# MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA PUBLIC INSURANCE
2010 GENERAL RATE APPLICATION

Before Board Panel:

Graham Lane - Board Chairman
Eric Jorgensen - Board Member
Len Evans - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
November 9th, 2009

Pages 1801 to 1953

APPEARANCES

| | |
|---|---|
| Walter Saranchuk, Q.C. | )Board Counsel |
| Candace Everard | ) |
| Kathy Kalinowsky | )Manitoba Public Insurance |
| Raymond Oakes | )CMMG |
| Byron Williams | )CAC/MSOS |
| Nick Roberts (np) | )MUCDA |
| Donna Wankling | )CAA |
| Jerry Kruk | ) |
| Robert Dawson | )CBA/MBA |

TABLE OF CONTENTS

--- Upon commencing at 10:03 a.m.

THE CHAIRPERSON: Okay, good morning everyone. We're here for the beginning of closing argument and first one up is Ms. Everard.

Before I start, by the way, Ms. Brenda Bresch is sitting in for Gerry Gaudreau this morning.

Ms. Everard...?

MS. CANDACE EVERARD: Thank you, Mr. Chairman.

We have now completed the evidentiary component of this public hearing with respect to MPI's Application to the Public Utilities Board for approval of its base rates and premiums charged for compulsory vehicle insurance; that is, rates for service for the 2010/'11 insurance year, which would take effect on March 1st, 2010.

As Board counsel, Mr. Saranchuk and I take no position on the merits of any part of the Application by the Corporation, or any of the positions taken by the other parties. Our role is to summarize the matters that this Board may wish to consider in this Proceeding.

For 2010/2011 the Corporation is seeking approval of rates which are based on no overall change in premiums. Experience-based rate adjustments are applied for ranging from minus 15 percent to flus -- plus 15 percent for individual classes, with the exception of mopeds and motor scooters, trailers, and off-road vehicles. For all vehicles other than motorcycles, trailers, and off-road vehicles, classification offset adjustments are applied, ranging from minus 16.7 percent to plus 5.7 percent to achieve revenue neutrality from rate group adjustments.

All adjustments are subject to an overriding cap of 20 percent, as set out in Board Order 148/'04, with the exception of mopeds, motor scooters, trailers, off-road vehicles, antique vehicles, and drive-aways, regarding which capping for rate changes has been established at 25 percent as per Board Order 156/'06.

There are no changes proposed to insurance uses in this Application. Similarly, there are no changes proposed to the Basic driver licence premiums and vehicle premium discounts which were approved by this Board in Order 98/09.

There is no change proposed to the fee amounts charged for services and transactions, though the Corporation proposes making late payment fees customer-based rather than policy-based, such that late payment fees will be charged once per customer per installment due date. There are no changes proposed in fees for permits or certificates.

With respect to the financial results of the Corporation, the updated financial picture for 2008/'09 and 2009/'10, which were the subject or prior years Rate Applications, are as follows.

With respect to the fiscal year ending in 2009, as reflected in TI.11, which is at Tab 5 of the Board's book of documents, Basic realized a net income of $7.7 million, including a transfer of $15.9 million from the Immobilizer Incentive Fund, or IIF. Basic's net income prior to this transfer was $8.2 million.

The net income of 7.7 million is compared to a projected net loss of 2.5 million last year, which included a $17 million transfer from the IIF and a $19.5 million net loss before the transfer. In other words, there was an improvement of 10.2 million in net income over that projected last year.

This change was attributable to an improvement in forecasted claims costs of 88.2 million comprised mainly of an 83.9 million implement in net claims incurred. Also, total expenses were 2.8 million less than forecasted. These improvements were offset in part by a decrease in projected investment income of 83.2 million. Those losses are attributed by the Corporation to three (3) factors:

Firstly, a realized loss on the equity portfolio of 35.5 million.

Secondly, a foreign exchange loss on hedged foreign investments of 20.2 million.

And thirdly, an impairment write-down of investments held of $24.6 million.

With respect to the fiscal year ending in 2010, the current year, as reflected in TI.12, which is at Tab 6 of the Board's book of documents, Basic is forecasted to have a net income of $11.5 million, which includes a transfer of $2 million from the IIF. Basic's forecasted net income prior to this transfer was $9.5 million. The net income of 11.5 million is compared to a projected net loss of $4.2 million last year, which included a nine hundred thousand dollar ($900,000) transfer from the IFF, and a $5.1 million loss before the transfer.

In other words, as at the time of the current GRA filing, Basic was projected to have net income of 11.5 million compared with a net loss of 4.2 million projected last year. This improvement was due to a combination of the following: A reduction in total earned revenue of 2.8 million, a decrease in net claims incurred of 27.9 million; an increase in total expenses of 2.7 million, and a decrease in investment income of

7.8 million.

The Corporation provided to the Board, by way of undertaking, its revised forecasted results for the current year entered as MPI Exhibit 14 in this proceeding. That report provides for a $23 million decrease in net income from that forecasted in the GRA filing or forecasted net loss of 11.5 million for rate-setting purposes, which includes a transfer of $2 million from the IIF.

Prior to this transfer there is forecasted for Basic a $13.5 million net loss. This is compared with projected net income of $9.5 million in the GRA filing, as reflected at TI.12 as the revised forecast for '08/'10. This change is due to a combination of an increase in forecasted total earned revenues of $1.4 million, an increase in forecasted total claims costs of thir -- $31.9 million, a reduction in forecasted total expenses of $1.8 million, and an increase in forecasted investment income of $5.8 million.

The Corporation has advised that a severe hailstorm struck southern Manitoba in August 2009 which will cost the Corporation $13.3 million net of reinsurance. The Corporation has also filed with the Board its second quarter report for the current year for the period ending August 31st, '09, which reflects net income from operations of $25.5 million which is 37 percent less than the Corporation's income for the same period last year of $40.3 million.

The second quarter report also reflects that current projections indicate that the Corporation is expected to realize a net loss of approximately eight hundred thousand dollars ($800,000) during the current fiscal year. And as I have already stated, Basic is expected to realize a net loss of approximately $11.5 million in the current year.

With respect to the fiscal year ending in 2011, the year of the Application, the projected operating results are reflected at TI.13 through TI.15, which are found at Tabs 7 through 9 of the Board's book of documents, and at Exhibit 14, which is the updated version of TI.15A. The Corporation is now projecting net income of $3.5 million for the year of the Application and there is no transfer from the IIF anticipated. This projection is about $5 million less than the $8.5 million in net income which the Corporation projected as at the filing of the GRA.

Total earned revenues for the year of the Application are currently projected to be $764.7 million, about 5.4 million less than the 770 million projection included in the GRA filing.

This year's Application assumes a 2.5 percent vehicle upgrade factor for the current year which reflects the renewal of the vehicle fleet through the disposal of older vehicles and the purchase of newer ones. As well, the Application assumes a volume factor representing growth in the number of vehicles insured of 2 percent.

Service fees and other revenues are expected to be 14 million in the year of the Application, which is a million dollar decrease from the current forecast for '09/'10.

Total claims costs which include net claims incurred, claims expenses, and road safety loss prevention expense -- expenses are expected to stay constant at 734 million, only about seven hundred thousand (700,000) less than the most recent forecast for the current year, though included in this forecast is an anticipated increase in claims costs of approximately $7 million due to the Personal Injury Protection Plan, or PIPP, benefit enhancements enact in -- enacted recently by Government for the victims of catastrophic injuries.

Total expenses are projected to be 115.6 million for the year of the Application, an increase of 2.6 million from the revised forecast for '09/'10 driven largely by an increase in operating expenses. The projected underwriting loss for the year of the Application is $984.9 million, while investment income is forecasted to be 88.4 million.

The result is that overall the Basic Insurance Program is expected to have net income of $3.5 million for rate-setting purposes.  This overall projected net income includes consideration of a forecasted zero percent rate change.

With respect to the outlook period, which consists of the fiscal years 2011/'12 through 2013/'14, we find projections at TI.15A in the GRA filing, updated at Exhibit 14, which years do not reflect any rate changes included in those projections, but the projections do reflect both upgrade and volume factor increases.

As reflected in Exhibit 14, the Corporation is projecting net income of $15.6 million in 2011/'12, net income of $37.6 million in 2012/'13, and net income of 57.7 million in 2013/'14.  These projections do reflect the introduction of the new Driver Safety Rating, or DSR System, and the effect of the DSR System upon vehicle and driver premiums, but they do not reflect any anticipated changes in claims costs as a result of the DSR.

The projections also reflect forecasted

savings resulting from the Business Process Review, or BPR Initiatives, but do not reflect any accounting changes from the adoption of International Financial Reporting Standards, or IFRS.

With respect to premiums, in the Application as filed, the average rate adjustment for each major vehicle class is as follows: For the private passenger class, a 0.2 percent decrease. For commercial vehicles, a 0.6 percent decrease. For public vehicles, a 2.5 percent increase. For motorcycles, a 5.7 percent increase. For trailers, a 3.8 percent increase. For off-road vehicles, a 16.7 decrease, which nets out to a zero percent overall change in rates.

After consideration of insurance use and territory and capping and balancing for experience rate adjustments, the results are modelled to assess the impact of various rate and classification changes.

In total, the vehicle population for the year of the Application is expected to be nine hundred forty-five thousand and twenty-nine (945,029) vehicles which yields the following requested rate changes:

Fifty point seven percent of vehicles will rece -- receive a rate decrease. Most decreases will be less than fifty dollars ($50).

Four point three percent of vehicles will receive no change in rates.

Forty-five percent of vehicles will receive a rate increase. The majority of increases will be less than fifty dollars ($50), however, 2.3 percent of vehicles will receive a rate increase of between fifty ($50) and a hundred dollars ($100). As well, less than 1 percent of vehicles will receive an increase of a hundred dollars ($100) or more.

Moving, then, to comments with respect to the Rate Stabilization Reserve, or RSR, we note that the stated purpose of the RSR is to protect motorists from rate increase made necessary by unexpected events and losses arising from non-recurring events or factors.

In its Order, 157/'08, the Board stated that it is in the public interest for a consensus to be reached as to how to set and amend the RSR range because that range is a major determinant in both rate and rebate decision-making.

Both MPI and the Board have a role in protecting the insurers future financial condition. At the next year's GRA the Board believes that this process would be best served if MPI again brings forward the idea of expressing RSR target levels in terms of minimum capital test or MCT ratios, but separating this from the specification of those target MCT ratios. In other words, progress towards redefining the RSR target range would best be addressed in two (2) distinct steps rather than one (1).

In response to this invitation the Corporation put forward a Dynamic Capital Adequacy Test, or DCAT, based approach which has been introduced by MPI as their preferred method for establishing an RSR target. The Corporation has strongly recommended that this Board adopt the DCAT approach as the most appropriate methodology for establishing the RSR target, stating its belief that this approach is the most appropriate tool for risk measurement for the basic plan over the risk analysis, Value at Risk, or VaR approach, and the MCT.

Currently, the DCAT used in not in line with Canadian actuarial standards due to the fact that it is missing balance sheet modelling, an actuary's opinion, and an MCT ratio. The Corporation has advised, however, that these components of an accepted DCAT will be possible by the next GRA.

The existing Board approved range for the year of the Application for the RSR was 75 to $114 million. This was based on the risk analysisk -- risk analysis/VaR approach completed in 2006 indexed by the growth in gross written premium. The Corporation provided a DCAT based approach found at AI.18.2 of the

Application, as well as an update to the risk analysis/VaR approach and MCT approaches for the year of the Application.

Based on the results of the analysis, the Corporation determined the following RSR target point and target ranges. The DCAT target point is a $185 million. The risk analysis VaR range is 102 million to 255 million. And the MCT range is 114 to $228 million.

Given the past year's poor investment environment, the Corporation MCT ratio fell from 70.6 percent to 7.26 percent caused by negative accumulated other comprehensive income, or AOCI, of $92.3 million and a loss on available for sale debt securities of $9.3 million.

The change in AOCI on the investment portfolio and actuarial adjustments to claims' reserves resulted in the major increase in the range determined by the risk analysis/VaR approach. This Board has heard from Doctors Hum and Simpson at this Hearing with respect to information that speaks to the differences in the objectives, scope, tools employed, and informational requirements of DCAT and risk analysis/VaR.

Both Professors Hum and Simpson preferred the continued use of the risk analysis and VaR approach for setting the level of the RSR versus the DCAT approach. Dr. Simpson stated that the risk analysis/VaR approach is more transparent, easi -- easily replicable and understood in terms of both of the nature of the calculations and the implied risk tolerance that is involved.

With respect to the DCAT utilized in this Application, Doctors Hum and Simpson provided extensive comments on the probability of each of the adverse scenarios utilized in the DCAT. Dr. Hum indicated that five (5) of the seven (7) adverse scenarios presented by the Corporation involved economic analysis that he found to be deficient.

Doctors Hum and Simpson noted that setting aside excess reserves for things that are very unlikely to happen is both publically and socially wasteful. Dr. Hum has noted that he hoped MPI would use the DCAT continually, but to do so creatively and in a more refined way in the future, indicating that it is as good a tool as any which should be extended to Extension and the entire Corporation.

Dr. Hum supported the concept of the use of adverse scenarios in the DCAT as a stress tester. Dr. Simpson further stated that the Corporation should continue to use the DCAT tool, suggesting that it should be utilized as a simulation exercise to generate a distribution of outcomes to measure the financial wellness of the Corporation, and that distribution would include implicitly both favourable and unfavourable outcomes.

Looking at the RSR balance historically, we see that as at the fiscal year ending 2006/'07 there was $161.3 million in the RSR including consideration of the IIF with no transfers from the other lines of business, being Special Risk Extension, or SRE, and Extension. For the year ending in February 2008 there was a balance in the RSR of $145 million after a $62.6 million rebate and -- and an accounting transitional adjustment reduction of 22.7 million. This was also including the IIF.

For the fiscal year ending in February 2009 the balance in the RSR was $136.9 million, including consideration of the IIF. For the year that will end in February 2010, the balance in the RSR is anticipated to be 123.4 million if the I -- or when the IIF is fully depleted. For the fiscal year ending in February 2011, it's anticipated that the RSR balance will be 126.9 million after a forecasted net income of 3.5 million to the Corporation.

For the fiscal year ending in February 2012, it's anticipated that there will be $142.6 million in the RSR, taking into account anticipated net income of $15.6 million in that year. For the fiscal year ending February 2013, it's anticipated that the RSR balance will be 180.2 million after projected net income of 37.5 million to Basic. For the fiscal year ending February 2014 it's anticipated that the RSR balance will be $237.9 million after net income of $57.7 million.

With respect to the overall financial wellness of the Corporation, it is noted in the Corporation's Annual Report that the Board of Directors of MPI approved transfers of $39 million in deemed excess competitive line retained earnings in March of 2007, to establish the Extension Development Fund, or EDF, and that an additional $31.7 million was transferred into that fund on July 1st, 2008. The EDF was used to defray the annual driver licensing project costs that flow through the Extension line of business. The balance in the EDF, as of the end of fiscal 2008/'09, was $59.4 million.

MPI has indicated that on March 1st, 2009, a further $21 million in competitive lines retained earnings was transferred into the EDF. In total, therefore, $91.7 million has been transferred into the EDF and the balance in that fund as at August 31st, 2009, was $77.3 million.

The competitive lines of business of the Corporation have approximately $152.3 million in retained earnings before transfers to the EDF, combined with $136.9 million in basic retained earnings, such that overall as of the close of the 2008/'09 fiscal year there was over $289 million in retained earnings in the Corporation.

The Corporation has declined to file with this Board any forecasts of retained earnings related to SRE and Extension to date, but has advised that it would consider doing so in the future.  If one excludes the committed retained earnings, including the $21 million transfer to the EDF on March 1st, 2009, and considers AOCI income -- pardon me, AOCI deficit of 118 million as at March 1st, 2009, the Corporation's net free retained earnings was $88 million.  With a recovery in equity markets during the current year the AOCI balance became a positive $2 million, which results in the Corporation's net free retained earnings increasing to 240 million.

Moving then to some comments with respect to cost allocation and in particular the Deloitte report that was filed with the Board, we note that in Board Order 150/'07 initially this Board ordered that MPI undertake a cost allocation review in consultation with the Board and file the results thereof at the next GRA.

We have heard from Richard Olfert, of Deloitte, as a witness in this proceedings, with respect to the cost allocation report that the Corporation filed. Mr. Olfert outlined five (5) guiding principles in relation to the cost allocathan -- allocation methodology being put forward by the Corporation.

Firstly, the methodology should be fair and reasonable. Secondly, it should be practical and efficient. Thirdly, it should be flexible and adaptable. Fourthly, it should be acceptable in a regulatory context. And, lastly, it should be consistent with industry standards.

There were two (2) objectives that Deloitte identified flowing from these five (5) guiding principles. Number 1, the assignability of costs should be maximized. And Number 2, there should be allocators identified that are practical and fair so that the basis of allocation would meet the criteria of the guiding principles.

The report categorized the Corporation as a service industry, or part of the service industry, meaning that most costs are incurred annually and some costs are incurred relating directly to serve specific customers such as claims costs, for example.

Mr. Olfert also testified that in MPI's

case, the allocation of costs that we are preoccupied with is across lines of business that are generally provided to the same customers.  Mr. Olfert spoke about the balance between complexity and accuracy and acknowledge that the proposed methodology needs to be something that can be put in place and remain in place for a period of time.

The proposed methodology incorporates a number of attributes to mitigate the risk of potentially increasing difficulty, including focussing on maximizing the assignment of costs and minimizing the requirement for allocation of costs, the purification of accounting units to facilitate cost assignment, continued due diligence on the part of the Corporation in its management views to ensure assigned cost categories remain purified, and minimizing the use of work effort measured allocators which can be considered more subjective when other options exist.

Mr. Olfert indicated that the methodology limited the use of work effort as a cost allocator what -- to where it was appropriate to do so, and that was suggested for only four (4) of the thirty (30) or so cost centres addressed in the methodology.  As the new Integrated Service Centres of MPI come on line, the Corporation has indicated that it would follow a framework template to undertake the accounting purification -- accounting unit purification process.

The main outcome of the Deloitte report was the cost allocation decision tree, found on page 30 of the report. The tree shows that between the Level A assignment and the Level B assignment to -- pardon me. The tree shows that between the Level A assignment and the Level B assignment, either to line of business or category of business, just under 90 percent of the Corporation's costs can be directly allocated into one (1) of the three (3) insurance lines of business or the non-insurance line of business.

The Level C allocation is designed to deal exclusively with those costs that must be split between the insurance and non-insurance categories of business. Just over $100 million of expense is allocated at Level C; that dollar amount based on 2009/'10 budget numbers, of which 87.9 million was allocated to the insurance operations and 12.9 million to non-insurance operation.

The distribution of how monies are allocated through the proposed cost allocation meth -- methodology is reflected on MPI's Exhibit 17.

The weighted call centre contact ratio was chosen as the allocator at Level C, where an allocation between insurance and non-insurance lines occur. It was identified as one of the biggest challenges that Mr. Olfert's team had, because these costs were not assignable and there was no particular causality between any individual dollar that was spent in a particular line, and the costs that are incurred in those categories deal with support services to customers in both categories of business.

Deloitte chose this approach over alternative approaches such as direct category of business full time equivalents, direct category of business salaries, and direct category of business by square feet of space.

Deloitte rejected the use of salaries as an allocator, as in its view insurance operations were being supported by information technology applications that supported the most complex functions of the organization, namely, insurance operations. Over $60.3 million in costs were allocated based on the weighted call centre ratio which addresses the rationale for the selection of the allocation approach chosen, as well as the results of the allocation base on the alternative methods.

With respect to the allocation of $52 million in corporate support service, the selected method allocates the highest percentage of costs to insurance operations of 92.1 percent, while alternative methods allocated between 85.6 to 87.2 percent to insurance operations.

At Level D of the Deloitte decision tree, over $159 million in costs are allocated between the insurance lines of business. Deloitte has recommended that these costs be allocated on the basis of net claims incurred versus premiums earned, due to the profit margin included in the competitive lines pricing. The impact of the chosen methodology on Basic can be found in the response to Interrogatory PUB/MPI-1-50(d).

Deloitte also proposed a similar framework for addressing the allocation of BPR costs. Mr. Olfert stated that in assessing each BPR project the same decision tree should be employed to consider projects one by one so that based on the essence of what is being accomplished through the process -- pro -- the project, pardon me, it can be determined to be either exclusively insurance, exclusively non-insurance, or a project that must be allocated on some basis. That said, the Corporation has not yet undertaken this process for the BPR initiatives.

As a result of the cost allocation methodology review certain costs which were funded by Driver and Vehicle Licensing, or DVL, and in particular costs related to the management of driver records which served both a driver licence and insurance purpose are proposed to be shared with insurance operations. In effect, the proposed methodology, based on the 2009/'10 preliminary budget, results in the $3.9 million more in expenses being allocated to Basic.

I'll turn then to a few comments regarding the International Financial Reporting Standards, or IFRS. In the coming year several elections will have to be made by the Corporation with respect to IFRS adoptions that will be brought forward at next year's GRA. The Corporation will be required to keep comparative financial information for the 2010/'11 year based on the adopted standards, and the new set of standards will be implemented effective March 1st, 2011.

The Corporation has indicated clearly that it is currently in the assessment phase of the IFRS implementation and had further information to consider before it could provide additional details as to the financial implications of IFRS to this Board.

With the complexity of IFRS relating to insurance Corporations the -- this Board has expressed interest in staying abreast of the potential impact of elections made by MPI over the coming year, as far as implications may exist for Basic ratepayers. MPI has indicated that it will consult with stakeholders, including the provincial controller, the auditors and the Auditor General, but was considering taking a broader view on consultation of the impact of the adoption of IFRS on ratepayers.

With respect to investment income as we know the Department of Finance has ultimate authority over MPI's investments, though MPI participates in an investment committee working group. MPI has an investment policy statement which is its guideline for realizing gains based on the level of unrealized gains, relative to the book value of its investments.

There is no question that 2008/'09 was a difficult year for investors, with MPI being no different and realizing only $4.6 million in investment income from its portfolio valued at over $2 billion. In contrast we can recall that in '07/'08, which was a good year, investment returns were received by the Corporation totalling over $125 million. We also know that investment income is a major component of the Corporation's income and offsets annual underwriting losses.

MPI is projecting approximately $88.4 million in investment income to Basic for the year of the application. The estimated underwriting loss for the same year is $84.9 million.

MPI has adopted previously the Aon recommended weightings for its investment portfolio consisting of 10 percent allocation to long-term bonds, 10 percent in Canadian real estate, 5 percent in private equity, and 5 percent in infrastructure, and is working to identify opportunities to acquire assets in each category.

The size of the Corporation's portfolio for the year of the Application is projected to be just over $2 billion, comprised of 75.5 percent in long-term bonds, 15.3 percent in equities, 3.1 percent in Europe and Far East equities, or EFE, 2.9 percent in cash and short-term investments, 2.5 percent in real estate, 0.4 percent in venture capital, and 0.4 percent in intra -- infrastructure. And that breakdown is found at Tab 15 of the Board's book of documents. The Corporation's investment portfolio is expected to grow to some $2.8 billion by 2013/'14.

As I had stated at the outset of my opening comments, in the year that ended in February 2009 the Corporation wrote down impaired investments to the extent of about $24.6 million. As at August 31st, 2009, the Corporation had unrealized gains on these write-downs of just under $6 million.

A few comments with respect to DVL. The Corporation characterizes DVL as a fourth line of business after its merger into the Corporation about four (4) years ago. The funding received by the Corporation for DVL is fixed at $21 million pursuant to a contact with Government. This amount does not cover the cost required to operate DVL, which results in a shortfall to the Corporation covered by Extension. The DVL bottom line impacts the Extension line of business within the Corporation.

In 2008/'09 MPI did not set out in its annual Report the total cost of DVL operations. For 2007/'08 the cost of DVL operations were some $32.8 million, while funding, as I had stated, was 21 million, resulting in a shortfall of about 11.8 million. In the previous year, 2006/'07, the cost of operations was 31.4 million, and at that time the funding was 20.5 million which resulted in a shortfall of 10.9 million. In the year prior, 2005/'05, the shortfall was 6.1 million.

We've heard some evidence in this proceeding with respect to broker commissions. MPI attributes two (2) major benefits resulting from the merger with DVL, including the Streamline Renewal process, as well as the reduced commissions paid to brokers, which are slated to decline from 5 percent to

2.5 percent for Basic transactions by November 1st of 2012.

As a result of the change, broker commissions to be paid by Basic are forecasted to decline by $21.9 million when the change is fully implemented. With a reduction in commissions on Basic, the Corporation negotiated higher commissions in Extension and -- with respect to one (1) time transactions. MPI has equated the additional Extension commissions to be approximately 1 percent of Basic commissions.

With respect to capital expenditures, we know that on May 1st of 2009 the Corporation acquired Cityplace and the surrounding parking lots for a purchase price of $81.5 million. The parking lots which were acquired have been assigned a value of $14.8 million and are being classified as a real estate asset within the investment portfolio. The building has been allocated $66.7 million of the purchase price, adjusted to approximately 50 million when one considers the space leased by MPI based on upcoming IFRS accounting.

MPI obtained two (2) external appraisals of Cityplace which supported the purchase price paid. MPI acquired the building to provide operational advantages, rather than enter into a new lease for the facility from 2013 to 2023, which would have resulted in substantially higher rent over the current -- or the previous leasing arrangements.

MPI has indicated that the acquisition will result in an annual savings of $3 million, which represents rent savings net of foregone investment income. The net present value of the base rent from 2010 through the extended lease period ending in 2023 was $35.9 million.

In addition to foregone investment income, the opportunity cost of acquiring the building was estimated to be $28.2 million. The cost of purchasing the billion -- the building at $50 million contrasts with the $35.9 million dollar cost to extend the lease through 2023. In addition, at the end of that lease period, MPI will have a building asset with enduring value. MPI has indicated that it does intend to hold on to the Cityplace property as a long-term investment.

I'll move into some comments with respect to the Business Process Review, or BPR. As the evidence reflects, MPI is continuing with the BPR and the projects undertaken in the BPR include those funded by the Extension development fund, which has to date had over $90 million allocated for such pro -- for projects, as well as the projects that are to be funded by Basic.

The Corporation has declined to provide to the Board the overall costs of the BPR broken down by project. The Corporation currently has one hundred and two (102) external consultants and twenty-two (22) -- two hundred and twenty-nine (229) full-time equivalent employees assigned to the various projects.

The Basic projects include driver safety rating, streamline renewals, PIPP infrastructure, and enterprise data warehouse. The Corporation plans to spend $77.2 million on Basic BPR projects through 2011/'12 of which $55.8 million is to be capitalized as deferred development cost.

The project development costs are being amortized over a five (5) year period. Amortization related to these initiatives can be found at MPI Exhibit 22 and -- and our forecast to result in amortization expenses in the year of the Application of $6.6 million.

The PIPP infrastructure project is in its final stages with an implemented or an anticipated -- pardon me -- implementation date of May 2012 -- 2010 -- pardon me. MPI has estimated the cost of the project to be $27.1 million and a detailed breakdown of those costs are provided in MPI Exhibit 33.

MPI anticipates full-time equivalent savings related to anticipated productivity improvements that are inherently part of any paper-base claims' management environment, as well as savings from automation -- from the automation of the invoice processing system, as well as quicker decisions which will lead to ineligible benefit payments ceasing earlier than otherwise.

MPI has estimated approximately $8.56 million in full-time equivalent productivity savings and just over $33 million in claims' cost savings due to leakage avoidance for a total benefit of $41.9 million.

With respect to claims incurred, we see claims experience rate adjustments by looking at historical data and projecting that data into the future to determine the expected costs of claims for all of the different categories in order to achieve revenue neutrality.

We see that in 2008/'09 accident benefits carried claims incurred of $186.4 million, in 2009/'10, $237.2 million, and in the year of the Application a projected number of $254.2 million.  For collision coverage, in 2008/'09 there was claims incurred of $247.7 million, in the current year the forecast is $261.5 million, and for the year of the Application the projection is $274.2 million.

For comprehensive coverage, in 2008/'09 the claims incurred were $48.1 million, for the current year the forecast is $55.4 million, and for the year of the Application the projection is $56 million. With respect to property damage coverage, in 2008/'09 the claims incurred were $33.7 million, for the current year the forecast is $36.5 million, and for the year of the Application the projection is $37.5 million.

With respect to public liability, in 2008/'09 the claims incurred were $3.6 million, in the current year the forecast is $5.1 million, and for the year of the Application the projection is $5.2 million. For total claims incurred then in 2008/'09 there was $519.5 million, the most recent forecast for the current year found in MPI Exhibit 14 is $628.5 million, and for the year of the Application the projection is $627.3 million.

During the fiscal year 2008/'09, Basic benefited from about $134.5 million, a favourable net runoff on the claims' liabilities for all years under PIPP posted at the prior year-end with only one (1) PIPP year, being 1998/'99 within this total, experiencing any adverse run-off.

This latest fiscal year favourable run-off is a continuation of a pattern of favourable run-off persisting for several years. For example, during the five (5) year fiscal period, from 2004/'05 to 2008/'09, Basic benefited from about $333.3 million of cumulative favourable net runoff on the claims liabilities for all years under PIPP, with each fiscal year within this period experiencing favourable net runoff overall.

The Corporation indicated that the fiscal year 2008/'09 runoff was a reflection of its efforts to have the evaluation of claims liabilities, as at the year ending February '09, respond more fully to the emerging experience, with a reported total reduction in these claims liabilities of about $149.7 million, which includes the provision for the '08/'09 accident year due to these efforts.

The second effect is that, since the future forecasts are projections from previous accident year ultimate projections, the future claims incurred for PIPP claims are reduced from previous forecasts by approximately $15 million per year.

In addition, PIPP benefit enhancements were incorporated for those individuals who suffered catastrophic injuries. The Corporation has estimated that the unpaid claims liability relating to these enhancements is $90.8 million. This claims liability was recorded in the '08/'09 fiscal year within the Corporation's records, although the legislation enacting the benefits was not in force until October 2009. The ongoing annual cost of the enhanced benefits has been estimated at $7 million.

We heard some evidence from the Corporation in the filing and a little bit on cross-examination with respect to its claims cost control initiatives. We know that those initiatives for bodily injury continue to be implemented, and those issues are addressed at SM.5.3 and 5.4 of the Application.

Just a couple of comments with respect to motorcycles. We know that over a number of years the Corporation has been phasing in the rate line adjustments for motorcycles, and that is to be completed in 2009.

In the 2009/'10 rate Application the Corporation began applying offset adjustments to motorcycles to ensure revenue neutrality. In prior rate applications, offset adjustments were not applied, resulting in a portion of the total change in revenue for motorcycles coming from the rate line adjustment. The Application of offsets was initiated in the last GRA as the rate line for motorcycles was nearing its target and revenue gain from rate line changes was no longer attainable.

The Corporation is continuing the practice of applying offsets to motorcycles again this year. The average rate line change -- changes range from an increase of 4.5 percent for Rate Group Zero to a decrease of negative .9 percent for Rate Group 4. As a result of experienced rate adjustments and the rate line adjustment overall increase, an overall increase of 5.7 percent for the motorcycle class is applied for.

Pursuant to the Application, moped and motor scooter owners will receive a 25 percent rate increase. Similarly, off-road vehicles have an experience indicator of 5 -- 56.7 percent, however, the Corporation is proposing a negative 16.7 percent adjustment.

With respect to claims expenses, there is a projection that there will be an increase from $77.6 million in '08/'09 to nine hund -- to 93.5 million in the year of the Application, an increase of about 20 and a 1/2 percent over two (2) years. The majority of this change is a result in the increase of amortization expenses relating to higher building amortization and amortization of improvement initiatives.

A couple of comments with respect to operating expenses. We note that the operating expenses attributable to Basic have increased to $45.5 million in the current year, from $41.3 million last year, and are projected to increase further to 48.5 million in the year of the Application. This increase is partly attributable to higher amortization costs from improvement initiatives.

Salaries are a major component of the operating expenses of the Corporation, representing approximately 58 percent of the total operating and claims expenses in the year of the Application. Staffing levels continue to increase for the Basic line of business, as set out in TI.9.

In particular, we see an increase from thirteen hundred and sixty-five (1,365) full-time equivalents as of March 1st, 2003, to about seventeen hundred and seventy six (1,776) full-time equivalents as at March 1st, 2008. That number further increased to about nineteen hundred and ninety (1,990) full-time equivalents in March 2009, the increase being attributable to BPR initiatives. As at February 2009 as indicated earlier, there were about two hundred and twenty-eight (228) full-time equivalents assigned to BPR.

The staff level is forecasted to grow further to two thousand one hundred and thirty-six (2,136) full-time equivalents in March 2010. This increase relates to technical and professional, as well as clerical positions. Thereafter staffing lefels -- staffing levels are forecasted to decline to seventeen hundred and eighty-nine (1789) full-time equivalents signalling the completion of some of the BPR projects.

With respect to anti-theft initiatives just a couple of comments. We've heard evidence with respect to the Winnipeg Auto Theft Suppression Strategy or WATSS. This was a strategy started by the Provincial Auto Theft Task Force, a partnership between MPI, the Winnipeg Police Service and Manitoba Justice to monitor youth offenders convicted of auto theft and insure their compliance with court-imposed conditions.

Originally the Corporation made a funding commitment of eight-hundred (800) -- almost nine hundred thousand dollars ($900,000) per year and that funding was extended to July of '09. At this Hearing the Corporation has indicated that its funding commitment will continue to 2011/'12. The extension of the funding was justified due to the lag time between the apprehension of accused people, charges being laid and the sentencing of individuals as they move through the criminal justice system. The funding provided by the Corporation directly supports a -- an additional fourteen (14) positions within Manitoba Justice.

The other very significant component of the Corporation's anti-theft strategy is the Immobilizer Incentive Program which is a plan to essentially immobilize the fleet. Manitoba Legislation requires the mandatory installation of immobilizers where most at risk vehicles are located in or commuting to Winnipeg. The Immobilizer Program was funded by the IIF with an allocation of $50 million from the Basic RSR and has offset the costs of the installation of immobilizers and the administration of the Immobilizer Program. It is anticipated that the funding in the IIF will be fully depleted in the current year.

At the end of '08/'09 the Corporation had immobilized one hundred and fifty-eight thousand three hundred and sixty-one (158,361) vehicles, and that number is forecasted to grow to over a hundred and eighty-five thousand (185,000) vehicles by the end of the current fiscal year.

Between 2005/'06 and 2014/'15 the current forecast assumes that over a hundred and ninety six thousand dollar ($196,000) -- a hundred and ninety six thousand (196,000) vehicles, pardon me, will be immobilized under the program.

The current forecast assumes that the total installation costs over the period from '05/'06 to 2013/'14 will be $65 million. The program is forecast to be self supporting and is forecast to result in positive net income to the Corporation.

For the current year 2009/'10 the

Corporation is forecasting a reduction in claims incurred from auto theft of $27.9 million to Basic and $5.5 million to Extension. The total impact on the operating results for the current year is forecast to be a positive $15.9 million.

For the year of the Application the Corporation is forecasting a reduction in claims incurred from auto theft of $30.8 million to Basic and $5 million to Extension. The total impact on the operating results from the program for the year of the Application is a positive $27.9 million. The current forecast assumes that the reduction in Basic claims incurred over the period from 2005/'06 to 2014/'15 is estimated to be $256 million. Details on the result of the Immobilizer Program can be found at the response to Interrogatory 77 posed by the Board in the First round.

In closing then, Mr. Chairman and members of the Board, there are many issues on which we have heard evidence over the course of this Hearing. I have tried to summarize the main issues that were covered during the Rate Application on behalf of Mr. Saranchuk and myself. We thank the Board, MPI, MPI's Counsel, the Intervenors and their Counsel for all of the cooperation extended over the course of this Hearing.

THE CHAIRPERSON: Thank you very much,

Ms. Everard.

Ms. Kalinowski, when it comes to your turn, if you take -- MPI takes issues on any of Board Counsel's comments, I'm sure you'll pick up on it. Thank you.

Mr. Williams, are you ready to go?

MR. BYRON WILLIAMS: I am -- excuse me -- I am, Mr. Chairman. I -- I have two (2) -- I -- I might recommend given that it's five (5) to 11:00 that -- that we might want to take a very quick break, a four (4) or five (5) minute break.

And -- and I would request that before you do so, as in the past few, Hydro, Payday Lending, and MPI proceedings my clients have -- I, under their instructions anyways, have prepared a outline of our argument, and I've shared it with MPI certainly and with -- with Intervenors.

Certainly, I'm prepared to make it available to the Board and to -- excuse me -- Board -- the Board advisors, if -- if that's desirable. I would just note that the evidentiary portion of the Hearing is closed, so it -- it is -- in -- in my submission, not properly marked as an exhibit. And certainly just for the -- the benefit that the Board may get from it, at the end you have a handy dandy summary of the thirteen (13) recommendations that my clients are presenting.

Also, to assist all parties, I think, the benefit is that there is citations or support for the claims that I make on behalf of my clients referring directry -- directly to the transcript and that there also are some of the more extensive quotes from the transcript which we believe need to be put into context, so we've -- certainly that's available if the Board would like to see it.

THE CHAIRPERSON: Yes, please. So we'll take the break now and -- and Mr. Singh can get them -- get the copies made.

--- Upon recessing at 10:57 a.m.
--- Upon resuming at 11:09 a.m.

THE CHAIRPERSON: Thank you, Mr. Williams. We have your Coles Notes' synopsis. You can start at any time.

CLOSING SUBMISSIONS BY CAC/MSOS:

MR. BYRON WILLIAMS: Yes. Thank you. And -- and just as you flip through the notes just a reminder that they're two-sided, so if you're struggling to -- to carry on -- it's actually a clever trick to make you think that my argument is shorter than it -- than it actually is. But I hope it saves a bit of paper, as well.

And I just did want to identify again my -- my -- Ms. Desorcy from the Consumers' Association is -- is here again and checking to make sure that I faithfully relay her and Ms. Wheiss' recommendations on behalf of their organizations.

I want to focus and it will probably take the -- the bulk of the morning and int -- on -- on half of my argument which relates to the Rate Stabilization Reserve. And there are some important contextual matters which certainly on behalf of my clients I would submit are -- are important to consider.

And one (1) is the historical context that perhaps only Mr. Saranchuk, Mr. Kruk, and Mr. Palmer can -- can recall in -- in all its glory. But I want to take, on behalf of my clients, you back to 1994/'95 when the Corporation was facing some material challenges.

I think at the time it was described as the worst winter in -- winter of the century. There was a material and significant adjustment to the rates -- to the -- I -- I said RSR there, that's a misquote -- to the -- to the reserves in terms of claims incurred relating to incurred but not reported.

And the consequence of a variety of factors but including both the worst winter in history and some sig -- very significant IBNR adjustments was that reserves at that time were in a fairly large deficit position, and I put in a citation for that, I believe, in the range of negative $50 million.

Coupled with that was from -- at the time, as well, there was a consideration that flowing from the Kopstein report there had been a -- recommendation that -- that a Rate Stabilization Reserve should be developed. I think at the time based upon 15 percent of premiums written, subject to check.

So the regulator at the time was faced a) with an objective to develop some material retained earnings, that rainy day fund, to provide consumers with some stability in the face of rare events or not relatively unexpected events and, at the same time, the Corporation was in a -- in a deficit position in terms of retained earnings.

And also affecting the Board at the time, it's my client's submission, was the sense that this aiming towards this rate stabilizing target had been an objective that had been often promised, but seldom delivered.

And the sense was from, certainly, in

rereading those decisions which are found at Tabs 14 to 18 of the CAC/MSOS Exhibit book number -- book of documents which is Exhibit Number 5, the sense was that the -- the Board certainly was not confident that merely trying to achieve a -- a building of rate -- of the Rate Stabilizing Reserves through projected or forecast net income was going to work.

So our submission to you on behalf of our clients is that if you look at the Board decisions from 1995 through 2000, you'll see a series of regulatory decisions carefully designed to improve the Rate Stabilization Reserve position in a transparent and credible fashion.

And I'm going to divide that into three (3) steps, certainly for the benefit of my client. One (1) was -- and this starts in the -- the Board Order from 1995, Order 130/9 -- 95, an express plan to build up the reserves through RSR surcharges. And an important per -- perspective on that from at least in my clients' views, was that the plan was very transparent. The public was given notice that there was a surcharge in the rates to build up the reserves, and that's set out in a couple of the Board Orders I've cited there.

And MPI was expressly directed, as well, to ensure that the entire incremental revenue generated from these surcharges remained in the RSR and were disclosed as a separate item -- line item order in -- in future minimum filing requirements.  So that's Step 1: Rebuilding the surcharges, but doing it in a transparent fashion, accountable to the public, explaining why and showing the results of that surcharge.

Step 2, moving it away from a target based on the relationship with premiums written or other simple relationships in an effort to have a credible and transparent methodology.

And I simply note in this area that, certainly, there were industry approaches available at the time.  For a variety of reasons, they were not chosen.  DCAT was in its very early stages at that time, so that -- that approach was not followed but, certainly, various industry standard approaches were considered in the 1998 Board Order 154.

Essentially -- and the initiative for this came originally from M -- MPI, although materially refined by the Board; MPI proposed what I certainly would characterize on behalf of my clients is a time series analysis.  Looking at the drivers -- four (4) of the big five (5) dri -- potential drivers of a potential draw on the Rate Stabilization Reserve:  claims costs, claim expenses --  claims expenses, operating expenses and revenues.

In my client's submission, this initial proposal was improved over time. The simplistic assumption of perfect correlation was rejected and there was a focus on variance from forecast, taking into account actual corr -- correlation.

And at the Board's request, another key initiative was brought into place which was MPI was directed to take into account investment risk. MPI proposed a methodology, VaR -- Value at Risk, and eventually the Board, and this is in Order 151/2000, said that investment risk should be taken into account using a two point five (2.5) year time horizon and using a 25 percent weighting towards equity.

And it's important to recall that that -- that 25 percent equity weighting was based upon the expectation that MPI would be there within two (2) years -- would be at 25 percent equity. And that's set out at page 46 of the Board Order I've referenced.

So, essentially, summarizing Step 2, in my client's submission, the Board determined that the RSR target should be set based on statistical probability employing time series analysis and using given confidence levels as an expression of risk tolerance.

Step 3. And, again, that's also

referenced both in the '99 and 2000 Board orders, what do you do in the future when you've got a reserve that is either above target or below target. And we would submit that the Board's direction at that point in time was, when in -- excessive target have a dividend when below the target have a surcharge.

This brings us, in six (6) minutes, to today, or at least to June of 2010 and '11, when the MPI Application was presented. And in my client's submission, that Application was materially inconsistent with the traditional approach. We're not suggesting anything pejorative by that. We -- we're just trying to highlight the difference between the MPI Application and the traditional approach. In my client's submission it -- it was inconsistent with step 1, as previously identified.

There's no doubt, MPI has confirmed this on a number of occasions, that there was built into this Application an implicit surcharge, whether it's 2 percent, 1 1/2 percent. We don't need to quibble over the numbers.

It's also clear that there was no notice of that implicit surcharge in the Application or in the Public Notice and no reference -- expressed reference to the incremental RSR revenue on a separate line item in any of the pre-filed materials expressly setting out that it was incremental RSR revenue.

In my client's view, there was also an inconsistency, and, again, we're not attributing blame, MPI's entitled to have its view, but an inconsistency with Step 2.  MPI endorsed the DCAT -- T, a tool developed for stress testing capital reserves for firms in a competitive marketplace and it proposed an RS target number, not a range, of $185 million, not a hundred and eighty-five dollars ($185), as my outline may mistakenly leave that impression.

In my client's view, there's two (2) material inconsistencies with the traditional approach. The development of the RSR target through DCAT was no longer based on statistical probability and risk tolerance was no longer expressed as a range based upon confidence levels.

The inconsistency with Step 3, and, again, MPI has been quite upfront about this one, they're not in favour of a rules bra -- based approach to surcharges in bad times and dividends in good times, and by that I mean either when -- when the RSR is deficient or in excess of its target level.  They're looking for a situation specific approach.

And I put on the next page a little blurb, and this really isn't an inconsistency, it's just a state of the union in terms of the RSR. Our understanding of the position of MPI is that, short of a dramatic shortfall in Basic retained earnings, the Corporation does not anticipate further transfers from Extension or SRE to Basic.

So that's the historical context. There are some other contextual factors that my clients would recommend for the Board's consideration when your looking both at the RSR target range and the appropriate mel -- methodology for setting that range.

One (1) is the monopoly environment. And, certainly, there's little dispute on the Intervenor's side of the table, I believe, that MPI enjoys a monopoly in Basic and a practical equivalent of a monopoly in Extension.

And, certainly, there are implications of this when we look at setting the reserves. The situation of MPI must be distinguished from a company in the private sector marketplace. There is regulatory rate setting, but MPI does not face the market risk of losing market share as a consequence of a material rate increase to respond to a statistically rare event.

Certainly, in the private sector, a company in that -- that position, faced with a statistically rare event with significant financial results, would face the damned if you do, damned if you don't -- don't scenario, in the event that -- to -- to continue to fulfil its obligations to policyholders, it obviously would have to raise rates, but it would be vulnerable to losing market share if it did so.

MPI, not in a competitive marketplace and with an unlimited backer like the Crown of Manitoba, is not in that position. There are clear implications from -- that flow from this. One (1) is that the reserves for MPI for a Rate Stabilization Fund are likely to be -- need to be materially lower than they would be for a -- a corporation looking at a Capital Adequacy Test, facing the discipline of the commit -- competitive market.

The other implication that obviously flows from this is it -- it is less likely that methodologies developed for testing capital adequacy in the private sector will be highly applicable to this scenario. Dr. Simpson spoke of this in -- in his discussion with the Chairman right near the end of his oral evidence. Here there is no market test, and part of that market test is staying in business or not staying in business. And he makes the point that there is a material difference in terms of the methodologies that flow from that distinction.

Flowing to the next page, there is also the point that Dr. Hum was at pains to point out in both his written evidence and his oral evidence. In the private sector, in the event of excessive reserves, there is a -- there is a competitive discipline. A competitor may attempt to scoop up the reserves in the Corporation. We don't have that discipline for MPI in the pub -- in -- in it's circumstances.

The concept of rate stability is obviously important. I think the Corporation defines it in -- in the context of the RSR and, certainly, if they disagree with me, they'll make that clear. As a reasonably small we should insert the word "overall rate change from year to year."

In the context of the RSR, my clients take a bit of a -- a different perspective. They're never, of course, in favour of massive rate increases, but in the context of the RSR, they look at the concept of rate stability as avoiding unacceptably large rate increases in one (1) year related to stastis -- statistically rare events.

They also recognized that in any given year, on an indi -- in -- individual basis, individual consumers will face some significant volatility in their rates by the action of rate line adjustments in CLEAR.

And just -- even in this Application, you're looking at sixty-five thousand (65,000) vehicles seeing rate increases between 5 and 10 percent and another fifteen thousand (15,000) between 10 and 15 percent.

The concept of inter-generational equity is always something my clients look at in terms of the RSR from two (2) perspectives. For today's consumers, we don't want to be imposing excessive future costs. At the same time, we do not wish -- certainly, my clients do not wish to be deferring excessive current costs to future generations.

A few last key points of -- from a contextual perspective. Certainly one could draw the conclusion looking at the last twelve (12), thirteen (13) years of debate about the Rate Stabilization Reserve methodology that it's, you know, the only tool to addr -- address events that are relatively rare or not forecast.

Obviously, the Corporation has built in prudently other tools. There's re-insurance both for terrible, calamitous accidents and for events like hail loss, both mitigating impacts upon loss costs. And, certainly, actuarially -- actuarial methodology also includes a provision for adverse deviation.

Another important point my clients wish to make, and we'll co -- come to this in a few minutes, is that the RSR is no substitute for good management. And we're not certainly suggesting that MPI is -- is badly managed, but as we look at the RSR, we don't want to build too much of a crutch in, in terms of -- a -- a crutch for bad management. And good management, certainly, my clients describe as good forecasting skills, prudent cost effective management and pro-active loss prevention programs including Road Safety, DSR and the Immobilizer Program.

And, certainly, from a contextual perspective, certainly in looking at the level, we -- my clients would submit that -- that one does not want to build in an excessive crutch. The best protection for the Corporation is good management.

Mercantile is -- mercantilism is a -- not really a -- a contextual factor; it's a segue to a -- a couple of contextual factors, but I love mercantilism. Of course it's a theory that's long since been discredited in modern economic theory, but it refers to the hoarding of reserves by kings of old. And I think Dr. Hum may have had his century wrong. I think it was more prevalent in the 1700s than the 1800s. But it essentially was a notion that you just can't have too much of a war chest.

But in the context of the RSR, from my

client's perspective, you can have too much of a war chest. And there's a couple considerations in terms of that. One (1) is the concept of moral hazard, and that's been defined, and I think this is actually MPI's definition, which -- which was preferable to the one I submitted to them.

Moral hazard can be described as the potential for excessive risk taking due to a lack of consequences that could be faced. And I -- I applaud Ms. McLaren for her candour on this point. CAC and MSOS -- CAC/MSOS and MPI appear to agree that reserves should not be set so high as to encourage unduly risky behaviour by the Corporation or excessive capital expenditures back -- backstopped by high reserves.

Now, there is a reference on the -- for those of you working off of a two (2) sided page -- or a two (2) sided photocopy to Tab 8 from the CAC/MSO -- SOS book of documents, and that tab looks at the growth in corporate MPI claims and operating expense indexes versus CPI.

I'm not sure that this is appropri -- appropriately placed exactly here in the -- the discussion, and I want to urge some caution about the -- to the Board in looking at it, in fairness to the Corporation.

First of all, this table is not Basic. It's for the Corporation as a whole, including DVL, and it also, certainly, will capture Immobilizer costs in there. But the point my -- my clients wish to make in looking at this table and recognizing that it's from an overall corporate viewpoint, not the Basic Program, is that there's clearly been significant expenditures and significant relative growth in expenditures on the Corporation as a whole over that -- this period of time. And that they're also, certainly, that -- this period of time has been coincident with a material growth in reserves for the Corporation. So it's not a suggestion of imprudent management or expenditures, it's just a trend that my clients will be paying careful attention to in the future.

Going back to the point that you can have too big of a war chest, certainly from my client's perspective, one (1) element of that argument was the moral hazard argument. The other element of the argument is the opportunity costs and social utility argument. And both Dr. Simpson and Dr. Hum made this point well, the idea that excessive reserves can be wasteful in that there are other opportunities being foregone.

Now try, as Mr. Saranchuk -- My Friend, Mr. Saranchuk, might in his able cross-examination, to --

to get Dr. Hum and Dr. Simpson to say where exactly do the excess -- where exactly is that optimal reserve level. He couldn't get that from them. They suggested a further analysis on their part would be required. But he did get some important facts out from that cross-examination, and I thank him for that. Certainly, the closer one gets to the extremes of confidence levels, the more likely it is that the value of the foregone opportunity will be greater than the value of the stability provided by the reserves.

And going down to the fourth bullet on this page:

> "The level of reserves necessary to protect a certain con -- confidence level does not rise in a linear fashion."

And Dr. Hum made this point quite well at page 1634, and 35 of the transcript. In the first paragraph, from 1634, towards the end, he talks about moving to 99 percent as opposed to -- to a 92 or 95 percent, and made the point that the cost of moving to that higher degree of tolerance, risk intolerance is not linear.

And I've bolded his comments from page 1635, "It is nonlinear. In fact, it goes up very steeply."

Before you flip the page, bullet 3 on that page above, I didn't talk about it previously, but it is im -- important. I think, statistically, when we look at a one (1) in one hundred (100) year event it is important to understand that within that time period there's a over 35 percent chance that that event will not take place within that particular time period. That's -- that's the math -- mathematical result of that analysis. So while we want to be cautious we also have to put some rigour into -- to the degree of caution that we have.

Another critical contextual factor is the importance of looking at the well-being of the entire Corporation. And certainly in my direct examination of Dr. Hum, I made a little bit of fun of his analysis in pages 8 to 12 of his evidence of the -- the formula he presented, but I think the formula starkly presents a important conclusion that Dr. Hum drew.

And he made the point that risk management, effective risk management, for an organization such as MPI cannot be adequately examined by only looking at one (1) portion of the firm. And the analogy he drew in this particular case, I think he used a couple others in other transcript references, is down at lines 19 to 23.

He -- the point he made was that if you're a shareholder of General Motors you -- you would certainly be quite interested in the fact that -- that Chevy was doing well.  But when you're trying to understand the risk to the Corporation you'd want to understand, as well, what's going on with Buicks, with trucks, with vans.  I think he made that point well.  And certainly looking forward, this reinforces the need to consider the well-being of the Corporation including current and projected levels of the retained earnings for Extension and SRE.

I want to turn to the purpose of the RSR and -- and it's in a -- my -- my clients listen very carefully to Dr. Hum and Simpson, in their written evidence, but also their -- their oral evidence.  And they've con -- come to the conclusion that we may benefit from restating the purpose of the RSR, just slightly.

Dr. Hum and -- and Simpson in their evidence -- and I don't put in a reference, but if memory serves me right this is page 13 and 14 of their evidence, draw distinction between the language of the stated purpose which is to protect against rate increases made necessary by unexpected events and losses arising from nonrecurring events or factors.

And they say that -- suggest perhaps that we really should be protecting against events that have a low probability of occurring in an -- in any given year. And they use hail as an example noting that it -- that something like hail may not be predictable with certainty within the next fiscal year, but its occurrence should neither be considered unexpected in the statistical sense over a longer timeframe.

Doctors -- Dr. Simpson took -- took another shot at this as -- at -- well, and he said the essence of the RSR exercise, go into the third bullet, is to pick up the question of potential volatility around the trend. And my clients have found Dr. Hum and Simpson's evidence on this point quite persuasive, and -- and they think that going forward it might be helpful to restate the purpose of the RSR, and this is their first recommendation; that the purpose of the RSR be restated to language something like this, it wasn't done with poetic implications in mind. The purpose of the RSR is to pro -- protect motorists from unacceptably large year over year rate increases that arise from events outside the control of MPI and having a low probability of occurring in any given year.

And certainly my clients insisted that including the -- the caveat, outside the control of MPI, is an important distinction to make. We're looking at, certainly on their behalf, in terms of whether it's loss costs, investment results, or variations in premiums earned that are arising from events with a statistically low probability of happening.

Turning to the next page of the -- the outline which should be labelled "Consensus," my clients aren't drawing any conclusions about whether we're going to make consensus in this Hearing. They certainly, in -- in terms of retaining Dr. Hum and Dr. Simpson, we're -- we're trying to approach this in a less adversarial role and instead of asking them to vote, asking them to talk about the strengths and weaknesses and -- and the concepts behind these different approaches.

My clients do have some observations about consensus. If it's ever going to be achieved in terms of the Rate Stabilization Reserve, the target and the methodology, parties have to be committed to the same or to similar objectives. They have to be committed, in my clients' view, to a process, not a result. If one's going in this with a preordained number then it's unlikely that consensus will be achieved.

If we're going to achieve consensus on something like this, one will have to step away, at least to some degree, from the usual adversarial roles that we take in these Proceedings, and I think no one disagrees that the cornerstone of consensus is credibility. And as you'll hear in -- in a short while my clients certainly are not confident in the current iteration of the DCAT in terms of its credibility.

Turning to the next page, a Proposed Criteria for Evaluating the RSR Methodology. My clients have developed this based on some of the Board's IRs, some of the language and approaches taken from MPI and certainly based upon the evidence of Doctor Hum and Simpson. They see it as five (5) elements to the analysis that they're -- they're applying.

First, how well does the proposed methodology address the current stated purpose of the RSR? My clients aren't presumptuous enough to think that the Board may substitute their purpose so they're trying to -- to weigh the methodologies against what -- what the current accepted purpose is.

A second and key question is, Is the proposed methodology credible? My clients have broken down this question into two (2) key elements, First, are statistically and methodol -- methodologically-sound techniques employed? Secondly, can the analysis be said to justify -- to result in justified true belief?

Now, not having a benefit like Mr. Dawson or Mis -- or Dr. Hum of a Harvar -- or an Oxford education, I wasn't quite sure what -- what was meant by justified true belief, so I've -- I put in an excerpt from Dr. Hum's evidence which I think succinctly summarizes this:

> "It's not enough in this case for the Corporation to believe or to truly believe. The question to properly ask: Are there considerations that others would accept, in terms of the justifica -- justification of why this is believed? Only then can true belief, justified true belief be achieved and that's what we might also call in a shorthand word, knowledge."

The third criteria my clients have employed is, Is the proposed methodology transparent? Again, two (2) elements to this consideration, Can it be replicated and can it be expressly related to the purpose of the RSR? My clients have asked us, Well, is the proposed methodology economically and technically feasible?

And a fifth and late addition to the discussion is, Does the proposed methodology integrate a variety of tools? And we'll speak again later in terms of Dr. Simpson's ev -- evidence on this point. But from my clients' perspective this is a situation where some redundancy does not hurt, provided it is cost effective.

And, again, my clients are looking, not only at this Proceeding but as we move into Hydro Proceedings, again, my clients will be analyzing reserves from the perspective, not only of probability, but they do see some value in probabilis -- probalis -- probabilistic stress testing as well. So my clients think that this is an important consideration not only for this Proceeding but for subsequent ones.

I do have some comments about the weight that you should give to the evidence. And in my clients' submission the evidence of the independent witnesses, Dr. Hum and Dr. Simpson, should be given great weight for a variety of reasons relating to their experti -- expertise, their independence, their analytic rigour, and their creativity.

I want to start first with their expertise. And it's important to understand that Dr. Hum and Dr. Simpson go right back to their Honours Degree in their BA level. They bring a great deal of expertise, not just in economics, which is critical to this discussion, but also in statistics in mathematics. And My Learned Friend, Ms. Everard, referred to this, at least implicitly, in -- in her comments, but Dr. Hum and

Dr. Simpson have studied, taught and conducted pure and analytical research in many of the central issues relating to the setting of the RSR. I've listed a few of them:

Issues relating to firms operating in a monopoly environment, microeconomics; risk analysis relating to a variety of firms in a variety of regulatory and marketplace environments, monetary economics; the behaviour of the economy in high and low inflation periods; the effect of current Bank of Canada monetor -- monetary policy, the behaviour of equities, bonds and other investment vehicles in a variety of economic environments.

And it's important to point out that their expertise in the quantitative analysis of public programs and policies has been sought out from a -- a variety of sectors: Government organizations including the Bank of Canada, as well as by some of the leading economic think tanks and NGOs in Canada, including the Economic Council of Canada. And there is no doubt that they have expertise in the application of modern statistical techniques to the analysis of economic problems and relationships.

And, again, going to the next page of your outline, I think -- oh, actually to the opposite page --

whether it's evidence-based modern time series economic analysis, perhaps a little more sophisticated than the RAA but similar, or theory-focussed stress testing using Monte Carlo simulations. And I believe Dr. Hum is probably the only one, certainly, who testified to actually doing those type of high-level simulations. And obviously that -- that can re -- relate to how to use a DCAT-like approach in the future.

Dynamic programming -- and that's probably a concept that -- that no one's talked enough about in this proceeding. But it's clear that Dr. Hum and Simpson are familiar with many of the leading statistical and methodol -- methodological approaches to addressing many -- the various issues raised by the Rate Stabilization Reserve.

And it's certainly, from my client's perspective, it's really important to understand, this isn't a battle between economists and actuaries. The central issue is not whether the DCAT was conducted in accordance with accepted actuarial practice. The central issue is whether the DCAT or the RAA or some combination thereof are the right tools for the task at hand. And the skill sets of Dr. Hum and Dr. Simpson, in our submission, leave them well qualified, whether it's in statistics, in economics, or in critical analysis, to accomplish this task.

It also is important to emphasize the independence of Dr. Hum and Dr. Simpson. Again, My Learned Friend, Mr. Saranchuk, tried really hard to make them vote in terms of the -- in -- in terms of the -- their preferred approach and, ultimately, they did offer some recommendations. But they were not retained for that purpose, and indeed they were approached to look both at the potential for and barriers to consensus. And we think that that initial letter of retainer that -- to -- to -- is important in understanding the independent approach -- the analytical approach -- they brought to this process. They don't have a vested interest. They're not the authors of the RAA or the DCAT.

We think, also, the demeanour of Dr. Hum and Simpson is important. And you certainly had the opportunity to watch them, the -- the colourful Dr. Hum and the somewhat more sober Dr. Simpson, on November 2nd and -- and November 3rd. And in my client's submission, their value and their contribution was heavily underscored by their performance in oral av -- evidence. And it's fair to say from my client's perspective, that the credibility of their conclusions was strongly enhanced -- it was buttressed by the cross-examination of -- by MPI and the examination by Board counsel.

The conclusion could be fairly drawn, in my client's submission, that Dr. Hum and Dr. Simpson came to this table with no particular axe to -- to grind, they brought an analytic -- analytically rigorous approach, and that they were also creative in setting out methodol -- methologically sound ways to incorporate both time series analysis and probability based stress testing.

In my client's perspective, the evidence of these independent witnesses should be preferred to the evidence of the MPI panel, and that is not meant in any way to be derogatory to the MPI witnesses. They are clearly, capable professionals within their field and they are deeply committed to both the values and the positions of MPI.

In my client's respectful submission, their contribution to this Hearing has -- has been a little hindered by the Corporation's own difficulty in developing and sticking with a credible position regarding the RSR.

Again, the original RAA, albeit, was presented by MPI, al -- albeit, it has been materially modified in subsequent Board decisions. Later, MPI zealously promoted the MCT. And, of course, now it prefers the DCAT to the M -- MCA -- MCT, as well as, it prefers it to statistically based time series analysis.

In my client's respectful view, given this history, this was a Proceeding where the internal, highly competent staff of MPI could have benefited greatly from external indepe -- an external independent viewpoint.

We note that there was no independent advice from the corporate -- from an expert in corporate finance or economics. And, certainly, our interpretation of the record is that there was little, if any, involvement from the external actuary.

And so, certainly, it's no surprise, given the Corporation's longstanding opposition to the risk analysis, that the evidence of MPI may seem to be disproportionately focussed on its weaknesses rather than its strengths. And my clients think that this lack of external independent viewpoints may also have hindered M -- MPI in -- in terms of thinking a little bit outside the limited prevue of the MCT and the DCAT, which were, of course, developed for a different purpose within a different context. And they contrast that with Dr. Hum and Simpson's creative look at different ways to bring -- involved probability stress testers.

Methodology. I want to focus, certainly, first, on -- on behalf of the DCAT, which my clients would characterize as plausibility based stress testing. My clients have major concerns, going back to those five

(5) criteria. I'm not going to go through all of them with the DCAT.

But in terms of it's purpose and in terms of its credibility, they -- they take the position that the DCAT is a good tool for certain purposes, but cannot be primarily, and certainly not solely relied upon for the purposes of setting a range for the RSR. In their view, it is not based on statistically sound methodology and does not establish justified true belief in its scenarios.

I just want to spend a bit of time on purpose because I -- I think that that's -- it's fairly clear that the -- the DCAT was designed for another purpose, i.e., satisfactory financial condition, in another context, the competitive market, and it is not the best tool for the question at hand. Certainly, within that other context it might be des -- more desirable to pick the ultra conservative reserve that might flow from using non-statistically based -- based methodology.

And the challenges in applying the DCAT to the RSR stated purpose are both colourfully described by Dr. Hum and perhaps more soberly described by Dr. Simpson. Dr. Hum doesn't dispute the fact the DCAT is a great hammer. He just makes the point that what one might need for this analysis in setting the RSR is a screwdriver.  And he points out to the risk that this, the DCAT, like any other tool can be imaginatively and creatively used or it can be cavalierly wielded.  Dr. Hum agrees that it's a useful tool oriented towards the financial health of the Corporation, but not specifically focussed or oriented, in his words, towards the RSR.

Turning on the next page to credibility. In terms of the DCAT, are statistically sound techniques employed?  In my client's submission they are not.  And again, on this point, my client's rely heavily on the evidence of Dr. Hum and Dr. Simpson.  They argue that there's no evidence of theoretical, i.e., Monte Carlo type simulation, or empirical distribution, i.e. rigorous time series analysis, was calculated for the purpose of that report.

And Dr. Hum, excuse me, Dr. Simpson was pretty vigorous on this point noting no evidence, in his view, of a rigorous estimation of a probability of distribution.  And if one turns back to my cross-examination of the MPI panel, I think there's support from that at page 1316 to 18 of the transcript.

But the best support for this submission flows from the MPI effort to cross-examine Dr. Hum and Dr. Simpson using the hail testing scenario.  And we've incorporated in the -- in the transcript a -- a lengthy reference from that discussion.  And if you'll recall the -- the cross-examination, the premise of MPI was that, look at hail.  We -- we've looked at three (3) out of -- three (3) recorded events out of fifteen (15) years. That's a probability distribution.

And that claim was vehemently refuted and rigorously refuted both by Dr. Simpson, I -- I believe at page 1575, and then I've ins -- inserted a lengthy quote from Dr. Hum at page 1576.  And -- and Dr. Hum looks at that scenario, and he -- he points out that you have -- that to -- to draw conclusions about the risk, the frequency of -- of that event and the severity of that event in Winnipeg, MPI was relying upon data both from Winnipeg and from Dauphin.

And in the first bolded statement he asks, you know, a -- a fairly pointed question.  Wher -- what's the correlation between storms and Dauphin and Winnipeg? And there's no evidence of that type of analysis, no conci -- no evidence of the consideration of whether MPI's in a -- Winnipeg's in a hail path or not.

Going down to the -- to the second bolded statement, to -- to look at the probability, Dr. Hum points out that you would have to have a probability distribution of the underlying structure, but I don't know if it was done and -- and certainly if you review the transcript at page 1316 you'll understand it was not done.

He goes on to point out that if MPI is truly, deeply concerned about the RAA using fifteen (15) years of data, then cur -- certainly one would have to be worried about using two (2) from Winnipeg and one (1) from Dauphin over fifteen (15) years to predict the severity and frequency of a hail storm.

He goes on to a deeper point which really relates to a -- a significant issue that both Dr. Hum and Dr. Simpson have with the DCAT, is that MPI, in its analysis, is really looking at the tail of the distribution and -- and statistics, and the tails of the distribution are extremely problematic. He notes, as well, that there's no evidence of a distributional form.

Now, it was unfortunate that MPI's cross-examination of Dr. Hum and Dr. Simpson was interrupted by the -- by the -- the close of business on that day because MPI was looking to go to the Corporation's response to PUB-2-32 presumably to -- to buttress its support that -- that the DCAT analysis can be supported by credible statistical analysis.

But look at the answer, the excerpt from PUB-2-32B which has been inserted at the bottom of the page. The Corporation does not have a sufficient number of data to generate a credible probability distribution for the annual hail claim frequency. Now, my clients -- or my witnesses were certainly looking forward to being asking that question on the next day of business. Unfortunately, it -- it did not occur.

Just before break, Mr. Chairman, looking at this probability analysis, or the al -- the suggestion that the DCAT is based upon it, look as well, if you would, at the sustained low interest rate low equity returns, and the question posed to Mr. Palmer on October -- oh, I'm going off of memory here -- October 26th, or perhaps on October 15th:

"At the time you filed the DCAT analysis, you had not conducted a joint probability distribution. Would that be fair?

That's correct.

These numbers were judgmentally adjusted [is the question] correct?"

Mr. Donald Palmer confirms, "Yes."

Mr. Chairman, seeing it's twelve o'clock, I'm -- my expectation is that it will probably take me another hour and fifteen (15) minutes to go through my submissions. I could carry on for another fifteen (15) minutes now, or I can -- otherwise, I would suggest that we return at one o'clock, subject to the Board's wishes, obviously.

THE CHAIRPERSON: Would it be possible to come back at 12:45?

MR. BYRON WILLIAMS: From my perspective, absolutely.

THE CHAIRPERSON: Is that okay with the Corporation?

MS. KATHY KALINOWSKY: Yes, it is.

THE CHAIRPERSON: Okay. We'll be back at 12:45 then. Thank you.

--- Upon recessing at 11:59 a.m.

--- Upon resuming at 12:54 p.m.

THE CHAIRPERSON: Okay, Mr. Williams.

CONTINUED BY CAC/MSOS:

MR. BYRON WILLIAMS: Thank you. I know I had you, on behalf of my clients, rivetted with attention as you followed through my outline. Just where we were, the -- bullet, we -- we -- we were moving to a new page where the top bullet should say, "There is no sound basis for grounding the calculation of an RSR."

And just again, the discussion in this area was focussed on the DCAT and, particularly, on the credibility of the DCAT. And just to remind the Board, and then I'll resume my conversation on behalf of my clients, the -- in terms of credibility, my clients were looking at the credibility from two (2) perspectives: One, is it based upon a statistically-sound methodology; and secondly, does it result in justified true belief in the -- the conclusions?

Staying still on the -- a second element of my clients' concern in terms of the -- this is -- the statistical methodological reliability of this approach and the credibility thereof, I've included a -- a quote from the transcript from Dr. Hum and then, again, from his evidence at page 15, and you can see from his evidence which the -- the bolded words, Dr. Hum is a -- expressed a concern in his written evidence about the DCAT picks only the outliers for its exercise and concludes that there's no sound basis for grounding the calculation of an RSR solely on the basis of a set of hypothetical outliers.

At pages 1526 and 27 of the transcript, Dr. Hum and Dr. Simpson elaborated on these two (2) points, and directing you to the first bolded area, the point that Dr. Simpson is making is one hopefully I've made before, however, inelegantly, is that when you're focussing on outliers you're looking at results that if properly evaluated are way out there. And he's, from a methodological concern, he's noting that the tails of a distribution are particularly hard to characterize.

Dr. Hum's quote on page 1527 addresses the other point and he uses the word "outlier" generally in the statistical sense. He makes the -- the point that some of the MPI scenarios are, indeed, not statistical outliers, they're hypothetical outliers as well. So that's the -- the basis of their concern in this area.

A finer -- final statistical or methodological concern with the DCAT, especially as compared to the risk analysis, is that the DCAT metaphorically is a one tail test in that it does not allow for favourable scenarios that if interspersed over a five (5) year horizon or a four (4) or five (5) year horizon would moderate the DCAT projections. So, that's a methodological concern of Dr. Hum and Dr. Simpson in that it would tend to the -- exacerbate or overstate the results.

And in their oral evidence they elabor -- elaborated on this point:

"The worst case that the DCAT is composed of, the worst-case scenario

that one could imagine and not built
into here is any of the more favourable
scenarios that would offset this."

And they draw this -- the distinction later on page 1537 with the RAA, which -- which does a one tail test but built into those combinations are both the combination of favourable and unfavourable scenarios. And that's an important methodological distinction as well, in their view, and that certainly my clients urge that position upon you.

Going to the next page, can the analysis be said to be justified to result in justified true belief? And my learned friend, Mr. Saranchuk, went through all seven (7) scenarios flowing from the DCAT and, certainly, I put the pages of the cross-examination there, and I don't intend to repeat them. I thought it was a thorough and -- and helpful job.

But on this justified true belief point, certainly on behalf of my clients, I want to zero in on the biggest ticket item in the DCAT, the sustained low interest rate decline in equina -- equity market scenario covering the years 2009/'10 through 2013/'14.

And if you read MPI's dialogue in terms of that scenario, you see that the potential losses appear to be -- in terms of retained earning, appear to rise towards 228 million, I believe, in the 2012/2013 year, with the consequent recommendation from the Corporation that the RSR target should be in the range of 180 -- 80 million, or very close to the actual Basic target of the Corporation.

And, certainly, in our review, this is the highest RSR recommendation flowing from these seven (7) scenarios. And there are two (2) major analytic problems in this approach, in my clients' submission, and this calculation.

The first concern is that this is counterintuitive both to theory and empirical evidence. And Dr. Hum made this point. The very scenario imagined is -- is not consistent with economic theory, where you would expect an inverse relationship between low interest rates and equities, and it is contrary to empirical evidence.

And I -- I think it's noteworthy that Dr. Hum made this statement in -- in oral evidence and was certainly not tested on it by Manitoba Public Insurance.

As I've discussed earlier on behalf of my clients, we had asked whether, for the purposes of the DCAT analysis, MPI had conducted a joint probability distribution. The answer was "no."

Subsequently, in response to a PUB

request, they did at least some analysis of the relationship between low interest rates and a decline in the equity market sustained over a four (4) year period. And of the seventy-two (72) periods they analysed, they found one (1) where this actually occurred.  And, of course, that was in the Great Depression.

And this leads us to the second critical concern in terms of the justified true belief of these scenarios, and that is the Corporation's, es -- especially in its investment scenarios, on critical reliance on historical data dating back ninety (90) years.

And if one leaps back in time, go past the time of Eisenhower, Truman, back to Roosevelt, look what occurred in -- in tho -- that ninety (90) years that MPI is using in terms of its TSX data.  Sixteen (16) of those ninety (90) years are 80 percent covered the second World War and the Great Depression.

And there have been material changes since then which, in our clients' submission, certainly based on the expert advice of Dr. Hum and Simpson, make uncritical rel -- reliance on that data very problematic. A few of them are listed in the record, whether it's the move off the gro -- gold standard, changes in the tax treatment of capital gains and dividends in the early

1970s, changes in fiscal policies, OPEC.

And as Dr. Simpson aptly points out, in his judgment, going back -- going back to a period pre-OPEC, pre-World War II, does not help much. In this question, the more relevant date is generally the more recent, yet we note that there's no effort by MPI to give less weight to this pre-WWII data.

Dr. Simpson concludes, and we urge this conclusion on the Board, that reliance on this data is very problematic. Society has learned a lot from the policy mistakes since then and is very un -- unlikely to repeat those ones. They may invent some new ones, but not those ones.

And -- and he used the example of Presidents Bush and Obama reacting to the -- the crisis in the -- the economy that we experienced over the last year and the aggressive intervention in the economy, both by a perhaps less intellectually acute republican president and a more -- more robust intellectually democratic president, but the lessons of the past have been learned, at least in this regard, which makes this scenario, this big ticket item, inherently unreliable.

And my clients have asked me this question, and -- and I think it's an important one, turning to the next page of the outline. Could one imagine going to ratepayers and saying, we need to build in an extra $60 million surcharge into our rates, because we're protecting against a repeat of a four (4) or five (5) year low interest rate, low equity return scenario, which is intuitively and empirically not supported, and it only occurred once in the last ninety (90) years, during the Great Depression, where macroeconomic tools were less well understood and materially different.

And -- and by that, Mr. Chairman, and certainly I see you reaching for the mic, that's that sustained period, that four (4) year period, which they think it unlikely to recur.

THE CHAIRPERSON: I'm just asking you whether you misspoke because you said 60 million. You meant sixteen (16), didn't you, based on your notes?

MR. BYRON WILLIAMS: Yes, I certainly did mis -- misspeak, and certainly I meant to say 16 million. Thank you, Mr. Chairman.

And just to underline the -- the unreliability, in my clients' submission, of relying on -- on that uncred -- in an uncritical way of that ninety (90) years of TSX data, look at scenario 4 of the MPI in terms of the sustained declined in the equity markets which resulted in a recommendation, and it's not a hundred and sixty dollars ($160) for an RSR, but $160 million for an RSR flowing from that scenario, based on what they considered to be a repeat of a fifth percentile observation, fifth percentile observation.

And I'm not going to get into the issue of whether this was a real probability distribution or merely a glance at the data, but my -- I wish to highlight on behalf of my clients, look at the material difference in the fifth percentile pre-World War II, where you're looking at losses of minus 44.19 percent po -- versus post World War II, where the comparable observation was minus 14.3.

Again, in my clients' view, it -- it points to the very problematic nature of relying on that dated data.

A very thoughtful question asked by my friend, Ms. Kalinowsky of -- of the expert witnesses Dr. Hum and Dr. Simpson was, well, if you don't like the MPI scenarios, what about the PUB posing the scenarios?

And, certainly, in -- in its current form, my clients would still be very uncomfortable with -- with this, the current DCAT methodology because, in their view, it would still not be probability based, it still would rely upon hypothetical outliers, and still be employing a one tail test.

So my clients' recommendation,

recommendation number 2, is that the DCAT not be used as either the sole or the primary mechanism for setting the RSR. My clients do agree that the DCAT could conceivably be used as a limited secondary check on an RAA like methodology, although, in their view, it -- it would be preferable if one wishes to stress test to employ probability-based stress testing.

I'd like to turn to the MCT for just a couple min -- minutes and, in my clients' view, the MCT is no longer being actively promoted by MPI. My clients' primary concern with the MCT relate to its purpose, and -- and, to some degree, its credibility.

In terms of its purpose, their comments would be similar to what they would say with regard to the DCAT. It was developed for a different purpose in a different context. It doesn't make it a bad tool. Of course, it's a very useful tool, but maybe not the right tool for the question before the Board.

In terms of credibility, and the Board adverted to this in its Order last year, where does that 50 to 100 percent of MCT come from? What's the analytical basis for that?

And, certainly, the record in this proceeding has not offered any guidance on that. In my clients' submission, there is no real satisfactory explanation of how to translate this MCT analysis into an RSR range.

So, in my clients' submission, it's the -- the wrong tool, a good tool, but the wrong tool for this purpose and, also, translating it into a range is -- is problematic.

I think Dr. Hum and Dr. Simpson make an important point which relates to my next argument on behalf of my client, as well as this one.

Going back to that model that Dr. Hum presented in his evidence, they made the point that there can be no simple relationship between the -- the related risk to the Corporation, in the sense of either a simple proportionality or a simple rule of thumb. There's no simple formula or algorithm that one could expect to endure.

Why is that? Because we have to recognize that there's an interaction -- this Corporation, between the Basic and other elements of -- of the Corporation that are not regulated. We have to recognize that the nature of this relationship may change over time, and we have to recognize that the relative risks of the two (2) divisions may change over time.

So while it's tempting, certainly, to come up with a simple proportion or a simple formula for the purposes of setting the RSR, in my client's submission, based upon the expert advice of Dr. Hum and Dr. Simpson, that simple kind -- kind of approach is unlikely to long endure.

I -- I've got a typo in the last bullet on -- on this page.

I think it's also worth listening to Dr. -- Dr. -- Mr. Palmer on this point, in terms of the taking into account of other comprehensive income, in terms of the MCT. And I -- I miss Dr. -- Dr. -- Mr. Palmer expressed the concern that taking other comprehensive income into account might amount to rate setting by -- the word was not "you you", I believe it was "yo-yo," so I apologize for mis -- misstating his words or mistyping them, in any event. But that's a point from -- from MPI that we offer for your consideration.

Another potential approach in my client's understanding was presented in the -- the examination of Mr. Saranchuk, My Friend, Mr. Saranchuk, of Dr. Simpson and -- and Dr. Hum. And it looked -- looked at setting R -- RSR range as being 10 to 20 percent of prospective annual overall Basic expenditures.

Certainly, my clients prospective, this is not a preferred approach because of concerns both with credibility and transparency, and they think that Dr.

Simpson's response to this was -- was rather well put. He described it a -- a bit of a crude approach, not in a negative way, just as a -- in the sense that it's arbitrary in the statistical pre -- statistical sense. He suggested his preference for the RAA, because it makes it more clear what you're trying to protect again. And to pick a number of 20 percent or, putting words into his mouth, 10 percent, is a little bit more arbitrary, in a statistical sense.

And -- and on behalf of my clients, I want to elaborate on that just -- just a little bit. Just in terms of transparency, if one thinks of what really are the three (3) major drivers, potential drivers, of a need to draw down the RSR, one (1) of them certainly would be corporate expenditures, especially in the loss cost category.

And -- but there are also two (2) other major potential drivers: One (1) would be a rare statistical event affecting premiums earned, and another would be investment income. And the proposed benchmark of 10 to 20 percent of overall Basic expenditures does not capture either -- conceptually, either premiums earned or investment income.

Moreover, my clients would say that just a range without more gives them little confidence that it's approximately the right number, without at least testing it; whether it's a little bit too much, a little bit too -- too little. And -- and if one is analytically looking for a -- a link to the RSR, which is to control unacceptably high rate increases, from my client's perspective, a -- a more -- a -- a more close link would be from the premiums earned side. But certainly, those are my client's comments there.

What about the RAA? And my clients, in terms of the RAA, have looked at the RAA, in terms of modest amendments, which they're going to propose to the Board in the context of this proceedings; also more material amendments, as mentioned by Dr. Hum in his evidence; and also potential ways to integrate the RAA, including the VaR and statistically-based stress assessments.

As a starting point, Mr. Chairman and members of the Board, my clients prefer the RAA to the other options for the purposes of setting the Rate Stabilization Reserve, based upon the criteria of purpose, credibility, and transparency. And I'm not going to elaborate on this to a great degree because we -- certainly, Mr. Saranchuk's cross-examination of Hum and Simpson in this area when he -- when he acouraged -- encouraged them to vote, I think wa -- is very compelling.

We've set out how, under purpose, how Hum and Simpson described the purpose of the RSR. They also note that it's slightly different from the express purpose -- current purpose of the RSR. But certainly, in comparison, the DCAT, their -- their conclusion is that the RAA method most -- more directly applies to the stipulated RSR objective of a fund to ensure a stability of basic rates, and certainly my clients share that view.

Hum and Simpson make the point, in terms of credibility and transparency, that given that objective it's -- it's natural for the RAA to examine past statistical evidence of events that give rise to extraordinary claims and/or expenses, and that the method allows for a calculation of the optimal reserve level.

In essence the RAA is statical analysis in a classical, or to quote Dr. Simpson, "or -- or parametric form," it expressly addresses the potential risk and identifies the relationship between them using historical data, and uses standard statistical techniques. It assists us in terms of reliability and credibility but it -- because it's constrained by its reliance on published historical data and non-proprietary statistical procedures relatively easy to replicate.

So in terms of the menu that the Board has before it, from the perspective of purpose, credibility, and transparency, Recommendation 3 it -- from my clients, is that the RAA, as appropriately amended, should continue to be a primary vehicle by which the Rate Stabilization Reserve is set.

Turning to the next page which I think is the opposite page for those working of two (2) sided copies, there's two (2) potential immediate changes to the Value at Risk analysis and the operating risk -- as it's integrated with the operating risk analysis, that my clients would have considered heavily and -- and had some comments on. And one (1) is the use of the 25 percent equity weighting.

And going back to ancient history you'll recall that that was suggested by Board, in fact, ordered by the Board way back at the turn of this decade, based on the assumption that the Corporation would achieve 25 percent equity within two (2) years. Of course the reality is, as of 2008/'09 year-end, we certainly weren't anywhere near there. We're only 13.4 percent, in terms of equity. And again the projection for the next year is much less than 25 percent in equity.

So my clients' perspective there is arguably a material overstatement of the Value at Risk and a material overstatement of the RSR targe range flow

-- flowing from this use of the 25 percent equity weighting. And the table which I've taken from the record, it's Tab 22 of CAC/MSOS Exhibit 5; this is an excerpt from his table. And just to illustrate this point, I've brought this to your attention: The -- the first line -- line is the -- the current number, in terms of the risk analysis. And you see that's based up -- assumed 25 percent equity, a two point five (2.5) year time horizon, and the result is a -- a RSR target range, 97 million to 245 million.

What happens when you take the actual equity, as of February '09, and plug it into the equation? And of course MPI has confirmed this calculation using that same time horizon, two point five (2.5) years. What do you get? An RSR range of 68 million to 139 million. Well, of course, things change, so what we also ask -- also provided, in terms of that tab, was looking at actual equity as July 2009. And again you see a similar result.

In my clients' submission, the use of that 25 percent equity weighting, has skewed the -- the RAA analysis. It does not accord with the current reality of the Corporation, either in the '08/'09 year-end or moving forward into '09/'10. So that is som -- a change they would decin -- definitely recommend to the Board, is to use -- set the RSR target for the purposes of this GRA using actual equity.

What about the other consideration raised by MPI? Should we use a one (1) year time horizon for the VaR or a two point five (2.5) year time horizon? The current Board approved is the two point five (2.5) year, but MPI for a variety has reasons has suggested this one (1) time horizon. And they've made some thoughtful comments, although in my client's submission some of those comments must be taken with a bit of a grain of salt given the Corporation's self-interest in the result.

But to be fair to MPI, my clients have -- have tested this scenario, as well. And for comparison purposes, again using actual equity -- and this is on the record, Tab 22 of CAC/MSOS-Exhibit Number 5 -- here you see the RSR target range, using a two point five (2.5) year horizon, 68 million to a 139 million, versus using a one (1) year time horizon where the range is larger, 98 million to 196 million.

Dr. -- Dr. Hum was less sanguine, S-A-N-G-U-I-N-E, than MPI about using the one (1) year horizon. I don't think he'd study it a great deal, but the point was put to him by Mr. Saranchuk at -- in the transcript records below. And I bolded Dr. Hum's statement. I think it's clear he certainly did not endorse the one (1) year time hori -- horizon and indeed said:

"I hope to convey the impression that the VaR should be conducted with nuance, with respect to time holding periods of the class of securities for which we cannot readily readjust."

And I've got some elaboration of his a -- a bit later on which I'll draw to your attention.

Certainly on behalf of my clients, they think MPI has raised a valid point for consideration. They don't think the record of this hearing has extensively can -- canvassed that issue of whether it should be one (1) year or two point five (2.5). In their view, the jury is still out, especially in light of Dr. Hum's comments, and they would defer a decision until there's a more thorough discussion.

But perhaps it's important to consider both in setting the reserve target for 2010/'11. And this is something my clients have -- have thought about, and which they're going to propose in terms of the -- the range for the RSR for the current year. And what the -- I'll -- okay, and what the -- my clients have essentially said is the jury's still out on this question, so let's look at a couple scenarios.

Going back to that actual equity two point five (2.5) years, you see an RSR target range of 68 million to 139 million, which by Mr. Williams' humble calculation is about a midpoint of -- of that -- exc -- excuse me, I've -- I've erred with my midpoints. The midpoint of that should be 103.5 million, as opposed to 147 million. And then you see the actual equity using a one (1) year VaR period, a target range of 98 million to 196 million and a midpoint of 147 million.

So it's somewhat of a consensus building compromise for this proceeding, recognizing that in my clients' view, the jury is still out and they may not ultimately recommend a one (1) year time horizon. They would suggest considering setting an RSR target range using the midpoints of the -- of this analysis, take into account actual equity, and then split the difference, essentially, between the one (1) year VaR period and the two point five (2.5) year VaR period.

It's a compromise. It's essentially recognizing that the discussion on this point was not very fulsome in this proceeding, but it's one we'd strongly recommend fro the Board's consideration.

So that's Recommendation 5; that the RSR range for 2010/2011 should be between 104 million and 147 million.

Time does not permit moving to the next

page of the outline. You'll see the heading, "Other Potential Changes to the VaR and Risk Analysis." And -- and Dr. Hum had a -- a number of points about the -- how the VaR should be modified and could be easily be modified and, again, I've -- one (1) was to recognize the current and ongoing shifts. And I've indicated here, into private equity, but one could say in terms of the investment pol -- policy and the question he raises, Is that properly recognized?

And the other issue which I -- I believe certainly is, in his view, an important one relates to stocks and flows. He's -- I've put in how he describes it in the transcript; what a flow is as opposed to a stock of wealth. And he makes the argument that -- that the real point that people might -- are more likely to be concerned is, is not the fluctuations that occur in the stocks within limits, i.e., the flows, but really -- excu -- i.e., the stock, but really the flows.

And pointing you to lines 18 to 25 of his comments on page 60 and 51 (sic):

> "I would be loathed to allow that complex tangle of situations affecting the stock to have a dramatically big impact in the RSR calculation with respect to the determination of the

target reserves."

So that is probably a fundamental issue which is easily fixed, because all you have to do is not value the stock, but see what is the predictable flows. And, again, time does not permit a thorough analysis of this, but over the long term, it is something worthy of the Board's consideration in looking at the VaR.

Another point related to the VaR, what scenario should be employed? MPI employs the historic scenario. There's a variety of other ones out there -- parametric -- apparently Mr. Palmer, Dr. Hum, and my favourite, the Monte Carlo scenario. We'd note that the historic model was used in this Proceeding, and that the results of the VaR are very sensitive to the use of simulation model, and that MPI did not use other methods to test the historic method results.

So an open question going forward, if we're continuing to employ the VaR, is, Which simulation model should be employed?

A final point going back to the red dye -- yellow dye scenario, is when one looks at the risk analysis, it's important to understand that that worst case scenario based upon an assumption of perfect correlation between investment risk and operating risk, in my client's respectful submission, overstates the probability of that risk.

And I point to the transcript reference which -- which they believe substantiates that assertion and note as well that the Corporation has never tested this correlation, but the limited and simplistic analysis that they have done is presented in Undertaking 37 underscores the fact that there is not perfect positive correlation.

Moving in -- into -- towards potential improvements in terms of the operating risks, my clients note that ideally, especially with regard to loss costs, more than fifteen (15) years of data would be of assistance. But we also, on behalf of our clients, go back to Dr. Simpson's point that the best data is the most recent data, and observe, as well, that over time this information will improve.

In the short term, when one is only looking at fifteen (15) or, over time, seventeen (17), eighteen (18), twenty (20), in terms of the -- the risk -- years of data in terms of the risk analysis, there are standids -- standard statistical tools as concern -- confirmed by MPI such as a t-distribution which can be used when less than twenty-five (25) observations.

Dr. Hum and Dr. Simpson, both, also made an interesting point in cross-examination, is that they're not necessarily buying the -- the conclusion that -- that the data prior to fifteen (15) years ago, with regard to PIPP or with regard to loss costs, is of no value.

They recognize the structural break associated with the introduction of No-Fault, but still may be -- they suggest and we urge for your consideration, if you're looking at improvements to the operating risk analysis, simply be possible to use this prior data. Just another missing data, problem reference, and as you'll be aware, Dr. Hum and Dr. Simpson are quite familiar with that issue.

In terms of economic and technical feasibility of any of these potential options, certainly from the transcript at page 1,242, we're not saying on behalf of our clients that a hundred thousand dollars ($100,000) or, indeed, two (2) or three hundred thousand dollars ($300,000) is not a big deal, but they note that the cost to perform the VaR and the RAA individually, as well as the MCT and the DCAT internally, are clearly less than a hundred thousand (100,000) individually.

So given my clients' pending comments about building in a bit of redundancy, they -- they certainly see that there -- that is economically feasible, given the context of a Corporation of -- of this magnitude.

(BRIEF PAUSE)

MR. BYRON WILLIAMS: Under the heading, "Working Towards Consensus," are there better ways to integrate the RAA and stress testing? My clients strongly recommend to the Board the evidence of Dr. Simpson, especially as conveyed at pages 1648 to 1640 -- 1646 to 1648 of the transcript, and, again, a helpful question posed by Mr. Saranchuk in -- in response to a helpful question posed by Mr. Saranchuk. And Dr. Simpson made at -- at least five (5) important points about how one could better attempt to integrate the time series statistical analysis of the RAA with some sort of probabilistic stress testing.

And the first bolded statement notes, he -- he outlines the potential to use the DCAT in a bit of a different fashion and use some simulation exercises to generate a distribution of outcomes to test the wellness of the financial Corporation.

An important consideration in doing so, from Dr. Simpson, is -- is not to use the metaphorical single tail testing but to consider both favourable and unfavourable outcomes, and then you -- and then that would yield a -- some analysis, albeit it on an outlier basis that -- that could give some assistance to the Corporation to better integrate these techniques.

Dr. Simpson, on the next page of my outline, essentially ten (10) second clips, this simulation exercise, to say it's a -- it's like a Monte Carlo simulation methodology.

Then he makes, at lines 23 of 1647 and going on from there, another very important point, which is, again, it's important to look at the overall wellness of the Corporation, the financial well-being of the Corporation, use this methodology for the -- as a primary vehicle for -- for setting the RSR, but you have to look at if there are other reserves at a more broadly-based reserve for the Corporation, because this is an exercise for the financial -- financial wellness of the Corporation.

So turning to recommendation 6 of my clients: Over the long term, consideration should be given to improving both the operating risk and the VaR component of the RAA or risk analysis. Strong consideration also should be given to incorporating a second check in the form a statistical probability-based stress test.

And, again, and this is not put in there but certainly I have instructions from my clients to include the following line: The overall -- overall well-being of the Corporation should continue to be taken into account.

Going to the la -- and just to repeat that, that the overall well-being of the Corporation should be taken into account.

Going to the last entry on that page, that is not a recommendation of my clients but they would simply note that if there is a desire on a short-term basis to translate this into a more simple rule of thumb, such as a percentage of premiums earned or, less ideally, claims incurred, that could be -- could be done on the understanding that that is a -- only a short-term range that is unlikely to endure and that it should continue to be tested rigorously every two (2) to three (3) years.

I can assure the Board that after the RSR, things will move much more quickly.

There's a few last cleanup issues related to the RSR that my clients feel is very important to -- to recommend to the Board, and they relate to matters other than methodology of setting the RSR or the target range.

First of all, in a -- in a hearing where consensus seems to be in fairly short supply, my clients are -- are glad to point out that in terms of the concept of transparency there -- there is a lot of consensus between the position of the Corporation and certainly of CAC/MSOS.

And there's general agreement that in terms of transparency from a consumer's perspective, consumers should have the right to understand how the rate -- how the reserve target is calculated. They should have the right to understand the impact that the reserve is having on their rights -- on their rates, excuse me, R-A-T-E-S, and also the purpose to which the rate stabilization reserve funds are being used. And Ms. McLaren is -- agrees with that statement and certainly my clients endorse it, as well.

In situations -- turning to the next page of the outline -- where a RSR surcharge may be -- well, may be found necessary, my clients note that in the 1990s there appeared to be consensus around how notice should be given and also how the incremental revenue associated with an RSR surcharge should be reported.

And they also see consensus on these same issues on a -- the -- on a going forward basis with MPI. And we've included the transcript excerpt from page 1204 where Mr. McLaren agrees that -- that a surcharge should be expressly noted in the Application and in the

Corporation's public notice.

And also, the agreement by Mr. Palmer later on the page that in terms of reporting the future RSR surcharges, setting them out separately, the incremental revenue therefrom, he does not have any problem with that. So again, there's consensus on notice.

Turning to the next page of the outline, there's -- there's less consensus on retaining the range. And my clients feel very strongly that a range is important, and in their view -- and they rely heavily on the evidence of Dr. Hum as set out on this outline on this page from the transcript of 1568 in relying upon this conclusion.

He makes the point that a simple number, whether it's one eighty-five (185) or one twenty-five (125), provides not enough and less information. It's not very good information and it's not very helpful in telling you how -- how concerned you should be given how far you away -- are away from a particular target. So his advice to the Board was keep that range, and certainly my clients concur in that.

My clients also disagree with MPI in terms of the starting basis for dealing with situations where reserves are either in excess of the target range or below the target range.

My clients prefer to start with a rule-based approach. And they note that such a rule-based approach has served consumers very well in the past, i.e., a rule-based approach to setting rates that break even over the long range. That's been a very useful approach.

They conceded that there may be times when an exception to the general rule is mandated, but they think the starting position from the Board would be well advised to be, start with the rules in terms of a surcharge when you're below, a dividend when you're above, and certainly allow the Corporation, if it believes there should be an exception to that rule, to make Application thereof.

So recommendation number 7 from my clients is that the Board direct that any future surcharges and the incremental revenue from those surcharges will be expressly identified in the Application pre-hearing notice and pre-filed materials of MPI; and that the RSR continue be -- to be set using a range; and that the rule-based approach for the treatment of shortfalls and excesses be continued.

Mr. Chairman, if I could just be given a -- a second to stand down?

THE CHAIRPERSON: Of course.

(BRIEF PAUSE)

THE CHAIRPERSON: Yes, Mr. Williams, whenever you're ready.

MR. BYRON WILLIAMS: We're moving to the relatively short snapper part of the submissions of CAC/MSOS. And I want to emphasise that a significant although not disproportion of time has been devoted to the RSR. These issue which follow, while they may be short snappers in terms of discussion, are no less important to my clients.

And my clients want to spend a couple minutes to address issues relating to forecasting. And the Board may recall that there were a couple of heart palpitating information requests by CAC/MSOS relating to -- to forecasting, those being CAC 1-28 and 2-17, raising fascinating issues relating to auto correlation, heteroscedasticity, and Durban-Watson tests, and the all -- and -- and the like. There's also a bit of an undertaking by the Corporation, that being number 42, which references some forecasting issues.

And, certainly, my clients recognize the materials are complicated and they certainly cannot do justice to this in closing submissions, but there is a bit of a helpful discussion, if someone dense -- if somewhat dense, in these Information Requests.

But my clients believe that it's important to provide a high level background flowing from these responses. Certainly, there's no doubt that there have been excessive forecasts and claims incurred as opposed to actuals over the last five (5) years.

And, again, my clients do not use the word "excessive" in a pejorative sense. It's -- it's just the results, we want a consistent basis over the last five (5) years. There's been a overforecast as -- as opposed to actuals.

So these Information Requests were really focussed at trying to -- to test the underlying relationships which may have led to these -- these forecasts using the number of standard statistical tests to consider whether there were potential design issues relating to MPI's forecasting.

And, again, they're lengthy and dense responses, both on the transcript and in the Information Requests, but here, in my clients' views, are the significant responses. And these are found both in the transcript and in the Information Requests.

One (1) significant response was the

finding that at a 1 percent significance level, results are inconclusive in terms of accepting or rejecting the null hypothesis of no autocorrelation.

The other very important response flows from Undertaking 42, which suggests, at the 5 percent significance level, with regard to the non-highway traffic -- HTA units, the 'D' value of zero point five seven three (0.573) is in the positive, underlining the word "positive," autocorrelation interval.

And, certainly, the conclusion my clients would -- would suggest flowing from this response is that we should reject the hypothesis of no autocorrelation. Why does one test for autocorrelation? And, again, hopefully the responses to 128 will -- will be of some assistance in this. We're not looking for bias, but when -- when one (1) forecaster projects any future results, the actual results may be above or below the actual valuation that occurs.

Autocorrelation is a statistical term of art, going to the point when the error terms from one (1) observation to the next are correlated. It can be positive. It can be negative.

Why does it matter? The presence of autocorrelation may, and I -- I'm underlining the word "may," mean that when using linear regression for forecasting, as MPI does, although the estimators may be unbiased, they may not be efficient in the sense that they don't have minimum variance. And by "efficient," we mean certainly in terms of comparison to techniques which take into account autocorrelation.

Painful as it is, we'll continue with this. Potentially, and, again, underlining the word "potentially," using least square regressions may be too far off compared to what could be obtained using other techniques, whether they're added lag values or differencing or transforming the equations.

Now I want to underscore this point, Mr. Chairman. My clients are not saying anything should be changed in the forecasting, just that the tests in terms of auto correlation in this hearing suggest that the issue should be observed and reported on for the next proceeding.

So Recommendation 8 of -- of my clients is that as part of its pre-filed material in the next GRA, that MPI test for auto correlation and heteroscedasticity -- H-T-E-R-O-S-C-A-D-A-C-I-T-Y (sic), for the Court Reporter -- and also that MPI report back with reasons on whether it continues to be of the view that linear regression is a preferred methodology, and it may well be of that view. Just an issue to watch moving to the future.

Road safety. In my outline on behalf of my clients, I outlined the big three (3) concerns and we all know what they are: occupant restraint, unsafe speed and impaired driving. My clients have a few simple points in terms of road safety.

In terms of the big three (3), there's been a relatively modest growth in expenditures compared to growth and expenditures elsewhere in the Corporation, especially in terms of occupant restraint. And Ms. McLaren was very helpful on this point because she said, "It's not because the Corporation is not willing to spend more, but because it has not identified legitimate opportunities to expand in a cost-effective basis." And hopefully I've fairly represented her statement.

We know that at a high level, and the high level costing methodology that the Corporation has used in terms of trying to get a high level estimate of the costs of unsafe speed, lack of occupant restraint and impaired driving, that there -- that demonstrates that there is an ongoing material impact on MPI costs and upon Manitoba consumers from the failure to use seatbelts, from impaired driving and speeding.

And as one (1) of the Corporation's Undertakings demonstrated, that cost is, of course, disproportionately borne by citizens in rural Manitoba. And I -- I think of the seventy-two (72) -- excuse me, of the seventy (70) deaths just in the '09 year to date, I think fifty-two (52) of them were from rural Manitoba. That's certainly of concern to my clients.

My clients also note that although the Transport Canada data is dated, whether it is in terms of fatalities, serious injuries or occupant restraint usage, Manitoba tends to perform below the Canadian average. Again, it's not just an MPI issue, it's a Manitoba issue.

And my client, certainly, from their review of the records see little evidence that MPI is aggressively seeking out legitimate opportunities to expand in these areas in a cost-effective basis.

An inquiry was made, Have you talked with Saskatchewan? which, for reasons that certainly escape my clients, performs better in -- in terms of occupant restraint usage, and the answer was, "Not recently."

So Recommendation 9 of my client -- and it tries to respect the Corporation's focus on education and also its efforts to integrate those educational activities with enforcement activities -- is:  Let's give MPI some encouragement to -- to -- to see if there are cost-effective opportunities out there, and that MPI be directed to conduct a review of Canadian and North

American best practice relating to public information programming and the integration of public information programming and enforcement in the areas of occupant restraint, unsafe speed and impaired driving and compare it to its own practice; as well, that MPI be directed to report on any changes to its current approach flowing from that review back to the Board.

Turning to cost control, and I probably have to apologize to my clients for not canvassing this area as well as I should have in this proceeding.  But at a high level, there are some ongoing source -- sources of concern for CAC/MSOS.  And I want to be clear here. Their assertion is not that the operations of the Corporation are being imprudently managed.  Their assertion is simply that there are some high level trends that deserve careful monitoring.

One (1) of these relates to the growth in Basic's share of the overall corporate budget.  And, certainly, we -- we can identify that there's been a twenty-five point -- 24.5 percent increase in expenditures in comparing the Basic share of the corporate budget from '05/'06 to '08/'09.

That's the relative growth in the -- in -- in the Basic ex -- experiments -- expenditures from the actuals in '05/'06 to the actuals in '08/'09.  We know there's a number of reasons for that, but it's a trend that's of concern. Likewise, in terms of looking instead of at actuals, looking at approve -- approved expenditures from '06/'07 through '09/'10, again, a 28 percent increase.

Now, certainly, if we look at expenditures of the Corporation, immobilizers, which -- which have been a valuable program, have certainly been a driver. But what we did in CAC/MSOS Exhibit 5, Tab 9, was draw an excerpt from a Board information request which looked at the growth in claims expenditures excluding immobilizer growth, and that's on the opposite page from the cost control page in your outline, and also as compared to inflation.

Again, there's no -- the -- this is -- you'll see at a high level between the '98 and 2009 period Basic claims expenditures grew more -- grew more rapidly, significantly more rapidly than CPI, and those conclusions are -- are cited at the bottom of that page. Again, not an assertion that the expenditures are imprudent, just a trend of concern.

My clients also note some frustration in trying to test the productivity of the Corporation in this proceeding because they've been unable to use -- and we moved onto the next page of the outline. They've been unable to use, in testing the productivity of Basic, standard performance measures such as claims expenses per claim for Basic, claims expenses for claims employees for Basics, and claims per claims employee for Basic due to challenges in disentangling Basic from the rest of the Corporation.

My clients were pleased to learn that the Corporation believes that proxies could -- could be developed for the next GRA.  In terms of cost control issues, my clients also note that there are a number of immerging issues related to BPR and the increasingly integrated nature of the Corporation.

In the next few years, certainly we're seeing the impact on amortization of -- of the BPR Program and those programs related in whole or in part to Basic, and Ms. Everard spoke of that this morning.

We've seen a three (3) month impact on the timing of the rollout of Basic programs, such as DSR, due to non-basic programs such as the enhanced identification card.

We note that there have been significant costs incurred with regard to PIPP infrastructure and certainly from my client's perspective, it will be important to test whether the projected cost savings over the next seven (7) years from this PIPP infrastructure project are realized, whether it's the paper -- paperless office or the avoidance of claims leakage.

We thank MPI for the provision of the -- the most recent excerpt or report from the Gartner report, I -- I believe that was Undertaking 43, and -- and, certainly, identified going forward some risk to the PIPP infrastructure program, although I think characterising them as -- as moderate, low to moderate.

But there are some challenges that are -- that we would draw to the Board's attention, again, for example, in terms of the PIPP infrastructure initiative, getting training resources, some challenges due to competing demand with other BPR initiatives, another integration effect, and -- and this was as of May 2009, a gap in MPI leadership in terms of PIPP architecture. Now that may have been rectified since then.

So Recommendation 10 of my clients is: For the next GRA, MPI be directed to provide and justify recommended matrices and targets to measure productivity of Basic on an ongoing basis; again, thanking them for the provision of the Gartner Group update, that MPI be directed to provide ongoing updates from the Gartner Group relating to the BPR initiatives within the Basic purview; and that MPI be directed to provide an update on the PIPP infrastructure business case demonstrating benefits as compared to costs.

Moving to one (1) of the last two (2) elements of my clients' submission, cost allocation. The Corporation retained Mr. Olfert and his Deloitte team in terms of the -- for the purposes of preparing a cost allocation methodology and certainly in my clients' submission it was a -- a really good start. They recognized that by their own admission of MPI there is still significant work to be done.

And in terms of the costs side of the allocation, the primary concern of CAC/MSOS relates to the allocator at the Level D level and certainly the -- the Gartner Group recommended -- excuse me -- Deloitte recommended premiums earned over claims incurred I think on the basis that analytically Basic does not put a -- build a profit margin into its rates whereas Extension and SRE do.

Certainly from reading Deloitte's report, my clients' conclusion is that both might be considered reasonable. I put a question mark there. MPI may challenge that assertion.

One (1) of my clients' big concerns with Deloitte in terms of this allocator is that they didn't test the claims incurred from the -- from the context of the concept of stability. And certainly, the Board will be familiar from other regulatory proceedings, when one looks at cost allocation, stability is an important consideration.

All other things being equal, once doesn't want an allocator that is prone to jump around a fair bit. It doesn't build confidence in the system and -- and certainly, from my clients' perspective, premiums earned is preferable to claims incurred based on the recent history of the Corporation.

My clients also note that the -- while Deloitte accepted conceptually that there's a built-in profit margin into SRE and Extension, it didn't analyse the materiality of those profit margins. And my clients note that this choice of allocator has a significant impact on Basic costs.

To MPI's credit, they recognize that there is a need for more work on -- on the claims incurred allocator. And they, to our understanding, have endorsed the concept of stability in assessing cost allocators. So that's on the costs side. My clients' primary concern relates to that Level D allocator.

They note, as well, there does not appear to be a review of MPI's existing assignments of costs related to BPR. More importantly, my clients are of the -- are concerned that there was no review of the allocation of revenues conducted by Deloitte.

And on the surface, this is a direct allocation, it seems fairly simplistic, but that type of simplistic superficial analysis, in my client's submission, does not take into account the integral relationship between the Basic and the Extension Program.

And certainly, if you review the -- the con -- the transcript, I think Mr. Olfert from Deloitte was frank in -- in acknowledging this relationship. Based on our reading of the transcript, he acknowledged that the potential of the Extension Program to obtain revenue is materially enhanced by its relationship with Basic, that Extension levers Basic customer records and customer contacts at renewal -- although I -- I think he said it was mutual -- and he said that he con -- conceded -- conceded is the wrong word -- he agreed that Extension would look very different if not for Basic.

So my clients' recommendation number 11 is that the Board acknowledge the good work and the directional progress made by MPI in terms of the Deloitte cost allocation review; that the concept of stability be expressly incorporated in assessing allocators; that MPI be directed to conduct additional analysis in terms of a mechanism to improve the Level D allocator and to specifically consider both claims incurred and premiums earned in that analysis.

Not written in recommendation 11, but my client confirmed for their instructions on this point, is that MPI be directed to report back in terms of revenue allocation, taking into account the benefits enuring -- I -- benefits flowing to Extension through its relationship with Basic, and that consideration be given to recommending a workshop on these issues to address them to the greatest degree possible prior to the GRA Application.

A final comment, a final area of discussion is the regulatory environment and certainly, as -- as just the preceding comments would hopefully reinforce, there is strong and compelling evidence in this proceeding about the increasingly interwoven nature of this Corporation, Basic with other elements of the Corporation, including Extension and certainly DVL. And there's no doubt in my clients' view that this is providing growing challenges in terms of the regulation of the Basic program.

And we've identified just three (3) or four (4) challenges experienced in this hearing, something such as the calculation of full-time equivalents for the Basic program, the comments of -- of Dr. Hum in terms of what needs to be looked at in terms of setting the rate stabilization reserve, the methodology, look at the risks for the Basic, look at the risks for the other elements of the Corporation and look at the covariance between those risks.

We've seen the impact on the rollout of important Basic programs such as Driver Safety Rating, of non-Basic BPR initiatives such as EIC.  We've also seen a number of overlays of this interaction in the cost allocation review process.

Thanks to My Friend Mr. Saranchuk's discussion with MPI of November the 3rd, there was strong evidence on this on the record of this proceeding that the Extension element of the program is essentially operating as a monopoly, de facto, D-E space F-A-C-T-O, if not de jure.

There's also strong evidence that extension revenues are strongly reliant and benefit from their relationship with Basic.  And certainly, my clients feel frustrations in this regulatory process given the challenges posed and the -- by the closely integrated mature of the Corporation in face of the Board's expressed statutory mandate.

So my clients are recommending that the PUB recommend that Section 26.4 of the Crown Corporations Act be amended to allow the Regulator, in setting Basic rates, to expressly consider the overall well-being of the Corporation, including the existing reserves and projected income of Extension and SRE and the effects on Basic costs and revenues of the integrated nature of the Corporation.

And certainly, my clients have been a long time coming to this recommendation, certainly longer than their friends at CAA, but it's a recommendation that they strongly make in this proceeding.

Finally, rates. And I note that I'm really close to my hour and fifteen (15) estimate, Mr. Chairman and members of the Board, for the afternoon. In terms of what should be the rate that flows from the proceeding discussion, my clients note that even with the downgraded projected results for 2010/'11 the Corporation is still looking at being a bit above breakeven.

In my clients' viewpoint, that's not necessarily a bad thing. They -- they like to hold the Corporation as close to breakeven as they can. They think that's an appropriate objective of the Regulator, but they note that there still is some turbulence in terms of the investment market settling and still some uncertainty in -- in the market and the general economy. Certainly, things look a lot better than they did six (6) months ago, but there's still some -- some clouds that have yet to dissipate.

They -- my clients also note, as well, that IFRS is raising some issues in the -- the next little while, which is not noted in their outline. So my clients' view, prudence is still called for, and that does reinforce the wisdom, in -- in my client's submission, of what the Board did back in the spring in terms of DSR. Certainly, my clients think prudence was appropriately exercised then and a more moderated degree of prudence is called for going forward.

So my clients are asking -- they're relatively confident in the position of the Corporation, so, certainly, they're not seeking an overall rate increase, but nor are they seeking a decrease.

Certainly, in the event that the Corporation identifies potential best practice initiatives that be -- that can be invested in the big three (3) of road safety, my clients would certainly be supportive of consideration being given by the Corporation to using some of the funds above breakeven for that purpose.

Mr. Chairman, certainly, I thank the Board for its patience, and the MPI panel, fellow Intervenors, and certainly Board counsel and advisors for their indulgence, as well.

My clients will be making a submission for costs. They'll do that in writing.

Just for the Board's information, the recommendations are set out at the end of the outline. There's been a couple that have been verbally added along the way to recommendation 6 and to recommendation 11, but those are apparent from the transcript.

Thank you very much. Subject to any questions, those close my submissions.

THE CHAIRPERSON: Thank you, Mr. Williams. We're just going to take a five (5) minute break and we'll come back with the other two (2) Intervenors that are going to provide argument today.

MR. JERRY KRUK: Mr. Chairman, if I might, Ms. Wankling has to leave by three o'clock. We need fifteen (15) minutes. And she's got a medical thing she has to attend to, so --

THE CHAIRPERSON: She can come up first then.

MR. JERRY KRUK: Thank you.

THE CHAIRPERSON: Is that all right with you, Mr. Dawson? We'll be back in no more than five (5) minutes.

--- Upon recessing at 2:05 p.m.

--- Upon resuming at 2:13 p.m.

THE CHAIRPERSON: Thank you for your patience. We exceeded the five (5) minutes slightly, I think. Okay, Ms. Wankling...?

CLOSING SUBMISSIONS BY CAA:

MS. DONNA WANKLING: Mr. Chairman, thank you for your indulgence in -- in allowing CAA to change up the order slightly on this close.

Good afternoon, Mr. Chairman, members of the Board, ladies and gentlemen. My name is Donna Wankling and I'll be making the closing argument on behalf of CAA Manitoba.

We could summarize CAA's presentation by just saying, "We too," after listening to Mr. Williams. However, instead, for today's closing, we'd like to take you back a few years for a bit of a history lesson, if you will, illustrating that the more things change, the more they stay the same.

We will focus on five (5) main areas, the rate stabilization reserve, cost allocation, the monopoly that is Extension insurance, red light cameras, and transparency. So let's begin.

When CAA first became part of these

hearings about fifteen (15) years ago, MPI's financial capabilities were at the point of bankruptcy and MPI needed all of us to help build up their income, their reserves, and their ability to operate on a long-term basis.

CAA, along with others sitting as Intervenors today, became part of the solution. We fully supported the increase of a rate stabilization reserve fund and the ability to build up that reserve to protect Manitobans against the kind of financial problems facing us at that time.

We recognized and supported the implementation of premium surcharges in the rate of 2 to 4 percent over a period of four (4) to five (5) years that would be dedicated to this RSR.

As an organization, we took all kinds of negative feedback from our members during that time, but we stood by our decision. We supported the initiative to regain solid financial ground. We saw the bigger picture.

Thanks to this collective effort and ability to think long-term, MPI emerged from its financial situation to become what it is today, a successful Crown corporation overflowing with riches.

Should the time come that MPI is found

again to be in a position of financial crisis, again, CAA would be there to support whatever is required to once again build up the reserves.

Having said that, we have difficulty accepting MPI's argument that the RSR needs to be increased in any meaningful way. We are hesitant to increase the level of the RSR for a couple of reasons. One (1), we all remember a few years ago the Manitoba Government looked at taking excess monies from the RSR to fund universities. CAA, along with others, objected to the utilization of those monies for that purpose and the idea was subsequently dropped.

Over all of these years, MPI has changed their position from the VaR to the RAA to the MCT and now they're pushing for the Public Utilities Board to accept DCAT. It seems that MPI is only interested in using a system that drives a higher RSR. Admittedly, we are not in a position to agree or disagree with what method is used, but we do believe that the RSR should not be increased in any meaningful way since there is no looming crisis or documented need.

The discussion by Drs. Hum and Simpson on the RSR was very enlightening, in particular, the difference between plausible and probable occurrences. Whether one agrees with Drs. Hum and Simpson or the

Corporation and their use of DCAT, the bottom line remains the amount of money MPI has it its reserves. We believe that a range is proper to include all probabilities and not a specific number driven by plausible scenarios. We believe there is no need to further increase the RSR.

Moving on to cost allocation. This time we go back a couple of years when the PUB ordered MPI to undertake a cost allocation review in consultation with the Board and file the results of the review at the next General Rate Application, the 2007 General Rate Application. The review is one (1) year late, but better late than never. We thank Mr. Olfert from Deloitte for his testimony on cost allocation.

The issue of cost allocation is centred on which business line, Basic, Extension, SRE and DVL, pays what proportion of expenses. CAA recognizes that the majority of MPI's expenses are loaded onto Basic Insurance. In contrast, the other lines of business only exist because of Basic. MPI would have been unable to expand its base without money from Basic. It is ironic then, that the PUB has access to Basic but not the other lines of business. In order to ensure fairness of the cost allocation, the PUB needs access to the different lines of business.

While it's great that MPI ultimately updated a cost allocation review, for practical purposes it's not very useful in providing a full picture of the Corporation's finances.

On to Extension Insurance and the MPI monopoly. Around the same time that MPI was in financial difficulty and looking for support from the Interveners to build up their reserve, MPI recognized that customers wanted increased convenience when purchasing insurance and proposed a new computer system. We supported MPI's move to the Autopac on-line computerized system. Now Extension insurance could be purchased along with Basic at the mere push of a button, while for competitors, forms needed to be filled out manually. MPI flourished financially with the implementation of this new technology.

Fast forward to where we are today and MPI has admitted to ownership of 95 percent of the Extension market, but, nevertheless, continues to refer to its ext -- to its Extension line of business as competitive, even though the four (4) or five (5) competitors that are still left require forms to be filled out when purchasing their product.

The majority of those who MPI refers to as its competitors have effectively been driven out of the marketplace, and MPI will continue to obtain an increased share. In addition to controlling 95 percent of the market, the new streamlined insurance and driver's licence renewal process further positions MPI as the convenient choice when buying insurance.

Under the new renewal system, ratepayers will receive an annual statement combining both vehicle insurance and driver's licence premiums increasing the convenience of renewal but decreasing the need to visit an insurance broker, much less filling out the forms of the competing insurance carriers left. In this day and age it's unlikely that a consumer will choose to make a special trip to their corner broker to renew their Extension insurance when they can easily purchase that insurance through MPI and renew on a five (5) year term.

This seemingly hassle-free way of renewal is effectively going to further the monopoly in the Extension line of business by cutting out the few insurance carriers left. The irony of our support and insistence on the Autopac on-line computerized system now works against any meaningful competition.

Back on December 1st, 1998 and even prior to that, CAA Manitoba said that Extension insurance is really not a competitive product since the Corporation, through its monopoly on Basic, encourages customers to purchase Extension coverage. CAA main -- maintained back then that the profits earned in the Extension Insurance Division should therefore be taken into account when setting rates and the level of the RSR. Today we maintain this posi -- position and urge the PUB to continue to challenge the validity of Extension insurance as a competitive line.

In formulate -- in formulating your opinion, please keep the following in mind.

1. The MPI Extension business has grown to capture almost the entire share of the market. One would be hard pressed to argue that there is significant competitive threat to this line when MPI holds a marketshare of 95 percent.

And 2. CAA holds the view that this dominant marketshare has been driven by the perception of ratepayers that because MPI is the sole source of auto insurance in this Province there are limited, if any, alternative options for Extension Insurance.

Additionally, the method of purchasing Extension insurance is driven from the same computer system that supports Basic. CAA strongly advocates on behalf of Manitoba ratepayers for the Extension line of business to be put under the watchful eye of the PUB to ensure transparency.

On to red light cameras and another history lesson. CAA was asked to endorse photo radar when it was first proposed. We declined. Our position has always been that based on the way the program is set up in Manitoba it results in nothing more than a cash grab, however, as an organization devoted to road safety, CAA does see merit in the use of photo radar technology for speed law enforcement, but with the following conditions:

That the usual demerit points not be applied until the identity of the driver is known.

That the investment in and frequency of usage of photo radar technology be sufficient to create a credible deterrent effect.

That it be used strictly as a tool to reduce the severity and frequency of collision -- collisions, not to generate revenue.

That law enforcement agencies employ radar primarily in areas of high collision frequency or where there are other safety concerns.

That law enforcement agencies cooperate in the development of an effective and consistent public relations and education program for photo radar.,

That the technology be used to enforce speed limits that are reasonable and that a full and complete traffic study be completed in Winnipeg and other major centres in the province so that speed limits can be set properly.

As MPI pointed out, as precluded by law, drivers charged with photo radar infractions will not be penalized under the new Driver Safety Rating Scale. CAA absolutely agrees with this position. Unless the driver can be properly identified there is no way that the owner of the vehicle should lose their discount for auto insurance for a red light camera infraction.

There is also little evidence to support the theory that red light cameras increase road safety. According to a Winnipeg Sun article dated May 18th, 2009, based on information obtained from MPI, collisions at photo radar intersections actually increased for the first three (3) years of the program. It wasn't until 2007 that the numbers began to decrease, falling to one hundred and sixty-eight (168) collisions from two hundred and forty-three (243) the previous year.

Between 2005 and 2007 there was a reduction of almost ten thousand (10,000) speeding tickets handed out through photo enforcement. Some of this undoubtedly due to learned behaviour. Drivers that take the same route every day know the location of the cameras and know when and where to slow down; however, the number of red light runners increased by almost four thousand (4,000) over that same two (2) year period.

While the jury is still out on the effectiveness of photo radar enforcement in terms of improving road safety, one (1) thing is for sure, it should not be used as part of the driver safety rating and CAA is on side with MPI in this regard.

And now onto transparency. The opportunity for all stakeholders to meet in this Public Forum for the purpose of discussing auto insurance rates and the Rate Stabilization Reserve Fund is critical, especially since MPI is a monopoly. Over the last four (4) or five (5) years MPI has developed a culture that is long on rhetoric and short on transpor -- parency.

Board Orders and Board recommendations have been ignored or set aside for MPI to address at their convenience and this drives things like the Manitoba Bar Association filing motions against them for not providing information and CAC/MSOS expressing their frustrations around the issue of Extension.

There are too many questions that are responded to with simply, this is not part of the Hearing. Perhaps it's timely to have MPI set up a goal in which they meas -- measure perception of openness and transparency much like the dials used in the quarterly and annual reports to demonstrate the Corporation's other goals.

Diminished transparency has significantly impacted the level of trust and the net result is that the public is at risk generally of being shortchanged, and in many instances of not fully being aware of where their money is going. It is clearly time for MPI to embrace a culture of transparency and openness.

CAA will continue to act on behalf of Manitoba motorists to ensure fairness and transparency in the rate setting process.

Mr. Chairman, we wish to thank the Board, its advisors, the MPI panel and the other Intervenors for the courtesies extended to CAA during the course of this Hearing. Thank you.

THE CHAIRPERSON: Thank you, Ms. Wankling. Okay. And we'll now move to Mr. Dawson.

(BRIEF PAUSE)

CLOSING SUBMISSIONS BY CBA/MBA:

MR. ROBERT DAWSON: Good afternoon, Mr. Chairman, members of the Board. At the opening of this year's Hearing, Mr. Chairman, you had spoken of the Public Utilities Board's mandate to protect the public interest and that appears at page 9, line 22 of the transcript, and you had gone on at page 10, line 4 to refer to the Board's requirement that the process by which rates would be set should insure transparency in terms of the Applicant's operations and financial position.

And I submit, of course, Mr. Chairman, that you were entirely correct in identifying the role and approach that this Board should take when balancing the Applicant's goals against public interest. Now I could pause here and point to case law from Manitoba courts and from those of other jurisdictions that define the role of public regulators, but I suggest it's sufficient to note Ms. McLaren's agreement with Board Counsel's characterization at page 1791, line 12 of the transcript:

> "That the public interest is best served by this Board which functions as an independent proxy for competition."

To fulfill effectively that proxy role, the Board needs to collect information. And the kind of information that it needs, is such, that it would be required, in order to understand accurately the Applicant's overall financial position. As indicated at page 10, line 11 of the transcript, Mr. Chairman, such an understanding forms the basis of the Board's decision on fixing rates.

Unfortunately, this year's Hearing has highlighted barriers that the Hearing process has encountered in collecting that information. For example, Board Counsel filed an Information Request PUB-1-4, seeking at paragraph (e) details about the PIPP benefit enhancement relating to catastrophic injuries. Part of the reply that the Applicant made was to refuse disclosure, stating that, and I quote:

> "Information disclosing consultations or deliberations between a Crown Corporation and a Minister of the Crown and Crown Cabinet confidences are confidential." End quote.

My client encountered the same reluctance arising out of some fifteen (15) of its first round Information Requests being told that the information sought was confidential or irrelevant. And unless the Board would like me to go through those IRs, I suggest that because they're obviously the subject of my clients' motion for disclosure, which of course the Board allowed by its order of, I think, 133/'09, it's likely sufficient for these closing submissions simply to gloss over those details rather than risk re-arguing that motion.

And a third example comes in the same reluctance that we saw, the reluctance to disclose during the course of my cross-examination of Ms. McLaren, where the Applicant's lawyer objected at page 1,735 on the ground again that my question would elicit confidential information. Now, every time that the Applicant refuses to answer a question, whether it comes through Information Requests from Board Counsel or any Intervenor or during cross-examination at the Hearing, the Board is being denied information.

And by definition, this undisclosed information has got to be information that the Board needs to understand accurately the Applicant's overall financial position and also to discharge effectively the Board's role as an independent proxy. Now I say that it must be by definition to be the case because, clearly, if the information were not connected to the Board's work, such Information Requests would actually be irrelevant and of no interest to the Board.

However, when these questions come from Board Counsel itself, or when answers to an Intervenor's questions are compelled by order of the Board arising out of a motion for disclosure, it's safe to assume that the Board does not treat the information sought by such resisted inquiries as irrelevant or having no interest to the Board.

Indeed, the Board has written about the way in which the lack of relevant information can impede its ability to discharge its statutory duty of oversight and regulation. And I refer, as one (1) example, to the oft cited, at least in the course of this Hearing, pages 19 and 20 of Order 98/'09 relating to the DSR.

The Board is very much aware of that matter so I can move quickly and simply say that it involved a question put to the President of the Applicant Corporation in April 2009 at a time before enhancements to PIPP benefits had publicly been announced, but when their $90 million price tag was certainly known, secretly, to the Applicant.

At page 19 of its Order, the Board complained in the following words -- and I think it is worth repeating them:

"The Corporation..."

This is the quote:

"The Corporation did not inform the Board at the DSR Hearing of pending enhancements to coverage pursuant to the Basic Personal Injury Protection Plan for those individuals who have cov -- who have suffered catastrophic

> injuries, nor did the Corporation provide the Board with an estimate of the financial implications of the planned enhancements."

The basis for the Board's complaint is made all the more clear when one remembers that you, Mr. Chairman, had put the question or put the subject of Enhanced coverage for victims of catastrophic personal injury to Ms. McLaren during the course of that Hearing.

And, as we've already seen in the course of this year's evidence or this year's Hearing's evidence, instead of mentioning the planned $90 million PIPP enhancements that would be publicly announced in the very month that followed her evidence before the Board, Ms. McLaren gave an answer that the Board, I'll suggest very diplomatically, later characterized by the following sentence at page 20 of it's Order, quote:

> "It is difficult to reconcile the response to the direct question with what -- with the now-known facts." End of quote.

Now, of course, in my cross ex -- or, rather, in the cross-examination by Board Counsel which began at 50 -- page 58, line 7, and also in my own cross-examination of Ms. McLaren where summary questions start at page 1,723, line 22, Ms. McLaren gave an explanation. And the essence of that message or reply or explanation is two-fold.

First, Ms. McLaren says that your question, Mr. Chairman, had sought to elicit an answer that would have revealed information the Applicant felt was confidential. And, secondly, Ms. McLaren says that, Really, the Board need not to have concerned itself about those details because, after all, the Applicant had considered the effect of those then secret enhanced PIPP benefits, and had decided for itself that the changes would not create a problem. And I refer you to the beginning of page 1729, line 20 of the transcript where, in cross-examination by me, Ms. McLaren stated the following:

> "At that point [meaning where the question was asked], we, [that's the Applicant] were confident that not only in our mind and not publicly known, that the cost of Bill 36 had been incorporated. In our considerations, we believed that all else being equal, including things like accelerated auto theft savings, reductions in our expected PIPP cost claims before

consideration of Bill 36, all of these combined left us with a very strong confidence that our finances were continued to be sound."

And I notice the phrases that I emphasize -- "we" -- that is the Applicant were confident in "our" considerations -- the considerations of the Applicant. "We" -- that is the Applicant believed.

Well, these assurances are comforting, of course, but the reality is that it falls to this Board to express confidence, not the Applicant; it falls to this Board to have considerations, not the Applicant, and it falls to this Board to express beliefs, not the Applicant.

Very simply, it's a usurpation of the statutorily delegated regulatory function of this Board when an Applicant of any kind, subject to regulation, substitutes its own opinions for the findings of this Board.

If that is how oversight is supposed to unfold; namely, just trust the Applicant, why hold these hearings at all? Why bother testing the evidence? Why should any of us ask any questions?

The purpose, after all, of these Hearings is to extract information from the Applicant so that its views and conclusions may be publicly aired, publicly tested, and ultimately confirmed or rejected by this Board.

If a regulated applicant can simply determine fundamental issues, why not simply have the applicant unilaterally prepare the regulatory Order?

Of course, the Applicant will protest in its closing submission, I imagine. It will assure the Board that the Applicant recognizes the oversight authority of this Board and it will pledge, as it always does, its submission to that Authority.

But, as my fellow intervener, CAA Manitoba, just stated in its closing submission, the reality is that, so long as the Applicant provides answers to questions that the Board later writes about, in terms of having difficulty to reconcile those answers with the facts, the Applicant really has nothing to lose in taking that position.

The public of Manitoba, however, loses because, of course, it relies on this Board and its Hearing process to function as that independent proxy to competition. And I'll suggest that, in addition to the public, it's also this Board that loses in a very fundamental way.

Information that this Board thinks is

relevant and necessary clearly has to be before the Board. When such information is hidden, suppressed, or lied about, this Board simply has no idea that it has only part of the picture. This Board will, therefore, proceed to issue its orders and fulfill its regulatory oversight role without all of the relevant considerations before it, through no fault of its own.

Now it's not difficult to imagine the political and media embarrassment that this Board could undeservedly suffer if, by reason of an applicant's lack of forthrightness, this Board were to issue an order that somehow became problematic or unworkable.

It would be this Board that would be in the spotlight and it would be -- it would do this Board no good whatsoever to point to the Applicant and say, well, you know, that information should have been before us, but I guess we forgot to get it.

The public and the politicians would correctly point to the statutory mandate that informs this Board's existence. Holes in the evidence would be blamed on this Board.

It's equally a problem for this Board, whereas in the case of Bill 36, it turns out that the Applicant's $90 million price tag actually did not fatally undermine the financial expectations of the

Board.

However, I would expect that the Board should take little conciliation that, at least this time, the Applicant was reliable when it secretly decided that it would not answer the question about Bill 36 on the ground that the Applicant had already taken into account the cost it would eventually result in.  At best, we can say that, this time, the Board dodged the bullet, but, frankly, is that the way that a prudent regulator wants to operate?

The disclosure of information is only one (1) of the impediments that I submit this Board has to suffer. Last year, the Board will recall, that the Manitoba Bar Association had explored the failure and reluctance of the Applicant to comply with some of the orders that this Board has issued.  And my client also outlined some of the recommendations that the Applicant had largely ignored.

I don't propose to go back to those subjects in detail because, of course, they already form part of the record and because this Board, frankly, supported and took up many of my client's concerns when the Board issued the order that followed after last year's regulatory Hearing.

However, it disheartens my client to note that despite the strong language that this Board used in last year's order, the Applicant seems no closer this year to giving appropriate attention to the expressions of this Board.

In my cross-examination, starting at page 1754 of the Applicant, I took up the way in which the Applicant had considered, as an example, the Board's recommendation that MPI should support the Board's expanded oversight into DVL, Extension, and SRE.

I had chosen to characterize the meeting that they held, at which those recommendations were considered, as cursory, and, of course, the Applicant's witness naturally rejected that adjective.  But here's why I had chosen adje -- the adjective "cursory" for that description.

First, that significant recommendation, that is whether or not the Board's oversight ought to be expanded into DVL, Extension, and SRE, had been lumped in with a bunch of other recommendations that the Board had considered.

And I'll submit that a proper consideration of the advantages and disadvantage of the expanding PUB oversight would have required more -- would have probably filled one (1) single very long meeting all on its own.

Secondly, isn't it interesting that MPI cannot tell us the date on which that meeting took place? And I submit that, in a culture, a corporate culture, where everything gets documented, this is what they all tell us, the lack of any wricken -- written record of that meeting speaks volumes as to the importance of what might have happened at that meeting.

Thirdly, on cross-examination, the witness also suggested that no special preparations had been made or special work arising out of that meeting.

For example, there were no special reports, there was no research made, there was no presentations. It simply was: Do we have anything new to say? No. Let's move along. That is the impression we're left with. When the Board considers these facts, I very much regret that the Board may be left with the cutting and wounding impression that it's recommendations got the attention that the Applicant thinks they deserved.

I have to point out to what I have characterized as -- well, I have pointed out at the beginning here of what I've characterized as a problem in respect of information, and I'm now just can -- just discussed what I have suggested is another problem in respect of the way in which the Board Orders and information are being considered by the Applicant.

And I might also now compound these difficulties by reminding the Board that similar concerns have arisen in the context of other regulated applicants. Pointing to the public record, in the context of Manitoba Hydro, CBC Television had run a series of short pieces in September or October of 2009 mentioning in passing in a report on whistleblowing that Hydro had not yet complied with a recent PUB Order.

And of course, in the context of payday loans hearings, this Board will recall the financial statements of the regulated parties which were very reluctant to release most -- which were very reluctant to release that kind of information and most did not.

Such incidences certainly tarnish and undermine the administration of justice, as well as this Board's reputation. And I, therefore, submit with reluctance that the time has come for this Board to assert itself, and I say "with reluctance" because I recognize that there is a useful and enviable culture that surrounds these hearings.

Unlike as happens in some tribunals, none of the parties that appear before the Board is obviously hostile to the Board. There is a general atmosphere of cooperative regulation, to some extent, and this extends especially amongst the Intervenors and to the way in which they interact for their interact -- their -- their interventions.

In the context of these particular hearings, there's also this general understanding that strict legalities can appropriately be bent to accommodate time considerations and other common sense concerns while all the while preserving, of course, the requirements of natural justice.

So I'm certainly not saying that this -- this indicates a laxness in terms of holding a fair and just hearing. It is, however, my client's submission that the Board may wish to review its position if only to protect itself in the public and political opinion.

So having focus this year on disclosure of information, my client submits that the Board take the opportunity to consider procedures to ensure the -- that information is before the Board to the extent that the Board thinks it's required to fulfill its regulatory role. Specifically, there are three (3) ways in which my client submits this could be done. And, of course, there certainly are others, but let's start with three (3).

First, there are indeed ways in which to introduce confidential information in the course of evidentiary hearings all the while protecting the release of that information from the general public, but at the same time making it available to the other parties in fulfilment of the requirements of natural justice.

My client certainly recommends that this Board, in consultation with its lawyers, implement those generally accepted ways of handling confidential information and to the extent that it's necessary, amend and publish new rules of procedure to give effect to those rules, or to those considerations.

Secondly, and this arose again in the context of the motion that my client had brought for disclosure and I'm not going to repeat the merits of that, I'm just going to comment that the Manitoba Evidence Act clearly establishes a procedure at Section 10 -- 10(2) or 0.2 rather, by which to address requests for disclosure of Crown confidences, for whatever reason. And we're not going to get into the details.

The Applicant latched onto the Freedom of Information Act, which again, at the risk of revisiting the motion, simply had no application to the disclosure in the context of judicial or quasi-judicial proceedings. My client again submits that this Board may wish to incorporate the existing provisions relating and the existing law relating to the disclosure of Crown confidences into the Board's own procedures and rules.

And the third area on which I'd like to touch upon deals with the Board's concern, as well as that shared by many of the other Intervenors, that the existing jurisdiction of the Board is inadequate to allow the Board to discharge its regulatory obligations.

Now, to the extent that this Board believes that it requires an expanded jurisdiction, or greater authority to fulfill its regulatory role, my client would submit that this Board should pursue those goals more publicly and more obviously.

For example, this Board could sharpen the wording by which it expresses such concerns in its published orders, as well as in the way in which it reports those orders by way of press releases or general announcements of new orders to the media.  If anyone doubts the effect of sharp words upon the public, recall the wording, the single sentence that appeared in the reasons for decision that the Chief Justice of Manitoba wrote in the Fletcher case.  His simple one (1) line complaint snowballed into what became the very useful beneficial change that is Bill 36.

There is a second way in which the Board might become a little more assertive in trying to expand its jurisdiction and that deals with its own interactions with the Ministerial oversight that exists.  It is usual, and I'm not sure if it happens, but I would be very surprised if it didn't, that Boards such as this will have regular meetings with the Minister responsible.

And it is appropriate at that point to raise concerns, especially where there are problems that hinder the effective operation of the Board. I suspect that if those meetings occur, this Board is already doing that, knowing the way that this Board operates. But for the sake of completeness, I outline that as another option.

And thirdly, especially if it was signalled in the Board's published reasons, there are outside groups such as my own client, such as, to some extent, CAA Manitoba, that have regular meetings with Ministers of the Crown as part of their own ongoing agendas. And these outside parties, Intervenors or otherwise, might take up the lead that appears in the Board's written reasons if that were, in fact, indicated.

So these are some ways in which the Board might move to more aggressively seek an expansion of its -- of its jurisdiction. These then are just some suggestions. I've outlined three (3) areas and, of course, there are other considerations that the Board and its lawyers might review. The goal, of course, should always be to increase the effectiveness of the Board and ultimately enhance its public and political reputation as a regulator functioning as an independent proxy for competition.

In a year during which public policy and public interest considerations dominated my client's cross-examination, it should not be surprising that the MBA has no specific recommendations or submissions on benefits payable to victims of personal injury.  We can leave that to another time.

However, my client wishes to assure the Board and anyone else reading the transcript that the entitlements of victims of personal injury as arising out of the operation of a motor vehicle continue very much to interest the Manitoba Bar Association and its members, and it still is working to undo no fault which, as my motto says, is still viewed to be no good.

On a procedural note, the Board's rules require me to signal my client's intention to make a written application for an award of costs and I do so now.

And finally, in closing, the Manitoba Bar Association thanks the Board for granting Intervenor status to it, allowing its participation in this year's Hearing.  My client, and also myself, thank the Board counsel for their guidance and assistance throughout this matter and I also extend my thanks to the cooperation of the other Intervenors who certainly have saved me from duplicating their able efforts in many areas of inquiry.

And failing any questions from the panel, that concludes my submission. Thank you, Mr. Chairman.

THE CHAIRPERSON: Thank you, Mr. Dawson.

Just before we close today, a couple of questions. Ms. Everard or Mr. Saranchuk, do you happen to know the length of time that Mr. Oakes' submission will take?

MS. CANDACE EVERARD: Yes, Mr. Chairman. He said he would be well under an hour.

THE CHAIRPERSON: Ms. Kalinowsky, do you have an estimate or maybe you can't have one at this point in time?

MS. KATHY KALINOWSKY: I do not have an estimate, I'm sorry.

THE CHAIRPERSON: Okay. Well, then we'll start on Thursday at 9:00 a.m. then. Okay, we'll see you all back then. Thank you.

--- Upon adjourning at 2:51 p.m.

Certified correct,

___________________

Cheryl Lavigne, Ms.