account in Ontario, so our account is always zero. As we write cheques against that account, funds would come back. Is that any clearer?

MS. NEWMAN: Yeah, it does. And I guess the important thing to know is that the monies is being deposited in your account and that ICON is actually writing the cheques for claims.

MR. ANTHONY: Correct.

MS. NEWMAN: Okay. And we'll talk tomorrow morning about how the premium tax and the health levy interacts with all of that, and, if I've got it right, all of your expenses associated with the writing of the policy, the investigation, the payment of claims, are collected through this once a month commission that's ...

MR. ANTHONY: Through the three fees we receive on a monthly basis, yes.

MS. NEWMAN: Charged against this account.

MR. ANTHONY: Yes.

MS. NEWMAN: And the policy, you said, that's written and provided to the broker is an FA policy.

MR. ANTHONY: It will show Insurance Corporation of Newfoundland, Facility Association, identifies it, and that's been a change that occurred since the last hearing, I guess, when there was a request made to make sure that it was very identifiable to an individual that they have a Facility policy, and, as I said, the policy is identified as a Facility Association policy, the application also shows that ... if I could just touch on one thing. We were talking about sort of the flow of work and what we do with the applications and how we handle claims. It's probably important just to mention that as a servicing carrier, we, particularly, all the (inaudible) the claims, we don't have a special unit that deals with Facility Association. We treat it exactly as we do for our own regular book of business, so whatever level of service we provide to our customers, and I would like to think it's very good, we provide the same level of service and we use the same staff and all circumstances with regard to claims, and, in a lot of cases, even when we're auditing a file, we have a couple of people who are more well versed in Facility than others, but depending on volumes, the summer, the early months of the summer are usually busier months, we will move staff from our regular book and we share, so we ... the intent is they're all treated the same, whether it's a Facility person or a regular account. We don't differentiate how we treat people.

MS. NEWMAN: And you said that they're all treated the same. What is your commentary on the commission that's paid to you, to the servicing carrier in terms of its adequacy to cover the expenses associated with the writing of the business and then the handling of the claims afterwards?

MR. ANTHONY: I think you just said the right word. It's just adequate. You know, we've been a servicing carrier since the beginning, for 15 years. There are times, I'm sure, when it's developed some margin of profit as a servicing carrier. We do not account for it separately from our normal expenses. We don't have a Facility unit where we do a P&L. We've analyzed it from time to time to see if it makes sense. We do it to have, basically to have some control over that. Out of Facility come some very good accounts over time, and I think I've always looked at it, if that's a way that we have that we can groom a relationship with a client who

1 may be Facility today, the hope is that they're not  
2 always Facility or not Facility tomorrow, that they  
3 would see fit to like the service they received and they  
4 come in, so it's a way of having a source of business  
5 outside of the normal course, and that's probably the  
6 largest attraction for us is that we're a part of this  
7 province, at the moment we only write in  
8 Newfoundland, and it's very important to us, and, you  
9 know, if we're going to ... I subscribe to if you're going  
10 to be involved in something, well be involved in it and  
11 be involved in all parts of it, so we've chosen to do that,  
12 so, like, I said, the compensation, I'd suggest to you, is  
13 just adequate and I think it's been covered off here. If  
14 it was much better than that, there'd be a line-up, and  
15 that's never been the case and in fact there's fewer  
16 servicing carriers, I believe, in Canada today ... there  
17 hasn't been a change in Newfoundland but somewhat  
18 of a unique situation here, I think, and so that's where  
19 we are.

20 (2:00 p.m.)

21 MS. NEWMAN: You said that you look at it in some  
22 way, and I am paraphrasing, so if I'm gone too far, let  
23 me know, as an opportunity for future business ...

24 MR. ANTHONY: Uh hum.

25 MS. NEWMAN: ... is that correct? We heard earlier  
26 about a turnover in FA, a 50 percent turnover. How  
27 does that ...

28 MR. ANTHONY: There is a very high turnover. I  
29 would suggest to you it's in excess of 50 percent, but  
30 you have, and some of that is, you know, there's a high  
31 prevalence of shopping from year to year. Obviously  
32 it's very expensive and one would expect or hope that  
33 people that are in there would shop around and they  
34 certainly should shop around, so you would expect,  
35 you know, to see that. That adds very much to the  
36 expense of handling it, but also there are, you know, I'd  
37 suggest to you, there are a number, you know, you  
38 can't quantify it, but there are a number of people who  
39 are in Facility this year who will not be in Facility next  
40 year because, you know, as a servicing carrier we see  
41 business come in that a market may not want because,  
42 say, it's an older vehicle, okay, and let's use that one as  
43 a ... other than that it's a good risk. I mean, we've  
44 already identified, or the Board has, there's quite a  
45 number of people in Facility who are claims free or  
46 accident free, so some of those would be there because  
47 the vehicle is beyond a tolerable age for the markets out

48 there, okay. That person might in the intervening year  
49 or around renewal time purchase a vehicle that's of a  
50 newer vintage, let's say, and if that was the only reason  
51 they were in Facility, I can assure you they come out  
52 immediately and they would go into the regular market,  
53 so things of that nature, people have earned another  
54 year of driving experience, and if they're in Facility  
55 because they had an accident record or conviction  
56 record, if they've, I guess, Mr. Simpson referred to it  
57 sort of carrot and stick approach to things, and if  
58 they've earned the right, certain ones would fall off and  
59 some others will go the reverse way, would come on,  
60 and it's a very, it's somewhat volatile but in there there  
61 are people who are there for a very short period of time,  
62 so there are opportunities there.

63 MS. NEWMAN: Okay. Who determines who gets  
64 placed in FA, is it the broker or the servicing carrier?

65 MR. ANTHONY: It's the broker. The broker, in a  
66 broader sense the broker determines that based on the  
67 companies that they represent and the criteria that  
68 they're given. The servicing carrier has no decision  
69 making ability on who goes in or out of Facility. We  
70 accept, I guess it's been referred to sort of as all-comers.  
71 Whatever business that we received as a servicing  
72 carrier, we audit, make sure it's correct and we issue a  
73 policy. We make no other determination.

74 MS. NEWMAN: Okay. In the case of (inaudible)  
75 insurance, the brokerage, they're only writing policies  
76 right now with ICON.

77 MR. ANTHONY: Correct.

78 MS. NEWMAN: So how would they decide as to who  
79 gets placed in FA then?

80 MR. ANTHONY: Again they have been given  
81 instructions, they have an underwriting manual for that  
82 particular company, and from time to time for other  
83 companies that they may sell for we have, like I said,  
84 they've had various companies from time and time and  
85 I'm sure tomorrow if things line up as we hope they will  
86 and if there's a grey market, an interest for grey market  
87 companies to come back in, that there would be criteria  
88 for a grey market company there as well.

89 MS. NEWMAN: Okay. So in the case of Anthony  
90 Insurance though, the only thing that they would, they  
91 only company that they would look to other than FA  
92 would be ICON, is that ...

MR. ANTHONY: Well, we're getting into an area now where, you know, somewhat, some privileged information as to what the tolerance is for one company. I'm really here to answer on behalf, as a servicing carrier, and I don't mind sort of expanding out to some degree, but we're getting into an area where if there's going to be an investigation on that, it would be much broader based hearing, I would suspect.

MS. NEWMAN: I merely used it as an example, so we'll use other, another company that's, another brokerage that's got several insurance companies. And what would ... they would base their decision on what the insurance companies are telling them they would accept ...

MR. ANTHONY: Correct.

MS. NEWMAN: ... in the voluntary market.

MR. ANTHONY: Correct.

MS. NEWMAN: So the determination to some degree is based upon the guidance that's provided by the insurance company.

MR. ANTHONY: Well, ultimately, I mean, it's the insurance companies that set the rules.

MS. NEWMAN: Right, and it's the ...

MR. ANTHONY: Not the broker.

MS. NEWMAN: So if the insurance companies aren't willing to take particular risks, then the broker is left with no option, whether it's five companies they look to or one or ten. Then FA is their only other option.

MR. ANTHONY: Exactly. Now, if I could just expand on that ...

MS. NEWMAN: Sure, yeah.

MR. ANTHONY: ... just a little bit, while brokers might have a company who will accept certain business, I would suggest, and I think it's been commented on here, I mean, relationship between brokers and companies are very much on a business case basis, and I think Commissioner Powell asked would you deal with any broker who came in. Well, if it makes ... to the person from CGU this morning ... if it makes, if there's a business case being made, sure, but, you know, brokers

also have to be somewhat careful. They can't load one company, one of their companies up with a lot of specific business that's sort of on the fringes, because ultimately that will drive a higher loss ratio than if you had a broad base, so they try to share amongst all their companies, okay.

MS. NEWMAN: So are the underwriting ...

MR. ANTHONY: So there's some business decisions in there that go beyond just pure underwriting. The broker has to protect the relationship with the companies that they represent as well. There's some ownership there. But in the strict sense it's the company that sets the guidelines.

MS. NEWMAN: Okay. I guess you sat through much of the hearing, as we said, and there are some reasons for people being placed in FA that would not appear necessarily to the lay person as being necessarily related to risk. For example, it's easy to understand that the accident and conviction history of somebody would impact upon the risk perceived by the insurance company, but there's some other items such as the credit history or whether they've bounced a cheque in reference to insurance before, that would not seem to, to a lay person, suggest that a person should be placed in FA. Do you think that there's any relationship with that particular item and risk?

MR. ANTHONY: Well, it's probably unfortunate that the Facility binder registry that's been referred to throughout the hearings wasn't adopted by the Superintendent's office, and, I mean, there was a big, there was a fair amount of debate about it in the last hearing, and it's one of the things, I believe, it would seem that it has been offered up. If we had that, and I think the reasons why people fall to Facility are addressed in the listing that's there, it's unfortunate that we don't have that in place here, and perhaps it may not be of value in this hearing but assuredly be a value for future hearings down the road that we could sit here and have an informed discussion over exactly who is in Facility and why. The only thing I can add, I think the majority, the main points are covered on that document, has been talked about here ...

MS. NEWMAN: The binder control?

MR. ANTHONY: Um?

MS. NEWMAN: The binder control?

MR. ANTHONY: Binder control, yeah, and I really can't, not much I can really add to that, and other than the commentary that it's unfortunate that for whatever reason, has been chosen not to become more informed, and the offer was there.

MS. NEWMAN: So you support the binder control ...

MR. ANTHONY: Absolutely.

MS. NEWMAN: ... register as an information gathering tool.

MR. ANTHONY: Absolutely. You can't have enough information. I mean, the more you can get, the better.

MS. NEWMAN: Do you think it might actually go beyond that and be more than an information gathering tool but might actually help to influence the type of business that's placed in FA?

MR. ANTHONY: Well, I'm sure if you knew, you know, if you had more detail of exactly what's in there, and then you try to find the root of the issue, try to find the root of the problem, and then you deal with it, and, you know, maybe there's some things there, there's a root cause beyond the obvious, and, like I said, if you could assimilate that information on a regular basis over some sensible period of time, I hate to suggest actuaries because we heard enough about actuaries and numbers now, but, you know, you can look at it and, to be frank, a lot of it at the end of the day is common sense. You know, you look at something and you let common sense prevail and a certain picture comes out of that and then we can always throw a few actuaries in there for good measure and they get more specific ...

MS. NEWMAN: Just to confirm the common sense. So do you have any knowledge as a servicing carrier if there are people in FA other than what you might have heard here, but just on a daily basis, would you know if a broker has placed an insured in FA because they bounced a cheque or because they were senior or because they're new to Canada or because of the age of their vehicle? Would you be advised of that when you're writing the FA business?

MR. ANTHONY: No. Like I said, we accept it as (inaudible) and there's no way for us to know the exact reason why. That's why that binder register would be a very useful tool.

MS. NEWMAN: And do you accept that or do you have any comment on whether these particular items I just listed off, bouncing a cheque, whether they're senior or, you know, a senior above 65 or above 70, 75, whether they've had a break in their insurance or they're a new driver, whether those things might impact upon risk or if they do not?

MR. ANTHONY: It's my opinion that they can and that they do in different magnitudes, sometimes in combination, it's not one simple reason. Usually it's a combination of different things. It's ... very few things are that black and white. There are ... perhaps impaired driving would be one. That's pretty much a slam dunk. Even there different companies in the marketplace take different approaches to how they want to particularly treat an impaired conviction, i.e. length of time they're willing to, before they'll re-accept it, if they accept it at all. Seniors, I guess, touch on that, it's no doubt an important issue here. I don't personally believe today that seniors are put on Facility strictly on age alone. I think they're put on Facility usually as a result of age and other situations, i.e. a recent accident or some change over the term. You know, just again as a general observation and, you know, these are people who, for a lot of us, have been long time clients. I mean, they're clients the business has been built on, and, you know, it's hard enough getting the client in your door and we expend a lot of money getting them and we just simply, you know, for someone to think that they just go out the door at a certain magic age, I don't think it reflects reality. Like I said, it's in conjunction with other issues, I would suggest primarily a lot of times it'd be ... and ages from company to company will vary. Company A might be 70 years, Company B might be 75, Company C might be 80, but they may say at a certain age if there is an at fault accident or if there's an accident, well then they treat it from that point somewhat differently. I can't say, like I said, I've been in the business a long long time, that when I started back in the days of the old risk sharing pool, before Facility Association, where things were just transferred into Facility from the market involved, the age for people back then when I started was like 60 or 65, but it had no impact on what they paid because basically there's a risk sharing pool that ultimately everyone subsidized. It's much like what Mr. Simpson referred to. I guess we could have a pool here but it becomes very, very expensive, and ultimately you will wind up with drivers in the pool who have a worse experience than your main component, and they in effect become subsidized, and since Facility, I guess

1 the Facility changed from a pool arrangement to where,  
2 I guess, it was somewhat transparent to a lot of people,  
3 to Facility Association, the market has very much  
4 moved away from that practice, and there may be  
5 companies out there who have a strict age limitation,  
6 but I don't know, I'm not aware of any.

7 MS. NEWMAN: So it sounds like there's a lot of  
8 judgement involved in some of these circumstances.

9 MR. ANTHONY: Well, that's what we call underwriting  
10 and that is the business of insurance. You know, it's a  
11 main ... very few things in this business oddly enough  
12 where we have pure control over. You know, we can  
13 control our expenses and we can control how we  
14 underwrite, but I can't control if I have ten more claims  
15 that I thought I was going to have, can't put, say, okay,  
16 we've had our quota for this month, no more, and so  
17 that is the business of insurance and I guess it's one of  
18 the areas I have grave concern with, this Bill 28 that's  
19 been referred to a few times, and that's now, I guess,  
20 technically defunct in that it didn't get past first reading  
21 and it's now died on the order paper, so it may never re-  
22 appear. It keeps getting referred to, which is somewhat  
23 irritating.

24 MS. NEWMAN: What was the concern you had with  
25 Bill 28?

26 MR. ANTHONY: Bill 28 will very much put controls on  
27 underwriting practices and, you know, if that's what, I  
28 guess, the end of the day if that's what is seen to be  
29 prudent for the consumer or for society in general, what  
30 that will do, it will no doubt drive business from Facility  
31 Association to the general market, but in effect what it's  
32 going to force is subsidization because it will move  
33 risks that are right now at a higher rate into a market  
34 where the rate right now is lower and it will move that  
35 rate up to cover the increase in risk. It may also have  
36 the impact of reducing the market here even further by  
37 way of having companies who are interested in writing  
38 here which could work in the complete reverse of what  
39 was hoped and could be a dangerous thing.

40 MS. NEWMAN: You mean companies leaving the  
41 market?

42 MR. ANTHONY: We've already had one and I'm sure  
43 there would be others who, if they had to run, work in  
44 that regime, would choose not to.

45 MS. NEWMAN: Okay. Mr. Chairman, I have quite a  
46 few more questions here. I wonder if we perhaps  
47 should break here.

48 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, it's  
49 that time and Mr. Martin, Commissioner Martin, has  
50 another engagement at three o'clock, so we'll finish for  
51 the day and resume at nine o'clock. Is that okay with  
52 everybody? Okay, thank you, Mr. Anthony.

53 MR. ANTHONY: Okay.

54 *(adjourned to January 15, 2003)*

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