

1 MANITOBA PUBLIC UTILITIES BOARD  
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67 Re: MANITOBA PUBLIC INSURANCE  
8 LOSS TRANSFER HEARING  
910  
11  
12  
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 10th, 2005  
24

25 Pages 1 to 226

## APPEARANCES

1  
2 Walter Saranchuk ) Board Counsel  
3 Candace Everard )  
4  
5 Kevin McCulloch ) Manitoba Public Insurance  
6  
7 Darlene Hall ) Automobile Ins. Services  
8 Branch - Financial Services  
9 Commission of Ontario  
10 Raymond Oakes ) CMMG  
11 Byron Williams ) CAC/MSOS  
12 Nick Roberts ) Manitoba Used Car Dealers  
13 Association  
14 Michael Mager (np) ) CAA  
15 Margaret Scurfield (np) ) IBAM  
16 Don Miller ) Manitoba Car & Truck  
17 Rental Association Inc.  
18  
19 Robert Dawson ) CBA/MBA  
20  
21 Claudio Sousa (np) ) Scootering Manitoba  
22  
23 Arthur Tabachneck ) Insurance Bureau of  
24 Canada  
25 Robert Ramsey ) MMIC

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1 --- Upon commencing at 9:10 a.m.

2

3 THE CHAIRPERSON: Good morning. Welcome  
4 to a special hearing of the Public Utilities Board. The  
5 subject is MPI and its approach to allocating the cost of  
6 accidents.

7 I'm Graham Lane, Chairman of the Board,  
8 and I'm joined in this Proceeding by My Colleagues, Ms.  
9 Denise Cote, Mr. Eric Jorgensen and Mr. Len Evans.

10 In 1994, by legislation, a total no-fault  
11 benefit system was put in place for MPI. Prior to then  
12 no-fault benefits were in place, but the Tort system was  
13 the dominating system.

14 The new system converted the benefit  
15 approach to a system wherein all injured persons, whether  
16 drivers, passengers or pedestrians, are treated the same,  
17 regardless of fault.

18 Concurrently, and by corporate policy, MPI  
19 determined the cost of accidents would also be allocated  
20 on a no-fault basis; that is allocated on a first-party  
21 basis, to the classification of the vehicles involved.

22 At the time, this new system was brought  
23 in primarily to improve benefits and benefit  
24 administration, while taking pressure off what was then  
25 considerable upward pressure on rates.

1                   From testimony of prior MPI Hearings, it  
2 has been the Board's observation that MPI and its benefit  
3 system has, on an overall basis, met the objectives set  
4 for it.

5                   Compared to many other jurisdictions,  
6 rates in Manitoba are low, benefits are good, and claims  
7 administration is handled timely and efficiently.

8                   From the Board's perspective again, a view  
9 formed through years of Hearings, for most persons and  
10 parties, there's a general satisfaction with the system,  
11 with a notable exception of motorcyclists.

12                   Unlike the case for other vehicles  
13 premiums for motorcycles have risen dramatically, soared  
14 in fact. Even with increase from 1994 levels of 300  
15 percent or more, the average motorcycle rate has still to  
16 reach the level prescribed by actuarial data.

17                   And as asserted by motorcyclists and the  
18 motorcycle industry, the premium increases have led to a  
19 substantial decline in the number of registered  
20 motorcycles, since the no-fault approach was implemented.

21                   The decline in motorcycle registration has  
22 been cited and regretted by motorcyclists and motorcycle  
23 dealers.

24                   Motorcyclists' dissatisfaction with  
25 motorcycle premium rates affects the owners of other

1 vehicles as well. As most owners of motorcycles also own  
2 a passenger vehicle or truck, and of course there are  
3 also scooters and mopeds with similar characteristics to  
4 motorcycles.

5           Motorcycle owners attribute the high rates  
6 applied to motorcycles, to MPI's first-party claims  
7 allocation methodology, and claim that approach to be  
8 unfair to motorcycles, based on the fact that motorcycle  
9 costs arising out of accidents where motorcyclists are  
10 not at fault, are nonetheless attributed to the  
11 motorcycle class.

12           Motorcyclists have claimed that if  
13 accident costs were allocated to vehicle classifications  
14 on the basis of fault, the upward pressure on motorcycle  
15 rates would diminish and rates may fall.

16           Motorcyclists have suggested that having a  
17 no-fault benefit system does not require no-fault  
18 accident cost attribution, and have gone further to  
19 assert that no-fault accident cost attribution is not in  
20 the public interest.

21           Motorcyclists have claimed that first-  
22 party claim cost allocation fails to provide appropriate  
23 disincentives to poor driving to drivers of passenger  
24 vehicles and trucks and other vehicles.

25           Motorcyclists have also claimed that other

1 jurisdictions, including at least one (1) other major no-  
2 fault benefit jurisdiction, provides for some element of  
3 accident cost allocation on the basis of fault.

4                   And it is critically important to note,  
5 that the issues to be dealt with go beyond motorcycles,  
6 to potentially impact other vehicle classifications as  
7 well.

8                   On the other hand, MPI, supported by its  
9 internal and external actuaries, and the Board in past  
10 Hearings, asserts that no-fault first-party claim cost  
11 allocation is fair, and results in actuarially sound and  
12 statistically credible insurance rates.

13                   As a second line to defence to its  
14 approach, MPI has asserted over the years that  
15 motorcycles are inherently dangerous and the motorcycle  
16 rates reflect and should reflect that fact and risk. In  
17 essence, MPI has suggested that its approach is fair and  
18 more reflective of the public interest, than would be the  
19 fault based approach suggested by motorcyclists.

20                   The costs of opposing and defending MPI's  
21 first-party accident cost attribution system against the  
22 ongoing criticism mounted by the motorcyclist has been  
23 high over the last ten (10) years. Yet despite  
24 considerable testimony by expert witnesses and arguments  
25 mounted by both motorcyclist and MPI, the Board has never

1 managed to resolve the issue for once and for all.

2           Accordingly, the Board determined in last  
3 years MPI/GRA proceeding that a special Hearing would  
4 take place and at that Hearing, evidence and positions  
5 would be sought and obtained from all interested parties.  
6 And at that Hearing, the practices and philosophies of  
7 other jurisdictions would also be considered.

8           This is that Hearing and the Board's  
9 resolve remains that. Arising out of this Hearing, the  
10 Board intends to reach a final conclusion on the merits  
11 of MPI's first-party accident cost attribution approach.  
12 And again this case goes beyond motorcycles.

13           With the notable exception of the absence  
14 of pre-hearing conference prior to this Hearing, the  
15 Board has and is employing its normal approach to public  
16 proceedings in this case. Past participants in MPI/GRA  
17 hearings were advised of the Hearing and invited to make  
18 presentation and participate.

19           Public notice of this Hearing was  
20 provided. Other parties that the Board considered as  
21 being potential providers of useful information and  
22 comments were invited and the Board instituted its award  
23 of cost provisions. Information that's been shared  
24 amongst the parties registered to participate.

25           The Board would not have instituted this

1 approach if there were a statute based requirement for  
2 the approach taken by MPI, but there is no such basis.  
3 MPI's first-party claims cost attribution approach is in  
4 place by means of corporate policy consistently applied  
5 since it was adopted.

6                   Notwithstanding Board findings and  
7 comments in past Hearings, the Board has no bias towards  
8 any particular outcome, other than that of wanting the  
9 Hearing to result in an outcome representing a  
10 perspective fairly reflective of the public interest.

11                   A secondary goal, is to bring about a  
12 fuller understanding of the merits of the differing  
13 positions that will be discussed.

14                   The Panel before you will be very  
15 attentive to what is said and placed before us at this  
16 Hearing and our decision will be based on the evidence  
17 placed before us.

18                   In the end, our decision will be based on  
19 a number of criteria. Will the premium system in place  
20 that is based on the claim cost attribution approach  
21 selected be representative of an actuarially sound and  
22 statistically based approach?

23                   Is the system that's either in, or to be  
24 put in place, fair?

25                   Can the system, as maybe be amended or

1 not, going forward provide for a lower number of  
2 accidents, with a lower overall severity? Will the  
3 system be administratively feasible?

4 Will the system be comparable to  
5 approaches in other jurisdictions?

6 Will the approach be acceptable to the  
7 majority of MPI's policyholders?

8 Whether we will be able to satisfy each  
9 and everyone of these criteria remains to be seen.

10 Tension between criteria can be expected.

11 To begin with, I will now call on all  
12 participants to this proceeding to identify themselves,  
13 starting with Board Counsel.

14 Unlike the procedure followed in general  
15 rate application hearings, wherein each participant also  
16 makes opening comments, the only opening remarks in this  
17 case, will be by Board Counsel, Mr. Walter Saranchuk,  
18 just to save time.

19 Mr. Saranchuk ...?

20 MR. WALTER SARANCHUK: Thank you, Mr.  
21 Chairman.

22 For the record, my name is Walter  
23 Saranchuk of the law firm of Pitblado LLP; I appear as  
24 Board Counsel. And assisting me, to my far left, is my  
25 colleague Candace Everard from our firm.

1                   With us this morning are the Board's  
2 accounting advisors, Mr. Roger Cathcart and Mr. Brent  
3 McLean of Price Waterhouse Coopers.

4                   If I may, Mr. Chairman, might I suggest  
5 that for the record you request the representatives of  
6 the registered intervenors and the participants with  
7 filed submissions to identify themselves after which I  
8 will have a few brief opening comments.

9                   THE CHAIRPERSON:   Thank you, Mr.  
10 Saranchuk. We'll start with the Consumers Association of  
11 Canada Manitoba Inc. and the Manitoba Society of Seniors.

12                   Mr. Williams...?

13                   MR. BYRON WILLIAMS:   Good morning, Mr.  
14 Chairman and members of the Board.

15                   Yes, indeed I am Mr. Byron Williams. I'm  
16 an attorney with the Public Interest Law Centre and I'm  
17 pleased to be here on behalf of the Consumers Association  
18 and the Manitoba Society of Seniors.

19                   THE CHAIRPERSON:   Thank you, Mr.  
20 Williams. We'll move on now to the Coalition of Manitoba  
21 Motorcycle Groups?

22                   Mr. Oakes...?

23                   MR. RAYMOND OAKES:   Good morning, Mr.  
24 Chairman, members of the Board, ladies and gentlemen. My  
25 name is Raymond Oakes, I'm an attorney with the law firm

1 of Booth Dennehy, LLP. I'm representing the coalition of  
2 Manitoba Motorcycle Groups, as I have since 1992 and I  
3 look forward to the commencement of this Hearing.

4 THE CHAIRPERSON: Thank you, Mr. Oakes.  
5 We'll move to Manitoba Used Car Dealers.

6 Mr. Roberts...?

7 MR. NICK ROBERTS: Good morning, Mr.  
8 Chairman. My name is Nick Roberts. I'm the Executive  
9 Director of the Manitoba Used Car Dealers Association.

10 THE CHAIRPERSON: Thank you, Mr. Roberts.  
11 Canadian Automobile Association, Mr.

12 Majer ...?

13 Okay. Manitoba Bar Association, Mr.

14 Dawson...?

15 MR. ROBERT DAWSON: Good morning, Mr.  
16 Chairman, members of the Board. My name is Robert Dawson  
17 of the Winnipeg law firm, Dawson Law Chambers. I appear  
18 on behalf of the Manitoba Bar Association and we're ready  
19 to proceed.

20 THE CHAIRPERSON: Thank you, Mr. Dawson.  
21 For Scootering Manitoba, Mr. Sousa...?  
22 For Manitoba Car and Truck Rental  
23 Association, S. Devlin...?

24 MR. DON MILLER: Good morning, Mr.  
25 Chairman, members of the Board. My name is Don Miller.

1 I'm the President of the Car and Truck Rental Association  
2 for Manitoba. Thank you.

3 THE CHAIRPERSON: Thank you.

4 We have a representative here from the  
5 Insurance Bureau of Canada, IBC.

6 MR. ARTHUR TABACHNECK: Good morning, Mr.  
7 Chairman, members of the Board. My name is Art  
8 Tabachneck. I'm manager, statistical research and  
9 development for the Insurance Bureau of Canada and  
10 directly responsible for the CLEAR system, the Canadian  
11 Loss Development and Automobile Rating.

12 THE CHAIRPERSON: Thank you, sir.  
13 Financial Services Commission of Ontario,  
14 the SCO...?

15 MS. DARLENE HALL: Good morning, Mr.  
16 Chairman and members of the Board. My name is Darlene  
17 Hall. I'm the Director of Automobile Insurance Services  
18 Branch with the Financial Services Commission of Ontario.

19 THE CHAIRPERSON: Thank you.  
20 Motorcycle and Moped Industry Council...?

21

22 (BRIEF PAUSE)

23

24 MR. ROBERT RAMSEY: Good morning, Mr.  
25 Chairman. My name is Robert Ramsey. I'm the President

1 of the Motorcycle and Moped Industry Council and I have  
2 with me, also as an expert witness, Mr. Liam McFarlane of  
3 Dion, Durrell and Associates.

4 THE CHAIRPERSON: Thank you, sir.  
5 Manitoba Public Insurance...?

6 MR. KEVIN MCCULLOCH: Good morning, Mr.  
7 Chairman, members of the Board. My name is Kevin  
8 McCulloch. I'm appearing as Counsel for Manitoba Public  
9 Insurance at this loss transfer hearing.

10 And with me I have our President and CEO,  
11 Ms. Marilyn McLaren who will be giving evidence at this  
12 Hearing, as well, Mr. Don Palmer, our Director of  
13 Actuarial Services. Mr. Palmer will also be giving  
14 evidence. These are the two (2) witnesses that the  
15 Corporation will be calling at the Hearing.

16 In addition, Mr. Tom Strutt, senior  
17 solicitor in our legal department, is here offering  
18 assistance. And I note that Mr. Galenzoski is also  
19 sitting at the back table, although he'll be here only in  
20 observer role for the time that he is here during this  
21 Hearing.

22 THE CHAIRPERSON: Thank you, sir. Mr.  
23 Saranchuk -- Mr. Pelley, I didn't see you.

24 MR. BRIAN PELLE: Good morning, Mr.  
25 Chairman and Board Members. My name is Brian Pelley with

1 Ecker Partners Limited. I'm here to facilitate the work  
2 of the Board as the Board's actuary.

3 THE CHAIRPERSON: Thank you. And thank  
4 you all for coming. I'm sure your contributions will  
5 make this Hearing considerably more effective than it  
6 would have been in its absence.

7 Mr. Saranchuk...?

8 MR. WALTER SARANCHUK: Thank you, sir.  
9 Just for the record, perhaps we can make a note of the  
10 fact that Mr. Pelley is sitting in the far corner of the  
11 room and not with the Board advisors. If he feels  
12 ignored, we apologize.

13 But let me say that, Mr. Chairman, you  
14 reviewed in depth in your interrogatory commentary the  
15 reason for and the background to this special Hearing so  
16 my remarks really will be limited to procedural matters.

17 Firstly, I would, for the record, however,  
18 indicate that the following entities were invited by the  
19 Public Utilities Board to attend and participate at this  
20 Hearing as Board invitees, if you will, but for a variety  
21 of reasons have chosen not to do so.

22 They are as follows: The Manitoba  
23 Department of Transportation and Government Services,  
24 both at the legislature and through the Provincial Fleet  
25 Vehicles Agency; the Manitoba Department of Justice, that

1 is the Attorney General; the Manitoba Department of  
2 Finance; Transport Canada Administrative Services, in  
3 charge of Federal fleet vehicles; Manitoba Municipal  
4 Administrators Association; the City of Winnipeg, the  
5 City of Brandon, the City of Portage Le Prairie and the  
6 Taxicab Board.

7           Now, on the list of those invitees who  
8 have not sent representatives are included Saskatchewan  
9 Government Insurance, or SGI; ICBC, the Insurance  
10 Corporation of British Columbia; and an entity known by  
11 the acronym SAAQ, S-A-A-Q, which is for Societe  
12 L'Assurance Automobile du Quebec who are unrepresented at  
13 this hearing but have responded through correspondence to  
14 inquiries from Board Counsel, regarding assignment of  
15 lost costs under their respective -- their respective  
16 automobile insurance plans.

17           As will be referred to later, that  
18 correspondence will be filed in the evidence for  
19 information purposes only.

20           Now I'd request that the following  
21 documents be received and marked in the evidence as  
22 exhibits, and I would refer everyone to the exhibit list  
23 that's been distributed.

24           For the record, as Exhibit 1, I'd ask that  
25 the Notice of Public Hearing be marked in the evidence.

1                   As Exhibit 2, the time table for the  
2 exchange of information.

3                   As Exhibit 3, the Affidavit of Jo-Donna  
4 Williamson, confirming publication and serving of the  
5 Notice of Public Hearing, dated April 14th, 2005.

6                   As Exhibit number 4, the letter dated  
7 February 16th, 2005 to parties of record, with  
8 Notification of Public Hearing, attaching Notice of  
9 Public Hearing as Exhibit 1, and the Time Table as  
10 Exhibit 2.

11                   As Exhibit 5 to these proceedings, I'd ask  
12 that be marked, the letter dated February 16th, 2005, to  
13 Board invitees with Notification of Public Hearing  
14 attaching Notice of Public Hearing as Exhibit 1, and  
15 Summary of the Prior Board Decisions on the matter of  
16 loss transfer.

17                   As Exhibit 6, the letter dated March 14th,  
18 2005, to the Special Assistant to the Attorney General of  
19 Manitoba, and to the Director of Highway Planning and  
20 Design of Transportation and Government Services, from  
21 Ms. Candace Everard of Pitblado LLP, Board Counsel,  
22 advising of the Public Hearing.

23                   As Exhibit 7, the submission by MPI dated  
24 March 18th, 2005.

25                   As Exhibit 8(a), the submission by Mr.

1 Brian Pelley of Eckler Partners, the Board's Actuary, and  
2 that's dated March 18th, 2005.

3 As Exhibit 8(b), e-mail dated March 21,  
4 2005, from the Board to parties of record, attaching the  
5 Submission of Mr. B. Pelley, the Board actuary.

6 As Exhibit 9(a), the submission of the  
7 Motorcycle and Moped Industry Council, known by the  
8 acronym MMIC, and that's dated March 14th, 2005.

9 As Exhibit 9(b), the supplemental  
10 submission by the Motorcycle and Moped Industry Council,  
11 received April 26th, 2005.

12 As Exhibit 10, the Manitoba Used Car  
13 Dealers Association, Information Requests of MPI, and  
14 MPI's Responses; those are fourteen (14) Interrogatories.

15 As Exhibit 11, the Coalition of Manitoba  
16 Motorcycle Group's Information Requests of MPI and MPI's  
17 Responses; that's comprised of thirty-nine (39)  
18 Interrogatories and Responses.

19 As Exhibit 12, the Public Utilities Board  
20 Information Requests of MPI and MPI's Responses; that's  
21 comprised of eight (8) Interrogatories.

22 As Exhibit 13, the Consumer's Association  
23 of Canada, Manitoba Inc., Manitoba Society of Seniors  
24 Information Requests of Mr. Brian Pelley and Mr. Pelly's  
25 Responses; that's comprised of seven (7) Interrogatories.

1                   As Exhibit 14, the Consumer's Association  
2 of Canada, Manitoba Inc., Manitoba Society of Seniors  
3 Information Requests of MPI and MPI's Responses;  
4 consisting of five (5) Interrogatories there.

5                   As Exhibit 15, Financial Services  
6 Commission of Ontario, known by the acronym FSCO or F-S-  
7 C-O, their presentation dated April 22nd, 2005.

8                   As Exhibit 16, the letter dated March  
9 15th, 2005, to Ms. Candace Everard of Pitblado LLP, Board  
10 Counsel, from the Insurance Bureau of Canada, with  
11 attached Appendices 1 and 2.

12                   As Exhibit 17, the e-mail dated March  
13 23rd, 2005, from Pitblado LLP to Gary Kapac, spelled K-A-  
14 P-A-C of Insurance Bureau of Canada.

15                   As Exhibit 18, e-mail dated March 29th,  
16 2005 from Gary Kapac of Insurance Bureau of Canada, to  
17 Candace Everard of Pitblado LLP Board Counsel.

18                   And as Exhibit 19, the last one (1), the  
19 PUB Book of Documents, that has been distributed.

20                   THE CHAIRPERSON:    So be it, Mr.  
21 Saranchuk.

22                   MR. WALTER SARANCHUK:    Thank you, sir.

23  
24 --- EXHIBIT NO. 1:                Notice of Public Hearing.

25

1 --- EXHIBIT NO. 2: Time Table for the Exchange  
2 of information.  
3

4 --- EXHIBIT NO. 3: Affidavit of Joe Donna  
5 Williamson, confirming  
6 publication, and serving of  
7 the Notice of Public Hearing,  
8 dated April 14th, 2005.  
9

10 --- EXHIBIT NO. 4: Letter dated February 16th,  
11 2005 to parties of record,  
12 with Notification of Public  
13 Hearing, attaching Notice of  
14 Public Hearing as Exhibit 1,  
15 and the Time Table as Exhibit  
16 2.  
17

18 --- EXHIBIT NO. 5: Letter dated February 16th,  
19 2005, to Board invitees with  
20 Notification of Public  
21 Hearing attaching Notice of  
22 Public Hearing as Exhibit 1,  
23 and Summary of the Prior  
24 Board Decisions on the matter  
25 of loss transfer.

1 --- EXHIBIT NO. 6: Letter dated March 14th,  
2 2005, to the Special  
3 Assistant to the Attorney  
4 General of Manitoba, and to  
5 the Director of Highway  
6 Planning and Design of  
7 Transportation and Government  
8 Services, from Ms. Candace  
9 Everard of Pitblado LLP,  
10 Board Counsel, advising of  
11 the Public Hearing.  
12

13 --- EXHIBIT NO. 7: Submission by MPI dated March  
14 18th, 2005.  
15

16 --- EXHIBIT NO. 8(a): Submission by Mr. Brian  
17 Pelley of Eckler Partners,  
18 dated March 18th, 2005.  
19

20 --- EXHIBIT NO. 8(b): E-mail dated March 21, 2005,  
21 from the Board to parties of  
22 record, attaching the  
23 Submission of Mr. B. Pelley,  
24 the Board actuary.  
25

1 --- EXHIBIT NO. 9(a): Submission of the Motorcycle  
2 and Moped Industry Council,  
3 MMIC, that's dated March  
4 14th, 2005.  
5  
6 --- EXHIBIT NO. 9(b): Supplemental submission by  
7 the Motorcycle and Moped  
8 Industry Council, received  
9 April 26th, 2005.  
10  
11 --- EXHIBIT NO. 10: Manitoba Used Car Dealers  
12 Association, Information  
13 Requests of MPI, and MPI's  
14 Responses; those are fourteen  
15 (14) Interrogatories.  
16  
17 --- EXHIBIT NO. 11: Coalition of Manitoba  
18 Motorcycle Group's  
19 Information Requests of MPI  
20 and MPI's Responses; that's  
21 comprised of thirty-nine (39)  
22 Interrogatories and  
23 Responses.  
24  
25 --- EXHIBIT NO. 12: Public Utilities Board

1 Information Requests of MPI  
2 and MPI's Responses; that's  
3 comprised of eight (8)  
4 Interrogatories.  
5

6 --- EXHIBIT NO. 13: Consumer's Association of  
7 Canada, Manitoba Inc.,  
8 Manitoba Society of Seniors  
9 Information Requests of Mr.  
10 Brian Pelley and Mr. Pelly's  
11 Responses; that's comprised  
12 of seven (7) Interrogatories.  
13

14 --- EXHIBIT NO. 14: Consumer's Association of  
15 Canada, Manitoba Inc.,  
16 Manitoba Society of Seniors  
17 Information Requests of MPI  
18 and MPI's Responses;  
19 consisting of five (5)  
20 Interrogatories.  
21

22 --- EXHIBIT NO. 15: Financial Services Commission  
23 of Ontario, FSCO, their  
24 presentation dated April  
25 22nd, 2005.

- 1 --- EXHIBIT NO. 16: Letter dated March 15th,  
2 2005, to Ms. Candace Everard  
3 of Pitblado LLP, Board  
4 Counsel, from the Insurance  
5 Bureau of Canada, with  
6 attached Appendices 1 and 2.  
7
- 8 --- EXHIBIT NO. 17: E-mail dated March 23rd,  
9 2005, from Pitblado LLP to  
10 Gary Kapac, of Insurance  
11 Bureau of Canada.  
12
- 13 --- EXHIBIT NO. 18: E-mail, dated March 29th,  
14 2005, from Gary Kapac of  
15 Insurance Bureau of Canada,  
16 to Candace Everard of  
17 Pitblado LLP Board Counsel.  
18
- 19 --- EXHIBIT NO. 19: PUB Book of Documents.  
20

21 MR. WALTER SARANCHUK: Now just with  
22 reference to Exhibit 19, the Book of Documents; it  
23 contains copies of all of the written submissions, as  
24 filed with the Board as formal presentations, or through  
25 exchange of correspondence by the participants, being the

1 Insurance Bureau of Canada, the Financial Services  
2 Commission of Ontario, it's also MMIC, the Motorcycle and  
3 Moped Industry Council, MPI and Mr. Pelly, as well as  
4 copies of all Information Requests, the Interrogatories,  
5 and the Responses as served and filed.

6

7

(BRIEF PAUSE)

8

9

10 A copy of the Notice of Hearing also  
11 appears and that's at the back of the Book of Documents  
12 at Tab 8. And just prior to that, as Tab 7, Parts a), b)  
13 and c), are copies of the material filed by SGI, ICBC and  
14 SAAQ. Those to be taken as filed for information  
15 purposes only.

15

16

17

18

19 Finally, I refer to the procedural outline  
20 that's been distributed, particularly, page 2, the part  
21 dealing with submissions, that is a summarized  
22 presentation in cross-examination.

19

20

21

22 We'll proceed with the parties as listed  
23 there. And the idea is that we have each representative  
24 sworn in as a witness.

22

23

24

25

26 Board Counsel will then give the witness  
27 an opportunity to provide preliminary information as to  
28 their credentials and to highlight and elaborate upon the  
29 main points of the submissions. And this will be done

1 through direct examination, in the case of MMIC and MPI,  
2 who are, of course, represented by Counsel.

3 Cross-examination will then follow in the  
4 order indicated; in Section F, on page 2 of the  
5 procedural outline.

6 And on a final note, as indicated in Part  
7 D, the presenters are to be heard Wednesday evening, that's  
8 tomorrow, May 11th at 7:00 p.m.

9 Those are my comments, Mr. Chairman,  
10 unless there are any questions, I'd request that we then  
11 proceed to have the first witness sworn in. And that  
12 would be Mr. Arthur Tabachneck of the Insurance Bureau of  
13 Canada.

14 THE CHAIRPERSON: Thank you, Mr.  
15 Saranchuk. Mr. Barron, would you please swear or affirm?

16  
17 (BRIEF PAUSE)

18  
19 MR. WALTER SARANCHUK: And just the  
20 spelling of that for the record? The spelling for the  
21 court reporter?

22 THE WITNESS: Arthur, A-R-T-H-U-R,  
23 Tabachneck T-A-B-A-C-H-N-E-C-K.

24  
25 ARTHUR TABACHNECK, Sworn

1 CROSS-EXAMINATION BY MR. CANDACE EVERARD:

2 MS. CANDACE EVERARD: Good morning, Mr.  
3 Tabachneck. You indicated, when you introduced yourself  
4 to the Panel just a few moments ago, that you hold the  
5 position of manager of Statistical Research and  
6 Development for the Insurance Bureau of Canada; is that  
7 correct?

8 MR. ARTHUR TABACHNECK: Yes -- yes, ma'am.

9 MS. CANDACE EVERARD: And how long have  
10 you been in that position, sir?

11 MR. ARTHUR TABACHNECK: I've been in that  
12 position for the past six (6) years.

13 MS. CANDACE EVERARD: Sir, can you give  
14 the Board a general idea of your education, training and  
15 experience, prior to coming into the position that you  
16 hold currently?

17 MR. ARTHUR TABACHNECK: I presume you  
18 mean a quick, brief overview?

19 MS. CANDACE EVERARD: I do.

20 MR. ARTHUR TABACHNECK: I hold -- I hold a  
21 PhD in Psychology from Michigan State University, with  
22 primary emphasis on research and statistics, followed by  
23 a twenty-five (25) year career directing various research  
24 and statistical offices, which is basically what my role  
25 is with the Insurance Bureau of Canada, managing their

1 statistical and research function, which includes the  
2 CLEAR system.

3 MS. CANDACE EVERARD: Thank you sir.  
4 Have you ever had an opportunity to testify before a  
5 tribunal or a Court, in the past?

6 MR. ARTHUR TABACHNECK: No, I have not.

7

8 (BRIEF PAUSE)

9

10 MS. CANDACE EVERARD: Sir, I do have some  
11 specific questions that I'd like to ask of you, but,  
12 perhaps at this point, if you want to make some  
13 preliminary comments on your own, you should have that  
14 opportunity.

15 MR. ARTHUR TABACHNECK: The only comments  
16 I'd make are the ones that we presented in the reports we  
17 had submitted to the Board, mainly that we don't know,  
18 whether or not, MPI's reliance on CLEAR would be affected  
19 by adopting a form of loss transfer, unless we know what  
20 that form is, and exactly how it would interact with  
21 CLEAR.

22 MS. CANDACE EVERARD: Sir, can you give  
23 the Board a broad understanding or description of CLEAR.

24 MS. CANDACE EVERARD: Sir, can you give  
25 the Board a broad understanding or description of CLEAR?

1                   MR. ARTHUR TABACHNECK:    The basic  
2 overview of CLEAR is to provide an equitable system for  
3 rating automobiles' first-party coverage, primary  
4 collision, comprehensive and accident benefits.

5                   And providing that rating in the form as  
6 best as we can credibly identify to where actual loss  
7 costs, the actual costs that each person owing, say, a  
8 particular vehicle has to put into a pot to cover all  
9 losses that -- that type of vehicle would be involved in  
10 are sufficient to cover those losses.

11                   And CLEAR is designed to, again, as best  
12 as it credibly can, to make sure that those ratings that  
13 are assigned do equate to the actual loss costs. And so  
14 the cheaper a car is to insure, the cheaper the premiums  
15 will be for that vehicle.

16                   MS. CANDACE EVERARD:    Sir, I know in the  
17 first instance when you introduced yourself you told the  
18 Board what CLEAR stands for, but maybe we could just  
19 repeat that now?

20                   MR. ARTHUR TABACHNECK:    Sure. It's the  
21 Canadian Loss Experience Automobile Rating.

22                   MS. CANDACE EVERARD:    Sir, if I can refer  
23 you then to -- do you have our book of documents with  
24 you?

25                   MR. ARTHUR TABACHNECK:    No, I don't.

1 MS. CANDACE EVERARD: I have an extra  
2 one, I'll...

3  
4 (BRIEF PAUSE)

5  
6 MS. CANDACE EVERARD: Sir, if you could  
7 refer to Tab 1. You'll see there's Tab 1A, B and C and  
8 those are all of the items of correspondence exchanged  
9 between your office and mine?

10 MR. ARTHUR TABACHNECK: Yes.

11 MS. CANDACE EVERARD: Sir, can you advise  
12 the Board of how rates are determined through CLEAR?

13 MR. ARTHUR TABACHNECK: Rates are  
14 determined through CLEAR. It's not an extremely simple  
15 thing to describe but I'll do my best briefly.

16 The bottomline, as I mentioned, was that  
17 we try to equate them to where actual loss costs will be  
18 the driver of the ratings. Unfortunately, that cannot be  
19 done directly because we have to assign ratings the  
20 moment a vehicle comes onto the marketplace and so before  
21 we have any experience on what the vehicle will be, we  
22 have to assign a rating.

23 And so the CLEAR system was developed so  
24 that we can actually work backwards to reach the most  
25 credible number and so it's starting by developing

1 statistical models through which we can estimate what the  
2 loss costs will be based upon vehicle characteristics.

3 And so man -- automobile manufacturers,  
4 before they release a vehicle, supply our office with all  
5 of the vehicle characteristics that we have considered  
6 may be relevant and we're continually adding to that list  
7 every year; right now, we're up to about fifty (50) to  
8 seventy-five (75) factors.

9 Those are used in a predictive model to  
10 develop a loss cost for each vehicle which are then  
11 adjusted by the experience that all insurers throughout  
12 Canada actually have.

13 And we do get data from every insurer.

14 MS. CANDACE EVERARD: So, are there other  
15 components that come into the equation besides vehicle  
16 characteristics and, if so, what are those?

17 MR. ARTHUR TABACHNECK: It's strictly  
18 vehicle characteristics as a predictive tool to estimate  
19 normalized loss cost and I do have to explain that  
20 briefly.

21 We're estimating normalized loss costs  
22 because we're trying to estimate just the losses that are  
23 attributable to the vehicle itself, removing all variants  
24 that may be attributable to where somebody lives, their  
25 driving record, any other factors beyond the vehicle

1 itself.

2                   And so we take all the data from insurers,  
3 remove the variants that could be -- that are  
4 attributable to additional premiums that insurers are  
5 charging beyond what we would expect for the pure  
6 vehicle.

7

8

(BRIEF PAUSE)

9

10                   MS. CANDACE EVERARD:    Sir, you said that  
11 there are a number of characteristics that are  
12 considered; can you give some examples of the main ones?

13                   MR. ARTHUR TABACHNECK:    Sure. Price,  
14 weight, horsepower, height, wheelbase, whether or not a  
15 vehicle has air bags, a theft deterrent system; as I  
16 said, that list continually increases every year as  
17 vehicles change.

18                   So, we do have -- anti-lock brakes would  
19 be a factor, stabilizing mechanisms would be a factor, et  
20 cetera.

21                   MS. CANDACE EVERARD:    Are repair costs a  
22 factor?

23                   MR. ARTHUR TABACHNECK:    Repair costs are  
24 not directly a factor but they do influence loss cost.  
25 And so since we are estimating loss costs and ultimately

1 reaching loss costs, the total costs that insurers have  
2 to pay, which include repair costs, at least for  
3 collision repair, would be included in that model.

4 MS. CANDACE EVERARD: What about  
5 frequency of theft, is that a factor?

6 MR. ARTHUR TABACHNECK: That would be a  
7 factor in the comprehensive coverage. As -- as I  
8 mentioned, we're primarily interested in loss costs,  
9 which is the total amount of loss divided by the number  
10 of vehicles insured.

11 Mathematically you can quickly see that  
12 that can be broken down into frequency; how often a  
13 vehicle is stolen, which is a number of claims, divided  
14 by number of vehicles, times severity, which is the  
15 average cost in those claims. If you multiply frequency  
16 times severity, the answer is loss cost, mathematically.

17 MS. CANDACE EVERARD: Okay. Sir, maybe  
18 just to employ a specific example, if -- if we can  
19 consider an SUV, for example, a sport utility vehicle,  
20 that is involved in a multi-vehicle accident, what data  
21 would thereafter be captured in the CLEAR rating for that  
22 vehicle?

23 MR. ARTHUR TABACHNECK: In the CLEAR  
24 rating, if the vehicle was at fault, it would be included  
25 in the collision rating, and that's only covering

1 vehicles that are at fault to the degree that at least  
2 that vehicles are at fault; that would be a first-party  
3 coverage, and the collision CLEAR rating would cover  
4 that.

5                   One (1) that wouldn't be relevant to MPI  
6 at present, but will be incorporated for Ontario next  
7 year, or at least we're hoping to, would be the other  
8 side to that equation, to where if they were not at fault  
9 in Ontario, they would be covered by -- and Quebec would  
10 be covered by direct compensation property damage.

11                   Currently that is not in CLEAR, we're  
12 hoping that we will be able to develop credible models to  
13 be able to incorporate that next year.

14                   If somebody was injured, regardless of  
15 whether they were at fault or not, that would be covered  
16 in the accident benefits coverage for CLEAR.

17  
18  
19

(BRIEF PAUSE)

20                   MS. CANDACE EVERARD:    So, sir, just so  
21 that I understand you correctly, if there was a situation  
22 where an SUV was in a collision with a small vehicle, for  
23 example a Firefly, to what extent would the damage caused  
24 to the Firefly be included in CLEAR?

25                   MR. ARTHUR TABACHNECK:    It would only be

1 included in CLEAR currently, if that vehicle were at  
2 fault or covered by the collision rating.

3 CLEAR does not incorporate any third-party  
4 coverages at this point.

5 MS. CANDACE EVERARD: Sir, we've heard or  
6 seen in some of the material filed by MPI for the  
7 purposes of this Hearing, that at one (1) stage the  
8 Insurance Bureau of Canada had considered gathering third  
9 party information, but that there were limitations or  
10 challenges encountered. Can you tell us about those?

11 MR. ARTHUR TABACHNECK: Yeah, we've tried  
12 to incorporate it. Actually we've tried every other year  
13 for the last ten (10) years. And what we have found is  
14 that we have never been able to get enough data  
15 representative of third party coverage, to be able to  
16 develop credible models, mainly because we are missing  
17 all the data from Ontario and from Quebec.

18 And so it's just the rest of the country.  
19 And the data in the different Provinces has been mixed,  
20 in terms of its results to where we couldn't  
21 statistically say it was comparable.

22 MS. CANDACE EVERARD: Thank you. MPI has  
23 also indicated in its position paper filed before this  
24 Board that in its view, CLEAR rating influences customer  
25 choice in choosing vehicles. What is your view on that?

1 MR. ARTHUR TABACHNECK: I don't have one  
2 (1). It did influence my own customers' opinion, mainly  
3 because I was looking for a vehicle to -- well, I was  
4 looking at insurance costs in buying my own vehicle, but  
5 I'm not an expert on consumer behaviour.

6 MS. CANDACE EVERARD: Fair enough, you  
7 have a personal view, but not a professional one?

8 MR. ARTHUR TABACHNECK: Absolutely.

9 MS. CANDACE EVERARD: Fair enough, thank  
10 you. Sir, if I could direct your attention to Appendix 1  
11 at Tab 1-A of the Book of Documents, it should be right  
12 behind Mr. Kapac's letter dated March 15th.

13 Appendix I is the list of the four (4)  
14 questions Q.1, et cetera --

15 MR. ARTHUR TABACHNECK: Yes.

16 MS. CANDACE EVERARD: If I could direct  
17 your attention to Q.2, Question 2. And these -- just for  
18 the purposes of the record, these were questions that  
19 were prepared by IBC?

20 MR. ARTHUR TABACHNECK: They were  
21 prepared by IBC, but I only responded to Question 1;  
22 Question 2, and the other questions were from someone  
23 else.

24 MS. CANDACE EVERARD: You're familiar  
25 with the content of Question 2, though and the answer?

1                   MR. ARTHUR TABACHNECK:    I'm familiar with  
2 the content of, but, not an expert in it.  
3                   MS. CANDACE EVERARD:    First off, could  
4 you read the answer into the record --  
5                   MR. ARTHUR TABACHNECK:    For Question 2?  
6                   MS. CANDACE EVERARD:    Actually the quest  
7 -- the question and answer, please?  
8                   MR. ARTHUR TABACHNECK:    Sure.  The  
9 question was:  
10                   "Is there act -- actuarial evidence of  
11 a dislocation of claims costs between  
12 private passenger automobile,  
13 commercial automobile and motorcycles,  
14 due to the first-party nature of the  
15 accident benefits compensation?"  
16                   And the answer was:  
17                   "According to experience in Ontario,  
18 drivers of motorcycles tend to suffer  
19 the most severe injury and drivers of  
20 commercial vehicles the least severe  
21 injury in a multi-vehicle accident.  
22 Due to the first-party nature of the AB  
23 compensation, based on the no-fault  
24 system there is actuarial evidence of a  
25 dislocation of claims cost with

1 motorcycle drivers bearing higher AB  
2 claims costs and commercial automobile  
3 lower costs. Private passenger  
4 automobiles are in the middle of the  
5 scale of the dislocation. The  
6 situation should be similar in Manitoba  
7 since both provinces have similar no-  
8 fault systems for AB compensation."

9 MS. CANDACE EVERARD: Thank you. And as  
10 set out in Q-2, AB stands for accident benefit?

11 MR. ARTHUR TABACHNECK: Yes, ma'am.

12 MS. CANDACE EVERARD: In both the  
13 question and answer Number 2, refer to dislocation of  
14 claims costs. Can you explain what that is?

15 MR. ARTHUR TABACHNECK: No, I cannot.

16

17 (BRIEF PAUSE)

18

19 MS. CANDACE EVERARD: Sir, if I could now  
20 direct your attention to question three (3) on the same  
21 page, the question reads:

22 "Would the dislocation be significant  
23 enough to justify a loss transfer  
24 between the respective types of  
25 vehicles?"

1                   And I understand from the first sentence  
2 of the answer, that IBC collects statistical data on lost  
3 transfer based on the current automobile statistical plan  
4 in Ontario; is that correct?

5                   MR. ARTHUR TABACHNECK:    Yes.

6                   MS. CANDACE EVERARD:    I further  
7 understand from the answer that the data gathered is  
8 limited to commercial automobile, private passenger  
9 automobile, private passenger automobile and motorcycles  
10 only; in other words, not all vehicles, is that correct?

11                  MR. ARTHUR TABACHNECK:    Yes.

12                  MS. CANDACE EVERARD:    Can you advise the  
13 Board of why it is that ICB collects the Ontario  
14 experience data?

15                  MR. ARTHUR TABACHNECK:    No I cannot.

16                  MS. CANDACE EVERARD:    Sir, can you advise  
17 the Board of how the Ontario loss transfer data is  
18 treated in CLEAR? Is it included or not included?

19                  MR. ARTHUR TABACHNECK:    It is not  
20 included because CLEAR only looks at the moment, or  
21 currently at accident benefit frequency and does not look  
22 at accident benefit severity in its accident benefits  
23 ratings.

24                               And since the only loss transfer  
25 information we get is regarding Ontario and Ontario has a

1 two thousand dollar (\$2,000) minimum payment that must be  
2 made by the party, then the claim count would always have  
3 to be at least one (1), which would mean that the  
4 frequency would still be there, it wouldn't change, based  
5 on Ontario's loss transfer system.

6 MS. CANDACE EVERARD: Sir, you said that  
7 this is currently the practice, is there -- has it been  
8 different in the past, or is there an expectation that it  
9 will change in the future?

10 MR. ARTHUR TABACHNECK: It's never been  
11 different in the past. We are continually analysing  
12 accident benefit severity to see if we can model it and  
13 starting this coming year since SAAQ in Quebec has become  
14 a CLEAR member, starting to use the CLEAR table, we're  
15 going to be getting their accident benefits data, which  
16 we're hoping will increase the credibility of the data to  
17 where we can have a severity model.

18 But, at the moment, it's simply frequency.

19 MS. CANDACE EVERARD: Sir, is the CLEAR  
20 data used in all jurisdictions in Canada?

21 MR. ARTHUR TABACHNECK: I believe so. It  
22 may not be used -- it's not necessarily used by all  
23 companies because it's an advisory rating and companies  
24 and provinces are free to use the ratings to the extent  
25 they want and we don't investigate how far they are using

1 them, but it is being used in every province and by the  
2 vast, vast majority of companies.

3 MS. CANDACE EVERARD: So, with the  
4 information that you expect will be forthcoming from  
5 Quebec, will IBC be able to develop a model based on  
6 severity?

7 MR. ARTHUR TABACHNECK: We were able to  
8 develop a model based on severity for Quebec and now we  
9 have to see if we can generalize that to be applicable to  
10 the rest of the country.

11 MS. CANDACE EVERARD: Sir, in the answer  
12 to Question 3 in Appendix I there is information with  
13 respect to Ontario and its experience.

14 Can you advise the Board of how applicable  
15 this experience may be to the Manitoba context?

16 MR. ARTHUR TABACHNECK: Can you let me  
17 know what page we're -- you're looking at?

18 MS. CANDACE EVERARD: Sorry. I'm in Q-3  
19 -- the second page of Q-3. It's the same page -- it's  
20 page 6 at the top on the -- no, it's not.

21 Sorry, my -- my copy was faxed to me so I  
22 have a page number but I don't think you do. The  
23 paragraph at the top of the page starts, "Theoretically  
24 the aggregated amount of loss transfer...".

25 It's got Q-4 at the very bottom of the

1 page.

2 MR. ARTHUR TABACHNECK: And, again, this  
3 is not my area of expertise, so I cannot address it.

4 MS. CANDACE EVERARD: Fair enough.

5 Sir, if I can now direct your attention to  
6 Tab 1C at the book of documents. It's an e-mail from Mr,  
7 Kapac of your office to myself; I believe that you're  
8 familiar. Tab 1C

9 MR. ARTHUR TABACHNECK: Yes.

10 MS. CANDACE EVERARD: The e-mail from Mr.  
11 Kapac, you've seen this before?

12 MR. ARTHUR TABACHNECK: I had a copy with  
13 me.

14 MS. CANDACE EVERARD: Good. Sir, can you  
15 confirm that CLEAR, as promulgated by the Insurance  
16 Bureau, includes advisory private passenger make and  
17 model rate group assignments and rate group differentials  
18 for accident benefits?

19 MR. ARTHUR TABACHNECK: Yes.

20 MS. CANDACE EVERARD: And can you  
21 confirm, as I think you've already stated but just to  
22 clarify that the accident benefits portion of CLEAR is  
23 affected only by the number of claims; in other words the  
24 frequency and not the dollar amount of the claims?

25 MR. ARTHUR TABACHNECK: That is correct.

1 MS. CANDACE EVERARD: Looking then at Mr.  
2 Kapac's March 29th e-mail and the last paragraph of that  
3 e-mail which reads:

4 "To date CLEAR's accident benefits  
5 ratings are based only on claim  
6 frequency thus MPI's reliance shouldn't  
7 be significantly affected. However, if  
8 severity is ultimately captured in  
9 CLEAR's ratings as well, then the  
10 adoption of full recognition of fault  
11 would likely result in a major  
12 conflict."

13 Can you explain the nature and  
14 implications of the major conflict to which Mr. Kapac  
15 referred?

16 MR. ARTHUR TABACHNECK: And actually that  
17 was my wording, although the e-mail came from Gary. It's  
18 the issue of whether or not MPI's data is consistent with  
19 the rest of the data that's going into CLEAR and that  
20 works two (2) ways.

21 **A. Whether we could include Manitoba's**  
22 **data within CLEAR and whether CLEAR would provide an**  
23 **equitable rating for Manitoba if there was a difference**  
24 **between what each data set represented.**  
25

1 (BRIEF PAUSE)

2  
3 MS. CANDACE EVERARD: Okay. So, just  
4 following on that, on what basis would the data sets have  
5 to be established to be consistent?

6 MR. ARTHUR TABACHNECK: This is our  
7 question as to what ultimately -- what MPI ultimately  
8 decides to adopt and how different it would be from the  
9 rest of the country's data.

10 If, for instance, for accident benefits  
11 all claims were paid and it was -- claim frequency was  
12 affected, then where we would be saying, one (1) vehicle  
13 actually had a claim frequency in the rest of the  
14 Country, in Manitoba we'd be saying that number would be  
15 reduced or not consistent with the rest of the Country.

16 And conversely, if we adopt severity into  
17 that equation, the dollar value that we would be  
18 projecting for loss costs would be inconsistent with what  
19 -- may be inconsistent with what you'd actually  
20 experience.

21 And that was the major reason that we were  
22 concerned with there being an inequity established, if  
23 you are not capturing the same incident -- the same type  
24 of claim, or defining a claim differently, then our  
25 answers in terms of ratings would not be equitable, or at

1 least equitably related to your actual costs.

2 MS. CANDACE EVERARD: So, in your view,  
3 is there a form of loss transfer that would not cause a  
4 conflict for CLEAR?

5 MR. ARTHUR TABACHNECK: I'm not an expert  
6 in loss transfer, and so we have to evaluate it as we saw  
7 what the situation was. I -- in -- yeah, I wouldn't even  
8 want to guess at this point.

9 MS. CANDACE EVERARD: Thank you very  
10 much, sir.

11 MR. ARTHUR TABACHNECK: Although, just  
12 one (1) thing. As you mentioned it, yes, I can -- I know  
13 of at least one (1) form, because Ontario's loss transfer  
14 does not adversely affect CLEAR and it is comparable with  
15 the rest of the Country, because it doesn't change what  
16 their data represents, and it's comparability with the  
17 rest of the country's information.

18 So, there is at least, yes, one (1)  
19 example, where it could be.

20 MS. CANDACE EVERARD: So, if a similar  
21 form of loss transfer that exists in Ontario were  
22 implemented in Manitoba, you would expect there would not  
23 be a conflict; is that correct?

24 MR. ARTHUR TABACHNECK: Correct.

25 MS. CANDACE EVERARD: Thank you. I have

1 no additional questions for Mr. Kapac. Sorry, I just  
2 called you Mr. Kapac, Mr. Tabachneck, I apologize.

3 MR. ARTHUR TABACHNECK: That's okay, you  
4 just gave me a promotion so...

5 MS. CANDACE EVERARD: I apologize. I  
6 think Mr. McCulloch is up next.

7 MR. ARTHUR TABACHNECK: Thank you.

8 MS. CANDACE EVERARD: He's -- but, Mr.  
9 Tabachneck, just stay where you are, Mr. McCulloch will  
10 sit somewhere, I'm not sure where. And to have some  
11 questions for you. Thanks.

12

13

(BRIEF PAUSE)

14

15 THE CHAIRPERSON: The process, sir, is  
16 that after Board Counsel is finished asking you  
17 questions, we go through the whole list; MPI starts and  
18 then each one (1) of the Intervenors has the ability to  
19 ask you some follow-up.

20

21 CROSS-EXAMINATION BY MR. KEVIN MCCULLOCH:

22 MR. KEVIN MCCULLOCH: Mr. TABACHNECK, I  
23 just want to clarify. It was clearly my understanding in  
24 responses to questions from Board Counsel, that you feel  
25 that your particular area of expertise is limited to the

1 response to Question 1 of the four (4) questions that  
2 were put to IBC; is that correct?

3 MR. ARTHUR TABACHNECK: Yes, that's  
4 correct.

5 MR. KEVIN MCCULLOCH: And you were also  
6 able to comment obviously, on the March 29th, 2005 memo  
7 from Mr. -- or e-mail rather, from Mr. Kapac, to Ms.  
8 Everard, because you had been involved in preparing that  
9 e-mail; is that correct?

10 MR. ARTHUR TABACHNECK: Yes, that is.

11 MR. KEVIN MCCULLOCH: Now, I want to  
12 refer you first of all to the second paragraph of the  
13 answer to Question 1 where you state:

14 "It is unlikely that the current CLEAR  
15 methodology will include loss transfer,  
16 as there's not enough national data  
17 available to enable sufficiently  
18 credible CLEAR ratings for either  
19 motorcycles or third party liability."

20 And that remains your opinion?

21 MR. ARTHUR TABACHNECK: Yes, CLEAR is  
22 primarily a first-party system.

23 MR. KEVIN MCCULLOCH: And in fact, you  
24 have in your answers today, talked about some efforts to  
25 collect, for example, severity data, that -- that may

1 have some impact on that opinion, but currently you still  
2 hold that view that is stated in this answer?

3 MR. ARTHUR TABACHNECK: Yes, that is  
4 correct.

5 MR. KEVIN MCCULLOCH: I'd like to refer  
6 you, if you would, to the material filed by Manitoba  
7 Public Insurance, which is Tab 4 in the Board Book of  
8 Exhibits.

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10 (BRIEF PAUSE)

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MR. KEVIN MCCULLOCH: And, in particular,  
if you could go to page 2, at the bottom of the page,  
where the MPIC paper states that:

"IBC does not currently have a model  
that differentiates risk based on a  
third-party model or the amount of  
damage that a type of vehicle causes.  
Some preliminary work has been done,  
but, there was insufficient data to  
develop a credible model. IBC does not  
have further plans to create a third-  
party model."

And then going over to the next page:

"Therefore, due to the lack of a

1                   credible third-party model, the  
2                   Corporation cannot implement full loss  
3                   transfer."

4                   Would you agree with that statement, Mr.  
5 Tabachneck?

6                   MR. ARTHUR TABACHNECK:    I agree with the  
7 majority.  I don't disagree with any of that statement, I  
8 agree with the majority right up until the one (1) point  
9 I cannot discuss because my expertise does not include,  
10 loss transfer per se, is whether or not it can implement  
11 full loss transfer.

12                   As far as its relationship with CLEAR and  
13 everything else in that statement, I totally agree.

14                   MR. KEVIN MCCULLOCH:    So, the factual  
15 statements about IBC, which is basically -- is the CLEAR  
16 system, the factual statements contained in there are  
17 correct and you can indicate that you agree with those  
18 factual statement, but, you may not be able to agree with  
19 the opinion that the Corporation draws from those facts?

20                   Is that a fair statement?

21                   MR. ARTHUR TABACHNECK:    That is correct.

22                   MR. KEVIN MCCULLOCH:    I want to take you  
23 back briefly to Tab 1C, where you talked about the fact  
24 that severity data is something that CLEAR is looking at  
25 gathering.  But, you made some comments that it may

1 create a major conflict with MPI's position, depending on  
2 the type of loss transfer, if any, that MPI might be  
3 asked to introduce; is that correct?

4 MR. ARTHUR TABACHNECK: Yes it is.

5 MR. KEVIN MCCULLOCH: And if the loss  
6 transfer method that were to be put into place in  
7 Manitoba, if one were to be put in place, if it differed  
8 from the loss transfer data that is -- or system that is  
9 used by CLEAR or governs data that's collected by CLEAR,  
10 is it fair to say that the Manitoba data, if incorporated  
11 into the other data, could skew the rest of the Country's  
12 data?

13 MR. ARTHUR TABACHNECK: Yes, that was  
14 definitely a concern.

15 MR. KEVIN MCCULLOCH: And on that basis,  
16 if a different model of loss transfer were to be employed  
17 in Manitoba you, in fact, would not use the Manitoba data  
18 and would exclude Manitoba data from your calculations?

19 MR. ARTHUR TABACHNECK: That is correct.

20

21 (BRIEF PAUSE)

22

23 MR. KEVIN MCCULLOCH: Those are all my  
24 questions, Mr. Chairman. Thank you.

25 THE CHAIRPERSON: Thank you, Mr.

1 McCulloch. We'll move to CAC/MSOS, Mr. Williams?  
2 MR. BYRON WILLIAMS: Thank you, Mr.  
3 Chairman, but, I have no questions.  
4 THE CHAIRPERSON: CMMG, Mr. Oakes...?  
5 MR. RAYMOND OAKES: Thank you.  
6  
7 CROSS-EXAMINATION BY MR. RAYMOND OAKES:  
8 MR. RAYMOND OAKES: Good morning, Mr.  
9 Tabachneck. The Counsel for MPI directed your attention  
10 to the answer in Appendix I that says, the answer to  
11 Question 1 and the second paragraph is the answer:  
12 "That it is unlikely that the current  
13 CLEAR methodology will include loss  
14 transfer as there is not enough  
15 national data available to sufficiently  
16 -- to enable sufficiently credible  
17 CLEAR ratings for either motorcycles or  
18 third-party liability."  
19 That's a limitation on the data that  
20 currently exists; isn't that correct?  
21 MR. ARTHUR TABACHNECK: That is correct.  
22 MR. RAYMOND OAKES: And how about with  
23 respect to the data from Ontario. That's a jurisdiction  
24 that uses loss transfer at present; can you explain that?  
25 MR. ARTHUR TABACHNECK: As I had

1 mentioned before, while Ontario does have a form of loss  
2 transfer, it currently has no effect on the CLEAR models  
3 since we're only using frequency and Ontario's loss  
4 transfer system does not effect whether or not a  
5 vehicle's reported as having or not having a claim  
6 frequency.

7 MR. RAYMOND OAKES: And so if Counsel for  
8 MPI had asked you in his questions relative to whether  
9 CLEAR would -- or IBC would then discount or not use  
10 Manitoba data in its CLEAR rate groups, if in fact they  
11 went to the Ontario system then you would treat it the  
12 same as the Ontario data; isn't that correct?

13 MR. ARTHUR TABACHNECK: That is correct.

14 MR. RAYMOND OAKES: Currently what  
15 percentage of Manitoba data would be embedded in CLEAR?

16 I can ask: Would it be a low amount of  
17 Manitoba data that would be used for CLEAR's purposes?

18 MR. ARTHUR TABACHNECK: Not sure exactly  
19 what you're talking about. Are you talking about in  
20 terms of the percentage of the total exposures for  
21 various coverage that go into CLEAR; how much of it is  
22 represented by Manitoba?

23 MR. RAYMOND OAKES: That's correct.

24 MR. ARTHUR TABACHNECK: Approximately --  
25 I don't have a calculator in my mind but I'll try give a

1 quick ballpark, approximately one-twentieth (1/20). So,  
2 possibly 5 percent of CLEAR's data is Manitoba.

3 MR. RAYMOND OAKES: A very small amount,  
4 in other words.

5 MR. ARTHUR TABACHNECK: Relatively.

6 MR. RAYMOND OAKES: Are rates determined  
7 by CLEAR or is it only rate groups?

8 MR. ARTHUR TABACHNECK: CLEAR only  
9 provides advisory rate groups.

10 MR. RAYMOND OAKES: And can you just  
11 briefly explain what a rate group is?

12 MR. ARTHUR TABACHNECK: A rate group is -  
13 - equates to a differential which is basically a relative  
14 measure of how expensive one loss cost is relative to  
15 another and so if a rate group, say, equates to a  
16 differential of two (2), that would be saying that it's  
17 loss cost is twice that of average.

18 Insurers then take that differential and  
19 apply it within their premium equation to determine what  
20 they will actually charge for a premium.

21 MR. RAYMOND OAKES: So, really it's a  
22 relative ranking?

23 MR. ARTHUR TABACHNECK: Correct.

24 MR. RAYMOND OAKES: Does MPI currently  
25 provide data to IBC for the purposes of CLEAR?

1                   MR. ARTHUR TABACHNECK:    Yes, they do.  
2   Twice a year.

3                   MR. RAYMOND OAKES:    Can I ask you, sir,  
4   whether in the provision of that data you have ever found  
5   errors in the data supplied by MPI?

6                   MR. ARTHUR TABACHNECK:    I could not  
7   answer whether we have specifically found errors.  We  
8   review all of our data that we receive from any province  
9   for reasonability each year and if we find anything that  
10  does not appear to be consistent with the data reported  
11  in previous years, we do inquire with the particular  
12  province or the particular company to find out why there  
13  was a discrepancy.

14                  MR. RAYMOND OAKES:    I think my question  
15  to you, sir, was has that happened with MPI?

16                  MR. ARTHUR TABACHNECK:    Not that I'm  
17  aware of.

18  
19   (BRIEF PAUSE)

20  
21                  MR. RAYMOND OAKES:    I'm going to refer  
22  you in Appendix I to the second page of that.  It's the  
23  portion of the answer of A.3 at the second page.  There's  
24  a table which is a detailed data and simulation.

25                  When I read that table it says to me that

1 the effect of loss transfer on private passenger vehicles  
2 would be .1 percent; is that correct?

3 MR. ARTHUR TABACHNECK: I did not prepare  
4 this table and it's outside of my area of expertise, but  
5 I'm reading the same thing as you are, yes.

6 MR. RAYMOND OAKES: Thank you for that.  
7 How does CLEAR deal with injury costs?

8 MR. ARTHUR TABACHNECK: CLEAR does not  
9 deal with injury costs, just accident benefit, frequency  
10 of claim.

11 MR. RAYMOND OAKES: And how many rate  
12 groups are used for accident benefits?

13 MR. ARTHUR TABACHNECK: Five (5).

14 MR. RAYMOND OAKES: And how many for  
15 collision and comprehensive benefits?

16 MR. ARTHUR TABACHNECK: It's dependent  
17 upon where in the comp -- where in the Country and which  
18 particular CLEAR table. I believe Manitoba is using  
19 ninety-nine (99) rate groups.

20 MR. RAYMOND OAKES: So, ninety-nine (99)  
21 as opposed to just five (5) for accident benefits; is  
22 that correct?

23 MR. ARTHUR TABACHNECK: That is correct.

24 MR. RAYMOND OAKES: Why would there be so  
25 few for accident benefits?

1                   MR. ARTHUR TABACHNECK: It is a function  
2 of how well we can differentiate between vehicles,  
3 credibly differentiate, and for accident benefits, the  
4 distributions only appear to lend themselves to provide  
5 for five (5) different ratings.

6                   MR. RAYMOND OAKES: So, there's data  
7 limitations and it's just more applicable to collision  
8 than to accident benefits?

9                   MR. ARTHUR TABACHNECK: So far, according  
10 to our modelling, yes.

11                  MR. RAYMOND OAKES: Did I understand your  
12 testimony previously that third-party -- the third-party  
13 component of collision in Ontario is anticipated to be  
14 added by CLEAR?

15                  MR. ARTHUR TABACHNECK: It is not  
16 specifically third-party, it's the no-fault property  
17 damage, yes.

18                  MR. RAYMOND OAKES: What would no-fault  
19 property damage be?

20                  MR. ARTHUR TABACHNECK: I'm sorry, I said  
21 no-fault; the direct compensation property damage.

22                  MR. RAYMOND OAKES: Can you tell me sir,  
23 is the data used for determining CLEAR rate groups, 100  
24 percent credible?

25                  MR. ARTHUR TABACHNECK: I don't think

1 I've ever found any data that -- well, depending upon  
2 your definition of credible; credible as opposed to a  
3 valid; credible in terms of sufficiently representative  
4 to provide a -- for a 95 percent confidence interval plus  
5 or minus 5 percent error, yes, it is.

6 MR. RAYMOND OAKES: And what -- what  
7 would be the credibility factor used?

8 MR. ARTHUR TABACHNECK: That is the  
9 credibility factor used; the amount of data we need to  
10 ensure that we can achieve -- that it is 95 percent  
11 representative.

12

13

(BRIEF PAUSE)

14

15 MR. RAYMOND OAKES: You'd agree with me,  
16 sir, that CLEAR is not concerned with adjustment at a  
17 major use group level of insurance rate making?

18 MR. ARTHUR TABACHNECK: That is correct.

19 MR. RAYMOND OAKES: And you've indicated  
20 you're not an expert at loss transfer but just based on  
21 your brushing up with the concept over the years, you  
22 would have some understanding that loss transfer could be  
23 done at various levels?

24

MR. ARTHUR TABACHNECK: That is correct.

25

1 (BRIEF PAUSE)

2  
3 MR. RAYMOND OAKES: With respect to the  
4 applicability of severity or the CLEAR Program's attempts  
5 to introduce the element of severity into their  
6 calculations, how long has IBC been working on that?

7 MR. ARTHUR TABACHNECK: I believe we have  
8 been attempting to apply severity ever since the creation  
9 of the CLEAR model, which was -- initial efforts were  
10 started in 1989.

11 MR. RAYMOND OAKES: And there's currently  
12 no implementation date set?

13 MR. ARTHUR TABACHNECK: No. Other than  
14 in Quebec, but then again, we're looking at a different  
15 set of data, different type of data, and it may not be  
16 applicable to the rest of the Country.

17 MR. RAYMOND OAKES: Now you also  
18 mentioned that IBC would prefer to incorporate a third-  
19 party coverage aspect to the CLEAR rating?

20 MR. ARTHUR TABACHNECK: Not prefer to. I  
21 know, all of our members in all the provinces that we do  
22 provide CLEAR Tables for, would appreciate our being able  
23 to provide third-party ratings, but we haven't had  
24 sufficient data to provide credible ratings for a third-  
25 party.

1                   MR. RAYMOND OAKES:    And the members would  
2 appreciate that because they have a concern over the risk  
3 posed to other insured by certain vehicles?

4                   MR. ARTHUR TABACHNECK:    Yes, I would  
5 agree with that.

6                   MR. RAYMOND OAKES:    And, in fact, it  
7 would be more fair to reflect that risk that's posed to  
8 other insured's as a result of the characteristics of  
9 certain vehicles?

10                  MR. ARTHUR TABACHNECK:    Again, as far as  
11 the actual impact of society, and the rights and wrongs  
12 of it, are out of my area of expertise.

13                  MR. RAYMOND OAKES:    You provided some  
14 anecdotal type of comments about safety features, and  
15 their effects on loss costs.  Would you agree with me  
16 that the introduction of safety features like ABS and the  
17 side and front airbags, increased the cost of a repair?

18                  MR. ARTHUR TABACHNECK:    The cost of a  
19 collision repair, most definitely.

20                  MR. RAYMOND OAKES:    And that could be  
21 substantially, given the complexity of some of those  
22 systems.

23                  MR. ARTHUR TABACHNECK:    Replacing an  
24 airbag may cost between twenty-five hundred (2500) and  
25 five thousand dollars (\$5,000).

1                   MR. RAYMOND OAKES:    Or more if there's  
2 curtain side airbags?

3                   MR. ARTHUR TABACHNECK:   More per airbag  
4 and type of airbag.

5                   MR. RAYMOND OAKES:    And so when a  
6 consumer goes to select a vehicle based on safety, in  
7 fact that vehicle may cost more to insure, because in the  
8 CLEAR ratings, that would take into account these  
9 additional substantial costs of repair?

10                  MR. ARTHUR TABACHNECK:   That is correct.  
11 It would -- CLEAR would provide a lower rating on a  
12 safety feature for accident benefits, if it reduced the  
13 frequency of the claim, it would provide a higher rating,  
14 if it increased the cost of the claim, whether that be  
15 for collision or comprehensive.

16                  MR. RAYMOND OAKES:    Just referring to  
17 your answer in A.4, if you could have that in front of  
18 you, sir, please?

19                  In that second part of the answer dealing  
20 with Manitoba, would you agree with me that what follows  
21 from the statement, that all vehicles are insured by MPI  
22 and no actual transfer of funds is necessary, that in  
23 Manitoba it is easier to do loss transfer than in perhaps  
24 other systems that don't have a monopoly?

25                  MR. ARTHUR TABACHNECK:   While it's

1 outside of my area of expertise, I would presume that  
2 would be correct.

3 MR. RAYMOND OAKES: Thank you. Those are  
4 my questions.

5 THE CHAIRPERSON: Thank you, Mr. Oakes.  
6 For MUCDA, Mr. Roberts...?  
7

8 CROSS-EXAMINATION BY MR. NICK ROBERTS:

9 MR. NICK ROBERTS: Does CLEAR apply to  
10 dealer plated vehicles?

11 MR. ARTHUR TABACHNECK: Only to the  
12 private passenger fleet, so, no.

13 MR. NICK ROBERTS: Do you collect any --  
14 any data from dealers?

15 MR. ARTHUR TABACHNECK: No, we collect --  
16 for CLEAR purposes, no commercial data. Just private  
17 passenger, not including farmers.

18 MR. NICK ROBERTS: That's all the  
19 questions I have, Mr. Chairman.

20 THE CHAIRPERSON: Thank you.  
21 I don't believe Mr. Majer is here, so  
22 we'll move on to Mr. Dawson.

23 MR. ROBERT DAWSON: Thank you, Mr.  
24 Chairman, just a very quick line of questioning, if I  
25 may.

1

2 CROSS-EXAMINATION BY MR. ROBERT DAWSON:

3 MR. ROBERT DAWSON: Mr. Tabachneck, you  
4 said, if I remember correctly, that when a new vehicle is  
5 introduced to the market, you obviously have no past data  
6 to go on; is that right?

7 MR. ARTHUR TABACHNECK: That is correct.  
8 Well, we have the past data of similar vehicles.

9 MR. ROBERT DAWSON: But, not for that  
10 particular vehicle?

11 MR. ARTHUR TABACHNECK: Not for that  
12 particular vehicle.

13 MR. ROBERT DAWSON: And in that  
14 particular case what you do, as you said, you rely upon  
15 vehicle characteristics that have been supplied to you by  
16 the manufacturer of that new vehicle; is that right?

17 MR. ARTHUR TABACHNECK: We rely on a  
18 statistical model, based on predicting loss costs from  
19 the characteristics provided by manufacturers, yes.

20 MR. ROBERT DAWSON: And the resulting  
21 CLEAR data then is -- is obviously considered to be  
22 reliable at that time?

23 MR. ARTHUR TABACHNECK: Credible, yes.

24 MR. ROBERT DAWSON: Credible. And it's  
25 obviously still used?

1 MR. ARTHUR TABACHNECK: Yes.

2 MR. ROBERT DAWSON: And am I correct that  
3 every year you will refine that data to improve its  
4 credibility?

5 MR. ARTHUR TABACHNECK: Every year we  
6 refine the end ratings of both by improving the  
7 statistical models, because statistical models by  
8 definition do get stale over time, and have to be  
9 refreshed and redeveloped, as well as every year we also  
10 modify those ratings, adjust those ratings, based on the  
11 most recent experience.

12 MR. ROBERT DAWSON: And your goal in all  
13 this, among other things, is certainly to make those  
14 ratings more -- more credible?

15 MR. ARTHUR TABACHNECK: More accurately  
16 reflective of the actual loss costs that are incurred.

17 MR. ROBERT DAWSON: Okay. Would it be  
18 fair to say then that the CLEAR system generally, is  
19 evolving over time?

20 MR. ARTHUR TABACHNECK: Yes.

21 MR. ROBERT DAWSON: Now we've talked  
22 about adding new cars. You've also talked about CLEAR,  
23 if I understood correctly, takes into account  
24 developments in the insurance industry, such as for  
25 example, the introduction of direct compensation in

1 Ontario and Quebec?

2 MR. ARTHUR TABACHNECK: Correct.

3 MR. ROBERT DAWSON: And you've also taken  
4 into account to a certain extent, the Ontario loss  
5 transfer?

6 MR. ARTHUR TABACHNECK: That is correct.  
7 Although, as I mentioned, it didn't have any effect so  
8 there was nothing to take into --

9 MR. ROBERT DAWSON: That's the next  
10 question I was just going to pose. That's fine.

11 But, nonetheless, you did take into  
12 account the fact that there were -- there was that change  
13 in the insurance industry?

14 MR. ARTHUR TABACHNECK: Yes. As with any  
15 type of modelling-based system, the modellers have to be  
16 aware of the data and its ramifications.

17 And so any time that there is a change in  
18 any of the insurance data that CLEAR is based on, we have  
19 to review it to make sure that it remains consistent to  
20 how it has been used in the past.

21 MR. ROBERT DAWSON: Thank you. Those are  
22 my questions, Mr. Chairman.

23 THE CHAIRPERSON: Thank you, Mr. Dawson.

24 I don't believe Scootering is here yet, so  
25 Mr. Miller...?

1                   MR. DON MILLER:    Mr. Chairman, we have no  
2 questions.  Thank you.

3                   THE CHAIRPERSON:    Thank you, sir.

4                   Okay, we'll be going back to Board Counsel  
5 now for closing cross.  So I think what we'll do is we'll  
6 take a fifteen (15) minute break now.  Thank you.

7

8 --- Upon recessing at 10:20 a.m.

9 --- Upon resuming at 10:40 a.m.

10

11                   THE CHAIRPERSON:    Welcome back, everyone.  
12 Board Counsel has a few follow-up questions.

13                   Ms. Everard...?

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

16

17 RE-CROSS-EXAMINATION BY MS. CANDACE EVERARD:

18                   MS. CANDACE EVERARD:    Mr. TABACHNECK...?

19                   MR. ARTHUR TABACHNECK:    Yes, ma'am.

20                   MS. CANDACE EVERARD:    We just have a few  
21 follow-up questions.

22                   You said in your evidence earlier that  
23 going forward Quebec will be providing information to IBC  
24 that wasn't provided before, correct?

25                   MR. ARTHUR TABACHNECK:    That is correct.

1 They've been providing it now for the past two (2) years.

2 MS. CANDACE EVERARD: So, they have been  
3 providing information for the last two (2) years?

4 MR. ARTHUR TABACHNECK: Had been, but we  
5 have not incorporated it into the Canada-wide CLEAR  
6 models and just -- this year is the first year we'll be  
7 actually providing a model for Quebec accident benefits.

8 MS. CANDACE EVERARD: So, if I understand  
9 you correctly, it's not that Quebec will be providing  
10 different or more information, it's just that IBC will be  
11 treating that information differently upon receipt; is  
12 that correct?

13 MR. ARTHUR TABACHNECK: It's that we will  
14 be getting an additional population of approximately 4  
15 million vehicles concerning accident benefits that we  
16 never had before to add into our analysis.

17 MS. CANDACE EVERARD: Is it still limited  
18 to just private passenger vehicles?

19 MR. ARTHUR TABACHNECK: Yes, it is.

20 MS. CANDACE EVERARD: Sir, you also  
21 commented that CLEAR is an evolving system and can you  
22 advise the Board, given the influx of information from  
23 Quebec and other changes that may occur dealing with  
24 accident benefits or third-party claims, is it your  
25 expectation that or is there a risk that the rate

1 groupings will change significantly as a result of  
2 different and more information being provided?

3 MR. ARTHUR TABACHNECK: Part of the  
4 methodology is to ensure that all change only occurs  
5 gradually.

6 MS. DENYSE COTE: I'm sorry, I didn't  
7 catch the last part?

8 MR. ARTHUR TABACHNECK: Part of the CLEAR  
9 methodology is that any change that occurs only occurs to  
10 the ratings gradually in a systematic manner.

11  
12 CONTINUED BY MS. CANDACE EVERARD:

13 MS. CANDACE EVERARD: How does IBC ensure  
14 that a gradual change occurs, if there is a significant  
15 influx in information or a change in the system?

16 MR. ARTHUR TABACHNECK: We ensure that a  
17 rating -- actually there's about three (3) or four (4)  
18 controls that go into how quickly a rating can change.

19 But it's typically allowed not to change  
20 by any more than 10 or 15 percent in a given year.

21  
22 (BRIEF PAUSE)

23  
24 MS. CANDACE EVERARD: Sir, you also  
25 testified earlier with respect to the fact that IBC

1 tracks frequency information as opposed to severity.

2 Now, if I understood you correctly, that  
3 relates to accident benefits that IBC tracks frequency  
4 but -- but not severity; is that correct?

5 MR. ARTHUR TABACHNECK: We track both but  
6 we do not include severity in our accident benefit  
7 models.

8 MS. CANDACE EVERARD: Now, what about  
9 with respect to collision; is it the case that both  
10 frequency and severity of claims are included in CLEAR?

11 MR. ARTHUR TABACHNECK: Yes, both for  
12 collision and for comprehensive coverages.

13 MS. CANDACE EVERARD: What about in the  
14 Quebec context going forward?

15 MR. ARTHUR TABACHNECK: In the Quebec  
16 context going forward, both frequency and severity are  
17 being included.

18 MS. CANDACE EVERARD: And is this the  
19 first year that that's the case?

20 MR. ARTHUR TABACHNECK: Yes, it is.

21 MS. CANDACE EVERARD: Sir, does CLEAR  
22 take into account the number of vehicles, that is the  
23 number of particular model of vehicle, in a particular  
24 province?

25 So, for example, if in Manitoba there are

1 a lot of Ford Taurus' on the road, just as an example,  
2 and hence more Ford Taurus' are involved in collisions,  
3 just because there are more of them, is that a -- an  
4 aspect that is taken into account in CLEAR?

5 MR. ARTHUR TABACHNECK: That's taken into  
6 account by definition of frequency which is number of  
7 claims of a particular model divided by the number of  
8 vehicles of that particular model.

9

10 (BRIEF PAUSE)

11

12 MS. CANDACE EVERARD: Mr. TABACHNECK, has  
13 IBC ever had its CLEAR model assessed by an independent  
14 actuary?

15 MR. ARTHUR TABACHNECK: CLEAR is overseen  
16 by a committee of actuaries that review it twice a year.  
17 So, they review all aspects of the CLEAR methodology.

18 MS. CANDACE EVERARD: And are those  
19 independent actuaries?

20 MR. ARTHUR TABACHNECK: These are  
21 representatives -- actually we have a representative from  
22 -- Don Palmer from MPI is on our committee and the top  
23 actuaries throughout the country are requested to be on  
24 our committee.

25 MS. CANDACE EVERARD: Sir, you mentioned

1 earlier in your evidence that the attempt or the goal of  
2 CLEAR is to maintain fairness and equity.

3 Can you explain what that concept means?

4 MR. ARTHUR TABACHNECK: It's the concept  
5 of, at least from a first-party coverage, that one will  
6 pay for their insurance relative to what the costs are to  
7 insure that particular type of vehicle.

8 MS. CANDACE EVERARD: And would that  
9 concept be applied to a loss transfer system in the same  
10 way?

11 MR. ARTHUR TABACHNECK: Since we've never  
12 incorporated loss transfer without -- we'd have to know  
13 what the loss transfer was to know whether or not it  
14 would be.

15 MS. CANDACE EVERARD: What's the case  
16 with respect to the Ontario model for loss transfer?

17 MR. ARTHUR TABACHNECK: The case of the  
18 Ontario model, it has no effect on CLEAR's current  
19 methodology.

20 MS. CANDACE EVERARD: So, it's fair and  
21 equitable?

22 MR. ARTHUR TABACHNECK: Yes.

23 MS. CANDACE EVERARD: Sir, can you tell  
24 the Panel whether CLEAR is based on a model from another  
25 country or is it something that's unique to Canada?

1                   MR. ARTHUR TABACHNECK: It is currently  
2 unique to Canada although numerous other countries and  
3 companies in the US have been interested in trying to  
4 incorporate it. So, far South Africa, Korea, Japan,  
5 China and England, have all looked into possibly adopting  
6 the same type system.

7                   But, it was originated in Canada and  
8 currently to the best of my knowledge, we're the only  
9 ones who are using a CLEAR type model today.

10                  MS. CANDACE EVERARD: Thank you.

11                  MR. ARTHUR TABACHNECK: You're welcome.

12                  MS. CANDACE EVERARD: Thank you sir. I  
13 have no further questions.

14                  THE CHAIRPERSON: Thank you very much.

15                  MR. ARTHUR TABACHNECK: Thank you for  
16 having us.

17                  THE CHAIRPERSON: I greatly appreciate  
18 your attendance and your responses to the questions posed  
19 to you. Thank you.

20                  MR. ARTHUR TABACHNECK: A pleasure to  
21 come.

22

23

(BRIEF PAUSE)

24

25

THE CHAIRPERSON: Okay. We're going to

1 proceed now for the cross-examination of the  
2 representative from the Financial Services Commission of  
3 Ontario, Ms. Hall.

4                   And we would commence with welcome first,  
5 and we'll commence with Board Counsel, Mr. Saranchuk?

6                   MR. WALTER SARANCHUK:   Maybe what we'll  
7 do is commence with the swearing in of the Witness, Mr.  
8 Chairman.

9                   THE CHAIRPERSON:   That would probably be  
10 a better idea.

11

12                                   DARLENE HALL, Sworn

13

14 CROSS-EXAMINATION BY MR. WALTER SARANCHUK:

15                   MR. WALTER SARANCHUK:   Ms. Hall, your  
16 position is indicated as the Director of the Automobile  
17 Insurance Services Branch of the Financial Services  
18 Commission of Ontario; is that correct?

19                   MS. DARLENE HALL:   That's correct.

20                   MR. WALTER SARANCHUK:   Now, just by way  
21 of background before we deal with the specifics in the  
22 submission that you were good enough to prepare, can you  
23 tell us about your personal background, in terms of  
24 education and training and experience in the insurance  
25 industry, particularly, automobile?

1 MS. DARLENE HALL: Sure. In terms of my  
2 educational background, I have a Bachelor of Mathematics,  
3 a Masters of Business Administration and I'm a Certified  
4 Management Accountant.

5 I've been involved in automobile insurance  
6 regulation over the last seventeen (17) years; first with  
7 the Ontario Automobile Insurance Board. As a result of  
8 changes in legislation that organization was merged into  
9 the Ontario Insurance Commission in 1990.

10 And as a result of further changes, the  
11 Ontario Insurance Commission, its functions were merged  
12 into the Financial Services Commission of Ontario, in  
13 1998.

14 My current responsibilities include,  
15 review and approval of automobile insurance rates in  
16 Ontario, oversight of actuarial functions, oversight of  
17 auto insurance compliance by insurers and other  
18 stakeholders, and also responsible for the motor vehicle  
19 accident claims fund in the Province.

20 MR. WALTER SARANCHUK: Thank you, ma'am.  
21 In terms of a description of FSCO, or the Financial  
22 Services Commission of Ontario, can you advise the Board  
23 of the -- of the nature of that Commission?

24 MS. DARLENE HALL: Sure. FSCO is an  
25 agency of the Government of Ontario. It reports through

1 to the Ministry of Finance and the Minister of Finance.

2 It's a separate organization, the  
3 superintendent of financial services is also the CEO and  
4 is responsible for regulatory decisions of FSCO. So it  
5 is an agency of government and I am a civil servant.

6 MR. WALTER SARANCHUK: And so can one  
7 conclude from that that the points of view revealed or  
8 dealt with in the submission are therefore reflective of  
9 the Government of Ontario, through FSCO?

10 MS. DARLENE HALL: Yes, I think what's  
11 provided here is the background in terms of what's  
12 happened with regulations and legislation over time.

13 In terms of major policy decisions that  
14 involve legislation or regulations, fiscal deals with the  
15 Ministry of Finance and of course the Minister on  
16 matters.

17 MR. WALTER SARANCHUK: Thank you. Now,  
18 while I'll have some questions for you Ms. Hall, in what  
19 can be termed a cross-examination, the point is that I  
20 think we could start, or should start with giving you an  
21 opportunity to elaborate on the submission that you were  
22 good enough to submit, or prepare and file with the  
23 Board.

24 And in that regard, I will just try to  
25 lead you through that so that you can review for

1 edification of all of us present, some of the highlights,  
2 in brief form, and then we'll ask you some, perhaps, more  
3 penetrating questions about that.

4 Is that satisfactory?

5 MS. DARLENE HALL: Sure, that's fine.

6 MR. WALTER SARANCHUK: So, just dealing  
7 with your submission which is at Tab 2 in the Book of  
8 Documents, you start with dealing with the background of  
9 the Ontario system, and you indicate that the Ontario  
10 Motorist Protection Plan was introduced in 1990; is that  
11 when Loss Transfer was initiated?

12 MS. DARLENE HALL: That's correct. In  
13 1990 the system was changed from primarily a Tort based  
14 system to a no-fault system, and at that time loss  
15 transfer was introduced.

16 MR. WALTER SARANCHUK: Yes. And in  
17 Appendix I, as noted on the first page at the top in your  
18 submission, in Appendix I the changes implemented from  
19 some recent past are identified in Appendix I as I  
20 stated; is that correct?

21 MS. DARLENE HALL: That's correct.

22 MR. WALTER SARANCHUK: And Appendix II,  
23 according to the submission, provides a high level  
24 summary of the current Ontario system, which as I  
25 understand it includes Tort as well as a no-fault

1 concept?

2 MS. DARLENE HALL: That's right. It --  
3 it's a threshold, no-fault system that is in place  
4 currently.

5 MR. WALTER SARANCHUK: And, of course  
6 Appendix II sets out the -- the thresholds and -- and  
7 indicates just what the other coverages are under your  
8 plan.

9 In terms of the background that gave rise  
10 to the implementation of loss transfer back some fifteen  
11 (15) years ago, that's dealt with on the first page and  
12 I'm just looking now for some clarification or perhaps  
13 elaboration on what's indicated in the second paragraph  
14 where you say that:

15 "The need for a mechanism to balance  
16 the costs of a first-party or no-fault  
17 insurance system between a different  
18 class of vehicles was reviewed in 1989  
19 in a reference hearing held by the  
20 OAIB, the Ontario Automobile Insurance  
21 Board."

22 Can you give us a little bit of  
23 information on that?

24 MS. DARLENE HALL: Sure. At -- at that  
25 time in Ontario, I -- I guess there had been a large

1 premium inadequacy that had been identified, and -- and  
2 the Government thought it appropriate to examine  
3 different systems of compensation and the Auto Insurance  
4 Board was requested to hold a reference hearing into  
5 various no-fault systems.

6                   A couple of the examples I think that were  
7 looked at were ones in Michigan and New York, and also a  
8 choice system for compensation.

9                   And the Board examined information and had  
10 evidence presented by witnesses, I think, from insurance  
11 departments in both New York and Michigan, and also  
12 obtained further information through evidence that was  
13 provided at that hearing.

14                   MR. WALTER SARANCHUK:   And in terms of  
15 the shift from a third-party to a first-party system,  
16 according to your submission, this is the last sentence  
17 or two (2) in your last paragraph on the first page that  
18 the Board concluded that:

19                   Including some vehicles in a threshold,  
20 no-fault system could lead to a  
21 significant increase in the cost and  
22 reduced availability of insurance,  
23 where for example the report cited the  
24 decision in various US jurisdictions  
25 which excluded motorcycles from the no-



1 Ontario, there are -- it's a private insurance scheme,  
2 and so there are hundreds of insurers, basically, whose  
3 interests would be affected?

4 MS. DARLENE HALL: Yeah, there are  
5 approximately just over a hundred (100) insurers  
6 operating in Ontario, in terms of the types of categories  
7 of vehicles, the -- the number of insurers participating  
8 varies, but...

9 MR. WALTER SARANCHUK: And in the second  
10 paragraph at the top of page 2, you address the situation  
11 in terms of transferring the compensation cost to  
12 different insurers.

13 And there's reference to the private  
14 passenger or smaller vehicles involved, and also there  
15 was -- there's a reference to that perhaps there would be  
16 a less incentive for trucking companies to participate,  
17 and I think you referred to that, in safety programs,  
18 reference to heavy commercial trucks.

19 Could you just elaborate on those two (2)  
20 points please?

21 MS. DARLENE HALL: I think particularly  
22 with the heavy commercial vehicles that under a Tort  
23 system, would normally pay out more, and under a no-fault  
24 system not pay out as much unless there was some  
25 mechanism in terms of a cost transfer, that this was

1 recognized in -- in terms of the evidence that was  
2 presented at the Board Hearings.

3           And I think there was also some suggestion  
4 that in terms of responsibility that it could lead to,  
5 for example, what's mentioned here, trucking companies  
6 not wanting to participate in safety programs.

7           So I guess that the end result could be  
8 that the -- the change in the type of compensation would  
9 -- would impact their cost structure, so, they may review  
10 issues like this differently, depending on the type of  
11 compensation system.

12           MR. WALTER SARANCHUK: Yes, thank you.  
13 And there's reference, of course, in quotes in the second  
14 line of that second paragraph. The concern was that in  
15 respect of trucks, they -- because they are bigger and  
16 heavier, they can cause a lot of damage to small vehicles  
17 and their occupants, while the truck occupants would be  
18 less likely to be seriously injured.

19           And that of course is part of the mix that  
20 you were talking about, in terms of the effect of a  
21 transfer under a first-party system?

22           MS. DARLENE HALL: That's correct.

23           MR. WALTER SARANCHUK: And we'll deal  
24 with the excerpt that you've included in your report in  
25 Appendix III, the excerpt from the Hearing of the Board,

1 the Insurance Board, in -- in a short while.

2 But again, looking at your submission with  
3 reference to Appendix IV, that provides a big -- a  
4 background, as to the vehicle population in Ontario, as  
5 at December 31, 2003; is that correct?

6 MS. DARLENE HALL: That's correct. And  
7 that's from the Ministry of Transportation statistics.

8 MR. WALTER SARANCHUK: Yes, and just if  
9 you will, take my calculation, just in very general  
10 terms, my understanding is that in Manitoba at  
11 approximately that time, February -- the end of February  
12 2004, for example, as opposed to December 31, 2003,  
13 that's shown in Appendix number IV, in Manitoba the total  
14 vehicle population was about five hundred and thirty-five  
15 thousand (535,000) vehicles, and my calculation is that  
16 it's just under 5.5 percent of the vehicle population in  
17 Ontario.

18 So, on the face of it again, my  
19 calculation is very rough, Ontario would appear to have  
20 twenty (20) times the vehicle population of Manitoba.

21 MS. DARLENE HALL: That's -- that's  
22 approximately correct.

23 MR. WALTER SARANCHUK: Yes. And moving  
24 on through your submission here, in Part 4 on page 2  
25 there's reference to how the loss transfer mechanism

1 works in Ontario and there's a definition in the second  
2 last paragraph and there's an indication as to what  
3 happens in terms of the disputes that might arise between  
4 insurers.

5                   What can you tell us about the loss  
6 transfer definition; can you just refer to that and  
7 elaborate please?

8                   MS. DARLENE HALL:    Sure.  I guess it's --  
9 it's the process by which the first-party insurer that's  
10 responsible for paying the no-fault accident benefits is  
11 reimbursed by the insurer of the second vehicle or the  
12 second party insurer.

13                   So, there is a process established.  There  
14 are certain conditions under which this mechanism is put  
15 into place and those are further elaborated on in the  
16 text.

17                   MR. WALTER SARANCHUK:    Yes, so that on  
18 that score if we can just move on to page 3 and deal with  
19 the different vehicle classes.  First of all, motorcycles  
20 where -- there is also reference to snowmobiles and  
21 ATV's, perhaps you can just explain what the system is in  
22 that respect?

23                   MS. DARLENE HALL:    I guess generally that  
24 people that would drive these types of vehicles are --  
25 are more susceptible to injury and there would be loss

1 transfer where those vehicles are involved with, I would  
2 call it, a larger vehicle so it would be a private  
3 passenger vehicle, a commercial vehicle.

4                   So, loss transfer would take place there.  
5 There is a provision though with regard to loss transfer  
6 overall, that it only occurs after the first two thousand  
7 dollars (\$2,000) in accident benefits has been paid.

8                   And this is to, I guess, reduce friction  
9 costs.

10                   MR. WALTER SARANCHUK:    Could you just  
11 explain the last term?

12                   MS. DARLENE HALL:    I think it's just that  
13 for a minimal of dollar payment the -- there would be  
14 administrative costs involved in -- in transferring the -  
15 - the accident benefits.  So, if it's below two thousand  
16 dollars (\$2,000) it felt that it wasn't an efficient  
17 process to actually engage in loss transfer.

18                   MR. WALTER SARANCHUK:    There would be  
19 enough of an administrative battle, if you will, between  
20 the insurers for anything over two thousand dollars  
21 (\$2,000)?

22                   MS. DARLENE HALL:    That's right.

23                   MR. WALTER SARANCHUK:    So, just by way of  
24 an example, if we have a vehicle collision involving a  
25 motorcycle and a private passenger vehicle or a

1 commercial truck in Ontario and the accident benefit's  
2 paid out and, let's put it this way, that the  
3 motorcyclist is not at fault, if there's a five thousand  
4 dollar (\$5,000) payout by the first-party insurer in  
5 respect of accident benefits, then what happens?

6 MS. DARLENE HALL: You would deduct the  
7 two thousand (2,000), so the three thousand dollars  
8 (\$3,000) left would be transferred.

9 MR. WALTER SARANCHUK: And, effectively,  
10 the first-party insurer is reimbursed by the third-party  
11 insurer covering the other vehicle involved?

12 MS. DARLENE HALL: That's correct.

13 MR. WALTER SARANCHUK: And moving on to  
14 large commercial vehicles, perhaps you can just explain  
15 or elaborate on what you've noted there in Part B on page  
16 3?

17 MS. DARLENE HALL: Sure. The loss  
18 transfer mechanism applies to large commercial vehicles  
19 and large is considered over forty-five hundred (4500)  
20 kilograms. So, any of these types of commercial vehicles  
21 involved with a -- a smaller vehicle, whether it's a  
22 private passenger vehicle or it could be a small  
23 commercial vehicle like a company car or van, there --  
24 there would be, again, loss transfer that would be  
25 applicable.

1 MR. WALTER SARANCHUK: So, in very  
2 general terms, we're talking about semi-trailer trucks  
3 and dump -- large dump trucks and that type of thing?

4 MS. DARLENE HALL: That's correct.

5 MR. WALTER SARANCHUK: And just on a very  
6 general basis, looking at the Ontario plan, is it fair to  
7 say that when you look at the loss transfer concept in  
8 place, that for motorcycles it's a one-way system out of  
9 that class.

10 For private -- for commercial vehicles,  
11 it's a one-way system into that class, in terms of the  
12 loss costs. And for private passenger vehicles, it's  
13 both?

14 MS. DARLENE HALL: That's correct. And I  
15 think it's due to the nature of injuries that would  
16 normally be sustained.

17 MR. WALTER SARANCHUK: And of course,  
18 this just relates to accident benefits?

19 MS. DARLENE HALL: That's correct.

20 MR. WALTER SARANCHUK: Now, moving on to  
21 page 5, dealing with your submission at a high level,  
22 before we get into perhaps the more penetrating  
23 questions, if you will.

24 There's reference to the loss transfer  
25 experience from 1990 through to 2004, and that includes

1 reference to Appendix VII in your report.

2           And, of course, there are essentially  
3 three (3) pages that comprise Appendix VII; the first one  
4 (1) dealing with private passenger automobile vehicles,  
5 the experience there.

6           And as I understand it, the transfer  
7 experience is such that on a combined basis, over that  
8 entire period of time, there's about 114 thousand --  
9 sorry -- \$114 million that was transferred to the  
10 commercial vehicles, amounting to about .8 percent of the  
11 total incurred accident benefits for private passenger  
12 vehicles; is that correct?

13           MS. DARLENE HALL:     That's correct.

14           MR. WALTER SARANCHUK:   And we see those  
15 figures in the bottom line, if you will, of the first  
16 page of Appendix VII?

17           MS. DARLENE HALL:     That's correct.

18           MR. WALTER SARANCHUK:   And then moving  
19 onto the next page, as I understand it, looking at the  
20 bottom line again, there's approximately \$74 million that  
21 was -- or 20.2 percent of the total incurred losses that  
22 were transferred out from private passenger or commercial  
23 vehicles; is that correct?

24           MS. DARLENE HALL:     That's correct.

25           MR. WALTER SARANCHUK:   And there is

1 reference in your report, at the top of page 6, about the  
2 experience from 1990 to 1998 and the total proportion of  
3 the accident benefits recovered by loss transfers and you  
4 talk about the small vehicle count there.

5 Can you just explain that, please?

6 MS. DARLENE HALL: This is referencing  
7 specifically the items noted in Appendix VII, page ii,  
8 which is dealing private passenger motorcycles. And just  
9 in terms of the absolute numbers, we're looking at a  
10 fairly small population, in terms of the number of  
11 motorcycles, as compared to, for example, private  
12 passenger vehicles.

13 So, there is more variability, just given  
14 the small number of vehicles that we're dealing with  
15 here. So, we do see some various results.

16 I would point out with respect to the  
17 first accident period which is 1990.1, so that would be  
18 the first half of 1990, the new system was only  
19 introduced June 22nd, 1990.

20 So, I mean that could account for that  
21 small number there. But, there is variation over time  
22 with the other numbers.

23 MR. WALTER SARANCHUK: Yes. And just  
24 harkening back to Appendix IV, for the moment and, but  
25 keeping your finger on Appendix VII, if you will, there,

1 in terms of dealing with the Ontario vehicle population  
2 as at the end of 2003, and you can appreciate, of course,  
3 we're talking almost two (2) years ago, but -- and so  
4 that the change in Manitoba would be somewhat significant  
5 as would be in Ontario, I would presume.

6 But, as at that time, motorcycles  
7 comprised 1.1 percent of the vehicle population; is that  
8 correct?

9 MS. DARLENE HALL: I believe that's  
10 correct.

11 MR. WALTER SARANCHUK: And so when you  
12 refer to the small vehicle count and the small  
13 fluctuations in the number of severe injuries from year  
14 to year; that's basically where you're coming from?

15 MS. DARLENE HALL: That's correct.

16 MR. WALTER SARANCHUK: Now, in the second  
17 paragraph on page 6 of your report, Ms. Hall, there's  
18 reference to the reasons for a decrease not being clear,  
19 and that's not the acronym, that -- not clear insofar as  
20 the significant decrease in the percentage and dollar  
21 amount of accident benefits recovered through lost  
22 transfers from 1998 to 2004 are concerned.

23 And then you indicate what perhaps may be  
24 due to maturation of claims and the like; could you  
25 elaborate on that information in that paragraph, please?

1 MS. DARLENE HALL: Sure. With regards to  
2 the amounts that are reported here, these are actual  
3 payment amounts. In terms of the process itself, I mean,  
4 the -- the first-party insurer would go to the -- the  
5 third-party insured to collect the amount owing.

6 And so that -- that in itself could take a  
7 period of time and so it -- that could be part of the  
8 explanation for why more recent years the -- the amount  
9 transferred is not as high; it does take a period of time  
10 for that to occur.

11 And also, with regard to any of the -- the  
12 amounts reported here, I'm not an actuary, but an actuary  
13 would tell you that you have to look at claims, and --  
14 because they take a long time to settle, you have to  
15 develop them to an ultimate basis to get what you really  
16 think the expected result will be for a particular  
17 accident year.

18 So, that exercise has not been gone  
19 through in terms of the statistics reported here.

20 MR. WALTER SARANCHUK: And just in terms  
21 of the procedure followed, in the event of a loss  
22 transfer scenario involving a motorcyclist, visa vie a  
23 commercial vehicle -- two vehicle accident, motorcycle  
24 not at fault, and you have a catastrophic injury claim on  
25 the part of the motorcyclist.

1                   So now, is there an -- a present value  
2 taken of the accident benefits that are presumed to have  
3 to be paid out over years at -- at an early juncture, or  
4 what happens in that event?

5                   MS. DARLENE HALL:    There could be  
6 periodic payments that are -- are made to the  
7 catastrophically injured person.  I think there is a way  
8 also for the company to enter into some sort of  
9 structured settlement, to actually settle the -- the  
10 claim outright with the injured party, so that would take  
11 into account the present value of -- of the future  
12 payments.

13                  MR. WALTER SARANCHUK:   So, what you're  
14 saying is that the claim in that kind of an event would  
15 more likely give rise to a settlement on a third-party  
16 basis, which would include the accident benefits element,  
17 paid by the third-party insurer?

18                  MS. DARLENE HALL:    Well, the -- the  
19 first-party insurer's always responsible for making the  
20 payment but then that first-party insurer would go to the  
21 third-party insurer to recoup the amount owing under loss  
22 transfer.

23                  MR. WALTER SARANCHUK:   And so in terms of  
24 a settlement involving a structure, so that -- which --  
25 perhaps you could just explain what you mean by a

1 structured settlement?

2 MS. DARLENE HALL: Insurers could enter  
3 into a -- an arrangement with an outside organization to  
4 actually look at this issue of all the future payments  
5 that would need to be made under the accident benefits  
6 system.

7 And as opposed to paying that out over a  
8 protracted period of time, they would figure out what --  
9 what should be the present value of those payments, and  
10 make a lump sum payment.

11 MR. WALTER SARANCHUK: And of course,  
12 just as an aside the advantage is that it's tax free in  
13 the hands of the accident victim?

14 MS. DARLENE HALL: I -- I'm not that  
15 clear on the tax --

16 MR. WALTER SARANCHUK: Okay, okay.

17 MS. DARLENE HALL: -- implications  
18 myself, but...

19 MR. WALTER SARANCHUK: Okay. In any  
20 event, in terms of the experience insofar as commercial  
21 vehicles are concerned, that appears in the third page of  
22 appendix 7, page III, with reference to that on page 6,  
23 the middle paragraph; what are we to conclude?

24 MS. DARLENE HALL: I think this summary  
25 for commercial vehicles, it shows that there is some

1 fluctuation in the results, as well, but over time I  
2 guess if we just look at the bottom numbers, the loss  
3 transfer amounts are 4.1 million over the period from  
4 1990 to 2004. And the percentage transferred 0.9  
5 percent.

6 MR. WALTER SARANCHUK: That leads to your  
7 commentary on page 6, dealing with Appendix VIII, under  
8 the heading, loss transfer payouts by commercial vehicles  
9 and private passenger vehicles, and perhaps we can just  
10 move onto Appendix VIII and you can elaborate on the  
11 amounts, bottom line, if you will as shown on the two (2)  
12 pages comprising Appendix VIII?

13 MS. DARLENE HALL: Okay. These are the  
14 actual loss transfer payments made for both private  
15 passenger vehicles and commercial vehicles.

16 For private passenger automobiles from  
17 1990 to 2004, the amount paid out is approximately \$122.5  
18 million or 0.7 percent of the third-party losses.

19 And for commercial vehicles, the amount  
20 paid out is 104.6 million or 6.4 percent of the third-  
21 party losses.

22 MR. WALTER SARANCHUK: Now, if I can just  
23 ask you as an aside, given that those last mentioned  
24 statistics and given the overall vehicle population in  
25 Ontario, taking into account the criteria that the Board

1 had following the Hearing, which lead to the  
2 implementation of loss transfer; has there been any  
3 conclusion drawn as to whether the objectives are being  
4 met?

5 MS. DARLENE HALL: I guess I would try to  
6 measure objectives by complaints that we receive. And I  
7 know that initially when the system was put in place  
8 there were, you know, questions as to how it worked and  
9 the mechanism.

10 And as a result of that, there were  
11 various bulletins that were issued by the Ontario  
12 Insurance Commission to clear up any confusion within the  
13 system. And so there were, I think in your package,  
14 you'll see three (3) bulletins that were issued, the last  
15 one (1) being in 1994.

16 I'm not aware of any major issues that  
17 have come to light since then.

18 MR. WALTER SARANCHUK: All right then,  
19 Ms. Hall, perhaps now we can talk in terms of, if you  
20 will, more penetrating questions. We're through with the  
21 -- dealing with the report at a higher level or at an eye  
22 level.

23 I would ask you to refer to Appendix VI,  
24 in your submission, it's at Tab 2 of Appendix VI, and in  
25 particular as you mentioned the bulletin number 11 of

1 1994.

2 Can you confirm that it really effects  
3 only accident benefit claims and only those claims for  
4 certain classes of vehicles under certain circumstances?

5 MS. DARLENE HALL: That's correct.

6 MR. WALTER SARANCHUK: And, of course,  
7 the loss transfer model operates in a competitive market  
8 in Ontario; correct?

9 MS. DARLENE HALL: That's right.

10 MR. WALTER SARANCHUK: Does the fact that  
11 Manitoba has a monopoly Crown corporation provider of  
12 basic automobile insurance in any way alter the need for  
13 or the appropriateness of using the comparable loss  
14 transfer system?

15 MS. DARLENE HALL: Well, I would think  
16 with Manitoba because you do not have, you know,  
17 individual insurance companies operating that these  
18 detailed mechanisms set out, in terms of these various  
19 forms and procedures, that you wouldn't need to go to  
20 that level of detail, in terms of, if in fact, you were  
21 to implement a loss transfer system.

22 I would -- I would suspect it would just  
23 impact the costs and the rates that would be charged.  
24 But, I wouldn't expect that you would need all these  
25 procedures that are in place in Ontario.

1                   MR. WALTER SARANCHUK:    Would it still be  
2 appropriate to apply a deductible?

3                   MS. DARLENE HALL:    I hadn't really  
4 thought about that because it -- it does have -- I mean,  
5 I think one of the reasons why the deductible was put in  
6 place is just the efficiency of the system.

7                   So I'm not sure that -- I'm not sure -- I  
8 haven't really thought about it in terms of...

9                   MR. WALTER SARANCHUK:    But on its face,  
10 it wouldn't appear to be an issue in a monopolistic  
11 environment, correct?

12                  MS. DARLENE HALL:    Yeah. I would agree  
13 with that.

14                  MR. WALTER SARANCHUK:    I also refer you  
15 to Appendix III, attached to your report. And this, of  
16 course, includes the excerpts from the hearings of the  
17 Ontario Automobile Insurance Board that you referred to  
18 earlier.

19                  Can you, in very general terms, give us  
20 some information as to the circumstances that led up to  
21 this report?

22                  MS. DARLENE HALL:    Sure. In Ontario, at  
23 that time, there had been, I think, the liability crisis  
24 and I think that was experienced elsewhere in Canada; I  
25 think that happened around 1985 or so.

1 I know that there was a committee that was  
2 struck to -- to look at that issue in particular and they  
3 did also touch on compensation system for automobile  
4 accidents.

5 That, followed by a further report by  
6 Justice Colter Osborne (phonetic) in terms of looking at  
7 the automobile insurance system in Ontario. Then that  
8 led to the creation of the Ontario Automobile Insurance  
9 Board, whose primary mandate was to actually set rates or  
10 a range of rates for insurers.

11 And as part of the hearings for that  
12 process, it was identified that the Tort system had some  
13 significant costs and that premiums were inadequate by a  
14 substantial amount.

15 And so the Government requested that a  
16 reference hearing be held on the various no-fault systems  
17 for consideration by the government. So the OAIB  
18 undertook that review, and that led to some of the  
19 material that you see here.

20 MR. WALTER SARANCHUK: So it was the  
21 government of Ontario that actually commissioned the  
22 report?

23 MS. DARLENE HALL: That's correct.

24 MR. WALTER SARANCHUK: Who authored the  
25 report?

1 MS. DARLENE HALL: The actual Ontario  
2 Automobile Insurance Board had its own chairman; it was a  
3 separate agency of government. So, this is the report of  
4 the OAIB, and that was handed over to the government.

5 MR. WALTER SARANCHUK: And, basically,  
6 this is what led to the implementation of loss transfer,  
7 a decision of the Ontario government in 1990?

8 MS. DARLENE HALL: That's correct. It  
9 led to the changes in the auto insurance product and the  
10 introduction of loss transfer.

11 MR. WALTER SARANCHUK: And just turning  
12 to the first page of the excerpt and, in particular, page  
13 390, paragraph 9.14 the first sentence being:

14 "The evidence before the Board suggests  
15 that inclusion of motorcycles under no-  
16 fault systems can lead to difficulties  
17 in terms of affordability and  
18 availability."

19 And there's reference to the experience in  
20 some of the US states, as you mentioned, Kentucky, New  
21 York, Michigan. Perhaps, at a high level, you can just  
22 elaborate on that particular paragraph?

23 MS. DARLENE HALL: Yeah. I guess the  
24 various states had various way of dealing with the issue.  
25 And so some of them actually excluded, for example,

1 motorcycles from no-fault benefits altogether. And that  
2 was their way of dealing with the system, and the  
3 problems that resulted with a -- with a no-fault based  
4 system.

5 MR. WALTER SARANCHUK: Would you give an  
6 indication as to which of the two (2) concerns was more  
7 daunting, if you will, to the government? Was it  
8 affordability, or availability, or is it a question of  
9 basically their being of equal concern?

10 MS. DARLENE HALL: I -- I would say that  
11 both are of concern, It's hard for me to sever the two  
12 (2), really, though, with regards to availability in --  
13 in Ontario, there is a -- a industry association called  
14 The Facility Association, that does provide insurance  
15 when the regular market does not provide insurance.

16 So that is a back up to regular market  
17 insurers, so there is some way of -- of making sure that  
18 consumers would still be able to purchase insurance, but  
19 it is hard to sever both affordability and availability.

20 MR. WALTER SARANCHUK: And are you  
21 speaking particularly with reference to motorcycles?

22 MS. DARLENE HALL: The -- the Facility  
23 Association is actually in place for all categories of  
24 automobile insurance, so it provides insurance private  
25 passenger vehicles, commercial vehicles, motorcycles, or

1 whatever the -- the regular market will not insure.

2 MR. WALTER SARANCHUK: In terms of  
3 estimating the impact of the introduction of a first-  
4 party system on, for example, motorcycles, as opposed to  
5 private passenger vehicles, given the vehicle population,  
6 the more -- the vehicle class of more concern would be  
7 motorcyclists; right?

8 MS. DARLENE HALL: That's correct. I  
9 mean, that would be the one that really has the issues, I  
10 think, more so in terms of both affordability and  
11 availability.

12 MR. WALTER SARANCHUK: And just with  
13 reference to paragraph 9.14, and the experience in  
14 Michigan, just by way of an example, there is reference  
15 that -- to the fact that, motorcycles are excluded from  
16 no-fault provisions, however, if they are involved in an  
17 accident with a car, the motorcyclist can collect first-  
18 party benefits from the insurer of the car, regardless of  
19 fault; that's correct?

20 MS. DARLENE HALL: Yes.

21 MR. WALTER SARANCHUK: And then Michigan  
22 made a decision to spread the cost of motorcycle-car  
23 accidents among all cars, and so that they also created  
24 the Michigan Catastrophic Claims Association, funded by  
25 assessments to all insurers; is that correct?

1 MS. DARLENE HALL: That's correct.

2 MR. WALTER SARANCHUK: So it was  
3 basically a -- an additional across-the-board assessment  
4 of premiums?

5 MS. DARLENE HALL: That's -- yeah, that's  
6 my understanding of the evidence presented.

7 MR. WALTER SARANCHUK: And at page 392,  
8 of the excerpts, paragraph 9.16:

9 "The conclusion of the Board was that  
10 motorcycles should be included within  
11 the referred threshold system subject,  
12 however, to a right of subrogation in  
13 respect of accident benefits."

14 Could you please explain that.

15 MS. DARLENE HALL: Yeah. I think the  
16 Board felt that subrogation was the best way of dealing  
17 with the potential problem with motorcyclists, so that  
18 the insurer of the motorcycle would subrogate against the  
19 at-fault party.

20 MR. WALTER SARANCHUK: And of course the  
21 way they addressed it, was by way of the loss transfer  
22 system.

23 MS. DARLENE HALL: Right. When -- after  
24 the OAIB delivered its report to the Government, and they  
25 came forward with legislation, it was a loss transfer

1 mechanism that ended up being the result.

2 MR. WALTER SARANCHUK: Were you  
3 personally part of this process in any way, Ms. Hall?

4 MS. DARLENE HALL: I was more behind the  
5 scenes in terms of research, so, not in terms of the  
6 actual policy decision, I wasn't involved.

7 MR. WALTER SARANCHUK: So you were one of  
8 the back-room persons with all of the information and --  
9 and the advice, so to speak?

10 MS. DARLENE HALL: Well, some of the  
11 information, some of the advice, I would imagine.

12 MR. WALTER SARANCHUK: And, as we  
13 discussed, the question of availability really isn't a  
14 factor in Manitoba. Do you agree with that?

15 MS. DARLENE HALL: I agree.

16 MR. WALTER SARANCHUK: So it comes down  
17 to affordability and you know that that's what's given  
18 rise, in effect, to this very hearing?

19 MS. DARLENE HALL: That's -- that's my  
20 understanding.

21 MR. WALTER SARANCHUK: To your knowledge,  
22 based on your experience, as one of the persons in the  
23 back -- backroom, if you will, at the time of the Hearing  
24 in Ontario, were there other considerations that came to  
25 play -- into play?

1 MS. DARLENE HALL: Well, I think just the  
2 whole system going from a Tort based system to a no-fault  
3 based system. I mean, everyone has a -- I guess a -- a  
4 different perception as to the rights and so on and, you  
5 know, I think for some felt, you know, giving up the  
6 right to sue in exchange for no-fault benefits that --  
7 that there was something that was being given up by  
8 certain people, I think, was probably some of the  
9 viewpoint.

10 MR. WALTER SARANCHUK: In terms of the  
11 implications of not properly, for example, addressing the  
12 affordability issue, would -- would encouraging persons  
13 to drive without insurance be one (1) of them?

14 MS. DARLENE HALL: That could potentially  
15 be the result if -- if premiums are too high, individuals  
16 might take the chance of -- of driving uninsured.

17 MR. WALTER SARANCHUK: Would another  
18 implication be a limitation of the right to choose in a  
19 compulsory insurance environment?

20 MS. DARLENE HALL: I'm not sure if I  
21 understand what you mean by "the right to choose"?

22 MR. WALTER SARANCHUK: Well, you're  
23 essentially dealing with one (1) insurance provider.

24 MS. DARLENE HALL: Yeah, that would be  
25 the other alternative. I mean, in -- in the Ontario

1 situation if a number of insurers, you know, decided not  
2 to sell the product, I mean, they could be forced to  
3 obtain insurance only from the Facility Association so.

4 MR. WALTER SARANCHUK: And when you say  
5 forced to obtain insurance from the Facility Association,  
6 what are the implications of that; are we talking about  
7 exorbitant premiums if you will, or comparatively  
8 speaking, what are the implications?

9 MS. DARLENE HALL: Normally Facility  
10 Association premiums are amongst the highest in -- in the  
11 market.

12 MR. WALTER SARANCHUK: Can you give us  
13 any indication by way of comparison, of what those might  
14 be? Are we talking about ten (10) times the going rate,  
15 two (2) times the going rate?

16 MS. DARLENE HALL: Yeah, I would think on  
17 the private passenger side, I can't recall motorcycles  
18 off hand, but I think private passenger side it's in the  
19 area of three (3) to three and a half (3 1/2) times  
20 regular market rate.

21 MR. WALTER SARANCHUK: You say you really  
22 can't give an estimate as to motorcycles, but would you  
23 agree that in the case of motorcycles, the implications  
24 would be more drastic?

25 In other words, it would be more than

1 three and a half (3 1/2) times, given what some, for  
2 example, consider to be the inherent risks involved, that  
3 type of thing?

4 MS. DARLENE HALL: Yeah, I'm not sure if  
5 I could hazard an estimate or give you a very accurate  
6 one.

7 I mean, the other I guess thing that we've  
8 seen in Ontario, is that when the product does get very  
9 expensive, people drop the physical damage coverage and  
10 just go with the mandatory coverage. And I think in the  
11 Facility Association you would tend to see people only  
12 buying compulsory coverage.

13 MR. WALTER SARANCHUK: Which would  
14 include?

15 MS. DARLENE HALL: Which would include  
16 accident benefits and third-party liability on insured  
17 automobile coverage.

18 MR. WALTER SARANCHUK: At page 391 of the  
19 excerpts in paragraph 9.15, there are certain options  
20 referred to as being available to deal with motorcycles  
21 and no-fault benefits.

22 Just reviewing those options, in bullet  
23 form there, could you explain each of those?

24 MS. DARLENE HALL: I guess the -- the  
25 first option here is really to exclude motorcycles from

1 the no-fault system entirely, and it -- and it would just  
2 be compensation through Tort.

3                   The second option here is to exclude, but  
4 you would have a minimum level of no-fault benefits.

5                   The third option here is to include with a  
6 right of subrogation. And this is the -- the  
7 recommendation that -- that the Auto Board made.

8                   And the fourth option here is some sort --  
9 some sort of cross-subsidization. I'm not totally  
10 familiar with the Hawaii experience, but it looked like  
11 some cross-subsidization would be involved.

12                   There are a couple of other ones, I guess  
13 on the next pages, as well. Each of them getting a  
14 little bit more complicated perhaps. But, the next one  
15 (1) would look to the -- a car policy, if there is a  
16 motorcycle and car accident.

17                   And the final one (1) is an assigned  
18 claims plan for motorcycles. So, it looks like some sort  
19 of pooling mechanism that would be arrived at to somehow  
20 continue to provide insurance, but, insurers would be  
21 part of an assigned claims plan for it.

22                   MR. WALTER SARANCHUK: Thank you, Ms.  
23 Hall. In Manitoba, of course, you wouldn't have a system  
24 whereby insurers are passing cheques from one (1) to  
25 another.

1                   So effectively that would really give rise  
2 to cross-subsidization, wouldn't it?

3                   MS. DARLENE HALL:    The -- I mean, the --  
4 I guess the loss costs of the pools for the different  
5 category types would be altered if you had a loss  
6 transfer mechanism.  So some would view that as cross-  
7 subsidization.

8                   MR. WALTER SARANCHUK:    Yes, at page 3 --  
9 I'm sorry, at page 2 of your report, the actual report,  
10 body of it, second paragraph at the top.  There is  
11 reference to heavy commercial vehicles with their greater  
12 potential for causing injury to occupants of smaller  
13 vehicles.

14                   And there's the comment made:

15                   "That the costs for compensating these  
16 injuries would be transferred to the  
17 insurers of private passenger or  
18 smaller vehicles.  And this cross-  
19 subsidization may lead to less  
20 incentive for trucking companies to  
21 participate in safety programs."

22                   In what sense does the absence of loss  
23 transfer, as they're described, cause cross-  
24 subsidization?  
25

1 (BRIEF PAUSE)

2  
3 MS. DARLENE HALL: I think in here the  
4 issue is that the -- I guess the fundamental change from  
5 a Torte to a first-party system, that this leads to  
6 cross-subsidization between the cross-subsidization  
7 between the costs associated with the various  
8 compensation systems.

9 So if, in fact, going to a first-party  
10 system and heavy commercial vehicles would be more likely  
11 to -- when involved with a smaller vehicle to result in  
12 injuries to the person driving the smaller vehicle, that  
13 there could be cross-subsidization of costs involved  
14 here.

15 And so that trucking companies could have  
16 less incentive to participate in safety programs because  
17 at the end of the day, in the absence of any loss  
18 transfer they wouldn't be paying out those claims, it  
19 would be the insurer of the smaller vehicle.

20 MR. WALTER SARANCHUK: Would you term  
21 that to be a public policy consideration?

22 MS. DARLENE HALL: Yes, I think it is  
23 very much so.

24 MR. WALTER SARANCHUK: Were there other  
25 public policy considerations besides wanting to provide

1 incentive safety systems?

2 MS. DARLENE HALL: I -- well, I think in  
3 terms of it, I mean the overall public policy  
4 considerations that we've already talked about, in term  
5 of, affordability and availability, those also entered  
6 into the decisions.

7 MR. WALTER SARANCHUK: What about  
8 specifically dealing with commercial trucks or heavy  
9 commercial vehicles and the introduction of loss transfer  
10 one (1) way to them, if you will.

11 Was that a public policy consideration?

12 MS. DARLENE HALL: Well, I think it just  
13 the nature of the vehicles, the ones that cause more  
14 damage are heavier vehicles or can result in more  
15 injuries.

16 So, I -- I think in terms of heavy  
17 commercial vehicles, there's not much else that can hit a  
18 heavy commercial vehicle and cause severe damage to a  
19 heavy commercial vehicle.

20 So, I think that resulted in the one-way  
21 transfer.

22 MR. WALTER SARANCHUK: Was there any  
23 consideration with the popularity of SUV's to have that  
24 same approach taken relative to those sports utility  
25 vehicles and the damage that they caused?

1 MS. DARLENE HALL: I guess I think SUV's  
2 are probably more of a recent phenomenon; wouldn't have  
3 been here at the time of the Auto Board hearings. But I  
4 think it's something that, kind of, mentioned offhandedly  
5 from time to time.

6 But I don't know that there's an accurate  
7 way of tracking the statistics for that.

8 MR. WALTER SARANCHUK: Is there anything  
9 on the, to use the vernacular, back burner, so far as  
10 FSCO is concerned to deal with that or consider it, at  
11 least?

12 MS. DARLENE HALL: I mean, I think we  
13 would consider it if it was presented. But I don't think  
14 that we really are -- I don't think the issue's been  
15 really presented to us in any formal way. So it's not  
16 something that I think is really under active  
17 consideration right now.

18 MR. WALTER SARANCHUK: Now, to the extent  
19 that loss transfer for heavy commercial vehicles singles  
20 out that one (1) class to the exclusion of others, can  
21 you comment on whether that's, indeed, fair, reasonable,  
22 non-preferential and not unfairly discriminatory, just in  
23 very general terms?

24 MS. DARLENE HALL: I guess just my  
25 understanding with the heavy commercial vehicles that --

1 that it is a one-way mechanism because there would be  
2 nothing else that could really hit a heavy commercial  
3 vehicle that would cause severe damage.

4                   So I think it just -- it works the one way  
5 just because of the nature of the vehicles involved.

6                   MR. WALTER SARANCHUK:   And, again, it  
7 comes down to public policy?

8                   MS. DARLENE HALL:   That's correct.

9                   MR. WALTER SARANCHUK:   At the top of page  
10 2 in the first paragraph, with respect to certain  
11 vehicles such a motorcycles and snow vehicles, the OAI  
12 recommended:

13                               "including these vehicles in a  
14                               threshold no-fault system while  
15                               providing for a right of subrogation in  
16                               order to balance costs of accident  
17                               benefits with other vehicles."

18                   Is it the previous concerns that we talked  
19 about of affordability and availability that led to this  
20 recommendation to balance costs?

21                   MS. DARLENE HALL:   That's my  
22 understanding.   Yes.

23                   MR. WALTER SARANCHUK:   And we might have  
24 touched upon this a little earlier.   But, thinking about  
25 it again, were there any other concerns or public --

1 public policy issues that led to the recommendation that  
2 you recall specifically?

3 MS. DARLENE HALL: I -- not that I can  
4 recall specifically. I think it -- it just had to do  
5 with the, you know, the nature of the change from a Tort  
6 to a first-party system and the impact it would have on  
7 certain categories of vehicles.

8 MR. WALTER SARANCHUK: And, of course,  
9 this balancing of costs, in fact, introduces an element  
10 of cross-subsidization in the minds of many; you agree?

11 MS. DARLENE HALL: Yeah. I think that  
12 some would view that as cross-subsidization, yes.

13 MR. WALTER SARANCHUK: And in terms of  
14 limiting loss transfer to motorcycles and snow vehicles,  
15 say to the exclusion of others, can you talk in terms of  
16 fairness and the reasonableness in non-preferential  
17 criteria in that regard?

18 MS. DARLENE HALL: I think that these  
19 classes of vehicles were identified as the ones that are  
20 most susceptible to a person being injured and, I guess,  
21 the most common in terms of the types of vehicles that  
22 could be out there that -- that could have issues.

23 So I think that was the reason for  
24 including snow vehicles, motorcycles in this mechanism.

25 MR. WALTER SARANCHUK: A public policy

1 decision?

2 MS. DARLENE HALL: That's correct.

3 MR. WALTER SARANCHUK: Moving on to page  
4 3 of your report, and the Section C, Loss Transfer Based  
5 on Fault. The last paragraph, there's reference to fault  
6 for accidents being determined according to a series of  
7 fault determination rules set out in the Ontario  
8 regulations under the Insurance Act.

9 That provides a set standard of how fault  
10 is determined in Ontario, is that correct?

11 MS. DARLENE HALL: That's correct. The  
12 fault determination rules do have I guess a series of  
13 incidents in terms of, you know, one (1) vehicle hitting  
14 another vehicle. So it does -- it does have specific  
15 types of incidents that -- that can occur, in terms of  
16 accidents.

17 MR. WALTER SARANCHUK: And these are  
18 applied by the different insurers involved in the process  
19 where there's an accident that occurs, is that correct?

20 MS. DARLENE HALL: That's correct, they  
21 would see -- they would refer to the fault determination  
22 regulation to determine which incident applies to the  
23 accident at hand.

24 MR. WALTER SARANCHUK: And that's, of  
25 course, an accident involving more than one (1) vehicle?

1 MS. DARLENE HALL: That's correct.

2 MR. WALTER SARANCHUK: And are these  
3 guidelines or strictly binding rules?

4 MS. DARLENE HALL: It is a -- a  
5 regulation under the Insurance Act, so, it is something  
6 that the insurers would use in determining fault.

7 MR. WALTER SARANCHUK: Can you give us  
8 any idea as to how extensive the resort to this practice  
9 is?

10 MS. DARLENE HALL: I would think that  
11 that -- that is the -- the standard process that is used.  
12 I think there may be one (1) exception where if the rule  
13 is not specifically spelled out in the rules, then a  
14 degree of fault is determined in accordance with the  
15 ordinary rules of loss.

16 But I would think, you know, the -- by far  
17 the majority of incidents would be set out in -- in the  
18 regulation.

19 MR. WALTER SARANCHUK: The ordinary rules  
20 of loss sometimes give rise to an arbitration, I take it?

21 MS. DARLENE HALL: That's correct.

22

23 (BRIEF PAUSE)

24

25 MR. WALTER SARANCHUK: At page 6 of your

1 report, at the very bottom, and top of page 7, with  
2 reference to stakeholder groups, you mentioned that  
3 motorcycle, snowmobile and trucking groups have, on  
4 occasion, made comments or recommendations regarding the  
5 loss transfer regulations, generally during periods of  
6 market instability. And you go on to elaborate by  
7 saying:

8 "The suggestions have ranged from  
9 expanding the scope of the loss  
10 transfer to eliminating it all  
11 together, depending on the group  
12 involved."

13 That's correct?

14 MS. DARLENE HALL: Yes, I think, for  
15 example, I think at sometimes commercial vehicle  
16 associations may have suggested eliminating it, and I  
17 think other -- other organizations, for example,  
18 motorcycle organizations may suggest that it be expanded  
19 in scope to, for example, in Ontario we have a -- a  
20 direct compensation system for vehicle damage. I think  
21 that there was a suggestion about expanding it to that as  
22 well, but...

23 MR. WALTER SARANCHUK: Can you just  
24 explain that, please.

25 MS. DARLENE HALL: In Ontario when there

1 is damage to two (2) vehicles, the -- the insurer of the  
2 -- the vehicle that -- where the driver was not at fault,  
3 they would pay for the damage, and that system was also  
4 introduced in 1990. So it's the first-party system for  
5 vehicle damage as well.

6 MR. WALTER SARANCHUK: And then they  
7 would be subrogating or be re -- and eventually  
8 reimbursed by the third-party insurer of the at-fault  
9 motorist?

10 MS. DARLENE HALL: No, there isn't  
11 subrogation.

12 MR. WALTER SARANCHUK: There isn't any.  
13 So that's what's now being contemplated, is it?

14 MS. DARLENE HALL: Well, it was a  
15 suggestion that was put forward. I'm not sure of the  
16 status on that specific issue. It's something I think  
17 that -- that Ministry of Finance would be involved in.

18 MR. WALTER SARANCHUK: And so in terms of  
19 the reference to direct payment, what did you mean by  
20 that?

21 MS. DARLENE HALL: In terms of direct  
22 compensation?

23 MR. WALTER SARANCHUK: Yes.

24 MS. DARLENE HALL: I think the suggestion  
25 was that where there is -- in terms of the direct



1 review.

2 MR. WALTER SARANCHUK: Whose rates?

3 MS. DARLENE HALL: Private passenger  
4 rates have gone down a fair bit. We've also seen  
5 motorcyclist rates fall for some companies, as well. And  
6 some on commercial vehicles.

7 MR. WALTER SARANCHUK: And so, in the  
8 case of private passenger, that would be attributable to  
9 the transfer from commercial vehicles?

10 MS. DARLENE HALL: Well, actually the  
11 nature of the changes that have been made to the  
12 insurance system over the last few years that were  
13 identified in, I think, Appendix I and II of the  
14 submission, there are several changes that have been made  
15 that have resulted in reduced claims costs in the system.

16 MR. WALTER SARANCHUK: Vis-a-vis private  
17 passenger vehicles, in terms of their experience and  
18 premium reduction, as a result of loss transfer, that  
19 would be effectively due to the fact that they are being  
20 compensated on a loss transfer from commercial trucks?

21 MS. DARLENE HALL: Yeah, that -- I mean,  
22 I think that's been, you know, the ongoing experience.  
23 The reductions that I was mentioning in the past year or  
24 so are a result of other changes to the automobile  
25 insurance system.

1 MR. WALTER SARANCHUK: So that's the  
2 streamlining of the program then?

3 MS. DARLENE HALL: Yeah, there were a  
4 number of changes in terms of the ability, in terms of  
5 the right to sue and also other measures taken with  
6 regard to, for example, whiplash and also other issues  
7 that have arisen in the automobile insurance system in  
8 Ontario.

9 And so there's been process changes made  
10 to streamline systems.

11 MR. WALTER SARANCHUK: Now, we touched  
12 upon this earlier, but, in order to conclude this line of  
13 questioning or at least my questioning.

14 With the some odd fifteen (15) years of  
15 experience approximately with loss transfer, what can you  
16 tell us about FSCO's or even Government of Ontario's  
17 satisfaction with, for example, the process, the concept,  
18 more so than the process, I guess, the concept, in terms  
19 of implementation and meeting the objectives?

20 Can you comment generally in those terms?

21 MS. DARLENE HALL: Well, I guess I think  
22 that since the system was introduced in 1990 and there  
23 were some, you know, clarifications made in terms of how  
24 the process was to work, in the early 1990's -- I mean, I  
25 think the system has worked and it really had not been an

1 issue in Ontario, for quite a period of time. So I would  
2 say, based on that, it appears that the current system is  
3 working.

4 MR. WALTER SARANCHUK: So it's adequately  
5 addressed the transition from Tort to first-party cover?

6 MS. DARLENE HALL: I would agree with  
7 that, yes.

8 MR. WALTER SARANCHUK: And would you say  
9 that that also applies, that kind of a conclusion to the  
10 public policy issues of availability and affordability?

11 MS. DARLENE HALL: I think that the loss  
12 transfer mechanism has helped with both availability and  
13 affordability.

14 MR. WALTER SARANCHUK: And in terms of  
15 what this Board has referred to as the quote "universal  
16 test for fairness" end of quote, would you describe the  
17 Ontario system to be fair?

18 MS. DARLENE HALL: Well, I -- I would  
19 think that the system is -- is -- appears to be  
20 operating. The -- I haven't heard major issues from  
21 stakeholders. So on that basis I would -- I would  
22 suggest it's fair.

23 MR. WALTER SARANCHUK: But truckers still  
24 aren't happy?

25 MS. DARLENE HALL: Well, I'm -- I haven't

1 heard loud screams lately but -- I haven't -- it has --  
2 it really has not been a significant issue in Ontario.

3 I know when I was putting together this  
4 report, it just -- we did some research but we -- you  
5 know, it hasn't been much of an issue so it took a bit of  
6 digging.

7 MR. WALTER SARANCHUK: Does your  
8 government consider this talking through FSCO and you as  
9 the Director on the Automobile side, consider the system  
10 to be reasonable?

11 MS. DARLENE HALL: I would, personally  
12 speaking, I would think that the current system is  
13 reasonable.

14 MR. WALTER SARANCHUK: And your reasons  
15 for suggesting that?

16 MS. DARLENE HALL: Just that I think the  
17 system appears to be operating. We haven't had  
18 complaints about the loss transfer mechanism in recent  
19 years, really. So I -- I think it is working.

20 MR. WALTER SARANCHUK: Another criterion  
21 is the question of whether it's non-preferential, can you  
22 comment about that, vis-a-vis the Ontario plan?

23 MS. DARLENE HALL: Non-preferential, I --  
24 I would -- I guess I -- I think that the -- you know, the  
25 key issue was really certain categories of vehicles cause

1 more damage than others and -- and this -- this mechanism  
2 provides a way to probably balance the issue in terms of  
3 a first-party delivery type of system for compensation  
4 so.

5 MR. WALTER SARANCHUK: And the last  
6 criterion that's been referred to in the past is the fact  
7 that a system is not unfairly -- not unfairly  
8 discriminatory.

9 Can you comment in those terms so far as  
10 the Ontario plan goes?

11 MS. DARLENE HALL: It would probably be  
12 similar to my -- my last answer in that we haven't really  
13 seen complaints about unfair discrimination because of  
14 loss transfer.

15 So, on that basis, I would think that it -  
16 - it's operating effectively.

17 MR. WALTER SARANCHUK: Thank you very  
18 much, Ms. Hall. Those are all my questions. But I think  
19 -- I would suggest you don't go anywhere because others  
20 might have some questions of you.

21 MS. DARLENE HALL: Sure.

22 MR. WALTER SARANCHUK: If not immediately  
23 then perhaps after lunch.

24 MS. DARLENE HALL: Okay.

25 THE CHAIRPERSON: Thank you, very much,

1 Ms. Hall.

2 I think it would probably be appropriate  
3 to take our lunch break now. We'll return at 1:30 and  
4 Mr. McCulloch will begin his cross-examination. Thank  
5 you.

6

7 --- Upon recessing at 12:00 p.m.

8 --- Upon resuming at 1:41 p.m.

9

10 THE CHAIRPERSON: You set to begin again,  
11 Ms. Hall?

12 MS. DARLENE HALL: Yes, I am, thank you.

13 THE CHAIRPERSON: Mr. McCulloch, any  
14 time.

15

16 CROSS-EXAMINATION BY MR. KEVIN MCCULLOCH:

17 MR. KEVIN MCCULLOCH: Ms. Hall, some of  
18 the things that you've been talking to us about today, go  
19 back to the -- to 1990, 1989, when Ontario introduced --  
20 first introduced the OMPP System; you'll agree with me  
21 there?

22 MS. DARLENE HALL: Yes, that's correct.

23 MR. KEVIN MCCULLOCH: And would you also  
24 agree with me that the proposal that was being put  
25 forward, namely a move to a threshold no-fault system,

1 from moving away from the Tort system for compensating  
2 automobile accident victims in Ontario, was -- was a  
3 rather radical move at the time?

4 MS. DARLENE HALL: Yes, I'd agree with  
5 that as well.

6 MR. KEVIN MCCULLOCH: As a matter of  
7 fact, Ontario was the first common-law jurisdiction in  
8 Canada to move to a no-fault system; isn't that right?

9 MS. DARLENE HALL: I'm not exactly sure  
10 of the history in all provinces, but I'll take your word  
11 for it.

12 MR. KEVIN MCCULLOCH: Many wouldn't, but  
13 I'm pleased that you did.

14 Now, you mentioned this morning that the  
15 movement to the no-fault system was a response to a  
16 liability crisis, I believe, is -- is the phrase you  
17 used. Could you explain what you meant by that?

18 MS. DARLENE HALL: I -- I know in the, I  
19 think the mid-'85s or so, there was some concern about  
20 liability costs increasing at quite a rapid rate and I  
21 think that was apart from just auto insurance.

22 But I know that at the time of the Auto  
23 Board, I mean, when they -- they were actually trying to  
24 set rates, they discovered a substantial inadequacy in  
25 premiums, primarily on the third-party liability side,

1 so...

2 MR. KEVIN MCCULLOCH: So, at the time the  
3 Auto Insurance Board was looking at rates in the mid-  
4 '80s, they recognized the fact that there was significant  
5 premium deficiency.

6 And I'd suggest to you that the result of  
7 that premium deficiency would either require -- or to  
8 solve that deficiency, rather, would require either a --  
9 or would require a significant increase in automobile  
10 insurance rates, or in the alternative, a loss of  
11 availability of insurance, insurers would leave the  
12 market if they weren't able to charge the appropriate  
13 rates?

14 MS. DARLENE HALL: I believe that would  
15 be the case. I think at that time, if I can recall  
16 correctly, they were looking at a 30 percent inadequacy  
17 on private passenger auto insurance rates, and there were  
18 a series of capped increases allowed to the industry and  
19 it was recognized that that couldn't continued, so...

20 MR. KEVIN MCCULLOCH: And do you recall  
21 if there was in fact a departure from the auto insurance  
22 market, by insurers in Ontario, around that time?

23 MS. DARLENE HALL: I don't, in the late  
24 '88-'89, I don't actually recall insurers leaving, but I  
25 think the Government of the day allowed increases. They

1 had frozen rates, and then they allowed capped increases  
2 in those rates for a few years, while they were sorting  
3 out the system.

4 MR. KEVIN MCCULLOCH: But you'd agree  
5 with me then, if the Government was looking at a solution  
6 that would solve the issue of affordability and  
7 availability, it wouldn't be likely that they would come  
8 up with a system that would create further pressure on  
9 the automobile insurers; isn't that correct?

10 MS. DARLENE HALL: I'd agree with that.

11 MR. KEVIN MCCULLOCH: All right. And do  
12 you recall whether, in particular, the insurers who were  
13 providing or offering motorcycle coverage, were vocal and  
14 -- and front and forward with their concerns at the time  
15 this solution was being proposed?

16 MS. DARLENE HALL: I think they were  
17 represented at the Board Hearings. I don't recall all  
18 the -- the issues that they raised, but I'm sure  
19 affordability was one of them.

20 MR. KEVIN MCCULLOCH: And on the  
21 Government side, there would be a concern about  
22 availability if the insurers weren't either allowed to  
23 charge appropriate premiums or if the system wasn't  
24 amended to address the liability concerns; isn't that  
25 right?

1 MS. DARLENE HALL: That's right.

2 MR. KEVIN MCCULLOCH: And as for the  
3 commercial trucks, which was also a concern at that time,  
4 correct me if I'm wrong, but, was this not the -- the  
5 time frame when a lot of big commercial trucks seemed to  
6 be losing their wheels on the 401, causing significant  
7 injuries to other users of the highways?

8 MS. DARLENE HALL: I -- I actually  
9 recollect that happening maybe about ten (10) years ago,  
10 but I can't remember if it was back in '89 or '90.

11 MR. KEVIN MCCULLOCH: But, you'd  
12 definitely agree with me, that there was a political  
13 element to the solution, namely, OMPP that the Government  
14 of Ontario came up with in 1990, isn't that correct?

15 MS. DARLENE HALL: I think in terms of  
16 addressing, you know, the issues at that time, they had  
17 to, I think you know, look at the compensation system  
18 from a number of perspectives and I'm sure it was a  
19 political decision.

20 MR. KEVIN MCCULLOCH: Now, in your paper,  
21 right in the first page and in other areas throughout,  
22 you mention the fact that it was one (1) of the concerns  
23 with the introduction of a no-fault system, that  
24 particularly the operators of motorcycles, but also  
25 snowmobilers and ATV's to the extent they had coverage;

1 would be subject to significant injury and therefore  
2 eligible for significant no-fault compensation, isn't  
3 that correct?

4 MS. DARLENE HALL: That's correct.

5 MR. KEVIN MCCULLOCH: And in previous  
6 Hearings before this Board, that of course you weren't  
7 involved with, we've had discussion about, let's term,  
8 the inherent risk of motorcycles. Are you familiar with  
9 that phrase?

10 MS. DARLENE HALL: I could guess what it  
11 means, just that the people riding motorcycles are more  
12 easily injured, but --

13 MR. KEVIN MCCULLOCH: You'd agree with  
14 me, would you not, that people who ride motorcycles have  
15 less personal protection when they're operating that sort  
16 of a vehicle?

17 MS. DARLENE HALL: Yes.

18 MR. KEVIN MCCULLOCH: And therefore,  
19 would run a higher risk of injury?

20 MS. DARLENE HALL: That's correct.

21 MR. KEVIN MCCULLOCH: And it's also  
22 pretty clear, I would suggest from your paper and from  
23 the experience of -- in Manitoba with no-fault, that  
24 higher risk of injury means a more serious injury, as  
25 well as higher benefits under a no-fault scheme?

1 MS. DARLENE HALL: That's correct.

2 MR. KEVIN MCCULLOCH: Now, would you  
3 agree with me, as well, that it is the purpose of  
4 insurance to reflect and recognize a risk in setting  
5 rates, the risk that certain groups or elements bring to  
6 the system, isn't that correct?

7 MS. DARLENE HALL: Yes.

8 MR. KEVIN MCCULLOCH: And if we have a  
9 situation where a motorcyclist is at fault for an  
10 accident, and gets injured in that accident, the inherent  
11 risk that he brings by virtue of riding a motorcyclist,  
12 becomes part -- a motorcycle rather, becomes part of the  
13 motorcycle loss experience, if that individual is at  
14 fault?

15 MS. DARLENE HALL: That's correct.

16 MR. KEVIN MCCULLOCH: So that experience  
17 would then reflect the inherent risk of that particular  
18 motorcycle claim?

19 MS. DARLENE HALL: That's correct.

20 MR. KEVIN MCCULLOCH: If the motorcyclist  
21 is not at fault, but a private passenger vehicle is at  
22 fault, under the loss transfer system in Ontario, that  
23 loss experience would be transferred to the private  
24 passenger vehicle, is that correct?

25 MS. DARLENE HALL: Yes, there is a

1 transfer mechanism to the at-fault vehicle.

2 MR. KEVIN MCCULLOCH: And that's beyond  
3 the two thousand dollar (\$2,000) deductible?

4 MS. DARLENE HALL: That's right.

5 MR. KEVIN MCCULLOCH: Would you not agree  
6 with me then that in that situation, the inherent risk  
7 that the motorcycle -- motorcyclist has brought to the  
8 system, is also transferred to the private passenger  
9 vehicle?

10 MS. DARLENE HALL: There is a  
11 transference of risk and the costs over to the private  
12 passenger auto vehicle.

13 MR. KEVIN MCCULLOCH: So that loss  
14 transfer system doesn't adequately -- or in any way  
15 reflect the inherent risk that the motorcyclist has  
16 brought to the system, just by getting out on his bike  
17 that day?

18 MS. DARLENE HALL: Sorry, is your  
19 question, has it in any way?

20 MR. KEVIN MCCULLOCH: Other than perhaps  
21 the two thousand (2,000) deductible that risk is not  
22 recognized as part of the motorcycle loss experience, in  
23 a loss transfer situation?

24 MS. DARLENE HALL: The -- the losses  
25 would be transferred over to the private passenger

1 vehicles, so it would have been netted out of the  
2 motorcycle experience.

3 MR. KEVIN MCCULLOCH: Okay. I want to  
4 move to a little discussion on the issue of availability.  
5 I believe you mentioned that there are currently about a  
6 hundred (100) companies selling automobile insurance in  
7 Ontario?

8 MS. DARLENE HALL: Yeah, approximately.

9 MR. KEVIN MCCULLOCH: Yeah. Do you know  
10 how many of those companies offer motorcycle insurance?

11 MS. DARLENE HALL: It would be a -- a  
12 subset of those, just from looking at just some stats  
13 that I looked at, probably on the private passenger auto  
14 side, the largest twenty (20) insurers probably account  
15 for about 75 percent of the market. And on the  
16 motorcycle side, I think the three (3) largest insurers  
17 are about 75 percent of the market.

18 So there's, I guess, other insurers that  
19 are in the motorcycle market, it's very much a minimal  
20 type of business that they engage in.

21 MR. KEVIN MCCULLOCH: Okay. So even with  
22 a loss transfer mechanism, am I correct in assuming that  
23 there are many fewer than a hundred (100) insurers who  
24 offer motorcycle insurance in Ontario?

25 MS. DARLENE HALL: That's correct, I

1 think the insurers view it as a specialty line, so...

2 MR. KEVIN MCCULLOCH: And you also  
3 mentioned that the motorcyclists may be part of the  
4 facility?

5 MS. DARLENE HALL: That's correct.

6 MR. KEVIN MCCULLOCH: So those  
7 motorcyclists who couldn't obtain a policy through a  
8 private insurer, would be referred to the facility?

9 MS. DARLENE HALL: That's correct.

10 MR. KEVIN MCCULLOCH: You indicated I  
11 believe in an answer to Mr. Saranchuk, that the facility  
12 charges private passenger vehicles approximately three  
13 point five (3.5) times the normal insurance rate that  
14 they would be able to get from a private company?

15 MS. DARLENE HALL: Yeah, I think it would  
16 be between three (3) and a three and a half (3 1/2) on --  
17 on average.

18 MR. KEVIN MCCULLOCH: And you said that  
19 you didn't have any information as to what the rate  
20 charged to motorcyclists by the facility, what that rate  
21 would be?

22 MS. DARLENE HALL: I -- I don't in my  
23 head have a comparable statistic.

24 MR. KEVIN MCCULLOCH: Would you not agree  
25 with me that it would be highly unlikely that the

1 facility would charge less than the three (3) to three  
2 and a half (3 1/2) times the regular rate to  
3 motorcyclists?

4 MS. DARLENE HALL: I mean, I -- I would  
5 assume it would be in that area, but I can't say for  
6 sure.

7 MR. KEVIN MCCULLOCH: Okay. And you also  
8 I think agreed with Mr. Saranchuk this morning, that  
9 availability is not an issue in Manitoba, since we're  
10 dealing with a compulsory automobile insurance system  
11 that is universally applied to all Manitobans?

12 MS. DARLENE HALL: Yes.

13 MR. KEVIN MCCULLOCH: You talked a bit as  
14 well about affordability --

15 MS. DARLENE HALL: Hmm hmm.

16 MR. KEVIN MCCULLOCH: -- being an issue  
17 that prompted the -- the change to the OMPP system, one  
18 (1) of the concerns that had to be addressed, is that  
19 correct?

20 MS. DARLENE HALL: That's correct.

21 MR. KEVIN MCCULLOCH: Now, since loss  
22 transfer was introduced at the same time in Ontario as  
23 the no-fault system was introduced, would you not agree  
24 with me that the Committee did not have any experience as  
25 to what impact a no-fault system would have on motorcycle

1 rates?

2 MS. DARLENE HALL: Yeah, the -- there was  
3 no practical experience to go by. I mean, it was a  
4 series of estimations.

5 MR. KEVIN MCCULLOCH: And would you also  
6 agree with me that affordability is -- is very much tied  
7 to the context or -- or the situation in -- in which  
8 these rates are being charged?

9 MS. DARLENE HALL: I'm not sure if I  
10 entirely understand the question.

11 MR. KEVIN MCCULLOCH: Well, that  
12 affordability for motorcycle insurance in Ontario may  
13 have to or would reflect the affordability of overall  
14 automobile insurance in Ontario?

15 MS. DARLENE HALL: I'd agree with that, I  
16 mean the -- the product is -- is similar.

17 MR. KEVIN MCCULLOCH: Do you have any  
18 information with respect to the comparison of what is  
19 being charged in Ontario for motorcycle coverage and what  
20 is being charged in Manitoba?

21 MS. DARLENE HALL: I haven't done a  
22 direct comparison of Manitoba rates, so I wouldn't be  
23 able to answer that.

24 MR. KEVIN MCCULLOCH: And if I were to  
25 suggest to you that in a filing before this Board in

1 August of 2004, as part of a General Rate Application,  
2 information was provided on a comparison of five (5)  
3 types of motorcycles, different criterias to who was the  
4 owner and merit, that sort of thing, and that in each of  
5 those situations the Ontario premium was higher, and in  
6 some cases significantly higher, than the Manitoba rate;  
7 would you have any reason to disagree with that?

8 MS. DARLENE HALL: No.

9 MR. KEVIN MCCULLOCH: So affordability  
10 can also be influenced by the -- the province and the  
11 area in which the rate is being charged?

12 MS. DARLENE HALL: That's correct.

13 MR. KEVIN MCCULLOCH: I guess what I'm  
14 clumsily saying is that what's affordable in Ontario may  
15 or may not be considered affordable in Manitoba?

16 MS. DARLENE HALL: I'd agree.

17 MR. KEVIN MCCULLOCH: You made some  
18 comment in response to questions from Mr. Saranchuk with  
19 respect to fairness of the loss transfer system.

20 And I'm going to suggest to you, Ms. Hall,  
21 that fairness, like affordability, may rest in the eye of  
22 the beholder; would you agree with that?

23 MS. DARLENE HALL: I'd agree with that.

24 MR. KEVIN MCCULLOCH: And the Ontario  
25 transfer, as we know, is, as far as motorcycles is

1 concerned, is purely a one-way transfer?

2 MS. DARLENE HALL: Yes. It -- I mean, it  
3 would be from the motorcycles to private passenger  
4 vehicles or commercial vehicles and not vice versa.

5 MR. KEVIN MCCULLOCH: So that if a  
6 motorcyclist collides with a private passenger vehicle  
7 and is at fault for that collision and the individuals in  
8 the vehicle are injured, those costs remain with the  
9 private passenger vehicle class, they're not transferred  
10 back to the motorcycle loss experience?

11 MS. DARLENE HALL: That's correct.

12 MR. KEVIN MCCULLOCH: Can you tell me  
13 what consideration led the Commission back in 1990 to  
14 consider that that was fair?

15 MS. DARLENE HALL: Well, I think the --  
16 the information that's been provided from the reference  
17 hearing, just the concerns that if -- if there were  
18 extensive no-fault benefits introduced that that could  
19 lead to availability and affordability problems.

20 MR. KEVIN MCCULLOCH: But, again, talking  
21 strictly on fairness, would you agree that that one-way  
22 transfer might appear to be unfair to the private  
23 passenger vehicle class?

24 MS. DARLENE HALL: Some would consider it  
25 unfair.

1 MR. KEVIN MCCULLOCH: All right. And  
2 would you also agree with me that the Ontario system only  
3 provides this preferential treatment for motorcyclists  
4 who are injured, it doesn't, for example, provide any  
5 preferential treatment for individuals of a small vehicle  
6 who are struck and injured by the fault of a larger  
7 vehicle?

8 MS. DARLENE HALL: I'm not sure in terms  
9 of that one you mentioned, vehicle. I mean, for example  
10 a small commercial vehicle that's hit by a heavy  
11 commercial vehicle there would be loss transfer assuming  
12 the heavy commercial vehicle is at fault, so...

13 MR. KEVIN MCCULLOCH: Right. But the  
14 example, I think, that was talked about this morning was  
15 an SUV hitting a Firefly?

16 MS. DARLENE HALL: Yeah, to date, that  
17 hasn't been contemplated in Ontario's.

18 MR. KEVIN MCCULLOCH: And did I  
19 understand you to say this morning that the reason that  
20 no action has been taken on SUV's was because there was  
21 no public outcry; did I get that right?

22 MS. DARLENE HALL: Well, I don't think  
23 it's been an issue that has been raised with us  
24 specifically or the government. I'm not aware of it  
25 being raised specifically.

1 MR. KEVIN MCCULLOCH: If it became the  
2 issue of public outcry would it then be addressed?

3 MS. DARLENE HALL: I expect that, you  
4 know, if the issue's raised then it would be examined to  
5 see, you know, what information would be available to  
6 assist in figuring out if loss transfer would make sense.

7 MR. KEVIN MCCULLOCH: So fairness may not  
8 be the only consideration that was applied when looking  
9 at who would be allowed to benefit from a loss transfer  
10 situation; there were other factors that were taken into  
11 account?

12 MS. DARLENE HALL: Well, I guess, I'm  
13 just trying to think from the initial set up of the  
14 system back in 1990. I think whatever information was  
15 available at that time was used in structuring the  
16 system.

17 MR. KEVIN MCCULLOCH: And I think you  
18 also indicated that even though the compensation system  
19 has undergone a number of changes over the last fifteen  
20 (15) years in Ontario, there have been no changes to the  
21 loss transfer system?

22 MS. DARLENE HALL: That's correct. I  
23 mean there were, I think, just a series of procedural  
24 items to clarify aspects of it, but that's all.

25 MR. KEVIN MCCULLOCH: The last thing I

1 wanted to discuss with you, was the comment in your  
2 material about the change in the loss transfer experience  
3 between 1990 and 1998, the first eight (8) years. And  
4 then the period 1998 to 2004.

5           And that's found on page 6 of your  
6 material. You indicate that there has been a significant  
7 decrease in the percentage and the dollar amount of  
8 accident benefits recovered through loss transfer, is  
9 that correct?

10           MS. DARLENE HALL: Yes.

11           MR. KEVIN MCCULLOCH: So that would mean  
12 that in the last six (6) years there's also been a  
13 significant decrease in the impact that loss transfer has  
14 had on motorcycle rates?.

15           MS. DARLENE HALL: Yes, looking at this  
16 at face value, though I think this is the raw data. An  
17 actuary would have to look at it and take it to an  
18 ultimate level to really figure out the appropriate  
19 rates.

20           MR. KEVIN MCCULLOCH: Yes, and I believe  
21 you gave that answer, as well, this morning. One (1)  
22 thing that interests me here, is in your paper, you talk  
23 about resolving disputes between insurers over amounts  
24 and degree of fault.

25           Is there an appeal process for an insurer

1 to dispute a finding of fault?

2 MS. DARLENE HALL: I think this has to do  
3 with the arbitration process. If the two (2) insurers do  
4 not agree there is an arbitration process that they could  
5 go through.

6 MR. KEVIN MCCULLOCH: So would you agree  
7 with me, that this portion of your paper seems to  
8 indicate that one (1) of the reasons that loss transfer  
9 is having a diminished impact on motorcycle rates could  
10 be that the insurers are just getting better at disputing  
11 liability?

12 MS. DARLENE HALL: That could potentially  
13 be the case, that...

14 MR. KEVIN MCCULLOCH: All right. Thank  
15 you Ms. Hall those are all the questions I have.

16 THE CHAIRPERSON: Thank you Mr.  
17 McCulloch.

18 Mr. Williams...?

19

20 CROSS-EXAMINATION BY MR. BYRON WILLIAMS:

21 MR. BYRON WILLIAMS: Good afternoon, Ms.  
22 Hall. I wanted to thank you on behalf of my clients for  
23 getting up so early this morning and taking your flight  
24 out to Winnipeg, too bad you couldn't have enjoyed the  
25 beautiful weather that we had here this weekend.

1 I'm going to start, as I often do, from a  
2 bit of a position of ignorance. Just for your terms of  
3 reference -- or my terms of reference, so you know where  
4 I'm coming from; you understand that in Manitoba, the  
5 Public Utilities Board plays a role in the approval and  
6 setting of the basic rates of the Manitoba Public  
7 Insurance program?

8 MS. DARLENE HALL: Yes, I understand  
9 that.

10 MR. BYRON WILLIAMS: Now, in terms of  
11 Ontario and the Financial Services Commission of Ontario,  
12 do you also play a role in the approval and setting of  
13 rates?

14 MS. DARLENE HALL: The Financial Service  
15 Commission of Ontario approves rates. Rate filings are  
16 submitted by insurers to FSCO. We do not set the rates,  
17 but we do review filings from insurers.

18 MR. BYRON WILLIAMS: And do you refuse  
19 filings or refuse to approve them from time to time?

20 MS. DARLENE HALL: We, in terms of  
21 process, where there are disagreements as to what we feel  
22 is the appropriate rate change, we enter into discussions  
23 with the company and that usually resolves the issue,  
24 where they modify their rate proposal.

25 MR. BYRON WILLIAMS: And just so I

1 understand, if they don't modify their rate proposal,  
2 what happens?

3 MS. DARLENE HALL: There is a process  
4 under the Insurance Act, whereby once the Superintendent  
5 refuses an application there's an appeal mechanism to a  
6 tribunal.

7 MR. BYRON WILLIAMS: In terms of the  
8 process that you operate under are you familiar, or do  
9 you employ the concept of, which is a regulatory term of  
10 art, the concept of just and reasonable rates, is that a  
11 term that you use in your work?

12 MS. DARLENE HALL: Yes, it's in our  
13 statute that the rates must be just and reasonable.

14 MR. BYRON WILLIAMS: And could you -- you  
15 wouldn't have the name of the -- the reference in the  
16 statute?

17 MS. DARLENE HALL: It would be under the  
18 Insurance Act, the rate regulation sections are Sections  
19 410 to 417.

20 MR. BYRON WILLIAMS: Now you had a bit of  
21 a discussion just now with Mr. McCulloch -- McCulloch, in  
22 terms of the one (1) way or asymmetrical loss transfer,  
23 and I believe you acknowledged that from the perspective  
24 of some within the private passenger class, that might be  
25 considered to be unfair, is that right?

1 MS. DARLENE HALL: That's right.

2 MR. BYRON WILLIAMS: And in your  
3 discussion with Mr. Saranchuk this morning, in terms of  
4 what led to the implementation of loss transfer in  
5 Ontario, or the one (1) way loss transfer, you described  
6 it as a -- a public policy debate, is that correct?

7 MS. DARLENE HALL: Yes, I think the  
8 entire move to a no-fault system was in fact an entire  
9 public policy issue. So there were different approaches  
10 looked at and the issue of loss transfer was part of that  
11 process.

12 MR. BYRON WILLIAMS: And in the specific  
13 Ontario context, in terms of the one (1) way or  
14 asymmetrical loss transfer, it was implemented by way of  
15 legislation and by the Ontario legislature, and also  
16 regulation by the Provincial Cabinet, is that right?

17 MS. DARLENE HALL: That's correct.

18 MR. BYRON WILLIAMS: So in terms of the  
19 policy direction and the -- the mandate to the -- to --  
20 to your -- to your Board, that is given expressly by the  
21 legislature, correct?

22 MS. DARLENE HALL: That's correct. I  
23 mean, it's embodied in the Insurance Act.

24 MR. BYRON WILLIAMS: Okay, thank you. No  
25 further questions.

1 THE CHAIRPERSON: Thank you, Mr.  
2 Williams. Mr. Oakes...?

3 MR. RAYMOND OAKES: Thank you, Mr.  
4 Chairman.

5  
6 CROSS-EXAMINATION BY MR. RAYMOND OAKES:

7 MR. RAYMOND OAKES: Ms. Hall, I want to  
8 start right at the start of the implementation of the no-  
9 fault legislation in Ontario in 1990.

10 I understand that one (1) of the  
11 objectives of the OAIB is that in changing from a third-  
12 party system to a first-party system, that change should  
13 be affected without dislocation to the various use  
14 groups. Would you agree with that?

15 MS. DARLENE HALL: I -- I think the idea  
16 was to minimize dislocation.

17 MR. RAYMOND OAKES: And the Board at that  
18 time was of the opinion that loss transfer was a  
19 necessary part of no-fault insurance to address the  
20 inequity that's created, otherwise, in this change from a  
21 third-party system to the first-party system.

22 MS. DARLENE HALL: Yes, I think they  
23 recognized that it was a mechanism to -- to balance the -  
24 - the cost change from the Tort system to a first-party  
25 system.

1 MR. RAYMOND OAKES: And I think the term  
2 you used was the significant cost pressures.

3 With respect to affordability, does the  
4 Ontario Government, did it then and does it now consider  
5 that affordability is a proper criteria in its insurance  
6 public policy?

7 MS. DARLENE HALL: I think they're, you  
8 know, constantly looking at the system to make sure it is  
9 affordable and you know, if huge increases are resulting  
10 in the system because of increases in cost, that's of  
11 concern to the government.

12 MR. RAYMOND OAKES: And so affordability  
13 is a proper criteria?

14 MS. DARLENE HALL: Yes.

15 MR. RAYMOND OAKES: In Appendix III there  
16 was excerpts from evidence before the Board and the  
17 excerpt at the document -- unfortunately the pages aren't  
18 numbered, but it's the first one (1) right after the  
19 cover page, Appendix III. It's sub-paragraph 9.14, it  
20 bears page 390 at the bottom if that helps you locate it?

21 MS. DARLENE HALL: Yes, I have it in  
22 front of me.

23 MR. RAYMOND OAKES: Thank you.

24 It indicates that Mr. Rhyason (phonetic) -  
25 - and it says indicted, but it means indicated in his

1 testimony that currently in New York motorcycle insurance  
2 is a hundred and fifty dollars (\$150) a year, and that it  
3 would increase to five hundred dollars (\$500) or six  
4 hundred dollars (\$600) if motorcycles were to be covered  
5 for no-fault benefits; and then there's a reference to  
6 the page of the transcript.

7                   Would you agree with me that likely the  
8 outcry would have been much more in a system that charges  
9 up to some twenty-five hundred dollars (\$2500) a year in  
10 motorcycle insurance?

11                   MS. DARLENE HALL: Well, twenty-five  
12 hundred (2500) sounds like a large amount, I'm not sure  
13 what it's moving from, but twenty-five hundred (2500)  
14 does sound large.

15                   MR. RAYMOND OAKES: And certainly if  
16 there was increases approximating 300 percent, that would  
17 be something that would generate an outcry and a need for  
18 reform?

19                   MS. DARLENE HALL: Yes. I'm not sure  
20 over what time period the 300 percent is, but that's a  
21 big number.

22                   MR. RAYMOND OAKES: If it was 300  
23 percent, say, over the course of a decade, that would  
24 still be a very large number resulting in an outcry and a  
25 need for reform; is that correct?

1 MS. DARLENE HALL: I -- I think that that  
2 is a large number. I think what we've seen when we get  
3 into double digit rate increases that we get lots of  
4 consumer complaints.

5 MR. RAYMOND OAKES: And you're speaking  
6 annually? A double-digit increase in any given year?

7 MS. DARLENE HALL: Well, I think if it --  
8 you know, one (1) year it may go by and that's fine. But  
9 if it reoccurs I think...

10 MR. RAYMOND OAKES: So if you had an  
11 average increase of 15 percent a year for a decade, for  
12 sure there would be an outcry in the streets?

13 MS. DARLENE HALL: I think it would cause  
14 concern.

15 MR. RAYMOND OAKES: There was some  
16 discussion about cross-subsidization. You'll agree with  
17 me, Ms. Hall, that cross-subsidization happens as an  
18 integral part of insurance? For example, those who don't  
19 have accidents subsidize those that do; is that correct?

20 MS. DARLENE HALL: Yeah. I mean, the  
21 whole insurance system is -- is built on, I think, class  
22 subsidization, some would view it that way.

23 MR. RAYMOND OAKES: And if a group of  
24 vehicles like in Manitoba, commercial trucks, had  
25 coverage and made claims yet paid no premium, that would

1 be a cross-subsidization; wouldn't it?

2 MS. DARLENE HALL: I believe it would be,  
3 yes.

4 MR. RAYMOND OAKES: And if we had two  
5 identical vehicles in two different territories and they  
6 collide, we'll call them Territory A and Territory B and  
7 in that fact scenario the Territory A vehicle is 100  
8 percent responsible for the accident and the claims  
9 incurred for that vehicle in Territory A is a thousand  
10 dollars (\$1,000) and the claims incurred for the  
11 Territory B vehicle is a million dollars. When rates are  
12 determined the cost assigned to Territory A is a thousand  
13 dollars (\$1,000) and a million dollars for Territory B.

14 In that case Territory B would be then  
15 cross-subsidizing Territory A; is that correct? Does  
16 that follow from that example?

17 MS. DARLENE HALL: I was trying to  
18 remember which Territory had which costs associated with  
19 it. But, I mean, normally, I think, the costs flow back  
20 to the territory where the vehicle is garaged. I'm not  
21 sure if that's the case in Manitoba as well.

22 But there is that whole issue of trying to  
23 set proper rates by territory and looking at loss costs  
24 by territory.

25 MR. RAYMOND OAKES: And in the situation

1 that I've just asked you about, Territory A vehicle, the  
2 at fault vehicle with a thousand dollars (\$1,000) of  
3 damage; if those don't go back to the area of the crash  
4 but, instead, to the area where it's garaged, to use your  
5 terminology, then there would be a cross-subsidization  
6 with this Territory B vehicle with -- that sustained the  
7 million dollar's worth of damage even though it wasn't  
8 responsible for the vehicle?

9 MS. DARLENE HALL: I'm trying to follow  
10 that. I mean, normally too, I think, in -- in setting  
11 rates there is a cap, you know, looking at large losses.

12 So, I mean, if you looked at it strictly  
13 on a -- a where the costs came from, you could view it as  
14 subsidization.

15 MR. RAYMOND OAKES: And the same cross-  
16 subsidization happens if we talk about insurance use in  
17 examples like this, and I don't want to repeat that  
18 convoluted example, but the same thing happens if we  
19 substitute the words "insurance use" for the words  
20 "territory" in an example like that; there's cross-  
21 subsidization in those fact circumstances between  
22 insurance users?

23 MS. DARLENE HALL: Yeah. I mean, there -  
24 - there's constant, I guess depending who's involved in  
25 the accident and the characteristics.

1 MR. RAYMOND OAKES: Mr. McCulloch talked  
2 a little bit about loss transfer with you and his  
3 statement was that loss transfer doesn't recognize the  
4 risk brought -- brought to the system by the motorcycle  
5 who, and just paraphrase at this point, is the victim in  
6 a crash caused by some other vehicle.

7 Would you agree with me that the current  
8 system without loss transfer, doesn't recognize the risk  
9 brought to the system by the one causing the damage,  
10 whether it be heavy truck, suburban, passenger vehicle,  
11 and the like?

12 MS. DARLENE HALL: Yeah, I think, you  
13 know, this whole issue of Tort versus no-fault, I mean,  
14 each has its benefits, but, I mean, there is, I guess,  
15 how you view equity in the system, everyone will have a  
16 different view to it.

17 MR. RAYMOND OAKES: But I want to direct  
18 your attention to that particular question, because you  
19 appeared to agree with Mr. McCulloch that the current --  
20 that loss transfer doesn't recognize the risk brought to  
21 the system by the victim of the crash.

22 Would you agree with me that the current  
23 system without loss transfer, doesn't recognize the risk  
24 brought to the system by the vehicle causing the damage?

25 MS. DARLENE HALL: I guess the word

1 "risk," I mean, it, you know, the -- the costs aren't  
2 associated back to -- to that, so, I mean, that -- that  
3 impacts the risk.

4 MR. RAYMOND OAKES: And the current  
5 system isn't reflecting that?

6 MS. DARLENE HALL: That -- you could  
7 argue that, yes.

8 MR. RAYMOND OAKES: Would you agree with  
9 me that that's the situation?

10 MS. DARLENE HALL: I -- I think there is  
11 an issue where you have the at-fault vehicles not  
12 reflecting the risk in the system.

13 MR. RAYMOND OAKES: Thank you for that.  
14 Let's talk a little bit about inherent risk, that's a --  
15 is that a common term used in the industry?

16 MS. DARLENE HALL: I think I've heard it  
17 before.

18 MR. RAYMOND OAKES: Okay. You'd agree  
19 with me that all motor vehicles are inherently risky?

20 MS. DARLENE HALL: I'd agree with that,  
21 yes.

22 MR. RAYMOND OAKES: And different types  
23 of individuals impose different inherent risks on other  
24 owners of vehicles?

25 MS. DARLENE HALL: I'd agree with that.



1 all the coverage that they're required as mandated to  
2 carry?

3 MS. DARLENE HALL: They -- they would  
4 also be required to purchase direct compensation to  
5 mandatory first-party coverage.

6 MR. RAYMOND OAKES: And at those base  
7 levels, that reduction in the mandatory amount that they  
8 have to buy, that assists in making motorcycle insurance  
9 in Ontario more affordable?

10 MS. DARLENE HALL: They all have to buy  
11 the basic, but I guess the loss transfer mechanism works  
12 to reduce the -- the loss costs.

13 MR. RAYMOND OAKES: Do the motorcycles  
14 have to buy collision and comprehensive?

15 MS. DARLENE HALL: Those are optional  
16 coverages.

17 MR. RAYMOND OAKES: How many companies in  
18 Ontario write motorcycle insurance?

19 MS. DARLENE HALL: I don't think I have  
20 the exact number at hand, but it would be somewhat less  
21 than -- than the hundred (100) that write private  
22 passenger auto.

23 MR. RAYMOND OAKES: Would it be more than  
24 twenty (20)?

25 MS. DARLENE HALL: More than twenty (20),

1 yes.

2 MR. RAYMOND OAKES: Okay. Is Ontario  
3 described as a competitive market?

4 MS. DARLENE HALL: Yes, I believe it is.

5 MR. RAYMOND OAKES: But it's still a  
6 regulated market?

7 MS. DARLENE HALL: Yes.

8 MR. RAYMOND OAKES: And why would it be  
9 regulated?

10 MS. DARLENE HALL: The -- I think there's  
11 recognition that as part of the process because auto  
12 insurance is compulsory that there should be some  
13 additional regulatory oversight.

14 MR. RAYMOND OAKES: And the insurance  
15 product should be regulated to account for public policy?

16 MS. DARLENE HALL: Yes, that's the  
17 underlying public policy rationale, in terms of the  
18 Insurance Act provisions.

19

20 (BRIEF PAUSE)

21

22 MR. RAYMOND OAKES: There's a reference  
23 in Appendix IV to the number of vehicles and I just want  
24 to summarize that briefly.

25 I understand that there's approximately

1 one hundred and thirty thousand, one hundred and thirty  
2 three (130,133) motorcycles and nine million, two hundred  
3 or nine million, seven hundred and forty seven and sixty-  
4 four (9,747,064) private passengers.

5 Do those numbers sound right to you?

6 MS. DARLENE HALL: I think the total of  
7 all the registered vehicle is nine million, seven hundred  
8 and forty seven and sixty-four (9,747,064). Private  
9 passenger automobiles is five million, nine hundred and  
10 sixty-four thousand, eight hundred and twenty-two  
11 (5,964,822).

12 MR. RAYMOND OAKES: Okay. I stand  
13 corrected on that. But, the calculation that we've made  
14 is that motorcycles represent 1.3 percent of the nine  
15 million, seven forty seven and sixty-four (9,747,064)  
16 registered vehicles. I can give you a moment to check  
17 that, or you could accept that subject to check?

18 MS. DARLENE HALL: I would accept that  
19 subject to check.

20 MR. RAYMOND OAKES: And now in Manitoba,  
21 we have approximately seventy-five hundred (7500)  
22 motorcycles and the total vehicle population is about  
23 eight hundred thousand (800,000) vehicles.

24 I would suggest to you that the motorcycle  
25 group is a smaller proportion of the total than in

1 Ontario and in fact, in Manitoba it's less than 1  
2 percent.

3                   Would you accept that subject to check?

4                   MS. DARLENE HALL: Yes.

5                   MR. RAYMOND OAKES: And in any event,  
6 motorcycles are a extremely small group?

7                   MS. DARLENE HALL: Yes, relative to total  
8 number of vehicles.

9                   MR. RAYMOND OAKES: And as a result of  
10 motorcycles being a very small group, that they have  
11 highly variable results for claim costs?

12                   MS. DARLENE HALL: Yes, they're more  
13 variable because of the low volume.

14                   MR. RAYMOND OAKES: And is CLEAR rating  
15 groups used in Ontario?

16                   MS. DARLENE HALL: Yes, it is by the  
17 majority of insurers.

18                   MR. RAYMOND OAKES: And FSCO approves the  
19 use of that system?

20                   MS. DARLENE HALL: We approve the  
21 individual insurers risk classification systems that  
22 would accompany (sic) that.

23                   MR. RAYMOND OAKES: And if loss transfer  
24 is moved to extend to collision costs, would they --  
25 Ontario still use CLEAR rating with respect to that

1 system?

2 MS. DARLENE HALL: I think what we would  
3 probably do is -- Arthur was speaking earlier this  
4 morning, we would -- FSCO would review the new  
5 methodology. And then individual insurers would file for  
6 that.

7 MR. RAYMOND OAKES: The classification  
8 plan typically used in Ontario, do seniors get a  
9 discount?

10 MS. DARLENE HALL: Yes they do.

11 MR. RAYMOND OAKES: And rates are  
12 different between vehicles that are driven to work and  
13 the ones that are not used for work purposes?

14 MS. DARLENE HALL: That's right.

15

16 (BRIEF PAUSE)

17

18 MR. RAYMOND OAKES: I thank you for your  
19 time this afternoon.

20 MS. DARLENE HALL: Okay.

21 THE CHAIRPERSON: Thank you Mr. Oakes.  
22 Mr. Roberts, do you have anything of this  
23 witness?

24 MR. NICK ROBERTS: Just a couple of  
25 questions.

1 THE CHAIRPERSON: Please proceed.

2

3 CROSS-EXAMINATION BY MR. NICK ROBERTS:

4 MR. NICK ROBERTS: Ms. Hall, in your  
5 opinion, do you believe that loss transfer is a fair  
6 process?

7 MS. DARLENE HALL: I think in Ontario it  
8 seems to have worked, so on that basis, I would consider  
9 it fair.

10 MR. NICK ROBERTS: And how are dealers  
11 insured in Ontario?

12 MS. DARLENE HALL: I would think that  
13 there would be garage policies in place for motor vehicle  
14 dealership vehicles?

15 MR. NICK ROBERTS: And that would cover  
16 their plates too?

17 MS. DARLENE HALL: I believe so.

18 MR. NICK ROBERTS: And is loss transfer  
19 applicable to dealer plates in Ontario?

20 MS. DARLENE HALL: I don't think so. I  
21 think it's just the individual private passenger  
22 vehicles, not those garage policies.

23 MR. NICK ROBERTS: Okay. In Manitoba  
24 large long haul trucking companies are exempt from  
25 Autopac premiums.

1                   So in your opinion, would you consider  
2 that cross-subsidization?  
3                   MS. DARLENE HALL:    I'm not --  
4                   MR. NICK ROBERTS:    Trust me, I'm a car  
5 dealer, you've got to believe me.  
6                   MS. DARLENE HALL:    I guess I don't know  
7 enough how the -- the long haul trucking system works to  
8 really comment appropriately, but...  
9                   MR. NICK ROBERTS:    Okay. How are long  
10 haul truckers insured in Ontario?  
11                  MS. DARLENE HALL:    I would expect that  
12 they have Ontario policies or I mean some are I think  
13 insured through US companies that also operate in  
14 Ontario. It's not an area that I'm that familiar with,  
15 because we don't regulate rates on -- on fleet type of  
16 policies, but...  
17                  MR. NICK ROBERTS:    Okay, thank you.  
18 That's all I have, Mr. Chairman.  
19                  THE CHAIRPERSON:    Thank you. I don't  
20 think anyone from the CAA is here right now, so we'll  
21 move on to Mr. Dawson.  
22                  MR. ROBERT DAWSON:    Thank you, Mr.  
23 Chairman. And at the risk of paraphrasing Mr. Roberts,  
24 I'll remind the witness that she has to trust me because  
25 I'm a lawyer.

1 CROSS-EXAMINATION BY MR. ROBERT DAWSON:

2 MR. ROBERT DAWSON: You've said, if I  
3 understood your earlier testimony correct, that some of  
4 the factors that were driving loss transfer in Ontario  
5 were afford-ability, availability and safety factors, is  
6 that right?

7 MS. DARLENE HALL: Yes, I think  
8 availability and afford-ability were the -- the key  
9 issues.

10 MR. ROBERT DAWSON: And you also said  
11 that loss transfer came at a time when insurers in  
12 Ontario were facing a crisis, in that claims were  
13 outstripping premiums in effect; is that right?

14 MS. DARLENE HALL: That's correct.

15 MR. ROBERT DAWSON: Now isn't it true  
16 that the initiative for loss transfer initially came from  
17 insurers and the insurance lobby approach in the  
18 Government; is that right?

19 MS. DARLENE HALL: I -- I'm not entirely  
20 sure. I know in terms of the request to the Auto  
21 Insurance Board from the Government, this issue of what  
22 to do with, you know, specific categories of vehicles,  
23 when you have a no-fault system was included in the terms  
24 of reference, but I'm not entirely sure where the  
25 lobbying came from.

1 MR. ROBERT DAWSON: Right. So the matter  
2 came to the Board and that was sent on a reference  
3 hearing not on the initiative of the Board, if I  
4 understand correctly?

5 MS. DARLENE HALL: It was a -- a request  
6 I think from the Lieutenant Government to the Board to  
7 look into various no-fault systems and a choice system.

8 MR. ROBERT DAWSON: You mean the  
9 Lieutenant Governor in Council?

10 MS. DARLENE HALL: Yes.

11 MR. ROBERT DAWSON: Okay. And the result  
12 of that report was among other things, to recommend what  
13 eventually became the system that we are talking about  
14 today, is that right?

15 MS. DARLENE HALL: Yes, the OIB -- OAIB  
16 submitted their report to the Government. The Government  
17 took that report and ended up with the OMPP product.

18 MR. ROBERT DAWSON: And in between the  
19 submission of the Board's findings, and the actual  
20 introduction of the legislation, I understand there was  
21 also the Osborne Report, which also considered that; is  
22 that right?

23 MS. DARLENE HALL: I think Osborne  
24 released his report in around '88 and the Board I think  
25 delivered their report to the Government in '89, probably

1 the fall of '89, and then in 1990 the OMPP was  
2 implemented.

3 MR. ROBERT DAWSON: You've talked about  
4 how the Government was pushing this initiative, you  
5 haven't mentioned two (2) groups that might have come  
6 forward with equal vigour.

7 Should we infer that at least initially  
8 there was no particular position taken by consumer groups  
9 in Ontario?

10 MS. DARLENE HALL: I believe that they  
11 were represented at Board Hearings, so I think they were  
12 at Auto Board Hearings, so...

13 MR. ROBERT DAWSON: Do you have any  
14 knowledge of consumer groups being involved in the  
15 initiative prior to the public hearings?

16 MS. DARLENE HALL: I'm not aware of.

17 MR. ROBERT DAWSON: And I assume you  
18 would also not be aware whether or not there had been any  
19 safety groups that were involved in the initiative before  
20 it came before the Hearing?

21 MS. DARLENE HALL: I'm not aware of -- I  
22 can't recall background from that.

23 MR. ROBERT DAWSON: At Appendix III of  
24 your report, which is at Tab 2 of the Board Counsel's  
25 Exhibit 19, you quote excerpts from the original Board

1 report, and do I understand that you had not a hand in  
2 writing it, but you were involved, as you said in the  
3 back room, in doing some research relating to that  
4 report; is that right?

5 MS. DARLENE HALL: Yes, I think in terms  
6 of the -- the Hearing itself, probably you know  
7 summarizing evidence from -- from the reference hearing.

8 MR. ROBERT DAWSON: Are you in a position  
9 to talk about the initiatives that began in any of the  
10 six (6) American States that are set out in that report?

11 MS. DARLENE HALL: I don't think I could  
12 really talk to any specific details, just with the  
13 passage of time and so on, but --

14 MR. ROBERT DAWSON: So if I were to ask  
15 you to confirm, for example, whether or not it was an  
16 insurance lobby initiative that brought about loss  
17 transfer in New York, you wouldn't be able to give me an  
18 opinion on it?

19 MS. DARLENE HALL: No, I wouldn't be able  
20 to answer that.

21 MR. ROBERT DAWSON: Okay. And is there  
22 any particular reason that you can remember that your  
23 research group, and the Board, did not consider any work  
24 that was being done in Australia or New Zealand or non-  
25 North American jurisdictions?

1 MS. DARLENE HALL: Not that I can  
2 recollect exactly. I think that the reference to the  
3 Board specifically identified a couple of threshold  
4 systems. So I'm not exactly sure how those specific  
5 threshold systems were recommended.

6 MR. ROBERT DAWSON: And that -- those  
7 systems that were identified, were provided, as you say,  
8 part of the terms of the reference which was provided by  
9 the government of the day is that right?

10 MS. DARLENE HALL: Right.

11 MR. ROBERT DAWSON: Okay. One (1) of the  
12 factors that you did not mention as being a driving  
13 factor, leading to the adoption of loss transfer, was  
14 some sort of sense of ease of administration.

15 Should we infer from that, that the ease  
16 of administering the system was not a major consideration  
17 in Ontario?

18 MS. DARLENE HALL: I think the -- what  
19 the Board had originally recommended was subrogation and  
20 at the end of the day, it was a loss transfer mechanism  
21 that was put in place.

22 So I think the government of the day  
23 thought that loss transfer was a better mechanism than  
24 subrogation.

25 MR. ROBERT DAWSON: And if I understand

1 correctly, the major change was that before the loss  
2 transfer system was implemented, the torte system, of  
3 course, in the normal Courts of law, would be used to  
4 resolve questions or disputes relating to liability, is  
5 that right?

6 MS. DARLENE HALL: That's correct.

7 MR. ROBERT DAWSON: And now, under the  
8 system, where there are those disputes, they would not go  
9 before private arbitrators, is that right?

10 MS. DARLENE HALL: With regard to loss  
11 transfer, yes.

12 MR. ROBERT DAWSON: Yes. And do you have  
13 any evidence to suggest that the change in moving these  
14 disputes out of the courts and into private arbitration  
15 has saved any money?

16 MS. DARLENE HALL: I don't have direct  
17 evidence of that, no.

18 MR. ROBERT DAWSON: And do you have any  
19 evidence that it has saved any time?

20 MS. DARLENE HALL: I don't have direct  
21 evidence of that either, but --

22 MR. ROBERT DAWSON: That's fine. I don't  
23 want to stretch -- stretch this more than it takes. And  
24 do you have any evidence that the change has, in fact,  
25 saved policy holders on their premiums?

1 MS. DARLENE HALL: Well, I think the --  
2 the numbers that I pointed to, in the appendix, in terms  
3 of the loss transfers, that are made out of certain  
4 categories of insurance, impact the premiums. For those  
5 categories of insurance, I think premiums would have been  
6 higher without loss transfer, so --

7 MR. ROBERT DAWSON: Are you in a position  
8 to confirm that, there are in fact, a greater percentage  
9 of claims now, that are being disputed, than were being  
10 disputed under the tort system, before the introduction  
11 of loss transfer?

12 MS. DARLENE HALL: I don't think I could  
13 really answer that. I mean the current accident benefits  
14 process, there is a series of steps, if there's  
15 disagreement about payment of accident benefits; it goes  
16 to a mediation process, and then can go through  
17 arbitrations.

18 So, there are more accident benefits  
19 claims than tort claims. So I don't think I can answer  
20 in total numbers, but --

21 MR. ROBERT DAWSON: But, you would have a  
22 sense that that's more likely correct than incorrect?

23 MS. DARLENE HALL: Yes.

24 MR. ROBERT DAWSON: Very well. You had  
25 mentioned, in passing reference, to something called a

1 friction fee, which if I can correctly summarize it was,  
2 that claims involving less than two thousand dollars  
3 (\$2,000) were not subject to loss transfer, is that  
4 roughly it?

5 MS. DARLENE HALL: That's correct.

6 MR. ROBERT DAWSON: And where the  
7 friction fee has not been reached, shall we say, am I  
8 correct that it falls to the insurer of the first-party  
9 to effectively absorb the cost of the loss?

10 MS. DARLENE HALL: That's correct.

11 MR. ROBERT DAWSON: And have the costs of  
12 the loss been, for example, two thousand and one dollars,  
13 (\$2,001), loss transfer would have kicked in, and it  
14 would have saved that first-party insurer the cost of  
15 paying out that claim?

16 MS. DARLENE HALL: It would just save the  
17 one dollar (\$1).

18 MR. ROBERT DAWSON: All right. Are you  
19 in a position to confirm that there are some insurers who  
20 have taken a deliberate tact of inflating their claims,  
21 where their claims would normally have fallen below the  
22 friction fee, in order to recover some money over that?

23 MS. DARLENE HALL: I wouldn't be able to  
24 confirm that.

25 MR. ROBERT DAWSON: Do you have any

1 evidence to suggest that what I'm speaking is nonsense?

2 MS. DARLENE HALL: I have no evidence,  
3 so...

4 MR. ROBERT DAWSON: Moving quickly to the  
5 end, in Appendix VII and VIII, you have a series of  
6 tables that set out the -- this is Appendix VII and VIII,  
7 at Tab 2, of Exhibit 19, and just in one quick sentence,  
8 can you remind us what these tables represent?

9 MS. DARLENE HALL: In Appendix VII, those  
10 are the recoveries, so it shows recoveries for private  
11 passenger auto, for motorcycles, and for commercial  
12 vehicles; and in Appendix VIII, it shows the payments  
13 made by private passenger automobiles and commercial  
14 vehicles.

15 MR. ROBERT DAWSON: All right. Now, if -  
16 - consider the following hypothetical: A motor vehicle,  
17 a private vehicle, is involved in an accident with a  
18 motorcycle, the claim exceeds the friction fee, we now  
19 have an instance in which loss transfer would apply; is  
20 that correct?

21 MS. DARLENE HALL: Assuming the second  
22 party was a hundred percent, or some percentage at fault,  
23 yes.

24 MR. ROBERT DAWSON: Could you explain, to  
25 the Board here, what would happen in the even that the

1 same insurer, insures both parties?

2 MS. DARLENE HALL: I think, technically  
3 speaking, loss transfer would apply. Practically  
4 speaking, I'm not sure how, you know, the one company  
5 would go through the process, if they would. If they  
6 didn't, of course, it would distort the statistics.

7 MR. ROBERT DAWSON: That's the point I  
8 was trying to get at. So you would -- you would conceive  
9 that if insurers, within their own company, were to make  
10 their own adjustments relating to these sorts of claims,  
11 the numbers that are set out in Appendixes VII and VIII,  
12 may in fact be slightly, if not more significantly,  
13 skewed?

14 MS. DARLENE HALL: Yes, that would have  
15 an impact.

16 MR. ROBERT DAWSON: And my last question  
17 relates to a comment that you made in passing, you said  
18 something, that you have no or very few complaints from  
19 the public relating to loss transfer; did I get that  
20 right?

21 MS. DARLENE HALL: Yeah, I think the  
22 public as a whole wouldn't necessarily be aware that loss  
23 transfer exists, but I guess in terms of various stake-  
24 holder groups, we haven't had complaints, I don't think,  
25 on the issue, to any great degree, so...

1 MR. ROBERT DAWSON: That's fine. Thank  
2 you. Those are my questions.

3 THE CHAIRPERSON: Thank you, Mr. Dawson.  
4 I don't believe Schutering (phonetic) is here yet. Mr.  
5 Miller.

6 MR. DON MILLER: We have no questions.  
7 Thank you.

8 THE CHAIRPERSON: Thank you, sir. Mr.  
9 Saranchuk, do you have any follow-up questions?

10 MR. WALTER SARANCHUK: Yes, sir.

11

12 RE-CROSS-EXAMINATION BY MR. WALTER SARANCHUK:

13 MR. WALTER SARANCHUK: Ms. Hall, we  
14 talked about the situation involving motorcycles and  
15 heavy commercial vehicles as being issues that the Board  
16 considered at the time loss transfer was being  
17 considered, amongst other options.

18 Would you agree that the concerns,  
19 relative to cross-subsidization at the time, arose from  
20 the comparison of the outcomes under the previous Tort  
21 system, and -- as opposed to the new no-fault system,  
22 absent any loss transfer?

23 MS. DARLENE HALL: I -- I mean, I think  
24 what was looked at is what, you know, what had happened  
25 under the Tort system, and then just based on the

1 experience of jurisdictions that had introduced no-fault  
2 in -- in the States, that those issues were considered,  
3 so...

4 MR. WALTER SARANCHUK: And is it a fact  
5 that many insurers in Ontario do not offer motorcycle  
6 insurance, and yet some offer them as a special line, is  
7 that correct?

8 MS. DARLENE HALL: I would say, you know,  
9 the majority of insurers offer, for example, private  
10 passenger auto, but I think they consider a motorcycle  
11 more of a -- a specialty type of line.

12 MR. WALTER SARANCHUK: Are there  
13 instances where, in offering coverage to the owner of a  
14 private passenger, that by reason of that fact, some  
15 insurers will also offer coverage for motorcycles, to  
16 that same vehicle owner?

17 MS. DARLENE HALL: Yes, there are certain  
18 companies that, of course, offer both and some have  
19 discounts in place if there's multi -- multi-vehicle  
20 policies.

21 MR. WALTER SARANCHUK: And we heard the  
22 suggestion that I think you agreed with, that while  
23 motorcycle premiums -- while -- are -- that motorcycles  
24 are -- premiums are likely higher in Ontario than in  
25 Manitoba, is that correct?

1 MS. DARLENE HALL: Yeah, I -- I believe  
2 someone was mentioning some statistics to me on the -- on  
3 the premium side.

4 MR. WALTER SARANCHUK: Would you agree  
5 that the premiums in Ontario for private passenger  
6 vehicles are as well?

7 MS. DARLENE HALL: I don't have a direct  
8 comparison of -- of Ontario versus Manitoba, but I  
9 wouldn't be surprised that Ontario were higher.

10 MR. WALTER SARANCHUK: And in your report  
11 very briefly at page 6, this is Tab 2, in your report,  
12 page 6. In the second paragraph from the top there's  
13 reference to the experience from 1998 to 2004, and I  
14 think we might have dealt with this earlier, but in any  
15 event there's mention made about a significant decrease  
16 in the percentage and dollar amount of the accident  
17 benefits recovered through loss transfers, and it says  
18 that the reasons for this decrease are not clear, and  
19 then you mention what some of the possibilities are.

20 Could the apparent decrease in loss  
21 transfer in Ontario be attributable to the long tail  
22 (phonetic) related to accident benefit costs and inter-  
23 insurer cost attribution processes?

24 MS. DARLENE HALL: Yes, I mean, I think  
25 in terms of the process, they are long tail and when the

1 second party is notified of -- of the amounts, that  
2 delays the process.

3 MR. WALTER SARANCHUK: And I just have  
4 some short questions, short snappers if you will. Do you  
5 have any knowledge about a Bodily Injury Threshold in  
6 Ontario?

7 MS. DARLENE HALL: I think that's  
8 referenced in -- in Appendix II to -- to my summary,  
9 references the verbal threshold.

10 MR. WALTER SARANCHUK: And is this a  
11 concept, or a factor, that existed prior to the  
12 implementation of loss transfer in 1990?

13 MS. DARLENE HALL: No, before 1990 it was  
14 basically a Tort system, with minimal no-fault system,  
15 but there was no threshold.

16 MR. WALTER SARANCHUK: Do you have any  
17 indication, or do you have any knowledge, about what the  
18 impact of the Bodily Injury Threshold has been on  
19 motorcycle rates in Ontario?

20 MS. DARLENE HALL: I can't comment  
21 specifically on that. I mean, the -- the threshold  
22 itself was designed to let, I guess, only the most  
23 serious cases be -- be available to be pursued in Tort,  
24 so...

25 MR. WALTER SARANCHUK: Would it have any

1 relevance at all to the experience for accident benefits  
2 on the loss transfer there for motorcycles?

3 MS. DARLENE HALL: In terms of the Tort  
4 claims, any of the Tort costs would be offset by no-fault  
5 benefits for any economic recovery, so...

6 MR. WALTER SARANCHUK: But if one was to  
7 -- to try to assess the overall impact, in terms of the  
8 benefit to motorcycles, arising out of loss transfer, and  
9 thinking in terms of the one-way system for accident  
10 benefits that's in place; is there any reason for the  
11 bodily injury experience to be relevant?

12 MS. DARLENE HALL: I'm just trying to --  
13 the -- I mean, the system itself in Ontario, I mean the  
14 ability to sue is subject to a threshold for non-economic  
15 loss and for economic damage, the right to sue for  
16 economic loss is in excess of accident benefits.

17 So if the accident benefits costs are  
18 reduced, then that would impact the right to sue.

19 MR. WALTER SARANCHUK: You know that we  
20 are in a total no-fault jurisdiction here in Manitoba,  
21 and so would this have any applicability, this -- the  
22 bodily injury threshold here?

23 MS. DARLENE HALL: Well I guess you don't  
24 have -- you have no right to sue here, so the threshold  
25 wouldn't have an impact.

1 (BRIEF PAUSE)

2  
3 MR. WALTER SARANCHUK: So the bodily  
4 injury threshold concept really wouldn't apply to  
5 Manitoba if, for example, the Public Utilities Board here  
6 were to look to introducing a system along the lines of  
7 what you have in Ontario, would it?

8 MS. DARLENE HALL: You're right, it  
9 wouldn't have an impact.

10 MR. WALTER SARANCHUK: I have no further  
11 questions, Mr. Chairman.

12 THE CHAIRPERSON: Thank you, Mr.  
13 Saranchuk.

14 The next submission would be from the  
15 Motorcycle and Moped Industry Council, Mr. Ramsey.

16 Are you prepared to start now? Okay,  
17 we'll begin with Mr. Saranchuk and then we'll have a  
18 brief break. Thank you.

19 Ms. Hall, thank you very much. We greatly  
20 appreciate your coming to Winnipeg and providing us this  
21 information and sitting patiently through the various  
22 questions and your responses were most helpful.

23 MS. DARLENE HALL: Thank you.

24 THE CHAIRPERSON: And I hope you were  
25 able to find a decent place for lunch.

1 (WITNESS STANDS DOWN)

2  
3 (BRIEF PAUSE)

4  
5 THE CHAIRPERSON: Perhaps to give Mr.  
6 Ramsay a chance to set up, why don't we have a ten (10)  
7 minute break now and then we'll start after the break and  
8 go through until we close down for the day at 4:00.

9 Thank you.

10  
11 --- Upon recessing at 2:35 p.m.

12 --- Upon resuming at 2:50 p.m.

13  
14 THE CHAIRPERSON: Okay. Welcome back,  
15 everyone. We'll start off, Mr. Barron, if you wouldn't  
16 mind doing your customary duty.

17 MR. GERRY BARRON: Thank you.

18  
19 ROBERT RAMSAY, Sworn:

20 IAN MCFARLANE, Sworn:

21  
22 THE CHAIRPERSON: Thank you, Mr. Barron.  
23 Mr. Ramsay and your colleague, are you  
24 ready to go?

25

1 DIRECT EVIDENCE OF MMIC:

2 MR. ROBERT RAMSAY: Yes, we are. Just to  
3 give a little bit of overview first, we're going to sort  
4 of play tag team. I will do the introduction part, deal  
5 with the policy aspects, and then Liam will deal with the  
6 actuarial aspects. I'm not an actuary, Liam is, and --  
7 and he has the experience and -- and information in that  
8 area.

9 My own background actually is in policy,  
10 and -- and I have a Degree from the University of Western  
11 Ontario, in Political Science, and I worked for a Member  
12 of Parliament and Cabinet Minister for a number of years,  
13 and part of that was developing policy.

14 And since becoming the President of the  
15 Motorcycle and Moped Industry Council, back in 1987, we  
16 deal a lot with all levels of Government, Federal  
17 Government, with Transport Canada, Environment Canada,  
18 Finance Industry, all sorts of aspects of that nature on  
19 policy issues.

20 We deal with Provincial Governments on all  
21 sorts of policy issues. One of the main areas that we  
22 focussed on, of course, is insurance, and I personally  
23 have been involved with insurance issues since about  
24 1987.

25 So, in all different provinces, I must

1 -- I must add, Ontario, British Columbia, Quebec, New  
2 Brunswick, and more recently, in Manitoba.

3           The MMIC is a national, non-profit  
4 industry association; we represent the major  
5 manufacturers and distributors of motorcycles across the  
6 country, and some of these companies are -- are very well  
7 known brand names, such as the Hondas, the BMW's, the  
8 Suzuki's and the Harley Davidson's of the world and many  
9 more.

10           They all make very good project and they  
11 all have very large corporations and must deal with  
12 government on a regular basis not only when dealing with  
13 vehicles because there many different vehicles standards,  
14 but all sorts of issues related to usage of these  
15 vehicles. We also are very -- very much involved with  
16 improving our society.

17           Improving society, we bring forward  
18 policies to aim at improving safety, to aim at improving  
19 the environment -- improving how our particular products  
20 are used.

21           From a motorcycle insurance standpoint  
22 MMIC has been involved since the early 80's. We take a  
23 very, what we feel, is an open and positive approach to  
24 insurance. We believe in fair and equitable insurance  
25 premiums for all; not just motorcyclists, but for all

1 people.

2                   We want an independent, transparent review  
3 of motorcycle insurance policies, and I must applaud the  
4 Board in taking this step to review loss transfer. It is  
5 a very positive step, no matter what comes out of it. I  
6 congratulate you.

7                   And in fact I also congratulate all the  
8 participants. Thank you.

9                   We have taken an approach across the  
10 country where we believe cost of insurance should be  
11 apportioned to the vehicle type based on fault  
12 determination. We believe that is the fair approach to  
13 this issue. We believe that is the right approach to  
14 this issue. And we believe that is proper, sound, public  
15 policy.

16                   But more importantly that what we believe  
17 is what has been accepted in the vast majority of de --  
18 jurisdictions; not only in Canada, but in North America.  
19 If we look at those jurisdictions, because of our  
20 background, because of the natural approach to law and  
21 justice, we do not penalize the victim.

22                   If you are a small child on a playground,  
23 with very little protection, and a bigger child comes  
24 along and beats you up, we don't say it's the inherent  
25 risk of being small. We understand that there is

1 justice, and that is the approach that we take.

2 So just to give you a little bit of  
3 background, and I think move of you have been here  
4 before. MMIC made presentations in 2003, and again in  
5 2004.

6 And we have advocated for a loss transfer  
7 mechanism. We commissioned a comparative study of  
8 motorcycle insurance in Manitoba in the autumn of 2004 by  
9 Dion, Durrell and Liam McFarlane was the gentleman who  
10 undertook that. And now I'm going to ask Liam to give  
11 the basis of that study. Liam...?

12 MR. LIAM MCFARLANE: Thank you, just by  
13 way of background, I am an actuary working in Canada for  
14 a firm, Dionne Durrell and Associates, we're an  
15 independent consulting organization. I have been working  
16 in the Canadian insurance marketplace for approximately  
17 twenty (20) years.

18 I have been with Dionne Durrell for now  
19 the last sort of nine (9) of those years. And throughout  
20 that whole time I've provided consulting services to the  
21 MMIC in review of quantitative aspects of the review of -  
22 - of motorcycle insurance, including you know, review of  
23 pricing, various pricing analysis, rate making, valuation  
24 of liabilities of insurers involved in this, looking at  
25 various regulatory issues with them again from a

1 quantitative perspective.

2           We certainly agree with -- with Mr.  
3 Ramsay, and -- and I think the other participants here,  
4 that this is not a -- not an actuarial issue loss  
5 transfer, but certainly a public policy issue.

6           Having said that, Mr. Ramsay asked us to  
7 look at quantifying the impact that loss transfer, and  
8 also the bodily injury threshold on Ontario  
9 motorcyclists, what sort of impact has that had on  
10 motorcyclists in -- in that jurisdiction. And we've  
11 produced that report on that basis.

12           I'm just going to make a couple of  
13 comments on that report, in terms of the scope, really  
14 it's -- it was to look at the -- the loss costs in  
15 Manitoba for motorcyclists and private passenger  
16 vehicles.

17           Under the no-fault and -- and prior Tort  
18 environment, to try and get a handle on -- on -- from a  
19 quantitative perspective, the change that the  
20 introduction of no-fault has had on motorcyclists and  
21 also on private passenger vehicles. To look at other no-  
22 fault insurance environments in North America, to  
23 determine how motorcyclists are treated and also again,  
24 as I said earlier, to quantify the impact of loss  
25 transfer and the bodily injury threshold in Ontario on --

1 on motorcycle premiums in Ontario.

2 Certainly through that analysis, as -- as  
3 folks had said earlier today, the -- there has been a  
4 significant cumulative impact of -- of the rate changes,  
5 increase in rates to Manitoba motorcyclists over the last  
6 ten (10) years or so, far outstripping those of -- of  
7 private passenger automobiles.

8 And in trying to determine what -- what  
9 is the cause of that, or -- or the elements or components  
10 of that, it's clearly that the -- the Manitoba personal  
11 injury protection plan, the PIPP Plan, counts for 80  
12 percent or so of -- of costs associated with motorcycle  
13 insurance, and -- and only 40 percent of costs associated  
14 with private passenger insurance.

15 So any -- any -- the driving force behind  
16 the underlying costs of this -- of the motorcycle  
17 insurance is clearly due to the PIPP Program.

18 We, in -- in our analysis, really relied  
19 on other work that's been done and it's -- that's  
20 iterated in our -- or outlined in our report, really  
21 relying on industry information and industry, all  
22 industry in Ontario, prepared by the industry actuary to  
23 -- to the Insurance Bureau of Canada, and also looking at  
24 the -- the Manitoba -- the MPI Rate Application. There  
25 was information in there that allows us to -- to analyse

1 and see what's happened.

2           And you know, the result of that analysis  
3 is clearly the transition between Tort and no-fault, if  
4 you looked at under Tort for motorcyclists, we looked at  
5 total injury costs being the bodily injury liability and  
6 also the accident and benefit costs, those are -- those  
7 are the total -- total injury costs, if you will, you  
8 know, between Tort and -- and PIPP, there's been a  
9 significant increase on motorcyclists and -- and a  
10 significant decrease for -- for private passenger to  
11 automobiles.

12           So clearly, the -- that introduction has  
13 changed the costs between the two (2), well there has  
14 been a cost change, based on that delivery mechanism  
15 between those two (2) types of classes of vehicles.

16           I am not going to go through the -- the  
17 other jurisdictions surveyed in -- in detail. In the  
18 report I did look at loss transfer, and the impact of  
19 loss transfer, and those. That impact of loss transfer  
20 is -- is as estimated by the Industry Actuary in Ontario.  
21 These are just -- taken his statistics, his numbers, and  
22 -- and put those into the Report.

23           And I've also looked at the -- the impact  
24 of the threshold. The reason we've looked at the  
25 threshold is -- is that in Ontario, it's my view that for

1 -- for motorcyclists, the -- the costs of -- of injury  
2 claims, et cetera, there's -- there's -- certain costs  
3 are transferred, you know, relative to a, say, pure no-  
4 fault environment, certain costs are transferred to be a  
5 loss transfer mechanism, and other costs are transferred  
6 because there's a threshold and there's Tort claims  
7 allowed over that threshold.

8                   So, when comparing to a pure no-fault  
9 jurisdiction, and it's, certainly in my view, it's  
10 appropriate to look at both the -- the loss transfer  
11 element and the Tort BI threshold. So that was  
12 considered through the Report.

13                   And I think the -- the -- we acknowledge  
14 that we don't have, you know, perfect underlying Manitoba  
15 data here, but what we're really trying to illustrate  
16 through the experience in Ontario, is that the -- the  
17 impact of those -- the loss transfer and that threshold,  
18 both of them separately and together, are material.

19                   And those are the comments I'd make to,  
20 and will certainly take any questions.

21                   MR. ROBERT RAMSAY: Thank you. I just  
22 want to go back for a second, and give you a little bit  
23 of background from -- from the MMIC standpoint, from  
24 motorcyclist standpoint.

25                   We've ben involved with this issue for

1 many years, as I mentioned earlier, and we're fully aware  
2 of the different systems that exist, not only in Canada,  
3 but in North America, and we want to outline that we  
4 don't make these recommendations and choices easily.

5           We have studied this at some -- some  
6 length, and we do try to do what we believe is the right  
7 thing for all people.

8           So, within -- within our world, I guess,  
9 of insurance, we've considered pure no-fault, and we  
10 think the system in Manitoba is a very good system, you  
11 know. It's served automobile drivers very, very well,  
12 and from that standpoint, I think it's been very good.

13           The optional Tort no-fault system, which  
14 is a system that was recently adopted in Saskatchewan,  
15 again, has been a good system. It allows the choice for  
16 motorcyclists, or anyone else who chooses, to -- to opt  
17 for an optional standpoint.

18           No-fault with loss transfer, the system  
19 that's basically in Ontario, is also a very good system,  
20 and -- and benefits the -- the people of Ontario.

21           And then there's Tort, and -- and most  
22 jurisdictions around the world had Tort up until the '70s  
23 and '80s when they started to evolve, because of  
24 different reasons.

25           Each of these systems offer benefits and

1 advantages, and each of these systems has disadvantages  
2 and affects some people unfairly.

3           In the system that we have here in  
4 Manitoba, it's main disadvantage is to motorcyclists.  
5 It's main disadvantage is to the smaller party. It's  
6 main disadvantage is to the little kid in the school  
7 yard.

8           All other people do very well out of this  
9 system. But as policymakers, as people that recommend to  
10 Government, to serve the people of this province, to  
11 serve the people of this country, it's our position, that  
12 you must try to be fair to all people.

13           If 90 percent of the people are treated  
14 fairly, that's good. But what about the other  
15 10 percent? If 99 percent of the people are treated  
16 fairly, what about the other 1 percent? We don't allow  
17 1 percent to be flushed down the toilet, for a better way  
18 of putting it.

19           This system, the no-fault system here in  
20 Manitoba, has benefited automobile drivers and other  
21 users, but it has negatively impacted motorcyclists, and  
22 very significantly negatively impacted motorcyclists.

23           Let me give you a little bit of an  
24 example. This is just a very short time period over the  
25 last couple of years: Sales in the rest of Canada have

1 gone up 18.8 percent, sales in Manitoba have gone down  
2 over 9 percent.

3                   Another example, in the rest of Canada,  
4 on- road motorcycles represent 57 percent of total  
5 motorcycle sales. In Manitoba, on-road motorcycles  
6 represent about 41.5 percent of sales.

7                   What you're seeing is the result of the  
8 impact of this policy. It takes a long time as we saw  
9 from Liam's analysis. It takes a long time to have that  
10 accumulative impact year over year, so that while  
11 automobile insurance has only gone up approximately 17  
12 percent in the last ten (10) -- eleven (11) years,  
13 motorcycle insurance has gone up over 350 percent in that  
14 same time period.

15                   And, that is now having it's telltale  
16 signs and it's affecting the market and affecting people  
17 and affecting jobs. So, it is a policy decision.

18                   It's a policy decision on what is  
19 fairness. And, we've heard different comments about what  
20 is fairness, about what is right and I'm sure we'll hear  
21 more comments about what is right, but when we've looked  
22 at all the different insurance scenarios, whether it be  
23 pure no-fault or Tort or somewhere in between, we believe  
24 the system that serves all people best has a mechanism  
25 that ensures that no people are treated improperly and



1 for motorcyclists there's very little difference, not  
2 near the difference and so what is impacting that? Well,  
3 insurance rates for automobile drivers in Manitoba are  
4 much lower relative to insurance rates for automobile  
5 drivers in almost every other province. And motorcycle  
6 insurance rates for motorcyclists in Manitoba are much  
7 higher relative to automobile rates in Manitoba than  
8 every other jurisdiction in Canada.

9           Now, if -- if I was a person who thought  
10 that this was mere coincidence, I wouldn't be here today.  
11 I don't think this is mere coincidence, it's part of the  
12 policy that we have with no-fault insurance and so the  
13 decisions that have to be made around this table is, do  
14 we continue with the same system that we have today?

15           If we continue with the same system that  
16 we have today, it's going to get worse for motorcyclists.  
17 I don't think there's anyone in this room that will say,  
18 Oh, no, things will get better. It won't, it'll get  
19 worse and so we have to make a decision.

20           I applaud the Board for taking the time to  
21 review this. I applaud the Board for looking at this in  
22 detail and I think we have a lot of good information that  
23 we can supply to the Board and to everyone else and we'll  
24 try our best to work with the Board to do what is right  
25 and to help the people of Manitoba so everyone benefits

1 from motorcycle insurance and automobile insurance that  
2 is fair to all Parties.

3                   So, our recommendation is that, yes, we do  
4 need some sort of mechanism, a loss transfer mechanism,  
5 or some type of loss transfer mechanism that will address  
6 this issue and I'll leave it with that, thank you.

7                   THE CHAIRPERSON: Thank you, Mr. Ramsay.  
8 Mr. Saranchuk?

9                   MR. WALTER SARANCHUK: Thank you, sir.

10

11 CROSS-EXAMINATION BY MR. WALTER SARANCHUK:

12                   MR. WALTER SARANCHUK: I'll begin with a  
13 series of questions of the Witness, Mr. McFarlane, and if  
14 we have time today, then Mr. Ramsay.

15                   Mr. McFarlane, I wonder if you would just  
16 turn to page 1 of your report which is at Tab 3(a), in  
17 the PUB, Book of Documents.

18                   And if you would take a look at the scope  
19 of your engagement. This document is dated November  
20 12th, 2004. Do you know what gave rise to this  
21 particular engagement at that particular time?

22                   Why was it, for example, to your  
23 knowledge, requested as at November of 2004, for example,  
24 and not any sooner?

25                   MR. LIAM MCFARLANE: I think from my

1 perspective, I can't speak for Mr. Ramsay, but, certainly  
2 it was his view that this is a public policy issue and  
3 not necessarily an actuarial issue.

4                   Now, however, I would imagine he decided  
5 that they wanted some sort of quantitative feel for or  
6 understanding for the impact of some of these provisions  
7 in Ontario.

8                   MR. WALTER SARANCHUK:    Do you know  
9 whether the Public Utilities Board hearing that was held  
10 last fall, here in Manitoba relative to MPI's rate  
11 application had anything to do with it?

12                   MR. LIAM MCFARLANE:    I have no such  
13 knowledge.

14                   MR. WALTER SARANCHUK:    Now, looking at  
15 the scope of your engagement and, in particular, the  
16 three (3) bullet points that appear in the first or  
17 second paragraph there, your first one is indicated as  
18 being:

19                                    "To compare and contrast lost costs in  
20                                    Manitoba for motorcyclist and private  
21                                    passenger vehicles under the current  
22                                    no-fault environment and prior Tort  
23                                    environmental."

24                                    In terms of the contrast, was your  
25 engagement to analyse the impact taking into account the

1 Ontario experience?

2 MR. LIAM MCFARLANE: No.

3 MR. WALTER SARANCHUK: And perhaps the  
4 answer might be obvious, but, why was the Ontario  
5 environment taken into account?

6 MR. LIAM MCFARLANE: Mr. Ramsay had asked  
7 me to provide again a -- quantify the impact of the loss  
8 transfer position provision in Ontario, with the -- I  
9 guess, the next thought being that a similar mechanism in  
10 Manitoba could have a similar impact.

11 MR. WALTER SARANCHUK: Was there any  
12 thought given to compare the loss costs in Manitoba for  
13 motorcyclist and private passenger vehicles, in other no-  
14 fault jurisdictions, such as Saskatchewan or Quebec?

15 MR. LIAM MCFARLANE: No, this is the  
16 scope that I was asked to look at.

17 MR. WALTER SARANCHUK: Did it surprise  
18 you to hear from the Motorcycle and Moped Industry  
19 Council that they wanted you to compare and contrast lost  
20 costs in Manitoba for private passenger vehicles?

21 MR. LIAM MCFARLANE: No.

22 MR. WALTER SARANCHUK: Okay. Can you  
23 just elaborate on that?

24 MR. LIAM MCFARLANE: The -- I guess the  
25 completion of that first sentence is that it's under the

1 current no-fault environment and the prior Tort  
2 environment, the understanding being the shifting from  
3 Tort to no-fault, how has that impacted those on  
4 motorcycles relative to those on private passenger cars?

5 I think the assumption or assertion is  
6 that if we've taken this decision to move to no-fault  
7 from a Tort environment that the -- whatever you think of  
8 Tort, perhaps that the justice system would provide the  
9 proper allocation of costs, however, there would be an  
10 additional layer of costs on top of that, due to the  
11 adversarial nature.

12 And I guess their thinking would be, if we  
13 just lifted those costs off that those, you know, the  
14 impact of moving from the Tort to no-fault should be  
15 consistent across vehicle classes.

16 And these are the two (2) -- the private  
17 passenger vehicle class is the main class that -- that  
18 they would compare to; and so that was the rationale  
19 behind that scope.

20 MR. WALTER SARANCHUK: Looking at the  
21 second bullet in terms of the scope of the study you were  
22 requested to -- to conduct, and that of course refers to  
23 a review of other no-fault insurance environments in  
24 Canada and United States to determine how motorcyclists  
25 are treated.



1 we had was from -- from the Manitoba -- the MPI Rate  
2 filing. So there's just not the data to do the  
3 quantitative analysis, and also perhaps the -- the --  
4 just -- just the amount of effort that's required to --  
5 to review each of those jurisdictions, would be  
6 considerable.

7 MR. WALTER SARANCHUK: Would there be an  
8 increased measure of reliability on the data if you were  
9 to compare Manitoba to the other no-fault jurisdictions  
10 in Canada; by that I mean SGI and SAAQ?

11 MR. LIAM MCFARLANE: In what context?

12 MR. WALTER SARANCHUK: Well in terms of  
13 determining just what the overall experience has been for  
14 motorcyclists, premium-wise, for example, over the last  
15 ten (10) years for example?

16 MR. LIAM MCFARLANE: If we had the same  
17 level of detail as we had for Manitoba, for the -- to  
18 allow us to -- to estimate the -- the loss costs under  
19 both no-fault and Tort environment, then certainly that  
20 additional information may -- may prove to be useful.

21 MR. WALTER SARANCHUK: Was any  
22 consideration given to a reference to the benefits  
23 derived by motorcyclists under the coverages available  
24 under these various jurisdictions that you are referring  
25 to, for example, in the second bullet?

1                   MR. LIAM MCFARLANE:    It was really not  
2 directed at -- at trying to assess the -- you know, the  
3 level of adequacy of -- of the benefits per se.  It was  
4 more really to look at how the environment delivery  
5 mechanism would impact motorcyclists.

6                   MR. WALTER SARANCHUK:    Was any  
7 consideration being given in your report or in your  
8 compilation of the data to the fact that in Manitoba we  
9 have a universal, compulsory, monopolistic insurance  
10 scheme, which basically insures all comers as opposed to  
11 the situation in Ontario?

12                   MR. LIAM MCFARLANE:    We were really  
13 looking at the -- the pure loss costs per exposure, and  
14 not focussing in on -- on availability or -- or the  
15 nature of the deliverer, it's really the product that  
16 they're delivering it under.

17                   MR. WALTER SARANCHUK:    And looking at the  
18 third bullet included in your scope of study, you were  
19 requested to quantify the impact of loss transfer and the  
20 bodily injury threshold in Ontario on motorcycle premiums  
21 in Ontario.

22                   Do you know why you were asked to include  
23 the bodily injury threshold?

24                   MR. LIAM MCFARLANE:    Yes, as -- we're  
25 comparing to -- to Manitoba, and trying to get an

1 understanding of -- under a pure no-fault environment, if  
2 in fact, some mechanism was put in place to transfer  
3 losses, what would be the impact?

4           In Ontario, there are -- the accident  
5 benefits -- there are accident benefits, losses and there  
6 is the ability to recovery in excess of those accident  
7 benefits through -- through Tort, if -- if you go  
8 through a threshold.

9           So, to -- in -- in my opinion, to -- to  
10 look at, on an apples-to-apples basis as much as  
11 possible, we have to consider the -- the claims that are  
12 transferred there out of a motorcycle or two (2)  
13 motorcycle by virtue of the threshold to get a -- an --  
14 an adequate comparison.

15           MR. WALTER SARANCHUK:   Okay.  Just on  
16 that score, let's find out whether we are comparing  
17 apples to apples and I would refer you to your Exhibit 5-  
18 E.  This is in Tab 3A, of course, Mr. Chairman.

19

20

(BRIEF PAUSE)

21

22

23

24

25

          MR. WALTER SARANCHUK:   And, here we're  
dealing with the impact of the loss transfer experience  
in Ontario, is that correct, Mr. McFarlane?

          MR. LIAM MCFARLANE:    Yes.

1                   MR. WALTER SARANCHUK:   And, we're also  
2 including in there, the impact of the bodily injury  
3 experience so far as loss transfer is concerned for  
4 motorcyclists in Ontario, is that correct?

5                   MR. LIAM MCFARLANE:   Yes.

6                   MR. WALTER SARANCHUK:   And, I'm looking  
7 at the top table, the impact of accident benefits, loss  
8 transfer for motorcycles. We see that the impact is  
9 minus 16.7 percent overall, is that right?

10                  MR. LIAM MCFARLANE:   Yes.

11                  MR. WALTER SARANCHUK:   What does that  
12 mean?

13                  MR. LIAM MCFARLANE:   That means that the  
14 -- the loss transfer -- losses that are being transferred  
15 to motorcyclists to -- to the liability coverage private  
16 passenger vehicles is 16.7 percent of the total loss  
17 costs for motorcycles over that five (5) year period.

18                  MR. WALTER SARANCHUK:   And what was the  
19 source of your information?

20                  MR. LIAM MCFARLANE:   The accident  
21 benefits estimate ultimate losses are from the Insurance  
22 Bureau of Canada. All industry actual loss ratio  
23 experience as of December 31st, 2003, the estimated  
24 ultimate losses from loss transfer is from the half-year  
25 exhibit from -- that -- similarly, the industry actuary

1 estimates by kind of loss and that is our estimate of  
2 those loss --

3                   We've -- we've -- we've -- we've added --  
4 we've taken an assumption as to how much is transferred  
5 from motorcycles to private passenger vehicles as opposed  
6 to snow vehicles and also on a market share basis, what  
7 has transferred to commercial vehicles for motorcycles.

8                   MR. WALTER SARANCHUK:    So this does  
9 include some measure of arbitrariness?

10                  MR. LIAM MCFARLANE:    It includes some  
11 measure of professional judgement.

12                  MR. WALTER SARANCHUK:    Is that  
13 arbitrariness?

14                  MR. LIAM MCFARLANE:    I -- I would ask you  
15 to -- to tell me how it's arbitrary?

16                  MR. WALTER SARANCHUK:    Well, what I'm  
17 getting at, though, sir, maybe I'm using the wrong  
18 phraseology; is there an estimate involved here?

19                  MR. LIAM MCFARLANE:    Yes.

20                  MR. WALTER SARANCHUK:    And so that's  
21 where the judgement comes into play?

22                  MR. LIAM MCFARLANE:    Yes.

23                  MR. WALTER SARANCHUK:    Okay. Now, when  
24 we are looking at the second schedule, the middle of the  
25 page of Exhibit 5-E, the impact of bodily injury

1 threshold for motorcyclists, there's a figure of minus  
2 24.5 percent, what does that reflect?

3 MR. LIAM MCFARLANE: What we are saying  
4 in that case is that due to the threshold, there are  
5 liability claims -- there are claims for injuries in  
6 excess of the threshold that are transferred out of  
7 motorcycles and to the total of \$110 million, which would  
8 be other -- make up 24.5 percent of the ultimate loss  
9 costs for motorcycles, net of that figure. The  
10 motorcycle losses would be that -- without the threshold,  
11 would be that much higher.

12

13

(BRIEF PAUSE)

14

15 MR. WALTER SARANCHUK: Given that we are  
16 in a total no-fault environment here in Manitoba, sir.

17 MR. LIAM MCFARLANE: Yes.

18 MR. WALTER SARANCHUK: And having heard  
19 from the FSCO witness today, that the right to sue if you  
20 will, or the Tort experience is not really relevant, or  
21 applicable, to the Manitoba situation. Can I ask you why  
22 there is this inclusion of the -- of the middle table?

23 MR. LIAM MCFARLANE: The -- again, in my  
24 view, to compare, if you will, the total costs to -- to  
25 motorcycles, if Ontario was a no-fault jurisdiction with

1 no right to sue for excess losses, they would be that  
2 much higher.

3                   Therefore to compare to Manitoba, we have  
4 to adjust for that, notwithstanding what the witness from  
5 FSCO said.

6                   MR. WALTER SARANCHUK:    So, when you look  
7 at the overall impact at 34.4 percent, in fact it's only  
8 16.7 percent, or so, that reflects the loss transfer  
9 portion, isn't that correct?

10                  MR. LIAM MCFARLANE:    That's correct.

11

12                                   (BRIEF PAUSE)

13

14                  MR. WALTER SARANCHUK:    Just taking an  
15 example, sir, if there were an auto -- if there were an  
16 accident, two (2) vehicle accident, one (1) a motorcycle,  
17 and one (1) a Mack dump truck, where the motorcyclist was  
18 not at fault at all, and the loss cost incurred was a  
19 million dollars, in terms of accident benefits paid to  
20 the motorcyclist.

21                  MR. LIAM MCFARLANE:    Hmm hmm.

22                  MR. WALTER SARANCHUK:    And that accident  
23 occurred in Manitoba versus Ontario, looking at the  
24 message you're trying to convey here on Exhibit 5-E,  
25 would the results be the same?

1                   MR. LIAM MCFARLANE:    In Ontario, in that  
2 situation, the motorcyclist who was injured, if it was  
3 not his fault, would have the ability to -- to recover  
4 accident benefits, losses over two thousand dollars  
5 (\$2,000) through -- by virtue of the loss transfer. He  
6 would also have the ability to recover other losses --  
7 other costs, due to the -- the threshold, if -- if it  
8 applied in that situation.

9                   Therefore, you know, in my view that's --  
10 that's why we're considering both of these -- these  
11 situations.

12                   In Manitoba, if it happened in Manitoba  
13 and it's a million dollar claim, the million dollar  
14 claim, the way I understand it, is paid for by the  
15 motorcyclist, there's no -- there's no loss transfer,  
16 there's no right to -- for Tort.

17                   What I'm saying is in Ontario, these  
18 costs, if you just look at loss transfer only, would  
19 underestimate the true costs that are being transferred  
20 to other types of vehicles because there is that Tort  
21 element.

22                   MR. WALTER SARANCHUK:    If there were a  
23 loss transfer system in Manitoba, along the same lines as  
24 Ontario, given the fact that we don't have the right to  
25 sue here, would the results be the same, in the same

1 order of these percentages?

2 MR. LIAM MCFARLANE: This is -- this is  
3 Ontario experience, I don't think we can draw that  
4 conclusion without understanding the -- the aggregate  
5 level of the PIPP coverage, relative to looking at the  
6 Ontario accident benefits, and the recoveries that would  
7 be made through the Tort system in Ontario.

8 If those two (2) were identical, i.e. the  
9 sum of the Tort plus the AB Ontario, relative to the  
10 PIPP, in Manitoba, then I believe the assumption would be  
11 -- would be reasonable that they would be consistent, the  
12 result would be the same.

13 MR. WALTER SARANCHUK: What costs were  
14 you contemplating as being included in the bodily injury  
15 threshold for Ontario?

16 MR. LIAM MCFARLANE: In this Exhibit?

17 MR. WALTER SARANCHUK: Yes.

18 MR. LIAM MCFARLANE: We've taken the  
19 actual Ontario bodily injury threshold losses that are in  
20 if you will, in private passenger auto. And a certain  
21 proportion of those are due to claims for motorcyclist.  
22 We've estimated that based on the proportion of  
23 motorcyclist in the market, cars are in accidents with  
24 motorcycles and some of those claims will give rise to a  
25 Tort claim.

1                   MR. WALTER SARANCHUK:    Let me ask you  
2 again, sir, what costs were included in the information  
3 that you've provided for the bodily injury threshold and  
4 would they be the same costs that could be covered under  
5 the PIPP program in Manitoba; to your knowledge?

6                   MR. LIAM MCFARLANE:    Certain elements, to  
7 my knowledge, would be covered in the PIPP program. I  
8 mean in Manitoba, given that it's -- there's no-fault  
9 benefits in PIPP that are similar to accident benefits.

10                   There may be -- in Ontario there are cost  
11 recoveries for pain and suffering, I'm not 100 percent  
12 certain whether that is provided for within the PIPP  
13 coverage in Manitoba, if it's not, then those costs would  
14 not be recovered in Manitoba.

15                   MR. WALTER SARANCHUK:    Anything else  
16 included in the Ontario experience that you think might  
17 be included in PIPP in Manitoba?

18                   MR. LIAM MCFARLANE:    I have not gone  
19 though, again those coverages, sort of, line by line to  
20 normalize those for the differences. The purpose of this  
21 Exhibit illustrates the impact of these things in  
22 Ontario.

23                   And illustrates the fact that it's  
24 material, you know, the transference due to fault, either  
25 through loss transfer or through the threshold Tort is

1 material. To actually do it for Manitoba it would  
2 require the Manitoba data and you know, looking at the  
3 PIPP coverage for Manitoba.

4 MR. WALTER SARANCHUK: So that 34.4  
5 percent at the bottom of Exhibit 5(e) really doesn't  
6 reflect what the experience would be in Manitoba under  
7 the Manitoba plan; does it?

8 MR. LIAM MCFARLANE: There is no Manitoba  
9 plan for loss transfer.

10 MR. WALTER SARANCHUK: If there were?

11 MR. LIAM MCFARLANE: Again, Ontario has a  
12 two thousand dollar (\$2,000) deductible and they have  
13 different acts and benefits. They have Tort. It depends  
14 on the actual implementation in Manitoba.

15 In Manitoba 80 percent of the losses are  
16 due to PIPP to the extent that any proportion of those is  
17 transferred, then you will have material impact. The  
18 loss transfer as it works in Ontario, purely on the  
19 accident benefits, if you want to look at that, is 25  
20 percent of the accident benefits lost costs.

21 So if you just, you know, assume that it's  
22 25 percent of the accident benefits lost costs and 25  
23 percent of the PIPP, then again that requires a knowledge  
24 of exactly the conditions of the loss transfer mechanism  
25 and the -- among other things, the fault determination

1 rules et cetera.

2 All this is illustrating is that there is  
3 a material transfer of losses between classes in Ontario.

4 MR. WALTER SARANCHUK: Now, you've gone a  
5 step further, I might suggest. You can look at bottom of  
6 page 10 of your report, where you repeat the information  
7 shown on Exhibit 5(e) at the bottom, namely that 34.4  
8 percent on one (1) table, and the information in your  
9 Exhibit 5(f), the 0.6 percent impact at the bottom of  
10 Exhibit 5(f), and have that quoted on page 10.

11 And your conclusion is:

12 "That the foregoing illustrates the  
13 impact in Ontario."

14 Which you have said. Then you go on to  
15 say:

16 "Exhibit 6 illustrates the impact on  
17 total lost costs in Manitoba assuming  
18 similar savings by coverage as  
19 experienced in Ontario.

20 And the result is 42 percent reduction  
21 in motorcycle premiums and an increase  
22 in private passenger automobile  
23 premiums of 1.2 percent.

24 Can you comment on the validity of those  
25 figures, sir, given the circumstances that we just dealt

1 with; not the least of which is the assumption about  
2 similar savings by coverage, as experienced in Ontario?  
3 This again is, if there were a loss transfer plan in  
4 Manitoba?

5 MR. LIAM MCFARLANE: Again, it -- it is  
6 assuming the -- that there's a similar savings by  
7 coverage as experience in Ontario. The -- result is --  
8 is that reduction.

9 Again, it is, under the assumption that,  
10 you know, there are -- there are similarities between  
11 Ontario and in Alberta, in that a great proportion of the  
12 -- the coverage is, the loss costs, a great proportion of  
13 the total loss costs, is due to -- to accident benefits  
14 or PIPP, in fact the PIPP is much higher than the  
15 accident benefits in Ontario.

16 If a proportion of, you know, the accident  
17 benefits costs were transferred onto, you know, with the  
18 same results, this is what would happen. It's -- it  
19 would have to be quantified specifically to Manitoba  
20 under a Manitoba plan.

21 MR. WALTER SARANCHUK: So the 42 percent  
22 level of savings that you've calculated, really can be  
23 realized only with the introduction of the right to sue,  
24 for the BI threshold in Manitoba; is that right?

25 MR. LIAM MCFARLANE: No.

1 MR. WALTER SARANCHUK: Why not?

2 MR. LIAM MCFARLANE: The benefits that  
3 are -- that are -- gained from -- from that Tort  
4 threshold in -- in Ontario, may already be available  
5 through PIPP in Manitoba. I can't tell you whether that  
6 is exactly true without comparing those elements in  
7 detail.

8 The assumption, in my assumption, is that  
9 the PIPP provides all of the recovery for injuries,  
10 whereas in Ontario, only the accident -- the accident  
11 benefits covers one portion, the other is recovered  
12 through tort, as taken to -- and add them to one (1).

13 MR. WALTER SARANCHUK: So your assumption  
14 then, again, is to try to compare apples to apples; is  
15 that everything that can be recovered under the Ontario  
16 plan is available to be covered under the PIPP plan in  
17 Manitoba?

18 MR. LIAM MCFARLANE: If it were, this  
19 would be the result.

20 MR. WALTER SARANCHUK: And you haven't  
21 conducted any study or analysis to determine what is or  
22 what isn't; have you?

23 MR. LIAM MCFARLANE: I have not looked at  
24 the individual components of the PIPP coverage relative  
25 to the combination of the accident-benefits loss transfer

1 in the Ontario BI. This is a, you know, if those  
2 assertions or those assumptions were -- were believed to  
3 be reasonable, this would be a reasonable outcome.

4 MR. WALTER SARANCHUK: Thank you, sir.  
5 In the -- in the information filed by the Insurance  
6 Bureau of Canada, and this is at Tab 1A, in the Book of  
7 Documents, this is Appendix I, and the answer to  
8 Question 3, Q.3, actually three (3) pages into that  
9 document, Tab 1A

10 MR. LIAM MCFARLANE: Hmm hmm.

11 MR. WALTER SARANCHUK: There's reference  
12 to the loss transfer experience there, the base before  
13 and after loss transfer, and the comment made is as  
14 follows, quote:

15 "However, this experience in Ontario  
16 may not be applicable to Manitoba. The  
17 following factors may be different  
18 between Ontario and Manitoba and may  
19 affect the magnitude of the dislocation  
20 in Manitoba, not a complete list."

21 And there's reference there to:

22 "(a) The proportion of commercial  
23 automobile and motorcycles in the Whole  
24 Risk Portfolio;

25 (b) The main type of use of

1                   motorcycles, for example, for pleasure  
2                   or commuter; and  
3                   (c) The age driving record and income  
4                   distribution of motorcycle drivers."  
5                   To what extent, sir, have those  
6                   distributional differences been recognized in your  
7                   report?

8                   MR. LIAM MCFARLANE:    They have not been  
9                   recognized.

10                  MR. WALTER SARANCHUK:    Has the question  
11                  of the weather in Manitoba compared to Ontario and the  
12                  length of the motorcycle riding season been taken into  
13                  account in your report?

14                  MR. LIAM MCFARLANE:    No, it has not.

15

16   (BRIEF PAUSE)

17

18                  MR. WALTER SARANCHUK:    Do you have any  
19                  knowledge as to the proportion of single vehicle  
20                  motorcycle accidents in Ontario?

21                  MR. LIAM MCFARLANE:    No, I do not.

22

23   (BRIEF PAUSE)

24

25                  MR. WALTER SARANCHUK:    Last year, and

1 it's Order Number 148/04, this Board stated as follows at  
2 page 51. Quote:

3 "According to MPI the vast majority of  
4 motorcycle serious losses occur in  
5 single vehicle accidents, a situation  
6 wherein loss transfer would not be  
7 applicable."

8 End of quote. Is that the experience in  
9 Ontario?

10 MR. LIAM MCFARLANE: The -- not to my  
11 knowledge. I mean, the -- there's a lot of -- of issues  
12 that enter into whether it's a single vehicle accident in  
13 terms of coding of the -- the fault of the loss and in  
14 terms of whether a hit-and-run is considered a single  
15 vehicle accident, et cetera.

16 Certainly, in Ontario the transfer of  
17 losses as we've highlighted is -- on the accident  
18 benefits -- is 25 percent of the losses. That would  
19 certainly imply that the preponderance of claims are not  
20 single vehicle.

21 MR. WALTER SARANCHUK: And -- and, in its  
22 order, the Board also went on to say that according to  
23 the MPI information of \$25.9 million in motorcycle  
24 serious losses reviewed by MPI, it claimed that less than  
25 \$1.6 million were generated in multi-vehicle collisions

1 where the other vehicle was at fault.

2 Further, of \$29.1 million of non-serious  
3 motorcycle losses reviewed by MPI, MPI claimed that \$8.9  
4 million arose from multi-vehicle collisions where the  
5 other vehicle was at fault.

6 So, we have heard the estimate given by  
7 you and your colleague, Mr. Ramsay, that PIPP claims  
8 comprise 80 percent of motorcycle costs. It would appear  
9 just on the face of this information that I just referred  
10 to, that magical 80 percent figure jumps out again,  
11 because according to MPI, according to the experience  
12 based on the year that it was talking about, 2003, out of  
13 \$55 million in motorcycle losses reviewed by MPI, MPI  
14 indicated that only \$10.5 million would be subject to  
15 loss transfer. In other words, 80 percent would not.

16 Can you comment on the experience in  
17 Ontario on a comparative basis?

18 MR. LIAM MCFARLANE: The -- as we've  
19 illustrated the all-industry experience in Ontario has --  
20 has -- over the last five (5) years has averaged that 25  
21 percent of accident benefits losses have been transferred  
22 out of -- out of motorcycles and that is on a -- that's  
23 calculated by the Actuary to the Insurance Bureau of  
24 Canada, which takes care of development and -- and other  
25 items as -- as mentioned earlier by the fiscal

1 representative.

2           Also, I have been privy to, you know, one  
3 (1) of the market leaders, I act as a consultant to the  
4 MMIC in a program that they -- they -- they -- they  
5 sponsor in terms of an insurance company that is one (1)  
6 of the market leaders in -- in -- in this and we  
7 certainly see those figures. The transfer is, in effect  
8 -- is in excess of -- of 30 percent that is assumed by  
9 other actuaries in that.

10           So, the -- the experience that we're  
11 seeing in Ontario is -- is at odds, certainly, with what  
12 would appear to be in Manitoba. Now, having said that,  
13 the -- the companies in Ontario are trading dollars.  
14 There is an incentive to code it properly, to go through  
15 a process, to actually recover those dollars.

16           And, you know, so we feel that the numbers  
17 in Ontario are solid. We cannot offer, we don't have  
18 access -- I don't have access to MPI's data. I have no  
19 access to how MPI codes the losses, how they determine  
20 fault etcetera.

21           And so I cannot comment on that, the fact  
22 that that data is at odds with Ontario, could be due to  
23 many reasons.

24           MR. WALTER SARANCHUK: Yes sir. And just  
25 to end this particular area of questioning. If the trend

1 that I referred to, or the experience, as indicated by  
2 MPI and as quoted in last years Board Order, were to be  
3 maintained, so that, again, 80 percent of the costs to  
4 motorcycles would not be subject to loss transfer; given  
5 your conclusions, in terms of the percentages, wouldn't  
6 the impact of loss transfer in Manitoba, if it were to be  
7 along the Manitoba -- well the Ontario line, be reduced  
8 even further?

9 MR. LIAM MCFARLANE: If those statistics  
10 are accurate. I have no knowledge of whether those are  
11 accurate, or not.

12 MR. WALTER SARANCHUK: I'm assuming if  
13 they were.

14 MR. LIAM MCFARLANE: If they're accurate,  
15 it would be less than what I'm indicating in Ontario,  
16 certainly.

17 MR. WALTER SARANCHUK: Thank you. And at  
18 page 11 of your report, sir, you deal in Section 8 with  
19 conclusions and recommendations.

20

21 (BRIEF PAUSE)

22

23 MR. WALTER SARANCHUK: And at Section 8,  
24 page 11, your first conclusion is:

25 "The introduction of no-fault insurance

1                   in Manitoba has had a favourable impact  
2                   on automobile drivers, and an adverse  
3                   impact on motorcyclist."

4                   In what sense has the impact on  
5 motorcyclists been adverse?

6                   MR. LIAM MCFARLANE:    Their rates have  
7 gone up 370 percent in -- for over that period of time.  
8 And for private passenger automobiles have gone up some  
9 20 percent, I believe, less than 20 percent.

10                  MR. WALTER SARANCHUK:    Would you agree  
11 that having access to generous PIPP benefits, paid  
12 without regard to fault, has benefited at fault operators  
13 of all types of vehicles in Manitoba?

14                  MR. LIAM MCFARLANE:    Can you repeat the  
15 question, please?

16                  MR. WALTER SARANCHUK:    Would you agree  
17 that having access to generous PIPP benefits, paid  
18 without regard to fault, has benefited at fault  
19 operators, of all types of vehicles?

20                  MR. LIAM MCFARLANE:    It may have  
21 benefited, at fault operators.  I'd have to really  
22 consider that in more detail.

23                  MR. WALTER SARANCHUK:    You have some  
24 reservations about that?  The question again, in  
25 fairness.



1 third-party they're involv -- in the incident with. And  
2 certainly over -- my experience, over this same period of  
3 time, over looking at different areas, different  
4 companies, different rate analysis, I have not seen where  
5 the -- where the motorcyclists have been at a greater  
6 level of fault than others. In fact, it seems to be that  
7 it's been -- been the opposite.

8 MR. WALTER SARANCHUK: And, in coming to  
9 that conclusion, why do you preface it with the words,  
10 "considering fault"?

11 MR. LIAM MCFARLANE: My personal view is  
12 that, and again, this is my personal view, is that the  
13 Tort environment, through the justice system, ultimately  
14 will put the dollars in the right buckets. I think to  
15 assume otherwise, is there's -- you're assuming that  
16 there's a flaw in that system, and -- and, you know,  
17 there is imperfections.

18 But, so -- that, in my view, they end up  
19 in -- in the right bucket. The change in delivery  
20 mechanism should -- should not change the, in my view,  
21 the total costs for those groups, it should change the  
22 cost of delivery, and -- and what has happened is this  
23 delivery mechanism has shifted costs to -- to  
24 motorcyclists that previously the system, the justice  
25 system, it's determined that it shouldn't be there.

1                   MR. WALTER SARANCHUK:    Do you consider,  
2 or would you arrive at the same conclusion if the words  
3 "considering fault" were omitted?

4  
5                                   (BRIEF PAUSE)

6  
7                   MR. LIAM MCFARLANE:    I don't know.  
8 Again, I'd like some time to think about that.

9                   MR. WALTER SARANCHUK:    Well, as for as  
10 long as you are here, then perhaps you can give it some  
11 thought and let us know.

12                                   Just harkening back to your first  
13 conclusion for a moment, there is reference to the  
14 adverse impact on motorcyclists; I neglected to ask you:  
15 If premiums have increased more than 300 percent because  
16 of higher claims costs, which have been properly assigned  
17 to motorcyclists, do you consider that to be adverse?

18                   MR. LIAM MCFARLANE:    Again, if that, you  
19 know, I agree with Mr. Ramsay's earlier point, that if  
20 somebody goes out and, you know -- you know, you talked  
21 about inherent risk, if the -- the person who has caused  
22 the damage and -- and if they went in there, and it's  
23 their cause, and it's 360 percent, then they should pay  
24 for it, I have no problem with that.

25                   MR. WALTER SARANCHUK:    In your -- in your

1 Fifth Conclusion, you state, quote:

2 "A loss transfer mechanism in Manitoba  
3 would result in material savings to  
4 motorcyclists, with a minimal increase  
5 to automobile drivers," End of quote.

6 What do you mean by material savings?

7 MR. LIAM MCFARLANE: Well, I look at that  
8 in -- in terms of, you know, what -- what would somebody  
9 look at and consider to be -- worth the effort, and --  
10 and, you know, if -- if the average premium is, you know,  
11 fifteen hundred dollars (\$1,500) and you save 10 percent,  
12 that seems to me that's material enough, and -- and  
13 that's what it, you know, again, under the assumptions  
14 that I've made, if that were to -- to be the result, I  
15 would consider that to be material.

16 MR. WALTER SARANCHUK: In your Executive  
17 Summary at page 3, in the bottom paragraph, you state,  
18 quote:

19 "It would be -- It would be very easy  
20 -- it would be -- It would be very easy  
21 for..."

22 Sorry:

23 "It would be very easy to implement a  
24 loss transfer mechanism in Manitoba,  
25 that would result in more equitable

1 treatment of motorcyclists, with very  
2 little impact on drivers of  
3 automobiles." End of quote.

4 In the -- in what sense would the  
5 introduction of loss transfer result in more equitable  
6 treatment of motorcyclists?

7 MR. LIAM MCFARLANE: Reflection of the  
8 claims are more in line with the reflection of the -- the  
9 fault, and, you know, that total class of -- of vehicles,  
10 that they bring to the equation.

11 MR. WALTER SARANCHUK: Is that reflected,  
12 sir, just -- harkening back to page 11 in your  
13 conclusions and recommendations?

14  
15 (BRIEF PAUSE)

16  
17 MR. LIAM MCFARLANE: Which; the -- the  
18 fact that the implementation or the equitable treatment?

19 MR. WALTER SARANCHUK: Well, basically  
20 what you state in the executive summary:

21 "That it would be very easy to  
22 implement a loss transfer mechanism in  
23 Manitoba, that would result in more  
24 equitable treatment of motorcyclists  
25 with very little impact on drivers of

1                   automobiles."

2                   So I would suggest that it refers to the  
3 words -- the key words are more equitable treatment. And  
4 I'm just asking you whether that appears in your  
5 conclusions and recommendations? And if not, why not?

6                   MR. LIAM MCFARLANE: Well, it would  
7 appear that, on page 11 of the recommendation, we've  
8 certainly focussed on the implementation as opposed to  
9 the point being equitable. But I still stand, you know,  
10 behind that. I would be -- I guess I have not repeated  
11 that.

12                  MR. WALTER SARANCHUK: Okay. How do you  
13 assess equity, or fairness, to know if it's being  
14 improved?

15                  MR. LIAM MCFARLANE: Well this is a --  
16 speaking as an individual or -- or an actuary, there's  
17 different -- different views of it. And -- and from an  
18 actuarial perspective, you know, I guess in -- in -- most  
19 in context, we're not determining whether it's equitable  
20 or not, we're just -- whoever has made the policy  
21 decision or -- to put the structure in place that's in  
22 place, so the product that's in place, we do the  
23 quantitative work in -- in dealing with that. So that --  
24 that doesn't really play into -- to the -- I guess the  
25 actuarial concept of it. I have my own personal view.

1                   MR. WALTER SARANCHUK:    But just holding  
2 you to your comments and your evidence as an actuary.  So  
3 whether loss transfer were implemented or not, the result  
4 would still be actuarially sound?

5                   MR. LIAM MCFARLANE:    I don't think  
6 there's any conflict with the actuarial principles as to  
7 -- to what MPI has to say, or what -- what they're  
8 contemplating.  I don't see any distinction between that  
9 or Ontario, it's -- it's -- there's no actuarial issues  
10 around that.

11                   MR. WALTER SARANCHUK:    And just finally,  
12 dealing with your recommendations at page 11, sir, where  
13 you recommend that Manitoba implement a loss transfer  
14 mechanism for motorcyclists, and other classes similarly  
15 affected, as appropriate.

16                   You know perhaps, or at least if you don't  
17 I'm advising you, that MPI has imposed a 15 percent rate  
18 cap on motorcycle rates to prevent what has been termed  
19 "rate shock".  So full actuarial rates have not been  
20 implemented.

21                   Would it be more equitable treatment if a  
22 loss transfer were implemented, and full actuarial rates  
23 were borne by motorcyclists?

24                   MR. LIAM MCFARLANE:    It would be more  
25 equitable if it was the full actuarial rates, but, yes,

1 contemplating a loss transfer, yes.

2 MR. WALTER SARANCHUK: Thank you. I have  
3 no more questions, Mr. Chairman. I take it this would be  
4 an appropriate spot to break.

5 THE CHAIRPERSON: Thank you, Mr.  
6 Saranchuk, thank you very much, you two (2) gentlemen,  
7 most appreciated.

8

9

(WITNESSES RETIRES)

10

11

12 THE CHAIRPERSON: So, we'll return again  
13 tomorrow at nine o'clock for another full day. Thank  
14 you.

14

15 --- Upon adjourning at 4:00 p.m.

16

17

18 Certified Correct,

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22 

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Carol Wilkinson, Ms.

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