

1 (9:10 a.m.)

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Good  
3 morning, ladies and gentlemen. I trust everyone  
4 managed to refrain from improving Facility's market  
5 share over the Christmas holidays. Any preliminary  
6 matters, Ms. Newman?

7 MS. NEWMAN: There's no motions, I understand, Mr.  
8 Chairman. I did want to mention that the Board has  
9 scheduled a public participation day for the 14th, next  
10 Tuesday, and I understand from the Board that there  
11 are three people who have confirmed their attendance  
12 for that day.

13 MR. SAUNDERS, PRESIDING CHAIRMAN: Three  
14 people. Very well. So we'll commence that at nine  
15 o'clock in the morning.

16 MS. NEWMAN: Yes.

17 MR. SAUNDERS, PRESIDING CHAIRMAN: And if  
18 there's anything left in the way of evidence or ...

19 MS. NEWMAN: We'll move on to that after the public  
20 ...

21 MR. SAUNDERS, PRESIDING CHAIRMAN: ...  
22 argument, we'll move on to that at the same, or  
23 following, yes. Okay. So where are we this morning?

24 MR. WHALEN, Q.C.: We're ready with ... David  
25 Simpson is our witness.

26 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
27 Simpson.

28 MR. WHALEN, Q.C.: We've provided two exhibits to  
29 the Board that are going to be used during this  
30 morning. There was some inquiry about taxi cab share  
31 of the market and so on, so there's some information on  
32 that, and also in Mr. Morris' pre-filed evidence there  
33 was an Exhibit 4 and there's sort of an update of that  
34 which we'll be dealing with, one just follows the other  
35 but it's more current information, (inaudible) deal with  
36 that.

37 MS. NEWMAN: Can we label these now then? It  
38 would be ...

39 MR. WHALEN, Q.C.: We can if you wish, whatever  
40 label is convenient for the Board.

41 MR. SAUNDERS, PRESIDING CHAIRMAN: Maybe I  
42 should swear Mr. Simpson first and ...

43 MS. NEWMAN: Okay. Perhaps we'll do that.

44 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
45 Simpson, do you want to take the Bible in your right  
46 hand, please? Do you swear then in the evidence  
47 you're about to give you will tell the truth, the whole  
48 truth and nothing but the truth, so help you God?

49 MR. SIMPSON: I do.

50 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
51 you. Okay.

52 MS. NEWMAN: The first document, Facility  
53 Association, Taxi Cabs, Jitneys ...

54 MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah.

55 MS. NEWMAN: ... and Livery, that will be, I guess, DS  
56 No. 1, is it? Do you have a middle initial, Mr. Simpson?

57 MR. SIMPSON: Pardon me?

58 MS. NEWMAN: Do you have a middle initial?

59 MR. SIMPSON: "J" for John.

60 MR. SAUNDERS, PRESIDING CHAIRMAN: DJS.

61 MS. NEWMAN: Okay, DJS No. 1. And the second  
62 document entitled "Facility Association Residual  
63 Market Summary of Financial Results" will be DJS No.  
64 2.

65 **EXHIBITS DJS-1 & DJS-2 ENTERED**

66 MR. SAUNDERS, PRESIDING CHAIRMAN: Jitneys,  
67 you don't know what that means, Ms. Newman?

68 MS. NEWMAN: I'm afraid I do not.

69 MR. SAUNDERS, PRESIDING CHAIRMAN: There's a  
70 gentleman on the left of me from Corner Brook can tell  
71 you all about it.

72 COMMISSIONER MARTIN: Tell you after.

73 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,  
74 very well. Carry on.

MR. WHALEN, Q.C.: Thank you, Mr. Chairman. Mr. Simpson, perhaps you could tell us a little bit about your background in the insurance industry and what you've done, where you've worked and so on.

MR. SIMPSON: Sure. I moved to Ontario to seek career related employment in 1987. I answered an ad in the paper for the insurance company, and that was State Farm Insurance, and I worked for their head office in Scarborough, Ontario, for 14 years, from 1987 through till 19-, pardon me, 2001, and I started off in the property underwriting side, quickly moved into management. They started up a Public Affairs Department in 1993 and I was asked to take that on. I did that for seven years. Following that I was moved into what they call the Assistant Division Manager Program, which is a development program for senior executives in the organization, senior management, and so that's my company background, and I started with Facility on July 1st, 2001. In terms of my industry involvement, I've been involved with the Insurance Institute of Ontario, which is the educational body for insurance in the province, and I was President there for two years, in 1999 through 2001, in a volunteer capacity, and in addition to that I've been on a few industry committees with a regulator in Ontario as well.

MR. WHALEN, Q.C.: And what about the Insurance Institute of Canada, are you a member of that ...

MR. SIMPSON: Oh, I'm sorry, I'm a member and I also served on the Board of Governors there as a result of being President and Past President in Ontario.

MR. WHALEN, Q.C.: And what is your educational background?

MR. SIMPSON: I've got a BA in History from Simon Fraser University in British Columbia, 1984, and an MBA from the (unintelligible) School of Business at York University in Toronto, 1996.

MR. WHALEN, Q.C.: So you've spent most of your working life in the insurance industry.

MR. SIMPSON: That and going to night school, yeah.

MR. WHALEN, Q.C.: And the Insurance Institute of Ontario and Insurance Institute of Canada you just mentioned, just tell us briefly what are they and what is the role of each of them.

MR. SIMPSON: Yeah. They're not for profit organizations. The Insurance Institute of Ontario goes back to 1899, so it's over 100 years old. There's an Insurance Institute of Newfoundland and Labrador as well. The national institute, broadly speaking, sets the educational standards and the academic content for the designations conferred by the Institute. The Institute confers two designations and they're the same across Canada. The first one is a Chartered Insurance Professional designation, the CIP, and the second one, the more senior one, is the Fellow Chartered Insurance Professional designation. The first one involves 12 courses of study, semester length, you know, 13 week courses, three hours a night, plus study and exams, and the senior designation is 10 university, typically 10 university level courses to obtain the FCIP. So those standards are prescribed, the academic standards, by the national body, and the provincial body, the Insurance Institute of Ontario, where I was on the governing council for a number of years and President for two terms, provides the arms and legs, if you will, conducts the classes, makes sure that there is instructors, correspondence courses, holds the seminars, that sort of thing, so the national body is more of a policy body, the provincial bodies are tasked with getting the job done, educating people in the, primarily the property and casualty insurance business. The life insurance industry has its own institute.

MR. WHALEN, Q.C.: So when you were on the Executive Committee of the Board of Governors of the Insurance Institute of Canada, you say there's an Insurance Institute of Newfoundland and Labrador, so you would have had some involvement with that.

MR. SIMPSON: Well, to the extent that I was on the Executive Committee and the Board of Governors, there was representation from this province as there was from all provinces, so have an opportunity to meet and interact with those folks a little bit, yeah.

MR. WHALEN, Q.C.: Now, is membership or taking these courses required in the insurance industry or is it simply something that's recommended and encouraged?

MR. SIMPSON: It pretty much varies by employer. It's not required within the industry but some companies will have a policy, if they're going to promote an individual to a certain level, they'll require a designation, and in some of the employment ads you'll see they'll require that candidates have a designation to be able to apply for a position, but there's no

1 requirement of completed a designation in order to have  
2 a job or a career in the insurance industry but it's very  
3 much encouraged and very broadly and heavily  
4 supported by the companies in terms of moral  
5 encouragement as well as financial support.

6 MR. WHALEN, Q.C.: What I'd like to do now, if I  
7 could, is just move to the focus of our inquiry, which is  
8 Facility, and ask you in a general way, before we get  
9 into some specific issues, to tell us how Facility works,  
10 you know, the work, the organization itself and your  
11 role in it in sort of a general overview, if you would,  
12 please.

13 MR. SIMPSON: Sure. Facility was formed as an  
14 unincorporated not for profit association in 1977 and it  
15 first began operation, if you will, in the Province of  
16 Alberta in 1979 and here in Newfoundland and  
17 Labrador in 1985. We also, in the Atlantic Provinces,  
18 manage the uninsured automobile fund. That's not  
19 germane to this hearing, as I understand, but just by  
20 way of additional information. And essentially our  
21 mission is identified in the Newfoundland and Labrador  
22 Insurance Company's Act where it states we're there to  
23 provide automobile insurance to owners and licenced  
24 operators of automobiles who would be unable to  
25 obtain the insurance without (phonetic) the plan of  
26 operation, and the ...

27 MR. O'FLAHERTY: Excuse me, Mr. Chairman, we don't  
28 have the benefit of any pre-filed evidence, so can I ask  
29 if Mr. Simpson slows down a little bit because I'm trying  
30 to make notes of his evidence.

31 MR. SAUNDERS, PRESIDING CHAIRMAN: Fine,  
32 okay.

33 MR. SIMPSON: I'm sorry.

34 MR. O'FLAHERTY: Sorry to interrupt you there, Mr.  
35 Simpson.

36 MR. SIMPSON: So the plan of operation then that's  
37 referred to in the legislation has been approved by the  
38 Superintendent in every jurisdiction of the nine where  
39 we do business in Canada. That'd be the four Atlantic  
40 Provinces, Ontario, Alberta and the three northern  
41 territories, and the plan has not only been approved by  
42 the Superintendent but any changes to the plan  
43 through time have also been approved by the  
44 Superintendent. To elaborate on that just briefly,  
45 changes to the plan require three essential steps. One

46 is approval by the Board of Directors of Facility  
47 Association, and I'll talk a little bit more about the  
48 Board's role in a moment, and approval by a majority of  
49 the member companies, and then approval by the  
50 regulatory authority. I might remind some people a little  
51 bit about constitutional change in Confederation in  
52 terms of the steps we have to go through, if I can add  
53 that comment. But the reason behind that is to make  
54 sure that any changes in the plan are considered and  
55 deliberated fully and that we're taking a balanced  
56 approach to things and considering various  
57 stakeholders. In keeping with the mission that's  
58 outlined in the act we're often referred to colloquially as  
59 the market of last resort. The most common term as you  
60 will read about in the industry is the residual market.

61 In terms of how we operate, we've got a full-  
62 time staff of 14 people at our Toronto head office and  
63 that's all our full-time staff. Just recently we moved into  
64 a shared services environment with the Insurance  
65 Bureau of Canada, so we share some back office  
66 functions with them to gain greater efficiency,  
67 reception, mailroom, things of that nature, and we just  
68 did that in December, and we're also supported by 80 or  
69 so, a little more than 80 volunteers from throughout the  
70 industry around the country, and that includes the  
71 members of our local operating committees. We have  
72 a local ... we have an operating committee to deal with  
73 local issues in every jurisdiction, of course including  
74 Newfoundland and Labrador.

75 MR. WHALEN, Q.C.: So that ... so each province or  
76 territory would have an operating committee, say,  
77 Newfoundland would have one, Nova Scotia would  
78 have a separate one, New Brunswick would ...

79 MR. SIMPSON: I'm sworn here, Mr. Whalen, so I'm  
80 trying to be as precise as I can. In western Canada we  
81 have one operating committee for Alberta and the  
82 territories, so just to clarify that, but in the other  
83 provinces, Ontario and the atlantic provinces, each has  
84 their own operating committee. The cost of running  
85 Facility Association salaries, rent, etcetera, are allocated  
86 amongst our member companies throughout the nine  
87 jurisdictions on the basis of premium volume. The  
88 exception to that allocation process is rate hearing  
89 costs, costs associated with the procedure involved  
90 right now, which are assigned back to the jurisdiction  
91 where the hearing takes place, and of course back to the  
92 members. We operate on a not for profit basis. We  
93 submit our costs. You know, our costs are included  
94 and we don't do it on a profit basis. We're not doing

1 this on contract for the insurance industry or anything  
2 else. We just do everything on a cost recovery basis.

3 Sometimes, I don't think it's happening here  
4 from what I've, from my personal attendance at these  
5 hearings, and of course I've read the transcripts of the  
6 days I was unable to be here, sometimes we're confused  
7 with being an insurer but we're not. I think it's  
8 important to emphasize that. We're an administrative  
9 body that administers insurance pools in those nine  
10 jurisdictions and we're there simply to fulfill the mission  
11 to guarantee the availability of auto insurance  
12 coverage. The perennial issues, perhaps somewhat  
13 obviously for consumers when it comes to auto  
14 insurance, are affordability and availability.  
15 Affordability is, I think, everybody's concern, but our  
16 role is primarily to guarantee the availability of auto  
17 insurance.

18 To make sure that we do provide that  
19 guarantee of availability, we contract with companies  
20 we refer to as servicing carriers. Servicing carriers are  
21 of course also member companies, as are all auto  
22 insurers required by law to be member companies of the  
23 Association. Currently we have four servicing carriers  
24 in Newfoundland and Labrador, Royal and Sun  
25 Alliance, Cooperators, Unifund and the Insurance  
26 Corporation of Newfoundland.

27 MR. WHALEN, Q.C.: Sorry, there's four service carriers  
28 but we understand that, and we have pre-filed evidence  
29 of the Superintendent, that there are about 50 insurance  
30 companies in the province.

31 MR. SIMPSON: That would be about right. The  
32 Superintendent would have that number. I don't know  
33 the exact number of our member companies offhand,  
34 Mr. Whalen, but ...

35 MR. WHALEN, Q.C.: So that we're clear, those 50  
36 companies, do, other than the four you mentioned, the  
37 other 46 or 48 or whatever number it would be, would  
38 not directly be involved with the Facility business other  
39 than their share of any risk.

40 MR. SIMPSON: That's absolutely correct. All the  
41 member companies share in the financial results  
42 according to their market share but they don't have any  
43 day to day involvement with Facility Association. Our  
44 interaction is with the servicing carriers. We've got  
45 really three key responsibilities and, or, I should say,  
46 there's three key responsibilities conveyed upon us,

47 our member companies and insurance intermediaries,  
48 brokers and agents in the province, and, as I indicated  
49 earlier, all companies licenced to sell auto insurance in  
50 the province have to be members of the Association.  
51 We must make auto insurance available to eligible  
52 owners and drivers and insurance intermediaries must  
53 have access to and a contract with Facility Association  
54 through the servicing carrier. I think it's also important  
55 to remember that brokers and agents placing business  
56 through Facility Association must use our manual of  
57 rules and rates. The rules portion of course is  
58 approved by the Superintendent and the rates by this  
59 Board, so they've been approved by the regulatory  
60 authority, and what that means for consumers is that  
61 whichever intermediary they buy a policy, a Facility  
62 Association policy, if you will, from, they should  
63 receive the same price regardless of the intermediary  
64 that they're dealing with for the risk that they present.

65 In terms of a little bit of, perhaps I just touched  
66 on it briefly, but the governing structure of Facility  
67 Association, we're governed by a 14 member board of  
68 directors. The board is made up of 10 senior people  
69 from insurance companies, and we try and get a cross  
70 section of the industry on the board. There's three  
71 broker representatives, one from western Canada, one  
72 from Ontario and one from Atlantic Canada, and they  
73 are appointed to the board by the Insurance Brokers  
74 Association of Canada, and then I'm also a member by  
75 virtue of my office as President and CEO. In terms of  
76 my responsibilities, those ...

77 (9:30 a.m.)

78 MR. WHALEN, Q.C.: Before you get to that, Mr.  
79 Simpson, could you ... you mentioned the brokers.  
80 There appears to be a regional representation  
81 requirement in that, I understand that, at least with the  
82 brokers.

83 MR. SIMPSON: The plan of operation requires that in  
84 terms of the broker representation, so there's one from  
85 Alberta and the territories, which I'll refer to as western  
86 Canada, if I may, one from Ontario and one from  
87 Atlantic Canada, and those are appointed by the Broker  
88 Association, Insurance Brokers Association of Canada.  
89 The Association has no say, if you will, just to clarify  
90 that, on who that broker rep might be. The Brokers  
91 Association has the authority to appoint them and we  
92 welcome them, and Board members serve for a two year  
93 term.

MR. WHALEN, Q.C.: Perhaps you might, before you move on to your role, tell us generally who the representatives would be on this board. (inaudible) brokers, but (inaudible) generally tend to be?

MR. SIMPSON: Like I say, they're senior officials, either at the CEO level or very close to that, from major insurers, so without the benefit of a list in front of me, Royal and Sun, the CEO of Royal and Sun Alliance, the CEO of CGU, the CEO of Pembridge, the Senior Vice-President for Canada for State Farm, the Senior Vice-President from the Cooperators, Senior Vice-President from ING, one of the larger insurers in the world, Guarantee Company of North America. That gives you representation ... I'm afraid I've lost ...

MR. WHALEN, Q.C.: Generally speaking then we're talking about ...

MR. SIMPSON: The President of Lombard, pardon me. So I think I've covered about eight of the ten. The two that are reading the transcript will realize I left them out, they'll have words with me I'm sure, but that's the best I can do from memory off the top.

MR. WHALEN, Q.C.: But generally speaking then, the categories, the most senior people in the insurance industry in Canada.

MR. SIMPSON: Very, very senior, typically either at the CEO level or one level below that.

MR. WHALEN, Q.C.: Sorry, carry on.

MR. SIMPSON: Thank you. In terms of my role, that is prescribed by the plan of operation, but very, very basically I'm responsible for the day to day operation of the Association and making sure everybody is doing what they're supposed to be doing. We're also, as part of our governing structure, we have a five member Executive Committee of the board and I'm a member of that Executive Committee, and they deal with operational issues as well, so they play a direct role in running the affairs of the organization, but the typical things you might expect with day to day operation, staffing, premises, making sure that our auditors are auditing our servicing carriers properly, things of that nature, those are my responsibility from an oversight standpoint.

MR. WHALEN, Q.C.: Now, Mr. Simpson, perhaps you can ... there are ... obviously we've heard from Mr. Pelly,

and I don't intend to get into that, but there are committees of the board and levels that an application like this would normally go through, and you've heard and, either heard or read his evidence on that as to that process. Is there anything that you want to add to that or has he pretty well explained the way that operates?

MR. SIMPSON: I think he's very well explained that, and just to recap, he develops preliminary indications and the pricing and reviews that with the Actuarial Committee, which is senior actuarial people from around the industry. That then goes to the Rates and Rules Committee which has broker representation on it but is primarily senior underwriters. They'll take a look at those indications through the lens, if you will, of market experience, what's going on in the market, you know, that kind of underwriting expertise that they can bring, and following that they may give some direction to Brian to cap certain indications or re-visit certain indications. We have such a small volume of business, and some coverages, the indications can be very volatile, so to respond to them directly on those small coverages, you know, might be an example where the Rates and Rules Committee would say to Brian, operationally, you know, we need to take a look at that. They come forward with their proposal and that proposal goes to the Board of Directors, which has the responsibility for determining the rates to be filed in a given jurisdiction, and the Board of Directors makes a final determination. In terms of the application before us at this hearing, the Board accepted the application as proposed with the exception of the effective date. The rates were initially developed with a May 1st implementation date and the Board directed that it be filed with a February 1st, 2003, implementation date, and the indications were re-cast by Mr. Pelly as a result of that.

MR. WHALEN, Q.C.: So I was going to come to that later, but perhaps we'll deal with that now. There was an inquiry about the difference between the indications and the proposals in the report that was filed by Eckler and Partners, and in fact I think if you just look at page one of that, and it contains that the indicated and the proposed, and there were some minor changes in some of those, very minor.

MR. SIMPSON: Very minor and that's, the difference between the indicated and the proposed is after, you know, Mr. Pelly, in consultation with the actuarial committees, developed the indications, then it goes to

1 the Rates and Rules Committee and what comes out of  
2 that is what is proposed.

3 MR. WHALEN, Q.C.: And so you've indicated that  
4 there was a timing issue in there.

5 MR. SIMPSON: Exactly. The original indications were  
6 developed with a forecast implementation date of May  
7 1st, 2003, and the Board directed that they be filed with  
8 an implementation date of February 1st, and I find the  
9 actuarial stuff hard to follow, I'm not an actuary, but, as  
10 we've heard, when you move the dates, because of the  
11 trend factor, you shift the numbers up and down. If  
12 you've got an implementation date further out, and  
13 we're obviously not to get a February 1st  
14 implementation date, so we're going to need an increase  
15 from the number that we filed for based on the timing  
16 alone, and, but conversely when Brian developed the  
17 rates to be filed, as he took it back to a February 1st  
18 date, there was a reduction in the proposed rate to  
19 reflect that.

20 MR. WHALEN, Q.C.: So he had cast a rate assuming  
21 an implementation date, so that I understand this, of  
22 May the 1st.

23 MR. SIMPSON: 2003, that's correct.

24 MR. WHALEN, Q.C.: And when the board said, no, we  
25 want to try to get this done earlier, he re-did his  
26 calculations and came up with the numbers which were  
27 the numbers proposed to this Board in his report.

28 MR. SIMPSON: That's correct.

29 MR. WHALEN, Q.C.: And they, you say, were  
30 somewhat lower than they otherwise would have been.

31 MR. SIMPSON: My understanding, it's in the order of  
32 about two percent for private passenger and three to  
33 four percent for commercial vehicles.

34 MR. WHALEN, Q.C.: And now, and I think this has  
35 been spoken to by both of our actuarial experts, if that  
36 date cannot be met, and I think we've all agreed it  
37 cannot, that it will now result in a resulting requirement  
38 for an increase of some ...

39 MR. SIMPSON: That's my understanding, in terms of  
40 ...

41 MR. WHALEN, Q.C.: ... amount to be considered by  
42 this Board obviously.

43 MR. SIMPSON: And that was reflected in the last  
44 decision we received from the Board in our 2001 filing.

45 MR. WHALEN, Q.C.: Now, am I correct that, and I  
46 don't want to go too far in leading you here or  
47 appearing to, but I just want to see if I understand this,  
48 the people that you have on these committees are from  
49 the industry.

50 MR. SIMPSON: That's correct, they volunteer their  
51 time.

52 MR. WHALEN, Q.C.: And so one would logically  
53 intuitively or in a common sense way assume that they  
54 have information of the rest of the market, their own  
55 little bits of information.

56 MR. SIMPSON: That's correct, yeah.

57 MR. WHALEN, Q.C.: And they bring that wisdom or  
58 lack of wisdom to that decision-making process.

59 MR. SIMPSON: Well, I hope it's not a lack of wisdom  
60 but that's why we have that committee there, because  
61 one of the issues that's been discussed at this hearing  
62 and other places, in that we have to be very mindful of  
63 our role and our place in the marketplace, and we really  
64 don't want to be in a position where we fall into  
65 competition with our member companies.

66 MR. WHALEN, Q.C.: That's the next point I want to  
67 take you to. It would seem to me that these people that  
68 are around that table, if there's 100 percent, as there is  
69 of the market across Canada, these people want as  
70 much of that business as they can get.

71 MR. SIMPSON: Most people in any kind of a business  
72 are there to grow their business and insurance people  
73 are no different, so ...

74 MR. WHALEN, Q.C.: And they're also competing with  
75 each other.

76 MR. SIMPSON: They're competing with each other,  
77 that's correct, and at any level ... you know, you've got  
78 the, from the board members on down, so they try and  
79 look at things with very much an overall marketplace  
80 perspective and always with a goal of keeping the  
81 residual market population as small as possible. I'm

probably the only guy with the title of CEO that wants to shrink his business but that's the reality and we view things through, most things through that lens. When I say "we," that means staff and volunteers alike.

MR. WHALEN, Q.C.: Okay. Well, we're going to come back and touch on that a little later on with two of these exhibits we have here that deal with the market share. Perhaps we can leave that area now and you can, and others can take you there more fully if they choose to later. The rate application process, there's been some discussion of that in questioning as to how things are done in other jurisdictions, so in fairness I want to take you to that and have you probably, without going into a lot of detail, just tell us what the rate application process is in the other jurisdictions. When Facility needs to do this, how is it generally done?

MR. SIMPSON: Well, in terms of ... first off I'd just like to say that in terms of our internal process, it mirrors this jurisdiction very, very closely, in other words, the actuary developing the actuarial, the indications, the Actuarial Committee, the Rates and Rules Committee and the Board, so once we get into the different regulatory environments, every jurisdiction is different. The Alberta Insurance Board, and it's not a rate board, they're charged with governing auto insurance generally in the province and they have a very broad mandate of which rate review and decision making and approval is part. Typically that's about an hour and that meeting will take place within about a month of our filing, because they meet regularly and they let us know the dates they're going to meet, and typically if we get a rate filing in, within about three weeks, quite frankly, of their meeting, then we're able to sit down with them and go through the filing and deal with any kind of questions they have face to face. The territories ...

MR. WHALEN, Q.C.: Before you leave, what is the nature of that hearing? Is it a hearing like this, is it in a board room, are there lawyers, sworn evidence?

MR. SIMPSON: Nobody is sworn. There's no lawyers, to the best of my knowledge, in the sense I don't know the occupations, full-time occupations of the board members, because these are not full-time jobs for them. The Chair is, I believe, a CA with a major accounting firm. But it's an informal discussion. We sit around the table in the meeting room, we talk about what we're seeing from our end of the market. If they've got any questions about the filing, they do have a consulting actuary who's not present but presumably they have as

a resource. If they've got any questions regarding the actuarial nature of the filing, they've got that resource to draw upon before we have our meeting, and then we sit down and we have a discussion. Like I say, it lasts about an hour, and typically I schedule my flight out for later that day and I get a decision on my email the following day.

MR. WHALEN, Q.C.: But they do have an actuarial, people, review your actuarial report. You file your ...

MR. SIMPSON: In terms of ... I know they have that resource. In terms of the actual review that's done, I don't know the detail. I've never been provided with a review, but if they've got questions about Mr. Pelly's methodology, they do have that resource to have an actuarial dig into that.

MR. WHALEN, Q.C.: Okay. And perhaps ... okay, the territories now ...

MR. SIMPSON: The territories, the filing is done, there's no hearing. Superintendents have authority over rates as well as rules, if you will, and they're done on a written basis, written submission basis. In Ontario, the Financial Services Commission of Ontario has authority over rules and rates and they have the authority to call a hearing. It's my understanding that they never have. Typically that involves some preliminary discussions between Mr. Pelly, Facility Association staff and the regulator, and I wasn't directly involved in that at all. I talked to the previous superintendent who's now back in his role as Chief Economist in Ontario, and said do we need to get directly involved in this or can we let our experts do it, and they said, and we both agreed that unless, we wouldn't get involved unless we needed to get involved. So there's a series of meetings, the filing goes in and there is, from, once they've deemed the filing complete, as their language is, they have a 60 day requirement to issue a decision, so typically that's the kind of timeframe we operate there.

MR. WHALEN, Q.C.: And in that jurisdiction, is it your understanding that, again that Ontario has an actuary who reviews your actuary's filings or your filings?

MR. SIMPSON: It's my understanding that it's Ms. Elliott's firm that ...

MR. WHALEN, Q.C.: And they come up with a rate.

MR. SIMPSON: They have that review. They also have their own, at least one actuary, full-time actuary on staff, they may have more, at the Financial Services Commission there as well. So they've got the staff actuary and the consulting actuary to review our work.

MR. WHALEN, Q.C.: And the Maritimes or the Atlantic Provinces, I'm sorry.

MR. SIMPSON: In PEI, probably the simplest one to start with, that's dealt with by the Superintendent of Insurance. There's no hearing there. That's one where again we submit the filing, very similar to the one that we submit here, and receive a decision back and forth and typically if the Superintendent has some questions he'll contact either myself, my staff or Mr. Pelly directly. In Nova Scotia we had a hearing, we filed in September, we had our hearing in the first week in November. We're hopeful of getting a decision sometime this week or next. It's a little bit more like this hearing in the sense that there's a tribunal. It's the UARB, Utility and Review Board of Nova Scotia, but they're, and we're sworn, but there are no lawyers present, and New Brunswick is very similar to that as well, and then here we are in Newfoundland and Labrador. I think we're all pretty familiar with this process.

(9:45 a.m.)

MR. WHALEN, Q.C.: Okay. So that's generally how the hearing process takes place, and the Atlantic Provinces are somewhat similar, it appears, other than PEI.

MR. SIMPSON: That's true and I would say with, the key difference is that in Nova Scotia, New Brunswick, the hearings are a day or a little better. We carried on for a couple of hours in the second day in New Brunswick, so the hearings themselves are less involved and obviously quite a bit shorter than this one, and in both jurisdictions the boards and, for that matter, Facility Association, are there without legal counsel.

MR. WHALEN, Q.C.: I see the common denominator and I think us lawyers will take some responsibility for the increased length of the hearings, but, other than that addition or subtraction they're pretty well the same.

MR. SIMPSON: They're very similar and they have a very, very similar role.

MR. WHALEN, Q.C.: Yeah. Now, to kind of tie these two things together, because I don't think we mentioned it when we were talking about the operations of your office, and I know it was dealt with at the previous hearing and you may have mentioned it and I didn't hear you and I apologize if that was the case, but the cost of operation of your office, how is that spread out?

MR. SIMPSON: It's spread out amongst all our member companies and ...

MR. WHALEN, Q.C.: Canada wide.

MR. SIMPSON: Canada wide.

MR. WHALEN, Q.C.: Based on what?

MR. SIMPSON: Based on their market share.

MR. WHALEN, Q.C.: Based on the share of the market.

MR. SIMPSON: Right.

MR. WHALEN, Q.C.: Now, what about the cost of the hearings in each of these provinces that you just talked about, how is that ...

MR. SIMPSON: Those go back to the member companies in the specific jurisdiction where the hearing takes place.

MR. WHALEN, Q.C.: So the cost of the hearings in Alberta are paid by the insurance companies in Alberta?

MR. SIMPSON: That's correct, and ...

MR. WHALEN, Q.C.: The Facility share in Alberta.

MR. SIMPSON: Nova Scotia and Newfoundland and Labrador are the only two provinces that bill Facility Association directly for costs. In the other jurisdictions, and we turn around and of course those costs are passed on to our members which is the automobile insurance industry in the province, in the other jurisdictions the costs are billed to the auto insurance industry directly. They don't come through our office.

MR. WHALEN, Q.C.: And in terms of your overall expenses of operating Facility, is it the Board of



1 Directors that looks at keeping those expenses where  
2 they think they should be at the end of the day? Your  
3 role first, obviously, but ...

4 MR. SIMPSON: Yeah. I propose the budget to the  
5 Executive Committee, the Executive Committee and I  
6 look at it in a little bit more detail and then it's approved  
7 by the full board. We do try and operate as efficiently  
8 and effectively as we can. I mentioned that we've gone  
9 into a shared services environment with IBC, so we're  
10 down from 16 employees to 14. Happily one person  
11 took early retirement, another one became an employee  
12 of the IBC, so everybody landed on their feet so to  
13 speak. But I believe, looking at, if I look at some  
14 history, probably our actual budget for the fiscal year  
15 just concluded is probably about the lowest we've had  
16 in the last ten years, so my staff, myself and the Board  
17 are mindful of trying to operate things as efficiently and  
18 effectively as we can.

19 MR. WHALEN, Q.C.: Now, Mr. Simpson, it appears  
20 that obviously one of your big cost areas, and I think  
21 the board has touched on, inquiry in this area already,  
22 is your relationship with service carriers. In other  
23 words, they get paid a fee, and we've talked about that  
24 with Mr. Pelly, and then one would logically want to  
25 know, well, are they being overpaid or underpaid, and  
26 also the brokers. The brokers get paid for referring this  
27 work and then are they overpaid and underpaid. And  
28 I'd like you to address those either separately or  
29 together, as you may choose, with the general comment  
30 first of how that is dealt with by your board, if at all,  
31 and is it reviewed occasionally or never or, you know,  
32 what's your comment on your diligence in terms of  
33 dealing with those two contract areas, we'll call them?

34 MR. SIMPSON: Okay. I'll deal with those the best I  
35 can and I'll start with the servicing carriers first.  
36 Servicing carrier compensation is spelt out in the plan  
37 of operation, and as I mentioned earlier of course that's  
38 approved by the Superintendent in all jurisdictions and  
39 of course in this jurisdiction, so their compensation is  
40 spelled out in the plan of operation and to change that  
41 plan of operation would require approval by the board,  
42 by the majority of member companies and by the  
43 appropriate regulatory authorities, so in terms of the  
44 servicing carrier compensation that's in the plan of  
45 operation, it does come up for discussion from time to  
46 time, for review from time to time, and you've got the  
47 situation where you've got a total of seven different  
48 servicing carriers across Canada so you've got in effect  
49 their competitors, if you will, having a very strong say

50 in how their fees are to be charged, so presumably  
51 they're knowledgeable about what it costs to run an  
52 insurance operation and govern themselves  
53 accordingly. In terms of broker commission ...

54 MR. WHALEN, Q.C.: Before we leave service carrier for  
55 a minute, you say there are four in Newfoundland, there  
56 are seven nationally. How many insurance companies  
57 are there nationally?

58 MR. SIMPSON: Honestly, Mr. Whalen, I don't know,  
59 but it's my understanding in Ontario that there's over  
60 100 licenced automobile insurers.

61 MR. WHALEN, Q.C.: So is it fair to say that those  
62 service carriers are providing services to a very large  
63 number of insurance companies indirectly since they're  
64 ...

65 MR. SIMPSON: They're acting on behalf of the whole  
66 automobile insurance industry, that's correct.

67 MR. WHALEN, Q.C.: And there are representatives on  
68 your board of those insurance companies which are  
69 insurance companies but not service carriers.

70 MR. SIMPSON: That's correct. As I mentioned, there  
71 are ten servicing, or seven servicing carriers, pardon  
72 me, across Canada, ten board members are from senior  
73 insurance companies, and so right there it would be  
74 impossible for the board to be dominated by servicing  
75 carriers. In reality, I believe, well we do have  
76 representation from Coop and Royal, Sun Alliance, so  
77 two ...

78 MR. WHALEN, Q.C.: Again without getting into this  
79 in great detail, has that been something that the board  
80 has looked at, are these rates not too high, not too low?  
81 Is that something that ...

82 MR. SIMPSON: From time to time the board has looked  
83 at it, and, as a matter of fact, it's a result of a very recent  
84 exercise in 2002 to look at the servicing carrier  
85 compensation, because one of the concerns is that  
86 there be servicing carriers to service our business and  
87 to make sure that we're fulfilling our role in the  
88 marketplace, and my staff tells me that some years ago  
89 we had approximately 20 servicing carriers across  
90 Canada. We're now down to seven, so common sense  
91 would suggest it's not a real strong money making  
92 proposition. I've had one servicing carrier tell me last  
93 year that they were pretty much at a break even

standpoint and they were willing to do that to be of service to the industry but if they fell below that they'd have to give it some real, real serious consideration.

MR. WHALEN, Q.C.: We're going to hear from a servicing carrier anyway, so I guess we'll get the other side.

MR. SIMPSON: I'm sure he'll be able to give you more detailed background than I can.

MR. WHALEN, Q.C.: Now, perhaps if we could just touch on the brokers.

MR. SIMPSON: Broker commissions are very similar. There are some differences between Ontario and the other jurisdictions but in jurisdictions other than Ontario the broker commissions are set out in the plan of operation, so they're subject to the same scrutiny. If they're to be changed, they'd require approval by the Board, by the member companies, by the appropriate regulatory authority. It's my ... I'm not real knowledgeable about the broker world, having never worked in that aspect of that business, but it's my understanding that the percentages contained in the plan of operation are generally lower than brokers would receive in the voluntary market, but, as I understand, the Board is to hear from brokers. I'm sure they'd be able to answer that more fully than I can.

MR. WHALEN, Q.C.: Yeah. But the rates tend to be a little higher so the dollar value might be high or higher.

MR. SIMPSON: On average that could be. I mean, it really depends.

MR. WHALEN, Q.C.: Now, I think there was some indication that there's a cap on brokers' fees in Ontario. Can you speak to that?

MR. SIMPSON: There is and that's identified in the plan of operation, so I don't have the specific numbers in mind, but that was something that, as I understand the history, and I've only been with Facility Association for a year and a half, so as I understand the history, pretty much mandated by the regulator, and they were last looked at, if you will, in 1994, so if one takes the basic inflation factor into account, those caps haven't kept ... I'd offer the comment those caps haven't kept current with just the reality of the inflation environment. They haven't ... the caps that are in the plan of operation have been there since 1994.

MR. WHALEN, Q.C.: And is that, I believe that's a dollar cap, is it, as opposed to a percentage cap?

MR. SIMPSON: To the best of my recollection it is a dollar cap.

MR. WHALEN, Q.C.: I can look for that if ...

MR. SIMPSON: And it varies by class of business as well.

MR. WHALEN, Q.C.: By class of business. Now, maybe we can talk for a moment about market share, and there's a couple of exhibits that we might want to have a look at for this. One is Undertaking No. 1, which is filed, which is, for people's benefit, is this little chart that showed the Ontario FA and RSP market combined, and the other one is BGP No. 4, and again this is just to help people visualize this. I don't intend to spend a lot of time on it but it's a natural focus of this inquiry and an earlier one which is if we follow out, what appears to be the common goal, which is to get the numbers down, or, as Commissioner Powell said, move it to the right on that chart, BGP No. 4. I'd like to talk, if I can, about what if anything Facility has done to try to move that to the right in Atlantic Canada, that is to get the participation in Facility down to, you know, one, two percent, that range, and also whether that involves some changes to the plan of operation. We've heard things about the binder registry system in Nova Scotia and New Brunswick. Perhaps you could speak to that, but in that general sense.

(10:00 a.m.)

MR. SIMPSON: Yeah. I think the key thing in market share, and what we've talked is rate adequacy and pricing relative to the voluntary market. That's highlighted, I think, BGP-4 here. That's the key, I think, to maintaining a low market share. In, I think it was '99 and 2000, we got, it might be, pretty sure that's correct, '99 and 2000, Nova Scotia, New Brunswick, we got below one percent of the market, and it's climbing again, as our price is really heavily subsidized until we get, achieve some rate adequacy there, so that's just a reflection of, in terms of BGP 4, we're moving up into the left, so those pricing relationships to the voluntary market do seem to hold. That's not to say that it's a good idea that we look at what the voluntary market price is and add five percent to it. We have to set our rates based on the actuarial evidence, certainly apply for them on that basis. But the other thing that we've

done in Nova Scotia, New Brunswick, and starting in 1997, is implement a binder control registry, and this was at the request of the Public Utilities Board in New Brunswick in 1997 and at the request of the Utility and Review Board, a couple of months later when they heard about New Brunswick.

MR. WHALEN, Q.C.: That would be Nova Scotia.

MR. SIMPSON: Pardon me, Nova Scotia, the UARB. And what the binder control registry is, quite simply, is a one page form that the broker fills out when insuring a risk through Facility Association indicating why he or she has insured the risk through Facility Association. There's a series of reason codes there, and just for interest sake, we revamped that form over the last number of months to make it perhaps more meaningful. I think the first time, when the first form was developed, there was another category so that became a little bit of a default option. It became easy for brokers to use, so we've made it a little less easy for them to put things there, to try and gather more meaningful data from that, but, and they submit those results to us and we compile them and share them with the rate boards in those two jurisdictions and ...

MR. WHALEN, Q.C.: Now, Mr. Simpson, was that done by or recommended or requested by the New Brunswick Board with the intention or expectation or hope that it would cause the Facility market to get smaller?

MR. SIMPSON: I think that very much was motivation as well as a desire to understand more why people were being insured through Facility Association, and again I wasn't around at the time so I'm just relying on my understanding from just talking to my staff.

MR. WHALEN, Q.C.: Did it have that effect?

MR. SIMPSON: Certainly the market share went down and quite dramatically, as I said, below one percent for a couple of years running on a written vehicle basis for private passenger, and I was just going to mention that just the, part of that focus, and in terms of reducing the market share, is to really get the, part of the philosophy was to really get the broker to stop and think why am I placing this risk in Facility or through Facility, is this something that really belongs, as being a risk through the Facility Association mechanism, so that was really the behaviour modification aspect of it as well as an information gathering aspect of it as well. In Alberta

where we've been below one percent of the market for, well, two years now and I think it'll be three years running, there's not a binder control registry system but the rate review process that we talked about there makes it far more practical for us to apply for rate in a more, and get rate approvals in a more timely fashion, sort of respond to our experience faster and respond to market dynamics faster, so there's some different things going that I'll touch on, market share, but definitely part of the binder control registry philosophy was let's get the brokers, the insurance intermediaries, thinking about why a risk got to be placed or is being insured through Facility Association to make sure that, you know, to follow the philosophy that we are indeed the market of last resort.

MR. WHALEN, Q.C.: Now, I believe there was some discussion about that binder registry system when we were last here before the Board discussing Facility a few years ago. Has that been implemented in Newfoundland?

MR. SIMPSON: No, it's ... we've discussed it with the Superintendent and really had no interest in it but we'd certainly be more than willing to work with the brokers in the province and the Superintendent to implement that at any time.

MR. WHALEN, Q.C.: So that is available and has been available ...

MR. SIMPSON: For quite some time.

MR. WHALEN, Q.C.: For quite some time and discussed. That's a matter for another jurisdiction. Other changes were discussed, I think, notations on applications of Facility and I think you've put out some information sheets and things to let people know about Facility.

MR. SIMPSON: Yeah. One of the things that I hear at these various hearings is people talking about people being placed in Facility as if they're not an active participant in the process, and I mentioned earlier that I'd been on a few working committees with a regulator in Ontario. One of those was the Ombudsman Liaison Committee. In Ontario every company has an Ombudsman Liaison Officer dealing with, responsible for dealing with consumer complaints. I held that role so I was asked to be on the committee there to talk about how we would implement that. Prior to that I was on an industry, Fiscal Financial Services Commission of

1 Ontario and Consumer Working Group, those three  
2 sectors, on how we inform consumers and developing  
3 consumer information, and the underlying philosophy  
4 through that or a key thread that ran through that was  
5 the consumer has a responsibility in this process to be  
6 an active participant, but to be an active participant  
7 they need to be informed and certainly with the, that  
8 shift in philosophy and the advent of the internet.  
9 There's an awful lot more information available to the  
10 consumer generally about auto insurance than there  
11 was, I would say, five to ten years ago. So along those  
12 lines we had a desire, and that predates my tenure,  
13 going back to when Stan Griffin was President, my  
14 immediate predecessor, to inform the public to a greater  
15 extent about Facility Association, so we've since  
16 sought and received approval and implemented  
17 identifying Facility Association on the application for  
18 auto insurance and a temporary liability slip that's  
19 typically, that typically goes along with that  
20 application. As well ... so, in other words, we don't  
21 want to be, anybody to be insured through Facility  
22 Association and not be aware of the fact, we want them  
23 to be keenly aware of the fact, because we like to think  
24 about if, if we're to be the market of last resort, and Mr.  
25 Whalen has said there's 50 some odd companies in the  
26 province, you know, the consumer with the help of his  
27 broker or agent, the internet, the yellow pages,  
28 whatever resources are at his or her disposal, should  
29 theoretically be knocking on every one of those 50 or  
30 55 doors before they come to Facility Association, so  
31 we want them to be aware of that, and we put together  
32 a little bit of a brochure. It's not too elaborate. It was  
33 developed by staff in conjunction with the Operating  
34 Committee here in Newfoundland and Labrador. We  
35 developed it in a way that we can use it in all  
36 jurisdictions across Canada beginning with, I believe it  
37 was April or May last year, we're providing that  
38 brochure with all new and renewal business. That goes  
39 out from the servicing carriers. It's also available or  
40 should be available to distribute it to all intermediaries  
41 in a province, and we're doing that throughout Atlantic  
42 Canada because, particularly, I think less so here in  
43 Newfoundland and Labrador but in Nova Scotia, New  
44 Brunswick, the market is going through some trying  
45 times, so we're seeing our volumes go up there quite  
46 significantly, we're seeing it going up here somewhat,  
47 so we want to make sure the consumer is aware of what  
48 Facility Association is, how they can get to our  
49 website, briefly how we operate, and, more importantly,  
50 a few things they can do to find insurance elsewhere,  
51 and along those lines. We've also included the IBC  
52 Consumer Information phone numbers so that they ...

53 that's another resource they can use to find another  
54 insurance mechanism other than Facility Association.

55 MR. WHALEN, Q.C.: Now, the notation on the  
56 applications and on the temporary liability slip, you say  
57 that's a recent thing, did that involve a change to the  
58 plan of operation? Did that require approval from  
59 superintendents or ...

60 MR. SIMPSON: It didn't require a change to the plan of  
61 operation. They are a statutory form so it did require  
62 approval by the Superintendents of Insurance.  
63 Unfortunately the Superintendent in this jurisdiction  
64 was the last to approve that change, but he did, and  
65 we're pleased to have, that he did and we've gone  
66 forward.

67 MR. WHALEN, Q.C.: And when was that approval  
68 received?

69 MR. SIMPSON: I'm sorry, I don't have the date in front  
70 of me.

71 MR. WHALEN, Q.C.: Approximately?

72 MR. SIMPSON: I would simply have to look that up.

73 MR. WHALEN, Q.C.: Okay. Perhaps something you  
74 can ... but it is implemented now.

75 MR. SIMPSON: Yes, it is.

76 MR. WHALEN, Q.C.: And it is something, I think, that  
77 we perhaps talked about when we were last before this  
78 Board. I don't know if you've read the transcripts but it  
79 was ...

80 MR. SIMPSON: I've scanned the transcripts, I have  
81 read the decision.

82 MR. WHALEN, Q.C.: Yes. So that's something that's  
83 been done. Now, I'm going to deal with a couple of  
84 specific areas with you. Perhaps we'll deal with this one  
85 first. There was some discussion on the proposal for  
86 CLEAR, and Mr. Pelly was taken to that and at some  
87 length, and I guess at the end of the day the question  
88 came down to him, and he's not a member of the board,  
89 as to, you know, is this an all or none request by  
90 Facility? You know, there's different ways that's been  
91 suggested that this be changed or whatever, and I'll use  
92 the word tinkered with, which may be ... but, and it's  
93 been, as I understand it, by Mr. Pelly, generally saying,

1 well, the cost of doing some of these things are cost  
2 prohibitive, so eventually, I guess, he was asked, well,  
3 what would you prefer, you know, that people leave it  
4 alone and you not implement it or implement it in its  
5 entirety, so I'm sure others will ask you to speak to that  
6 but what's your sense of that?

7 MR. SIMPSON: Well, it's my understanding that  
8 phasing in CLEAR would result in the servicing carriers  
9 incurring significant programming costs and I'm sure  
10 the servicing carrier representative that the Board will  
11 hear from can address that more comprehensively than  
12 I can. I think there was some concern as well, as I  
13 recall, about the timeframe that the dislocation analysis  
14 was performed and that that might be a little stale, if  
15 you will, so there may be a view that a new dislocation  
16 analysis would need to be done and obviously that  
17 would be at again a significant cost to the servicing  
18 carriers, but I suspect having done it once, presumably  
19 they've got some programming that allows them to do  
20 that that would be a lower cost than a phasing in  
21 approach, but on this whole issue of dislocation I think  
22 Mr. Pelly emphasized that to be dislocated you've got  
23 to first be located and with the relatively high turnover  
24 in the Facility book, again a servicing carrier can speak  
25 to this more readily than I can, but it's much higher than  
26 in the voluntary market because people tend to flow in  
27 and out of Facility and it's our goal to help them do  
28 that, to get out of Facility, so that the actual risks, the  
29 individuals that show up in that dislocation analysis  
30 that was done, those people may or may not be insured  
31 through Facility at the present time. Mr. Pelly, I think,  
32 uses the term sells. For a given place in the rate table  
33 there may or may not be a risk at the present time,  
34 although at the time the dislocation analysis was done  
35 there was. I think another key issue regarding  
36 dislocation is that we're not dealing with a monopoly  
37 situation here. You know, if we're looking at utility's  
38 rates and the rate needs to go up in a given territory, for  
39 example, and for electricity, and those folks only got  
40 one source of electricity, then I think we'd all want to be  
41 very mindful of that, but some of those folks that are  
42 going to be dislocated, if you will, by the change to the  
43 CLEAR methodology, would hopefully be dislocated  
44 back to the voluntary market from the very fact that it's  
45 now price attractive for them to be insured through the  
46 voluntary market, so I think that we have to remember  
47 that as well, that just because of certain risk  
48 classification that shows up in that or whatever that  
49 shows up in that dislocation analysis, is going to move  
50 in a certain direction, that doesn't mean that that  
51 individual is still there and it doesn't mean that they

52 necessarily find them being dislocated on the Facility  
53 Association rate scale, that hopefully they find  
54 themselves in the voluntary market.

55 MR. WHALEN, Q.C.: What are the concerns if CLEAR  
56 is not implemented?

57 MR. SIMPSON: I think from a public, sorry, from ... I'll  
58 back up. I think from a public policy concern is that  
59 what you'd run into is an adverse selection where you  
60 tend to start attracting some high risk vehicles to  
61 Facility Association because our goal is to follow the  
62 market and be consistent with the market, but to follow  
63 it, and the market by and large has adopted CLEAR,  
64 and for individual companies or for Facility, if we stay  
65 on the manufacturer's suggested retail price rate group  
66 system, then what happens is a relatively inexpensive  
67 muscle car, a Mustang or a Camaro, becomes cheaper to  
68 insure under the MSRP system than it does under the  
69 CLEAR system because of course the CLEAR system  
70 was designed to make cars more, to reflect the fact that  
71 cars that are more expensive to insure ought to cost  
72 more to insure, so for those cars with higher accident  
73 experience, under the CLEAR system they're going to  
74 have a higher rate group, so what happens then is ...

75 MR. WHALEN, Q.C.: Just because of the type of  
76 vehicle.

77 MR. SIMPSON: Well, the type of vehicle and perhaps  
78 the type of driver. You know, they ...

79 MR. WHALEN, Q.C.: They attract each other, do they?

80 MR. SIMPSON: Well, and the Vehicle Information  
81 Centre of Canada puts this on their website and, you  
82 know, they've got the ones that are far above average  
83 in red and those are the kind of cars that you would see  
84 there. You know, they're not all that expensive but  
85 they're high powered and, you know, young guys tend  
86 to drive them and crack them up, so the problem then,  
87 if we're out of step with the marketplace and don't adopt  
88 CLEAR, is that we tend to attract more of the high risk  
89 type of vehicle, the muscle car type of vehicle.

90 (10:15 a.m.)

91 MR. WHALEN, Q.C.: Thank you very much, sir. I'm  
92 going to move now, if I can, to a couple of other  
93 discrete areas that were touched on. One of them is  
94 somewhat of a concern, and I don't know who raised it  
95 but I think somebody dealt with it, and it dealt with the

1 taxi, issue of taxi drivers and whether every taxi driver  
2 was in Facility or how many or ... you know, try to get  
3 as much information as we can. So there, I think there  
4 was an exhibit there that has been provided to us, DJS  
5 No. 1. What can you tell the Board about that?

6 MR. SIMPSON: Well, following on his attendance  
7 here, this was developed by Mr. Pelly and shared with  
8 me, and for the last five accident years he's put together  
9 the written premium distribution for all coverages  
10 combined for this class of vehicles and developed a  
11 market share on that basis. The only thing that I'd  
12 emphasize about that market share term is that this is  
13 market share based on premium.

14 MR. WHALEN, Q.C.: Written premium.

15 MR. SIMPSON: Written premium.

16 MR. WHALEN, Q.C.: As opposed to?

17 MR. SIMPSON: Well, as opposed to written vehicles,  
18 which is the way that we indicate market share in the  
19 bar graphs that we have on our website.

20 MR. WHALEN, Q.C.: And the other information that's  
21 been supplied has generally been in that format as well.

22 MR. SIMPSON: That's correct.

23 MR. WHALEN, Q.C.: So we need to be cognizant of  
24 that difference.

25 MR. SIMPSON: Because they don't always exactly line  
26 up.

27 MR. WHALEN, Q.C.: Perhaps you could just take us  
28 through that, Mr. Simpson, if you would, please.

29 MR. SIMPSON: So then I'll go down to the percentage  
30 of market share and of course it does go up and down,  
31 so ...

32 MR. WHALEN, Q.C.: So the first set is the Facility  
33 Association.

34 MR. SIMPSON: That's written premium by calendar  
35 accident year for New Brunswick, Nova Scotia, pardon  
36 me, New Brunswick, Newfoundland and Labrador,  
37 which would be more appropriately labelled NL, I  
38 believe now, Nova Scotia, PEI and the four Atlantic  
39 Provinces as a whole, and we've got that for accident

40 years 1997, 1998, 1999, 2000, 2001 and then the total.  
41 That's for ... that's a written premium volume for Facility  
42 Association, is the first set of figures, the second is all  
43 industry as published by the IBC, Insurance Bureau of  
44 Canada, and again it's for the four Atlantic Provinces  
45 separately and combined for accident years 1997  
46 through 2001, and a total premium volume for each  
47 jurisdiction for those five years and again for the  
48 Atlantics as a whole.

49 MR. WHALEN, Q.C.: And then there is a percentage  
50 market share in the last column.

51 MR. SIMPSON: That's correct, and again this is given  
52 by each of the four provinces and the Atlantic  
53 Provinces as a whole for the five years, 1997 through  
54 2000, and then in terms of a total there, I'm assuming  
55 Mr. Pelly means an average over time, but I'd want to  
56 confirm that but I think from a common sense  
57 interpretation that's what we view it at. So in  
58 Newfoundland, for example, the market share going  
59 from 1997 through 2001, Newfoundland and Labrador,  
60 67 percent, 62 percent, 67 percent, 70 percent and 74  
61 percent, for a total of 68 percent. Now, that compares  
62 against, and I'll go rather than read each province in  
63 detail, perhaps just a comparison of the totals. New  
64 Brunswick, the five year total is 80 percent,  
65 Newfoundland and Labrador has a five year total of 68  
66 percent, Nova Scotia, the five year total is 79 percent,  
67 Prince Edward Island, the five year total is 88 percent,  
68 and the average, the total for the Atlantics is 77 percent,  
69 so what we'd see from this then is that the market share  
70 for this class of business in Newfoundland and  
71 Labrador has pretty consistently been among the  
72 lowest and on a, certainly when you compare it against  
73 the Atlantic average, is significantly lower than the  
74 market share average across Atlantic Canada.

75 MR. WHALEN, Q.C.: And so that I understand this  
76 correctly, we're talking, it appears to be, the percentage  
77 of people who drive taxis that are in Facility over that  
78 time period in Newfoundland, and that's a five year time  
79 period, is 68 percent.

80 MR. SIMPSON: Percentage of premium volume.

81 MR. WHALEN, Q.C.: Premium volume.

82 MR. SIMPSON: So I don't know how that translates to  
83 people who drive taxis, but premium volume, so it's a  
84 common base across all jurisdictions, I think, which is  
85 the key.

MR. WHALEN, Q.C.: And so I guess we can deduce from that that not all taxi drivers are in Facility and that Newfoundland appears to be faring reasonably well compared to the other jurisdictions.

MR. SIMPSON: I think both inferences are reasonable and correct.

MR. WHALEN, Q.C.: There was another document that we were asked to provide and we did, and I'm going to ask you to comment on that, and that, and it was in reply to a request by the Consumer Advocate for information of senior drivers, we will call them, and I think we provided an answer dealing with those persons at certain age categories who were in Facility as a percentage of the industry, and I don't believe we gave that a number but I'll give people a chance to find it. It was ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Response to information?

MR. WHALEN, Q.C.: It was response to information. We had provided a reply and were asked, I think ordered by the Board to get more information, so there's two types of information that you might want to look at. One is the Atlantic Provinces information, I think, which we supplied, and the other is the Newfoundland information, which was IBC went away and broke down for us, so I'll just give people a moment to find that.

MR. SAUNDERS, PRESIDING CHAIRMAN: Do we have a number on that, Mr. Whalen, like an FA number? No?

MR. WHALEN, Q.C.: It was ...

UNIDENTIFIED SPEAKER: The first (inaudible), Mr. Chairman.

MR. WHALEN, Q.C.: The CA ... it was filed, the first part is in FA information request that's in Tab 3. It's our reply.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MR. WHALEN, Q.C.: It's just our tab, we've put it together, but it's FA No. ... I think there was question number five and we provided, a request to FA 2 and 5.

MS. NEWMAN: In the official Board copy it's the very back of the response to the information request for the

Consumer Advocate. Yours should be in the same location. I have a letter there dated December 16th, 2002.

MR. WHALEN, Q.C.: Mr. Chairman ...

MR. SAUNDERS, PRESIDING CHAIRMAN: CA-4, you said, was it?

MR. WHALEN, Q.C.: Yeah.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah. I have the question. It's just a matter now of pulling out the answer.

MR. WHALEN, Q.C.: I think that Mr. O'Flaherty and Mr. Goodland don't have it, so it's 25 after. I don't know if this is as well to get ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Probably a good place.

MR. WHALEN, Q.C.: And I can indicate that I don't expect to be much longer in any event, so ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MR. WHALEN, Q.C.: I just got a few issues.

MR. SAUNDERS, PRESIDING CHAIRMAN: Let's do that.

MR. WHALEN, Q.C.: We can get this copied and then everybody can have it conveniently.

MR. SAUNDERS, PRESIDING CHAIRMAN: Fine. We'll come back in 15 minutes.

*(break)*

*(10:45 a.m.)*

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

MR. WHALEN, Q.C.: Thank you, I've just got a few tidy up things to deal with but so that we don't end off not dealing with it. Mr. Simpson, just as a matter of housekeeping, perhaps we will have you adopt the filing, the letter and the filing while under oath to the Board. This is the, it's Facility's filing.

1 MR. SIMPSON: I'll adopt that.

2 MR. WHALEN, Q.C.: And that's formally done, and  
3 that's as submitted, it's the Eckler and Partners  
4 submission. Thank you, Mr. Simpson. Now, we were  
5 dealing with those two exhibits, I take it everybody has  
6 got those now, and I again, don't want to ... those were  
7 the information on certain aged drivers, and I think the  
8 first one that was supplied dealt with, they were in  
9 somewhat different forms, Atlantic, and then we  
10 provided the Newfoundland one. Perhaps we'll just  
11 deal with that Newfoundland one for now, but I draw  
12 them to everyone's attention so they're both there, and  
13 they seem to be reasonably comparable.

14 MS. NEWMAN: Sorry, before you go on, Mr. Whalen.

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

16 MS. NEWMAN: Just for ease of reference, perhaps,  
17 when people are going back to look at these two items.  
18 I know they are contained in the documentation, but it  
19 might make some sense to also call the information one  
20 and two, and therefore when we're speaking about this  
21 here today.

22 MR. WHALEN, Q.C.: You want to just enter them as a  
23 separate sheet now?

24 MS. NEWMAN: Yeah, and that way they're ...

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

26 MS. NEWMAN: ... it will be duplicated in the evidence,  
27 and I apologize for that, but it will be easy to refer to.

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

29 MS. NEWMAN: Information three and four, sorry.

30 MR. SAUNDERS, PRESIDING CHAIRMAN: Three and  
31 four.

32 MS. NEWMAN: So the first item will be the first  
33 provided document which is titled at the top there, FA-  
34 2 Exhibit, page one.

35 MR. WHALEN, Q.C.: And that will be info number?

36 MS. NEWMAN: Info number three.

37 MR. WHALEN, Q.C.: Three.

38 MS. NEWMAN: And the next item is the Province of  
39 Newfoundland and Labrador, private passenger  
40 vehicles, written exposure distributions, that will be  
41 number four.

42 MR. WHALEN, Q.C.: Info number four.

43 MS. NEWMAN: Okay, thank you.

44 MR. O'FLAHERTY: And while we're dealing with  
45 housekeeping, Mr. Chairman, can I ask that the two  
46 exhibits, that is the filing and the letter, it be indicated  
47 what they're being marked as?

48 MR. WHALEN, Q.C.: Okay.

49 MR. O'FLAHERTY: I believe we're at DJS No. 3.

50 MS. NEWMAN: Yes.

51 MR. WHALEN, Q.C.: Do they need to be formally  
52 marked, or are they already not ...

53 MS. NEWMAN: We don't normally mark our reports.

54 MR. O'FLAHERTY: And what about the letter and  
55 these documents?

56 MR. WHALEN, Q.C.: They are part of the filing, I  
57 believe. Let's make sure we have the same thing, Mr.  
58 O'Flaherty. It's dated September the 5th. Now, I believe  
59 you have those two documents before you, Mr.  
60 Simpson?

61 MR. SIMPSON: I've got written exposure distributions  
62 by age ranges, and then I've got a page here, FA-2  
63 Exhibit, page one, (inaudible) response.

64 MR. WHALEN, Q.C.: And I believe those are age  
65 ranges as well.

66 MR. SIMPSON: I don't think so. I've got all sorts of  
67 numbers here talking about incurred losses, and current  
68 estimate, and ultimate incurred losses.

69 MR. WHALEN, Q.C.: Okay, I'm wondering if that's the  
70 same sheet, the bottom one.

71 MR. SIMPSON: So I don't think I'm literally on the right  
72 page here, I'm sorry, but that's what was put in front of  
73 me.



MR. WHALEN, Q.C.: Yeah, and you may not have the, we may not have the ... we may have the wrong ... I think we do. I'll just let you deal with that. Let's just clarify that. Let's just go to the info number four sheet, which is for the Province of Newfoundland. I think we might have the wrong page identified there on the other document. And that's written exposure distribution by age.

MR. SIMPSON: Yes.

MR. WHALEN, Q.C.: And those are responses to the Consumer Advocate's questions two, three, four, and five, and now perhaps we can just deal with those in the way they're presented there, which is the drivers over 50. Perhaps you can just take us through that as you understand it. Again, the source of this information is the Insurance Bureau of Canada.

MR. SIMPSON: That's correct, the source of this information is the Insurance Bureau of Canada, and it shows for the Province of Newfoundland and Labrador, private passenger vehicles based on the 2001 AIX, written exposure distribution by age ranges, and it is my understanding this is in response to the Consumer Advocate's request for information, 2.0, 3.0, 4.0, and 5.0, and it's got Facility Association and Industry, written exposure, and percentage distribution for various age ranges, and it shows that information for accident year 1999, 2000, and 2001.

And if you go to 1999, for Facility Association, for example, written exposures in 1999 were 7,416. Over 50, 1,643, or 22.2 percent. I think it's important to note as we get into these bands that over 50 means just that. It doesn't mean 50 to 65, it means 50 till whenever.

MR. WHALEN, Q.C.: All the way up.

MR. SIMPSON: All the way up.

MR. WHALEN, Q.C.: Okay, so that's 22 percent.

MR. SIMPSON: That's 22 percent, and for the industry, a comparable number is 34.8 percent.

MR. WHALEN, Q.C.: So that the number of drivers in Facility over 50 as a percentage is slightly smaller than the industry average?

MR. SIMPSON: Well 22.2 percent, compared to 34.8. I think I'd probably go a little bit further than slightly, you know, it's ...

MR. WHALEN, Q.C.: Significant.

MR. SIMPSON: Yes, it's two thirds of the level of the industry.

MR. WHALEN, Q.C.: Okay, and then the next category we have for that year, 1999, is over age 65.

MR. SIMPSON: Right, and that's 720 drivers through Facility, or 9.7 percent, and for the industry as a whole, that's 10.3 percent, so again, Facility there is, I'll use the word slightly there.

MR. WHALEN, Q.C.: So now over 65 again is everybody over 65.

MR. SIMPSON: I don't mean to be blunt about it, but 65 till death, that's correct.

MR. WHALEN, Q.C.: Yes, and so in that category, 9.7 percent are in Facility and in the regular market there's 10.3.

MR. SIMPSON: 9.7 percent of the written vehicles in, written exposures through Facility, that's right.

MR. WHALEN, Q.C.: And it's ...

MR. SIMPSON: It's slightly less than the industry total.

MR. SAUNDERS, PRESIDING CHAIRMAN: I have some problem with that, Mr. Whalen. You say everybody over 65 is in that group of 9.7 percent.

MR. WHALEN, Q.C.: I mean that 65, 70 and up, 75 and up.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, carry on, (inaudible).

MR. WHALEN, Q.C.: Okay.

MR. SAUNDERS, PRESIDING CHAIRMAN: No, I look at 9.7 percent, and then over 70 is 7.6, and over 75 is 5.0.

MR. WHALEN, Q.C.: Yes, but that's compared to the one on the right, Mr. ...

1 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

2 MR. WHALEN, Q.C.: They're comparisons with each  
3 other.

4 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

5 MR. WHALEN, Q.C.: So that the numbers go down as  
6 you get up in age. The numbers are what you can go  
7 by. Perhaps that's a better way of looking at it.

8 MR. SIMPSON: And it may be helpful if I can just add  
9 in that the numbers in the vertical columns under  
10 written exposures are inclusive of the numbers below  
11 them, so that 7,416 ... the 1,643 over 50, for example ...

12 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

13 MR. SIMPSON: Would be a subset of 7,416 and 720  
14 would a subset of 1,643.

15 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

16 MR. WHALEN, Q.C.: The numbers that appear to be  
17 important to compare, as I understand it, would be the  
18 Facility percentage with the industry percentage.

19 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, okay,  
20 carry on.

21 MR. SIMPSON: Well, I think what we're trying to get at  
22 here is whether or not, in fact, a disproportionate  
23 percentage of seniors are insured through the Facility  
24 Association mechanism.

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

26 MR. SIMPSON: As compared to the voluntary  
27 marketplace, and as we walk through this exhibit, we'll  
28 see what picture emerges here.

29 MR. WHALEN, Q.C.: Yes, so at age 65 and over, or I'm  
30 sorry, over 65, they're starting to get closer together.

31 MR. SIMPSON: Closer together but still slightly below.

32 MR. WHALEN, Q.C.: And as we get to 70 and over the  
33 percentage changes.

34 MR. SIMPSON: The picture changes a little bit over 70,  
35 all drivers over 70 is 7.6 percent of the Facility  
36 population, if you will. 7.6 percent is against the

37 industry, 6.0 percent. If you move to 75 and it's about  
38 five percent of the Facility population and about 2.8  
39 percent of the industry, and this is for, of course,  
40 accident year 1999.

41 MR. WHALEN, Q.C.: Yes, so over 75, it appears that  
42 the likelihood of you being in Facility has gone up  
43 significantly.

44 MR. SIMPSON: I would say that's true, yes.

45 MR. WHALEN, Q.C.: But up until that time, for  
46 instance, at age, over 65, and I would take that to be a  
47 category of over 65 to over 70 as a band almost, at 69,  
48 you have 9.7 percent as compared to 10.3.

49 MR. SIMPSON: That's correct.

50 MR. WHALEN, Q.C.: And Facility is lower. As you go  
51 over 70, Facility is higher. It's 7.6 percent as compared  
52 to 6 percent.

53 MR. SIMPSON: That's right, as we ... over 70 is where  
54 you start to see that shift occur.

55 MR. WHALEN, Q.C.: Yes, and over 75, it's a little more  
56 dramatic, it's, it's 5 percent versus 2.8 percent.

57 MR. SIMPSON: Relative to the industry, yes.

58 MR. WHALEN, Q.C.: Yes, and perhaps you could look  
59 at those same comparisons, and these are  
60 Newfoundland figures for 2000.

61 MR. SIMPSON: 2001.

62 MR. WHALEN, Q.C.: Yeah, 2000 and 2001.

63 MR. SIMPSON: I'm sorry, based on 2001 AIX, but for  
64 accident year 2000.

65 MR. WHALEN, Q.C.: Yeah.

66 MR. SIMPSON: For Facility Association, again, to walk  
67 through it, the total number of written exposures is  
68 down from the previous year at 6,234, and of those 23.2  
69 percent are over 50 for Facility Association, compared  
70 with an industry total of 35.9 percent being over 50.  
71 Over 65 the number is 9.7 percent compared to 10.4  
72 percent for the industry, so the comparison is relatively  
73 stable there. Over 70, 7.8 percent for Facility, 5.9 for the  
74 industry, very comparable to the year before, and over

75, 5 percent and 2.8 percent for Facility and industry respectively, so identical to 1999.

If I may, I'll just wrap this up with 2001 where the number of written exposures went down a little bit again at 6,161 for Facility. Over 50 was 25.2 percent compared to 37.2 percent for the industry being over 50. Over 65, Facility is at 10.5 percent, and the industry at 10.8 percent, so both numbers there have gone up compared to prior years, but Facility is slightly below the industry in terms of the market share in that age group. Over 70 Facility in 2001 was 8.1 percent, industry was 6.2 percent, so again, a similar comparison but in absolute terms the percentages are going up in both cases compared to the prior years, but the comparison is very similar between Facility and the industry. And in 2001, 5.3 percent for Facility and 3.0 percent for the industry.

MR. WHALEN, Q.C.: Okay, and this information, as the note shows, is based on IBC raw data with the principal operator age imported.

MR. SIMPSON: That's correct, in the sense that all companies under the Superintendent's plan are required on a statutory basis to report statistics to the IBC as the agency of the Superintendent, but it's not, it's my understanding that not absolutely every record has the age of the principal operator recorded, so there may be quality issues, but I am also given to believe that if there is an under-representation for Facility Association, there would be proportionate, if you will, on the reporting from an industry side, so the quality of data across Facility Association and industry is not perfect, but it's a similar level of imperfection for both Facility Association and the industry.

MR. WHALEN, Q.C.: Just as a matter of clarification, the information number three is really an irrelevant chart for this discussion, and the actual document is Exhibit Response 2.0 which was filed in response to the Consumer Advocate's questions, so we don't need to go to it, just by way of information so if people want to actually find it ... and that, as I understand it, contains the Atlantic Provinces similar information but I don't think it's even identical.

MR. SAUNDERS, PRESIDING CHAIRMAN: But you're not going to be referring to it.

MR. WHALEN, Q.C.: I'm not going to, it's just so that people can, if they wish to compare it, will not be

confused on that. Now, the other final area I want to talk to you about, if I may, Mr. Simpson, is the Superintendent of Insurance filed a, and I think it's his Schedule A to his pre-filed evidence, and I think there may have been some ... and perhaps if the witness could be shown that, and also DJS-2.

MR. SIMPSON: I'm sorry, Mr. Whalen, could you give me the pre-filed evidence piece that I'm ...

MR. WHALEN, Q.C.: Yes, Schedule A to ... Winston Morris filed an affidavit and he has a number of documents there, and in mine it's the last sheet, but in yours it might be in a different place. It's Tab 4 on everybody's.

MR. SIMPSON: That's it, yeah.

MR. WHALEN, Q.C.: Okay, so it is at Tab 4 as well in yours. It's just a single sheet.

MR. SIMPSON: Yeah.

MR. WHALEN, Q.C.: And I think it's right at the end of his, just before Bruce Whiffen's.

MR. SIMPSON: I have that, thank you.

MR. WHALEN, Q.C.: Okay, and then we have a document which I believe you provided to us from Facility, which is DJS-2.

MR. SIMPSON: And I seem to be without that.

MR. WHALEN, Q.C.: Okay, now I understood there might have been some discussion of a ... I'll look at some similar figures in Nova Scotia as an indication that the Board might be doing reasonably well in its projections over time, and am I correct that what we really have here is somewhat of an updating with possibly some minor corrections in Schedule A in your DSJ-2 (*sic*).

(11:00 a.m.)

MR. SIMPSON: Yeah, this is a similar exhibit that's prepared by our accountants at our office.

MR. WHALEN, Q.C.: Yeah, okay.

MR. SIMPSON: That's based on the records that we keep.

MR. WHALEN, Q.C.: So this is updated September, up to September, '02?

MR. SIMPSON: Up to September, that's correct.

MR. WHALEN, Q.C.: Okay, now using both of these documents just for, so that I can go through this and see if I understand it, with your DJS-2, you show a net written premium for Facility from 1986 to September '02 of \$198,363,000?

MR. SIMPSON: That's correct.

MR. WHALEN, Q.C.: You show a column there, expenses and deficiencies of revenue over expenditure, \$16 million?

MR. SIMPSON: \$16,279,000, yeah.

MR. WHALEN, Q.C.: Okay, and those are as compared to the figures which Mr. Morris had in his exhibit of up to 2001 of \$179,189,000, and he had net results from operations, profit/loss I think he called his column, and he has \$21 million, do you have that?

MR. SIMPSON: I have that, yes, thank you.

MR. WHALEN, Q.C.: So am I correct that now if we just continue those, where it's \$179 million, or at \$198.363 million, and where Mr. Morris has \$21 million, you have \$16 million, and that's simply by adding on the additional year and the loss of \$5.761 million for '02.

MR. SIMPSON: That's correct, assuming that Mr. Morris' figures are accurate. Obviously, I haven't had the opportunity to have my accounting staff look at that but ...

MR. WHALEN, Q.C.: Yeah, but generally you're ball park.

MR. SIMPSON: Very much in the ball park and a very similar format.

MR. WHALEN, Q.C.: Yeah, so you have, you really have, you have similar numbers, yours are just contained, the net written premiums for 2002 and the expenses of a deficiency over revenue of \$5.7 million, so that you end up with those new figures.

MR. SIMPSON: That's correct, it's more recent information.

MR. WHALEN, Q.C.: More recent information. Now then, Mr. Morris has gone on in his exhibit and he has calculated that less company expenses for premium taxes and health levies, and he says estimated at 5.5 percent of premium, and then he's calculated a figure of \$9.855 million and deducted that and he gets a figure of, he says it's approximately \$12 million.

MR. SIMPSON: That's the illustration, yes.

MR. WHALEN, Q.C.: Okay, now then, if we were to do that same calculation of 5.5 percent of the net written premiums, and now that number is higher, it's \$198 million, I get a figure of \$10 million ... he had \$9 million, but we have a higher number ... \$10,909,000.

MR. SIMPSON: That sounds about right, there's ...

MR. WHALEN, Q.C.: Yeah, \$10 million almost (inaudible), and with the losses, he had a net result of \$9 million, and when I take the \$10 million from the \$16,279,000, I end up with ... well almost \$11 million, but I end up with a number of \$5,370,000.

MR. SIMPSON: That sounds correct, sounds about right.

MR. WHALEN, Q.C.: So we're in about a \$5 million plus category, so those would be the kind of operational results of Facility over a 17 or 18 year period.

MR. SIMPSON: Since it's inception, yeah.

MR. WHALEN, Q.C.: Since its inception.

MR. SIMPSON: Yeah.

MR. WHALEN, Q.C.: Now, what do you deduce from this?

MR. SIMPSON: Well, you know, again, I'm not an actuary, but the history of Facility Association, as I believe Mr. Pelly testified, is to target a long-term break even result and with a small book of business you're going to experience some volatility, and of course, break even results, as the Superintendent's illustration here is intended to mean that the costs incurred by the member companies are included in that notion of break even in the sense that we should be generating a surplus every year for, or to pass along to our members to cover those costs. We operate on that cost recovery

1 basis, so as a lay person in these matters for the most  
2 part, for somebody who is targeting a break even basis,  
3 we seem to be at 17 or 18 years, about 2 1/2 percent off  
4 the mark, and given the volatility of the book, the fact  
5 that we have to take all that come to us, we don't select  
6 risk, we don't underwrite in a traditional fashion ... I  
7 would say over 17 or 18 years to hit within about 2 1/2  
8 percent of that break even target is a testimony to Mr.  
9 Pelly's work. I'm not going to take credit for it, but the  
10 idea is to hit, would be to hit zero, and we're at 2 1/2  
11 percent. Over time I think he's done a pretty good job.

12 MR. WHALEN, Q.C.: Well, I guess it's, it's his work  
13 and the work of the Board in picking a number.

14 MR. SIMPSON: Well, there's ... as we've talked about,  
15 there's a lot that goes into the rate that finally hits the  
16 street.

17 MR. WHALEN, Q.C.: Yeah.

18 MR. SIMPSON: So credit, if I need to spread the credit  
19 around, it would also be to the committee and the Board  
20 process organization, and the regulatory authority as  
21 well.

22 MR. WHALEN, Q.C.: Okay, now so that we're clear,  
23 these figures that we have here that have been  
24 calculated by Mr. Morris and sort of updated and using  
25 his methodology, they do not include cost of capital or  
26 a profit factor, or any of those other items?

27 MR. SIMPSON: That's correct.

28 MR. WHALEN, Q.C.: None of that's included or taxes  
29 or any of that, that's just raw numbers.

30 MR. SIMPSON: That's correct.

31 MR. SAUNDERS, PRESIDING CHAIRMAN: When  
32 you say taxes, I'm sorry, Mr. Whalen, you're talking  
33 income tax, are you?

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

35 MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah,  
36 okay.

37 MR. WHALEN, Q.C.: That's all I have, Mr. Chairman,  
38 for this witness.

39 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

40 MR. WHALEN, Q.C.: I don't know if others will have  
41 questions for him.

42 MR. SAUNDERS, PRESIDING CHAIRMAN: Mr.  
43 O'Flaherty.

44 MR. O'FLAHERTY: Thank you, Mr. Chairman. Good  
45 morning, Mr. Simpson.

46 MR. SIMPSON: Good morning.

47 MR. O'FLAHERTY: Can I ask that the witness be given  
48 a copy of the Mercer Risk Report? If you can just turn  
49 to page six of that report.

50 MR. SIMPSON: I should say I'm obliged to Ms.  
51 Blundon for helping me navigate this sea of paper this  
52 morning, and if I get a few more binders here, I'll be able  
53 to block the Telegram's photographer's line of sight,  
54 and I think that will be a positive for all of us, but on to  
55 the matter at hand, presumably.

56 MR. O'FLAHERTY: Okay, if the Board is ready ... thank  
57 you, Mr. Simpson, I would like to start my cross-  
58 examination with perhaps a couple of areas that I  
59 believe we can agree upon, so I want to look at a fairly  
60 high level now of overview, at the general background  
61 of automobile insurance, so that all of the persons  
62 present, and the stakeholders understand exactly the  
63 context in which the Facility Association is operating.  
64 Can you agree that certain auto insurance coverages  
65 are mandatory in the Province of Newfoundland and  
66 Labrador?

67 MR. SIMPSON: Yes, I can.

68 MR. O'FLAHERTY: And would that include third party  
69 liability, and under-insured and uninsured motorist  
70 coverages?

71 MR. SIMPSON: Third party liability for sure.

72 MR. O'FLAHERTY: Yes.

73 MR. SIMPSON: Under-insured and uninsured, I'm not  
74 sure.

75 MR. O'FLAHERTY: Okay, would you agree that this  
76 obligation for consumers in the province to carry  
77 automobile insurance helps to create a market for  
78 automobile insurance here in the province?

1 MR. SIMPSON: I'm not sure I agree with that. I think  
2 people will still buy cars and still feel the need to insure  
3 them, given that the significance the purchase of an  
4 automobile represents.

5 MR. O'FLAHERTY: Okay.

6 MR. SIMPSON: So I think there'd be a healthy and  
7 vibrant market for auto insurance if there was not a  
8 compulsory requirement.

9 MR. O'FLAHERTY: Do you see the requirement for  
10 mandatory insurance coverage as having any impact on  
11 the size of the market in Newfoundland and Labrador?

12 MR. SIMPSON: I assume that it would be a little bit,  
13 somewhat, maybe a little bit, maybe a lot, but it would  
14 be larger than in a purely voluntary system obviously.

15 MR. O'FLAHERTY: Okay, now I just want you to look  
16 at the market information briefly that is shown at page  
17 six of the Mercer report. Now, I believe that the last line  
18 of the first paragraph indicates that there were 218,192  
19 private passenger vehicles insured in this province in  
20 2001?

21 MR. SIMPSON: I have that, yes.

22 MR. O'FLAHERTY: Okay, and can we agree that the  
23 number of those vehicles that are insured through FA,  
24 which is indicated at 8,972, represents the number of  
25 private passenger vehicles that are insured through  
26 what you have referred to as the residual market?

27 MR. SIMPSON: I don't know the source of this  
28 information, but the number looks to be about right.

29 MR. O'FLAHERTY: Okay, well, okay, maybe I should  
30 preface my statements by saying assuming that these  
31 figures are correct, and we've already heard evidence  
32 that the 8,972 is a portion of the 218,192 vehicles, okay.

33 MR. SIMPSON: Yes.

34 MR. O'FLAHERTY: Assuming that those facts are  
35 correct, can we agree then that the 8,972 represents the  
36 number of private passenger vehicles that are insured  
37 through what you have referred to as the residual  
38 market?

39 MR. SIMPSON: I've got 8,372 here, but if that's ... if I'm  
40 on the right page here.

41 MR. O'FLAHERTY: It's probably a copying issue, 8,372  
42 then.

43 MR. SIMPSON: 8,372, yes.

44 MR. O'FLAHERTY: Okay, the principle is correct  
45 though, is it?

46 MR. SIMPSON: Yes.

47 MR. O'FLAHERTY: Okay, and can we agree that the  
48 remainder, and I won't do the subtraction, represents  
49 the number of private passenger vehicles that were  
50 insured through the so-called voluntary market in 2001  
51 in this province?

52 MR. SIMPSON: Yes.

53 MR. O'FLAHERTY: Okay, so would you agree then  
54 that the total market is the 218,192 vehicles that were  
55 insured, private passenger vehicles insured in the  
56 province?

57 MR. SIMPSON: Assuming that these numbers are  
58 accurate, yes.

59 MR. O'FLAHERTY: Okay, now if we can envisage then  
60 the total market as a pie graph, which we don't have in  
61 front of us, but I think that's simple enough to do, the  
62 voluntary market makes up 93.8 percent of the pie, and  
63 the residual market makes up 6.2 percent of the pie in  
64 2001 in Newfoundland and Labrador.

65 MR. SIMPSON: That would be on a written premium  
66 basis, not on a written vehicles basis, and the numbers  
67 we were discussing a minute ago were written vehicles.

68 MR. O'FLAHERTY: Okay.

69 MR. SIMPSON: So the numbers would be a little bit  
70 different.

71 MR. O'FLAHERTY: Okay, I'm thinking back to the sort  
72 of opening statement on behalf of Facility Association  
73 in which it was indicated, and I'll bring you to it ... this  
74 is the transcript ... you don't need to get a copy of this,  
75 this is from the transcript from December the 11th. In  
76 the opening statement we have an indication that it's  
77 about 96 percent in the voluntary market, and about 4  
78 percent in the residual market in Newfoundland and  
79 Labrador.

MR. SIMPSON: On a written vehicle basis, those would be the approximate numbers.

MR. O'FLAHERTY: Okay, that's page 12, and that's at line 15 of the transcript, okay. I guess, well I'll just read it to you so you're clear on what I'm referring to. The statement is, "In some provinces of Canada, it's below one percent, but in the people in that four percent range, the high risk four percent, the Facility group, if they don't cover their own costs, then they have to be passed on to the 96 percent group, and they're consumers as well". Okay, so that's the area that I'm focusing on.

MR. SIMPSON: Uh hum.

MR. O'FLAHERTY: So again, to go back to the pie graph, and I didn't hope to spend as much time on this, if we have a total pie then we have 96 percent of it approximately is represented by the voluntary market, and four percent is represented by the residual market.

MR. SIMPSON: Right.

MR. O'FLAHERTY: Okay, now I understand from your evidence that FA was first established in 1977 in Canada.

MR. SIMPSON: That's my understanding, yes.

MR. O'FLAHERTY: And also that it commenced operations in this province in November of 1985.

MR. SIMPSON: I'm not sure if it was November 1985.

MR. O'FLAHERTY: Okay, on the last exhibit we were referring to, which was ...

MR. SIMPSON: Pardon me, I do have something here, the information I do have is November 1, 1985.

MR. O'FLAHERTY: Okay, good, so then ... now I realize then from your evidence that FA, of course, has more than one role, or as you call it, mission, but the role that I'm focusing on is the operation of the residual market, or that four percent of the pie in the Province of Newfoundland and Labrador, okay?

(11:15 a.m.)

MR. SIMPSON: Right.

MR. O'FLAHERTY: And I also understand from your evidence that FA is not itself an insurer, but it's an association of insurers.

MR. SIMPSON: That's correct.

MR. O'FLAHERTY: Okay, now when FA was first established, what was its structure, back in 1977?

MR. SIMPSON: I really don't know, I've only been involved with the organization for the last year and a half.

MR. O'FLAHERTY: Okay, I understood from your evidence that it was an unincorporated non-profit association?

MR. SIMPSON: I don't ... that's its current structure, my assumption that it's pretty much similar to what it was in 1977, but exactly ...

MR. O'FLAHERTY: Okay.

MR. SIMPSON: But it is an unincorporated, not-for-profit association.

MR. O'FLAHERTY: Okay, and was it still an unincorporated, to your knowledge, an unincorporated non-profit association when it commenced operations in this province?

MR. SIMPSON: Yes.

MR. O'FLAHERTY: And has it always operated in this province as an unincorporated and non-profit association?

MR. SIMPSON: Since 1985, yes, there was presumably predecessor residual market mechanisms, prior to that I don't have any familiarity.

MR. O'FLAHERTY: Okay, and in fact, isn't this how it's described in the legislation in our province?

MR. SIMPSON: I don't have the legislation in front of me, but I believe so.

MR. O'FLAHERTY: I happen to, so let me get that for you. I'm going to refer to Section 97 of the Insurance Companies Act. Would you agree that that's the governing legislation for this portion of the market

we're talking about, for this portion, sorry, of FA's operations?

MR. SIMPSON: That's my understanding.

MR. O'FLAHERTY: Okay, it says in Section 97, the Newfoundland Automobile Assigned Risk Plan established as an unincorporated association before February 1st, 1986, is continued as an unincorporated non-profit association of insurers known as the Facility Association. Sound familiar?

MR. SIMPSON: Yeah.

MR. O'FLAHERTY: Okay, so then in its administration of the residual market, or that piece of the pie, the four percent that I was referring to, FA operates with the intention of making no profit in this province, is that correct?

MR. SIMPSON: The rates are developed and filed with a zero percent profit provision, and we operate on, in terms of our administration functions, we operate on a cost recovery basis.

MR. O'FLAHERTY: Okay, now my review of the material suggests that FA has presented ten filings in this province since 1985, and assuming that that's the correct number, okay, because I don't expect you to have that information off the top of your head, to your knowledge has the FA ever presented a filing for approval that contained a provision for profit?

MR. SIMPSON: To the best of my knowledge it has not.

MR. O'FLAHERTY: So then if we go back to my sort of high level look at the market itself, so the portion of the total market or the pie graph that has been conducted by FA since 1985 has always been conducted on a non-profit basis?

MR. SIMPSON: The, in terms of the way we've described their rate filings and our administration, that's my understanding.

MR. O'FLAHERTY: And in terms of the legislative scheme as well, that hasn't changed?

MR. SIMPSON: That's correct.

MR. O'FLAHERTY: Okay, now rate filings are also used, and I don't want to, I don't want to go too far into this, but I also understand in terms of, if we look at the 96 percent of the market, I understand the rate filings are also used in determining the auto insurance rate in that part of the market as well, is that correct?

MR. SIMPSON: Rate filings in ... I'm sorry, I didn't understand the question.

MR. O'FLAHERTY: Okay, in this province we use a benchmark system.

MR. SIMPSON: Right.

MR. O'FLAHERTY: That involves a rate filing, does it not?

MR. SIMPSON: I'm not familiar with the requirements under the benchmark system as to ...

MR. O'FLAHERTY: Okay.

MR. SIMPSON: ... you know, the level of detail that this Board requires in terms of voluntary companies' filing activity.

MR. O'FLAHERTY: Fair enough.

MR. SIMPSON: My prior employer didn't do business in this province, so I didn't have the opportunity to develop any familiarity with it.

MR. O'FLAHERTY: Okay, well, would you agree with me that the 96 percent of the market is conducted on the basis of making profit?

MR. SIMPSON: That would be my assumption.

MR. O'FLAHERTY: Okay, and would you be surprised if I told you that the benchmark filings or rate filings in this province that are approved, do contain a provision for profit?

MR. SIMPSON: I would not be surprised, no.

MR. O'FLAHERTY: Okay, so then can we agree then that of the big picture pie, the four percent is conducted, and has historically been conducted on a non-profit basis, while the 96 percent is conducted on a make, or a for-profit basis?



1 MR. SIMPSON: That would be my assumption.

2 MR. O'FLAHERTY: Okay, and that smaller portion is  
3 the portion that's administered by FA on behalf of its  
4 members under the legislation?

5 MR. SIMPSON: That's correct.

6 MR. O'FLAHERTY: Okay, now let's talk about the  
7 members of FA. Since its establishment in this  
8 province, or I'm sorry, since it commenced operations in  
9 this province, who have been the members, and I don't  
10 want the names of them, but who are the members of  
11 FA within this province?

12 MR. SIMPSON: Auto insurers licensed to do business  
13 in the province.

14 MR. O'FLAHERTY: And would you agree that that  
15 would be all of the auto insurers licensed to do  
16 business in the 96 percent of the market?

17 MR. SIMPSON: That's my understanding.

18 MR. O'FLAHERTY: Okay, and again, is that by a  
19 legislative requirement, that they are required to be part  
20 of FA?

21 MR. SIMPSON: That's my understanding as well.

22 MR. O'FLAHERTY: And under Section 98.1 of the Act,  
23 it indicates that an insurer licensed to transact  
24 automobile insurance in the province is a member of the  
25 association and shall be bound by the articles of  
26 association, so this is a mandatory obligation if an  
27 insurance company wishes to participate in the for-  
28 profit portion of the market in this province.

29 MR. SIMPSON: That's correct, they must be a member  
30 as well of Facility Association.

31 MR. O'FLAHERTY: Okay, so would you agree then  
32 that the same persons who participate in the for-profit  
33 portion of the market, actually participate in the residual  
34 or the smaller portion of the market through their  
35 membership in FA?

36 MR. SIMPSON: When you say the same persons, are  
37 you talking about insurers?

38 MR. O'FLAHERTY: The same members, the same  
39 companies?

40 MR. SIMPSON: Yes.

41 MR. O'FLAHERTY: So they're identical. If you're in the  
42 for-profit portion of the market, you have to be in the  
43 residual portion.

44 MR. SIMPSON: By definition under the legislation,  
45 you've just read it, yes.

46 MR. O'FLAHERTY: Right, so that's the law in this  
47 province.

48 MR. SIMPSON: Yes.

49 MR. O'FLAHERTY: Okay, are there any other members  
50 of FA besides the licensed automobile insurers in this  
51 jurisdiction?

52 MR. SIMPSON: Not to my knowledge.

53 MR. O'FLAHERTY: Okay, now you talked about the  
54 mission of FA under the legislation, and that was at the  
55 stage when I was asking you to slow down a little bit so  
56 I didn't get a good note of it. I just want to return to  
57 that for a second. Would you agree that the primary  
58 mission of the Facility Association in operating the  
59 residual market is set out again in the legislation in  
60 Newfoundland?

61 MR. SIMPSON: To make insurance available to eligible  
62 owners and drivers, yeah.

63 MR. O'FLAHERTY: Okay, and under, again, it's in  
64 Section 98.2 and 98.3 of the Act, and I won't read you  
65 those, but you've paraphrased what it is.

66 MR. SIMPSON: Yeah.

67 MR. O'FLAHERTY: The requirement is to ensure that  
68 insurance is available to those who cannot be serviced  
69 by the voluntary market.

70 MR. SIMPSON: Facility Association was set up by the  
71 industry to guarantee the availability of auto insurance  
72 in various jurisdictions.

73 MR. O'FLAHERTY: Right, I believe the wording in this  
74 particular legislation, and they'll all be a little bit  
75 different, is that it talks about providing a contract of  
76 automobile insurance to owners and licensed drivers of  
77 motor vehicles who, but for the plan, would be unable  
78 to obtain that insurance.

1 MR. SIMPSON: Right.

2 MR. O'FLAHERTY: Okay, now what party is it in the  
3 insurance industry that ultimately determines that an  
4 owner or licensed driver of a motor vehicle is unable to  
5 obtain insurance in the voluntary market?

6 MR. SIMPSON: Who determines that?

7 MR. O'FLAHERTY: Who makes that decision?

8 MR. SIMPSON: The only answer I think I can give for  
9 that is the marketplace.

10 MR. O'FLAHERTY: Okay, and do you mean by the  
11 marketplace, the licensed auto insurers who sell  
12 insurance in the province?

13 MR. SIMPSON: Yes.

14 MR. O'FLAHERTY: Okay, so then essentially it is your  
15 members who make the decision as to who is unable to  
16 obtain insurance in the voluntary market?

17 MR. SIMPSON: Broadly speaking, yes.

18 MR. O'FLAHERTY: Okay, so would you agree then  
19 that the, and this is an underwriting issue, of course,  
20 isn't it, as to whether or not you can get insurance in  
21 the voluntary market.

22 MR. SIMPSON: Yes, it is, yes.

23 MR. O'FLAHERTY: So in fact, your members through  
24 their underwriting policies and practices determine how  
25 big the 96 percent, how big the pie is, whether it's 96  
26 and 4 percent. Let me just rephrase the question,  
27 because you're looking doubtful. Let me ask it this  
28 way. Do your members' underwriting practices and  
29 policies have an influence on what shape this pie ends  
30 up in?

31 MR. SIMPSON: Underwriting and pricing relativities  
32 between insurance available through Facility  
33 Association and the voluntary market seem to have the  
34 biggest impact on our market share.

35 MR. O'FLAHERTY: Okay, would you agree that your  
36 members play the principal role in determining how big  
37 the residual market is in a given year?

38 MR. SIMPSON: Given the regulatory authority over  
39 our ability to achieve rate adequacy and the appropriate  
40 relativity in rate to the voluntary market, no, I would not  
41 agree with that.

42 MR. O'FLAHERTY: Okay, then who would you say  
43 plays the principal role in determining the size of the  
44 residual market?

45 MR. SIMPSON: Well, from all that I've seen, it's  
46 predominantly price driven, so that would be Facility  
47 Association and the regulators.

48 MR. O'FLAHERTY: Okay, now, again, if we just look at  
49 the opening statement, I want to refer to something  
50 that, and you've been at a lot of hearings yourself, and  
51 I've only been at this one, but I've heard it referred to  
52 quite consistently as the high risk drivers, or the high  
53 risk portion of the insurance market that we're referring  
54 to. Would you agree that that's an accurate assessment  
55 or statement of who makes up this four percent in  
56 Newfoundland and Labrador?

57 MR. SIMPSON: It depends on how you define, want to  
58 define high risk driver, but generally speaking that's,  
59 you know, that's where the loss experience would take  
60 you. Certainly the losses of this group are higher on a  
61 per car basis than in the voluntary market.

62 MR. O'FLAHERTY: Well, let me try this definition on  
63 you, for you. I would suggest to you that a high risk  
64 driver would be one who has accidents or convictions  
65 within a previous number of years that's recognized by  
66 the industry.

67 MR. SIMPSON: Well, keep in mind we're insuring  
68 drivers and vehicles, so that's one way to look at things  
69 from a high risk standpoint, but then you've also got  
70 the type, age, use of the vehicle as well, so from a risk  
71 profile standpoint, from a company looking at it, it's the  
72 driver and the vehicle that they're looking at.

73 MR. SIMPSON: Fair enough. I want to look now at an  
74 exhibit that was filed or entered through you at the  
75 Nova Scotia hearing last month. Can I, will I show it to  
76 him, or will the Clerk show it, please? That's the original  
77 if you want to show that to the witness. These are  
78 copies, I'll take one copy. I'll just give you a chance to  
79 have a look at this to see if you recognize this  
80 document?

81 MR. SIMPSON: Sure.

MR. O'FLAHERTY: This is a certified copy from the Nova Scotia Board that you referred to, of the exhibit that was entered through you as F-1 on October ... I'm sorry, it was entered in November of 2002.

MR. SIMPSON: Uh hum.

MR. O'FLAHERTY: Do you recognize this document?

MR. SIMPSON: Yes, I do.

MR. O'FLAHERTY: Okay, I'd ask to have that entered please, Mr. Chairman, as DS-3, I guess, in this hearing?

MR. SAUNDERS, PRESIDING CHAIRMAN: DJS-3.

MR. O'FLAHERTY: Yes, sorry, DJS.

MS. NEWMAN: DJS.

**EXHIBIT DJS-3 ENTERED**

MR. O'FLAHERTY: Can I ask you to turn to illustration number five? Are you familiar with this document?

MR. SIMPSON: Yes, I am.

MR. O'FLAHERTY: Can you tell us what this document is?

MR. SIMPSON: This was put together by my staff based on information received from the Insurance Bureau of Canada, and what we were trying to show here, and trying to indicate is that your definition of high risk driver or high risk goes beyond the driver and, in fact, in many cases in most jurisdictions, and certainly in Atlantic Canada, most people are surprised to find that the majority of people insured through Facility Association have no accidents or convictions.

MR. O'FLAHERTY: Well, I agree with you, that is a surprising insight.

MR. SIMPSON: And that's one of the motivations behind our applying for a ten percent clean driver discount and to take a more gradual approach in our accident and surcharge conviction schedule.

MR. O'FLAHERTY: Well, Mr. Simpson, let me stop you there. Now doesn't this chart tell us about this province, that in terms of the new and renewal business in the residual market, that 62.6 percent of the new

business, and 60.9 percent of the renewal business have no accidents or convictions?

MR. SIMPSON: That's, well I'll just clarify, that's correct ... and I'll just clarify that by saying no at-fault accidents. We're talking about accidents where the driver is determined to be at fault.

MR. O'FLAHERTY: So in terms of underwriting, these persons would be, would be dealt with as having a clean driving record, wouldn't they?

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Okay, and how is a clean driving record defined from an underwriting perspective?

MR. SIMPSON: Well, in terms of our definition, the clean driver discount we've applied for is no at-fault accidents in the last five years.

MR. O'FLAHERTY: Right.

MR. SIMPSON: And no convictions in the last three, and you know, we were talking about age earlier, we see a lot of under-age drivers insured through Facility. They may ... they're a high risk population, but somebody who is 16 or 17, only been on the road for a year, they may have a clean record but represent a high risk from an actuarial standpoint, so that would be included with these folks, and you know, you see a type, as I say, type of vehicle.

MR. O'FLAHERTY: Yeah.

MR. SIMPSON: Heavily modified cars, muscle cars, you see a little bit of territory deviation. I don't have those figures with me for Newfoundland, but generally across Canada, the population in Facility is a little bit higher in rural areas, so those are some of the reasons why someone with a clean driving record may be insured through Facility Association, and as I say, we've tried to in part at least, address that through the changes to our accident and surcharge schedule, and the application for a clean driver discount.

(11:30 a.m.)

MR. O'FLAHERTY: What I'm trying to reconcile though in my own mind is how this number relates to what I would call the moral argument, that persons who cause more accidents should pay higher premiums,

1 when the figures indicate that the majority of persons  
2 in Facility Association don't actually cause more  
3 accidents. Can you address that for me?

4 MR. SIMPSON: Well, I think probably the one way to  
5 get at that is to, you know, we'd have to take a look at  
6 the third party liability frequency of the Facility  
7 population, and I believe it's, I'm sure it's in one of these  
8 binders here somewhere, but two to three times higher  
9 than that of the voluntary market, so as a group these  
10 people are crashing into other people, and other cars,  
11 trees, whatever, more often than the total in the  
12 voluntary market. Now, whether that's, you know,  
13 whether that's just the 40 percent that has got a prior  
14 accident conviction that's doing that type of activity, or  
15 the 60 percent that has a clean record, I really don't  
16 know, but as a group, they do have a higher liability  
17 frequency and so ... I'm not an automobile insurance  
18 underwriter and never have been, but I think we also  
19 need to consider the aspect that there are other factors  
20 that, from an underwriting perspective that are  
21 presumably predictive of loss beyond the driving  
22 record, and perhaps a servicing carrier representative  
23 could help you out a little bit with that.

24 MR. O'FLAHERTY: Sure, no, I think I'd like to ask you  
25 about the issue of the moral argument though, and  
26 again, I'm looking at the opening statement on your  
27 behalf of Facility Association, and this is the same  
28 page, and it says, "The real issue is, for this Board", at  
29 line 25, "attempting to ensure that the people who are  
30 in Facility from time to time are the ones that actually  
31 bear the cost of their involvement, and that it isn't  
32 transferred or downloaded, in Newfoundland's case, to  
33 the 96 percent", so this seems to suggest that these  
34 people are responsible for being in ... to me it suggests  
35 that they're responsible for being in FA because they  
36 are poor drivers, or they get into more accidents, but  
37 the numbers that are on this chart don't suggest that is  
38 the case. Can you reconcile that for me?

39 MR. SIMPSON: Well, I would, as I say, I would, I don't  
40 know that I can reconcile it for you, but from an  
41 underwriting perspective, there are other factors that  
42 are predictive of loss, as to why somebody might be  
43 insured through Facility Association, and to an extent  
44 we share that concern, and that's why we've applied for  
45 the clean driver discount.

46 MR. O'FLAHERTY: Okay.

47 MR. SIMPSON: To reflect some of that. I think that,  
48 though, that's how we, you know, look at the  
49 population within Facility Association, I don't think  
50 that ... I think it's key that we not, we do, we're doing  
51 things on a cost recovery basis, but that we not ask  
52 those 96 percent of the population that are in the  
53 voluntary market to subsidize the 4 percent that are in  
54 the high risk residual market.

55 MR. O'FLAHERTY: Okay, well we'll return to that, that  
56 issue. Now, shouldn't ... another issue that ... I'm just  
57 looking at the number of renewals, and I guess this is  
58 sort of surprising to me too, 60.9 percent of persons  
59 renewed in Facility, that is persons who were already in  
60 Facility, have no accidents within the previous five  
61 years, have no at-fault accidents in the previous five  
62 years and no convictions in the previous three years,  
63 so can you indicate to me when do they get out of  
64 Facility, or on what basis do they get out of Facility, if  
65 they have no accidents?

66 MR. SIMPSON: You know, I think in terms of those  
67 local market conditions, I'm not in a position to answer  
68 those questions. I just have these very high level  
69 numbers. The Board is going to be hearing from a  
70 servicing carrier and from some brokers, so in terms of  
71 how people come to be insured through Facility, and  
72 how often they ... you know, and why, it's my  
73 understanding that is the reason for the appearance of  
74 these local people. I have this, sort of a very high level.

75 MR. O'FLAHERTY: Right.

76 MR. SIMPSON: All I know is that we have, they come  
77 to us, we have to provide insurance for them. That's  
78 what we have to do, but presumably they are insured  
79 through Facility Association for basically two reasons.  
80 One, as the legislation intends, they are unable to find  
81 insurance elsewhere, or two, from a pricing standpoint,  
82 we are a comparable alternative.

83 MR. O'FLAHERTY: Well, isn't it also the case, and  
84 we've already talked about this in your evidence, that  
85 they come to Facility Association because of the  
86 underwriting rules and practices of your members, that  
87 they can't get insurance in the voluntary market?

88 MR. SIMPSON: That may very well be true.

89 MR. O'FLAHERTY: Okay, now, and again, this is, I  
90 guess, sort of a ... I'm going to ask you if this makes  
91 common sense to you. Wouldn't it suggest, the

1 number of persons in the vol ... sorry, in the residual  
2 market who have not had an accident in the previous  
3 five years, it's more than 50 percent, wouldn't that  
4 indicate that there should be a downward effect, or a  
5 lessening of loss experience within the actual Facility  
6 Association portion of the market?

7 MR. SIMPSON: We don't see, we don't see that. I  
8 mean then you're back into the actuarial piece, and Mr.  
9 Pelly is better equipped to answer those questions than  
10 I am, but in terms of this accident and conviction  
11 record, this is a compilation of two half years, and we  
12 actually had requested the half year for 2002 and it  
13 became available after the Nova Scotia hearing, and  
14 these numbers are relatively stable, so I would, you  
15 know, expect that their impact on the rate level need  
16 over time, whatever that impact is, not to change very  
17 much.

18 MR. O'FLAHERTY: Would you agree, and you referred  
19 to this in your evidence as perhaps being more  
20 pronounced in Nova Scotia and New Brunswick, that  
21 the insurance industry is in a relatively challenging  
22 period right now?

23 MR. SIMPSON: I think that's true globally.

24 MR. O'FLAHERTY: Okay, I just want to focus on the  
25 auto insurance, and I agree with you, that's ... I agree  
26 with that observation, but I'm going to focus on the  
27 auto insurance market in this province. Are we in what  
28 is sometimes referred to as a tight market right now?

29 MR. SIMPSON: That's my understanding. Again, the  
30 local people would be able to give you a better  
31 understanding of that than I.

32 MR. O'FLAHERTY: Okay, but that's your personal  
33 understanding. Would you agree that when there is a  
34 tight market in the automobile insurance industry that  
35 auto insurers tend to tighten up their own underwriting  
36 criteria?

37 MR. SIMPSON: That's a little bit circular, but that's,  
38 you know, part of the definition of ... it's a ... auto  
39 insurance, as pretty much all property and casualty  
40 business is generally a cyclical business, so if they get  
41 ... if insurers get into a cycle where they're losing  
42 money and the prospect is of future losses ...

43 MR. O'FLAHERTY: Right.

44 MR. SIMPSON: They've got two mechanisms they can  
45 use to try and return themselves to profitability. One is  
46 underwriting, the other is pricing.

47 MR. O'FLAHERTY: Okay, so one of the options they  
48 have is to, and this is my term, to high grade their book  
49 of business and to take the best insureds they have  
50 within their book of business?

51 MR. SIMPSON: Presumably that's an option that a  
52 company has, yeah. They're all going to approach it a  
53 little bit differently.

54 MR. O'FLAHERTY: Yeah, and I'll address that with the  
55 insurance representative, but I'm just trying to get a big  
56 picture perspective on what's going on in the market  
57 right now.

58 MR. SIMPSON: Sure.

59 MR. O'FLAHERTY: Would you agree then that when,  
60 in circumstances where insurers do tighten up their  
61 underwriting guidelines, that that will have the effect of  
62 increasing the residual market within a particular  
63 province?

64 MR. SIMPSON: It can, and sometimes does. It's not a  
65 straightforward linear relationship. In other words, that  
66 may make the market more attractive, if you will,  
67 providing they've got room to set their prices to a non-  
68 standard, or what's sometimes referred to as a grey  
69 market insurer. In other words, it's a competitive  
70 marketplace, companies enter it, companies leave, that  
71 sort of thing, but broadly speaking, sure, the residual  
72 market share will tend to increase.

73 MR. O'FLAHERTY: Yeah, I think that's ...

74 MR. SIMPSON: But it depends on the level of  
75 competitive intensity in the market, it depends on, you  
76 know, the number of various types of companies in the  
77 market.

78 MR. O'FLAHERTY: And I think you've answered the  
79 question that I was looking for, in any event, which is  
80 that there is the underwriting side to the whole aspect  
81 of the size of the residual market. Now, I want to look  
82 at the exhibit which deals with the other side of the  
83 coin, which is pricing, and that's ... I believe it's BFP-4.

84 MR. WHALEN, Q.C.: Sorry, what was that ...

1 MR. O'FLAHERTY: BFP-4, Mr. Pelly's ... or sorry, BGP,  
2 sorry.

3 MR. SIMPSON: I'm sorry, I'm lost in the sea of binders  
4 here.

5 MR. O'FLAHERTY: Yes.

6 MR. SIMPSON: BGP-4?

7 MR. O'FLAHERTY: Yes, this is the chart which  
8 compares FA written premiums to industry.

9 MR. SIMPSON: Uh hum.

10 MR. O'FLAHERTY: And it talks about the FA's market  
11 share.

12 MR. SIMPSON: I have that.

13 MR. O'FLAHERTY: Now, as I understood, the purpose  
14 of this exhibit is to suggest to the Board that the  
15 solution to the growth in FA is to raise the margin  
16 between the prices in the voluntary market and that in  
17 the residual market.

18 MR. SIMPSON: I'm not sure that that's the purpose.  
19 We filed the rate application based on actuarial  
20 evidence. I think what this chart is depicting here is a  
21 correlation between market share you typically see, and  
22 the relationship of the premiums, added premiums  
23 changed in, through the residual market and the  
24 voluntary market.

25 MR. O'FLAHERTY: Okay, well then, perhaps then I  
26 don't need to get into this in great detail. So are you  
27 suggesting then that you're not relying upon this chart  
28 for the purpose of asking the Board to approve the  
29 rates?

30 MR. SIMPSON: Well, and that goes back to my earlier  
31 comment, if we were going to do that, then we would  
32 take the Board's filed rate from the voluntary market and  
33 add five percent and go ... and you know, I think that  
34 would be a way to do rates, but we don't do rates that  
35 way.

36 MR. O'FLAHERTY: Okay.

37 MR. SIMPSON: But this is an illustration of the  
38 correlation that we do observe between rate levels in

39 the residual market and the voluntary market, and  
40 market share.

41 MR. O'FLAHERTY: Okay, there's a, as they say the  
42 devil's in the details. There's a lot of details buried in  
43 this particular exhibit, aren't there?

44 MR. SIMPSON: That's true, yes.

45 MR. O'FLAHERTY: And that, for example, the relative  
46 size of the premium, sorry, the relative price of  
47 automobile insurance in Newfoundland versus New  
48 Brunswick versus Nova Scotia, that might be one of the  
49 things that's not shown.

50 MR. SIMPSON: Right, it's my understanding that on an  
51 average premium basis for private passenger in  
52 Newfoundland would be lower than in any other  
53 province.

54 MR. O'FLAHERTY: In the urban areas?

55 MR. SIMPSON: Through Facility on a province-wide  
56 basis.

57 MR. O'FLAHERTY: Oh no, yeah, I was just talking  
58 about in the voluntary market.

59 MR. SIMPSON: Yeah, I'm not knowledgeable about the  
60 rate levels in the voluntary market.

61 MR. O'FLAHERTY: Okay, we'll have some evidence  
62 regarding that. Now, also in respect of the Ontario  
63 comparison, there's a different system in Ontario, isn't  
64 there?

65 MR. SIMPSON: Ontario does have a different system.  
66 It's the only jurisdiction in Canada, and may be the only  
67 jurisdiction in North America with a two-tiered residual  
68 market system.

69 MR. O'FLAHERTY: Okay.

70 MR. SIMPSON: So, you know, somebody could say,  
71 well the low market share in Ontario is a function of that  
72 risk sharing pool. Taken all together in 2001, I think the  
73 chart has been supplied by the Board, but from memory  
74 it's less than 2 percent, so there could be an impact  
75 there. If that risk sharing pool was dissolved,  
76 presumably it would go three places. The companies  
77 that write the business right now and seeded  
78 (*phonetic*) to the pool, to one of the many non-

1 standard writers operating in the province, or to us, so  
2 we would expect if we just had the traditional residual  
3 market that we have in all other jurisdictions including  
4 this one, that in the absence of the risk sharing pool, we  
5 would expect our market share would be higher than  
6 what you see on this chart, very definitely, but I don't  
7 think that it would go necessarily to the ... you wouldn't  
8 add the two together because the population insured  
9 through the risk sharing pool has other places to go.

10 MR. O'FLAHERTY: But that would involve another  
11 different analysis than the one that's been done here.

12 MR. SIMPSON: That's very true.

13 MR. O'FLAHERTY: Okay, so, and I think, I won't  
14 spend too much more time on this because I think what  
15 you are indicating is that primarily FA is relying upon  
16 the actuarial evidence as placed before the Board to  
17 justify the rates, rather than on some sort of policy  
18 argument that there should be a gap between the two,  
19 the voluntary market and the residual market.

20 MR. SIMPSON: That's correct, you know, this is just  
21 trying to provide some, these are illustrations, trying to  
22 provide some perspective and background. It's been  
23 my experience that some boards and regulators, and  
24 myself included, are frustrated by the level of detail we  
25 have available about the population insured through  
26 Facility Association. We're relying on the IBC for that  
27 information. We're working with them to get more detail  
28 but this, the rate filing is based on the actuarial  
29 evidence, and as indicated in the filing, these are  
30 illustrations to help everybody understand what we see  
31 in the marketplace.

32 MR. O'FLAHERTY: Okay, another issue you raised, I'm  
33 wondering if we might consign to the same sort of  
34 category is this issue of competition between the  
35 voluntary market and again, the residual market. I  
36 believe it was described by Mr. Whalen as a common  
37 goal, which is to prevent this from occurring. Would  
38 that be a common goal of the members of FA and FA  
39 itself, is that ...

40 MR. SIMPSON: Very definitely. We do not want to be  
41 in competition with our member companies.

42 MR. O'FLAHERTY: Okay.

43 MR. SIMPSON: And our member companies don't  
44 want to be in competition with us.

45 MR. O'FLAHERTY: Okay, but once again, the rates for  
46 a particular segment of the market are determined on the  
47 basis of the accident experience shown in that segment  
48 of the market.

49 MR. SIMPSON: Broadly speaking, yes.

50 MR. O'FLAHERTY: Okay, so in, as I understand it, and  
51 please correct me if I'm wrong, in Newfoundland, the  
52 primary source of data for the filing you've put forward  
53 is the Facility Association accident experience. Perhaps  
54 I'll just go to page four of the filing. I don't expect you  
55 to know this inside out. The statement at page four  
56 says, "The primary data source underlying this analysis  
57 is Facility Association's loss experience for accident  
58 years 1997 to 2001 as reported to the IBC at 31  
59 December 2001." Would you agree with that  
60 statement?

61 MR. SIMPSON: Yes, I would.

62 MR. O'FLAHERTY: Having adopted the filing.

63 MR. SIMPSON: Yes.

64 MR. O'FLAHERTY: Okay, and then if we look over at  
65 the benchmark which is prepared in this province, my  
66 understanding is that, and please, if you have a  
67 different understanding, let me know, that the accident  
68 experience that's analyzed there is the remainder of the  
69 market, or the 96 percent, less the Facility experience?

70 MR. SIMPSON: I don't know whether it's all industry or  
71 all industry less Facility, I simply don't know.

72 MR. O'FLAHERTY: Okay, but if we assume that it's the  
73 latter, that it's all the industry less Facility.

74 MR. SIMPSON: Okay, in the exhibits that we've been  
75 looking at so far this morning where it's all industry, it  
76 is the 100 percent, not the 96 percent.

77 MR. O'FLAHERTY: Okay.

78 MR. SIMPSON: For age distribution, or whatever,  
79 when we say industry.

80 MR. O'FLAHERTY: Yes, fine, that's fine, but I'm talking  
81 about in the benchmark, okay, I'm talking about ... I'm  
82 trying to go as quickly as I can and I hope I'm not  
83 confusing the issue, but if we go back to the pie graph  
84 again. The rates for the four percent are set based on,

1 as we see from this document, primarily on their own  
2 accident experience, correct?

3 MR. SIMPSON: Yes.

4 MR. O'FLAHERTY: The rates for the 96 percent are  
5 developed, I would submit to you, primarily on their  
6 own accident experience, not considering the four  
7 percent?

8 MR. SIMPSON: I'm sorry, are you talking about the  
9 way that companies develop their rates, or the way the  
10 Board develops its benchmark?

11 MR. O'FLAHERTY: The way the Board develops its  
12 benchmark.

13 MR. SIMPSON: Okay, I have no understanding of that  
14 at all.

15 MR. O'FLAHERTY: Okay, well if we assume that that's  
16 correct, okay, that these are two independent analyses  
17 that are conducted, one by your company for your  
18 portion of the market, and the other by the Board  
19 through the benchmark analysis, okay. If those two  
20 rates happen to be close to each other, do you see any  
21 difficulty with the Board approving the rates based on  
22 the accident experience?

23 MR. SIMPSON: I think, you know, probably an  
24 analysis of our rates, we'd find that some are within the  
25 benchmark ranges as it now stands, so I'm not sure  
26 what you're driving at. You know, this is, we're required  
27 to file independent of the benchmark, so I'm not sure  
28 how this all relates to the benchmark at all. I'm sorry,  
29 you've just lost me.

30 *(11:45 a.m.)*

31 MR. O'FLAHERTY: Okay, I'll cut right to the chase  
32 then, I'm representing the consumers in the province  
33 who could be affected by the FA rate application, okay.

34 MR. SIMPSON: So you're representing the four  
35 percent?

36 MR. O'FLAHERTY: Yes, and the suggestion, the  
37 suggestion is that the rates for the four percent should  
38 not compete with the rates for the 96 percent, okay,  
39 that's the suggestion that, you know, you've put  
40 forward in evidence, that that's the common goal of FA  
41 and the insurers who make up FA. Do you agree?

42 MR. SIMPSON: We don't want to be in competition,  
43 yeah, we don't want to be in competition, we want to be  
44 the insurer of last resort, and on a basic philosophy  
45 that in general risk be commensurate with the premium.  
46 That would lead our rates to be at the high end of the  
47 market.

48 MR. O'FLAHERTY: Okay, and what I'm asking you is  
49 if the risk, or if the rates that are developed based on  
50 the loss experience for the four percent happen to be  
51 close to the 96 percent, does that make, besides  
52 offending this notion of competition or whatever, is  
53 there any rate making reason why the Board shouldn't  
54 adopt the rates based on the loss experience?

55 MR. SIMPSON: Not that I can think of.

56 MR. O'FLAHERTY: Okay.

57 MR. SIMPSON: You know, we're filing based on our  
58 actuarial evidence and I think some of those rates  
59 would be within the benchmark range.

60 MR. O'FLAHERTY: And I think, would you agree, that  
61 historically that's been the case in Newfoundland and  
62 Labrador?

63 MR. SIMPSON: I don't know, I would not be surprised  
64 if that were true.

65 MR. O'FLAHERTY: That appears to be when you look  
66 back over the historical record that there do appear to  
67 be many coverages which are within the benchmarks.

68 MR. SIMPSON: It could very well be.

69 MR. O'FLAHERTY: Okay, so is there any rate making  
70 principle that is (inaudible), to your knowledge, by the  
71 Board simply setting the rates based on the actuarial  
72 experience, actuarial analysis of the loss experience for  
73 Facility Association and leaving aside these  
74 considerations of competition that you've raised?

75 MR. SIMPSON: Well, I would hope the Board would  
76 make its decision primarily on the filing, but in most  
77 jurisdictions, this is the first experience I have with this  
78 Board, there is a real concern about public policy  
79 considerations, there's a concern about the impact on  
80 the marketplace, and the companies have taken an  
81 entrepreneurial risk to participate in the marketplace, so  
82 you know, our filing is developed and our rates are  
83 developed along those lines. We get into other parts of



things, within the overall rate, like the accident and surcharge schedule, and CLEAR, in that we're trying to follow market practice, you know, that's where, from a philosophical standpoint, you're talking about where we take the market considerations ... this is why we have our rates and rules committee, this is why we have company representation, so that in terms of, you know, the way that overall rate level need is classified and distributed amongst vehicles, amongst drivers, that's where that comes into play.

MR. O'FLAHERTY: Sure, and I think you hit the nail right on the head, I think better than I could have said it, when you indicated that these are really public policy issues that we're referring to, about competition, the place of the grey market, those sorts of issues, aren't they?

MR. SIMPSON: Well, I'd be surprised, if we're not concerned about it, I would be surprised if this Board is not concerned about those issues.

MR. O'FLAHERTY: Sure, but they don't form part of the actuarial analysis of loss experience.

MR. SIMPSON: That's not something that Brian, Mr. Pelly, thinks about as he develops his indications, no.

MR. O'FLAHERTY: Okay, I wanted to look at the, now the magnitude of the increases that are being sought by Facility Association in the province. Can you look at page one of the filing, which is probably the third page in.

MR. SIMPSON: I think I'll need a copy of the filing first.

MR. O'FLAHERTY: Okay. Do you have that page, Mr. Simpson?

MR. SIMPSON: Page one of the filing?

MR. O'FLAHERTY: Yes, it has three boxes which indicate indicated average rate level changes and proposed average rate level changes.

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Thank you. I want to look at the liability column which is the first column with percentages in it, towards the left hand side of the page running down?

MR. SIMPSON: Yes, uh hum.

MR. O'FLAHERTY: Can you approximate for me how much, on a percentage basis of the premium volume in FA's book of business is made up of liability coverage?

MR. SIMPSON: I'm sworn here, so I'm going to do my best. I believe it's 70 to 80 percent on the private passenger side.

MR. O'FLAHERTY: Okay, so if we look at the sheet that you've just entered into evidence, and again, I'm just doing round numbers here, the net premiums written show \$18,866,000 for September '02. Would that be an annual figure for premiums?

MR. SIMPSON: Premiums written as of September '02, that would be based on our fiscal year, so that would be 11 months.

MR. O'FLAHERTY: 11 months.

MR. SIMPSON: Because our fiscal year ends October 31st.

MR. O'FLAHERTY: Okay, so we'll say approximately \$20 million in premiums then for last year.

MR. SIMPSON: That's probably a fair estimate.

MR. O'FLAHERTY: Okay, so if there is an increase granted of, in the range that's sought, or the magnitude that's sought, which is on average 51.7 percent for private passenger vehicle, and 59.2 percent for commercial vehicles, what impact is that going to roughly have in round numbers on the premium dollars collected by Facility Association next year?

MR. SIMPSON: I really don't know. It depends on the volume of premium we write next year.

MR. O'FLAHERTY: Okay, if we assume the same premium?

MR. SIMPSON: Assuming the same premium volume, you're asking me to do math in my head and I'm not really good at that, but ... okay, so a written premium of ...

MR. O'FLAHERTY: Well, we'll take the lower figure, 70 percent of the \$20 million is \$14 million.

1 MR. SIMPSON: That's \$14 million.

2 MR. O'FLAHERTY: Okay.

3 MR. SIMPSON: Yeah, and then we increase that by 50  
4 percent roughly and then we're at \$21 million, I think. Is  
5 that where you wanted to go?

6 MR. O'FLAHERTY: Yes.

7 MR. SIMPSON: Where that increase would be.

8 MR. O'FLAHERTY: Right, well the, that would become  
9 \$21 million then for that portion of Facility's ...

10 MR. SIMPSON: For liability portion for private  
11 passenger.

12 MR. O'FLAHERTY: Right, and then the other ...

13 MR. SIMPSON: But pardon me, this is, that \$20 million  
14 premium figure that we're using is for all premium  
15 written in the province.

16 MR. O'FLAHERTY: Right.

17 MR. SIMPSON: So it would be somewhat, that 70  
18 percent would be somewhat less than \$14 million for  
19 private passenger because we'd have to strip the  
20 commercial out of that, and other classes of vehicles as  
21 well.

22 MR. O'FLAHERTY: Okay.

23 MR. SIMPSON: Because we write snowmobiles, ATVs,  
24 motorcycles.

25 MR. O'FLAHERTY: Sure, yeah, no, that makes sense,  
26 yeah.

27 MR. SIMPSON: That's all in that \$20 million.

28 MR. O'FLAHERTY: Alright, so maybe that's a bit of a  
29 waste of time to try to work it out into round figures at  
30 this stage as we are somewhat pressed for time. Okay,  
31 so in any event, you were ... and these are average rate  
32 increases that you are requesting the Board to approve  
33 here.

34 MR. SIMPSON: This is the average rate level, that's  
35 correct.

36 MR. O'FLAHERTY: So then some of the persons who  
37 will be affected by the proposed changes will have  
38 increases in excess of 51.7 percent and 59.2 percent.

39 MR. SIMPSON: That's correct, and some will have less.

40 MR. O'FLAHERTY: And some have less, correct.  
41 Okay, now, I want to ask you if you will characterize for  
42 me how you feel these increases are ... are these large  
43 increases that Facility Association is requesting?

44 MR. SIMPSON: I'd characterize them as very  
45 significant.

46 MR. O'FLAHERTY: Very significant, okay.

47 MR. SIMPSON: And I think the, you know, I think that  
48 that's not at issue. The Board's actuary has said that a  
49 significant increase is needed. I would characterize the  
50 number she has put forward as significant, but I'd also  
51 characterize these numbers based on, you know, our  
52 actuarial evidence as being a rate level that we need to  
53 hit rate adequacy with a zero percent profit provision.

54 MR. O'FLAHERTY: Okay.

55 MR. SIMPSON: So presumably they reflect the  
56 underlying cost of the system here in the province.

57 MR. O'FLAHERTY: Well, I want to look then, turn then  
58 briefly to your track record over the last ten years in  
59 predicting the rate levels that are indicated in this  
60 province. Let's start with the last time that you were  
61 here before the Board, or Facility Association was here  
62 before the Board. Were you working with Facility  
63 Association at that time?

64 MR. SIMPSON: I began with Facility Association on  
65 July 1, 2001.

66 MR. O'FLAHERTY: Okay.

67 MR. SIMPSON: So this is my first appearance before  
68 this Board.

69 MR. O'FLAHERTY: Okay, in the last rate filing, the  
70 evidence indicates that Facility Association was  
71 granted pretty close to what was requested on behalf of  
72 Facility Association by Mr. Pelly's firm. Do you have  
73 any understanding about that?

74 MR. SIMPSON: Is this the May 2001 filing?

1 MR. O'FLAHERTY: Yes, in 2001.

2 MR. SIMPSON: I don't know if you'd say pretty close.  
3 My recollection is that the filing was for a little over 13  
4 percent.

5 MR. O'FLAHERTY: Yeah.

6 MR. SIMPSON: And I think the Board's actuary came  
7 back saying that a recommendation of, with a  
8 recommendation of around 8 percent, and that was  
9 subsequently moved up because of the timing impacts  
10 on implementation, so 8 on 13 is what, about 60 percent,  
11 so close ...

12 MR. O'FLAHERTY: I believe the Board ordered ten  
13 percent.

14 MR. SIMPSON: The Board ordered ten, and I think the  
15 indication that Brian would have put forward on that  
16 effective date would have been about 15 or 16.

17 MR. O'FLAHERTY: Okay.

18 MR. SIMPSON: So the Board order was about, you  
19 know, in round figures, about, consistently about two  
20 thirds, because you have to keep the effective dates the  
21 same or it's an apples and oranges comparison.

22 MR. O'FLAHERTY: Okay.

23 MR. SIMPSON: So I think the Board order was about  
24 two thirds of what we applied for.

25 MR. O'FLAHERTY: Okay, and yet we are back here  
26 again the next year, and the indication from FA is that  
27 these rates were inadequate and seriously inadequate,  
28 weren't they?

29 MR. SIMPSON: Yeah, and I think that has, you know,  
30 that Brian's, Mr. Pelly has dealt with that fairly  
31 thoroughly in his evidence, and the 2001 filing was  
32 based on 1999 experience, and I think there was some  
33 updated experience that was added to that, I'm not sure.  
34 Here we are three years later and things have changed.

35 MR. O'FLAHERTY: Okay, well in fact, one of the filings  
36 we're referring to is 2001, and the next filing was in 2002,  
37 correct?

38 MR. SIMPSON: Yeah, we submitted this in September,  
39 I believe it was, so ...

40 MR. O'FLAHERTY: Okay, so we're only talking about  
41 one year later.

42 MR. SIMPSON: Well, the core information underlying  
43 the 2001 filing was 1999, and that's to the best of my  
44 recollection, I wasn't involved in the process, but the  
45 Atlantic filings were done ... Nova Scotia and New  
46 Brunswick were also based on 1999 AIX information,  
47 and we got those decisions in 2000 or 2001 or  
48 thereabouts, so there's been a little bit of ... it's more  
49 than one year.

50 MR. O'FLAHERTY: Yeah, I think actually the records  
51 will show that it's the 2000 AIX, or a portion thereof  
52 was taken into consideration.

53 MR. SIMPSON: A portion of that was taken into  
54 consideration, I would agree with that, that's my  
55 recollection as well.

56 MR. O'FLAHERTY: In any event, I just wanted to look  
57 at this in terms of, you know, how the indicated rates  
58 have compared to what the actual loss experience has  
59 been in this particular province, as been predicted on  
60 behalf of FA, okay, that's the focus of my inquiry, so  
61 would you agree then that the indicated rates in 2001  
62 turned out to be lower than the needs for FA, and  
63 significantly lower?

64 MR. SIMPSON: Given our financial results, I'd agree  
65 with that.

66 MR. O'FLAHERTY: Okay, now the previous time that  
67 you were before the Board, or FA was before the Board  
68 on an application was in 1997. You weren't involved  
69 with FA at that time?

70 MR. SIMPSON: No, I wasn't.

71 MR. O'FLAHERTY: Okay, I'm going to show you a  
72 Board order, and this is a matter of record for the Board,  
73 so I won't, I don't have copies for all of the Board, but  
74 are you familiar with what occurred in, with respect to  
75 the 1997 application?

76 MR. SIMPSON: No, I'm not.

77 MR. O'FLAHERTY: Okay, I'm going to just walk with  
78 you slowly through this order, okay, so that we can  
79 have a look at what occurred. The first recital indicates  
80 that on December the 19th, 1997, the Board received a  
81 filing from Eckler and Partners, actuarial consultants to

1 Facility Association, seeking Board approval of revised  
2 private passenger and commercial automobile insurance  
3 rating programs for use by Facility Association during  
4 1998. Now, in that particular filing, it's my  
5 understanding that, when we look at the filing, it's in ...  
6 well, I have it here ... December 19th, 1997, and perhaps  
7 the witness could be shown this because haste might  
8 ... if I try to go through this too quickly, it may be  
9 difficult.

10 MS. NEWMAN: I'm just wondering, it would normally  
11 be break time now, would this be a good time for us to  
12 get our act together and get the documentation.

13 MR. O'FLAHERTY: Yes, and I can get the documents  
14 organized, yeah, sure.

15 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, but  
16 that's the one you were referring to though, is it,  
17 December 17th ...

18 MR. O'FLAHERTY: 1997, yes.

19 MR. SAUNDERS, PRESIDING CHAIRMAN: Alright,  
20 we'll break until 12:15 approximately.

21 MR. O'FLAHERTY: Thank you.

22 *(break)*

23 *(12:20 p.m.)*

24 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.  
25 O'Flaherty.

26 MR. O'FLAHERTY: Thank you, Mr. Chairman. Can I  
27 ask that the witness turn to page one of the 1997,  
28 December 19th, 1997, filing?

29 MR. SIMPSON: Is this the one Section 1, Summary of  
30 Findings?

31 MR. O'FLAHERTY: Yes, thank you.

32 MR. SIMPSON: Yes.

33 MR. O'FLAHERTY: It's the ...

34 MR. SIMPSON: I have that.

35 MR. O'FLAHERTY: ... comparable charts of indicated  
36 average rate level changes and proposed average rate  
37 level changes ...

38 MR. SIMPSON: Right.

39 MR. O'FLAHERTY: ... that I'm focusing on. Now, in  
40 1997 Facility Association had presented a filing which  
41 showed indicated average rate level change ... I'm just  
42 going to deal with the liability column, okay ...

43 MR. SIMPSON: Alright.

44 MR. O'FLAHERTY: ... because I don't think, you know,  
45 we need to go through all of this ... for private  
46 passenger vehicle which again showed very significant  
47 rate level increases being indicated, would you agree?

48 MR. SIMPSON: Yes, very definitely.

49 MR. O'FLAHERTY: Okay. Now, these rate level  
50 changes that were indicated were not the proposed  
51 average rate level changes, as a matter of fact those  
52 were actually capped.

53 MR. SIMPSON: That appears to be the case. The  
54 numbers are somewhat lower, yes.

55 MR. O'FLAHERTY: Okay. And before I head off and  
56 talk more about 1997, can you tell me is this a technique  
57 or an approach which is commonly adopted by FA,  
58 which is to propose a lower than the indicated rate level  
59 change?

60 MR. SIMPSON: The rate that's to be filed is determined  
61 by the Board of Directors. What's entered into their,  
62 and as specified as a responsibility under the plan of  
63 operation, so what's entered in their deliberations over  
64 time is not something obviously I'm familiar with, so in  
65 terms of what happened here to not apply for numbers  
66 close to the indicated level I've got no knowledge of.

67 MR. O'FLAHERTY: Okay, sure. But in any event I  
68 think we've agreed that the indicated rate level changes  
69 are developed by the actuary and the proposed average  
70 rate level changes are developed by the Board of FA.

71 MR. SIMPSON: The rates that are filed are, ultimately  
72 that's a decision for the Board, whether or not to file for  
73 rate and the rate level.

1 MR. O'FLAHERTY: And that's not the actuary's  
2 decision.

3 MR. SIMPSON: As to what's to be filed?

4 MR. O'FLAHERTY: Yes.

5 MR. SIMPSON: Broadly speaking, no.

6 MR. O'FLAHERTY: In any event, because I don't want  
7 to sort of spend too much time on this, but Facility  
8 Association had presented a filing which indicated that,  
9 as you've agreed, very significant increases were  
10 indicated for private passenger vehicle and a somewhat  
11 lower increase for commercial, which is 27 percent.

12 MR. SIMPSON: The indicated for commercial liability  
13 is 27, the proposed was 20, yes.

14 MR. O'FLAHERTY: Right, and these were developed  
15 using similar or the same methodology, I believe, was  
16 the evidence of Mr. Pelly as is presently being used by  
17 Eckler Partners Limited.

18 MR. SIMPSON: I can take that as correct. I don't know  
19 that every judgemental assumption, obviously there's  
20 been several made ...

21 MR. O'FLAHERTY: Yes, no, no question.

22 MR. SIMPSON: ... would be the same.

23 MR. O'FLAHERTY: Yeah. No, and I wasn't looking at  
24 it in that, you know, in-depth analysis, but in general  
25 the methodology is the same. Now, eventually,  
26 according to the order, FA was awarded zero percent by  
27 the Board. Were you aware of that?

28 MR. SIMPSON: Now that I've just been provided with  
29 a copy of the order, I did take a chance to scan it at the  
30 break, and, yes.

31 MR. O'FLAHERTY: Okay. Unfortunately ... it's difficult  
32 for me to ask you questions about it because you  
33 weren't actually present at the time that this was going  
34 on.

35 MR. SIMPSON: More difficult for me to answer as I'm  
36 sure you'll appreciate.

37 MR. O'FLAHERTY: Yeah, no question, and I don't  
38 want to be unfair to you at all, but, in any event, the

39 Board order will stand for itself but in, can we agree that  
40 in 1997, the indicated rates and what was eventually  
41 ordered by the Board was, there was quite a significant  
42 difference between those two?

43 MR. SIMPSON: Yes, there was.

44 MR. O'FLAHERTY: Okay. And the Facility  
45 Association did not file in 1998 or 1999 or 2000, did it?

46 MR. SIMPSON: I don't have the history of that. I'm  
47 sure the Board has that.

48 MR. O'FLAHERTY: The records I've been shown, filed  
49 in 2001, and the last time prior to that was 1997.

50 MR. SIMPSON: Okay. That may very well be correct.  
51 I don't have any knowledge to contradict that.

52 MR. O'FLAHERTY: Okay. And would you agree that  
53 in general that the Board of Directors will not go  
54 forward with a rate filing if the rate levels that they're  
55 already relying on or the rates that are in effect are  
56 found to be sufficient for rate level, sufficient rate levels  
57 for the needs of FA?

58 MR. SIMPSON: Like I say, that's an individual decision  
59 for each jurisdiction by the Board as to whether or not  
60 to file, and if they do file, for what amount, or if we do  
61 file, for what amount.

62 MR. O'FLAHERTY: Does FA file annually in this  
63 jurisdiction?

64 MR. SIMPSON: To the best of my knowledge there's  
65 not a practice of specifically filing annually in any  
66 jurisdiction.

67 MR. O'FLAHERTY: Okay. So they file rate revision  
68 applications when the Board determines they are  
69 necessary.

70 MR. SIMPSON: In a nutshell, yes.

71 MR. O'FLAHERTY: Okay. And to your knowledge has  
72 the Board ever filed a rate revision application when it  
73 found that the rates were in excess of the rate level  
74 needs of FA?

75 MR. SIMPSON: In other words, does the Board ever  
76 file for a decrease?

1 MR. O'FLAHERTY: Yes.

2 MR. SIMPSON: Yes.

3 MR. O'FLAHERTY: Okay. In this jurisdiction?

4 MR. SIMPSON: I don't have direct knowledge of this  
5 jurisdiction. I'd have to, you know, have the records,  
6 the staff dig into the records, Mr. Pelly to find that out.

7 MR. O'FLAHERTY: Okay. What I'm trying to get at ...

8 MR. SIMPSON: There have been jurisdictions where  
9 from time to time the Association has filed for rate  
10 decreases.

11 MR. O'FLAHERTY: Okay. What I'm trying to get at in,  
12 you know, in a sort of long winded way is to establish  
13 that the rate levels that were ordered by the Board, the  
14 Board said you stay with the same rate level that you  
15 already have in 1998 when they made their order,  
16 correct?

17 MR. SIMPSON: We're talking about this Board and not  
18 the board of directors.

19 MR. O'FLAHERTY: Yes, this Board. Yeah, that can be  
20 confusing. And those rate levels stayed in effect until  
21 2001 when that order was made with respect to that  
22 application.

23 MR. SIMPSON: Okay. Actually stayed in effect  
24 probably then until 2002 because of the rates that were  
25 filed in 2001, had an effective date, as I recall, May 2002.

26 MR. O'FLAHERTY: And can we agree that in those  
27 years, from 1998 up until 2001, the operating results of  
28 FA in this jurisdiction were positive for the members of  
29 FA?

30 MR. SIMPSON: On an accident year or fiscal year  
31 basis?

32 MR. O'FLAHERTY: I guess it's ... is it done on a fiscal  
33 year basis in your accounting?

34 MR. SIMPSON: Well, it depends if we're talking about  
35 ... well, ultimately, you know, if you wrap the whole  
36 thing up, you get to the point, but there's timing  
37 differences, so if I can refer to the earlier exhibit.

38 MR. O'FLAHERTY: Yes, that's a good idea. That  
39 would be DJS No. 2.

40 MR. SIMPSON: Yes.

41 MR. O'FLAHERTY: And this is the revised one that  
42 you prepared.

43 MR. SIMPSON: Well, my staff has prepared.

44 MR. O'FLAHERTY: Sorry, your staff has prepared, I'm  
45 sorry.

46 MR. SIMPSON: And for 1998 there was excess of  
47 revenue over expenses. I think you want me to start  
48 1998, was that correct?

49 MR. O'FLAHERTY: Sure.

50 MR. SIMPSON: A little over \$10 million, \$10,192,000.  
51 In 1999 the excess of revenue over expenses was  
52 \$3,044,000, 2000, \$2,592,000, and 2001, it went \$10 million  
53 the other way and there was a deficit, a deficiency of  
54 revenue over expenses of \$8.491 million, and ...

55 MR. O'FLAHERTY: Okay, and that brings us up to the  
56 filing then in 2001.

57 MR. SIMPSON: Well, it wouldn't be exact timing but  
58 that'd be close.

59 (12:30 p.m.)

60 MR. O'FLAHERTY: Yeah. Anyway, look, sorry, Mr.  
61 Simpson, I'm sort of getting a little far afield here. What  
62 I'm trying to establish is that in 2001 you filed certain  
63 rates and those are now determined to be inadequate by  
64 FA. Okay, we've agreed on that.

65 MR. SIMPSON: Yes.

66 MR. O'FLAHERTY: In 1997 FA filed certain rates and  
67 those were turned down by the Board. The Board's  
68 conclusion was that those rates were not necessary at  
69 the time.

70 MR. SIMPSON: Evidently.

71 MR. O'FLAHERTY: And then there was no filing from  
72 FA in 1998, 1999 or 2000.

73 MR. SIMPSON: That's my understanding, yes.

MR. O'FLAHERTY: Okay. And can we assume from that that the FA Board of Directors did not see the need to file for increases in those three years?

MR. SIMPSON: No, I don't think we can. I wasn't a party to it of course but there was a lengthy hearing into the operations of FA from, I think it was early, it spanned about a year, from 2000 to 2001, early 2001, and there may be something at the time that while that hearing was going on, that a rate filing application might have been for whatever reason inappropriate, in other words, you know, just common sense standpoint, let's deal with one matter before we get onto the other, so I don't know what the thinking of the board was at that time. I do know that there were some other activities between the Association and the board at that time, so the environment was a little bit unusual, I would say, and that may have been a factor. I don't know that to be absolutely true.

MR. O'FLAHERTY: Can we agree though that during those three years, at least based on your chart, DJS No. 2, those three years being 1998, 1999 and 2000, the operational results of FA in the province were positive?

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Okay. Now, I just want to look backwards now into the previous years. Now, there were filings as well in 19-, and of course you weren't there, but just bring this to your attention, there were filings as well in 1992, 1994, 1995 and 1996 that were placed before the Board.

MR. SIMPSON: Okay.

MR. O'FLAHERTY: Okay. Now, in the list of exhibits that we have, we have one of the information exhibits, I'll ask you to turn to is called the Executive Summary of Findings from the Report on Review of Causes of Operating Surpluses, and this was filed by or provided to the Board as Information 1-1, following up on some evidence provided by Mr. Pelly.

MR. SIMPSON: And what would be the number on that, please?

MR. O'FLAHERTY: It would be 1, or I-1, sorry.

MR. SIMPSON: I-1. I think I've got it here, Info. No. 1, September 29th, 1999?

MR. O'FLAHERTY: Yes, you have it, correct.

MR. SIMPSON: Alright, thank you.

MR. O'FLAHERTY: Okay. Now, this document was entered into evidence as a result of certain comments that were made by Mr. Pelly with respect to whether or not the Board's actuaries had concluded that there had been any bias present in the rate indications developed in those previous filings that I've referred to.

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Okay. And his, or the conclusion of the Board's actuaries were that there was not a detection of any systematic bias towards over or underestimation.

MR. SIMPSON: That's the line at the very bottom, page number three.

MR. O'FLAHERTY: Yes.

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Now, what I want to bring to your attention is, didn't the Board's actuary also conclude for those particular years that the actual loss costs for private passenger third party liability for 1992, 1993 and 1995 were all overestimated?

MR. SIMPSON: Is this the fourth bullet point you're referring to where it says, "In hindsight the rate filings" ...

MR. O'FLAHERTY: Yes. Well, that's one of the references to it. There's an actual whole document where they get into it in much more detail. This is just a summary.

MR. SIMPSON: Right.

MR. O'FLAHERTY: Yeah. I guess my point being, leaving aside the issue of whether there was any bias or not, in each of those filings that pre-dated 1996, those rate filings all overestimated third party liability loss costs, isn't that correct?

MR. SIMPSON: That's what this says and it's my understanding that that was almost universal within the auto insurance actuarial community at that time in Canada.

1 MR. O'FLAHERTY: Okay. I would submit to you that  
2 the Board ...

3 MR. WHALEN, Q.C.: Mr. Chairman, you know, I think  
4 we have to be clear that this witness is not an actuarial  
5 expert. We're talking about all actuarial things and the  
6 author of all these reports, Mr. Pelly, has been here and  
7 was available but, you know, you can carry on to the  
8 extent that you're comfortable, but we're just  
9 regurgitating other people's things, expert's reports with  
10 a non-expert, so.

11 MR. O'FLAHERTY: Well, the actual topic that I was  
12 exploring was whether or not over the long-term period  
13 Mr. Pelly's actuarial advice has been reliable and ...

14 MR. WHALEN, Q.C.: It should have been put to Mr.  
15 Pelly in all fairness.

16 MR. O'FLAHERTY: I did put it to Mr. Pelly, Mr.  
17 Whalen. I did suggest it to him.

18 MR. WHALEN, Q.C.: Certainly not in these  
19 documents.

20 MR. O'FLAHERTY: Well, I did ask him about it. In any  
21 event, that's the topic and that's something that Mr.  
22 Simpson has testified to here today and he's the  
23 representative of FA.

24 MR. SAUNDERS, PRESIDING CHAIRMAN: I'll allow  
25 the questions, and if Mr. Simpson feels uncomfortable  
26 and if it's an area outside of your area of expertise, then  
27 certainly I'll leave it to you to indicate that, and as Mr.  
28 Whalen points out, and we do appreciate the fact you  
29 are not a trained actuary, but I'm not convinced though,  
30 Mr. Whalen, that the questions by Mr. O'Flaherty are in  
31 that area too deeply and I think we'll allow it to go on  
32 and see what happens.

33 MR. WHALEN, Q.C.: That's fine. I just want to point  
34 it out.

35 MR. SAUNDERS, PRESIDING CHAIRMAN: I  
36 understand.

37 MR. WHALEN, Q.C.: I'm comfortable (phonetic) with  
38 that.

39 MR. O'FLAHERTY: Mr. Simpson, when I reviewed the  
40 report, a review of the causes of the operating  
41 surpluses ... do you have some understanding of what  
42 that report was concerning?

43 MR. SIMPSON: Just on a very cursory basis from  
44 talking about it with my predecessor.

45 MR. O'FLAHERTY: Okay. And what is your  
46 understanding?

47 MR. SIMPSON: Of the report of ...

48 MR. O'FLAHERTY: The purpose of that report, yeah.

49 MR. SIMPSON: Of the analysis. The purpose of the  
50 report that was done for the Board? I really don't know  
51 what the purpose of it was other than to review the  
52 history of FA rate filings.

53 MR. O'FLAHERTY: Right, and wasn't it to determine  
54 why it was that there were surpluses being shown in  
55 the period 1997, 1998?

56 MR. SIMPSON: I think that's what in fact triggered the  
57 last hearing, was the concern in some quarters about  
58 surpluses.

59 MR. O'FLAHERTY: So when I looked at that report, the  
60 Board's actuary concluded that the loss costs were, and  
61 I'm quoting now from the report, "Consistently and  
62 significantly lower than the projected values in the  
63 filings that I've indicated, 1992, 1994, 1995 and 1996."  
64 Okay, now let's ... if we assume that that conclusion is  
65 correct, I want to ask you why should the Board place  
66 reliance upon Mr. Pelly's report when the Board's  
67 actuaries have concluded that those, in those four rate  
68 filings, the loss costs were consistently and  
69 significantly underestimated and the 1997 rate filing was  
70 rejected and we know now that the 2001 rate filing ...

71 MR. WHALEN, Q.C.: Can you tell us where you're  
72 reading from, Mr. O'Flaherty?

73 MR. O'FLAHERTY: I'm sorry, I'll start again.

74 MR. WHALEN, Q.C.: You're reading from the report, I  
75 guess.

76 MR. O'FLAHERTY: No, I'm not, I'm reading from my  
77 notes, I'm sorry, Mr. Whalen. The report of, on the  
78 review of causes of operating surpluses, we've only  
79 had put into evidence, which is what, the Executive  
80 Summary of the findings, okay.



1 MR. WHALEN, Q.C.: Okay. Well then ...

2 MR. O'FLAHERTY: Fair enough?

3 MR. SIMPSON: Yeah.

4 MR. O'FLAHERTY: Do you want me to get a copy of  
5 the report? Do you have a copy of that report?

6 MR. WHALEN, Q.C.: If we had the ... just as long as  
7 we're reading from it and we ...

8 MR. O'FLAHERTY: I don't have a copy of the report  
9 with me. Do you have a copy there?

10 MS. NEWMAN: Are you going to be referring to other  
11 sections?

12 MR. O'FLAHERTY: No, just that, just one section of  
13 the report.

14 MS. NEWMAN: I don't require the rest of it unless  
15 other counsel does.

16 MR. SAUNDERS, PRESIDING CHAIRMAN: The  
17 Executive Summary is all you're referring to, is it?

18 MR. O'FLAHERTY: No, the quote is not from the  
19 Executive Summary, so perhaps I could have a copy of  
20 the report. Sorry, Mr. Chairman. Sometimes when you  
21 try to go quickly it actually slows the process.

22 MR. SAUNDERS, PRESIDING CHAIRMAN: More  
23 hurry, less speed.

24 MR. O'FLAHERTY: Exactly.

25 MR. WHALEN, Q.C.: I think I've found the paragraph  
26 if it'll help somebody that, if you want a copy ...

27 MR. SAUNDERS, PRESIDING CHAIRMAN: Is that on  
28 page 14? No?

29 MR. WHALEN, Q.C.: Does the witness have the  
30 document?

31 MR. O'FLAHERTY: Well, I think what I'll do is I'll just  
32 refer, Mr. Whalen has pointed me to page 15. It's  
33 essentially the same.

34 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

35 MR. O'FLAHERTY: This is the paragraph which  
36 begins, "With the benefit of hindsight."

37 MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah.

38 MR. O'FLAHERTY: Can you just read that for us,  
39 please?

40 MR. SIMPSON: "With the benefit of hindsight," this is  
41 from page 15 of the 1999 report, "we have found that  
42 the filings made in 1992 through 1995 appear to have  
43 significantly overestimated the loss costs for private  
44 passenger third party liability (see previous section).  
45 The 1996 filing may have overestimated as well but the  
46 loss experience that stems from that filing is not mature  
47 enough to evaluate this as yet."

48 MR. O'FLAHERTY: Okay, that's fine, Mr. Simpson.  
49 Now, again, you know, I realize you weren't present in  
50 Facility Association at that time but in your evidence  
51 you have submitted that the FA's filing should be  
52 accepted over the Board's filing, sorry, over the Board's  
53 actuary opinion as to the appropriate rates. Now, the  
54 question I have for you is, given this history of  
55 consistent overestimation, and I'm not suggesting  
56 there's a systematic bias or there's any mala fides  
57 intended, but given this pattern of significant  
58 overestimation in the years outlined there as well as in  
59 1997 and a significant underestimate in 2001, what  
60 confidence or comfort can the Board take from Mr.  
61 Pelly's actuarial work as opposed to the Board's  
62 actuarial work?

63 MR. SIMPSON: I think that first off I'd like to ask, mal  
64 ... you used the word ...

65 MR. O'FLAHERTY: Bad faith.

66 MR. SIMPSON: Bad faith, alright.

67 MR. O'FLAHERTY: I'm not suggesting there's bad faith  
68 involved, okay. I'm suggesting, just looking at the  
69 results, there appears to be a pattern here and I'm  
70 asking you in light of that pattern how the Board can  
71 take comfort in relying upon Mr. Pelly's advice today.

72 MR. SIMPSON: Well, I think there's a few things here  
73 that are relevant. One is from my understanding of  
74 actuarial practice, and we've heard that it's some art,  
75 some science, you don't consider past financial results,  
76 that's inappropriate, so I don't think that the past  
77 financial results are particularly relevant. You do it on

1 a going forward basis. There's been years where  
2 Facility Association has incurred a surplus or an  
3 excess, years when it's incurred a deficiency. We're not  
4 here to recover any past losses, that's for sure. This is  
5 only going forward exercise, trying to get to the rate  
6 level to break even, zero percent profit provision where  
7 we've ... you know, and we use Mr. Pelly in all  
8 jurisdictions. The actuarial practice was put to tender  
9 last year for Facility Association, reviewed thoroughly  
10 by the Actuarial Committee, and the Association has  
11 every confidence in his work and I think that in terms of  
12 me saying why the Board should take Mr. Pelly's  
13 evidence over Ms. Elliott's and her firm's, that's not for  
14 me to say. That's for the Board to decide. They've  
15 heard all that evidence. I haven't heard it all. I heard a  
16 lot of it, read all the transcript, but, you know, if our  
17 Actuarial Committee and our board thought that there  
18 was a more capable actuary out there, presumably we'd  
19 be here with somebody more capable as a result of the  
20 process we went through last year, so I don't think I  
21 really have anything further to add to that other than  
22 this is the direction the board has been given, Mr. Pelly,  
23 and he's doing the best that he and his firm can.

24 MR. O'FLAHERTY: Okay, thank you. I want to turn  
25 now to the issue of cross subsidization.

26 MR. WHALEN, Q.C.: Maybe I can get that document.

27 MR. O'FLAHERTY: I'm sorry, Mr. Whalen.

28 MR. WHALEN, Q.C.: Otherwise I'll be in trouble with  
29 Mr. Stamp.

30 MR. O'FLAHERTY: I want to turn now to the issue of  
31 cross subsidization. Are you familiar with what I mean  
32 by that term?

33 MR. SIMPSON: If you ...

34 MR. O'FLAHERTY: In the context of this particular  
35 hearing.

36 MR. SIMPSON: If you're talking about cross  
37 subsidization between those insured through Facility  
38 Association and the voluntary marketplace?

39 MR. O'FLAHERTY: Yes.

40 MR. SIMPSON: Then yes.

41 MR. O'FLAHERTY: Okay, and can you please explain  
42 for me when Facility Association is suggesting that  
43 there is a cross-subsidization occurring between the 96  
44 percent and the 4 percent, what do you mean by that?

45 MR. SIMPSON: Well, if our rates are inadequate, the  
46 premiums would collect on behalf of the member  
47 companies. They're not adequate to cover the losses.  
48 In a nutshell, the Board has a requirement under the  
49 plan of operation at the end of each fiscal year to  
50 determine if there is to be an assessment or a  
51 distribution in a given jurisdiction. If there is an  
52 assessment, that goes out to the member companies.  
53 The member companies tell me that the source of funds  
54 they have for that is their customers in the voluntary  
55 market, so that's what I mean by cross-subsidization.

56 MR. O'FLAHERTY: Okay.

57 MR. SIMPSON: Now, again, the power for Facility  
58 Association to impose and to collect these assessments  
59 is a statutory power, is it not?

60 MR. SIMPSON: In the sense that the plan is identified  
61 in the statute.

62 MR. O'FLAHERTY: Yeah.

63 MR. SIMPSON: I don't have the detailed knowledge of  
64 the statute.

65 MR. O'FLAHERTY: Okay, no problem. In Section  
66 100(1)(j), indicates that the Association may pass  
67 bylaws relating to its affairs and consistent with this  
68 Act or the regulations imposing assessments on  
69 members of the Association for the purpose of meeting  
70 the operating costs of the Association and the plan and  
71 providing for the collection of those assessments. So  
72 in other words, the legislation in this province allows  
73 you to set up in your bylaws the power to do this.

74 MR. SIMPSON: We don't have bylaws, we have  
75 articles of association, but that's where the ... it's Article  
76 5 talks about the basis for sharing and the  
77 responsibilities of the board.

78 MR. O'FLAHERTY: Okay, so this then is, again, part of  
79 the statutory scheme for operating an automobile  
80 insurance company in the province.

81 MR. SIMPSON: That you're going to be subject to, or  
82 may be subject to those assessments, that's correct.

1 MR. O'FLAHERTY: Depending on the financial results  
2 of Facility Association in a given year.

3 MR. SIMPSON: That's correct.

4 MR. O'FLAHERTY: Okay, so you're indicating that you  
5 were told by members that this amount must somehow  
6 then be borne by the, by the regular market. Sorry, I  
7 won't call it the regular market, the voluntary market?

8 MR. SIMPSON: Well, presumably the companies have  
9 two sources of funds, their owners or their customers.

10 MR. O'FLAHERTY: I just want to focus on what  
11 you've been told, okay.

12 MR. SIMPSON: Okay.

13 MR. O'FLAHERTY: You say you've been told by your  
14 members specifically that it is the drivers in the regular  
15 market, or voluntary market that bear this cost  
16 eventually?

17 MR. SIMPSON: That is correct.

18 MR. O'FLAHERTY: Okay, can you explain exactly how  
19 this works in practice?

20 MR. SIMPSON: I think you'd have to ask the member  
21 companies that. I'm not familiar with how they do their  
22 business.

23 MR. O'FLAHERTY: Okay, so you don't know how this  
24 works in practice?

25 MR. SIMPSON: I haven't been a party to it, no.

26 MR. O'FLAHERTY: Okay, do you know if member  
27 companies are permitted to impose surcharges on  
28 drivers in the voluntary market?

29 MR. SIMPSON: To the best of my knowledge, not in  
30 this country, no. Surcharges to recoup the  
31 assessments?

32 MR. O'FLAHERTY: Exactly, surcharges to recoup  
33 assessments.

34 MR. SIMPSON: That has been done in some US  
35 jurisdictions to my knowledge, but ...

36 MR. O'FLAHERTY: But it's not lawful in Canada?

37 MR. SIMPSON: Whether it's lawful or not, I don't  
38 know, I believe it's not been done in practice. I have  
39 never heard of it being done.

40 MR. O'FLAHERTY: Okay, do you have any specific  
41 knowledge of insurers in this jurisdiction filing rate  
42 applications that include a provision for recouping  
43 these assessments?

44 MR. SIMPSON: No, I don't.

45 MR. O'FLAHERTY: Okay, now, do you have any  
46 specific information about this particular topic?

47 MR. SIMPSON: Specific to the individual member  
48 companies?

49 MR. O'FLAHERTY: Yeah, how this might work.

50 MR. SIMPSON: Only in a very general sense, when  
51 somebody is setting their prices for anything, whether  
52 it's insurance or anything else, the price is set to  
53 presumably cover costs, and to generate a provision for  
54 profit, you know, as we talked about earlier, and the  
55 money has to come from somewhere.

56 MR. O'FLAHERTY: Okay, well perhaps I'll address that  
57 then further with other witnesses. Can I ask you then,  
58 if we go back to that exhibit you filed, which was DJS-2,  
59 which is the Facility Association residual market  
60 summary of financial results for 1986 to September 2002,  
61 do you have that?

62 MR. SIMPSON: Yes.

63 MR. O'FLAHERTY: Now, if you just look at this  
64 document on a big picture basis, does this indicate that  
65 overall since the commencement of operations in this  
66 province, the effect of Facility Association's operations  
67 have had a positive or negative impact on the  
68 members?

69 MR. SIMPSON: Based on this illustration, and of  
70 course, the Superintendent's pre-filed evidence that  
71 members incur costs roughly equal to 5 1/2 percent. I'm  
72 not sure that 5 1/2 percent number is accurate, but we'll  
73 take it. I think that based on that, it's been slightly  
74 positive, to the nature of about 2 1/2 percent, but just to  
75 reiterate, that does not include a cost of capital, it does  
76 not include any notion of opportunity cost, which is  
77 hard to quantify but real for any business. It does not  
78 incorporate any, it doesn't make any attempt at time

1 value of money, so when you, you know, really got into  
2 it, whether they'd be any money ahead, I'd be doubtful.

3 MR. O'FLAHERTY: Okay, just looking at the figures  
4 though, and leaving aside these other considerations  
5 that you may believe are relevant, or the member  
6 companies may, would you agree that overall the  
7 operations of Facility Association have had a positive  
8 impact on member companies in this jurisdiction?

9 MR. SIMPSON: To a very minimal degree.

10 MR. O'FLAHERTY: Okay, now to that degree, and in  
11 the years that there is a positive impact, have your  
12 member companies told you how they might then be  
13 dealing with the residual market's contribution to, or  
14 subsidization of the other market, that is the regular  
15 market, do you have any information regarding that?

16 MR. SIMPSON: In terms of what they do with that  
17 money, how they operate?

18 MR. O'FLAHERTY: You've indicated that if there are  
19 losses they have to be borne by the persons who are in  
20 the regular market. If there are gains from the residual  
21 market, do you have any information as to what impact  
22 that has on drivers in the regular market?

23 MR. SIMPSON: I think, you know, to a very minimal  
24 degree, I mean what's \$5 million against all that's been  
25 written in the province in the last 18 years. You know,  
26 I'm not sure that, you know, that has a significant  
27 impact on the voluntary market, so where that money  
28 goes in comparative auto insurance markets, the  
29 company has done a pretty good job of beating  
30 themselves over the head.

31 MR. O'FLAHERTY: Well, I'm not accepting that your  
32 \$5 million figure is correct, okay, I'm just asking you  
33 have you any information from your members as to  
34 what happens when there is a positive result?

35 MR. SIMPSON: Not directly, no.

36 MR. O'FLAHERTY: No, you don't, okay. And isn't it  
37 also accurate to say that the financial results of the  
38 Facility Association impact the members of Facility  
39 Association in accordance with the law of the Province  
40 of Newfoundland and Labrador?

41 MR. SIMPSON: That's correct.

42 MR. O'FLAHERTY: So this is a legal obligation that's  
43 placed upon them in any event.

44 MR. SIMPSON: Yes.

45 MR. O'FLAHERTY: And they would know that going  
46 in before they entered into the business in  
47 Newfoundland and Labrador?

48 MR. SIMPSON: Presumably, if they didn't know they'd  
49 find out very quickly.

50 MR. O'FLAHERTY: Correct, can you tell me, if we look  
51 again at this document, and I'm almost finished now,  
52 Mr. Simpson, when it indicates in the column which  
53 says "Assessment to/from Members".

54 MR. SIMPSON: Right.

55 MR. O'FLAHERTY: Are these amounts in every case  
56 actual paid amounts, either to or from the members?

57 MR. SIMPSON: That's my understanding, it's money  
58 that's changed hands in a sense that when we have an  
59 assessment, as we did this year, the members sent us  
60 cheques.

61 MR. O'FLAHERTY: Right, and is your evidence that in  
62 each case where there is an assessment against a  
63 member, you receive cheques, and in each case where  
64 there are distributions, you write cheques?

65 MR. SIMPSON: That's correct.

66 MR. O'FLAHERTY: Okay, and can we tell from looking  
67 at this particular document how many years in which no  
68 assessments have been made?

69 MR. SIMPSON: From my understanding of this  
70 document, no assessments or distributions were made  
71 in 1986, '87, '88, '89.

72 MR. O'FLAHERTY: Yes, so you said the question  
73 better than I did, so no assessments or distributions at  
74 all in four years.

75 MR. SIMPSON: Right.

76 MR. O'FLAHERTY: And how many years were  
77 distributions made to members?

78 MR. SIMPSON: Ten.

MR. O'FLAHERTY: And how many years were assessments made against members?

MR. SIMPSON: Three.

MR. O'FLAHERTY: Bearing in mind if things weren't as volatile as they are, we'd want to distribute something to them every year to cover their costs that have been identified earlier, so we would expect, all things, you know, unfolding as they should, to see a distribution every year.

MR. O'FLAHERTY: Okay, now I want to ask you some questions regarding the servicing carriers and whether or not they are making money on processing the FA's business. Now, I understood from your evidence that there are four servicing carriers in the Province of Newfoundland and Labrador?

MR. SIMPSON: That's correct.

MR. O'FLAHERTY: And I also understand from the evidence given at the hearing that those servicing carriers are paid a fee which is based on a percentage of the premium.

MR. SIMPSON: That's correct.

MR. O'FLAHERTY: And I believe it's set out in the filing as at page 10, as one percent, but in fact it is somewhat more significant than that in the plan of operation.

MR. SIMPSON: The plan of operation specifies three fees. There is an operating fee, a service fee, and a claims adjusting fee.

MR. O'FLAHERTY: Right.

MR. SIMPSON: Fees are broken down three ways.

MR. O'FLAHERTY: And we did have that evidence from Mr. Pelly, so ...

MR. SIMPSON: Well, the plan is on the website for everybody to take a look at it.

MR. O'FLAHERTY: Oh yes, it's public information, I agree, and are those expenses calculated on the basis of the average premium volume, or sorry, as a percentage of premium volume?

MR. SIMPSON: As a percentage of premium volume, that's correct.

MR. O'FLAHERTY: Okay, and is the average premium per vehicle higher in the FA book of business than it is in the regular market?

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Okay, and does that have any impact on the expense loading that we're talking about here, vis-a-vis their regular business?

MR. SIMPSON: I really don't know the answer to that, in other words, there's additional cost typically that result from being a servicing carrier, I don't think you make a direct comparison ...

MR. O'FLAHERTY: Okay.

MR. SIMPSON: ... between the cost of servicing voluntary market business and the cost of servicing FA business. I'm sure the servicing carrier representative will be able to address that more fully.

MR. O'FLAHERTY: No problem. The amounts that are determined under the plan of operation, are those amounts determined based on consultation with servicing carriers?

MR. SIMPSON: Those have historically been based on a multi-stakeholder consultation, so we have an accounting and statistical committee, typically made up of people, CFO types, or people at that level, and they will or have asked the servicing carriers for information and then they view that through the lens of, you know, what they think it costs to run, and are those reasonable, so we get back to ... and that committee, like our board, like every other committee pretty much, of company people have servicing carrier and non-servicing carrier reps, and, you know, basically they're helping their competitors set their prices, so it's a powerful motivation, I think, to get it pretty close.

MR. O'FLAHERTY: Okay, and I understand from your evidence that one of the servicing carriers recently complained to you that the level of profit being realized was close to or right on the break even level for that company.

MR. SIMPSON: This was a servicing carrier, a representative from a servicing carrier on our board that

1 spoke to me last year, that does not operate in this  
2 province.

3 MR. O'FLAHERTY: Okay, to your knowledge, do the  
4 servicing carriers in this particular province make  
5 money on writing Facility Association business?

6 MR. SIMPSON: I have no knowledge of that. I do  
7 know that I have not received a single request to  
8 become a servicing carrier for Facility Association in  
9 the 18 or so months that I've had this role, so it would  
10 seem to me from a common sense standpoint, if it was  
11 a real money making proposition, other people would  
12 be trying to sign up for it.

13 MR. O'FLAHERTY: Have you received any requests to  
14 discontinue being a servicing carrier from any of the  
15 four servicing carriers in this province?

16 MR. SIMPSON: No, the number has been stable in the  
17 last 18 months.

18 MR. O'FLAHERTY: Okay, and for how long has that  
19 number been stable in Newfoundland?

20 MR. SIMPSON: I don't know.

21 MR. O'FLAHERTY: You don't know that, okay. The  
22 document that you entered with respect to the age  
23 comparison that was broken down, I just wanted to ask  
24 you, when we looked at the numbers ...

25 MR. SIMPSON: Is this info number four?

26 MR. O'FLAHERTY: I'm sorry, yes, information number  
27 four, and perhaps I'm missing something, but if you  
28 look at the first cohort of information, the 1999  
29 information?

30 MR. SIMPSON: Yes.

31 MR. O'FLAHERTY: As I understood it, you were  
32 suggesting that the numbers underneath the 7,146 were  
33 actually encapsulated in the 7,416, and that applied to  
34 all of the other numbers.

35 MR. SIMPSON: That's my understanding.

36 MR. O'FLAHERTY: Just, you know, briefly, when I  
37 look at the bottom two numbers, the 564, and the 369?

38 MR. SIMPSON: Yes.

39 MR. O'FLAHERTY: They appear to exceed the over 65  
40 number of 720.

41 MR. SIMPSON: Well, I think that, you know ...

42 MR. O'FLAHERTY: I'm just wondering if you have a  
43 correct understanding of the chart because if the 720  
44 included everybody over 70 and 75, wouldn't that  
45 number be greater than the 800 and ...

46 MR. SIMPSON: No, it wouldn't because the 564, when  
47 it says over 70, that's ... if I had a white board here I'd  
48 probably be able to get to it, but when it says over 70,  
49 that 564 ...

50 MR. O'FLAHERTY: Okay, includes the 369.

51 MR. SIMPSON: It includes the 369, that's 70 till death,  
52 75 till death.

53 MR. O'FLAHERTY: Okay.

54 MR. SIMPSON: So if you were to go 80 till death you'd  
55 see a smaller number there.

56 MR. O'FLAHERTY: No problem, I misunderstood.

57 MR. SIMPSON: Alright.

58 MR. O'FLAHERTY: Thank you, now another topic I  
59 wish to ask you about is the determination, or we'll say  
60 the preparation of the rate application and the approval  
61 process, you averted to that briefly in your evidence  
62 this morning.

63 MR. SIMPSON: Yes.

64 MR. O'FLAHERTY: Now, I understood from Mr. Pelly's  
65 evidence that FA basically operates on an annual cycle  
66 for the purpose of its rate files?

67 MR. SIMPSON: For the purpose of its rate reviews and  
68 analysis.

69 MR. O'FLAHERTY: Okay.

70 MR. SIMPSON: That's different than the filing, but  
71 certainly the analysis is done on an annual basis, at  
72 least, and sometimes more frequently if it's deemed  
73 warranted.

1 MR. O'FLAHERTY: Am I correct in saying that the AIX  
2 for the previous year will be received in about May of  
3 a given year?

4 MR. SIMPSON: Well the AIX is released from May  
5 through December, but Mr. Pelly tells me that the  
6 information that he needs to begin his actuarial work is  
7 typically available in late May.

8 MR. O'FLAHERTY: Okay, yes, I thought the date of  
9 May was mentioned in his evidence, and then  
10 subsequently you've described the process. A  
11 decision is taken by the board as to whether to go  
12 forward with a rate revision application.

13 MR. SIMPSON: With a rate filing in a jurisdiction.

14 MR. O'FLAHERTY: Okay, and I believe I asked you  
15 whether to your knowledge the Facility Association  
16 had ever brought forward such an application in  
17 Newfoundland on the basis of excess rates, and do you  
18 know the answer to that?

19 MR. SIMPSON: On the basis of?

20 MR. O'FLAHERTY: That the rates were too high?

21 MR. SIMPSON: I don't have the answer to that,  
22 whether Facility has ever filed for a decrease in this  
23 jurisdiction. I probably have the records back at the  
24 office.

25 MR. O'FLAHERTY: Would you mind making a call and  
26 finding out if that was the case?

27 MR. SIMPSON: I'd be pleased to do that.

28 MR. O'FLAHERTY: Thank you.

29 MR. SIMPSON: I know we have in some jurisdictions,  
30 I just don't know that we have in this one.

31 MR. O'FLAHERTY: Thank you, now as I listened to  
32 your evidence this morning, you mentioned on a couple  
33 of occasions that the fundamental premise of the rate  
34 filing is that it is not designed to recover amounts that  
35 are already paid out in the past, would you agree with  
36 that statement?

37 MR. SIMPSON: It's not, you know, the past is gone,  
38 it's not designed to recover operational losses from past  
39 years.

40 MR. O'FLAHERTY: So that money is gone.

41 MR. SIMPSON: That's right.

42 MR. O'FLAHERTY: Okay, is that a consideration, to  
43 your knowledge, that is taken into, that is taken into  
44 consideration ... that's an awkward way of asking you  
45 the question ... is that an issue that's taken into  
46 consideration by the board of directors, to your  
47 knowledge, in terms of the timing of a rate filing  
48 application?

49 MR. SIMPSON: In terms of the timing?

50 MR. O'FLAHERTY: Yes.

51 MR. SIMPSON: It might factor ... I don't have any  
52 direct recollection of that taking place, you know,  
53 saying, hey, we lost X million in this jurisdiction or that  
54 jurisdiction last year, we need to get a filing in there,  
55 but the financial results are an imperfect indicator, but  
56 they may be an indicator of deteriorating experience in  
57 a jurisdiction which would then cause the board to  
58 direct Mr. Pelly to do an additional analysis, perhaps an  
59 interim analysis for a jurisdiction, so the financial  
60 numbers might flag a need, but beyond that, they're of  
61 limited value in the rate setting process.

62 MR. O'FLAHERTY: Okay, and do they influence the  
63 spread between the indicated rates and the proposed  
64 rates that are brought forward by Facility Association?

65 MR. SIMPSON: Not to my knowledge.

66 MR. O'FLAHERTY: Okay, and is pressure received  
67 from members within a given jurisdiction, because  
68 obviously the results can be different from one  
69 jurisdiction to another, to bring forward a rate filing, a  
70 rate revision application based on financial results?

71 MR. SIMPSON: Pressure, I don't think pressure is an  
72 appropriate word, but obviously if a, you know, and  
73 they know what's going on in their own books, so that's  
74 the first flag for them because they get their information  
75 a lot faster than we do, so typically you'll, I'll hear  
76 members occasionally voice concern over deteriorating  
77 results in a given jurisdiction and, you know, wonder  
78 what our rate filing plans are.

79 MR. O'FLAHERTY: Sure.

MR. SIMPSON: If it's a letter, in the past I have forwarded that, or brought that forward to the board, you know, as part of their deliberations, so it enters into the thought process, in other words, what are our needs, but again, that's not directed at rate level, it's more the timing and activity of the analysis and the filing.

MR. O'FLAHERTY: Okay, so then it can be a consideration for the timing and the analysis for the rate filing.

MR. SIMPSON: That's true.

MR. O'FLAHERTY: Okay, and do you know, to your knowledge, if it had an effect on moving the date back from the May 1st to the February 1st in this case?

MR. SIMPSON: I'm trying to remember that discussion because that goes back to last August. There was, it was ... we did that, brought the dates forward in Nova Scotia and New Brunswick as well, as I recall, and it's a general concern in the industry about the deteriorating auto insurance results in Atlantic Canada generally, and the need to move to rate adequacy as quickly as possible.

MR. O'FLAHERTY: Okay, I'm going to ask you some questions about the CLEAR rating system that you're proposing, or FA is proposing to implement in the Province of Newfoundland and Labrador.

MR. SIMPSON: I'm not very knowledgeable about the CLEAR system but I'll do the best I can.

MR. O'FLAHERTY: Okay, thank you. Would you agree that the main issue that the Board needs to consider is the impact that the imposition of this rating system will have on policyholders?

MR. SIMPSON: I think that's one issue. I think the impact on the marketplace generally is another one.

MR. O'FLAHERTY: Okay, as I understand the rate filing, and please tell me if I'm wrong, the impact is meant to be revenue neutral in this particular jurisdiction?

MR. SIMPSON: Overall, and that's the way we've approached it in all jurisdictions where we filed for it. This is only one of two that has not approved it yet.

MR. O'FLAHERTY: Okay, but I am correct in suggesting that it's meant to be revenue neutral to the policyholders.

MR. SIMPSON: That's correct, if we did it independent of a rate filing, you know, we'd say this is the impact on the rates is zero percent.

MR. O'FLAHERTY: Okay, now the Board's actuary has recommended the imposition of caps on resulting premium changes that would come about from an imposition of CLEAR, do you agree with that statement?

MR. SIMPSON: That's my recollection, yeah.

MR. O'FLAHERTY: Okay, now why would FA have any concern, or do they have any concern about the imposition of caps?

MR. SIMPSON: I think it's, there's a couple of issues we've talked about earlier, you know, in terms of what is the real dislocation in terms of, you know, do people go back to the voluntary market or are they still in, or insured through Facility. I think from, it's hard to make, real hard to make a business case for ... and certainly that was the position of the Ontario regulator, and that such, there was such a small percentage outside of ... as I recall their cap was 35 percent they'd use in a voluntary market ... that there was such a small percentage of Facility business outside that cap, that it just didn't make business sense to cap, you know, in terms of programming costs and everything, and the reality of what happens in the marketplace, to cap those dislocations at the 35 percent for Facility, and as I understand the percentage in Ontario, as I recall, that would have been outside that 35 percent is higher than it is here.

MR. O'FLAHERTY: Yes, but I guess the fundamental question is that Facility Association has undertaken a dislocation study in this particular province, that's correct, isn't it?

MR. SIMPSON: Yes.

MR. O'FLAHERTY: And the results of that dislocation study are attached to your correspondence dated September 5th, 2002.

MR. SIMPSON: Right.



MR. O'FLAHERTY: And I know you're not an expert in this area, but if the Facility Association is satisfied that there will not be dislocation, in other words, that there will not be increases to the policyholders' premiums that are in any way significant, what would be the difficulty with imposing a cap on any increases?

MR. SIMPSON: I think from a practical standpoint, it's the programming costs that will be incurred by the servicing carriers relative to the small number of risks that they'd impact.

MR. O'FLAHERTY: Now, in this province, and if it's the same situation in Ontario, please let me know, but in this province the assessment of the impact on consumers has been based on a policy in force file that is now more than two years old, isn't that correct?

MR. SIMPSON: I believe that's the case.

MR. O'FLAHERTY: December 2000.

MR. SIMPSON: December 2000, I thought that was the date, I was just going to look it up, yeah.

MR. O'FLAHERTY: Okay, now I think you'll accept that there's a risk that this information is too dated to be considered reliable at this stage.

MR. SIMPSON: I suppose that's possible, given the turnover in the Facility Association book, if you will, across the four servicing carriers. Whether you ran the dislocation analysis again and found anything materially different, I have no idea. I'd be surprised if you did, given the overall population of Facility in that it's not going to be the same risks exactly, but vehicles and drivers are similar risks ... or vehicles in this case with a similar risk profile, so in other words, if we asked the servicing carriers, the board of directors (inaudible) servicing carriers update the dislocation analysis with newer information, would it look very much different than this one, I'd be surprised.

MR. O'FLAHERTY: But to your knowledge, did the Ontario Board have to grapple with that problem in coming to their determination?

MR. SIMPSON: I don't recall. I believe we used the same one, but it was done earlier. I forget this one ... we went to CLEAR for private passenger in Ontario, but it was sooner, so the analysis was a little fresher.

MR. O'FLAHERTY: Okay.

MR. SIMPSON: When we implemented CLEAR in Ontario.

MR. O'FLAHERTY: Okay, and the Board's actuary has recommended also a phase in of any changes in this particular case, and I believe that that's the issue that Mr. Whalen raised with you, whether Facility Association would have a preference between a phase in and doing the new dislocation study.

MR. SIMPSON: I haven't talked to the servicing carriers about it, but I would suggest from a ... if that is the issue at hand, because I think I mentioned earlier, I presume if they've done one dislocation analysis and a program to do that, they'd have the program to do it again, but to develop, presumably significant programming, I'm sure the servicing carrier representative would be interested to speak to this topic, to develop a new program to develop that phase in approach, I think would be cost prohibitive given the number of risks that it impacts.

MR. O'FLAHERTY: Okay, but if there were such a choice, FA would prefer recalculating the off balance factor based on an updated file rather than this phase in ...

MR. SIMPSON: Yeah, look at the dislocation analysis and do the ... yeah.

MR. O'FLAHERTY: And do the recalculation, okay, so we're clear on that.

MR. SIMPSON: I don't think either one are particularly necessary or desirable, given the lesser of two evils, that would be it.

MR. O'FLAHERTY: No, I understand, okay. In terms of the accident and conviction surcharges, to your knowledge, has there been any actuarial analysis of loss experience performed in support of these proposed changes?

MR. SIMPSON: To the best of my knowledge, no, and I think the filing says as much. These are modelled on what we use in Ontario, and we've had approved in New Brunswick, with the exception being the clean driver discount was moved to 15 percent, but this is an area within the rate filing that was developed by the rates and rules committee based on a little bit of what

1 we talked about, about clean ... or quote, unquote,  
2 "clean drivers insured through Facility", and what's  
3 going on in the voluntary marketplace. In other words,  
4 the conviction surcharge is now generally, as we're  
5 proposing, are much more gradual. At one time they  
6 were much more step-wise, you'd have three or four  
7 convictions perhaps before you encountered ... now it  
8 seems to be more one or two, and so we're trying to  
9 make that more gradual, and I think the key thing from  
10 a Facility Association standpoint, is that unlike some  
11 companies, we order, or require our servicing carriers to  
12 order a motor vehicle abstract at every renewal, so the  
13 idea, of course, is to get people out of Facility, so it's a  
14 little bit of a carrot and stick approach, to say, hey, you  
15 know, we're encouraging you to be a clean driver. If  
16 that is the reason you're in Facility is your driving  
17 record, we're encouraging you to clean that up and  
18 restore your eligibility for the voluntary market.

19 MR. O'FLAHERTY: Can you tell me whether or not the  
20 surcharges apply retrospectively when a person goes  
21 into Facility?

22 MR. SIMPSON: I don't understand what ... I'm sorry,  
23 by retrospectively.

24 MR. O'FLAHERTY: Looking back in time, so in other  
25 words, if I went into Facility next year, is the surcharge  
26 applied on how many accidents I've had outside of the  
27 Facility market as well as any within Facility?

28 MR. SIMPSON: That's correct, it's based on your  
29 driving experience, accident and conviction record, at  
30 the time that you apply.

31 MR. O'FLAHERTY: So you could be accepted into  
32 Facility and then they look at your driving abstract and  
33 surcharge your policy based on accidents you've had  
34 while you were a driver in the voluntary market?

35 MR. SIMPSON: I think at-fault accidents which  
36 actually show up on an Auto Plus Report, which is a  
37 database, but the convictions would show up on the  
38 Motor Vehicle abstract. I'm not sure what's on a Motor  
39 Vehicle abstract, but I assume accidents are on there as  
40 well, but I think probably ...

41 MR. O'FLAHERTY: I think so, yes.

42 MR. SIMPSON: Yeah, I don't know, but you'd probably  
43 see at-fault and not-at-fault, and of course, the  
44 surcharge only applies to at-fault accidents.

45 MR. O'FLAHERTY: Right, but do I have it correct in  
46 suggesting that it's not, you don't start with a clean  
47 slate in Facility and then it's only your accidents and  
48 convictions within Facility?

49 MR. SIMPSON: No, that's correct.

50 MR. O'FLAHERTY: So if you go into Facility as a  
51 result of your accident and conviction record, if you're  
52 one of those real bad drivers that, you know ...

53 MR. SIMPSON: Then that record will figure into the  
54 rate calculation that you'll pay for a Facility Association  
55 through one of our servicing carriers, that's correct.

56 MR. O'FLAHERTY: And how does the surcharge work  
57 in terms of just, if the policy is \$1,000, and you've got  
58 100 percent surcharge, what does that mean?

59 MR. SIMPSON: Well, I've never rated an automobile  
60 policy, so you probably don't want me to start now.

61 MR. O'FLAHERTY: No problem.

62 MR. SIMPSON: So, but there's a number of variables  
63 that go ... you start with your base rate, type of vehicle,  
64 age of driver, driving record, and all these things are  
65 calculated.

66 MR. O'FLAHERTY: Right.

67 MR. SIMPSON: And I'm sure your broker reps would  
68 be more than able to do a rate calculation for you when  
69 they come in.

70 MR. O'FLAHERTY: That's fair enough, I'll ask them.  
71 One of the last issues you referred to, and I'm trying to  
72 speed through this now, is the issue of affordability,  
73 you averted to that in your evidence.

74 MR. SIMPSON: I mentioned that perennially those, in  
75 my experience, those are the two issues that, about auto  
76 insurance that, at the time of purchase, most interest  
77 consumers, or are of most concern.

78 MR. O'FLAHERTY: Does the Facility Association have  
79 any mandate to provide affordable insurance?

80 MR. SIMPSON: No, we don't, our mandate is to make  
81 it available, and marketplaces get disrupted, excuse me,  
82 when regulators confuse that mandate with when to  
83 provide affordable insurance.

MR. O'FLAHERTY: The position of Facility Association is that the issue of affordability is not one within their particular area of responsibility?

MR. SIMPSON: I think it's a responsibility for everybody in the marketplace, and I referred earlier to our best efforts to run an efficient operation, you know, in terms of controlling our costs, for example, I think that that's a responsibility, but ultimately it's a statutory product, and in terms of the end cost to the consumer, that's pretty much in the hands of the government in terms of defining the statutory product, and the court system in terms of how much they're going to award based on that statutory policy.

MR. O'FLAHERTY: Okay, just one moment, Mr. Simpson. In your evidence you made reference to a practice which is now being undertaken in New Brunswick and I just want to refer to my notes now so that I have this correct ... the binder registry system.

MR. SIMPSON: Binder control registry, yes.

MR. O'FLAHERTY: Binder control registry.

MR. SIMPSON: Uh hum.

MR. O'FLAHERTY: And I understood from your evidence when I was trying to scribble it down furiously, that this was a one page document that's filled in for every application that's received?

MR. SIMPSON: It's not a one page document that's filled in for every application, it's a, I think there's 25 per tablet, and every time a broker or agent places somebody through Facility Association, they indicate that they've done so and why, and I think it fits about 25 risks per page.

MR. O'FLAHERTY: Okay.

MR. SIMPSON: When they complete the page they mail it in and my staff compiles the results.

MR. O'FLAHERTY: Is that a form document?

MR. SIMPSON: Pardon me?

MR. O'FLAHERTY: Is that a printed form document?

MR. SIMPSON: Printed form, yeah, we provide it to them, yeah.

MR. O'FLAHERTY: Can I get a copy of one of those documents, not a filled in one, but a blank one?

MR. SIMPSON: Yeah.

MR. O'FLAHERTY: Thank you, and with respect to the application for Facility Association coverage and temporary insurance coverage, is there another notation or form that is filled in at that stage?

MR. SIMPSON: Not to my knowledge. It's a statutory application, it's the same as any statutory application other than it indicates that it's a Facility Association policy.

MR. O'FLAHERTY: Just one second. Is that a requirement in this province to indicate that it's a Facility Association policy?

MR. SIMPSON: On the application, the liability slip, by requirement we sought and received approval from the Superintendent, it's a statutory document to include that information.

MR. O'FLAHERTY: Okay, so can I get a copy of that document as well?

MR. SIMPSON: Yes.

MR. O'FLAHERTY: Thank you, finally then, just to go back to the New Brunswick issue, I believe that your testimony was that the imposition of ... imposition is perhaps a harsh word, that the establishment of the binder control registry was by virtue of the request of the Board?

MR. SIMPSON: That's my understanding of the history of it, in the spring of 1997, the Public Utilities Board in New Brunswick requested that it be implemented, and as I indicated earlier, for a twofold purpose. One is to gather information, and the other is to make sure that people insured through Facility Association are placed through Facility Association as a result of a thoughtful process.

MR. O'FLAHERTY: Okay.

MR. SIMPSON: At the point of sale.

MR. O'FLAHERTY: I understood or made a note, and perhaps you can just correct me if I'm wrong, that Mr. Whalen suggested to you that there was a particular

1 rationale of the Board in approving this particular  
2 process.

3 MR. SIMPSON: Part of the rationale was a desire to  
4 lower the market share of Facility Association, and that  
5 goes to the deliberate process I just spoke of.

6 MR. O'FLAHERTY: Right, and do you have any, is that  
7 a matter of public record that that was part of the  
8 rationale of the Board?

9 MR. SIMPSON: I don't know.

10 MR. O'FLAHERTY: Do you know if it's contained in a  
11 Board order or a decision?

12 MR. SIMPSON: This, I have been given the thumbnail  
13 overview from my staff as to what the history of it is. I  
14 have not seen any documentation of it.

15 MR. O'FLAHERTY: So this is your information  
16 provided to you by your staff?

17 MR. SIMPSON: That's correct, that's my understanding  
18 from my staff.

19 MR. O'FLAHERTY: Okay, and that's their  
20 understanding of the Board's rationale?

21 MR. SIMPSON: Well, it's coming from somewhere.

22 MR. O'FLAHERTY: Okay, I don't have any further  
23 questions, thank you for your patience, Mr. Simpson.

24 MR. SIMPSON: Yeah.

25 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, it's  
26 near 1:30, and you don't want to start now, do you, Ms.  
27 Newman?

28 MS. NEWMAN: I could just ask a couple of questions.

29 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

30 MS. NEWMAN: Because I'm going to seek another  
31 undertaking on a particular document and it won't take  
32 more than two minutes.

33 MR. SAUNDERS, PRESIDING CHAIRMAN: Sure.

34 MS. NEWMAN: And then we can close for the day.

35 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, you  
36 do that.

37 MS. NEWMAN: And hopefully then I'll be able to  
38 consolidate some of my questions and I shouldn't take  
39 too long tomorrow morning. The point that I wanted to  
40 address today was in relation to the brochure that you  
41 spoke about on direct testimony with Mr. Whalen. You  
42 had said that Facility Association, through its staff, had  
43 prepared a brochure.

44 MR. SIMPSON: The staff in consultation with the  
45 Newfoundland and Labrador Operating Committee.

46 MS. NEWMAN: Okay, and is this a Newfoundland  
47 document then?

48 MR. SIMPSON: I think I mentioned this earlier, we did  
49 adopt it, or took a harmonized approach if you will,  
50 because the issues for the consumer are pretty much  
51 generally the same in all jurisdictions, so it's one that's  
52 being provided to Newfoundland Facility Association  
53 policyholders right now with their new and renewal  
54 business policies, available in agents' offices, but it's ...  
55 so in that sense it's a Newfoundland document, but it's  
56 not exclusive to Newfoundland and Labrador.

57 MS. NEWMAN: So it is provided to every insured  
58 through your new or renewal business, every time a  
59 policy or a proof of ...

60 MR. SIMPSON: That's correct, and it's available at, it's  
61 supposed to be anyway, available through every broker  
62 or agent's office.

63 MS. NEWMAN: Okay.

64 MR. SIMPSON: In other words, we directed our  
65 servicing carriers to include it with the new and renewal  
66 policies. We directed them, I think they're in bundles of  
67 25, to send a supply to every broker and agent they  
68 have a contract with, and presumably that's every  
69 broker and agent in the province, so that they have the  
70 information in their offices.

71 MS. NEWMAN: But you have no knowledge of  
72 whether they're actually sending it out, but just that  
73 they've been told to send it out.

74 MR. SIMPSON: We haven't done an audit of that  
75 practice, no, but that's a direction that we've given and  
76 for Atlantic Canada I think our print run to date is

1 somewhere around 110,000 brochures, so I would hope  
2 they're not sitting in boxes somewhere.

3 MS. NEWMAN: So the same direction was given to  
4 other provinces in Atlantic Canada as well?

5 MR. SIMPSON: Yes, Prince Edward Island, Nova  
6 Scotia, and New Brunswick, as well as Newfoundland.

7 MS. NEWMAN: Okay, and this wasn't circulated in  
8 Ontario or Alberta?

9 MR. SIMPSON: Not yet, it was developed with the  
10 foresight that should it be deemed necessary or  
11 appropriate to distribute it in Ontario, Alberta, or the  
12 Territories, that it's ready to go, that we need to, you  
13 know, fire up the printer and ... actually send our printer  
14 a cheque and get some more printed up and away we  
15 go.

16 MS. NEWMAN: I would like to have a copy of that  
17 brochure.

18 MR. SIMPSON: I think, I didn't bring a bundle in my  
19 suitcase, but I'm sure we've got some around.

20 MR. WHALEN, Q.C.: I had one, I was just looking for  
21 it, but yeah, we ...

22 MS. NEWMAN: So we can get a copy of that.

23 MR. SIMPSON: We put that on the website as well,  
24 you know, it's not an elegant website but we're trying to  
25 get as much information out there as we can.

26 MS. NEWMAN: Those are all my questions on that  
27 point and we can come back tomorrow if that's alright.

28 MR. SAUNDERS, PRESIDING CHAIRMAN: Do you  
29 have anything else before we close? Anyone? Mr.  
30 O'Flaherty? Mr. Whalen?

31 MR. O'FLAHERTY: No, Mr. Chairman.

32 MR. WHALEN, Q.C.: Well just there's a number of  
33 undertakings.

34 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, there  
35 are.

36 MR. WHALEN, Q.C.: We'll try to comply with those  
37 this evening and have them available first thing in the  
38 morning.

39 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, that  
40 will be fine, and we'll resume at 9:00 in the morning.  
41 Thank you very much gentlemen and ladies.

42 *(hearing adjourned to January 9, 2003)*