

1 MANITOBA PUBLIC UTILITIES BOARD
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67 Re: MANITOBA PUBLIC INSURANCE
8 LOSS TRANSFER HEARING
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13 Before Board Panel:

14 Graham Lane - Board Chairman
15 Denyse Cote - Board Member
16 Eric Jorgensen - Board Member
17 Len Evans - Board Member
18

19 HELD AT:

20 Public Utilities Board
21 400, 330 Portage Avenue
22 Winnipeg, Manitoba
23 May 17th, 2005
24

25 Pages 882 to 1055

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| 1 | | LIST OF EXHIBITS | |
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| 2 | No. | Description | Page No. |
| 3 | MMIC-43 | Four (4) pages from Transport | |
| 4 | | Canada entitled, Road Safety | |
| 5 | | in Canada 2001. | 887 |
| 6 | MMIC-44 | Transport Canada brochure no. TP3322 | |
| 7 | | "Canadian Motor Vehicle Traffic | |
| 8 | | Collision Statistics". | 888 |
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1 --- Upon commencing at 9:05 a.m.

2

3 THE CHAIRPERSON: Good morning everyone.
4 Welcome to closing statements.

5 First of all I'll call on Mr. Saranchuk.
6 And, Mr. Saranchuk, I believe we have a couple of new
7 exhibits as well?

8 MR. WALTER SARANCHUK: I haven't been
9 informed of any, Mr. Chairman, but --

10 THE CHAIRPERSON: I'm guessing they're a
11 result -- I'm guessing they're the result of
12 undertakings.

13 Mr. Barron, we do have two (2) new
14 exhibits, do we not?

15

16 (BRIEF PAUSE)

17

18 MR. WALTER SARANCHUK: Yes, Mr. Chairman,
19 I'm now advised that there are two (2) additional
20 documents to be marked in the evidence. As the next
21 exhibit a document consisting of five (5) pages with the
22 top page being e-mail cover sheet from Mr. Robert Ramsay
23 of MMIC to Mr. Gerry Barron of the Public Utilities
24 Board.

25

And the attachments appear to be two (2)

1 e-mails related to the number of injuries and fatalities
2 by vehicle type; that's Exhibit number 43.

3 THE CHAIRPERSON: These are four (4)
4 pages from Transport Canada entitled, Road Safety in
5 Canada 2001, I think, Exhibit 43.

6

7 --- EXHIBIT NO. MMIC-43: Four (4) pages from Transport
8 Canada entitled, Road Safety
9 in Canada 2001.

10

11 THE CHAIRPERSON: Mr. Barron, are you
12 distributing to the other parties?

13 By the puzzled look, I don't believe it
14 was done. Would you mind photocopying it and providing
15 it to them?

16 MR. WALTER SARANCHUK: The document
17 attachment -- the first page of the attachment itself is
18 Transport Canada, "Road Safety in Canada, 2001".

19 THE CHAIRPERSON: Correct.

20 MR. WALTER SARANCHUK: As Exhibit 44...

21 THE CHAIRPERSON: I believe it's an e-
22 mail by Mr. Ramsay of May 13th but attached to it is
23 Transport Canada's "Canadian Motor Vehicle Traffic
24 Collision Statistics", TP3322, the brochure.

25 MR. WALTER SARANCHUK: Yes, sir, that

1 attachment is fifteen (15) pages and the top page is --
2 not included in those fifteen (15) pages is the e-mail
3 dated May 13th, 2005 from Mr. Ramsay to Mr. Barron;
4 that's Exhibit 44.

5 THE CHAIRPERSON: Very good. Exhibit 44.

6

7 --- EXHIBIT NO. MMIC-44: Transport Canada brochure no.
8 TP3322 "Canadian Motor
9 Vehicle Traffic Collision
10 Statistics".

11

12 THE CHAIRPERSON: Mr. Saranchuk, back to
13 you.

14 MR. WALTER SARANCHUK: Thank you, sir.

15

16 (BRIEF PAUSE)

17

18 MR. WALTER SARANCHUK: Mr. Chairman,
19 members of the Board, ladies and gentlemen, good morning.

20 At its special hearing held last week from
21 May 10th to May 12th, 2005 the Public Utilities Board
22 heard testimony addressing the appropriateness of the
23 current methodology adopted by Manitoba Public Insurance,
24 MPI, to assign accident costs to the vehicle class
25 incurring those costs, that is on a first-party basis,

1 regardless of fault considerations.

2 The stated purpose for the special
3 hearing, of course, was to consider an alternate
4 approach, namely, possible implementation of a loss
5 transfer system which recognizes a degree of fault for an
6 accident in the assignment of accident costs for premium
7 calculation purposes; that is on a third-party basis.

8 In that respect, the Board received
9 submissions from the Insurance Bureau of Canada, IBC,
10 Financial Services Commission of Ontario, FSCO or F-S-C-
11 O, the Motorcycle and Moped Industry Council, MMIC,
12 Manitoba Public Insurance and Mr. Brian Pelly, the
13 Board's actuary.

14 The witnesses who testified at the hearing
15 spoke to those submissions and were cross-examined by
16 Board Counsel, Counsel for the representatives and --
17 sorry, counsel and representatives for the Intervenors
18 and Counsel for MPI.

19 The written submissions and Information
20 Requests pertaining to them formed part of the
21 documentary evidence at the Hearing. As well, the Board
22 received in evidence, for information purposes only,
23 correspondence sent by Saskatchewan Government Insurance,
24 or SGI, the Insurance Corporation of British Columbia,
25 ICBC, and SAAQ, the Societe de L'Assurance Automobile du

1 Quebec, relative to the assignment of loss costs under
2 their respective automobile insurance plans.

3 At its hearings dealing with MPI's annual
4 general rate applications over the course of at least the
5 last decade the Board has heard protestations from
6 representatives of the Coalition of Manitoba Motorcycle
7 Groups, known as CMMG, over MPI's current practice of
8 assigning accident costs.

9 CMMG, and latterly MMIC, have long
10 asserted that the methodology is unfair and detrimental -
11 - discriminatory to motorcyclists. Over the years,
12 however, in the absence of compelling reasons to the
13 contrary, the Public Utilities Board has not required MPI
14 to change its current approach.

15 As it stated it would in its Order 148/04,
16 following MPI's General Rate Application last year, the
17 Board called this special hearing to deal with the issue
18 specifically, with the intention of arriving at a final
19 conclusion once and for all.

20 Of particular importance too, is the
21 observation by the Board, that loss transfer goes beyond
22 motorcycles, potentially to impact the other motor
23 vehicle classes as well.

24 As Board Counsel, I take no position in
25 the matter. My role today is rather to summarize at a

1 high level the evidence advanced by the parties for the
2 Board's consideration.

3 Dealing firstly with the Insurance Bureau
4 of Canada, or IBC, its report is submitted, or was
5 submitted through correspondence to the Board and to
6 Board Counsel, and appears at Tab 1 in the Book of
7 Documents, being Exhibit 19.

8 The testimony on behalf of IBC, was given
9 by Mr. Arthur Tabachneck, the Manager of Statistical
10 Research and Development. He testified that the Canadian
11 Loss Experience Automobile Rating, or CLEAR system, is
12 unique to Canada and provides an equitable system for
13 rating automobiles, first-party coverage; that is
14 collision, comprehensive and accident benefits, and is
15 designed to make sure those assigned ratings equate to
16 the actual loss costs.

17 He indicated that in Ontario, due to the
18 nature of the first party accident benefits, based on the
19 no-fault system there, there is a dislocation of claims
20 costs with motorcyclists bearing higher accident benefit
21 claims costs.

22 Ontario has a loss transfer system, and
23 collects statistical data on loss transfer, which is
24 limited to commercial vehicles, private passenger
25 automobiles and motorcycles.

1 Mr. Tabachneck observed that loss transfer
2 data from the Ontario experience is limited to claims
3 frequency and does not look at accident benefit severity
4 -- severity in its accident benefit rating.

5 He stated that it was currently looking at
6 -- that is IBC was currently looking at the possibility
7 of developing a severity model, but to date there was not
8 sufficient credible data.

9 IBC, through its witness, indicated that
10 Ontario's data, which includes its third party loss
11 transfer mechanism, does not adversely affect the CLEAR
12 rating data. And also stated that if a loss transfer
13 scheme similar to Ontario's were adopted in Manitoba,
14 that similarly would not have an adverse impact on CLEAR
15 data.

16 Not directly addressed by IBC, but as an
17 aside, more so gleaned from FSCO'S, that's Financial
18 Services Commission of Ontario's evidence in particular,
19 the description of the fact -- a description of the
20 Ontario system of loss transfer, on the basis that it is
21 essentially a third party loss transfer in favour of
22 motorcycles, which enjoy a one-way transfer of accident
23 benefit costs exceeding two thousand dollars (\$2,000) to
24 either the private passenger or commercial vehicle
25 classes, to the extent motorcyclists are not at fault in

1 an accident.

2 Accident benefits incurred by the private
3 passenger vehicle class, can be assigned to the
4 commercial vehicle class, but not the motorcycles.
5 Commercial vehicle accident benefit costs are not
6 assigned at all under Ontario's loss transfer plan.

7 Another participant, as invitee at this
8 special hearing, was the Financial Services Commission of
9 Ontario, known as FSCO and its report appears in the
10 evidence as Tab 2 in the Book of Documents.

11 Testimony was given by its Director of
12 Automobile Insurance Services Branch, Ms. Darlene Hall.

13 FSCO provided some insight into the
14 reasons for the introduction in 1990 of a loss transfer
15 mechanism in Ontario, for claims costs as they relate to
16 accident benefits.

17 Loss transfer was introduced in
18 conjunction with the move away from the Tort based system
19 to a no-fault system. With that shift there was a
20 recognition of significant cost pressures on motorcycle
21 rates and concerns arose above the affordability and
22 availability of motorcycle insurance.

23 In terms of large commercial trucks over
24 forty-five hundred (4,500) kilograms, there was the
25 concern that a switch from the Tort to no-fault system

1 would result in heavy commercial trucks paying less for
2 accident benefits under a no-fault system, unless there
3 was some cost transfer mechanism such as loss transfer.

4 FSCO confirmed that loss transfer was
5 introduced to meet those public policy concerns. The
6 FSCO report filed in evidence describes the loss transfer
7 system on Ontario. In the first instance, the first loss
8 transfer -- sorry, the loss transfer mechanism pertains
9 to motorcycles, snowmobiles, all terrain vehicles and
10 large commercial trucks over forty-five hundred (4500)
11 kilograms.

12 In accidents involving snowmobiles,
13 motorcycles and ATV's accident benefit costs are paid by
14 the first party insurer which is then indemnified by the
15 insurer of the second party involved in the accident in
16 accordance with the degree or percentage of fault
17 assigned to the second party vehicle driver.

18 This loss transfer occurs after the first
19 two thousand dollars (\$2,000) in accident benefits have
20 been paid out. Cheques are passed between insurance
21 companies and the process is essentially invisible to the
22 insureds.

23 In instances where the motorcyclist is
24 responsible for a motor vehicle accident, the accident
25 benefit claims costs of the other parties are not

1 transferred to the insurer of the motorcyclist.

2 In the case of large commercial trucks
3 involved in accidents with private passenger vehicles
4 indemnification by commercial vehicle insurers for
5 accident benefit costs paid by private passenger vehicle
6 insurers is required based on the degree or percentage of
7 fault on the part of the truck drivers.

8 Again, this loss transfer only occurs
9 after the first two thousand dollars (\$2,000) in accident
10 benefits have been paid out. The fault for accidents is
11 determined based on a series of fault determination rules
12 set out by regulation under the Ontario Insurance Act.

13 FSCO's witness stated that the current
14 loss transfer system is operating smoothly in Ontario as
15 far as can be determined with the general acceptance of
16 the public.

17 Evidence was also given on behalf of the
18 Motorcycle and Moped Industry Council or MMIC whose
19 reports appear at Tab 3 of the Book of Documents. The
20 testimony was given by its actuarial advisor, Mr. Liam
21 McFarlane, and Mr. Robert Ramsay, MMIC's President.

22 They shared the view that the introduction
23 of the PIPP or personal injury protection plan in
24 Manitoba has resulted in a material decrease in claims
25 costs for automobile drivers and a material increase in

1 claims costs for motorcyclists.

2 MMIC said this contributed to an increase
3 in motorcycle rates of over 300 percent over the past ten
4 (10) years, while insurance rates for those driving
5 private passenger vehicles have risen by less than 20
6 percent during that same time.

7 MMIC contended that the introduction of no
8 fault in Manitoba, that is the change in the automobile
9 insurance delivery mechanism in 1994, namely the PIPP
10 system, shifted costs to motorcyclists that previously
11 under the Tort system would not have been assigned to the
12 motorcycle group.

13 Mr. Ramsay asserted that the change in
14 delivery mechanism from a Tort system to a no-fault
15 system should not change the total costs for rate groups.
16 It should only impact the cost of delivery.

17 MMIC maintained that the cost of insurance
18 should be apportioned to the vehicle class based on fault
19 determination. MMIC asserted that this approach is
20 proper, sound public policy which has been accepted in a
21 vast majority of jurisdictions, not only in Canada but in
22 North America.

23 MMIC recommended that Manitoba implement a
24 loss transfer mechanism for motorcyclists and other
25 classes similarly affected as appropriate. MMIC stated

1 it would be very easy to implement a loss transfer
2 mechanism in Manitoba and would result in more equitable
3 treatment of motorcyclists with very little impact on
4 drivers of private passenger vehicles.

5 The implementation of loss transfer would
6 not be in conflict with actuarial principles, MMIC
7 maintained. And the actuary for MMIC agreed with the
8 suggestion that if loss transfer were implemented rates
9 should be determined based on full actuarial rates and
10 the currently existing 15 percent rate cap should be
11 eliminated.

12 For its part, Manitoba Public Insurance
13 participated by submission of a report which appears at
14 Tab 4 in the Book of Documents and by way of testimony
15 given by Ms. Marilyn McLaren, its President and Chief
16 Executive Officer, and Mr. Don Palmer, MPI's Actuary.

17 MPI indicated that its current system
18 classifies risk by insurance use, territory, vehicle
19 characteristics and driving record of the registered
20 owner.

21 MPI stated that in its view, the current
22 system treats all motorists and vehicles similarly and
23 equitably, and is fair and non-preferential.

24 Since the current system makes appropriate
25 use of generally accepted means of assessing the

1 likelihood of claims cost frequency and severity, MPI is
2 of the view that the first party assignment of costs
3 encourages customers to choose safer vehicles with lower
4 repair costs.

5 In terms of the implementation of a loss -
6 - loss transfer mechanism, MPI stated that a loss
7 transfer system may make some sense in some
8 jurisdictions, but not in Manitoba.

9 In other parts of the country,
10 affordability and accessibility are very serious issues.
11 They are not in Manitoba, according to MPI.

12 MPI provides guaranteed access to
13 automobile insurance, and broad comprehensive coverage
14 available on a universal basis, which is not the case in
15 other jurisdictions according to MPI's evidence.

16 For the majority of vehicles, light trucks
17 and passenger vehicles, the risk associated with the
18 vehicle is determined based on the Insurance Bureau of
19 Canada's Canadian Loss Experience Automobile Rating
20 System, which I referred to earlier.

21 MPI stated that the clear system is a well
22 designed, robust and reliable system implemented to
23 evaluate the different risks that different vehicles
24 bring into the insurance system.

25 Clear rate groups are established based on

1 first party losses, including an injury component with no
2 consideration of loss transfer. MPI reiterated the fact
3 that IBC does not have a model that differentiates risk
4 based on third party liability.

5 In dealing with possible implementation of
6 a partial loss transfer mechanism, MPI claimed that due
7 to the lack of a credible third-party model, the
8 Corporation can not implement full loss transfer.

9 MPI stated problems with the
10 implementation of loss transfer at the insurance use and
11 territory level would not meet the test of fairness and
12 reasonableness.

13 It maintained of that MPI's rate making
14 methodology allocates costs at a much finer level of
15 detail than the major class level with costs being
16 allocated to discreet insurance use and territory
17 groupings.

18 Applying loss transfer at the major use
19 level would fail, a key test of actuarially sound rate
20 making, MPI contended, by ignoring the information
21 gathered in MPI's system which is at the insurance use
22 and territory level.

23 MPI has stated that implementation of a
24 partial loss transfer approach at the major class level
25 would produce significant dislocation. In many

1 circumstances the dislocation would bear no relationship
2 to the actual costs incurred by the insurance use and
3 territory groupings.

4 MPI stated it is simply bad public policy
5 to charge a rate to a group that is not reflective of its
6 costs.

7 The last witness testifying before the
8 Board was Mr. Brian Pelly, the Board's Actuary, and
9 briefly the points that he conveyed were that the issue
10 of loss transfer is not an actuarial issue but one of
11 public policy.

12 And with the use of appropriate, reliable
13 data, rates under a loss transfer scenario could be
14 considered to be actuarially sound.

15 In concluding Mr. Chairman and Board
16 Members, I would suggest that in its consideration of the
17 issue of loss transfer, the Board will likely be
18 concerned with the following issues.

19 Firstly, an actuarially sound and
20 statistically driven approach; secondly, a level of
21 public acceptability; thirdly, administrative
22 feasibility; fourthly, good public policy, and last but
23 not least, whether a mechanism meets a universal --
24 universal test of fair, reasonable, non-preferential and
25 not unfairly discriminatory treatment.

1 In order to assist the Board in its
2 deliberations, it would be appropriate and beneficial for
3 each of the parties to this Hearing to address those
4 criteria in closing remarks.

5 Those are my comments, Mr. Chairman.

6 THE CHAIRPERSON: Thank you, Mr.
7 Saranchuk.

8 So, leaving aside Mr. Saranchuk and MPI,
9 we'll follow the order of the appearances in the
10 procedural outline and we'll begin with the Consumers
11 Association of Canada/ Manitoba Society of Seniors, Mr.
12 Williams.

13
14 CLOSING COMMENTS BY MR. BYRON WILLIAMS:

15 MR. BYRON WILLIAMS: Yes, thank you, and
16 good morning, Mr. Chair and members of the Board.

17 I know that Ms. Desorcy will be joining us
18 a little bit later this morning so I'll try and bring her
19 presence to our attention when she pops in.

20 Just for the Board's convenience, I'll
21 probably be referring to three (3) pieces of material in
22 the record: One will be the transcript from Wednesday,
23 May 11th, 2005, specifically page 382; secondly, will be
24 the transcript from Tuesday, May 10th, page 10; and the
25 third reference we'll make will be to the CAC/MSOS Book

1 of References, which is the document cleverly titled
2 CAC/MSOS Book of References dated May 10th, 2005. And
3 I'll bring it to your attention when I'm coming to them.

4 As you may be aware, in the course of
5 representing my clients in a regulatory proceeding I meet
6 with them frequently for the purposes of getting
7 instructions.

8 Usually in the course of a hearing like
9 this, I'll meet with them three (3) or four (4) times to
10 brief them on the issues and to get their sense of the --
11 the recommendations they would like me to make on their
12 behalf to the Board.

13 And usually, as well, there's some
14 telephone conversations and some e-mail conversations or
15 e-mail correspondence as well. And, of course, prior to
16 closing argument I confirm my final instructions from the
17 clients.

18 And usually by the time we get to closing
19 argument or the day before closing argument there are no
20 surprises. I expect by that time that I will know what
21 my clients are going to tell me.

22 Well, yesterday I met with my clients at
23 about 9:07 in the morning and I got a couple of
24 surprises. The first was that Ms. Desorcy from CAC who's
25 a bit of a night owl was actually on time and, in fact,

1 early.

2 So, I think that suggested, to a certain
3 degree the importance with which she considered this
4 issue. The second surprise I got was from both my
5 clients; not because they had changed their mind, they
6 hadn't, but because I got the strong sense from them that
7 while they were committed to the advice that they were
8 going to give to the Board, they didn't really like to
9 give it.

10 And that's perhaps for the first time in
11 my clients' experience when they feel strongly about an
12 issue but they're also reluctant to offer the advice that
13 they're going to give.

14 In the Chairman's opening remarks, and we
15 don't need to turn there, but at page 13 of the
16 transcript, he identified six (6) issues in terms of what
17 the Board considered would be appropriate and important
18 to consider in the course of balancing the public
19 interest and in determining whether to move towards a
20 loss transfer system or to keep the current first-party
21 system in terms of claims allocation

22 And for my clients there were three (3)
23 that are particularly important: Will the system be
24 fair? Will it provide for a lower number of accidents
25 with lower overall severity? And will the premium system

1 in place be based upon a claims costs attribution
2 approach that is actuarially sound and statistically
3 based?

4 Based upon those criteria, my clients have
5 no doubt that the current system, the first-party system
6 of claims cost allocation is a system that will, in the
7 final analysis prove to be more fair, have a greater
8 impact on loss prevention and also lead to rates which we
9 can be confident -- premiums which are actuarially sound
10 and statistically based.

11 But while my clients are confident that
12 that's the right recommendation to make to the Board,
13 they don't like to give it and they don't like to give it
14 for two (2) reasons.

15 The first is that ultimately while they
16 believe the first-party system of claims allocation will
17 be more fair than loss transfer, they recognize it's not
18 perfectly fair. And to a certain degree fairness is in
19 the eyes of the beholder.

20 In this case my clients cannot offer you a
21 perfect solution, one that all will consider to be fair.

22 And what struck them about this case is
23 really that there's almost two (2) intellectual
24 solitudes. From the perspective of the proponents of the
25 fault based claims cost allocation, it almost defies

1 reason that there could be another system. And likewise
2 from the perspective of MPI, it's very difficult for my
3 client -- at least as my clients' feel, for them to
4 understand why a fault based system would be attractive.

5 So, my clients' first regret is they can't
6 provide a recommendation that's acceptable to others --
7 to all others.

8 My clients also feel badly because they
9 know that if their recommendation is accepted, it will
10 disappoint motorcyclists, an important group of consumers
11 who have and should -- should continue to play a central
12 role in the deliberations of this Board.

13 So, from that perspective, my clients
14 believe firmly in the position, but it's one that they
15 make with some misgivings.

16 In terms of a way -- in terms of an
17 outline, where I would like to take the Board over the
18 course of the next forty-five (45) minutes or so, to an
19 hour, in case you're counting, there's three (3) major
20 issues that -- that my clients have asked me to cover.

21 And the first topic they wish me to
22 address is really to provide the context for this
23 decision, because in this Hearing you've heard a story,
24 largely presented by MMIC, a story of two (2) systems.
25 One (1) system MMIC talks about is the first-party claims

1 cost allocation system in Manitoba, a system which it
2 says is inherently discriminatory, and biased and unfair
3 towards motorcyclists.

4 And I think the conclusion you might draw
5 from the MMIC story is that that first-party claims costs
6 allocation is really the roots -- at the root of all the
7 cost pressure being experienced by motorcyclists in
8 Manitoba.

9 MMIC has also presented another story, a
10 story about Ontario. The -- the magic elixir, the -- the
11 holy grail for -- for motorcyclists, the panacea to all
12 the cost pressures faced by motorcyclists; the loss
13 transfer system, the one (1) way loss transfer system in
14 Ontario.

15 So, the first part of my argument on
16 behalf of my clients will be to examine the merits of the
17 MMIC position and the portrayal of those two (2) systems.

18 Secondly, on my clients' behalf, I'll
19 consider the relative merits of pure loss transfer,
20 versus the current first party claims cost allocation
21 system. And we'll make reference to the six (6)
22 questions the Board asked at page 13, but in particular,
23 we'll focus upon fairness as measured by both personal
24 accountability and accountability on behalf of the rate
25 group or class.

1 And secondly, we'll speak, or I will speak
2 on my clients' behalf about the relative merits of both
3 systems in encouraging loss prevention, reducing the
4 frequency and severity of collisions.

5 Now, I'll take a few minutes to just
6 discuss the relative merits of a couple variations on
7 those two (2) main proposals before you. One (1) -- one
8 (1) of those variations is the asymmetrical or unilateral
9 or one-way loss transfer system in Ontario.

10 And the other one (1) I'll comment briefly
11 upon is -- is the option presented by CAC/MSOS in cross-
12 examination on Thursday evening, namely really cutting to
13 the chase of the MMIC argument, and providing an express
14 subsidy for motorcyclists, one (1) that is allocated
15 across all classes in the same way as claims expense.

16 If you're looking for themes in terms of
17 the CAC/MSOS arguments, I think there'll be two (2), or I
18 hope there'll be two (2) that come to your attention.

19 The first theme relates to choice. At the
20 end of the day when CAC/MSOS come down to the question of
21 which system is most fair they elected for the first-
22 party claims cost allocation system on the grounds that
23 the predictive insurance premiums which flow from that
24 system are more reflective of the choices of a -- that a
25 consumer has within their power. They're more reflective

1 of those choices than the loss transfer system.

2 And I thought one of my clients put it
3 very well. You can't choose a vehicle in which people
4 will drive more carefully but you can choose a vehicle in
5 which you are safer and in which there is a less
6 probability of you being hurt in an accident.

7 The other theme which may come through in
8 our argument -- or my argument on behalf of CAC/MSOS, is
9 a question of what should driver decision, should it be
10 public policy as represented by objectives such as loss
11 prevention and fairness or are we really looking for a
12 system that will simply provide some rate relief to
13 motorcyclists, regardless of the public policy
14 implications?

15 I'm going to turn now to the first issue,
16 the contextual issue, in terms of the two stories
17 presented by MMIC. And I think the starting point for
18 that issue is a question posed by the Chairman at page 9
19 of the transcript, or an observation, and you don't need
20 to turn there.

21 But the Chairman noted at page 9 that:
22 "Unlike the case for other vehicles,
23 premiums for motorcycles have risen
24 dramatically, soared in fact, even with
25 increases from 1994 levels of 300

1 percent or more, the average motorcycle
2 rate has still to reach the level
3 prescribed by actuarial data."

4 And this significant nature of the -- the
5 growth in motorcycle premiums was also commented on by
6 the MMIC actuary, Mr. McFarlane, at page 185 of the
7 transcript.

8 And his explanation, and that's one (1)
9 concurred in by MMIC, I believe, is that the driving
10 force behind this rate pressure has been PIPP. And he,
11 along with Mr. Ramsay of MMIC, had no difficulty in
12 coming to the conclusion, at page 189 of the transcript,
13 that the no-fault system has negatively impacted
14 motorcyclists.

15 As a solution, MMIC point to the loss
16 transfer system and, in particular, they point to
17 Ontario, the unilateral one-way loss transfer system in
18 Ontario, as the solution to the cost pressures
19 experienced by motorcyclists.

20 And at page 10 of Mr. McFarlane's evidence
21 dated November 12th, 2004 he leaves the implication that
22 an Ontario-like solution to Manitoba's problems might
23 reduce the pure premium for motorcyclists by about 42
24 percent.

25 And when asked at page 372 of the

1 transcript to give a sense of the order of magnitude, Mr.
2 McFarlane talked about imposing a cost of maybe ten
3 dollars (\$10) per private passenger in order to achieve
4 savings of four hundred dollars (\$400) for motorcyclists.

5 In summary, MMIC suggests that the no-
6 fault system, coupled with first party claims costs
7 allocation has had a harsh and unfair impact upon
8 motorcyclists, driving that 300 percent rate increase.

9 They portray loss transfer as a solution,
10 the panacea, the all-healing policy option for
11 motorcyclists. And the question that my clients pose is
12 have MMIC -- has MMIC properly diagnosed the roots of
13 this issue and assuming they have, is loss transfer the
14 -- the answer?

15 Based upon my clients' review of the
16 record, it's their view that MMIC has failed to properly
17 diagnose both the roots of the cost pressure upon
18 motorcyclists and the -- and, as well, the role of loss
19 transfer as a all-healing policy option.

20 And ironically, much of the evidence for
21 my clients' conclusion has come from Mr. Ramsay himself,
22 the admitted lobbyist and media spokesman for the
23 motorcycle industry, and that's at page 378 and 379 of
24 the transcript.

25 First of all the answer to the suggestion

1 that loss transfer is the magic fix, the holy elixir
2 comes from Mr. Ramsay, because he -- when he takes us
3 through a portrayal of the motorcycle insurance situation
4 in Ontario in 2004, just one (1) year ago at page 380 of
5 the transcript he portrays the situation as being in
6 crisis.

7 He notes that -- and this is at page 381,
8 that in 2002, the rate increase for motorcyclists
9 increased between 15 and 20 percent, in 2003 the increase
10 on average was between 18 and 25 percent, and with
11 regards to 2004, although the fact was not provided by
12 Mr. Ramsay, but Mr. McFarlane, the actuary for MMIC,
13 noted that Primmum, P-R-I-M-M-U-M, the Underwriter for
14 the MMIC Open Road Insurance Program, increased premiums
15 for motorcycles, on average, by 25 percent in January
16 2004: Average increases in 2002, fifteen (15) to twenty
17 (20); average increases 2003, eighteen (18) to twenty-
18 five (25); 2004 by the motorcyclists industry's own
19 insurer, 25 percent.

20 So, in Ontario, the home for unilateral
21 one-way loss transfer, there's a very difficult situation
22 for motorcyclists. And at the same time, and Mr. Ramsay
23 noted this at a couple pages in the transcript, pages
24 387, 388 as well as 390 and 391, there's an availability
25 issue. Three (3) insurers dominate 75 percent of the

1 market. And the rest of motorcyclists in Ontario are
2 forced to resort either to the Facility Association, and
3 the exceedingly high rates within the Facility
4 Association, or to use insurers who will only insure
5 motorcyclists on the basis of tide selling, as Mr. Ramsay
6 described it.

7 The agreement that they will only insure
8 motorcyclists, yet they also agree to insure their house
9 or their car with the insurance company as well.

10 So, the answer to whether loss transfer is
11 the -- the solution, the sole solution, the magic
12 solution would appear to be no, based upon the evidence
13 of Mr. Ramsay.

14 Is there something we can learn from Mr.
15 Ramsay though, about why it's not the magic fix. Are
16 there parallels we can draw between the rapid escalation
17 of costs in Ontario in recent years, and the rapid
18 increase in costs in Manitoba, and that can help us to
19 understand the cost pressures that the Chairman spoke of?

20 CAC/MSOS believe that there are. And in
21 particular they direct the Board's attention to the
22 transcript, page 382 of the Hearing, and you don't need
23 to -- to dig them up, but also Exhibits 29(a) through
24 29(e) of the record, and in particular Section -- Exhibit
25 29(a), which gives a lot of help in diagnosing the cost

1 pressure in Ontario.

2 And in Exhibit 29(a), you'll see quotes
3 attributed to leading figures in the Ontario Insurance
4 Industry, who suggest that the real driver of costs in --
5 in loss transfer Ontario were accident benefits, because
6 motorcyclists were far more likely to be badly injured in
7 an accident than car drivers.

8 And you'll see quotes that suggest that in
9 loss transfer Ontario, if a motorcyclist for example,
10 lays down a bike on the road, the likelihood of injury is
11 far higher than for a driver behind the wheel, wearing a
12 seat belt.

13 And Mr. Ramsay, if you care to check,
14 confirmed that these were suggestions that were part of
15 the debate in Ontario, and that's at page 382 of the
16 transcript.

17 Mr. Ramsay also confirmed that in reaction
18 to the crisis in the motorcycle industry and loss
19 transfer Ontario, his organization, the MMIC, was
20 lobbying for changes. They were lobbying for heftier
21 deductibles and for the availability of policies with
22 reduced benefits for motorcyclists, to assist in
23 affordability and availability.

24 So these are the lessons we can draw from
25 Mr. Ramsay. We can observe that in a no-fault

1 environment, even with loss transfer, there will be
2 serious costs and pressures upon motorcyclists because
3 (a), they are more likely to be injured, (b), they are
4 more likely to be seriously injured, (c), in a no-fault
5 environment, with relatively generous third-party
6 benefits, there are likely to be more at fault
7 motorcyclists eligible for benefits and for a relatively
8 higher level of benefits than they would have been under
9 the Tort system.

10 And I might add, and I found Mr. Ramsay to
11 be a very helpful witness, we can also learn from him
12 that the cost pressures -- the cost crisis being placed
13 upon motorcyclists, it's not just a Manitoba issue, it's
14 not just an Ontario issue, is acknowledged by him at
15 pages 386 and 387 of the transcript, in just the two (2)
16 to three (3) years preceding 2004 motorcyclists averaged
17 50 percent in rate increases.

18 After learning from Mr. Ramsay that loss
19 transfer is not the magic elixir, we can now try and
20 understand the puzzle in Manitoba. What has been driving
21 the Manitoba motorcycle cost pressures over the past
22 decade?

23 The starting point for our analysis we
24 have to go a little -- back a little farther than Mr.
25 McFarlane was prepared to do in his.

1 The starting point is back in 1993 where
2 MPI identified and acknowledged that -- that
3 motorcyclists would require an 80 percent rate increase
4 to be at their actuarially indicated rate, and that
5 reference appears at page 615 and 663 of the transcripts.

6 So, even before the move into no-fault,
7 there were extraordinary cost pressures upon
8 motorcyclists because their rates at that point in time
9 did not reflect their costs.

10 And the existence of this shortfall,
11 that's not just a claim by MPI, that was expressly
12 recognized by this Board which, in a decision upheld by
13 the Manitoba Court of Appeal, rejected the Corporation's
14 go slow approach to motorcycle rate increases in the move
15 to a no-fault environment.

16 The Manitoba Public Utilities Board told,
17 in recognition of the shortfall in terms of statistically
18 driven and actuarially sound rates, directed Manitoba
19 Public Insurance to raise motorcycle rates going into no-
20 fault.

21 So, that's one of the key factors in terms
22 of we trying to understand that 300 percent rate
23 increase. And the other one, and I don't want to
24 belabour the point, but is just the serious risk of
25 injury in terms of motorcyclists, the increased

1 likelihood of injury in the case of an accident and the
2 increased severity of an injury in the case of an
3 accident.

4 And I do -- well, without belabouring the
5 point, I do want to identify the transcript references
6 where this appears because I think it's significant that
7 it's not just MPI saying that.

8 These observations come from Ontario, they
9 come from MMIC itself, they come from Transport Canada,
10 in Exhibit 43, that was filed today and there's
11 overwhelming evidence from Manitoba as well.

12 I can't pronounce his name properly, I
13 don't think, but at page 41 of the transcript Mr.
14 Tabachneck observed that drivers of motorcycles tend to
15 suffer the most severe injury in multi-vehicle accidents.

16 At page 87 and again at page 115, Ms.
17 Hall, speaking for the FSCO from Ontario, spoke to both
18 the probability and severity of injuries in which
19 motorcyclists were involved.

20 She noted that people that drive these
21 vehicles are more susceptible to injuries, at page 87.
22 She also noted at page 131 that the higher risk of injury
23 leads to more serious injury and higher benefits.

24 And Mr. Ramsay, on behalf of MMIC at page
25 352 through 354 of the transcript, acknowledged the

1 likelihood of more serious injuries when motorcycles were
2 involved and also the likelihood of injuries. And he
3 noted that this observation extended to single vehicle
4 accidents as well.

5 Exhibit 43, which the Board was generous
6 enough to forward yesterday to us, there's a cite which
7 appears on page 1 of 4, which would be the second page in
8 the exhibit, appearing after the e-mail from Mr. Ramsay.
9 The headline is, "Motorcyclists Accounted For One (1) in
10 Eighteen (18) Fatalities."

11 "Transport Canada observes that
12 motorcycle registrations in Canada have
13 decreased from a high of five hundred
14 and ten thousand (510,000) in 1983, to
15 three hundred and eighteen thousand
16 (318,000) in 2001.

17 In 2001 there was one (1) motorcyclist
18 for every fifty-seven (57) motor
19 vehicles registered. Nonetheless,
20 motorcyclists still accounted for
21 almost 5 percent, almost one (1) in
22 twenty (20) of Canada's road user
23 fatalities in 2001."

24 And there is Manitoba evidence to -- to
25 demonstrate the vulnerability of motorcyclists to serious

1 injury. And I went through this in cross-examination
2 with -- with MPI on Thursday evening, and in particular I
3 would direct you to the CAC/MSOS Book of References, Tab
4 5. I'm not really sure you need to turn there, but
5 that's where I'm referring to. The second table in that
6 -- in that tab discusses the relative severity of
7 motorcycle injuries to all purpose passenger or pleasure
8 vehicles, and the numbers are striking.

9 Injury severity for pleasure vehicles, for
10 example of seventy-six hundred dollars (\$7,600), for
11 motorcyclists thirty-three thousand (33,000). About four
12 (4) times as high.

13 Likewise, if you go to the fourth table on
14 page 3 of that Interrogatory Response, you see the
15 percentage of physical damage claims with an injury, and
16 you see four (4) pleasure passenger vehicles, it's about
17 13 to 14 percent. For motorcycles it's 53 percent.

18 And again, in Exhibit CMMG-MPI-219 from
19 last year's Hearing, there's also stark evidence, and --
20 and the Chairman comments upon this on Thursday evening,
21 in terms of the single vehicle claims as a percentage of
22 total claims. And you see for '01, '02, and '03
23 insurance years, for vehicles like pleasure vehicles the
24 three (3) year average was 17.6 percent, almost 18
25 percent. For motorcyclists it was 50 percent.

1 So, when you go back to that MMIC story,
2 when you look at the Ontario experience, when you look at
3 the unique Manitoba data, you can start to understand the
4 roots of the pressure on motorcycle rates; it started
5 back in '93/94, because motorcycle rates were
6 understated, or were -- they were not recovering their
7 costs.

8 It's a function of the no-fault system
9 itself, to the extent that there are a greater degree of
10 accident benefits, and -- and it's a function of the fact
11 that motorcyclists are more likely to be injured.

12 If you want to understand the mistaken
13 weight which we would submit that MMIC placed upon loss
14 transfers, the be all and end all cure for the rate
15 pressure experience by motorcyclists we think -- or I --
16 we would submit -- I would submit on behalf of my clients
17 that that is borne out by Mr. Palmer's calculations. I
18 think that's about page 758 of the transcript.

19 When he discussed taking Mr. McFarlane's
20 42 percent pure premium and plugging it back into the MPI
21 rate making methodology, Table TI-2 and he disclosed that
22 42 percent to pure premium, and that translated into
23 about a 4 percent rate increase, or excuse me, I
24 misspoke, a 4 percent rate decrease.

25 So the point is, that there are other

1 factors driving motorcycle costs, primarily driving
2 motorcycle costs and that loss transfer as a magic remedy
3 is unlikely to -- to achieve it.

4 So, having established to the
5 satisfaction, at least, of my clients that loss -- that
6 the absence of loss transfer is not the primary driver of
7 motorcycle rate pressures and that loss transfer itself
8 does not offer a magic elixir to rate pressures my
9 clients would submit that the real question before the
10 Board is still, is a good system. After all, a 4 percent
11 rate decrease is still meaningful to motorcyclists.

12 I wonder if I could ask My Friend, Mr.
13 Dawson, to supply me with a bit more water?

14 As I indicated previously, from my
15 clients' perspective, in your deliberations, we would
16 submit the two (2) issues you should give the most weight
17 to in determining whether to stay with the first-party
18 claims allocation system or more to a loss transfer
19 system are fairness and loss prevention.

20 And we think they're important for a
21 couple of reasons; 1 is, they're really the issues that
22 are most important to my clients. They want a system
23 that's fair. They want a system that keeps costs down
24 and, perhaps most importantly, a system that helps to
25 deter the tragic and serious cost of accidents on a

1 personal basis for Manitoba consumers.

2 So, they're important to my clients, but
3 we also recommended them to your attention because we
4 think you told us in last year's Board Order, that you
5 thought they were important as well.

6 At page 78 of Board Order 148/04, the
7 Board asked the question, it said:

8 "Is it fair to charge the costs of an
9 accident to an innocent motorist as
10 opposed to the at-fault driver?"

11 And the Board also raised the question, it
12 noted that:

13 "MPI and CAC/MSOS both cited the bonus
14 malice system as providing sufficient
15 deterrence and caution and contended
16 that the costs of accidents are
17 effectively reduced by that system."

18 But the Board indicated it was not
19 convinced. So those are the two (2) issues that my
20 clients wish to particularly focus upon.

21 Starting with the fairness issue. The
22 first question is, how do we measure fairness? And if we
23 read both the Board Order last year and then the Board's
24 comments at the start of this Hearing, it's described the
25 measurement of fairness, we would submit, in a couple of

1 ways.

2 At page 78 of last year's Board Order it
3 said -- it posed the question as:

4 "Whether it is fair to charge the cost
5 of an accident to an innocent motorist
6 as opposed to the at-fault driver?"

7 It seems to be a very individual kind of
8 accountability suggested by that question of fairness and
9 we'll address it.

10 And, in a way, it echoes the concern or
11 the principle advanced by Mr. Ramsay when he suggested
12 that loss transfer is more fair because it upheld the
13 fundamental principle that the wrongdoer should be
14 accountable -- should be held accountable in the
15 allocation of costs, and that's at page 393 of the
16 transcript.

17 So, there's a personal element to
18 accountability. And so -- but while CAC/MSOS -- believes
19 it's important to measure fairness in terms of the
20 personal accountability of the at-fault motorist, they
21 believe that in terms of fairness the more important
22 issue is one of class or rate group accountability.

23 And they say that because insurance is a
24 form of rate pool -- or risk pooling. And they say that
25 because neither loss transfer or first party claims

1 allocation are really purporting to hold at-fault
2 motorists directly accountable for the entire cost of the
3 accident.

4 Rather, both systems are about holding the
5 class or rate group accountable. And that's why, from my
6 clients' perspective, the question in terms of fairness
7 was better posed by the Board at page 10 of this year's
8 transcript.

9 And it summarized the concern -- the
10 fairness concern of motorcyclists as this:

11 "Motorcyclists claim that the first-
12 party claims allocation methodology is
13 unfair to motorcycles based on the fact
14 that motorcycle costs arising out of
15 accidents where motorcyclists are not
16 at-fault are not nonetheless
17 attributable to the motorcycle class."

18 And we think that's the more important
19 question is whether -- which class should be held
20 accountable.

21 In terms of the two (2) elements of
22 fairness, individual accountability and class
23 accountability, I will start with individual
24 accountability. And I would refer the Board to my
25 somewhat painful cross-examination of Mr. Ramsay at pages

1 401 to 407 of the transcript. You don't need to turn
2 there.

3 But that's when we explored how the
4 current system held individual at-fault motorists
5 accountable, and then we compared about the individual
6 accountability offered by loss transfer.

7 And in that cross-examination, we used the
8 example of an at-fault motorist; a private passenger, all
9 purpose, Territory 1. And we recognized that due to the
10 absence of credible data, loss transfer couldn't be
11 considered down to the rate group level, so instead we
12 looked at the way in which the individual at-fault
13 motorist would be held directly accountable through bonus
14 malice at either the major class level, the usage level
15 or the territory level, versus the level of
16 accountability imposed indirectly through loss transfer.

17 And again, without going too far into the
18 grizzly details, but if you'll recall, through the bonus
19 malice system, through the direct accountability imposed
20 by that system, we had the at fault motorist absorbing a
21 two hundred and twenty-five dollar (\$225) cost for his or
22 her first at-fault accident.

23 In contrast, in terms of personal
24 accountability through the indirect loss transfer
25 mechanism, assuming a ten thousand dollar (\$10,000)

1 accident, we found that at the class level as a whole,
2 the major class level as a whole, there was a whole two
3 (2) cent impact upon that at-fault motorist. And across
4 all purpose usage as a whole, there's approximately a
5 three (3) cent impact. And across the all purpose
6 Territory 1 usage, there was a five (5) cent impact.

7 Well, maybe my example was wrong. What
8 about if I multiplied it by ten (10). What if it was a
9 hundred thousand dollar (\$100,000) accident; a relatively
10 serious accident? Well, in that case the accountability
11 for that individual at-fault motorist would be fifty (50)
12 cents, if you took it to the all purpose, Territory 1
13 level.

14 So, in terms of individual accountability
15 of the at-fault motorist, my clients can conclude that
16 the existing system, the bonus malice system, is a
17 primary vehicle for costs of accountability for the
18 individual at-fault driver. And they would respectfully
19 suggest that loss transfer has an indirect, almost
20 immeasurable -- unmeasurable impact.

21 So, that leads us back to what my clients
22 would submit is the bigger question before you; class
23 accountability. Is it more fair to allocate the costs of
24 that claim to the class of the at-fault motorist, or to
25 the class of the -- of the person who was not at fault?

1 It sounds almost counter-intuitive.

2 The starting point for that, in terms of
3 class accountability is to recognize, and this was
4 conceded by Mr. Ramsay at page 406 of the transcript,
5 however we -- we consider wrongdoing or who's at fault,
6 whichever class we're talking about, within those two (2)
7 classes, within for example, the major class of private
8 passenger vehicles, all six hundred thousand (600,000),
9 for any individual there's only one (1) person at fault.

10 In determining the fairness of class
11 accountability, my clients believe it's important to
12 consider the issue of what drives the likelihood of
13 injury, and what drives the severity of injury, and also
14 to consider from the class perspective, what factors lie
15 within the control of individual members within that
16 class.

17 It's really that matter of choice that my
18 clients think is the most important issue. If you look
19 at the two (2) factors that drive the cost of accidents,
20 the frequency and severity, from a class perspective the
21 frequency of accidents are driven by two (2) things
22 generally, I'm speaking in broad strokes here.

23 First of all, where do we drive? Do we
24 drive in a dense urban area where there's more vehicles
25 or do we drive in the -- in my home -- out in the country

1 near my home town of Souris.

2 And secondly, for what purpose do we drive
3 and how frequently? Are we choosing, using the all
4 purpose classification, to drive at busier times of the
5 day and to drive more frequently? Or are we choosing,
6 using the pleasure classification, probably to drive a
7 bit less often?

8 And both these factors are, to at least a
9 certain degree, a function of choice.

10 The other element in the -- in terms of
11 the likelihood of an accident is from an individual
12 perspective, how do we drive? How I drive or how others
13 drive.

14 But that action of individuals within the
15 class is beyond the control of members within that class.
16 And Ms. McLaren confirmed this at page 818, 819 of the
17 transcript. She noted that there's no distinct
18 relationship between the action of a particular member of
19 any particular rating class. There's no predictability
20 in terms of who will be at fault in a particular class.

21 If we go from the frequency issue to the
22 severity issue, if we look at the likelihood of injury or
23 the severity of injury, part of that is a function, from
24 an individual perspective, of how -- who's causing -- how
25 the person who caused the accident is driving?

1 But, again, that's an individual choice
2 beyond the control of anyone within that class. From the
3 class perspective, the two (2) factors that are somewhat
4 within the control of individual members within the class
5 relate to the type of vehicle we choose to drive. How
6 well protected are we? How safe are we?

7 That's something, the likelihood of injury
8 in terms of the vehicle we choose that can be empirically
9 predicted, not with absolute certainty, but empirically
10 predicted through CLEAR.

11 So, again, looking at it from the choice
12 perspective, that's something within the control of the
13 vehicle purchaser. It's got a predictive element to it
14 and it's a clear function of choice.

15 The other factor which may drive the
16 severity of the accident beyond the actions of the driver
17 and beyond the particular vulnerability of the vehicle
18 may be the other vehicle that's involved in the
19 collision, the size of the vehicle whether it's the
20 Firefly or whether it's the Safari or the -- the tank
21 that Mr. Oakes was discussing driving down Portage and
22 Main.

23 And that's certainly something that is
24 within the control of individual drivers, but from my
25 understanding, based upon the record of this proceeding,

1 is that there's no predictive element to that. Ms. Hall
2 was asked this by Mr. Saranchuk in cross-examination at
3 page 113 of the transcript. And she said, there's no
4 accurate way of tracking statistics for that.

5 And I believe that MPI, at the request of
6 the Board, has been asked to look at this question on a -
7 - has asked the Insurance Bureau of Canada to look at
8 this question for -- on a couple of occasions and has
9 been unsuccessful.

10 So, while there's an element of function
11 of choice to this, there's no empirically predictable
12 power in terms of the type of element -- in terms of the
13 type of damage a vehicle will cause.

14 The bottom line, from my clients'
15 perspective, is that in terms of class accountability, we
16 can empirically predict -- project the frequency of
17 accidents based upon our choices, where we drive and when
18 we drive.

19 We can empirically project the likelihood
20 of injury through the choices we make in terms of the
21 safety of the vehicles we choose to purchase. But we
22 can't predict fault.

23 And it's within this rubric of choice that
24 CAC/MSOS believes that the question of fairness between -
25 - in terms of the first-party claims allocation or the

1 loss transfer system should be decided.

2 And again, as one (1) of my clients, Ms.
3 Desorcy succinctly put it, we can't choose a vehicle
4 which people would drive more carefully, but we can
5 predict an outcome and we can choose a vehicle in which
6 we will be safer.

7 So that's that crucial element of choice,
8 that's within the consumer's control. And that's the
9 element that in my clients' submission, is best
10 represented by the current first-party system.

11 So, from my clients' perspective, they
12 believe the current system best reflects the predictable
13 -- the consequences of the predictable choices of
14 consumers, and they're concerned because they believe
15 that the loss transfer systems of claims allocation mutes
16 the predictable impact of choices. And so from their
17 consumer perspective they consider it less fair.

18 Mr. Chairman, and Members of the Board,
19 the second significant criteria my clients wish to look
20 at in terms of the loss transfer first-party claims
21 allocation question, turned on the issue of loss
22 prevention.

23 And I won't dwell on this to a great
24 degree, because I think a lot of the arguments flow from
25 my first arguments in terms of fairness.

1 But I -- I believe a starting point is to
2 turn to the words of Mr. Pelly. And he noted he -- at
3 page 695 of the transcript, he was asked by Ms. Everard:

4 "And is it your view that the bonus
5 malice system has incentive value to
6 encourage good driving practises?"

7 And Mr. Pelly went:

8 "I believe that's generally held to be
9 true."

10 And in terms of loss prevention, it's our
11 clients' submission that the loss transfer claims
12 allocation process is a much less effective way of loss
13 transfer, excuse me, of loss cost prevention, than is the
14 bonus malice system. It's less direct and it's less
15 tangible than bonus malice.

16 And I believe this was suggested in fact
17 by Mr. Pelly, and I believe it's page 715 of the
18 transcript. He talked about loss transfer as a vehicle
19 or a mechanism for loss prevention. He quoted, and I
20 don't think anyone can impeach his objectivity, It's much
21 less direct and tangible to the average policy holder
22 than bonus malice.

23 And again I think I would submit that the
24 best example of that is the example that I've gone
25 through twice now in this -- in this Hearing in painful

1 detail; the -- the impact upon a driver, of a first
2 accident through the bonus malice system, versus the
3 impact upon a driver of the indirect effect of loss
4 transfer.

5 Well, they believe that at the level of
6 personal accountability and loss prevention, loss
7 transfer adds very little. CAC/MSOS are firmly of the
8 view that at the rate group level and at the class level,
9 loss transfer claims allocation will be
10 counterproductive, in terms of loss prevention.

11 And to reiterate what was said previously,
12 in their perspective, the key predictive consumer choice
13 that is available, is in terms of the risk of the injury
14 that you may experience. The risk, the key choice that's
15 open to consumers, in terms of the seriousness of
16 injuries, relates to the particular vehicle which you
17 choose to drive in.

18 And under the current system, the first-
19 party claims allocation system, all other things being
20 equal, the more vulnerable the vehicle you choose to be
21 in is -- or you are in that vehicle to injury, the higher
22 your insurance premiums will be.

23 And from my clients' respectful
24 submission, that's a good thing. It's a good thing in
25 terms of people paying the costs that they should, in

1 terms of the risk they bring to the system and it's a
2 good thing, because it sends the message that you're --
3 that there will be a -- a cost to you, in terms of
4 choosing unsafe -- excuse me, the proper word's not
5 unsafe, but vehicles that are more vulnerable to injury.

6 My clients' believe the consumers properly
7 informed, are rational, economical beings. And if
8 they're aware, as many consumers are, that there are
9 price consequences to the safety choices they make, they
10 will act rationally.

11 In my clients' view, loss transfer acts in
12 a counterproductive way in terms of loss prevention, by
13 allocating costs based upon the random element of fault,
14 and by obscuring the actual cost impact of severity of
15 injury.

16 Mr. Chairman, if I could, I'm actually
17 quite getting near the end, but if I could have about
18 three (3) minutes to refresh myself, that would be most
19 timely, or you could even make it five (5).

20 THE CHAIRPERSON: Okay. We'll take a ten
21 (10) minute break, and we'll be back at 10:25.

22

23 --- Upon recessing at 10:15 a.m.

24 --- Upon resuming at 10:28 a.m.

25

1 THE CHAIRPERSON: Mr. Saranchuk...?
2 Mr. Williams...?

3 MR. BYRON WILLIAMS: Thank you. Mr.
4 Chair and members of the Panel, I'm appropriately
5 refreshed and I'm hopeful I can speed us towards the
6 conclusion in a greater level of comfort than I was in
7 just a few seconds before.

8 THE CHAIRPERSON: We're pleased.

9
10 CONTINUED BY MR. BYRON WILLIAMS:

11 MR. BYRON WILLIAMS: To -- to use a
12 phrase that's been used often in this Hearing, I want to
13 offer some short, snapper, kind of, arguments on a few
14 points.

15 One of them is on the question -- the
16 question posed by the Board at page 13:

17 "Will a premium system in place based
18 upon claims costs attri -- claims cost
19 attribution approach would be actual --
20 actuarially sound and statistically
21 based?"

22 I just have a few comments about that.
23 The --first of all, is the -- to note the observation
24 made by Mr. Palmer, the actuary for MPI at page 582 and
25 583 of the transcript, who notes that in terms of

1 applying loss transfer at the rate group level, which in
2 my clients' perspective is where if you were going to go
3 with this system that would be the place to apply it, Mr.
4 Palmer observed:

5 "We don't have the credible data. It's
6 not just drilled down to the rate group
7 level. Drilled down to the individual
8 make/model/ model year data."

9 He observed that there wasn't the data to
10 -- to make -- to -- to bring it down to the rate group
11 level.

12 In terms of whether applying loss transfer
13 at the major class level, upon the current MPI system,
14 would be -- meet the test of being actuarially sound and
15 statistically based. I think the most important and
16 objective evidence you can have on that point is the --
17 at page 711 of the transcript, the question posed to Mr.
18 Pelly. And it was Mr. McCulloch asking:

19 "Do you agree with the statement that
20 the major class bases does not meet the
21 actuarial test of establishing rates
22 that provide for the expected future
23 costs?"

24 And Mr. Brian Pelly's reply is:

25 "As I understand, MPI has interpreted

1 the concept of applying loss transfer
2 only at the major class level, I would
3 agree with that statement."

4 Now, there may be some debate between Mr.
5 McCulloch and Mr. Oakes, in terms of whether or not it
6 could be done under some other methodology, but there is
7 not much evidence in this Hearing on -- on any other
8 methodology at the major class level that MPI could
9 apply.

10 In terms of applying loss transfer at the
11 territorial level or the usage level, I wish I would have
12 posed these questions to Mr. Pelly, but I forgot. So I
13 apologize for that.

14 But I did pose these questions of Mr.
15 Palmer at page 839 of the transcript. And he identified
16 serious concerns, I would characterize his evidence, in
17 terms of the actuarial soundness of doing so. But I'll
18 refer you to page 839, and you can draw your own
19 conclusions from what he said. And there are also
20 comments on that point from Ms. McLaren at page 763 of
21 the transcript.

22 I also thought to ask Mr. Palmer,
23 unfortunately not Mr. Pelly, about asymmetrical loss
24 transfer, one-way loss transfer, unilateral loss
25 transfer. And I asked him whether in his view it

1 accorded with Principle 4 of the -- with Statement 4 of
2 the actuarial principles. And again, you'll have to read
3 the question to make sure that I posed the question
4 articulately enough and that Mr. Palmer accurate --
5 answered accurately enough.

6 But I believe his evidence was that it
7 does not accord with Statement 4 of the actuarial
8 principles. And again, I would caution, that's my
9 interpretation of those words. So approach my
10 characterization with caution.

11 One (1) of the issues which was raised in
12 the course of this Hearing by Board Counsel in his
13 discussion with Ms. Hall from Ontario, and in subsequent
14 conversations, was the issue of affordability. And I
15 wanted to share with you some -- some comments from my
16 clients on this issue, because I posed the question to
17 the Consumers Association and to the Manitoba Society of
18 Seniors, whether they considered this an affordability
19 issue.

20 And -- and they characterized the question
21 as this:

22 "The debate in this Proceeding is
23 really about the affordability of a
24 specific type of vehicle. It's not
25 about the affordability of car

1 insurance [or excuse me] vehicle
2 insurance per se."

3 My clients went on to note that while they
4 believe that access to fair, competitively priced, high
5 quality auto insurance is important to Manitobans, they
6 don't rank it as highly, for example, as a basic
7 necessity like electricity.

8 So, they were a little uncomfortable with
9 the affordability debate in the way that Ms. Hall
10 characterized it. My clients also observed that at least
11 in 80.6 percent of the cases based upon last year's
12 evidence, we're talking about the affordability from the
13 perspective of someone who owns at least two (2)
14 vehicles, one (1) being a motorcycle, one (1) being
15 another vehicle. And that was confirmed at page 803, in
16 terms of the reliability of that information in my cross-
17 examination of Ms. McLaren.

18 So, my clients in no way mean to diminish
19 the real cost impact of these rate increases suffered by
20 motorcyclists and they certainly support motorcyclists'
21 right to choose which vehicle they -- they choose to
22 insure. But they want it understood that they don't see
23 this as an affordability issue in the same way that we
24 might see access to hydro-electricity to heat one's home
25 or to -- to turn on one's lights in the same way.

1 Short snapper number 3. One (1) of the
2 arguments that was made, and I believe it was made by Mr.
3 McFarlane at page 371 of the transcript, was when you
4 allocate the loss transfer class -- costs of the
5 motorcycle class across a large pool, a major class such
6 a private passenger, there's a relatively small impact.

7 He observed, at page 371, that there's a
8 motorcycle for every one hundred (100) cars. So if you
9 spread that loss for a pool a hundred (100) times as
10 large, the average impact would be relatively small.

11 My clients have two (2) concerns with that
12 statement. One (1) is, you could pretty much make -- you
13 know, given the sheer magnitude of the private passenger
14 class, you could make that argument in terms of any kind
15 of costs that you'd like to allocate and they think that
16 that's a dangerous kind of analytical approach to adopt.

17 They certainly, in the context of auto
18 insurance, have no objection to paying their just and
19 reasonable costs. But they'd like to limit -- limit it
20 to their just and reasonable costs and not the costs of
21 others.

22 The other point though, and it's a
23 significant point, is that even though the impact upon
24 the class as a whole will be relatively small, the impact
25 upon specific vehicle owners within that class will be

1 very large or may -- excuse me, I misspoke, may be very
2 large.

3 Now, my clients want -- want to make clear
4 that they've endorsed serious rate -- or premium
5 dislocation in the past. In the adoption of the CLEAR
6 system my clients were strong advocates of a relatively
7 aggressive approach in terms of CLEAR.

8 But that was rate dislocation with a
9 purpose. Rate dislocation driven towards more
10 actuarially sound, more statistically driven rates. Rate
11 dislocation that my clients could justify to their
12 members as clearly directed at loss prevention; is
13 clearly directed at providing better information to
14 consumers.

15 My clients cannot say the same thing about
16 the rate dislocation as a consequence of loss transfer.

17 If you have any questions about the
18 significance or potential significance of this, I direct
19 your attention to page 704 and 705 of the transcript,
20 again, Mr. Pelly.

21 And he's commenting at lines 14 to 22 and
22 I'm just paraphrasing. If all -- and he's talking about
23 full loss transfer:

24 "If all classes of vehicles and
25 insurance uses and territories were

1 encompassed, then I think you would
2 probably see a lot of categories
3 subject to fairly significant
4 dislocations and you'd need to address
5 that."

6 Going on on page 704 and 705, Ms. Everard
7 put to him the question, Well, what about partial loss
8 transfer; that would result in less dislocation?

9 And Mr. Pelly suggested that it probably
10 did. But there may still be significant dislocation that
11 needs to be addressed.

12 And, again, going back to my previous
13 point, Ms. McLaren said this best at page 656 and 57 of
14 the transcript:

15 "In my clients' perspective this would
16 be dislocation without a proper public
17 policy purpose."

18 She spoke of dislocation of rates at the
19 insurance use territory level for factors other than
20 fault or other than the vehicle choices by the people in
21 those groups or the insurance use or the territory
22 choices. The financial impact would not be related to
23 any of the choices they made about what to drive, where
24 to use it, how, under what circumstances they use it; any
25 of those things.

1 Short snappers 4 and 5, I think. There
2 was some discussion in this Hearing through questions
3 posed by Board Counsel in terms of whether MPI was social
4 insurance or pure insurance. And presumably it's on a
5 spectrum.

6 But my clients would submit that one (1)
7 of the great strengths of the MPI program is that it's
8 tended towards the pure insurance type of program; that
9 doesn't mean that there are not meaningful social policy
10 objectives that flow from public ownership through
11 investment, through many of the good works that MPI does
12 in the community.

13 But from my -- my clients' perspective,
14 MPI works best if we keep its function relatively simple,
15 providing cost effective, fair, basic insurance, in a
16 program that's universally accessible and -- and that
17 from their perspective, is -- is the proper purpose of
18 Manitoba Public Insurance.

19 There was also a bit of discussion kind of
20 going to the social purpose of MPI, about the role that
21 environmental issues should play. And my clients
22 listened with some interest when I portrayed the
23 discussion that took place in the Hearing last week on
24 this subject.

25 But, as a cautionary note, they have a few

1 cautionary words to the -- the Board on this subject. If
2 we're look -- there hasn't been a lot of evidence on the
3 -- the environmental impact of -- of this issue, and if
4 we're looking at the issue in terms of small footprints,
5 they'd ask the question, is it better to have -- thank
6 you, Mr. Dawson -- is it better to have one (1) car, or
7 is it better to have a car and a motorcycle?

8 Those are -- I don't think we have an
9 evidentiary record to determine that question. Or to use
10 one (1) of my clients' examples, is it better to have a
11 motorcycle and a second vehicle, a car, or is it better
12 to have a car and then to use public transit -- transit?

13 These are issues that we -- my clients are
14 not satisfied have been fully addressed. And they would
15 caution the Board about moving from pure insurance
16 purposes to -- to other -- to other factors.

17 And at the end of the day, and they're --
18 they're not satisfied of this question, they would ask
19 you to ask yourselves, is there an environmental cost to
20 insurance?

21 In my clients' perspective, certainly if
22 we wanted to reflect environmental costs in terms of
23 vehicle purchases, there's some sense to that, whether
24 it's appropriate to impute environmental costs to the
25 purchase of insurance, they believe is a debate that

1 should be more fully canvassed before the Board walks
2 down that path.

3 Administrative ease was another question
4 posed by the Board. And my clients don't have a lot of
5 comments about that, except to draw the Board's attention
6 to a comment by the Insurance Bureau of Canada, between
7 pages 44 and 47 of the transcript.

8 And the witness for the Insurance Bureau
9 in those pages, spoke about how it looked at the
10 frequency of injury, but that it was trying to develop a
11 model based upon severity of injury, in terms of more
12 fairly reflecting accident benefit costs.

13 And certainly my clients support that
14 venture and they're hopeful that with more data from
15 Quebec, that that may be of great, great assistance.

16 But the Insurance Bureau witness noted,
17 and that's at page 47, if that is adopted, then the
18 adoption of full recognition of fault would likely result
19 in a major conflict.

20 Again, I don't pretend or nor do my
21 clients to be experts on the -- the administration of
22 CLEAR, but that's a quote that we would direct to your
23 attention, and you can interpret it as you see fit.

24 The final comments by my clients relate to
25 variations on the pure loss transfer and the existing

1 first party claims allocation system.

2 I believe it was the evidence of Mr.
3 Ramsay that he favoured the Ontario model, the
4 unilateral, the one-way, the asymmetrical loss transfer
5 model.

6 My clients cannot go strongly enough on
7 the record in suggesting to you that they believe that
8 such a system, where costs are transferred out of
9 motorcyclists for at-fault accidents related to private
10 passenger, but are not transferred back in, with relation
11 to at-fault accidents caused by motorcyclists, would be
12 fundamentally unfair and inappropriate.

13 And they asked me to use the strongest
14 words that I'm capable of and those were -- those were
15 them. They would also observe that if you're trying to
16 look at loss transfer as a loss prevention mechanism,
17 then any limited, indirect, intangible impact it might
18 ever have in a pure loss transfer form, much of it is
19 lost if you only have asymmetrical or one-way loss
20 transfer.

21 And don't take my word on it, take the
22 word of Mr. Pelly in his response to CAC/MSOS
23 Interrogatory 2-E where he spoke of, on his -- that
24 unilateral loss transfer would mitigate the loss
25 prevention objectives. And he also confirmed that at

1 page 717 of the transcript.

2 In terms of such a unilateral one-way
3 approach, my clients would note that in Ontario such a
4 process was brought in by legislation and through
5 regulation and they believe that if such an approach,
6 which they consider to be discriminatory in the
7 regulatory sense, was brought forward they would suggest
8 that it should be done by express legislative direction.

9 Late on Thursday, and this, Mr. Chair and
10 members of the Panel, I believe is my second last point,
11 late on Thursday, through cross-examination, we posed to
12 MPI an alternative scenario -- or I posed to MPI on
13 behalf of my clients an alternative scenario.

14 I suggested to them, what if rather than
15 imposing loss transfer with the dislocating effects that
16 it has, what if we just recognized the -- if there was
17 felt by the Board a need to provide an express subsidy to
18 motorcyclists, why not recognize that subsidy and then
19 allocate it as we might allocate claims expenses across
20 the other classes.

21 Ms. McLaren, I believe, at page 835
22 suggested that if the Board had to go down this path that
23 this approach made some sense to me. I'm sure her client
24 will have -- or her Counsel will have some comments about
25 this approach which was put to her as well -- or he may.

1 My clients said some comments to me about
2 that approach. I did do it with instructions but it
3 wasn't an approach they endorsed at the time and they
4 don't endorse that approach. They endorse the current
5 system of allocating claims costs.

6 They do observe though that if the Board
7 felt the need to do something for motorcyclists that from
8 this -- their perspective this would be a better way to
9 go. It would be transparent recognition of a subsidy.
10 It would not have the dislocating effect upon what they
11 consider to be a good mechanism in terms of allocating
12 claims costs that the first-party system has.

13 So, it's not a system that they endorse.
14 But they see it as the lesser of two (2) public policy,
15 in quotation marks "evils" and I think "evils" is a wrong
16 word but they see it as the lesser of two (2) unpalatable
17 scenarios.

18 Just to close on this point, one of the
19 reasons why my clients do not support an express subsidy
20 is, again, going back to the point, they don't consider
21 this an affordability issue in the way that hydro-
22 electricity is an affordability issue.

23 They consider this to be the affordability
24 of a specific type of vehicle. And so they don't see a
25 subsidy in these circumstances to be appropriate.

1 The final points on behalf of my clients,
2 Mr. Chair and members of the Panel, relates to a comment
3 made by Ms. Hall at page 130 of the transcript.

4 And in discussion with Mr. McCulloch, she
5 agreed that loss transfer in Ontario was a political
6 decision. And at other parts in the transcript she
7 talked about the system in Ontario and said:

8 "I haven't heard loud screams lately."

9 And that's at page 124/125. And questions
10 were posed to her by My -- My Friend on behalf of CMMG,
11 talking about the outcry and suggesting a need for
12 reform.

13 And from my clients' perspective, consumer
14 voices should be heard. And to the extent possible with
15 an appropriate public policy framework that should be
16 addressed.

17 But they would ask the Board to -- to
18 recognize that this is really a decision about public
19 policy, it's not about stifling the outcry, it's about
20 doing the best thing for all consumers that the Board can
21 -- can do, in a very difficult task it has, in balancing
22 the public interests with the primary objectives, in my
23 clients' perspective, of a system that's fair and that
24 also focuses upon loss prevention.

25 Subject to any questions the Board may

1 have, I can just indicate that my clients'
2 recommendations are to -- to stick with the existing
3 system, in terms of first-party claims allocation. I can
4 indicate that they will be making an application for
5 costs, but mindful of the time, they will do that in
6 writing, in a timely matter, unlike what I've done in the
7 recent past.

8 Thank you, Mr. Chairman, and Members of
9 the Board, for your patience.

10 THE CHAIRPERSON: Thank you, Mr.
11 Williams, for such an extensive and thorough closing
12 remarks.

13 Hearing no questions from My Colleagues,
14 we'll move on to Mr. Oakes.

15 Mr. Oakes...?
16

17 CLOSING COMMENTS BY MR. RAYMOND OAKES:

18 MR. RAYMOND OAKES: Thank you, Mr.
19 Chairman, Members of the Board, ladies and gentlemen.

20 I wanted to start by first expressing the
21 CMMG's appreciation of the opportunity to deal with this
22 significant issue in a forum such as this, as well for
23 the hard work of all the participants, the way the Board
24 has rolled up its sleeves, and as well the other Board
25 Counsel, the Corporation and the witnesses that we heard.

1 It was an excellent forum of fact finding.
2 We had detailed, extensive reports of an experienced
3 actuary from Toronto, Mr. Liam McFarlane, with respect to
4 his twenty (20) years experience, ten (10) of which are
5 in the motorcycle insurance section of the industry.

6 We had the brief, but very fair and
7 balanced logic of Mr. Pelly, a gentleman we don't often
8 get the opportunity of hearing from.

9 And we had two (2) non-expert witnesses,
10 one (1) of them, Dr. Tabachneck, I think was more modest
11 in terms of his expertise, and of course Ms. Hall, with
12 the opportunity of living with the Ontario experience for
13 a number of years.

14 Some comment about the MMIC, which
15 provided some very, very informative material to this
16 Board, Mr. Williams called Mr. Ramsay a lobbyist. I
17 think it's important to correct the record and to reflect
18 that Mr. Ramsay is a part of a very large motorcycle
19 insurance in -- in Canada, and he gives us the benefit of
20 that expertise.

21 The CMMG of course has understood,
22 appreciated and lobbied for loss transfer since the early
23 1990's. We first came to these Hearings in 1992, and
24 became immediately aware of the issue, mostly through
25 Ontario's fair and exhaustive review of all of the

1 stakeholders, when it introduced loss transfer, which is
2 quite a marked departure from MPI's involvement in -- in
3 loss -- in no-fault.

4 And certainly I appreciate that the answer
5 to the Government, with respect to the introduction of
6 that kind of legislation are forced to deal with it, and
7 frankly, didn't have a lot of time to do that. But
8 certainly a marked departure between that and the Ontario
9 experience.

10 In fighting for loss transfer for some
11 thirteen (13) years, the analogy in the discussion
12 related to loss transfer, that the CMMG has often thought
13 about was the ancient mythical creature called the hydra.
14 The Hydra was a beast with multiple heads which regrew
15 each time they were cut off. The loss transfer issue is
16 like that mythical Hydra, it seems to evolve and regrow
17 justifications every time that it's examined.

18 A long time ago, ten (10) years ago, say,
19 the Corporation would say, well, loss transfer won't help
20 you because you're very far from rate sufficiency so even
21 if we gave you the 40 percent loss transfer it wouldn't
22 affect your rate.

23 Of course, now, we grow closer, after 300
24 percent increases, not surprising, but we now grow closer
25 to rate self-sufficiency and if we accepted the

1 calculations of Dion Durrell then some 42 percent
2 reduction would, in fact, have a decrease to the premiums
3 that motorcyclists are paying at this time.

4 When we got closer then, of course, then
5 the Corporation would come with a new justification.
6 Inherent risk became the new battle cry of the
7 Corporation. Well, we heard the testimony of an actuary
8 who's done primarily motorcycle insurance for the last
9 decade and he's never heard the term 'inherent risk'
10 before, and he testified to that.

11 And even in the material produced by the
12 Corporation this year, they acknowledge that automobiles,
13 and in fact all vehicles, are inherently risky The new
14 cries this year, having known that the inherent risk
15 argument wouldn't cut the mustard, we heard, Well, it's
16 unfair to seniors.

17 There was a new rallying cry. It
18 certainly took me by surprise because I've never known
19 the Corporation to be sensitive to the needs of seniors
20 at all. Ontario they have discounts for seniors.
21 Certainly on the benefits side, the seniors were paying
22 for the IRA or IRI, the income replacement insurance, for
23 younger people when they weren't collecting but paying
24 the same premium, so that rallying cry took me by
25 surprise.

1 The next one (1) was equally without basis
2 and we found out the loss transfer, at least according to
3 the Corporation, was going to be unfair to people in the
4 rural parts of Manitoba. And there was a very, very
5 limited justification based on the fact that apparently
6 they make less money in rural Manitoba; no consideration,
7 of course, of cost of living or any of those things.

8 But that was the new head of the Hydra
9 which didn't take much effort to be cut off.

10 Mr. Chairman, before going through the
11 flaws in the Corporation reasoning in great detail, let
12 me first clarify the coalition's position on loss
13 transfer. The Coalition's position is that the cost
14 should be assigned to each respective insurance grouping
15 based on the costs caused by the grouping.

16 Costs imposed on any particular insurance
17 grouping from other groupings, should be maintained in
18 the group that was responsible. This is a clear and
19 precise approach to fairness and equity. You do not pay
20 for something that your group did not cause.

21 In the Coalition's view, costs should
22 always be transferred for all insurance groupings and not
23 just motorcycles.

24 While this is the purest form, we do
25 submit that the -- there are other possibilities open to

1 the Board. These would include loss transfer for only
2 some groups or only for the PIPP coverage or adopting the
3 correction of the unintended consequences of the PIPP
4 approach which was put forward for examination by Counsel
5 of the CAC/MSOS.

6 The Coalition is somewhat supportive of
7 these lesser alternatives since they, of course, at least
8 partially eliminate the unfairness of the current
9 approach.

10 Now, Mr. Chairman, to deal with the Hydra.
11 When we first started discussions of loss transfer many
12 years ago, one (1) of the arguments, as I've indicated,
13 is that motorcycles were inherently risky.

14 In Appendix A, page 6 of its position
15 paper, MPI again states that motorcycles are unique.
16 When questioned by the CMMG relating to the definition of
17 inherent risk, MPI provides a classical definition of
18 expected loss costs, not of a term 'inherent risk'.

19 It is the probability of loss times the
20 amount of loss. In response to CMMG/MPI-3, MPI notes
21 that:

22 "Inherent risk or risk is the basis of
23 all rate making. Thus, there is
24 nothing unique about inherent risk as
25 defined in the context of motorcycles.

1 Motorcycles are risky, as are cars,
2 trucks, vans, sport utility vehicles.

3 Mr. Ramsay, in his evidence, pointed out a
4 more acceptable and classical view of risk, which is the
5 probability of a claim measured by claims frequency. In
6 this regard, passenger vehicles and motorcycles are quite
7 similar with motorcycles, of course, having less
8 frequency. And we saw introduced, the Exhibit 43, the
9 Canadian Motor Vehicle Traffic Collision Statistics,
10 which show the percentages relative to involvement --
11 percentage of fatalities and serious injuries by road
12 users and I'll leave you to read that.

13 There was a similar review of frequency at
14 page 257 of the transcript. Board Member Mr. Evans
15 keenly appreciated the -- the data that was produced in
16 the examination of Mr. Liam McFarlane about the
17 percentage frequency of involvement in accidents.

18 The second head that was grown to defend
19 the status quo was based on economics. The Corporation
20 filed rather dated information with respect to the impact
21 of loss transfer on vehicle classes. Full loss transfer,
22 according to the MPI data appears to result in slightly
23 (0.6 percent) lower rates for private passenger vehicle,
24 higher rates for commercial vehicles and lower rates for
25 motorcycles.

1 The MP results for private passenger
2 vehicles agree generally with findings of other
3 participants at the Hearing and I'm referring to the
4 fiscal data as well as Mr. McFarlane's analysis; small
5 impacts on the private passenger class.

6 At the insurance use and territory level,
7 the Corporation suggests that shifts would occur that are
8 unfair due to varying economic circumstances of
9 territories and insurance uses. As shown in the chart,
10 page 3 of the MPI loss transfer position paper, premiums
11 would decrease about 4 million in Territory 1 while
12 Territory 2 would rise about 3 million and Territory 4
13 would rise about 1 million.

14 Given that there about three hundred and
15 seventy-five thousand (375,000) vehicles in Territory 1,
16 three hundred and thirty-five thousand (335,000) vehicles
17 in Territory 2 and eighteen thousand (18,000) HDA
18 powered vehicles in Territory 4, we're talking about a
19 rate of change that is in the range of four (4) or five
20 (5) cups of coffee for those vehicles.

21 The distribution of changes actually
22 improves under loss transfer. The Corporation provided
23 Exhibit 3, and comments on page 4 of its submission, that
24 the distribution of rate changes is higher with loss
25 transfer than under the current approach.

1 The Coalition was perplexed by this
2 result, having prepared a table showing the distribution
3 of changes and found that there's more winners under loss
4 transfer than the status quo; nearly three hundred
5 thousand (300,000) who receive no change or rate decrease
6 compared to two hundred and fifty-four thousand (254,000)
7 under the current approach.

8 Increases were not too different between
9 the current and loss transfer approach, although there
10 were fewer increases under loss transfer. The Coalition
11 questioned the approach used by the Corporation and
12 received that the response to CMMG/MPI-11, which showed
13 the formula used by the Corporation.

14 The Corporation used by the -- Corporation
15 was incorrect. On cross-examination we addressed that
16 somewhat within the confines of the abilities of expert
17 evidence in these Hearings and suggested the appropriate
18 formula for the group data provided to those in
19 attendance at the Hearings.

20 As described in the response to PUB/MPI-7,
21 the loss transfer effects and the distribution table were
22 not dampened with capping, which would result in less
23 rate change than shown. The overall conclusion drawn is
24 that the -- based on the information provided by the
25 Corporation, the range of rate changes is likely to be

1 similar and, perhaps, smaller under full loss transfer
2 than the current approach.

3 The Corporation also reminds those present
4 the rate volatility should not increase under loss
5 transfer, which was a matter canvassed in -- in last
6 year's Hearings. The reference was pages 768 and 69 of
7 last year's transcript, that wasn't an issue that was
8 debated at length in these Hearings.

9 According to MPI, Winnipeggers would be
10 winners and non-Winnipeggers losers if full transfer was
11 adapted, the third head of the hydra.

12 An equally persuasive argument is that due
13 to the absence of loss transfer, Winnipeggers are, in
14 fact, subsidizing insurance rates for non-Winnipeggers,
15 since they are paying for costs they did not bring upon
16 themselves. The Corporation relied on some limited
17 economic data to buttress this argument, stating that
18 Winnipeggers have higher incomes and better vehicles, as
19 measured through higher rate groups than people outside
20 of Winnipeg.

21 The Corporation in that vein provided
22 material suggesting the based on median incomes
23 Winnipeggers are relatively better off than non-
24 Winnipeggers. Therefore they conclude that reassigning
25 costs would be a burden to non-Winnipeggers.

1 Even though the burden is small, the
2 coalition was curious as to why this new term median
3 income data was selected and we searched previous rate
4 applications and rate making methodologies, could find no
5 use of this term 'median' rather than what the
6 corporation uses which is averages. And that was
7 confirmed during cross-examination.

8 The difference, in any event, no matter
9 which data use shows a difference of either some sixteen
10 hundred dollars (\$1,600) or some four thousand (4,000)
11 which is inconsequential given the difference in living
12 costs amongst regions.

13 Clearly on economic factors, the
14 Corporation's argument is not correct. Regional
15 imbalance would not increase if the cross subsidization
16 from Winnipeg to other territories was eliminated by
17 applying losses on a responsibility basis.

18 Next, head of the MPI argument against
19 loss transfer is that pleasure use would be adversely
20 affected. This would affect retirees who have no earned
21 income that would be protected by PIPP.

22 As noted in CMMG Interrogatory 6, the
23 Corporation has no direct evidence that pleasure use is
24 predominantly used by retirees. Data provided by the
25 Corporation suggests that slightly more than one-third

1 (1/3) of vehicles registered in pleasure use were owned
2 by persons sixty-five (65) or older who may or who may
3 have not been retired.

4 The Corporation declined to respond as
5 they did with approximately two-thirds (2/3) of our
6 interrogatories that a response to CMMG Interrogatory on
7 this point would not be germane.

8 The question was germane since it was
9 designed to drill down further on who the pleasure use
10 vehicle owners are. If pleasure use vehicles also have
11 all-purpose insurance, it provides valuable information
12 from a policy's perspective.

13 This would indicate that 33 percent of
14 pleasure use owners who are over sixty-five (65) many are
15 likely retired since they have a vehicle insured and many
16 still are working if they have a vehicle registered as
17 all-purpose.

18 In that case what they would lose on the
19 one hand we pointed out they would gain through lower
20 rates on the all-purpose vehicles.

21 The Corporation in setting up their straw
22 man arguments against loss transfer appear to mistake the
23 impact of loss transfer with a gap in their
24 classification plan. If retirees are unable to receive
25 the same benefits as other Manitobans because they are

1 retired and no longer have insurable incomes, the
2 classification plan should reflect in the same manner
3 that this is a different unique risk classification.

4 Ms. Hall again in cross-examination
5 indicated that discounts for retirees are commonplace in
6 Ontario. And we'd suggest that if they were really the
7 champion of the retired, they would certainly be
8 designing a simple criteria as an input to the rating
9 process and it would be found at the broker's office.

10 The -- the next argument made by the
11 Corporation that the current approach helps consumers
12 make wise choices to assist in minimizing risk to
13 individuals and property. This theme was also weaved in
14 various responses to information requests such as PUB-
15 4(a) to (c).

16 This approach leads to different rates for
17 good and bad drivers, different rates for territories and
18 insurance uses and different rate groups.

19 Information was provided by the CMMG based
20 on the 2002 CAA vehicle ownership survey. That survey
21 showed that insurance rates and rating mechanisms were
22 not even on the most remote radar screens the consumers
23 when they make vehicle choices.

24 The Corporation tried to confirm that
25 assignment of costs on a first-party basis as a way of

1 encouraging this wise consumer behaviour that this
2 pointed to for a number of years was not based on any
3 supporting studies in their possession.

4 The Corporation confirmed that they could
5 not provide any proof whatsoever to support their belief.
6 Yet a current -- continues to argue that consumers choose
7 vehicles based on these lower costs and they responded in
8 that fashion and the PUB Interrogatory's 1 and 2-A.

9 This is merely hypothesis of the
10 Corporation, unsupported at best. Untested hypothesis
11 are not useful for sound public policy formulation.

12 Even with respect to the cross-examination
13 of Ms. McLaren, her buying decisions fly in the face of
14 this concept, surely the Corporation -- the head of the
15 Corporation with access to its own website about
16 vulnerable vehicles, would have chose -- wouldn't have
17 chose a vulnerable vehicle, had they found that own logic
18 convincing.

19 The facts are, unfortunately, and Mr.
20 Williams fails to appreciate this in his discussion on
21 this topic, is that a choice of vehicle is no indication
22 of your opportunity to be hurt. If you choose an
23 automobile you can be hit by a truck. If you choose a
24 truck, you can be hit by a larger truck.

25 There's a certain random -- randomness

1 with respect to that issue. And to depart -- to move
2 from that proposition to the proposition that those
3 victims should pay for the costs of the wrongdoers
4 injury, misses the point entirely.

5 When a vulnerable person has physical
6 trauma visited upon them, the system should not condone
7 and impose a double-whammy by making those vehicles pay
8 for the wrongful acts of another. The wrongdoer is the
9 one (1) that brings the risk to the system.

10 We heard quite a bit of testimony about
11 CLEAR. As noted by Mr. Pelly, loss transfer is only of
12 marginal relevance to CLEAR, and CLEAR is merely a
13 ranking system with relativities.

14 Mr. Pelly indicated the relativities are
15 not directly used by MPI. Mr. Pelly's evidence confirmed
16 which -- that which Mr. Tabachneck had indicated to us.
17 Vehicle rankings do not change due to loss transfer.
18 They would still be provided by CLEAR, and still be
19 useful for the assignment of rate groups.

20 MPI suggested for the Corporation to adopt
21 loss transfer that would somehow jeopardize the CLEAR
22 system as developed by IBC. The IBC witness on page 57
23 of the transcript, testified that MPI's data is about 5
24 percent of the total CLEAR data, which is an
25 insignificant portion of the total.

1 Adding confusion to the perspective of
2 this Corporation's response to PUB-2(d). The Corporation
3 implies that loss transfer would somehow affect our costs
4 from rate group perspective are assigned to a Chevy
5 Suburban and Pontiac Firefly. With respect to rate
6 group, the assignment is unchanged regardless of how
7 costs are assigned, as CLEAR rate groups are what use,
8 not some fault based hybrid.

9 As well, the rate line would not change,
10 since all costs are reflected in the rate line
11 adjustment. The only thing that would change would be
12 the assignment of costs by insurance uses and territory.
13 These would change to reflect the responsibility for the
14 accident, and create greater equity.

15 Further, in cross-examination, the CMMG
16 elicited from the Corporation that CLEAR rate groups are
17 used in Tort Provinces such as Alberta, where losses are
18 transferred. Public policy in these jurisdictions
19 supports both CLEAR and the transfer of claim costs. We
20 heard from Ms. Hall in that regard as well, where she
21 indicated if collision were added to loss transfer in
22 Ontario, then CLEAR would remain in use.

23 The inconsistency with the first nature
24 party of CLEAR argument is actually irrelevant to
25 motorcycles, since CLEAR rate groups are not used as set

1 out in CMMG Interrogatory 36.

2 Even if encouraging owners to purchase
3 vehicles that minimize risk is the goal, it may not be
4 achieved via CLEAR. Mr. Tabachneck was explicit in his
5 testimony at pages 63 and 64 of the transcript. Simply
6 put, the CLEAR system assigns higher collision rate
7 groups to vehicles with advanced safety systems like
8 airbags, anti-lock brakes, traction control and similar
9 systems.

10 Remembering that collision groups run from
11 one (1) to ninety-nine (99) and accident benefit groups
12 run from one (1) to five (5), a lower accident benefit
13 rate group will not offset the higher collision rate
14 group, since MPI combines them for its rate groups.

15 If the MPI objective is to encourage
16 greater adoption of lower risk vehicles, then they should
17 not be using CLEAR rate groups in the manner they are, as
18 safer vehicles will often have higher rate groups and
19 rates.

20 And of course that's a, somewhat of a
21 double edged sword, as we heard from Mr. Tabachneck's
22 evidence on my cross-examination, that sophisticated
23 safety systems result in higher repair costs for those
24 vehicles.

25 Basing continuation of the current system,

1 based on the consumer choice and consistency with CLEAR
2 are simply not supported by MPI past practice, other
3 expert opinion, or approaches in other jurisdictions.

4 A fifth approach the Corporation uses to
5 support the existing system is consistency with the rate
6 making methodology; that is, every component of the rate
7 setting system, including rating groups, should be first
8 party based or, alternatively, loss transfer based.

9 We heard from actuaries, such as Mr.
10 Pelly, this was not necessarily a requirement for rates
11 to be actuarially sound. The Corporation does not
12 suggest that assigning costs on a responsibility basis
13 would violate rate making principles, nor was that the
14 testimony of Mr. Pelly or Mr. McFarlane.

15 Mr. McFarlane deals with that at page 729
16 of the transcript, and we talked about was it driving it
17 from the top and he says:

18 "I don't think it's radically different
19 than what MPI does now, other than I've
20 taken the top step off and started at
21 the major class level and then
22 analysing the experience beneath it to
23 build a provincial indication.

24 Question: And this alternate approach
25 that you've just described, is that

1 accepted in other jurisdictions?

2 Mr. Pelly: I would say it's commonly
3 applied. Sure."

4 We heard contrary -- as a contrast with
5 that, we heard contradictory descriptions of the MPI
6 approach, as being bottom-up from Ms. -- Ms. McLaren, and
7 top-down from Mr. Palmer.

8 Top-down being that claims costs are
9 forecast at the overall Manitoba level, and these are
10 driven down to the major use level. Then they are
11 further driven down to territory and insurance use level.

12 Full transfer wouldn't work, according to
13 Mr. Pelly, if driven down from the major use level. The
14 Corporation describes the first party approach as:

15 "treating all motorists and vehicles
16 similarly and equitably."

17 First full loss transfer, as supported by
18 the Coalition, also treats motorists similarly and
19 equitably.

20 The Corporation states its approach is
21 reasonable. I'd submit their reasonableness is best
22 tested through the lens of the person on the street. The
23 Coalition believes that if the person on the street were
24 asked if their rate groups should include costs that
25 their group was not responsible for, the answer would be:

1 that is unreasonable.

2 The Corporation confirms in
3 Interrogatories 14 and 17 that it does assign
4 responsibility on each and every claim, and that is
5 needed to assign -- or each and every collision claim,
6 and that is needed to assign the appropriate bonus-malice
7 rating.

8 Under loss transfer, nothing changes and
9 the bonus-malice system will continue to work as today.
10 We heard Mr. Williams today talk about how the two
11 hundred and twenty-five dollar (\$225) bonus malice charge
12 is such -- a much more effective system than having a
13 result by loss transfer.

14 His example used ten thousand dollar
15 (\$10,000) losses and he went so far as to extrapolate to
16 a hundred thousand dollar (\$100,000) loss.

17 Well, Mr. Chairman, in the motorcycle
18 experience, we get concerned with large losses that may
19 approximate \$2 million, and we don't look at just the
20 effect on the eight hundred (800) or seven hundred and
21 fifty thousand (750,000) vehicles across the province.

22 We look at those seventy-five hundred
23 (7500) motorcycles, and the effect that they would have,
24 and suggest that his examples with respect to fifty cents
25 (\$.50), and the like, are totally inapplicable to the

1 dealing with the issue at hand, where the CMMG is saying
2 that loss transfer could result in as high as a 42
3 percent reduction in the premiums.

4 On page 8 of its position paper, the
5 Corporation argues that:

6 "The approach used by the Corporation
7 saves times and costs in resolving
8 liability."

9 We're the first to admit that lower
10 administration costs are a desirable goal, however, we
11 should be reminded that liability assignment is the
12 cornerstone of the justice system, as well such small
13 refinements as the bonus-malice system.

14 What the -- what it appears the
15 Corporation is saying is that there is some looseness in
16 how liability is assigned, in order to speed the
17 processing of claims.

18 This is confirmed in the response to PUB
19 Interrogatory 3-B which indicates in some incidents that
20 responsibilities do not add up to 100 percent.

21 We -- adding further to this mystery
22 around liability assignments, is the information with
23 respect to fault charts. Last year is shown on page 793
24 of that transcript, which we certainly did this year.

25 Mr. Bedard testified there were no

1 definitive fault charts by the Corporation, and he went
2 to indicate and -- that he showed the factors that the
3 Corporation used.

4 They use precedent, they use commonsense,
5 there was no reflection of fault charts at all in his
6 answer. This year, of course, Ms. McLaren's evidence was
7 quite different than that.

8 Perhaps this -- efforts in cost reduction
9 is the reason we're seeing strange results for single
10 vehicle accidents for the Corporation. As Mr. Ramsay
11 testified, he was startled by the high level of
12 motorcycle single vehicle acts in Manitoba. These are
13 well beyond the results of studies that he was quite
14 familiar with, including the quite famous Hert (phonetic)
15 report, or studies by Canadian organizations such as the
16 Traffic Injury Research Foundation.

17 The higher the ratio of single vehicle
18 accidents, the smaller the rate reduction effect of loss
19 transfer for motorcycles are, and I wonder if that's
20 coincidental.

21 If the MPI data overstates single vehicle
22 accidents, it will produce a relatively small, yet
23 material, reduction in motorcycle rates under loss
24 transfer.

25 These -- this is also at odds with the

1 information produced by Mr. McFarlane and FSCO. Even
2 under arduous cross-examination by Mr. Saranchuk, Mr.
3 McFarlane indication their reduction would be material.

4 FSCO's response is described by Ms. Hall
5 with respect to the effect of loss transfer on motorcycle
6 premiums, this summer around 20 percent.

7 I think the Board has to be careful to
8 take a judicial type of assessment of the quality of the
9 evidence that's been adduced at this hearing.

10 MPI did not produce an actuarial report.
11 Sure, it appended a report of Mr. Christie which is
12 referred to in CMMG circles as the water cooler report.
13 It's in that report, Mr. Christie talked to, and the
14 Corporation wouldn't tell us how, or who, or when, but
15 talked to a number of cronies and other insurance
16 organizations, and produced a -- a very short summary of
17 what's happening in other jurisdictions.

18 The loss transfer position MPI put forward
19 as their evidence, certainly wasn't an actuarial report,
20 it wasn't produced entirely under the control of Mr.
21 Palmer.

22 It -- the Corporation failed to answer
23 two-thirds of the interrogatories of -- of the CMMG,
24 again contributing to the lack of -- of evidence which
25 was directly within the control of the Corporation to be

1 produced at these hearings, and instead relied on a
2 repeating fallacious justifications made necessary,
3 because the Corporation has adhered, we would say
4 blindly, to this concept for a number of years.

5 I would suggest that the Board should
6 prefer the balanced testimony, certainly of Mr. Pelley,
7 the more extensive testimony and actuarial report of Mr.
8 McFarlane, the only detailed actuarial report dealing
9 with the impact of loss transfer, and with people with
10 experience in many systems, in many jurisdictions.

11 Mr. McFarlane's evidence was not disputed
12 or shaken even with the cross-examination of Mr.
13 Saranchuk and Mr. McCulloch. Mr. McCulloch, of course,
14 couldn't shake his testimony even relying on such almost
15 Biblical references, such as the August pages of the
16 Winnipeg Sun.

17 The final myth to deal with arises by
18 virtue of the CAC position and the interrogatory number 3
19 that they put forward. Their questioning is:

20 "if loss transfer mechanism is adopted,
21 will policy holders be impacted by the
22 randomness of bad drivers that happen
23 to purchase the same type, make and
24 model as their vehicle?"

25 The Corporation's response is "yes". This

1 makes sense as it is their view of the principle of
2 classification. Every level of the classification plan,
3 including the vehicle level, has good and bad drivers in
4 it, creating homogenous groups of good and bad, or
5 fortunate and unfortunate, is the fundamental principle
6 of pooling.

7 For example, farm trucks in Territory 2,
8 currently have the good farm truck drivers and the bad
9 farm truck drivers. Loss transfer does not change this
10 fundamental pooling concept. All it does -- all it does
11 is assign cost to the pool based on who is responsible
12 for those losses.

13 Ms. Hall of FSCO confirmed the biased
14 nature insurances about cross-subsidization. Her
15 comments successfully shattered the mist that somehow
16 loss transfer is bad cross-subsidization and that is
17 inappropriate.

18 Mr. Pelly made a similar comment. If
19 there's bad cross-subsidization, there's no worse case in
20 Manitoba than a group of owners who pay no premiums, and
21 yet have claims in the \$1.5 million range annually. And
22 I'm speaking about the extra-Provincial trucking industry
23 in Manitoba. And the Board heard representations by way
24 of presentations on last Wednesday night.

25 Ms. Hall also provided information on

1 public reaction to loss transfer in Ontario, private
2 passenger vehicles have not complained or reacted in a
3 negative fashion. This is likely due to the minimal
4 impact on private passenger vehicle rates. It appears
5 there's been little reaction from commercial vehicle
6 owners as well.

7 Ms. Hall indicated that when motorcycles
8 were invited to the table, so to say, when the amendments
9 were contemplated on Ontario, it was due to the large
10 increase in rate, something in the nature of three (3) to
11 four (4) times higher.

12 Ms. Hall also testified if the size of
13 increase was expected for a large vehicle group like
14 private passenger vehicles, there would have been some
15 serious negative publicity, in contrast MPI testified
16 that the motorcycles were not brought to the table during
17 the process leading up to no-fault being introduced in
18 Manitoba.

19 The OAIB report was public knowledge long
20 before the Province of Manitoba embarked on the no-fault
21 experience, and certainly would have been available to
22 MPI.

23 The failure to consult motorcyclists is
24 surprising, since the Corporation had information that
25 motorcycle rates would be adversely affected. Instead of

1 taking proactive steps as in Ontario, MPI chose the
2 course of doing nothing.

3 They stood on the side lines with no
4 discussion with the motorcyclists, and only generic
5 information was sent to the group as part of the mass
6 mailings to Manitobans. And Ms. McLaren confirmed that
7 the mass mailings didn't have anything to do with
8 motorcycle insurance.

9 Ms. McLaren and Mr. McFarlane and Ms.
10 Hall, both noted that motorcyclists were the group most
11 adversely affected by the change in Ontario. Ontario
12 responded with consultation and a plan that has resulted
13 in good public policy that prevented harm to the
14 industry.

15 The CAC through a rather lengthy
16 hypothetical argument, put to Mr. Ramsay relating to a
17 car and a motorcycle colliding where the car is at fault,
18 attempting to show that somehow loss transfer incorrectly
19 punishes -- punishes the innocent members of the larger
20 car grouping. That is the motorcyclists and all other
21 members of the insurance classification the car is
22 insured in, say all purpose, are innocent.

23 To follow this line of reasoning, we would
24 have to fall into the old trap that a person who has
25 never had a claim or been a long while without a claim,

1 should pay nothing for insurance.

2 Some members of the motorcycling community
3 that have been claim free for many years I'm sure would
4 have support that concept. We all know better that after
5 many years of these Hearings. Insurance by its nature is
6 a pooling of homogenous risks and the premium paid is for
7 the potential of the loss occurring to the insured.

8 The hypothetical also suggests if losses
9 were transferred, the impact would be negligible on the
10 large group, so it would have little effect in terms of
11 sanctioning inappropriate driving. The CAC is concerning
12 -- is correct, concerning the low rate effect in support
13 of -- of the -- the minimal cost on other drivers. What
14 it's lacking in their discussion is of course the impact
15 is huge for the small class, in this case motorcycles.

16 The Manitoba insurance ind -- motorcycle
17 industry has experienced hardship. Mr. Ramsay's
18 statistics make that clear. Street motorcycle sales are
19 rising in Canada, but falling in Manitoba. Fewer
20 motorcycles sold, means fewer jobs in those industries;
21 fewer motorcycle repair jobs and other related services.

22 In summary, Mr. Chairman, Members of the
23 Board, the Coalition's position is that full loss
24 transfer should be adopted. Loss transfer the CMMG
25 believes, particularly to the person on the street, is

1 fairer, equitable and reasonable.

2 The Coalition can envision -- envision a
3 number of approaches in this regard, due to the variety
4 of possibilities in implementation. If the Board were to
5 chose this route, the CMMG suggests a third party be
6 brought in to work with MPI and the Intervenor to
7 develop the potential methodologies.

8 These could be reviewed after the 2000
9 rate hearings but not later than the 2007 Rate
10 Application.

11 Mr. Chairman, we know that it's difficult
12 to get someone to do a task that they have decided they
13 don't want to do. I have two (2) teenagers at home and I
14 run into that constantly.

15 Once the Board has wrestled with this very
16 difficult decision and made a decision, hopefully
17 favourably in terms of implementation, likely the
18 challenges will not seem as daunting as the Corporation
19 has indicated in this last Hearing that they are able to
20 make this change, they've said so for many years.
21 Previously they've indicated they're philosophically
22 opposed.

23 We'd like to thank the Board for its
24 consideration during this special Hearing and the
25 cooperation of Board counsel, the Corporation, our fellow

1 Intervenors and those other interested parties who
2 provided information to this process. Thank you.

3 THE CHAIRPERSON: Thank you, Mr. Oakes,
4 for your strong and direct presentation.

5 Do any of my colleagues have anything?

6 MS. DENYSE COTE: Yes, Mr. Oakes. I
7 believe you mentioned in your ending comments about the
8 implementation that you thought that a third-party could
9 come in to work with MPI and the Intervenors.

10 What kind of expertise would you envisage
11 that third-party to have?

12 MR. RAYMOND OAKES: Well, I was referring
13 to some of the comments of the MMIC and their eagerness
14 to work with the Corporation. I think that they would
15 work together with the firm of actuaries that -- that
16 they worked with for a number of years.

17 The concern being that only MPI has the
18 data, and I think that in order to properly test the
19 statements of the Corporation, certainly given some of
20 the inconsistencies in the application of single motor
21 vehicles and some other issues that certainly cause the
22 CMMG some concern, we think there should be some
23 independence to that process.

24 MS. DENYSE COTE: Thank you.

25 THE CHAIRPERSON: Thank you, again, Mr.

1 Oakes.

2 Mr. Roberts, the Manitoba Used Car Dealers
3 Association?

4

5 CLOSING COMMENTS BY MR. NICK ROBERTS:

6 MR. NICK ROBERTS: Thank you, Mr.
7 Chairman, Members of the Board.

8 First, let me thank the PUB, other
9 Intervenors and MPI for the opportunity to present the
10 Manitoba Used Car Dealers Association position on loss
11 transfer.

12 As these hearings on loss transfer
13 progressed, it seemed to me that this became an issue
14 about loss transfer for motorcycles and motorcycles only,
15 Possibly because the motorcycle group has brought up loss
16 transfer year after year and has been the driving force
17 on this issue.

18 If our association had been aware of the
19 positive effect that loss transfer would have on the
20 dealer plate pool, we also would have been equally vocal
21 about the benefits of loss transfer.

22 We want to make it abundantly clear that
23 our members are also in favour of loss transfer. Our
24 association represents automobile dealers from the
25 smallest operations to the largest and, as such, we

1 believe we represent a reasonable cross-section of the
2 views of dealers across Manitoba.

3 As ratepayers, we tested the current
4 system that MPI uses to assign costs against the
5 benchmark set by the Board. Those tests were that the
6 system be fair, reasonable, non-preferential and not
7 unfairly discriminatory.

8 We believe the current system does not
9 meet these tests. We also find it wanting from the car
10 dealers' perspective on -- on plain commonsense grounds.

11 MPI, in its submission, focusses on
12 fairness or equity and reasonableness. In our final
13 decision we also focus mainly on these two (2) tests.

14 To help us, we decided to consult the
15 dictionary to ensure that we had precision in our
16 interpretation of these.

17 According to Miriam Webster's Dictionary,
18 'fair' can take on a variety of meanings including:

19 "Being marked by impartiality and
20 honesty. Free from self-interest,
21 prejudice or favouritism. Conforming
22 with the established rules."

23 At MUCDA we believe that MPI believes it
24 is conforming with these definitions of 'fair'. There's
25 no belief on our part that they are being partial or

1 dishonest or engaging in simple self-interest.

2 We suppose that they believe they are
3 conforming to established rules. Those rules, however,
4 were established by MPI and we believe are unsound. MPI
5 hinges its belief that the rules are correct on two (2)
6 primary beliefs; that since the MPI plan is primarily a
7 first party plan, so consistency necessitate assignment
8 of costs for rating on a first-party basis.

9 Second, that doing so will provide
10 incentive to Manitobans to manage their affairs in a
11 manner that reduces risk through the choices they make.

12 From the material filed at the hearing and
13 evidence from experts, we heard clearly that we are
14 talking -- what we are talking about is how costs are
15 allocated. To our ears, there was nothing suggested by
16 the Corporation or other experts that assigning costs on
17 a loss transfer basis would violate actuarial or other
18 rate-making principles.

19 The nature of the MPI plan does not force
20 automatic assignment of costs for rate setting on that
21 basis, it is an approach that MPI chose. Given their no-
22 fault plan's reliance on the Quebec system, we are
23 intrigued that they did not rely on Quebec's rating
24 approach when assigning costs for no-fault; that is,
25 assignment on a fifty-fifty (50/50) basis as described by

1 Mr. Christie in the document attached to the MPI position
2 paper.

3 We heard, during our examination of the
4 Corporation that used car dealers are at the mercy of the
5 marketplace providing a valuable service to Manitobans.
6 As such, used vehicle -- used car dealers are not able to
7 simply choose to sell low-risk vehicles. In order to
8 earn a livelihood, they must sell vehicles that they
9 public wants. These may be what are classified by the --
10 as high risk by the Corporation.

11 So, from a risk control perspective, the
12 assignment based on first-party does not work for
13 dealers. Dealers who chose vehicles that they want to
14 sell in order to keep insurance rates low for dealers is
15 not likely to be in business very long, quite simply,
16 since these may not be the vehicles that the public
17 wants.

18 Dealers are also thwarted in managing the
19 risk of persons that take dealer vehicles for test
20 drives. The most a dealer can ask for is a copy of the
21 prospect's driver's license and accompany them on a test
22 drive.

23 Dealers in terms of care, custody, and
24 control are different than most other uses. Dealers, by
25 necessity, have to allow many strangers to drive their

1 vehicles. This is unlike a privately owned car where the
2 number of drivers is few and likely to be either family
3 members or a friend or neighbour of the owner.

4 MPI also makes a fairly strenuous effort
5 to link the necessity for the status quo on the need for
6 it to match the methodology used by the IBC to assign
7 rate groups. The CLEAR system is based on first-party
8 data, therefore the Corporation argues it must assign
9 costs to individual insurance uses and territories on a
10 first-party basis.

11 During the information request process,
12 MUCDA/MPI Interrogatory 4, the Association solicited from
13 the Corporation that CLEAR does not apply to dealers,
14 simply since dealers are not assigned rate groups.
15 Therefore, this argument does not hold for dealers.

16 We also learned from MUCDA/MPI
17 Interrogatory 5 that the dealer-plated vehicle is not the
18 same as other vehicles. A plate for a car is put on a
19 car. This type of vehicle risk is relatively stable and
20 this aids using rates for risk control.

21 For dealer-plated vehicles the dealer
22 plate may be on various -- varies from cars to trucks to
23 motorhomes to buses and is not stable and not meeting the
24 concept of risk control that MPI uses to support a first-
25 party assignment of costs.

1 So, the rules, while consistently applied,
2 do not work for dealers. In fact, they are unfair for
3 dealers. It could be said they are preferential toward
4 privately owned vehicles and discriminate against dealers
5 as they fail to account for the characteristics of the
6 dealer pool. Consequently, assignment of costs based on
7 those rules is unfair for dealers.

8 The second test was whether the existing
9 approach is reasonable, meaning that it is in accordance
10 with reason. Reason has many interpretations, but in
11 this context, perhaps, a sufficient ground of explanation
12 or a logical defence or something that supports a
13 conclusion or explains a fact.

14 Suppose a dealer allows a potential
15 customer to take a dealer-plated vehicle for a test
16 drive. That person has an accident and say they were not
17 at fault. And, let's say that the accident cost \$2
18 million in injury costs. As things stand today, those
19 costs would be assigned to the dealer class, even though
20 the driver and the dealer were not responsible.

21 Even as Mr. Oakes said, if we asked a
22 person on the street, they would suggest that the
23 assignment of costs in this manner is unreasonable.

24 We saw from the 2005 Rate Application,
25 material and from examination of the Corporation's

1 witnesses, that there is a significant amount of cost
2 charged to the dealer class that fall into this category;
3 for example, \$6.7 million in 1996 alone.

4 In cross-examination, the Corporation
5 confirmed this is up to one-third (1/3) of all costs,
6 serious loss costs for dealers. This in turn creates a
7 much higher rate.

8 Let's further examine the case of the
9 driver of a dealer-plated vehicle we just talked about.
10 Suppose the person is twenty (20), has no vehicle, and
11 relies on their parents' car. Suppose they have an
12 accident in the dealer car and they are not at fault.
13 The costs are charged to the dealer class and the rates
14 go up.

15 Since it is a small pool, rates will
16 likely go up a lot. Similarly, if they were driving mom
17 and dad's car, the costs would be charged to the
18 respective pool, and rates would also go up, but only a
19 bit.

20 That is, from a rate perspective, the
21 system prefers a -- large risk pools since large losses
22 are spread over a larger base.

23 As well, it is more likely for large
24 classes to have matching losses with other vehicles in
25 the class. The large size of all-purpose car pool, for

1 example, suggested there are lots of times when all-
2 purpose cars have a collision with another all-purpose
3 car, in which case transferring losses is not needed.

4 For a small pool like dealers, having
5 dealer cars collide with one another, would be a very
6 rare event.

7 As an aside, in terms of risk management,
8 notice the private vehicle owner receives preferential
9 treatment. Mom and dad do not lose their discount since
10 neither of them are responsible, even though they had
11 care, custody and control of the vehicle.

12 The twenty (20) year old receives the
13 driver's license accident surcharge instead. The dealer
14 in this case, if they are a fleet, will have a change in
15 their fleet rating, potentially losing discounts. The
16 individual owner does not. The individual vehicle owner
17 thus is treated preferentially, relative to dealers.

18 Perhaps the solution is to have claims
19 costs for dealer-plated vehicles, where the dealer
20 principal is not involved, treated like pedestrian or
21 cyclist claims.

22 Finally, MUCDA members believe common
23 sense should prevail. If one were to tell a person on
24 the street that their insurance rates are going up due to
25 an accident caused by someone else, they would find it

1 questionable, if not unbelievable.

2 Let's take the current system to a logical
3 conclusion: Suppose that the bonus malice system was
4 based on the same principle with losses assigned on a
5 first-party basis. That is, if you are involved in an
6 accident, then you should be sanctioned. It does not
7 matter whether you were at fault; you were in an
8 accident. Good risk management practise is that you
9 should do everything to avoid accidents and you didn't,
10 therefore, your rate is now higher.

11 Would this make common sense to the
12 public? Would it be acceptable to the public? Perhaps
13 for private insurers where customers can choose another
14 company, but not for a monopolist public insurer.

15 During the hearings, MUCDA asked about the
16 treatment of dealer-plated vehicles in other provinces.
17 In other provinces such as Alberta, costs are not
18 assigned in the same manner as Manitoba, since they are
19 Tort jurisdictions with losses assigned to the
20 responsible party.

21 On a comparative basis, the Manitoba
22 method charges all costs to the dealer instead. On a
23 relative basis, this means that rates are higher for
24 Manitoba car dealers than they should be, relative to the
25 situation in other provinces.

1 We learnt from our cross-examination that
2 it is relatively easy for a Manitoban to get a short-term
3 policy and buy a vehicle in another province, and bring
4 it to Manitoba. The overall consequence is that it
5 leaves Manitoba dealers at a competitive disadvantage,
6 relative to dealers in other provinces, adversely
7 affecting the industry.

8 MUCDA knows that there was special rate
9 relief provided to the extra-provincial industry, or
10 excuse me, extra-provincial trucking industry, due to its
11 unique characteristics and competitive disadvantage
12 issues. While not exactly the same, the situations are
13 similar.

14 To conclude, when we entered this process,
15 MUCDA was firmly stacked up with those who support full
16 loss transfer. We remain committed to loss transfer as
17 the only approach that meets the Board's test, plus its
18 common sense.

19 We however, during the course of this
20 review, have come to conclude regardless of how loss
21 transfer is applied, or not applied to all other groups,
22 dealers are different and loss transfer is a necessity
23 for fair treatment of dealers.

24 In this case we visualize loss transfer
25 potentially only applying to dealers. Dealers are not

1 seeking that all their costs be transferred, merely the
2 claims for which they are not responsible, be transferred
3 out on a percent-responsibility basis. Dealers are
4 willing to accept transfers in on the same basis.

5 Dealers have unique circumstances that I
6 discussed earlier, those being: A requirement to sell to
7 the public what they want; limited ability for risk
8 management relative to other vehicle classes, due to the
9 nature of the dealer business; no rate groups.

10 The MUCDA is not amenable to an approach
11 discussed by CAC/MSOS Counsel with MPI toward the end of
12 the Hearings, unless the group -- groups of vehicles
13 considered is thoroughly analysed to include all
14 insurance uses, whether there was an unintended
15 consequence of no fault introduction. This in our
16 opinion, would include dealers.

17 The MUCDA was perplexed during the
18 Hearings at MPI's response to several Information
19 Requests, particularly those related to updated effects
20 of the impact of loss transfer on dealer plates.

21 At last year's Hearings, the Corporation
22 came forth with a significant error in dealer plate data,
23 which was used to justify a substantial rate -- rate
24 increase for dealers. Before this Hearing, we by
25 necessity, were forced to use information from the

1 Corporation, that was based on that incorrect data.

2 From our first round Interrogatory
3 Question 2, from the 2005 GRA, the response was that the
4 data error was \$5.7 million. Or put another way, a 50
5 percent error. A large amount.

6 During our cross-examination, Mr. Palmer
7 called the amount insignificant. In my books \$5.7
8 million is a very significant amount.

9 The Corporation attempted to sell the lack
10 of analysis on the basis that relatively, things would
11 not change. We, however, are unconvinced as simple
12 common sense tells us that if the old analysis was based
13 on bad data, then the results had to be incorrect.

14 The failure to provide updated
15 information, even though the Corporation runs twenty (20)
16 plus rate scenarios each year, was perplexing to us. The
17 lack of information added substantially to the work
18 burden for the Association, and leads one to wonder how
19 proper policy making can be done without accurate
20 indications of the effect of the change.

21 I'm not sure how Government bodies make
22 policy decisions, I can only speak for how private
23 organizations make decisions.

24 I know using old, incorrect data, would
25 not be acceptable when more up to date information is

1 available.

2 And with that, Mr. Chairman, I conclude
3 our submission.

4 THE CHAIRPERSON: Thank you, Mr. Roberts.
5 Very interesting.

6 We'll move on now to Mr. Dawson for the
7 Bar Association.

8 Mr. Dawson...?

9 MR. ROBERT DAWSON: With your permission,
10 Mr. Chairman, I'd like to move to a more central location
11 to save the Members of the Panel having to crane
12 throughout my submission.

13 THE CHAIRPERSON: No problem.

14

15 (BRIEF PAUSE)

16

17 CLOSING COMMENTS BY MR. ROBERT DAWSON

18 MR. ROBERT DAWSON: Thank you, Mr.
19 Chairman.

20 On behalf of the Manitoba Bar Association,
21 I'd like to remind the Panel that my client takes no
22 position with respect to the issue of loss transfer, by
23 that I mean that we are neither in favour of the adoption
24 of any loss transfer system, nor do we by implication,
25 necessarily support the current system being retained.

1 Having said that, I can say that the gist
2 of my presentation today will be to argue that loss
3 transfer, as it's been proposed in various ways before
4 this Board, is philosophically ill suited to adoption in
5 Manitoba.

6 But, having said that, I remind the Board
7 that there may be overriding public policy
8 considerations, such as those raised by earlier
9 Intervenors in their closing submissions, that would make
10 this philosophical objection less important or even
11 irrelevant.

12 I propose to provide a framework for the
13 Board to analyse the specific recommendations, and my
14 special focus will be upon the rights, interests and
15 expectations of Manitobans, as those issues underlie this
16 discussion.

17 And that touches upon three (3) of the
18 several issues that the Chairman set out, or rather Mr.
19 Saranchuk set out on behalf of the Board, as being issues
20 that the Board would like assistance on. Specifically I
21 think that my comments will relate to points 2, 4, 5,
22 namely whether or not the submissions or the changes or
23 decision not to change, would be publicly acceptable or
24 whether or not the outcome of these Hearings would make
25 good public policy, and whether any rate setting

1 methodology or mechanism would result in fair,
2 reasonable, non-discriminatory and non-preferential
3 rates.

4 I'd propose to do this in -- under three
5 (3) headings, and despite the fact that my introduction
6 is almost longer than the rest of the submissions, I
7 think it's useful to outline where we're going.

8 The first question that I'd like to cover
9 is, what does legislative intent tell us about these
10 rights, interests and expectations of Manitobans.

11 Secondly, what do other jurisdictions have
12 to teach us about rate setting. And thirdly, despite
13 what will undoubtedly sounds like a challenging and
14 controversial question, is this, that is the Public
15 Utilities Board, even the right forum in which to effect
16 any change or to make a decision to preserve the status
17 quo.

18 And for the convenience of the Panel
19 Members, I'll tell you that I will make reference to
20 transcripts and exhibits but I suggest that unless the
21 Board wants to, there's really no need to turn to them.
22 I do this simply for the purposes of establishing a later
23 reference if the Board would like to review what I'm
24 saying.

25 And of course, it certainly does not

1 require that I should invite the Board to interrupt me at
2 anytime with any questions or comments.

3 So, let me turn to the first point that I
4 want to talk about and that deals with the question of
5 what legislative intent may tell us about the rights,
6 expectations and concerns of Manitobans.

7 We've heard throughout this Hearing four
8 (4) catch phrases. That is that Manitobans have a right
9 to have fair, reasonable non-discriminatory and non-
10 preferential rates. But, these concepts really I suggest
11 to you, are profoundly unhelpful.

12 It would be as if I suggest to you that I
13 stood up right now and declared 'I like pie'. That may
14 give you a rough idea of what I like but it doesn't tell
15 you what kind of pie I like, how big of a slice I'm
16 expecting, where I'd like it served, what utensils I'm
17 going to require.

18 In short, for those of us who have gone
19 through a background in philosophy will recognize that
20 concepts like fair, reasonable, non-discriminatory and
21 non-preferential; these are generally considered to be
22 high level or first order goals.

23 And on their own they're completely
24 helpless in terms of guiding our discussion. I'm going
25 to suggest to you that we can put meaning into these

1 terms by looking at among other things what is the intent
2 that underlies the legislation that sets up the current
3 scheme or that would be impacted by any changes that
4 we're proposing under loss transfer.

5 I had originally intended to spend a
6 considerable amount of time reporting to this Board my
7 findings on the legislative history of the legislation
8 but that was before I knew that Dr. Evans would be
9 joining the Panel.

10 And I'll suggest that the Board has a far
11 better source than any second-hand report that I might
12 make based upon my review of answered Hansard legislative
13 committee discussions; reports such as the USCU
14 (phonetic) Commission as well as the decisions of this
15 Board simply by consulting Dr. Evans.

16 So, both to save time as well as to deal
17 with something that's much more relevant, I'll suggest
18 that we move directly to something that may be of more
19 assistance to the Board.

20 Of course legislative intent can be found
21 certainly in those kinds of primary sources that I made
22 reference. But we are also fortunate in that the courts
23 will occasionally turn to the legislative scheme and ask
24 the question of what is it's purpose.

25 There have been relatively few such

1 decisions in Manitoba but one that is particularly useful
2 for this discussion arose in 1997. It's a Manitoba Court
3 of Appeal Decision and the style of cause is Macmillan
4 and Rural Municipality of Thompson.

5 I normally at this point would pause and
6 hand out the case except that the facts are really quite
7 irrelevant and there are simply two (2) paragraphs that
8 deserve the attention of the Board.

9 The facts by way of very brief background
10 was a dispute as to whether or not injuries had been
11 sustained as a result of the operation of a motor
12 vehicle. Clearly if in fact the Court found that there
13 were a finding that a motor vehicle had caused the
14 injuries, then the injuries would be covered under the
15 MPI scheme.

16 So, the facts as I say, are quite
17 irrelevant. The case goes on at length to deal with
18 whether or not the automobile discussion was relevant.
19 But I want to turn the court -- this Panel's attention
20 specifically to paragraph 54 where Madame Justice Helper
21 makes the following comment.

22 "I have concluded that the legislature
23 created an all encompassing insurance
24 scheme to benefit, or to rather, to
25 provide immediate compensatory benefits

1 to all Manitobans who suffer bodily
2 injuries in accidents involving an
3 automobile."

4 Now, I have to say when I read that
5 statement, that sounded to me like the usual platitude
6 that a judge makes to throw out some comment that makes
7 it sound like they've done some work.

8 This is fact I suggest to you, is a rather
9 profound statement. Whether intended or otherwise, I'm
10 going to draw out what I'm going to suggest to you are
11 three (3) nuggets of guidance.

12 First Madame Justice Helper makes
13 reference that the scheme as being an all encompassing
14 insurance scheme. This suggests that attempts to draw
15 parallels upon SGI's approach, allowing opting out in
16 favour of Tort, may at least, based on this comment, run
17 counter to the underlying philosophy of the legislation.

18 I will have more to say about this as I
19 close, but that's the first point that I think we need to
20 look at.

21 The second one (1) relates to the notion
22 of providing compensatory benefits to all Manitobans.
23 This gives rise to an implicit balancing act, namely that
24 premium pricing has to obviously be sufficient in order
25 to pay compensation to all Manitobans. But, there'd have

1 to be some sort of control on compensation that could be
2 paid, it can't be open ended, it can't be indeterminate.

3 Therefore, it follows that MPIC ought to
4 try and reduce both the frequency and severity of
5 accidents in whatever it can pursuant to the scheme, and
6 the key way in which it can do that is through rate
7 making methodology.

8 The third nugget that I extract from Madam
9 Justice Helper's comment, deals with her use of the
10 notion of compensation. She said, if you remember, that
11 the scheme is designed to provide, and I quote, immediate
12 compensatory benefits to all Manitobans.

13 She did not write, which she could have,
14 that it was an all encompassing insurance scheme, to
15 punish those who caused Manitobans to suffer bodily
16 injuries and accidents involving an automobile.

17 I make much of this distinction, that is
18 she deals with compensation not punishment, because as I
19 should briefly argue, that has a big bearing on where we
20 can go under the legislation.

21 I've had the opportunity to review the
22 presentations that were made before this Panel on
23 Wednesday evening, and I noticed that a number of the lay
24 presenters would not agree with me that the thrust of the
25 legislation is not compensatory, but rather they would

1 suggest I think, that it is punitive.

2 I point for example, to the comments of
3 Mr. Bach at page 472, line 18, where he said:

4 "I feel that MPIC should first go after
5 the driver's instead of the vehicles."

6 That was echoed again by Mr. Arjoon, if
7 I'm pronouncing his name correctly, who apparently
8 related to the Board that he had been involved as a
9 motorcyclist in an accident and said at page 464, line 9:

10 "What I find illogical is, when it came
11 time to pay my wages and for the
12 replacement costs of my motorcycle, it
13 came out of our pool."

14 This is again another statement suggesting
15 that the purpose ought to be to punish the wrongdoer, not
16 so much the compensation. Mr. Arjoon here is not
17 complaining that he got compensated, that he got money
18 for his injury, that his motorcycle was fixed. He's
19 complaining that he ended up having to pay for it, and
20 that the wrongdoer, as far as he sees it, got off scott-
21 free.

22 And it's not just the presenters that said
23 this. Mr. Ramsay said at page 182, line 10, "we",
24 meaning his group:

25 "Believe cost of insurance should be

1 apportioned to the vehicle type, based
2 upon fault determination. We believe
3 that it is the fair approach to this
4 issue."

5 Well, with respect, that's an approach,
6 but based upon the comments of Madam Justice Helper, at
7 least at paragraph 54 of the MacMillan Decision, it seems
8 not to be the Manitoba approach.

9 Clearly this approach demonstrates, that
10 is the comments Mr. Ramsay made, demonstrates a bias in
11 favour of, or perhaps coming out of a Tort or fault based
12 environment. And this harkens back to some of the
13 comments that My Learned Friend, Mr. Williams, made in
14 the opening of his comments, namely that there is an
15 ideological divide almost, separating those who are used
16 to a Tort based system from here in Manitoba.

17 I'm going to suggest to the Board that
18 MPIC's witness in fact got it right. You'll remember
19 that Mr. Palmer, while being cross-examined by Mr.
20 Saranchuk, said at page 617, line 21, "we're", meaning
21 MPIC:

22 "We're in the business of compensating
23 losses."

24 I suggest to you that that statement makes
25 clear the understanding on behalf of MPIC, that they

1 recognize they're in the compensation business, they're
2 not in the punishment business.

3 Of course some may say, but, yes, they
4 have this bonus malice system, but we all know that that
5 operates very separately from the way in which premiums
6 themselves are actually going to be set. Bonus malice
7 doesn't impact upon the rate setting methodology.

8 And, I suggest to you that this is
9 correct. And, if you took a course in the philosophy of
10 law, which sadly it may seem to some of you on the Panel
11 I'm now giving, you would know that -- and, I will submit
12 to you as it is fact, that is primarily concerned with
13 identifying a wrongdoer and imposing liability on that
14 person.

15 Tort is primarily concerned with
16 punishment, it is not primarily concerned with
17 compensation and common sense, even from those who aren't
18 lawyers, would immediately recognize this as being true.
19 You would know, for example, that the liability that a
20 wrongdoer under a Tort system may have to pay, has no
21 necessary connection with the actual loss that is
22 suffered.

23 Consider, for example, the notion of
24 punitive damages that can arise in Tort, this is extra
25 bonus cash for the wrongdoer. It has no connection with

1 the actual loss that was sustained. It is an attempt, as
2 its name implies, to punish the wrongdoer.

3 Tort system can work in the other
4 direction as well. It can argue that the wrongdoer
5 should pay less than the cost of the loss that the victim
6 has sustained, and that's through the concept of
7 contributory negligence.

8 These are notions that are philosophically
9 underpinning the Tort system, supporting the view that
10 Tort is primarily there to punish, not necessarily to
11 compensate.

12 The notion of loss transfer itself, I
13 further submit, is tied inextricably to the notion of a
14 Tort system, not a system whose primary purpose is
15 compensation.

16 The leading, or one (1) of the leading
17 European texts is written by Christian Von Bar, the
18 English translation is "Common European Law of Torts" and
19 in volume 1, which was published in 1998 at page 510 we
20 have the following observation:

21 "The concept of transferred loss is
22 intended to prevent someone appealing
23 to rules whose purpose is not to
24 protect that person, but to protect
25 others."

1 Now, let's pause and make sure we grab
2 that meaning.

3 Of course, loss transfer operates,
4 normally, to prevent the wrongdoer from hiding within the
5 class of others and escaping any punishment.
6 Philosophically then, that protection that loss transfer
7 would normally afford -- well, without loss transfer,
8 philosophically, without the protection of loss transfer,
9 is what I'm trying to say, punishment would not be
10 possible, and therefore loss transfer actually flows, I'm
11 submitting, from the notion of a Tort-based system.

12 But of course, we all know that there's no
13 Tort here in Manitoba anymore, and that then means that
14 if we are going to adopt loss transfer in Manitoba, we
15 should not fool ourselves into thinking, I submit, that
16 it is somehow an extension of the existing legislative
17 intent. Rather, it must be adopted boldly as saying
18 that it merely is a cost control.

19 There is a group that is complaining its
20 rates are too high; what can we do to help them? Well,
21 loss transfer may be an answer.

22 Now, of course, Ontario has been described
23 as, in the words of My Friend Mr. Williams, the magic
24 elixir, and I'm going to suggest to you that -- under the
25 heading that -- I have a second heading that I'm using

1 that what do other jurisdictions have to teach us about
2 the non-consensual imposition of loss transfer; I'm going
3 to suggest to you that Ontario has nothing to teach
4 Manitoba.

5 I've already talked to you about the
6 distinction of Tort being, of course, an Ontario-based
7 system too, and how Tort does not apply really, of
8 course, in Manitoba; but I think that it's important to
9 review the historical background of the Ontario decision
10 to adopt loss transfer.

11 We know, of course, that Ontario seems to
12 be this magic elixir, because as Mr. Tabachneck said, at
13 page 43 line 19, the Ontario loss transfer data has no
14 affect upon the CLEAR system; that seems to be our
15 biggest problem here in Manitoba. We want CLEAR, but we
16 don't want to skew that data.

17 And, of course, in Ontario loss transfer
18 has no effect upon CLEAR, because it's triggered only
19 after the two thousand dollar (\$2,000) premium, therefore
20 since clear only tracks frequency, the frequency claims
21 count is always going to equal one (1), whether or not
22 there's loss transfer. So it sounds great.

23 We know from Ms. Hall, that the liability
24 crisis arose in Ontario, and this at page 99, line 19 of
25 the transcript:

1 "And it led to the creation of First
2 Government Committee to examine the
3 issue, and it was followed by the
4 Osborne Report and then there
5 wasn't..."

6 And she correctly identifies it:

7 "...a Reference Hearing from the
8 Government of the day to, shall we say,
9 the Ontario version of the Public
10 Utilities Board, the Ontario Automobile
11 Insurance Board."

12 There was a conference at the University
13 of Laval in 1998, entitled, Vingt ans D'assurance sans
14 Egard a la Responsabilite, twenty (20) years of
15 insurance, or no fault insurance, at which, Bruce
16 Feldthusen, gave a presentation entitled, Have the
17 Politics of Rate Regulation Produced a better No-Fault
18 Regime for Ontario.

19 And that paper, and that paper was
20 subsequently reprinted in the 1998 Volume 39, of Les
21 Cahiers de Droit, page 437 -- 473 rather.

22 And the conclusion of that author was that
23 this initiative in Ontario largely emerged as a result of
24 the lobbying efforts, first of insurers, as well as
25 lawyers.

1 In terms of the insurers, and the lawyers
2 having been the impetuous, Ms. Hall tells us at page 165,
3 line 16, that she was not aware of any consumer group
4 involvement prior to the public hearings, that's because
5 no public -- no public consumer group was complaining at
6 that particular point.

7 It was a problem, but it wasn't the kind
8 of problem that I'm about to describe.

9 Ms. Hall went on to say at page 82,
10 line 12 that:

11 "Without the change that loss transfer
12 introduced, insurers might not have
13 been able to sell insurance for special
14 -- specialty vehicles or insurance
15 might not have been affordable".

16 But it was the insurers who were bringing
17 this forth, and if we pause and ask the question: Why
18 would the consumer groups not have been complaining, the
19 logic I think is as follows.

20 Of course, the problem without loss
21 transfer is that each insurer, of course, is trying to
22 reduce its claims costs. Under loss transfer, the first
23 party insurer is entitled to recoup those costs from the
24 party at fault.

25 Translation: We don't have to pay, the

1 other party's insurer has to pay. And that's of course
2 after the two thousand dollar (\$2,000) deductible, or
3 premium threshold.

4 That then leads insurers who find the
5 majority of their insured are causing claims, or at
6 fault, to essentially lead to dump those wrongdoers. It
7 makes perfect sense, I insure those who don't have to get
8 -- who don't file claims, I dump those who cost me money,
9 and then they have developed this marvellous PR
10 development of the Facility Association, which of course
11 is a pool of all of the insurers who get together, and
12 they're not feeling sorry for the wrongdoers at this
13 point, they are, as Miss Hall says, at page 107, line 9,
14 they're charging, quote:

15 "Premiums are amongst the highest in
16 the market."

17 So, if you're stupid enough as a person
18 who seeks insurance, to have been denied insurance, and
19 you still want to go out on the road under loss transfer,
20 well, we have a place for suckers like you and it's
21 called, 'The Facility Association'.

22 The fact about the result of loss transfer
23 in Ontario happened to be affordable, to some extent, for
24 consumers; I suggest to you it was quite incidental, it
25 was a happy benefit, it was almost a PR coup, but that's

1 not the purpose.

2 Ms. Hall also made reference at page 167,
3 line 6, to the fact that:

4 "Other jurisdictions were investigated
5 as to the appropriateness of their
6 systems of loss transfer."

7 And she pointed out, as it's set out at, I
8 think it's Tab 2 in the Appendix, that these were six (6)
9 American jurisdictions: New York, Michigan, New Jersey,
10 Kentucky, Hawaii, and another one.

11 I've had a look at some of the details
12 that were there, and I refer to a paper again written by
13 Stephen Sugarman entitled, Quebec's Comprehensive Auto
14 No-Fault Scheme and the Failure of Any of the United
15 States to Fault, which appears again in the Les Cahiers
16 de Droit, in the 1998 Volume at page 303.

17 Guess what? In those jurisdictions that,
18 remember, they were picked by the government, the Board
19 was told which jurisdictions to look at, in those
20 American jurisdictions that they were asked to look at,
21 guess who had started the idea of dealing differently
22 with certain categories of claims; it was the insurers.

23 It was the lawyers, because the lawyers,
24 of course, want to keep the tort system going as much as
25 possible. I suspect I'm going to have to move out of the

1 jurisdiction after saying that.

2 It seems logical, given the fact that
3 Ontario is located right next door to Quebec, which had a
4 perfectly operating system, that you would necessarily,
5 as this Board indeed has done, looked at Quebec.

6 Why did they not? I suggest to you that
7 we can draw the inference that clearly the purpose of the
8 Ontario system was not designed to protect the interests
9 of consumers, it was not designed to make an affordable
10 system, it was designed to come up with a system that
11 would most benefit the insurance companies, to allow them
12 to continue doing business as usual in a Tort-based
13 system.

14 And, indeed, Ontario and the American
15 system preserves the concept of fault which certainly
16 would be the expectation of those jurisdictions, and
17 that, again, echoes back to the comments that Mr.
18 Williams made about the ideological divide.

19 Any jurisdiction that is seriously
20 concerned about its citizens and their ability to handle
21 insurance, clearly is going to do what happened in
22 Manitoba, they're going to take over the insurance
23 companies.

24 You're going to do like Quebec, you're
25 going to create a monopoly; that's the most effective way

1 to control the way in which costs, and the entire
2 insurance industry is obviously run.

3 And that I needn't dwell on because that
4 clearly relates to the legislative history in Manitoba.
5 But I think it's telling, and I suggest to you that for
6 that very reason alone, the magic elixir that appears to
7 be Ontario is really, in many ways, of a poisoned dark
8 child of the insurance industry.

9 So where should we be looking if not
10 Ontario? If I had had this Board's budget, the one
11 jurisdiction that I would have been most interested in
12 looking at would have been New Zealand. And it would
13 have been a very specific time frame that I would have
14 wanted to look at. And I'm hoping that it might have also
15 involved an all expense paid trip to New Zealand, but
16 that's a whole separate issue.

17 In 1974, the New Zealand government
18 created the Accident Compensation Corporation. And I'm
19 going to speak in the period prior to the changes that
20 began in 1992, in New Zealand, when essentially this
21 whole system fell apart.

22 But that Accident Compensation
23 Corporation, as probably members of this Panel know, had
24 a very broad scope of coverage. It covered all
25 accidental personal injury; that meant that not only did

1 motor vehiclists get covered, so did pedestrians, so did
2 the man who was out golfing and accidentally stubbed his
3 toe.

4 Everything was covered; workers'
5 compensation. Premiums were collected from four (4)
6 categories, employers, employees, motor vehicle owners,
7 and taxpayers, and with the exception of employers, the
8 premium rate was flat.

9 So that meant that all workers paid a
10 percentage based upon their income. All motor vehicle
11 owners paid, what I think we would recognize in Canada as
12 essentially a gas tax, all taxpayers paid a percentage
13 based on their income, and only employers paid a premium
14 that was related to the risk inherent in the industry
15 that they were, of course, engaged in.

16 Note that this is a monopolistic
17 jurisdiction, and note arguably that loss transfer was
18 introduced. Despite my earlier comments that seemed to
19 attack loss transfer, it should be noted then that it can
20 be done in a monopolistic jurisdiction.

21 The suggestion that I have is, is that
22 maybe it ought not to be done because it does not mesh
23 with Manitoba's underlying philosophy of the legislation
24 but, nonetheless, New Zealand shows us that it can be
25 done.

1 The argument, I guess would be, that every
2 Manitoban -- or any Manitoban driver, or perhaps insured,
3 would pay a flat rate, which simply would divide the
4 number of premium, or the number claims costs, by the
5 number of cars and off we go.

6 I can hear the heads spinning at the CLEAR
7 Bureau. I can see poor Mr. Palmer curling into a fetal
8 position and crying. This, obviously, would cause
9 tremendous problems, it is, however, an option that
10 presents itself.

11 And it's important to note, despite having
12 now almost suggested that New Zealand is the new elixir,
13 that this whole system collapsed.

14 It coincided with the introduction largely
15 of a conservative government in 1992, but there had been
16 significant cost reductions and trimmings on the benefit
17 plan.

18 The other area that we might have looked
19 at, of course, would have been Quebec and it's
20 unfortunate that the reply from Quebec was not to send a
21 representative, but rather to have a handwritten note
22 that said Linda's not available to talk to you, but since
23 you're obviously not going to think of it yourself, have
24 a look at our legislation. That really wasn't all that
25 helpful and I -- I know that every effort was made.

1 It's unfortunate in many ways because, of
2 course, Quebec would have potentially been useful to us
3 to a certain extent. Again, it's another monopolistic
4 jurisdiction, but of course, it only covers bodily
5 injury.

6 It could have been a model for our
7 discussion, so long as we would then have taken into
8 account the differences that would have been necessary
9 because, of course, MPIC extends well beyond merely
10 bodily injury.

11 Mr. Tabachneck, at page 63 line 4, had
12 said that CLEAR members would certainly like third party
13 ratings, because they have a concern over the risk posed
14 to other insured, by certain vehicles, but his problem,
15 as he said, was at page 39 line 14:

16 "We have never been able to get enough
17 data representative of third party
18 coverage."

19 So, that poses more of a -- a difficult
20 problem.

21 However, there's a certain elegance to the
22 Quebec approach, at least in the context of bodily
23 injury. Some might say that there's an arbitrary
24 division, you simply take the number of vehicles that
25 were -- or the number of claims, rather, arising out of

1 an incident, and then divide the cost of the overall by
2 that number, and you assign it appropriately to each
3 class.

4 That may make sense, because
5 philosophically you might say, well, a life is a life,
6 and all lives should be valued equally regardless of
7 blame, perhaps. So, that's Quebec.

8 There are two (2) more to consider and
9 that -- the next one deals with Saskatchewan, again,
10 another monopoly, and again, one that is trying to deal
11 with the problems that are presented to it, and it has
12 selected the notion of opting out in favour of Tort.

13 That's actually a rather workable
14 solution. Some might argue that it undermines the
15 philosophy of creating a compensatory system for the
16 benefit of all Manitobans. Certainly lawyers would be
17 pleased to assist those who would pursue the Tort system,
18 and the fact that it has been introduced in a
19 monopolistic jurisdiction such as Saskatchewan, and
20 presumably has not impacted its use of CLEAR and other
21 rate settings, again suggests that this is something that
22 could be done. Public policy considerations will
23 determine, in the Board's mind, whether it should be done
24 in this Board -- in this province, but that's something
25 to consider.

1 And then the last one is something that
2 Mr. Williams devised, and I'm going to call it, "The
3 Arbitrary Sum" when he asked Ms. McLaren at page 135 line
4 15, if it would be possible simply to retain the current
5 rate making methodology, but transfer a sum in
6 recognition of the unintended consequences of no-fault,
7 as an express and transparent cost, allocating it to the
8 rate base in a manner similar to the way in which claims
9 are allocated.

10 Ms. McLaren said, at page 836 line 3, that
11 it certainly would be a significantly less distorting,
12 than full loss transfer, but she then went on to caution
13 us at line 16 of that same page:

14 "We could all spend, all kinds of time
15 every October, talking about how much
16 the amount should be this year."

17 That seems to fly in the face of this
18 Board's initial pronouncement that you want to settle
19 this decision once and for all. So, that's the problem
20 with the arbitrary sum.

21 In closing, I'd like to just raise one (1)
22 question, which prior to May 5th I might have gone on at
23 great length, and that is the question of whether this is
24 a process of change or no change, is one that should be
25 done in this forum.

1 Prior to the Manitoba Court of Appeal's
2 decision on May 5th, which was an Application for Leave
3 by the Consumers' Association in connection with this
4 Board's decision relating to a Centra Gas application, I
5 might have been more keen on suggesting that this is not
6 necessarily the correct form, for legal reasons.

7 I have to say that that decision, coupled
8 with earlier decisions, would lead me to rather readily
9 agree with the comment that Ms. McLaren had made when I
10 asked her about jurisdiction, that this Board certainly
11 can basically do whatever it chooses.

12 And the good news, for those of you who
13 are sitting on the Board, is that the decision of the
14 Manitoba Court of Appeal, although not terribly well
15 reasoned, essentially sets up such a high threshold for
16 anyone who would ever dare try and challenge this Board's
17 decision on any point, that a client would either have to
18 have an awful lot of money, or an awful lot of courage,
19 to attempt to do so.

20 That means, certainly, this Board has the
21 power to do it; ought it to do so? We know that Ms.
22 Hall, in her cross-examination, had described the move
23 from Tort to no-fault as being an Ontario political
24 decision, a radical change.

25 It was, I note, a decision that came about

1 as a result of a government initiative, a directed
2 reference hearing. And while this Board may very well
3 have the power to do so, I suggest that even though loss
4 transfer may not be a well understood notion, it may be a
5 question on which legislative initiative would be more
6 appropriate than essentially what, to the public might
7 consider, almost a closed hearing.

8 It certainly is not a closed hearing; this
9 board has made every effort to canvass that. But, we
10 know that this Hearing is not being covered in the
11 newspapers, we know that there are no members of the
12 public here.

13 It simply isn't the sexy issue that will
14 grab that kind of interest. It could be made into a more
15 interesting discussion, one that would involve the
16 political representatives of the day.

17 I simply draw that to this Board's
18 attention on that point. So in closing I've suggested to
19 you that loss transfer really is the offspring of a Tort
20 system, and it's philosophically ill-suited to a
21 monopolistic jurisdiction.

22 It arguably, therefore, would be that it
23 would distort the rights, expectations, and interests of
24 Manitobans, as those rights, interests, and expectations
25 are set out in the statutory scheme.

1 I caution the Board, however, to note that
2 there's plenty of reason, public policy reason, that may
3 say, we wish to override those considerations. So this
4 in no way undermines the view that the Board -- the Bar
5 Association has taken up, namely, no position.

6 They are all -- are other alternatives
7 with respect to loss transfer, and I've canvassed those,
8 and I can leave that with the Board for its
9 consideration.

10 In one (1) line, I'll simply say that the
11 -- the Bar Association intends, as we're required to say,
12 pursuant to the Board's rules, to make an application for
13 costs, we're prepared to put that in writing in due
14 course.

15 And on behalf of my client, the Manitoba
16 Bar Association, we certainly appreciate the opportunity
17 and hope that we've been of assistance to this Board.

18 Failing any questions, that concludes my
19 submission. Thank you.

20 THE CHAIRPERSON: Thank you, Mr. Dawson.
21 A very interesting survey. Thank you.

22 Any questions?

23 Mr. McCulloch, if I may, and in no way
24 intending to rush you, sir, how long do you think you
25 will take in your closing remarks?

1 MR. KEVIN MCCULLOCH: There are one (1)
2 or two (2) minor items that I need to get some direction
3 from Ms. McLaren on, but I really anticipate not taking
4 more than 45 minutes, and in all likelihood, less than
5 that.

6 THE CHAIRPERSON: Very good then. We'll
7 break for twenty (20) minutes and we'll come back at
8 approximately twenty (20) minutes to 1:00 for Mr.
9 McCulloch's closing statement.

10 MR. WALTER SARANCHUK: Just before we
11 break --

12 THE CHAIRPERSON: Mr. Saranchuk...?

13 MR. WALTER SARANCHUK: Yes, Mr. Chairman.
14 Just before we break, maybe just for the record, out of
15 an abundance of caution, we should have the question
16 posed of any other Intervenor, who might be represented
17 here, whether there are questions for any closing remarks
18 that will be made.

19 THE CHAIRPERSON: Ms. Olafson, do you
20 have anything to say?

21 MS. OLAFSON: No, thank you.

22 THE CHAIRPERSON: It's fine. We heard
23 you. Thank you. Thank you, Mr. Saranchuk.

24 Okay. We will come back together again in
25 about eighteen (18) minutes. Sorry to rush you. It's a

1 busy day and Mr. McCulloch, I must say, you have to take
2 the time that you require to take.

3

4 --- Upon recessing at 12:20 p.m.

5 --- Upon resuming at 12:50 p.m.

6

7 THE CHAIRPERSON: Thank you, everyone.
8 Mr. McCulloch, it's now your turn.

9

10 CLOSING COMMENTS MR. KEVIN MCCULLOCH:

11 MR. KEVIN MCCULLOCH: Thank you, Mr.
12 Chairman, Members of the Board. I want to say it at the
13 outset that this entire Hearing has been something of a
14 different experience for me, from what is usually the
15 situation in a General Rate Application. And it was
16 brought home right at the outset, when Mr. Saranchuk
17 didn't put any onus questions to the MPI witnesses and --
18 and the burden of proof question didn't come.

19 And, obviously, the reason for that is
20 that the Corporation's role in this sort of a special
21 hearing is somewhat different than it would be at -- at
22 the general rate application where we're coming forward
23 with a proposal purporting something and -- and having to
24 support it.

25 The other situation that strikes me as

1 being somewhat different is that normally in a general
2 rate hearing when it comes to final submission, I spend a
3 couple of days before preparing some nicely organized,
4 well-written notes and arguments and then on the day of
5 the submissions I spend my time scrambling to try to
6 correct the outrageous statements coming from
7 Intervenors.

8 This is different in this hearing as well.
9 Certainly, from my point of view, much of what both Mr.
10 Williams and Mr. Dawson said in -- in submission reflect
11 positions that are taken by the Corporation and,
12 therefore, that enables me to, perhaps, avoid detail that
13 I would otherwise have gone into.

14 I don't intend to repeat all of the detail
15 that both those gentlemen referenced in -- in making
16 their submissions, although I do want to highlight the
17 points that, from MPI's point of view, were in agreement
18 with the positions taken by Mr. Williams and Mr. Dawson.

19 Now, the stated purpose, obviously, for
20 this special hearing as set by the Board, was to examine
21 the concept of loss transfer, but from a public policy
22 point of view. And I, too, Mr. Chairman, have noted your
23 opening remarks on page 13 of the transcript and want to
24 address the six (6) points that you, on behalf of the
25 Board, identified as being the criteria to which you

1 would be judging the issue of loss transfer.

2 I'll run through them very briefly. The
3 first one, the question: Will the premium system that
4 is based on the claim cost attribution approach selected
5 by -- be representative of an actuarially sound and
6 statistically based approach? Is the system fair? Will
7 it be fair?

8 Can the system, old one or the new one,
9 provide for a lower number of accidents with a lower
10 overall severity?

11 Will the system be administratively
12 feasible? Will the system be comparable to approaches in
13 other jurisdictions and will the approach be acceptable
14 to the majority of MPI's policy holders?

15 So, these are the public policy
16 considerations that the Board has indicated it will be
17 using to test any loss transfer proposal that it might
18 consider. I'm going to come back to those six (6) a
19 little later in -- in the presentation, because I think
20 it's worthwhile at this point emphasizing that the issue
21 of loss transfer has been before this Board for many
22 years and it's MPI's position that in those previous
23 hearings and in those previous applications, the Board
24 was also looking at public policy considerations.

25 So, that the idea of looking at public or

1 loss transfer from a public policy point of view is
2 certainly not new to this particular Hearing.

3 Also, we all conceded that the true test
4 of a loss transfer system was not an actuarial one and
5 I'll be making further comment on that later in the -- in
6 the -- in the -- in the presentation.

7 What I would like to do very briefly is to
8 refer back to four (4) previous Board orders and I'll
9 only be referring to portions from each of those orders.
10 I have copies of the pages involved that I'll supply to
11 Mr. Barron at the conclusion of my submission in the
12 event the Board Members want to refer back specifically
13 to those -- those orders.

14 The first one and -- and also the reason
15 that I refer back to those prior orders is that I don't
16 believe the Board can look at this issue of loss transfer
17 in a vacuum. I think that the past history is relevant
18 and I think what's more, the Corporation has the right to
19 rely on guidance and direction that it has been given by
20 previous Board orders.

21 Now, the first order that I wish to refer
22 to is Order Number 154-98, Board Order dated
23 December 1st, 1998. And at page 83 the Board
24 specifically ordered MPI to respond at the next General
25 Rate Application, to CMMG Recommendations, related to

1 an adequate system of merit/demerit
2 points and accident surcharges, will
3 sufficiently penalize those drivers who
4 cause accidents."

5 But I'd suggest, Members of the Panel,
6 that that statement addresses one of the criteria that
7 you have identified for this Hearing:

8 "An adequate system of merit/demerit
9 points and accident surcharges, will
10 sufficiently penalize those drivers who
11 cause accidents."

12 A reference to the bonus malice system."
13 The Board goes on to state, in that Order,
14 that:

15 "The Board is of the view that choosing
16 the type of vehicle to drive, is an
17 individual's choice and responsibility.
18 The Board recognizes common sense
19 dictates, that the risk of personal
20 injury, an individual assumes, by
21 operating a motorcycle, or a smaller
22 passenger vehicle, compared to
23 operating larger vehicles, is greater."

24 So, we can argue all we want, whether
25 that's a statement about inherent risk, or whether it's a

1 statement about inherent vulnerability, but nonetheless,
2 it's a very clear statement, that individuals by their
3 personal choice, can impact the risk that they bring to
4 the system.

5 The Board states that:

6 "In its view, this is to be a personal
7 choice and as a consequence, the risks
8 of this choice must also be personal."

9 Addressing, I would suggest, the fairness
10 issue that appears in the criteria.

11 "The Board considers that on balance,
12 the existing system..."

13 Talking about the first party assignment
14 of loss.

15 "...is fair, reasonable, non-
16 preferential and is not unfairly
17 discriminatory. The Board will not
18 require the Corporation to change its
19 methodology to encompass the loss
20 transfer model."

21 Now some four (4) years later, in 2002,
22 Order Number 203-02, at page 54, again the Board
23 identifies the fact that back in '99 it had suggested
24 that -- that the study be -- be taken, and that the Board
25 reasoned that the basic principle, in Manitoba's no-fault

1 plan, was and should continue to assign costs to the use
2 that incurs the costs.

3 And they again emphasize their -- the fact
4 that this involves a personal choice, so two (2) must be
5 the assumption of the risk; the choice of the vehicle is
6 personal, the assumption of the risk is also personal.

7 But it goes on to say that:

8 "The Board recognizes that it's been
9 almost four (4) years since the
10 previous study, and that while the
11 principles, in their view, are still
12 correct, the Board required MPI to
13 review the matter of loss transfer and
14 to report its recommendations at the
15 next GRA."

16 And again the Board gave the Corporation
17 some direction as to where it expected to go with that
18 review. The report had to provide, at a minimum, the
19 rationale for the current system, identifying advantages
20 and disadvantages, a contrast with the loss transfer
21 implicit in the fleet rating program, legislative and
22 practical barriers to implementation of a loss transfer
23 system, a summary of practices in other jurisdictions,
24 both private and public, and the estimated administrative
25 and other costs to implement a loss transfer system.

1 So, that was ordered in November of '02.
2 And by the time the Corporation came to the general rate
3 application hearing in October of '03 that study had been
4 filed with the Board.

5 And in dealing with it the Board, at the
6 outset, indicates that it appreciates the work undertaken
7 by MPI to produce the report pursuant to the prior order.
8 Especially it appreciates the calculations required to
9 produce the indicated required rates by major class if
10 loss transfer were adopted.

11 I'm suggesting to the Board that the
12 Corporation had the right, when it received this Order in
13 December of 2003, to be satisfied that it had met the
14 requirement placed on it by the Board in the previous
15 year; that it had produced a study that responded to the
16 issues raised by the Board and that the Board was
17 accepting of that report.

18 In this Order the Board makes a few more
19 comments about the issue of loss transfer. They indicate
20 that the information provided by the Corporation shows
21 significant rate dislocation for most motor vehicles at
22 the major class level.

23 And it goes on to say that:

24 "More compelling reasons must be
25 advanced before the Board will order

1 MPI to abandon the current system of
2 assigning costs to the major class
3 where those claims are incurred on a
4 first party basis."

5 It goes on to talk about CLEAR. It says:
6 "The CLEAR system assesses risk on a
7 first party basis and makes no attempt
8 to assess the extent to which a
9 particular vehicle may damage another
10 vehicle if involved in multi-vehicle
11 collisions."

12 That was confirmed again at this hearing
13 by both the IBC representative and by witnesses for MPI.
14 CLEAR rate groups -- sorry, CLEAR rate group assignments
15 are linked directly to the first party principle. Thus,
16 determining credible rate groups on an at fault basis for
17 loss transfer would not be possible.

18 Again, confirmed in evidence before this
19 hearing. The Board goes on to state that it agrees with
20 MPI that this inability to have a credible assignment to
21 rate groups on an at-fault basis, they agree with MPI
22 that this is the single greatest impediment to
23 introducing loss transfer.

24 And that to try to do so would be an
25 incongruous situation in rate making. They go on to deal

1 with another one of the criteria that this Board has
2 identified as something it wants addressed.

3 The Board then, and we're talking December
4 of '03, was of the view that loss transfer would not
5 provide any additional incentive to drive more carefully.
6 The merit discount program already targets drivers with
7 poor driving records. Loss transfer can only be
8 implemented on a territorial and insurance use level, not
9 according to vehicle make, model and model year.

10 And the element of randomness in the
11 causation of accidents is only to a minimal extent that
12 MPI could communicate individual responsibility or
13 individual choice through vehicle premiums.

14 So, again, indicating that through the
15 loss transfer method doesn't bring with it the personal
16 responsibility that the Board has recognized must be a
17 part of rate making methodology and a part of the
18 assignment of costs.

19 Once again, in December '03 the Board
20 stated that it's not persuaded to adopt loss transfer as
21 part of the rate making methodology.

22 Now, obviously, this Board has decided
23 that it wanted to hear a more focussed presentation on
24 the issue of loss transfer and that's why we've spent the
25 last three and a half (3 1/2) going on to four (4) days

1 providing that.

2 However, I think there are still great
3 value to be drawn from the findings of these previous
4 Boards and I would seriously ask the Board to give those
5 findings the weight and the credibility to which the
6 Corporation believes they deserve.

7 Let's return then to the six (6) criteria
8 which the Board has set for this Hearing:

9 "Will the system be actuarially sound
10 and statistically based if it includes
11 a loss transfer component?"

12 We've been told by the actuaries that
13 whether there's a loss transfer system or no loss
14 transfer system that the rate making methodology can
15 still be actuarially sound. But, we've also been told
16 that loss transfer cannot be applied and therefore can't
17 be actuarially correct down to the level of MPI's
18 existing rate making methodology.

19 So, it was the evidence of Ms. McLaren
20 that if -- if you have detailed significant information
21 that you use to set rates and you can't drive the loss
22 transfer information down to that level, if you apply a
23 loss transfer you are, in effect, not using the system to
24 the full degree to which it's been developed over the
25 years.

1 We've also been told that there would be
2 an adverse impact on the classification system, so there
3 is an element of damage that a loss transfer system would
4 do to the rate making methodology. It's not possible to
5 bring it down to the rate group level and both Mr. Pelly
6 and Mr. Palmer have confirmed that.

7 So, while overall the rate making
8 methodology can still be actuarially sound, it's not
9 without problems from an actuarial point of view.

10 Fairness. On a very simple level, one
11 could argue that assigning loss cost based on fault is
12 fair, but I would suggest that that's, perhaps, too
13 simplistic an approach as to what constitutes fairness.

14 PIPP benefits are first-party losses and
15 it's largely for that reason that the Corporation has
16 stayed with the position that they should be assigned on
17 a first-party basis. There is an element of choice when
18 one chooses to operate a motor vehicle that puts them at
19 a greater vulnerability.

20 And this is an issue that -- I don't know
21 how successful I was, but I was trying to canvass, I
22 believe with -- it might have been with Mr. Ramsay, that
23 if you are -- if you concede the fact that motorcyclists
24 are more vulnerable, they are prone to suffer injury more
25 often and to suffer greater injury where they're -- where

1 they're involved in a collision or, if it's a single
2 vehicle accident, it -- it's just the nature of the
3 beast, if you will.

4 If you take the situation where it's an
5 automobile accident, motorcycle accident where the
6 automobile is responsible and you -- you transfer that
7 entire cost to the automobile group, to the private
8 passenger class, then you have totally escaped putting
9 any responsibility on the motorcycle driver for the risk
10 that he brought to that situation merely by being on the
11 bike that day.

12 So, that negates the element of choice,
13 the idea that in an insurance and compensation scheme,
14 people ought to be responsible for the choices they make.

15 It also brings up the issue of
16 subsidization and we've talked about the fact that
17 transferring a loss means that the private passenger
18 class and certainly those individuals in the private
19 passenger class who weren't responsible for the
20 particular collision that's being transferred, will be
21 subsidizing the motorcycle pool.

22 I think it's important to point out
23 information that's come before this Board many times in
24 the past is that the private passenger class and, indeed,
25 the other -- other major class groups under the MPI

1 system have been subsidizing motorcycles for ten (10) --
2 twelve (12) years. The -- the very capping of the
3 motorcycle rate at 15 percent means that the balance of
4 the actuarially required rate has to be made up by these
5 other groups.

6 So, we're in a situation where
7 subsidization has been going on for a considerable
8 period of time. There's the possibility that as
9 motorcycles are brought to rate adequacy, that cross-
10 subsidization will no longer be required, but if you go
11 to a loss transfer system or if you go to the
12 alternatives suggested by Mr. Williams and I'll deal with
13 that later, but if you go to that alternative, then what
14 you're saying loud and clear is that this Board believes
15 that other classes must continue to subsidize the motor
16 vehicle class.

17 It's as clear and as simple as that. And
18 that raises other issues of fairness.

19 The third issue, will the system, whether
20 it's with loss transfer or without loss transfer, reduce
21 the number of accidents or the severity of the accidents?

22 Again, it all fits in with the, and we'll
23 call it, the inherently vulnerable position that
24 motorcyclists are in. And certainly while there is not
25 only no evidence to suggest that loss transfer would have

1 a positive impact on the driving habits of the class to
2 which the losses are being transferred, I would suggest
3 that there is actually strong evidence to suggest that it
4 would have the opposite impact.

5 Because the private passenger vehicle is
6 so large, we've been told that the impact of transferring
7 losses from the motorcycle class into private passenger
8 vehicle would be negligible.

9 Over the years, we've heard it described
10 as the cost of a latte, the cost of a couple of cups of
11 coffee, the cost of five (5) cents or ten (10) cents
12 depending on which of Mr. Williams' examples you use.

13 But that's hardly the sort of cost
14 implication that is going to have an impact on people's
15 driving. Leaving the losses in the motorcycle class, I
16 would suggest, on the other hand, should have a direct
17 impact on how those people operate those vehicles and how
18 safety conscious they are.

19 And that's recognizing the fact that a
20 considerable number of accidents, based on the evidence,
21 are single vehicle accidents. It may even assist in
22 their ability to avoid injury and collision in multi-
23 vehicle accidents. But, from a single-vehicle accident
24 point of view, I don't think you can -- you can question
25 that leaving the costs in the motorcycle class would have

1 an impact on their driving behaviour.

2 You know the Corporation has said that in
3 its view bonus malice, the merit/demerit system, is the
4 appropriate way to penalize those who are responsible for
5 accidents.

6 And when I read that excerpt from the
7 prior Board Order, I think you'll recall I put the
8 emphasis on the word 'adequate' because I know this
9 Board, last year, said that it wasn't particularly
10 persuaded by the fact that the bonus malice system would
11 have that positive impact on frequency and severity.

12 But, I think that you also have to keep --
13 or take into account, the Corporation has indicated for a
14 number of years now that it does feel it can do a better
15 job in the area of bonus malice and one of the
16 impediments in doing that better job was the fact that
17 DDL, the driver license functions, were lodged over with
18 the Government and the vehicle insurance was lodged with
19 MPI.

20 And the statement was made at last year's
21 Hearing that when those two (2) are joined we feel that
22 one (1) of the real advantages of the merger will be the
23 opportunity to beef up the bonus malice system and to
24 make it much more responsive.

25 So, in response to your comment from last

1 year that you weren't particularly convinced that bonus
2 malice was doing it, I'd ask you to consider that the
3 Corporation has indicated the intention to improve the
4 bonus malice and that really that bonus malice is the
5 best way to bring personal responsibility to the issue of
6 automobile insurance.

7 The other point I would make is that part
8 of the argument that seems to be put forward by CMMG to
9 support a loss transfer system is that, well, it's such a
10 minor impact on the personal -- or the private passenger
11 vehicle class that you don't really need to be concerned
12 about fairness.

13 I think fairness comes into play no matter
14 how much personal or individual impact we're talking with
15 respect to the private passenger vehicle class. You
16 can't just override fairness by saying, well, it's only
17 the cost of a latte.

18 Would the system be administratively
19 feasible? Again, I think that there's been admission on
20 behalf of MPI, not only in this Hearing, but previously
21 that -- that, yes, we would have the wherewithal, or the
22 Corporation would have the wherewithal to administer a
23 loss transfer system.

24 Obviously, the type of loss transfer
25 system that may or may not be implemented, could have an

1 impact on the administration, and until you know exactly
2 what system might be implemented, you really can't give a
3 definitive answer on the administrative cost, but from a
4 principle point of view, I don't think there's any doubt
5 that it is administratively feasible.

6 The criteria was -- indicated that
7 whatever system may or may not be considered here, would
8 have to be compared or comparable to other jurisdictions.
9 And we're really, to some extent, all over the map on
10 this one.

11 We've heard about some American
12 jurisdictions, only very briefly, that seem to have some
13 -- some rather draconian provisions in their loss
14 transfer systems, in that accident benefits for
15 motorcyclists are either reduced or -- or non-existent.

16 Up until Mr. Oakes' presentation today, I
17 would have anticipated that CMMG was coming forward with
18 a Ontario Model, is what it's been called, namely an
19 asymmetrical one-way transfer from motorcycles to private
20 passenger vehicles.

21 It appears, from what he said this
22 afternoon, that in fact CMMG would support a full loss
23 transfer system. Again, there hasn't been a whole lot of
24 definition as to what constitutes a full loss transfer
25 system, but that's the position that was taken.

1 I also think that our comparison to the
2 Ontario Model, with the evidence that was given here,
3 indicates that the Ontario Model is not working, and this
4 is another point where I certainly agree with -- with Mr.
5 Williams.

6 There had been significant premium
7 increases over the last number of years and there's
8 ongoing discussion about the potential of reducing
9 benefits for motorcyclists. It's clear that at the time
10 the no-fault, or, sorry, the loss transfer provisions
11 were put in place in Ontario, that there were significant
12 issues of affordability and availability.

13 You know for certain that availability is
14 not an issue in Manitoba, and I would suggest that from -
15 - even with the increase that has occurred in motorcycle
16 rates over the last ten (10) years or so, affordability
17 is really not an issue in Manitoba either.

18 It was interesting that, and I don't fault
19 her for it, the lady from FSCO, Ms. Hill, said that one
20 of the reasons she thought loss transfer was working well
21 in Ontario was because she wasn't getting any complaints.

22 I can tell you that that test is not
23 sufficient when MPI judges its customer service and the
24 programs that it provides to Manitobans. I guess there
25 are times when we might get -- like to get away with that

1 sort of a test, but it's certainly not the way the
2 Corporation runs its business, based on whether or not
3 we're getting complaints.

4 The final point that -- the criteria that
5 the Board had identified is: Would a loss transfer
6 system be acceptable to the majority of MPI's policy
7 holders?

8 And that's a tough one, because clearly,
9 the Board is not able to hear from the majority of MPI's
10 policy holders. It can hear from, as it has, Intervenors
11 who represent segments of the Manitoba Society. And
12 obviously Mr. Williams, through the two (2) clients that
13 he represents, CAC and MSOS, brings the largest group of
14 policy holders to this discussion, but that's really, in
15 -- in looking at that criteria, is the -- the most
16 definite information that -- that you have before the
17 Board.

18 Obviously, CMMG and the Manitoba Used Car
19 Dealers Association, bring a different view, however,
20 certainly from point of CMMG, that's a view that has been
21 around for a considerable period of time.

22 So, it doesn't come as a surprise, either
23 to the Board I'm sure, or to the Corporation, that they
24 maintain that it would be acceptable, at least to
25 motorcyclists, but certainly they have not provided any

1 information that would indicate the majority of MPI's
2 policyholders would support a loss transfer system.

3 I want to move to highlighting a few
4 points from both the other witnesses and the presenters.
5 And, again, I don't want to belabour any of these points.
6 I just want to make it clear to the Board that these are
7 issues that MPI supports or issues that MPI would like
8 the Board to address.

9 Dealing with Mr. Pelly's evidence, the two
10 (2) major points, as far as the Corporation is concerned,
11 is that Mr. Pelly agreed that due to the fact that IBC
12 does not have a model that differentiates risk on a
13 third-party basis, full loss transfer at the vehicle rate
14 group level was not possible.

15 And that supports findings from the
16 previous Boards that I've -- that I've referenced. Mr.
17 Pelly also agreed that implementing loss transfer on a
18 major class basis does not meet the actuarial test of
19 establishing rates that provide for expected future
20 costs.

21 It's one (1) of the potential actuarial
22 impacts that -- that I referred to earlier. And this,
23 again, responds to Board criterion number 1.

24 Mr. McFarlane; the only point that I would
25 stress to the Board from -- from Mr. McFarlane's evidence

1 is that when questioned, both by Mr. Saranchuk and by
2 myself, as to why the bodily injury Tort threshold costs
3 were included in his calculation, he conceded that taking
4 them out would have a -- an impact on the 42 percent
5 projected savings that he had calculated based on having
6 those costs included in there.

7 So, he did, under cross-examination,
8 concede that taking those costs out would have an impact.
9 I would suggest to the Board that when you consider the
10 nature of the costs that are included in that BI Tort
11 threshold award they, indeed, should be taken out.

12 I did ask Mr. McFarlane about that impact
13 and he agreed with me that it would lower his expected
14 savings, if you will; the 42 percent. And I also asked
15 him about the -- whether, actuarially, rates had been
16 adequate for motorcyclists prior to the implementation of
17 no fault.

18 And, of course, he didn't have any
19 personal knowledge of that, but I did ask him whether if
20 the 1993 application had indicated an actuarially
21 required rate of 80 percent for motorcycles, that would
22 mean that the motorcycle rates at that time were
23 inadequate.

24 And he conceded that that was correct.
25 Now, the reason for putting that question to him was to

1 lay the foundation for the evidence that Mr. Palmer
2 brought to the Board.

3 Mr. Palmer talked about the fact that you
4 had to distinguish between pure premium and premium and
5 that only where motorcycle rates were adequate would
6 those two (2) be the same.

7 So, that in Mr. McFarlane's report, when
8 he talks about premium savings of 42 percent, and pure
9 premium savings of 42 percent, that would only hold up if
10 it had been proven that the actuarial rates -- sorry,
11 that the motorcycle rates were actuarially adequate prior
12 to the calculation being done. And as we know, that
13 wasn't the case.

14 I want to address very quickly the
15 discussion that was held with respect to the Manitoba
16 Health Agreement. There was -- Mr. Palmer was questioned
17 about that and it was suggested that the agreement that
18 Manitoba Health and MPI entered into back in 1994 or 1995
19 really was another example of loss transfer.

20 Well, I don't agree with that
21 categorization of the agreement. I think it was -- it's
22 quite clear that the purpose of entering into the
23 agreement with Manitoba Health, as stated by Mr. Palmer,
24 was that the Government of the day wanted to ensure that
25 the introduction of no-fault would be revenue neutral as

1 far as Manitoba Health was concerned.

2 In previous years, in the Tort regime,
3 Manitoba Health had a subrogation authority -- a
4 subrogation right to claim medical expenses where medical
5 services were being provided to individuals who were
6 injured in an automobile accident. They could claim or
7 reclaim those expenses against the liable party's
8 coverage.

9 But, when the agreement was entered into
10 there was no agreement to transfer actual medical costs
11 on a claims-by-claims basis. The agreement merely set up
12 a formula that would continue the pre-PIPP recovery level
13 that Manitoba Health was enjoying prior to the
14 introduction of PIPP. There were many elements in that
15 pre-PIPP recovery where Manitoba Health would not get any
16 compensation.

17 For example, if -- if third-party
18 liability coverage was -- was insufficient to compensate
19 the injured individual, Manitoba Health stepped aside and
20 didn't recovery anything, so it's quite different from a
21 pure or true loss transfer system; the Manitoba Health
22 Agreement.

23 I also take considerable issue with
24 comments from -- particularly MMIC that the Tort system
25 is a loss transfer system. And it appeared to me they

1 were expounding the Tort system as -- as a much superior
2 means of loss transfer.

3 I think you have to take cognizance of the
4 fact that the Tort system was, at best, a limited means
5 of transferring losses, the main limitation being the
6 coverage limits held by the responsible party.

7 If the responsible party carried two
8 hundred thousand dollars (\$200,000) third-party liability
9 and the injured party got a judgement for \$1 million, the
10 responsible party's insurer would pay two hundred
11 thousand (200,000) and the injured plaintiff would be
12 left to try to collect the balance, if he could, from the
13 other party.

14 The transfer between the insurance
15 companies was the two hundred thousand (200,000), so it
16 was limited Tort loss transfer. They didn't transfer the
17 million as loss experience in the liable party, they only
18 showed the two hundred thousand (200,000). So, there are
19 definite constraints in looking at the Tort system as a
20 loss transfer method, and, obviously one that this Board
21 couldn't address in any event.

22 I want to deal with the alternative
23 scenario that Mr. Williams presented at -- at the end of
24 his presentation and -- and we talked about it briefly
25 previously, the idea that his clients don't endorse this

1 approach. However, if for some reason the Board feels
2 there must be some sort of subsidy or support given to
3 the motorcycle group that you do it on the basis of a
4 lump sum and that lump sum would be distributed as other
5 claims costs are distributed in MPI's rate making
6 methodology.

7 I can tell the Board that, for a number of
8 reasons, the Corporation does not support this proposal.
9 I believe Mr. Williams identified it as the lesser of two
10 (2) unpalatable scenarios and the Corporation doesn't
11 want to put any unpalatable scenario before the Board.

12 And, I think one (1) of the main reasons
13 and the main concerns with it is, number 1, it -- it is a
14 clear subsidy to the motorcycle class.

15 Number 2, it won't put an end to the
16 question, because two (2) years down the road I can
17 envisage representatives coming forward and saying, Well,
18 you know, the twenty thousand dollars (\$20,000) you gave
19 us back in 2005 is -- is no longer adequate; we think it
20 should be twenty thousand and five hundred (20,500) and
21 here's our actuarial report that supports that.

22 It -- it's not going to put an end to the
23 issue and -- and I think it's -- it's -- while I
24 appreciate the sincerity of Mr. Williams and -- and his
25 clients in putting it forward, it isn't something that --

1 that MPI can ask the Board to adopt.

2 Mr. Oakes made a few points that I think
3 need to corrected. In his cross-examination, he seemed
4 to be critical of -- of the Corporation for coming
5 forward in its report that was filed as part of our
6 evidence, coming forward with different types of loss
7 transfer scenarios.

8 I understood him to say that in the past
9 we had only discussed and looked at the Ontario model of
10 loss transfer. Though I can tell this Board that the
11 reason the Corporation brought forward these different
12 scenarios, the full loss transfer, in, out, asymmetrical,
13 bi-symmetrical, whatever you want to call them, was that
14 the intention was to look at loss transfer as a whole.

15 And the Corporation felt that it had to
16 bring forward a number of possible loss transfer
17 scenarios so that at the same time it could identify to
18 the Board the pitfalls that the Corporation saw with each
19 of those models.

20 So it wasn't a matter of -- of trying to
21 switch horses and -- and create more complex issues, it
22 was a matter of wanting to make sure that the Corporation
23 was ready to respond to all of the potential loss
24 transfer scenarios that it might face.

25 The other complaint that I think were --

1 or complaints that were unjustified with respect to the
2 evidence provided by the Corporation, dealing with, for
3 example, retirees and the potential impact that it might
4 have on rural versus -- versus city members, again, was
5 nothing more -- it wasn't being brought forward as a
6 reason not to go to loss transfer, these scenarios were
7 being brought forward so that the Board would understand
8 the implications and the ramifications that different
9 loss transfer scenarios might cause.

10 And another point that I just want to
11 correct Mr. Oakes on, because he seemed to be making an
12 issue of it is, I don't believe I put the -- the Winnipeg
13 Sun article to MMIC's actuary, Mr. McFarlane, I believe I
14 put it to Mr. Ramsay.

15 I wasn't looking for an actuarial opinion
16 on -- on the accuracy of a Winnipeg Sun article.

17 The other issue that Mr. Oakes raised was
18 he talked about the fact that under CLEAR sophisticated
19 safety systems, that are put in the newer vehicles,
20 create higher repair costs, and therefore, these vehicles
21 with the sophisticated safety systems incur higher
22 premiums.

23 The converse of that is, that these
24 systems reduce injury costs, and therefore, overall the
25 impact is a reduction in premium for those vehicles that

1 have sophisticated safety systems, it's -- it's not a
2 matter of driving the cost up. The other point I think
3 that should be made is that Mr. Oakes seemed to be
4 commenting adversely on the fact that the MPI had not
5 filed an actuarial report as part of its material.

6 I think that clearly the response there is
7 that we started on the premise that this was not an
8 actuarial issue; that it was to be determined on the
9 basis of public policy.

10 From my point of view, Mr. Pelly was
11 called for a very limited actuarial purpose, largely to
12 confirm the fact that this wasn't an actuarial issue and
13 to talk about implications.

14 So we didn't see this as -- as an issue
15 that was going to be resolved through filing an expert
16 actuarial report. Obviously, we produced Mr. Palmer to
17 answer questions in that regard, but I don't think we
18 should be criticised for that element of -- of the case.

19 The only comment I wanted to make, with
20 respect to Mr. Roberts and some of the comments that he
21 made on -- on the dealers' situation, I think it should
22 be noted that if you look at the assessment of loss
23 transfer filed by the Corporation, dealers in Territory 1
24 would incur a 16 percent increase if loss transfer were
25 implemented.

1 And the class to which dealers belong, the
2 commercial class, would also as a -- as a class,
3 experience a significant increase in premium.

4 So it's not as if a loss transfer for used
5 car dealers would automatically result in a reduction in
6 -- in their premiums.

7 I think it's well to note that his -- his
8 comment with respect to Quebec, and preferring the way
9 that they split injury costs, must be looked at in light
10 of the fact that injury benefits is all that the SAAQ
11 provides.

12 MPI obviously provides coverage all across
13 automobile insurance lines, and that's why the first
14 party cost-allocation methodology works for the Manitoba
15 context; the Manitoba experience.

16 One final item: Mr. Roberts seemed to
17 indicate that small pools were -- were somehow
18 disadvantaged because of their numbers, by virtue of the
19 size of the pool. Well, I think there's been plenty of
20 evidence before this Board, that the Corporation
21 acknowledging that it's dealing with a small pool,
22 applies techniques to ensure that they won't be
23 disadvantaged.

24 So the Corporation, for example, uses
25 multi-year averaging, capping of large losses,

1 credibility weighting, and calculating losses and rates
2 by unit, which works to the advantage of the small pool,
3 and eliminates the disadvantage that they might otherwise
4 suffer.

5 One final comment on Intervenor's'
6 Presentations: Mr. Dawson, I -- I must say, and I -- I
7 said this to him at the break, brought something of a new
8 interpretation to the -- the case, Macmillan and Meek
9 versus the RM of Thompson, and however, since he's
10 brought it up, I think it is also worthy to note that in
11 that Decision, looking at the PIPP No-Fault Program,
12 Justice Helper, who wrote the decision, took the approach
13 that in this new program, you don't look to the cause of
14 the accident, you look to the cause of the injury, and
15 that is the basis of the first party no-fault approach to
16 compensating injuries.

17 So once you're satisfied that the injury
18 was caused by an automobile, or by the use of the
19 automobile, fault goes out the window, it's -- it's
20 irrelevant. The issue is: was it caused by an
21 automobile, by the use of an automobile, and if so,
22 you're entitled to compensation.

23 And that's an interesting approach that I
24 would suggest, also supports the position that in
25 assessing rates based on no-fault claims, fault should

1 not be brought into the equation through the loss-
2 transfer method.

3 Moving to my conclusion, I indicated that
4 the issue of loss transfer has been before this Board on
5 numerous occasions, it's been the subject of debate,
6 evidence and deliberation, it's been examined from a
7 public policy point of view, and the comments and
8 findings which I have quoted from earlier decisions,
9 clearly establish that fact.

10 We have once again, through this hearing,
11 which the Corporation also acknowledges as being a -- a
12 helpful step in isolating the issue of loss transfer, and
13 looking at it outside the parameters of a general rate
14 application, when you can be more focussed.

15 The Corporation feels that there has been
16 no compelling reason presented, in this hearing, to
17 justify the direction to move to a loss transfer hearing
18 -- or sorry -- loss-transfer mechanism, and to abandon
19 the first party cost allocation methodology.

20 As I say, there's -- we've listened to
21 seven (7) witnesses, spent the better part of four (4)
22 days hearing -- including Final Submissions, and there
23 has been no new evidence, no change in -- in prior
24 positions, that I suggest would warrant the Board making
25 such a move.

1 It is noted that in the Order from last
2 year's hearing, the Board indicated that while it hadn't
3 heard any new arguments, it was hearing the same
4 arguments presented, perhaps a little more forcefully
5 than it had in the past, and that would probably account
6 for the involvement of -- of MMIC.

7 But at the end of today, I think we have
8 to take the same approach that, we've heard no new
9 evidence, and merely repeating the same evidence, and
10 saying it a little louder or saying it in a slightly
11 different way, doesn't justify the Board on a public
12 policy consideration moving to direct a loss transfer
13 mechanism; and that is the Corporation's position. Thank
14 you.

15 THE CHAIRPERSON: Thank you, Mr.
16 McCulloch.

17 Before I close the Hearing, Mr. Saranchuk,
18 can you think of anything we've missed?

19 MR. WALTER SARANCHUK: Not that I'm aware
20 of, sir.

21 THE CHAIRPERSON: All right. This
22 concludes the public hearing phase of the Special Hearing
23 arising out of Board Order 148-04. The Board appreciates
24 the participation of all those that were present during
25 all or some of the hearing.

1 I want to also express the Board's
2 appreciation for the efforts of the Board Counsels, the
3 Board Advisors, and the staff.

4 I would like to specifically note the
5 contribution of Ms. Candace Everard who put in a lot of
6 time and helped organize the hearing in the pre-hearing
7 phase, it was most helpful.

8 With respect to the gathering and listing
9 of evidence, the Board is satisfied that one (1)
10 objective of 184 has been met in this regard, that we
11 have a sufficient amount of evidence to consider.

12 As to our objective of this process ending
13 the debate, that is our goal. MPI cannot be faced, year
14 after year, with a continuous return to the, if you want
15 to call it, some of the basic founding principles of
16 their cost allocation design. So hopefully, we can sort
17 through this and come to an Order that will resolve this
18 matter.

19 We will reflect, ponder, review the
20 evidence, and we will come to a decision which will be
21 issued in due course. Thank you, everyone.

22
23 --- Upon adjourning at 1:45 p.m.

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Certified Correct,

Carol Wilkinson, Ms.

