

NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

Hearing Transcript

2017 Automobile Insurance Review

June 12, 2018

PRESENT:

The Board:

Darlene Whalen, Chair and CEO
Dwanda Newman, Vice-Chair
James Oxford, Commissioner

Board Counsel/ Staff:

Jacqueline Glynn, Board Counsel
Ryan Oake, Board Staff

Parties (Alphabetical Order)

Atlantic Provinces Trial Lawyers Association
Ernest Gittens

Presenters

Amanda Dean, IBC
Ryan Stein, IBC

Campaign to Protect Accident Victims

Colin Feltham
Jerome Kennedy, Q.C.

Consumer Advocate

Dennis Browne, Q.C.
Andrew Wadden

Insurance Bureau of Canada (IBC)

Terry Rowe, Q.C.
Trevor Foster

Spinal Cord Injury NL

Thomas Fraize, Q.C.
Lara Fraize-Burry
Michael Burry

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1 (9:02 a.m.)
 2 CHAIR:
 3 Q. Good morning, everybody. It looks like
 4 we're all ready to go. Mr. Rowe, I guess,
 5 over to you.
 6 ROWE, Q.C.:
 7 Q. Thank you, Madam Chair. Mr. Stamp, my
 8 colleague, won't be here today. He had a
 9 matter in court which he could not move or
 10 change in any way. So we are going to
 11 proceed with the presentation by IBC, and
 12 ready to do that are Amanda Dean, the Vice-
 13 President Atlantic of IBC, and with her is
 14 Ryan Stein, the Director of Policy. I think
 15 I have that correct. So they will proceed
 16 with the presentation.
 17 CHAIR:
 18 Q. Whenever you're ready.
 19 MS. DEAN:
 20 Q. Thank you. Good morning, and thank you for
 21 the opportunity to take part in this
 22 consultation process to offer my industry's
 23 feedback. As Mr. Rowe said, my name is
 24 Amanda Dean, and I am the Vice-President
 25 Atlantic for Insurance Bureau of Canada, or

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1 IBC, and here with me today is Ryan Stein,
 2 Director of Policy with IBC.
 3 IBC is the national trade association
 4 that represents 90 percent of Canada's
 5 property and casualty insurers, the
 6 companies that provide the insurance for
 7 homes, businesses, and cars throughout the
 8 country.
 9 Today I'm here on behalf of our member
 10 companies who write auto insurance in this
 11 province. Off the top, let me emphasize
 12 that our members fully recognize the
 13 problems within the Newfoundland and
 14 Labrador auto insurance system; namely,
 15 premiums are too high. That has a negative
 16 impact on the disposable incomes of the
 17 people of this province, but premiums are so
 18 high because claims payouts are incredibly
 19 and unsustainably high.
 20 These interconnected problems have
 21 created instability and an unhealthy market
 22 with too few companies choosing to compete
 23 for the business. This instability is
 24 hurting Newfoundland and Labrador auto
 25 insurance customers and they deserve better.

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1 We've been hearing certainly from the
 2 people of this province for the past few
 3 months and receiving emails and calls on our
 4 consumer information line, and we've been
 5 hearing the impact that these high premiums
 6 certainly have on the people of this
 7 province.
 8 In Newfoundland and Labrador, just four
 9 insurers write 87 percent of the auto
 10 insurance business. Compare that to Canada
 11 as a whole, where the four insurers with the
 12 largest market share write 55 percent of the
 13 business, or the Maritimes where the four
 14 insurers with the largest market share write
 15 52 percent of the business. In fact, five
 16 of the largest insurers in the Maritimes
 17 don't write auto insurance in this province
 18 at all.
 19 The reason for this is simple. Since
 20 2006, selling auto insurance in Newfoundland
 21 and Labrador has, on average, been a losing
 22 proposition. Collectively, insurers have
 23 posted an average annual underwriting loss
 24 of 15 million dollars for the past 11 years.
 25 This annual loss continues even though

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1 Newfoundland and Labrador consumers have
 2 paid ever higher premiums compared to their
 3 neighbours in the Maritimes. In 2006,
 4 Newfoundland and Labrador drivers paid just
 5 \$14.00 a year more than drivers in the
 6 Maritimes. Today they pay \$318.00 more on
 7 average than consumers in the Maritimes.
 8 What's even more startling is that the
 9 increase in premium is not even remotely
 10 keeping pace with the increase in claims
 11 payouts. They pay higher premiums after a
 12 collision, even though consumers in the
 13 other Maritime provinces can access better
 14 medical, rehabilitation, and disability
 15 income benefits.
 16 Another sign of instability in the
 17 Newfoundland and Labrador market is the
 18 relatively high number of drivers who can
 19 access coverage only through the Facility
 20 Association, which is the insurer of last
 21 resort for high risk drivers. In this
 22 province, the Facility Association covers
 23 3.3 percent of drivers. In other provinces,
 24 it covers less than 2 percent. Then there
 25 are those drivers who we read about who

<p style="text-align: right;">Page 5</p> <p>1 drive without insurance at all. 2 Now before I go any further, let me 3 address the elephant in the room. That’s 4 the falsehood circulating around the 5 province that over the past few years 6 insurance companies have posted hundreds of 7 millions of dollars in profits. Insurers 8 are not making money on auto insurance in 9 Newfoundland and Labrador. They are losing 10 money. 11 Don’t just take my word for it. 12 Instead, take the word of a report on 13 industry profitability that was commissioned 14 by this Board. According to the March 15 report by consulting firm, Oliver Wyman, 16 insurers lost money in this province because 17 costs are escalating here. This study also 18 concluded that even though higher costs have 19 led to higher premiums and limited 20 availability, insurers still need to charge 21 another 17 percent on top of 2017 premiums 22 just to be viable. 23 So what are the cost pressures driving 24 this instability. There is a big one, and 25 that is the ever rising costs of settling</p>	<p style="text-align: right;">Page 7</p> <p>1 study of claims that recently closed. For 2 minor injuries, they account for \$22,000.00 3 or 70 percent of total settlements, and 4 again this is not, nor does it include 5 payments for medical bills or lost wages. 6 This amount is all in addition to putting 7 people back to where they were. 8 Improving the auto insurance system for 9 Newfoundland and Labrador citizens will take 10 a collective effort. Today’s opportunity to 11 provide feedback is an important step. 12 I’d like to go further, though, and 13 discuss the specific reforms that IBC, on 14 behalf of our members, first proposed 15 through this process in February. Our 16 proposed package of reforms is designed to 17 meet three objectives. Those objectives are 18 to stabilize premiums by reducing and 19 stabilizing bodily injury claim costs, 20 improve health outcomes for people injured 21 in collisions by providing access to 22 treatment based on current medical evidence 23 and by having appropriate accident benefit 24 levels, and three, making it easier for 25 people to repair and replace their damaged</p>
<p style="text-align: right;">Page 6</p> <p>1 bodily injury claims. Between accident 2 years 2011 and 2016, the average cost jumped 3 from \$55,000.00 to nearly \$79,000.00. 4 That’s a leap of \$24,000.00, making the 5 average cost of settling a bodily injury 6 claim the highest in Atlantic Canada. 7 Here’s another way to look at cost 8 pressures. During the same time that those 9 bodily injury costs per vehicle in 10 Newfoundland and Labrador rose steadily, the 11 same costs plummeted in Nova Scotia and in 12 New Brunswick. In those provinces, the 13 governments implemented a cap on pain and 14 suffering awards for those with minor 15 injuries. Between 2000 and 2016, bodily 16 injury costs per vehicle were up 9 percent 17 here, but down 51 percent in New Brunswick, 18 and down 42 percent in Nova Scotia. 19 So where does all the money go if it 20 doesn’t go toward helping people recover 21 from injuries? Most of the money goes 22 toward cash based non-pecuniary damages. 23 These cash payouts account for \$25,000.00 24 per claimant or 64 percent of total 25 settlements according to Oliver Wyman’s</p>	<p style="text-align: right;">Page 8</p> <p>1 vehicles. 2 Now let me share several reforms that 3 our members believe will right the ship and 4 give the people of Newfoundland and Labrador 5 the auto insurance system they deserve. The 6 first reform we recommend is replacing the 7 existing \$2,500.00 non-pecuniary damages 8 deductible with a \$5,000.00 non-pecuniary 9 damages cap on those with minor injuries. 10 Deductibles, regardless of their size, erode 11 over time until they become a small cost of 12 doing business. On the other hand, non- 13 pecuniary damages caps have been proven to 14 contain bodily injury claim costs and keep 15 premiums stable. We recommend a \$5,000.00 16 cap that is adjusted annually for inflation 17 and applies to all injuries deemed to be 18 minor by the prevailing medical literature. 19 We’re aware that in the Atlantic 20 region, a \$7,500.00 cap linked to inflation 21 is common. However, that amount runs the 22 risk of allowing bodily injury claim costs 23 to run ahead of inflation. To avoid this, 24 the BC government, which is the only other 25 full tort jurisdiction in Canada, recently</p>

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1 announced a \$5,500.00 cap that will come
 2 into effect in 2019.
 3 Along with recommending the
 4 introduction of a \$5,000.00 cap in
 5 Newfoundland and Labrador, we recommend an
 6 up to date definition of minor injury.
 7 While there are several similar definitions
 8 that are used across the country, there are
 9 subtle but important differences amongst
 10 them. Choosing the right definition could
 11 mean the difference between the reform
 12 succeeding or failing in this province. For
 13 example, the definition in Nova Scotia
 14 covers only basic strains or sprains, even
 15 though the medical literature includes
 16 temporomandibular joint, which is pain in
 17 the jaw, psychological, and certain pain
 18 conditions such as common injuries from
 19 which most people recover within days,
 20 weeks, or a few months. The right wording
 21 has real consequences.
 22 In Alberta, court decisions in 2012 and
 23 2015 exposed the limits of its minor injury
 24 definition. As a result, the average bodily
 25 injury claim cost has increased by 55

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1 percent or 9 percent per year since that
 2 time. To address these rising claims costs,
 3 last month Alberta revised its minor injury
 4 definition to be more in line with the more
 5 up to date definitions across Canada. The
 6 more current definitions in Alberta,
 7 Ontario, New Brunswick, Prince Edward
 8 Island, and BC, apply the cap to all of the
 9 injuries that the prevailing medical
 10 literature deems minor.
 11 At IBC, we believe that a cap of
 12 \$5,000.00 that applies to pain and suffering
 13 awards for those with minor injuries should
 14 produce the savings needed to improve market
 15 conditions. The cap will also allow the
 16 government to enhance accident benefits.
 17 Our next recommendation is threefold;
 18 make accident benefits mandatory, enhance
 19 the medical rehabilitation and disability
 20 income benefits to the levels in the
 21 Maritimes, and establish pre-approved
 22 evidence based treatment protocols.
 23 Currently, accident benefits in Newfoundland
 24 and Labrador provide fewer treatment options
 25 than in the Maritimes and Alberta. The fact

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1 that accident benefits are optional and low
 2 is especially problematic for someone
 3 seriously injured in a collision.
 4 (9:15 a.m.)
 5 Alberta and Nova Scotia have diagnostic
 6 treatment protocols. The intent is to
 7 provide people who have common injuries with
 8 immediate access to evidence based treatment
 9 on a pre-approved basis, so that they can
 10 recover quickly. Adequate accident benefits
 11 and treatment protocols are important parts
 12 of a quality auto insurance product.
 13 Combined with a cap on pain and suffering
 14 awards for those with minor injuries, they
 15 focus auto insurance on improving health
 16 outcomes instead of on cash settlements.
 17 The last recommendation that I would
 18 like to discuss today is having Newfoundland
 19 and Labrador make the transition from the
 20 property damage claims settlement model to a
 21 direct compensation property damage or DCPD
 22 model.
 23 This province's consumers could benefit
 24 from a simpler claims process if they could
 25 deal with their own insurer when repairing

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1 or replacing their vehicle. Currently, only
 2 Newfoundland and Labrador and Alberta have a
 3 tort based vehicle damage claims settlement
 4 model. The Maritimes and Ontario have the
 5 DCPD model.
 6 At IBC, we believe, along with our
 7 members, that drivers in Newfoundland and
 8 Labrador deserve a stable auto insurance
 9 system, and we believe that a stable system
 10 can be achieved with the changes that I've
 11 outlined.
 12 Thank you again for undertaking this
 13 consultation process and for the opportunity
 14 to share my industry's feedback. That's my
 15 presentation.
 16 CHAIR:
 17 Q. We're back to our regular order.
 18 MR. FELTHAM:
 19 Q. Thank you, Madam Chair. I'm going to begin
 20 the questioning for the Campaign, although
 21 today we have split it up across subject
 22 matters, it's just a question of sharing
 23 workload. We won't duplicate between myself
 24 and Mr. Kennedy, but I'll begin. Ms. Dean,
 25 I'd like to start with the closed claims

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1 study instructions document, if I could.
 2 Those are the IBC instruction on
 3 Newfoundland and Labrador private passenger
 4 third party liability BI closed claims
 5 study, 2017. I'd like to go to the notes to
 6 users section, page 3 of 4 of that section,
 7 which is toward the end of the document.
 8 MS. KEAN:
 9 Q. Which section?
 10 MR. FELTHAM:
 11 Q. There's a section at the back called notes
 12 to users, and it's numbered differently than
 13 the rest of the document. Okay, page 3 of
 14 4. It's right there, thank you, and down
 15 toward number 7 is where I'd like to go.
 16 Ms. Dean, you have that document?
 17 MS. DEAN:
 18 A. Yes, I can see it, thank you.
 19 MR. FELTHAM:
 20 Q. All right. So this states in number 7 that,
 21 "IBC did not carry out any auditing process
 22 before claimant cases were accepted into the
 23 master file". You can confirm that?
 24 MS. DEAN:
 25 A. That's certainly what it says.

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1 MR. FELTHAM:
 2 Q. Okay, and you agree with that?
 3 MS. DEAN:
 4 A. Absolutely.
 5 MR. FELTHAM:
 6 Q. And it also says, and you'll agree, that
 7 "IBC had no access to any supporting
 8 documentation or paper files"?
 9 MS. DEAN:
 10 A. That is correct.
 11 MR. FELTHAM:
 12 Q. And then IBC goes on to caution users in
 13 their interpretation of the data?
 14 MS. DEAN:
 15 A. I did not prepare this document, I should, I
 16 guess, provide that caveat. I'm a part of a
 17 different arm of IBC than those who prepared
 18 this document.
 19 MR. FELTHAM:
 20 Q. Okay, this is an IBC document that's been
 21 submitted to the Board and you're here on
 22 behalf of IBC today?
 23 MS. DEAN:
 24 A. It is.
 25 MR. FELTHAM:

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1 Q. So I take it that the lack of an auditing
 2 process is the reason that IBC is cautioning
 3 users with respect to the interpretation of
 4 the data?
 5 MS. DEAN:
 6 A. Ryan, would you like to –
 7 MR. STEIN:
 8 A. I'll take this one. I mean, we wanted the
 9 users to know what IBC did and what IBC did
 10 not do, so we wanted the users to know about
 11 the training sessions that IBC undertook so
 12 that the people completing the file could
 13 complete it correctly, wanted to know that
 14 IBC did review the first 25 files of each
 15 company to make sure that they were
 16 reporting correctly, and after reviewing it,
 17 after getting everything, IBC also went
 18 through it, the master file, to make sure
 19 that everything reported appeared to be
 20 reported correctly, but, no, we did not do
 21 an audit.
 22 MR. FELTHAM:
 23 Q. All of those things you just mentioned, Mr.
 24 Stein, they're not mentioned here in number
 25 7. What's mentioned here in number 7 is

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1 that there's a caution against
 2 interpretation of the data in the master
 3 file, there was no audit?
 4 MR. STEIN:
 5 A. There was no audit, that's correct.
 6 MR. FELTHAM:
 7 Q. So IBC doesn't know and cannot confirm
 8 whether the companies involved in the data
 9 collection were consistent as to, for
 10 example, how they allocated non-pecuniary
 11 general damages sort of in the context of
 12 global settlements? That can't be done.
 13 MR. STEIN:
 14 A. IBC did not undertake an audit, but gave all
 15 the training and instructions that we
 16 believe are required so that the companies
 17 completing the data would complete it
 18 correctly.
 19 MR. FELTHAM:
 20 Q. But there was no audit undertaken to confirm
 21 what I just stated?
 22 MR. STEIN:
 23 A. That's right, there was no audit.
 24 MR. FELTHAM:
 25 Q. And that kind of allocation, that would call

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1 for judgment on the part of the user of the
 2 data, the person providing the data,
 3 assessing the data?
 4 MR. STEIN:
 5 A. It would depend on a given file. Companies
 6 would often – you know, when they’re
 7 reviewing the claims files, they would have
 8 had, you know – they would have broken down
 9 the settlement and the companies could then
 10 know what to report under each head of
 11 damage.
 12 MR. FELTHAM:
 13 Q. Right, using their judgment to do that?
 14 MR. STEIN:
 15 A. Well, if it was written like that in the
 16 file, then there was no judgment, they just
 17 recorded what was there.
 18 MR. FELTHAM:
 19 Q. But I’m talking about global settlements.
 20 How they are determined and how they are
 21 allocated is going to be based on the
 22 judgment of the person extracting that data
 23 from the file?
 24 MR. STEIN:
 25 A. Not if the file – the file would have broken

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1 down how the money was allocated.
 2 MR. FELTHAM:
 3 Q. Okay, but what I’m saying is in other cases
 4 where that’s not been done and there’s a
 5 global settlement that occurs?
 6 MR. STEIN:
 7 A. If there was a file like that, that just
 8 said here’s an absolute dollar amount
 9 without any supporting documentation, I
 10 presume that’s right, but I don’t believe
 11 that that was the nature of the files the
 12 companies were going through.
 13 MR. FELTHAM:
 14 Q. Okay, but there was no audit to make that
 15 determination?
 16 MR. STEIN:
 17 A. There was no audit.
 18 MR. FELTHAM:
 19 Q. Okay, I’d like to move now to the February
 20 report of IBC, February, 2018, and in
 21 particular page 3 of 17. So under consumer
 22 outcomes, the second bullet, the second
 23 sentence, notes that, “Currently the top
 24 four insurers in Newfoundland and Labrador
 25 comprise 87 percent of the market”. So, Ms.

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1 Dean, how has that changed in the last
 2 decade?
 3 MS. DEAN:
 4 A. There are fewer insurers operating within
 5 the province, and fewer insurers comprising
 6 a larger portion of the market share.
 7 MR. FELTHAM:
 8 Q. Okay, and when I looked at the 2005 report
 9 that the Board issued after the review then,
 10 they noted that in 2003 there were 11
 11 companies writing 84 percent of the market
 12 at that time?
 13 MS. DEAN:
 14 A. Correct.
 15 MR. FELTHAM:
 16 Q. So in that intervening period, you’re aware
 17 that a large amount of that decrease is
 18 owing to insurance companies buying or
 19 acquiring or integrating other insurance
 20 companies?
 21 MS. DEAN:
 22 A. Some of that is true, and there are
 23 certainly insurers who also left the
 24 province in that time as well.
 25 MR. FELTHAM:

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1 Q. But the decrease that we’re talking about is
 2 in large part owing to existing companies or
 3 other companies coming in and acquiring and
 4 integrating the companies that are in the
 5 province into their operations?
 6 MS. DEAN:
 7 A. In some instances, yes.
 8 MR. FELTHAM:
 9 Q. The bottom of page 3, the second sentence,
 10 IBC says here, “Experience from other
 11 jurisdictions shows that market performance
 12 and consumer outcomes improve when the
 13 product being sold focuses on care instead
 14 of cash”, but if we look at Ontario for a
 15 moment, I mean, they’ve got a very robust
 16 accident benefits system, a component, and
 17 they’ve got a threshold and deductibles
 18 system to eliminate so-called minor claims?
 19 MS. DEAN:
 20 A. Uh-hm.
 21 MR. FELTHAM:
 22 Q. But we know they’ve got the highest rates in
 23 Canada?
 24 MS. DEAN:
 25 A. Uh-hm.

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1 MR. FELTHAM:
 2 Q. So you'll agree with me that that's
 3 significantly at odds with your statement
 4 that experience from other jurisdictions
 5 shows market performance and consumer
 6 outcomes improve?
 7 MS. DEAN:
 8 A. The jurisdictions that we're referencing
 9 there are certainly the ones that have been
 10 able to control costs. Certainly Ontario
 11 has a very different product. Insurers can
 12 only offer an insurance product that is
 13 heavily regulated by the government in terms
 14 of what they can offer, but also regulated
 15 in terms of what they can charge.
 16 Comparisons with Ontario are a bit difficult
 17 to make. Certainly when we look at Nova
 18 Scotia, New Brunswick, PEI, and Alberta,
 19 there have been improved outcomes and a
 20 stable market in those jurisdictions.
 21 MR. FELTHAM:
 22 Q. But we have an example of Ontario where,
 23 you'll agree with me, they do have robust
 24 accident benefits for medical care?
 25 MS. DEAN:

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1 A. Uh-hm.
 2 MR. FELTHAM:
 3 Q. They've got a threshold and a deductible
 4 system to get rid of the minor claims.
 5 MS. DEAN:
 6 A. Uh-hm.
 7 MR. FELTHAM:
 8 Q. But yet we're not seeing improvement of
 9 consumer outcomes certainly?
 10 MS. DEAN:
 11 A. Well, insurance is certainly a system, and
 12 they also have incredibly escalating claims
 13 costs and incredibly high premiums.
 14 MR. FELTHAM:
 15 Q. Despite their robust accident benefits for
 16 medical care and their means of eliminating
 17 minor claims?
 18 MS. DEAN:
 19 A. That is just part of the product.
 20 MR. FELTHAM:
 21 Q. This particular sentence uses a word there.
 22 You say that, "The product being sold
 23 focuses on care instead of cash".
 24 MS. DEAN:
 25 A. Uh-hm.

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1 MR. FELTHAM:
 2 Q. You use the word "cash", and I notice that
 3 AVIVA does too in their submission to the
 4 Board.
 5 MS. DEAN:
 6 A. Uh-hm.
 7 MR. FELTHAM:
 8 Q. But really when you use that, what you're
 9 referring to there is the compensation that
 10 is received by innocent victims of auto
 11 negligence for their pain and suffering?
 12 MS. DEAN:
 13 A. The non-pecuniary amounts we're referring
 14 to.
 15 MR. FELTHAM:
 16 Q. Right, right, for those of what would be
 17 compensatory damages, they're settled, but
 18 that's the idea, that's what you're
 19 compensating?
 20 MS. DEAN:
 21 A. Yes.
 22 MR. FELTHAM:
 23 Q. Okay, but you call it "cash". Why do you
 24 call it cash?
 25 MS. DEAN:

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1 A. Because it is an amount over and above that
 2 which is provided for care, for the medical
 3 bills, for the physiotherapy bills, and for
 4 any lost wages that might be experienced
 5 while individuals are undergoing medical
 6 treatment following their injuries.
 7 MR. FELTHAM:
 8 Q. That's why you call it cash?
 9 MS. DEAN:
 10 A. It's certainly one way of describing it.
 11 (9:30 a.m.)
 12 MR. FELTHAM:
 13 Q. All right, let's have a look at – I'm sorry,
 14 I'm jumping around from place to place, but
 15 there are a bunch of documents. Let's go
 16 back to your slide show, please. If we look
 17 at page 2 or slide 2, I guess, this
 18 particular slide here – now you're showing,
 19 to be clear, these are total premiums?
 20 MS. DEAN:
 21 A. Average written premiums, so on average what
 22 the average Newfoundlander and Labradorian
 23 would pay compared to New Brunswick or Nova
 24 Scotia.
 25 MR. FELTHAM:

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1 Q. Total auto premiums?
 2 MS. DEAN:
 3 A. Correct.
 4 MR. FELTHAM:
 5 Q. You're not limiting this to, for example,
 6 third party liability premiums, or just
 7 showing collision coverage premiums?
 8 MS. DEAN:
 9 A. Total premium for private passenger
 10 vehicles.
 11 MR. FELTHAM:
 12 Q. Okay, yes, and you don't break down here,
 13 like, what this is made up of. This is
 14 including Section B, everything, that
 15 somebody would purchase as private passenger
 16 auto product, this is the premium on average
 17 that they're paying?
 18 MS. DEAN:
 19 A. Correct.
 20 MR. FELTHAM:
 21 Q. Okay, and then if we go over to slide 5,
 22 here again average premium by province, so
 23 again we've got total auto private passenger
 24 premium being paid?
 25 MS. DEAN:

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1 A. Uh-hm.
 2 MR. FELTHAM:
 3 Q. Yes?
 4 MS. DEAN:
 5 A. Yes.
 6 MR. FELTHAM:
 7 Q. And you don't break out the various
 8 coverages and show the trends here, do you?
 9 MS. DEAN:
 10 A. No, not when expressing the average.
 11 MR. FELTHAM:
 12 Q. Okay, why don't you do that? Why don't you
 13 break out and show what the trend is, for
 14 example, for collision and comprehensive
 15 over time in Newfoundland, or third party
 16 liability over time in Newfoundland? Why
 17 are you choosing to show only the average
 18 premium?
 19 MS. DEAN:
 20 A. We could certainly show a lot of numbers,
 21 but we might be here all day. Ryan, did you
 22 want to add to that?
 23 MR. STEIN:
 24 A. Just wanted to show what somebody who buys
 25 total coverage pays for auto insurance.

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1 MR. FELTHAM:
 2 Q. You would be aware, though, that the average
 3 premium for the optional physical damages
 4 coverage, the collision and comprehensive –
 5 do you know that they've increased about 4.7
 6 percent annually since 2006, do you know
 7 that?
 8 MS. DEAN:
 9 A. Is that from a GISA report?
 10 MR. FELTHAM:
 11 Q. I'm asking you if you know it?
 12 MS. DEAN:
 13 A. Well, I don't have the numbers in front of
 14 me. I certainly see a lot of numbers with
 15 the four Atlantic provinces.
 16 MR. FELTHAM:
 17 Q. That's not one that rings true to you at the
 18 moment?
 19 MS. DEAN:
 20 A. It's not one that I'm recalling at the
 21 moment.
 22 MR. FELTHAM:
 23 Q. Okay. Do you know what was happening with
 24 third-party liability premiums in
 25 Newfoundland and Labrador during the same

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1 period?
 2 MR. STEIN:
 3 A. No, but we know what was happening to the
 4 costs.
 5 MS. DEAN:
 6 A. Um-hm, um-hm.
 7 MR. FELTHAM:
 8 Q. So, you know what's happening to the costs.
 9 You know what's happening to the total
 10 premium, but you don't know what was
 11 happening to the individual premiums for
 12 the—or sorry, the individual coverages and
 13 the premium that relates to those?
 14 MR. STEIN:
 15 A. We tended to look at premium at the total
 16 level, but we do know what's been happening
 17 with the costs at the individual levels.
 18 MR. FELTHAM:
 19 Q. Okay. Are you aware that in Newfoundland
 20 and Labrador that we buy optional physical
 21 damages coverages more than our Atlantic
 22 Canadian neighbours? Did you know that?
 23 MR. STEIN:
 24 A. We did not do a comparison of that for this
 25 hearing.

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1 MR. FELTHAM:
 2 Q. Okay. And I'd like to go to your slide that
 3 deals with the recommendations for reform.
 4 This is towards the end. It's not numbered,
 5 so—but it follows Slide 9. So, your first
 6 objective here you say is to "Stabilize
 7 premiums by reducing and stabilizing bodily
 8 injury claim costs." So, but I'd like to
 9 also look at the February 2018 report, page
 10 4. And at the top of page 4 it notes,
 11 "IBC's reform proposals are designed to
 12 achieve the following four objectives.
 13 Reduce and stabilize premiums by reducing
 14 and stabilizing bodily injury claims costs."
 15 MS. DEAN:
 16 A. Um-hm.
 17 MR. FELTHAM:
 18 Q. But now, in your presentation today, you say
 19 just stabilize premiums? You'll agree with
 20 me, that's what you said?
 21 MS. DEAN:
 22 A. That's what's in the presentation, correct.
 23 MR. FELTHAM:
 24 Q. Okay. So, no longer saying reduce and
 25 stabilize premiums, but now saying just

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1 stabilize premiums?
 2 MS. DEAN:
 3 A. Well, the longer-term goal is to certainly
 4 reduce premiums, but as we have seen, the
 5 losses within the province over the past
 6 number of years are such that it's a
 7 tremendous amount, that massive reforms are
 8 needed in order to stabilize the insurance
 9 market to get to that point where claims
 10 costs can be controlled, and as premiums are
 11 driven by claims costs, that will then have
 12 an impact on the—a positive impact on the
 13 pocketbook of Newfoundlanders and
 14 Labradorians.
 15 MR. FELTHAM:
 16 Q. But you'll agree with me that in February
 17 2018 you were saying reduce and stabilize
 18 premiums and today you're saying stabilize
 19 premiums only?
 20 MS. DEAN:
 21 A. Well, I think that's the first step, is to
 22 stabilize. We are—it's in our submission in
 23 February. We're not recanting that
 24 submission by any stretch of the
 25 imagination. We stand behind the

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1 submission, and that is certainly the goal.
 2 MR. FELTHAM:
 3 Q. That somewhere, sometime premiums might come
 4 down?
 5 MS. DEAN:
 6 A. Once claims costs are controlled,
 7 absolutely.
 8 MR. FELTHAM:
 9 Q. So, would you agree with me on this, if
 10 something is going up in cost at least than
 11 the rate of inflation, would you agree with
 12 me that that's stability in cost?
 13 MS. DEAN:
 14 A. Less than the rate of inflation?
 15 MR. FELTHAM:
 16 Q. Yes. If something is going up in cost less
 17 than the rate of inflation, that's pretty
 18 stable, isn't it?
 19 MS. DEAN:
 20 A. It would be.
 21 MR. FELTHAM:
 22 Q. So, I'd like to look at page 5 now of this
 23 same report, the February report. And
 24 there's a table towards the bottom called
 25 Annual Bodily Injury Claims Cost per

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1 Vehicle.
 2 MS. DEAN:
 3 A. Um-hm?
 4 MR. FELTHAM:
 5 Q. So, you've got the various provinces,
 6 Atlantic provinces, plus Alberta. So, if we
 7 look at the Newfoundland and Labrador column
 8 there, we're seeing—it says there that
 9 there's been a nine percent increase in
 10 claims costs over a 16-year period?
 11 MS. DEAN:
 12 A. Um-hm.
 13 MR. FELTHAM:
 14 Q. Okay? So, my math tells me that that's
 15 about a half a percentage point a year?
 16 MS. DEAN:
 17 A. Um-hm.
 18 MR. FELTHAM:
 19 Q. Does that make sense to you?
 20 MR. STEIN:
 21 A. I mean –
 22 MR. FELTHAM:
 23 Q. Nine percent over that 16-year period. I
 24 mean it's a little—you know, it's not
 25 exactly, but –

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1 MR. STEIN:
 2 A. Yeah.
 3 MR. FELTHAM:
 4 Q. You get the point?
 5 MR. STEIN:
 6 A. We won't say it's exact, but we get what
 7 you're saying.
 8 MR. FELTHAM:
 9 Q. Yes.
 10 MR. STEIN:
 11 A. Yes.
 12 MR. FELTHAM:
 13 Q. Okay. So, I mean, based on what you agree
 14 with me on earlier, I mean that's stable
 15 claims costs.
 16 MS. DEAN:
 17 A. Well, when you're starting off at higher
 18 amount and it continues to increase, when
 19 you look at the neighbouring provinces –
 20 MR. FELTHAM:
 21 Q. No, just forget the neighbouring provinces
 22 for a moment. I'm asking about Newfoundland
 23 and Labrador and the increase over a period
 24 of time that's something much less than the
 25 rate of inflation.

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1 MS. DEAN:
 2 A. Well, and that's what we're here talking
 3 about is Newfoundland and Labrador, and
 4 trying to stabilize the insurance market
 5 which—for auto insurance which is showing
 6 tremendous pressure and tremendous pressure
 7 lends itself eventually to increased costs
 8 for consumers which we're hearing from
 9 consumers is a difficult situation to be put
 10 in.
 11 MR. FELTHAM:
 12 Q. But let's go back to my question for a
 13 second. My earlier question you agree with
 14 me that something going up at less than the
 15 rate of inflation in terms of costs would be
 16 stable. And then, we see that the claims
 17 costs in Newfoundland and Labrador have gone
 18 up much less than the rate of inflation for
 19 the last 16 years. Ergo we've got
 20 stability, don't we?
 21 MS. DEAN:
 22 A. Stability at an incredibly high and
 23 unsustainable level.
 24 MR. FELTHAM:
 25 Q. If we look at that 409-dollar figure in 2016

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1 for Newfoundland and Labrador, what is
 2 included in that? What claim costs go into
 3 that figure? Can list them out for me?
 4 MR. STEIN:
 5 A. So, what would be in that figure would be
 6 the—it's GISA, it's data from GISA, General
 7 Insurance Statistical Agency. It would
 8 include indemnity payments. It would
 9 include the case reserves, and then it would
 10 include the actuarial reserve or the IBNR
 11 reserve that GISA and Ernst and Young would
 12 add onto it.
 13 MR. FELTHAM:
 14 Q. Sorry, so we've got the case reserve?
 15 MR. STEIN:
 16 A. Indemnity payment.
 17 MR. FELTHAM:
 18 Q. Indemnity payment.
 19 MR. STEIN:
 20 A. The case reserve.
 21 MR. FELTHAM:
 22 Q. Right.
 23 MR. STEIN:
 24 A. Oh, you would also include within that
 25 adjustment expenses, and then the actuarial

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1 reserve.
 2 MR. FELTHAM:
 3 Q. Okay. And who puts the actuarial reserve
 4 on?
 5 MR. STEIN:
 6 A. That would be done by GISA or Ernst and
 7 Young.
 8 MR. FELTHAM:
 9 Q. Not Oliver Wyman?
 10 MR. STEIN:
 11 A. No, this—no, not in this figure. Oliver—I
 12 mean, we're citing GISA. Oliver Wyman might
 13 have, I mean, might have done that in their
 14 report, but we're citing just GISA here.
 15 MR. FELTHAM:
 16 Q. Okay.
 17 MR. STEIN:
 18 A. Sorry, and this was written before the
 19 Oliver Wyman Report as well, so.
 20 MR. FELTHAM:
 21 Q. Sure, okay. I want to take you now to some
 22 testimony from the 2005 Automobile Insurance
 23 Review. So, this is testimony, I'm calling
 24 it testimony, a presentation of Mr.
 25 Forgeron, and I want to take you to

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1 something that he said back then. So, this
 2 is a February 21st, 2005 transcript. And I'd
 3 like to look at page 23. So, while we're
 4 waiting to go there, I guess, so in 2005,
 5 IBC was a cap proponent before this Board
 6 then, correct?
 7 MS. DEAN:
 8 A. I believe so. I was not with IBC at that
 9 time.
 10 MR. FELTHAM:
 11 Q. Okay, but you're aware that they were here
 12 in 2005 and they were a cap proponent?
 13 MS. DEAN:
 14 A. I am aware that they were here, absolutely.
 15 MR. FELTHAM:
 16 Q. And they were a cap proponent? They were
 17 not here advocating for a cap in 2005?
 18 MS. DEAN:
 19 A. I have not read Mr. Forgeron's presentation
 20 from 2005.
 21 MR. FELTHAM:
 22 Q. Setting aside that for a moment, what Mr.
 23 Forgeron—we'll get to that. But you know
 24 that in 2005 the IBC came to Newfoundland
 25 and Labrador before this Board and advocated

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1 for a cap on bodily injury claims?
 2 MS. DEAN:
 3 A. Okay.
 4 MR. FELTHAM:
 5 Q. Well, you don't know that?
 6 MS. DEAN:
 7 A. It's been something that we've been working
 8 on for an incredibly long time. So –
 9 MR. FELTHAM:
 10 Q. And you know that Mr. Forgeron gave a
 11 presentation on behalf of IBC at that time?
 12 MS. DEAN:
 13 A. I can see that here.
 14 MR. FELTHAM:
 15 Q. Okay. Do you know what he stated would
 16 happen if we did not bring a cap into
 17 Newfoundland and Labrador back in 2005?
 18 MS. DEAN:
 19 A. It is page 23, starting line 4?
 20 MR. FELTHAM:
 21 Q. Yes. You don't—it's not something you know
 22 now? This is—you're seeing the transcript,
 23 but you don't know what he said back then is
 24 what my point?
 25 MS. DEAN:

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1 A. I don't know.
 2 MR. FELTHAM:
 3 Q. Okay. So, if we look at the transcript,
 4 starting at 3 of Mr. Forgeron--and here, you
 5 know, just some context, here he's talking
 6 about—he's there with Ms. Vall (phonetic)
 7 and also with IBC. And just to back it up
 8 to page 22, they're talking about total
 9 claims costs and drivers. And he—she says,
 10 "Now, as Don mentioned," this is on page 22,
 11 "Now, as Don mentioned before, this issue
 12 has come up for discussion a couple of times
 13 in the recent past. Little has changed to
 14 make this cost environment more amenable to
 15 long-term stability. Little has changed to
 16 really address these underlying cost
 17 factors. Temporarily premium adjustments
 18 happen, so there was a much better match,
 19 but very soon the cost pressure started to
 20 pick up again. I don't know if you want to
 21 add more onto that, Don." And we go to page
 22 23.
 23 MS. DEAN:
 24 A. Okay.
 25 MR. FELTHAM:

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1 Q. And then, Mr. Forgeron at line 3 starts and
 2 says, answer: "No, only to just reinforce
 3 that point, that unless you deal with the
 4 significant cost driver to suggest that
 5 stability is going to be realized in the
 6 auto insurance marketplace is, you know, is
 7 a false hope. It's simply not going to
 8 happen." But we just talked about stability
 9 a few minutes ago and we looked at claims
 10 costs, and forgetting what level they were
 11 at, because that's not what he's talking
 12 about here. He's talking about stability
 13 over time.
 14 MS. DEAN:
 15 A. Um-hm.
 16 MR. FELTHAM:
 17 Q. We know that there has been stability in the
 18 auto premium charged for third-party
 19 liability coverage that relates to payment
 20 of BI claims, don't we?
 21 MS. DEAN:
 22 A. At a high level.
 23 MR. FELTHAM:
 24 Q. Okay, but he's not talking about that. He's
 25 talking about the level that existed back

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1 then, right, which you would say is--already
 2 say is a high level. And he says you will
 3 not have stability, but as you've stated to
 4 me, we have had a stability in that.
 5 Haven't we?
 6 MS. DEAN:
 7 A. At an unsustainably high level.
 8 MR. FELTHAM:
 9 Q. And we know that it's been increasing at a
 10 rate below inflation since Mr. Forgeron's
 11 time back in 2006?
 12 MS. DEAN:
 13 A. On average.
 14 (9:45 a.m.)
 15 MR. FELTHAM:
 16 Q. Before my colleague takes over his share,
 17 there's only one other item I want to go to
 18 and that's the slideshow again, sorry. I
 19 keep calling it a slideshow and my friend is
 20 making fun of my terminology. So, I
 21 apologize if I'm not using the right
 22 language for that. But Slide 4, I just want
 23 to clarify on this document.
 24 MS. DEAN:
 25 A. Um-hm.

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1 MR. FELTHAM:
 2 Q. So, as I understand it, as an automobile
 3 insurer, you'd have sort of two sources of
 4 revenue?
 5 MS. DEAN:
 6 A. Um-hm.
 7 MR. FELTHAM:
 8 Q. You'd have your premiums that you collect
 9 from the motoring public, and then, you'd
 10 have your investment income that you would
 11 earn on the float I'll call it. So, that
 12 is—there's a lag between when claims
 13 payments have to be made and when—and the
 14 total amount of premiums collected, and so,
 15 what you've got in between insurance
 16 companies have the ability to invest that,
 17 those collected premiums and earn investment
 18 income. Do I have that right?
 19 MS. DEAN:
 20 A. You do, and they're regulated federally in
 21 terms of those investments.
 22 MR. FELTHAM:
 23 Q. Okay. So, again, just to be—my point on it
 24 is we've got two pieces, if you will, to the
 25 revenue, right?

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1 MS. DEAN:
 2 A. Um-hm.
 3 MR. FELTHAM:
 4 Q. We've got the premiums and then we've got
 5 the investment income?
 6 MS. DEAN:
 7 A. Yes.
 8 MR. FELTHAM:
 9 Q. So, when you show Average Annual
 10 Underwriting Loss, that's only one piece?
 11 That's the premium piece, isn't it?
 12 MS. DEAN:
 13 A. That's correct.
 14 MR. FELTHAM:
 15 Q. Okay. So, we don't see anything here in
 16 terms of--forgetting about whether I take
 17 issue with the accuracy of the numbers, and
 18 we'll just assume for the moment that they
 19 are correct. We're only seeing what relates
 20 to premiums collected?
 21 MS. DEAN:
 22 A. Correct.
 23 MR. FELTHAM:
 24 Q. All right. So, really that doesn't give us
 25 a full picture of what profitability is?

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1 MS. DEAN:
 2 A. We did see in one of the Oliver Wyman
 3 reports the GISA ROE numbers. So, that
 4 would include both streams of revenue.
 5 MR. FELTHAM:
 6 Q. Right. And that's in the Oliver Wyman, but
 7 just in terms of your document here?
 8 MS. DEAN:
 9 A. This is just underwriting.
 10 MR. FELTHAM:
 11 Q. This is just one piece, right?
 12 MS. DEAN:
 13 A. Correct.
 14 MR. FELTHAM:
 15 Q. So, when I was reading the 2005 report--and
 16 maybe we can bring that up for a moment.
 17 MS. GLYNN:
 18 Q. The Board's report from 2005?
 19 MR. FELTHAM:
 20 Q. Oh sorry, yes. Thank you. And when we get
 21 it, I'd like to go page 109, please. It's
 22 just something that struck me. It was
 23 interesting when I was--and I read this
 24 report, and then when I saw your graph, it
 25 made me think of this. So, if we go to page

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1 109, toward the bottom there. Okay, the
 2 last paragraph. So, in this section of the
 3 report they're talking about these two
 4 income sources that insurers have, premium
 5 and investment income. And at that time, it
 6 says, "The consumer advocate noted that 2003
 7 was the first time in 25 years that the
 8 property and casualty industry had an
 9 underwriting profit according to the facts
 10 of the General Insurance Industry in Canada
 11 in 2004." So, my point here is that, while
 12 you've shown us what's going on you say with
 13 underwriting income, clearly from that
 14 statement, from the report referred to in
 15 the 2005 study, the profitability piece and
 16 the investment income is obviously a really
 17 big part of this picture and really
 18 important in terms of whether an insurance
 19 company is making any money if for 25 years,
 20 from 2003 back, the insurers didn't make any
 21 money on premiums. You'll agree with that?
 22 MR. STEIN:
 23 A. Well, I mean, I'd have to see the numbers to
 24 validate that statement, but you know, just—
 25 but yes, investment income is an important

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1 source of income for insurance companies,
 2 just like underwriting results are.
 3 MR. FELTHAM:
 4 Q. And we can't really get a sense of what's
 5 going on with profit without that, can we?
 6 MR. STEIN:
 7 A. Overall in —
 8 MR. FELTHAM:
 9 Q. Without knowing both parts I mean, the
 10 premiums collected and the investment
 11 income.
 12 MR. STEIN:
 13 A. It's important, yes, if you want to look at
 14 total profitability, it's important to look
 15 at both which you can get out of the Oliver
 16 Wyman Report.
 17 MS. DEAN:
 18 A. One of the important messages with Slide 4
 19 is that there has been more money paid out
 20 than has been taken in within this province.
 21 And that was one of the things that we
 22 wanted to achieve with that graph with the
 23 underwriting income.
 24 MR. FELTHAM:
 25 Q. Right. And with respect, Ms. Dean, that was

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1 the case for 25 years before 2003, according
 2 to what the Board noted back in 2005?
 3 MS. DEAN:
 4 A. And it would be interesting to look at
 5 investment income rates at that point in
 6 time versus what they are now.
 7 MR. FELTHAM:
 8 Q. But the point being, regardless of what the
 9 investment income rates—25 years there were
 10 underwriting losses, and the insurance
 11 industry didn't fold up its tent, it didn't
 12 go bankrupt. Again, my point being just
 13 we're only seeing one side of the story in
 14 terms of profitability with respect to Slide
 15 4?
 16 MS. DEAN:
 17 A. We're also comparing two very different
 18 points of time as well.
 19 MR. FELTHAM:
 20 Q. Okay, I'm going to turn it over to my
 21 friend. Thank you very much.
 22 MS. DEAN:
 23 A. Thank you.
 24 MR. STEIN:
 25 A. Yes.

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1 KENNEDY, Q.C.:
 2 Q. Thank you. Good morning, Commissioners.
 3 Ms. Dean, I have two quick questions on that
 4 point that you were just exploring with Mr.
 5 Feltham. Is it not correct that in 2017 in
 6 Canada the insurance industry reported 986
 7 million dollars in investment profit alone?
 8 MS. DEAN:
 9 A. For the entire country?
 10 MR. STEIN:
 11 A. Can you please clarify your question? For
 12 the entire country, for a province, for a
 13 line of business?
 14 KENNEDY, Q.C.:
 15 Q. Is it not correct that in the first quarter
 16 of 2017 the insurance industry in Canada
 17 reported 986 million dollars in investment
 18 profit alone?
 19 ROWE, Q.C.:
 20 Q. Madam Chair, can we have that clarified?
 21 Does that include life insurers and
 22 disability insurers or is it just auto
 23 insurers? I don't know where that comes
 24 from.
 25 KENNEDY, Q.C.:

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1 Q. I've asked the question. Can they answer?
 2 Is the answer yes or no?
 3 ROWE, Q.C.:
 4 Q. They don't know what the context is.
 5 KENNEDY, Q.C.:
 6 Q. I think the question is pretty clear,
 7 Commissioner—Madam Chair. In the first
 8 quarter of 2017, in Canada, did the
 9 insurance industry as a whole, report 986
 10 million dollars in investment profit alone?
 11 MR. STEIN:
 12 A. I would have to check. Don't have that off
 13 the top of my head.
 14 KENNEDY, Q.C.:
 15 Q. So, that would equate with a 4-billion-
 16 dollar, close to a 4-billion-dollar profit,
 17 3.5 to 4-billion-dollar profit for the
 18 insurance industry as a whole in Canada?
 19 MR. STEIN:
 20 A. We can't verify that. We don't know where
 21 your numbers are coming from.
 22 KENNEDY, Q.C.:
 23 Q. So, you don't know the answer? How much,
 24 sir, did the insurance industry make in 2016
 25 in Canada as a whole, all lines of

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1 insurance?
 2 MR. STEIN:
 3 A. Off the top of my head, I don't know.
 4 KENNEDY, Q.C.:
 5 Q. You don't. You're the—what's your role,
 6 sir?
 7 MR. STEIN:
 8 A. I'm the director of Policy.
 9 KENNEDY, Q.C.:
 10 Q. For IBC?
 11 MR. STEIN:
 12 A. That's correct, yeah.
 13 KENNEDY, Q.C.:
 14 Q. And you don't know the answer to that
 15 question?
 16 MR. STEIN:
 17 A. I do not know the answer to that question.
 18 KENNEDY, Q.C.:
 19 Q. Okay. Ms. Dean, in 2016 in Newfoundland and
 20 Labrador, the Superintendent of Insurance,
 21 again my math might be very simplistic here,
 22 shows what I would suggest to you as 100
 23 million dollars in profit for the automobile
 24 insurance industry in this province. Is
 25 that correct?

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1 MS. DEAN:
 2 A. How are you arriving at that number?
 3 KENNEDY, Q.C.:
 4 Q. My question, Ms. Dean, in 2016 in
 5 Newfoundland and Labrador, the
 6 Superintendent of Insurance demonstrates—
 7 report demonstrates that the automobile
 8 insurance in Newfoundland and Labrador made
 9 100 million dollars in profit or 23 percent
 10 profit. Is that correct?
 11 MS. DEAN:
 12 A. That is not correct.
 13 KENNEDY, Q.C.:
 14 Q. The number I put to you, Ms. Dean, I would
 15 suggest, especially the 986 million dollars
 16 in investment profit, would only be the
 17 banks that would make more money in Canada,
 18 is that correct?
 19 MS. DEAN:
 20 A. I do not follow the profitability of the
 21 banks, and I do not have a source for that
 22 number.
 23 KENNEDY, Q.C.:
 24 Q. Okay. Now you referred earlier to IBC or
 25 the Insurance Bureau of Canada, your—who you

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1 are, and I tried to get to from Ms. Elliott,
 2 but she really couldn't clarify. So, let's
 3 just try this. How many members would there
 4 be in the Insurance Bureau of Canada?
 5 MS. DEAN:
 6 A. We represent 90 percent of Canada's property
 7 and casualty insurers. So, that would be
 8 over 200 insurers across the country.
 9 KENNEDY, Q.C.:
 10 Q. Okay. So, this would be all lines of
 11 insurance, is that correct?
 12 MS. DEAN:
 13 A. Home, car and business.
 14 KENNEDY, Q.C.:
 15 Q. Okay.
 16 MS. DEAN:
 17 A. Life and health is completely another part
 18 of the industry.
 19 KENNEDY, Q.C.:
 20 Q. Are all Newfoundland and Labrador insurance
 21 companies members of IBC? All companies who
 22 operate in Newfoundland and Labrador, are
 23 they members of IBC?
 24 MS. DEAN:
 25 A. Not all.

<p style="text-align: right;">Page 53</p> <p>1 KENNEDY, Q.C.:</p> <p>2 Q. You've indicated I think that four companies</p> <p>3 write 80 percent of the automobile insurance</p> <p>4 business. Are they members of IBC?</p> <p>5 MS. DEAN:</p> <p>6 A. They are.</p> <p>7 KENNEDY, Q.C.:</p> <p>8 Q. And then, I think the—well, I can go to</p> <p>9 this, say if we need to, Ms. Dean, but</p> <p>10 you've been here throughout the hearing.</p> <p>11 Ms. Elliott referred to six major insurers I</p> <p>12 think, TD, AVIVA, Intact, RSA, who else?</p> <p>13 There was two more. There were six major</p> <p>14 insurers which she referred to. Do you</p> <p>15 remember that?</p> <p>16 MS. DEAN:</p> <p>17 A. Travelers, Co-operators.</p> <p>18 KENNEDY, Q.C.:</p> <p>19 Q. Yes, Travelers, Co-op, yes.</p> <p>20 MS. DEAN:</p> <p>21 A. Yes.</p> <p>22 KENNEDY, Q.C.:</p> <p>23 Q. So, they're all members of IBC, correct?</p> <p>24 MS. DEAN:</p> <p>25 A. One of them is not.</p>	<p style="text-align: right;">Page 55</p> <p>1 KENNEDY, Q.C.:</p> <p>2 Q. That if we write a public body and ask for</p> <p>3 certain information, then there's</p> <p>4 information provided. Certain can be</p> <p>5 redacted or privileged, but you're aware</p> <p>6 that that process exists?</p> <p>7 MS. DEAN:</p> <p>8 A. I am.</p> <p>9 KENNEDY, Q.C.:</p> <p>10 Q. You are aware, although it's—there seems to</p> <p>11 be some reluctance on your part to admit it,</p> <p>12 that IBC lobbied for the cap in Newfoundland</p> <p>13 and Labrador in 2005? You're aware of that?</p> <p>14 Okay, maybe you're not.</p> <p>15 MS. DEAN:</p> <p>16 A. It certainly would make sense.</p> <p>17 KENNEDY, Q.C.:</p> <p>18 Q. Yes. They also lobbied governments across</p> <p>19 Canada, Nova Scotia, New Brunswick, PEI, for</p> <p>20 example. You're aware of that?</p> <p>21 MS. DEAN:</p> <p>22 A. Yes.</p> <p>23 KENNEDY, Q.C.:</p> <p>24 Q. Correct?</p> <p>25 MS. DEAN:</p>
<p style="text-align: right;">Page 54</p> <p>1 KENNEDY, Q.C.:</p> <p>2 Q. And who is that?</p> <p>3 MS. DEAN:</p> <p>4 A. Co-operators.</p> <p>5 KENNEDY, Q.C.:</p> <p>6 Q. Okay. Now, one of the roles of IBC is</p> <p>7 lobbying, isn't it?</p> <p>8 MS. DEAN:</p> <p>9 A. Correct.</p> <p>10 KENNEDY, Q.C.:</p> <p>11 Q. Yes. Lobbying governments particularly?</p> <p>12 MS. DEAN:</p> <p>13 A. Um-hm.</p> <p>14 KENNEDY, Q.C.:</p> <p>15 Q. And you heard some discussion here</p> <p>16 yesterday, Ms. Dean, of ATIP or Access to</p> <p>17 Information and the Protection of Privacy</p> <p>18 Act?</p> <p>19 MS. DEAN:</p> <p>20 A. Um-hm.</p> <p>21 KENNEDY, Q.C.:</p> <p>22 Q. You're aware that that exists in every</p> <p>23 province?</p> <p>24 MS. DEAN:</p> <p>25 A. I am.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Correct.</p> <p>2 KENNEDY, Q.C.:</p> <p>3 Q. In fact, what we see at times that the</p> <p>4 lobbying or that the imposition of the cap</p> <p>5 or an application such as we're dealing with</p> <p>6 here today is preceded by a crisis, isn't</p> <p>7 it?</p> <p>8 MS. DEAN:</p> <p>9 A. We strive to continue conversations with</p> <p>10 governments, provincial governments, about</p> <p>11 the heavily-regulated auto insurance</p> <p>12 product. And we hope that the auto</p> <p>13 insurance product does not arrive at a</p> <p>14 crisis because that does not benefit</p> <p>15 consumers. So, we work to provide the best</p> <p>16 information that we have as an industry to</p> <p>17 the provincial governments that regulate our</p> <p>18 industry.</p> <p>19 KENNEDY, Q.C.:</p> <p>20 Q. Are you aware of the crisis which occurred</p> <p>21 in New Brunswick in 2004 which led to</p> <p>22 Bernard—or partly led to Bernard Lord's</p> <p>23 defeat in New Brunswick, and then, the cap</p> <p>24 came in after that. Are you aware of that?</p> <p>25 MS. DEAN:</p>

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1 A. I am certainly aware of the crisis that
 2 arose throughout this entire region at that
 3 time.
 4 KENNEDY, Q.C.:
 5 Q. Yes, and you--I'm sure you're not going to
 6 agree with me. I'm going to put this to
 7 you, has the IBC in any way contributed to
 8 or helped create the crisis in relation to
 9 the taxi drivers which has now led us to
 10 where we are here today?
 11 MS. DEAN:
 12 A. We have not created a crisis with taxi
 13 drivers. That is outside of the role, my
 14 role, in representing our members and
 15 private passenger vehicles in this hearing.
 16 KENNEDY, Q.C.:
 17 Q. Are IBC registered lobbyists in the Province
 18 of Newfoundland and Labrador?
 19 MS. DEAN:
 20 A. We are.
 21 KENNEDY, Q.C.:
 22 Q. And are you a registered lobbyist?
 23 MS. DEAN:
 24 A. I am.
 25 KENNEDY, Q.C.:

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1 Q. Who else in the IBC will be a registered
 2 lobbyist?
 3 MS. DEAN:
 4 A. Don Forgeron, our president and CEO. Also,
 5 a gentleman who is just recently no longer
 6 with us, Tom O'Handley, would have been
 7 registered as a lobbyist.
 8 KENNEDY, Q.C.:
 9 Q. In the last two year, how many meetings have
 10 either you or IBC personnel that you're
 11 aware of met with ministers of the
 12 Newfoundland and Labrador Government?
 13 MS. DEAN:
 14 A. There have been several meetings. We have
 15 had several new ministers in which we go in
 16 to introduce ourselves, and the industry and
 17 the information that we would be able to
 18 provide.
 19 KENNEDY, Q.C.:
 20 Q. Yes. And my question though is how many
 21 meetings have there been? Do you know that?
 22 MS. DEAN:
 23 A. I don't have the exact number of meetings.
 24 KENNEDY, Q.C.:
 25 Q. And Service Newfoundland and Labrador would

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1 be the department responsible for the
 2 automobile industry regulation, correct?
 3 MS. DEAN:
 4 A. Correct.
 5 KENNEDY, Q.C.:
 6 Q. So, I think there have been by my account at
 7 least three ministers?
 8 MS. DEAN:
 9 A. That's sounds about right.
 10 KENNEDY, Q.C.:
 11 Q. Minister Trimper. I think Minister Joyce
 12 was there for a while.
 13 MS. DEAN:
 14 A. He was.
 15 KENNEDY, Q.C.:
 16 Q. And now, Minister Gambin-Walsh.
 17 MS. DEAN:
 18 A. Gambin-Walsh, correct.
 19 KENNEDY, Q.C.:
 20 Q. Have you met with all three of them?
 21 MS. DEAN:
 22 A. I've met with all three of those ministers.
 23 KENNEDY, Q.C.:
 24 Q. Have you met with other ministers in the
 25 government?

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1 MS. DEAN:
 2 A. We have met with other ministers in the
 3 government with other files.
 4 KENNEDY, Q.C.:
 5 Q. When you say other files, I'm talking about
 6 the automobile insurance industry is what
 7 I'm talking about now.
 8 MS. DEAN:
 9 A. Okay.
 10 KENNEDY, Q.C.:
 11 Q. So, have you met with other ministers in the
 12 government in relation to the automobile
 13 industry and particularly the imposition of
 14 a cap?
 15 MS. DEAN:
 16 A. That would not have been the primary agenda
 17 item on the meeting with other ministers as
 18 our industry does interact with other
 19 departments on a number of levels. For
 20 example, oil spill remediation.
 21 KENNEDY, Q.C.:
 22 Q. Okay, did—first how many meetings did you
 23 have with other ministers? Have you met
 24 with the minister of Finance? I think there
 25 have been a couple of ministers of Finance.

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1 Have you met with them?
 2 MS. DEAN:
 3 A. Not the most recent minister of Finance.
 4 KENNEDY, Q.C.:
 5 Q. Did you meet with the previous minister of
 6 Finance?
 7 MS. DEAN:
 8 A. Yes, I did.
 9 KENNEDY, Q.C.:
 10 Q. How often?
 11 (10:00 a.m.)
 12 MS. DEAN:
 13 A. I met with her once or twice in relation—the
 14 primary agenda on that meeting was the
 15 implementation of the RST when this
 16 government brought back the RST.
 17 KENNEDY, Q.C.:
 18 Q. Yes, you know the cap—but the cap came up or
 19 did it? Well, you tell me.
 20 MS. DEAN:
 21 A. I'm trying to –
 22 KENNEDY, Q.C.:
 23 Q. You tell me now.
 24 MS. DEAN:
 25 A. I'm trying to remember. It was some time

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1 ago because the RST implementation and how
 2 companies would be able to do a systems
 3 change is in the timeline that government
 4 required was—certainly took up a lot of time
 5 during that meeting. It may very well have
 6 come up.
 7 KENNEDY, Q.C.:
 8 Q. So, you don't remember if—you don't remember
 9 whether or not you met with the minister of
 10 Finance maybe for another reason and
 11 discussed the cap, is that what you're
 12 telling me?
 13 MS. DEAN:
 14 A. I'm telling you that I do remember meeting
 15 with the minister of Finance. I do remember
 16 that it was focused on the RST. I do not
 17 remember other portions of that discussion
 18 because we were in a very tight timeline and
 19 government was trying to get answers from
 20 the industry, industry was trying to get
 21 answers from government at that point.
 22 KENNEDY, Q.C.:
 23 Q. Just out of curiosity, the claim that--when
 24 you look at your average claims cost, does
 25 that include the taxes?

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1 MS. DEAN:
 2 A. Average claim. Taxes associated with claims
 3 costs?
 4 KENNEDY, Q.C.:
 5 Q. Yes, the \$409 that you refer to there, is
 6 that including the HST that's paid on that?
 7 MS. DEAN:
 8 A. The RST?
 9 KENNEDY, Q.C.:
 10 Q. RST.
 11 MS. DEAN:
 12 A. Sorry.
 13 KENNEDY, Q.C.:
 14 Q. Well, we pay –
 15 MS. DEAN:
 16 A. Yes, it's the retail sales tax which is over
 17 and above.
 18 KENNEDY, Q.C.:
 19 Q. HST/GST, yes.
 20 MS. DEAN:
 21 A. That was just HST/GST charged on claims
 22 pieces.
 23 KENNEDY, Q.C.:
 24 Q. The claims costs of 409 average, does that
 25 include also the cost of taxes?

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1 MS. DEAN:
 2 A. It does not include the RST which was just
 3 implemented in, I believe it was July of
 4 2016, if I recall.
 5 KENNEDY, Q.C.:
 6 Q. Does it include any taxes?
 7 MS. DEAN:
 8 A. It includes input taxes, so -
 9 KENNEDY, Q.C.:
 10 Q. And what percent? Are they minor taxes, if
 11 there's any such thing?
 12 MR. STEIN:
 13 A. You're referring to claims, the claims cost
 14 figures?
 15 KENNEDY, Q.C.:
 16 Q. Yes.
 17 MR. STEIN:
 18 A. And are there taxes applied on them?
 19 KENNEDY, Q.C.:
 20 Q. Yes, well you –
 21 MR. STEIN:
 22 A. I mean, yeah, regular GST/HST, some of these
 23 are exempt from those, but the—but yes, if
 24 taxes were incurred, they're included in
 25 those numbers.

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1 KENNEDY, Q.C.:

2 Q. Because the previous government had removed

3 the 15 percent on the HST or on the tax, on

4 insurance premiums.

5 MS. DEAN:

6 A. On insurance, correct.

7 KENNEDY, Q.C.:

8 Q. Okay. So, when you had put forward your

9 average claims costs now of--\$409, does that

10 include taxes?

11 MR. STEIN:

12 A. Are you referring to the –

13 MS. DEAN:

14 A. The RST.

15 MR. STEIN:

16 Q. The RST, I believe, is applied on premiums.

17 I do not believe it's included in the claims

18 costs, only—the only taxes included on the

19 claims cost numbers would be the taxes

20 incurred for those claim services.

21 KENNEDY, Q.C.:

22 Q. Now let's come back to your meetings with

23 the ministers of government. How many other

24 ministers of government have you met with,

25 Ms. Dean, you or anyone at IBC to the best

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1 of your knowledge?

2 MS. DEAN:

3 A. Certainly. We've met with the Minister of

4 Transportation to discuss road safety.

5 KENNEDY, Q.C.:

6 Q. Did the cap come up?

7 MS. DEAN:

8 A. I believe it did. Minister of Environment

9 with regard to oil spill remediation and

10 climate change.

11 KENNEDY, Q.C.:

12 Q. Did the cap come up?

13 MS. DEAN:

14 A. That meeting, climate change and certainly

15 what's been happening with the weather was a

16 very large conversation. It may have, I do

17 not recall.

18 KENNEDY, Q.C.:

19 Q. Okay. Have you met with the government

20 caucus as a whole, for example?

21 MS. DEAN:

22 A. Government caucus? No, we have not in this

23 province.

24 KENNEDY, Q.C.:

25 Q. Have you met with the premier or anyone in

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1 the premier's office?

2 MS. DEAN:

3 A. At an informal event I had a conversation

4 with members of the premier's office, but we

5 were unable to secure meetings with anyone

6 in the premier's office. I know our

7 president and CEO when there's a new premier

8 anywhere in this country, he likes to

9 introduce himself and certainly the

10 industry, and we were never granted a

11 meeting.

12 KENNEDY, Q.C.:

13 Q. In the informal meeting or discussion with

14 the premier or members of the premier's

15 office, did the cap come up?

16 MS. DEAN:

17 A. The cap did come up, that's what my members

18 pay me to do.

19 KENNEDY, Q.C.:

20 Q. If I were to suggest—sorry?

21 MS. DEAN:

22 A. My members pay me to lobby government

23 members.

24 KENNEDY, Q.C.:

25 Q. Are there any emails—okay, before I get to

Page 68

1 that, excuse me, how often have you met with

2 bureaucrat's in the Department of Service

3 Newfoundland and Labrador in the last 12 to

4 24 months?

5 MS. DEAN:

6 A. It would be a number of times, certainly

7 when they have questions of our industry and

8 we need to discuss what's going on within

9 the market. Whenever we have updated data,

10 we request meetings with those officials, so

11 it would be a number of times.

12 KENNEDY, Q.C.:

13 Q. I'm interested in the cap. How many times

14 have you met with bureaucrats, officials,

15 either at the director level, ADM or deputy

16 level in the Department of Service

17 Newfoundland and Labrador in the last 12 to

18 24 months where you discussed the cap?

19 MS. DEAN:

20 A. A number of times, I don't have the exact

21 number off the top of my head.

22 KENNEDY, Q.C.:

23 Q. Two dozen?

24 MS. DEAN:

25 A. Within the last 24 months?

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1 KENNEDY, Q.C.:

2 Q. Yeah.

3 MS. DEAN:

4 A. That would be excessive.

5 KENNEDY, Q.C.:

6 Q. Okay, well 15?

7 MS. DEAN:

8 A. Maybe 10; likely less.

9 KENNEDY, Q.C.:

10 Q. One of the new commissioners at the PUB was

11 the former, I think, superintendent of

12 insurance, did you meet with him?

13 MS. DEAN:

14 A. I did.

15 KENNEDY, Q.C.:

16 Q. How often did you meet with him?

17 MS. DEAN:

18 A. Oh goodness, I met with him maybe three

19 times.

20 KENNEDY, Q.C.:

21 Q. Okay, so there were regular meetings with

22 bureaucratic officials in the Department of

23 Service of Newfoundland and Labrador where

24 the cap was discussed?

25 MS. DEAN:

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1 A. Yes.

2 KENNEDY, Q.C.:

3 Q. Okay, that's what you do, you lobby.

4 MS. DEAN:

5 A. We bring a number of industry issues and

6 certainly respond to what's happening within

7 the market.

8 KENNEDY, Q.C.:

9 Q. Yes. Now how is IBC funded? Do other

10 insurance companies pay certain amounts of

11 money to be part of the IBC, where does your

12 money come from?

13 MS. DEAN:

14 A. Insurance companies, our members, pay a

15 membership fee.

16 KENNEDY, Q.C.:

17 Q. And part of that will come from the claims

18 or the premiums that are paid by the

19 insurers, is that a fair statement?

20 MS. DEAN:

21 A. They pay us and I –

22 KENNEDY, Q.C.:

23 Q. So the innocent accident victim is paying

24 for you to take away or to lobby government

25 to take away their own rights, that's what's

Page 71

1 happening, isn't it?

2 MS. DEAN:

3 A. To gather information about what's happening

4 with the market and present information and

5 best practices in other jurisdictions. It's

6 a more effective model than having 200

7 different insurance companies constantly

8 requesting meetings with those who regulate

9 them.

10 KENNEDY, Q.C.:

11 Q. I want to now deal with the May 2018 report,

12 if we could bring that up, please. And

13 first just confirm for me, Ms. Dean, that

14 there are no—I don't see anyway, any

15 particular mention in the February 2018

16 report in relation to fees paid to lawyers,

17 is that a fair statement? Am I accurate on

18 that?

19 MS. DEAN:

20 A. In the May 2018 report?

21 KENNEDY, Q.C.:

22 Q. Or excuse me, the first one, February 2018.

23 MS. DEAN:

24 A. That would be a fair statement.

25 KENNEDY, Q.C.:

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1 Q. Yeah. Yet in the May 2018 report, we

2 basically get an attack on lawyers, don't

3 we?

4 MS. DEAN:

5 A. Sorry, what page are you looking at?

6 KENNEDY, Q.C.:

7 Q. My first question, it's an overall question

8 that in the May 2018 report there's

9 basically an attack on lawyers, isn't there?

10 MS. DEAN:

11 A. We gather information when we prepare these

12 reports from members and we certainly have

13 discussions because we are submitting

14 reports that represent their experience in

15 any jurisdiction.

16 KENNEDY, Q.C.:

17 Q. Yeah, so it's not an attack on lawyers is

18 what you're saying?

19 MS. DEAN:

20 A. It's a simulation or resembled information

21 from our members in order to prepare this

22 report.

23 KENNEDY, Q.C.:

24 Q. You can say you don't like us, it doesn't

25 matter, Ms. Dean, you know, that's not going

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1 to affect me personally. Let's go to page
 2 4.
 3 MS. DEAN:
 4 A. I have no personal –
 5 KENNEDY, Q.C.:
 6 Q. Well I'm going to show you that IBC does.
 7 Let's go to page 4, please, of the May 2018
 8 report. The second paragraph, these massive
 9 non-pecuniary damage payments, so someone
 10 who gets \$20,000 for an injury that affects
 11 their quality of life to the point of being
 12 able to play with their children, go to
 13 work, clean the house, do the things that
 14 other normal people do, that's a massive
 15 payment, is it, Ms. Dean, is that what
 16 you're saying?
 17 MS. DEAN:
 18 A. We are discussing minor injuries in these
 19 submissions, minor injuries only where
 20 individuals will recover.
 21 KENNEDY, Q.C.:
 22 Q. Whiplash 2, whiplash 1 and 2 is described as
 23 a minor injury, isn't it?
 24 MS. DEAN:
 25 A. It is.

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1 KENNEDY, Q.C.:
 2 Q. So that person who has a neck injury, 12 to
 3 24 months recuperating, affecting their
 4 ability to do the normal things that they
 5 do, that \$20,000 to \$30,000 that he or she
 6 gets, that's a massive payment, is it?
 7 MS. DEAN:
 8 A. Minor injuries are those which individuals
 9 will recover, and we are referring to the
 10 non-pecuniary damages amounts here versus
 11 what is paid in other provinces in relation
 12 to what is driving premiums in this
 13 province.
 14 KENNEDY, Q.C.:
 15 Q. We'll come to that later. So these massive
 16 non-pecuniary damage payments correspond
 17 directly to auto insurance legislation that
 18 emphasizes cash payments over health
 19 outcomes, so again, back to—I'm not going to
 20 repeat that, Mr. Feltham dealt with that
 21 issue of cash over care, correct?
 22 MS. DEAN:
 23 A. Correct.
 24 KENNEDY, Q.C.:
 25 Q. "The ability to take an injury that's

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1 expected to heal in a few days, weeks or
 2 months and to turn it into tens of thousands
 3 of dollars in cash is why 82 percent of
 4 injury claims involve personal injury
 5 lawyers." What do you mean by that
 6 statement?
 7 MS. DEAN:
 8 A. Well, as we saw in the Closed Claims Study
 9 that was prepared by Oliver Wyman, 82
 10 percent of injury claims, minor injury
 11 claims involved legal counsel. That is a
 12 high amount when we compare that to
 13 neighbouring provinces.
 14 KENNEDY, Q.C.:
 15 Q. Do you agree with me? Ms. Dean, that one of
 16 the most basic premises of our legal system
 17 in Canada is that people have the right to
 18 be represented by lawyers and the right to
 19 access justice?
 20 MS. DEAN:
 21 A. Absolutely, but also insurance is an
 22 indemnity to once you are, one of the basic
 23 principles is that of indemnity in placing
 24 you back to where you were prior to the
 25 incident, and what we are stressing,

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1 certainly in this report, is the care and
 2 getting individuals in this province better,
 3 quicker and back to their regular lives.
 4 KENNEDY, Q.C.:
 5 Q. So lawyers prevent that from happening, do
 6 they?
 7 MS. DEAN:
 8 A. That's not what we're saying, it's just that
 9 the process could be a lot quicker to get
 10 individuals better quicker. Again, we are
 11 all working within the constraints of the
 12 current legislation and regulation.
 13 KENNEDY, Q.C.:
 14 Q. Let me read this to you again, "The ability
 15 to take an injury that is expected to heal
 16 in a few days, weeks or months and turn it
 17 into tens of thousands of dollars in cash is
 18 why 82 percent of injury claims involve
 19 personal injury lawyers." Are you alleging
 20 here that personal injury lawyers engage in
 21 fraudulent practices?
 22 MS. DEAN:
 23 A. Not referring to any such thing, I am
 24 referring to the fact that there are
 25 certainly larger amounts paid for non-

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1 pecuniary damages in this province over and
 2 above that which ensures that the victims of
 3 motor vehicle collisions are healing,
 4 received the treatment that they require and
 5 incur any out-of-pocket expenses for lost
 6 wages and so on, that the current system—and
 7 insurance is very much a system, insurers
 8 offer a product and they manage claims at
 9 the end of the day for those unfortunate few
 10 of us who have to make a claim, while the
 11 many pay for it. And what we're hearing
 12 from consumers is that the pressures of
 13 paying for this current system is
 14 challenging to the pocket books of many
 15 Newfoundlanders and Labradorians.
 16 KENNEDY, Q.C.:
 17 Q. It's a very good answer, but I'm going to
 18 come back to my question now. Are you
 19 alleging –
 20 ROWE, Q.C.:
 21 Q. Madam Chair, she's answered the question. I
 22 mean –
 23 KENNEDY, Q.C.:
 24 Q. She has not answered—I asked a question,
 25 there was no answer. Listen to my question

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1 and listen to her answer.
 2 ROWE, Q.C.:
 3 Q. She said at the beginning –
 4 KENNEDY, Q.C.:
 5 Q. Can I ask my question?
 6 CHAIR:
 7 Q. Mr. Kennedy, are you –
 8 ROWE, Q.C.:
 9 Q. - that she was not alleging fraudulent
 10 parties.
 11 CHAIR:
 12 Q. I was just going to say, are you just
 13 looking for a “yes” or “no”?
 14 KENNEDY, Q.C.:
 15 Q. I'm going to come back to my question, is
 16 are you alleging then that lawyers are
 17 engaged in dishonest or unethical practices?
 18 MS. DEAN:
 19 A. No.
 20 KENNEDY, Q.C.:
 21 Q. Now, who is Aviva, are they a member of—
 22 they're a big insurance company, aren't
 23 they?
 24 MS. DEAN:
 25 A. Yes, they are.

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1 KENNEDY, Q.C.:
 2 Q. Are they a member of the IBC?
 3 MS. DEAN:
 4 A. Yes, they are.
 5 KENNEDY, Q.C.:
 6 Q. You've read their report?
 7 MS. DEAN:
 8 A. Yes.
 9 KENNEDY, Q.C.:
 10 Q. You know what's in their report?
 11 MS. DEAN:
 12 A. I do.
 13 KENNEDY, Q.C.:
 14 Q. That's an attack on lawyers, isn't it?
 15 MS. DEAN:
 16 A. I certainly can't speak on behalf of Aviva.
 17 KENNEDY, Q.C.:
 18 Q. Well, as a member of the IBC, don't you
 19 speak on behalf of Aviva and other insurance
 20 companies?
 21 MS. DEAN:
 22 A. From time to time some of our members choose
 23 to advance additional commentary to that
 24 which the group of insurers that we assemble
 25 to come up with positions put forward.

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1 KENNEDY, Q.C.:
 2 Q. Okay, let's go to your next paragraph.
 3 “This personal injury lawyer rate
 4 representation is unusually high.” Is there
 5 something wrong with people being
 6 represented by lawyers in the view of IBC?
 7 MS. DEAN:
 8 A. No, it's just in our observation it's
 9 unusually high when compared to neighbouring
 10 provinces.
 11 KENNEDY, Q.C.:
 12 Q. Let's go to the next paragraph, “That so
 13 many Newfoundland and Labrador claims have
 14 personal injury lawyers is a symptom of the
 15 problem that has caused consumers to have to
 16 pay hundreds of dollars more for insurance.”
 17 MS. DEAN:
 18 A. Yes.
 19 KENNEDY, Q.C.:
 20 Q. Are you blaming lawyers for the increase in
 21 premiums?
 22 MS. DEAN:
 23 A. I am not. I am blaming the system and I am
 24 blaming the current legislator of a
 25 regulatory regime that has led to the

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1 situation. It's also important to keep in
 2 mind that the last reforms in this province
 3 were 2004, that is 14 years ago. Any system
 4 where you have an industry that offers the
 5 product and you have government that
 6 regulates it, from both the product and the
 7 pricing side of things, there needs to be a
 8 review from time to time. We are well
 9 overdue in this province for that review.
 10 KENNEDY, Q.C.:
 11 Q. Okay. Again, a very good answer, but let me
 12 come back to my question. My question was
 13 that so many—I'm reading you the statement,
 14 "That so many Newfoundland and Labrador
 15 claims have personal injury lawyers is a
 16 symptom of the problem." So my question is,
 17 that indicates to me that you are blaming
 18 lawyers for the increase in premiums for the
 19 average person in this province, is that
 20 what you are saying there?
 21 (10:15 a.m.)
 22 MS. DEAN:
 23 A. No, I'm blaming the current system, the
 24 current regulatory and legislative regime.
 25 KENNEDY, Q.C.:

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1 Q. Okay, now it wouldn't be that so many
 2 lawyers are involved because there's such a
 3 mistrust of the greedy insurance industry,
 4 is it?
 5 MS. DEAN:
 6 A. It's the same industry that serves customers
 7 in other provinces as well, and those
 8 provinces have individuals who are involved
 9 in motor vehicle collisions who get better
 10 and go on with their lives.
 11 KENNEDY, Q.C.:
 12 Q. So let's continue a little bit further. If
 13 I could ask to have the Aviva submission at
 14 page 11, brought up, please? May, 2018.
 15 Aviva puts out some stats here, I just want
 16 to see if you agree with these stats. So if
 17 you look, you'll see there's a nice colour
 18 pie. "Aviva settlement average was 34,886.
 19 Settlements were noticeably higher when
 20 there was legal representation. 41,000 with
 21 legal representation versus 9900 with no
 22 legal representation." Now whether or not
 23 those numbers are accurate as a whole, do
 24 you agree with the general principle that
 25 when lawyers are involved in personal injury

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1 claims the claims payouts are significantly
 2 higher?
 3 MS. DEAN:
 4 A. This is a snapshot of Aviva's experience as
 5 a company itself, so I certainly can't
 6 comment on that. I'm not an employee of
 7 Aviva, they do not share on an ongoing basis
 8 this type of information with me. What we
 9 are talking about in our report is the
 10 current legislative and regulatory system
 11 that insurers, as well as drivers,
 12 participate in within this province.
 13 KENNEDY, Q.C.:
 14 Q. Okay, so in your experience, IBC's
 15 experience, would you agree that claims are
 16 settled for three to four times more money
 17 when lawyers are involved, as opposed to
 18 individuals negotiating with the insurance
 19 companies themselves, insurance adjusters
 20 themselves, is that a general principle?
 21 MS. DEAN:
 22 A. I have aggregate claims information that
 23 show that certainly claims in this province
 24 are unsustainably high.
 25 KENNEDY, Q.C.:

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1 Q. Okay, let's go to the heading down there,
 2 the shocker, the number of lawyers, so you
 3 and Aviva, IBC and Aviva appear to share the
 4 same approach towards the number of lawyers
 5 involved in personal injury claims, that's
 6 what we just went through earlier, correct?
 7 MS. DEAN:
 8 A. It's certainly a higher amount that what is
 9 evident in the neighbouring provinces when
 10 it comes to minor injuries.
 11 KENNEDY, Q.C.:
 12 Q. And that's a bad thing from IBC's
 13 perspective, is it?
 14 MS. DEAN:
 15 A. It's one piece of why we need to take a look
 16 at the system.
 17 KENNEDY, Q.C.:
 18 Q. Okay, because what, lawyers are making too
 19 much money, is that what you're saying?
 20 MS. DEAN:
 21 A. I haven't said that.
 22 KENNEDY, Q.C.:
 23 Q. Okay, the last point on the Aviva, and I
 24 want to see again if these statistics
 25 correspond with your own, that last

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1 paragraph, “Legal representation impacts the
 2 length of time it takes to resolve a claim.
 3 In the Aviva sample, claims with no legal
 4 representation closed after an average of
 5 352 days; while claims with legal
 6 representation took an average of 922 days.”
 7 Again, is that a basic principle that you
 8 encounter that unrepresented victim claims
 9 settle much quicker than claims involving
 10 lawyers?
 11 MS. DEAN:
 12 A. That would be the experience of one of our
 13 member companies that I do not have the
 14 background or the ability to comment on
 15 those specific numbers.
 16 KENNEDY, Q.C.:
 17 Q. Okay, can you find those numbers for us,
 18 from an IBC perspective?
 19 MS. DEAN:
 20 A. No, I would not have access to those
 21 numbers.
 22 KENNEDY, Q.C.:
 23 Q. Can you find from an IBC perspective the
 24 difference between when claims settled, the
 25 amount the claim settled in unrepresented

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1 victims versus represented victims?
 2 MR. STEIN:
 3 A. If it’s anywhere, it would be in Oliver
 4 Wyman’s Closed Claims Study Report.
 5 KENNEDY, Q.C.:
 6 Q. Okay, now let’s go to—is it IBC’s position
 7 that there was too high a percentage of
 8 lawyers or too high a percentage of accident
 9 victims represented by lawyers?
 10 MS. DEAN:
 11 A. 82 percent as presented by the Closed Claims
 12 Study, as undertaken by Oliver Wyman, that
 13 seems to be a high amount.
 14 KENNEDY, Q.C.:
 15 Q. So the preferable, the IBC would prefer a
 16 system where an accident victim negotiates
 17 directly with an insurance adjuster and gets
 18 \$2,500.00 as opposed to a case where a
 19 lawyer is involved and they get \$30,000, is
 20 that the system that you’re proposing?
 21 MS. DEAN:
 22 A. One of the things in terms of the insurance
 23 system, insurers can cost anything. They
 24 can cost out any form of a system. The
 25 difficulty comes with what that price tag is

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1 at the end of the day. We are hearing loud
 2 and clear from consumers that they are
 3 paying too much for insurance within this
 4 province and we can’t ignore the fact that
 5 the premiums of the many pay for the few.
 6 However, when we’re talking about those
 7 injured in motor vehicle collisions, those
 8 folks need to get better and that’s why our
 9 recommendations also go on to advance some
 10 additional recommendations.
 11 KENNEDY, Q.C.:
 12 Q. So again, two questions that come out of
 13 that because with all due respect, I don’t
 14 think you’ve answered my question. So is it
 15 the position of IBC that you would prefer to
 16 have unrepresented accident victims
 17 negotiate with insurance adjusters directly,
 18 as opposed to having lawyers involved?
 19 MS. DEAN:
 20 A. We would prefer to see a sustainable auto
 21 insurance market in Newfoundland and
 22 Labrador.
 23 KENNEDY, Q.C.:
 24 Q. With all due respect, my question is “yes”
 25 or “no”. If you can’t answer it, fair

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1 enough. Do you, are you suggesting that
 2 there should be a system where unrepresented
 3 accident victims negotiate with insurance
 4 adjusters directly, as opposed to being
 5 represented by lawyers?
 6 MS. DEAN:
 7 A. There should be a system where those who are
 8 injured heal and receive a reasonable amount
 9 of compensation.
 10 KENNEDY, Q.C.:
 11 Q. So you’re not going to answer my question,
 12 are you? You’re refusing to answer the
 13 question?
 14 ROWE, Q.C.:
 15 Q. Madam Chair, IBC has put forth their
 16 position that there should be a reform of
 17 the existing system. I mean, this is not a
 18 fair question to put to Ms. Dean who is here
 19 on behalf of IBC. She’s only quoting the
 20 statistics that came out of the Closed
 21 Claims Study.
 22 CHAIR:
 23 Q. Sounds to me like you’ve gotten as far as
 24 you’re going to go.
 25 KENNEDY, Q.C.:

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1 Q. Thank you, Madam Chair. Now, when we have
 2 litigation, do IBC members, the insurances
 3 companies, they have lawyers, correct?
 4 MS. DEAN:
 5 A. Uh-hm, correct.
 6 KENNEDY, Q.C.:
 7 Q. They can hire lawyers to fight claims?
 8 MS. DEAN:
 9 A. Correct.
 10 KENNEDY, Q.C.:
 11 Q. Our system is set up so that we can go to
 12 court and courts will determine what they
 13 appropriate amounts are for non-pecuniary
 14 general damages, loss of past income, cost
 15 of future care, housekeeping, maintenance
 16 capacity, courts can do all that?
 17 MS. DEAN:
 18 A. Uh-hm.
 19 KENNEDY, Q.C.:
 20 Q. Are you aware of in the last couple of years
 21 of any of the insurance companies in this
 22 province have taken any claims to courts
 23 that would be characterized as what you call
 24 minor injury?
 25 MS. DEAN:

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1 A. I am not aware, but that doesn't mean that
 2 they haven't.
 3 KENNEDY, Q.C.:
 4 Q. Now I want to come to page 5 of your
 5 February report, because now I'm going to
 6 suggest you get into a criticism of the
 7 court system. Page 5, this would be—excuse
 8 me, it's the February report, I apologize
 9 for that, Commissioners. Page 5, of your
 10 report. You see the paragraph there
 11 beginning, "The size of the average
 12 Newfoundland and Labrador bodily injury
 13 claim is inconsistent with prevailing
 14 medical literature on motor vehicle
 15 collision index rates (phonetic). A 2015
 16 study by leading Canadian scientists and
 17 health practitioners state that most injured
 18 people recover within days or a few months."
 19 So you are aware of the fact that if
 20 insurance companies don't like what's going
 21 on, we go to court and a judge decides,
 22 correct?
 23 MS. DEAN:
 24 A. Correct. I'm also aware of the costs
 25 associated with that as well.

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1 KENNEDY, Q.C.:
 2 Q. So the negotiations that take place between
 3 adjusters and lawyers would be based on the
 4 caselaw that has been determined by our
 5 courts.
 6 MS. DEAN:
 7 A. Correct.
 8 (10:30 a.m.)
 9 KENNEDY, Q.C.:
 10 Q. So are you saying there that the courts are
 11 getting it wrong too, that they're not
 12 applying the prevailing medical literature?
 13 MS. DEAN:
 14 A. We are stating that there is a report, a
 15 study that was conducted in 2015 that can
 16 certainly add to the body of knowledge with
 17 regard to the prevailing medical literature.
 18 KENNEDY, Q.C.:
 19 Q. So that report that by your footnote is
 20 dated, what you say is the prevailing
 21 medical literature, is dated December 2014.
 22 In the last four years, has the IBC or any
 23 of their—excuse me, any of the member
 24 companies taken a case to court to ensure
 25 that this prevailing medical literature is

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1 before the judges of our province?
 2 MS. DEAN:
 3 A. Not that I'm aware of, but again, that
 4 doesn't mean it hasn't –
 5 KENNEDY, Q.C.:
 6 Q. Why wouldn't you do that? If your
 7 prevailing medical literature indicates that
 8 what judges, how we've been deciding cases
 9 for the last, ever how many years, and going
 10 back, I suppose we could go back to some of
 11 the cases in the '90s where the start of the
 12 change, why wouldn't the insurance company
 13 take this matter to court? Can you offer an
 14 explanation for that?
 15 MS. DEAN:
 16 A. Well certainly I'm not an employee of any
 17 one particular insurance company. I can
 18 only surmise that the expense associated
 19 with doing so may play into it, especially
 20 when you look at the size of claims within
 21 this province as it is.
 22 KENNEDY, Q.C.:
 23 Q. Okay.
 24 MS. DEAN:
 25 A. In addition to any wait times that it may

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1 take in order to get to trial, especially
 2 when you're dealing with individuals with
 3 minor injuries. The desire on the part of
 4 any insurer would be to get that individual
 5 in treatment as soon as possible and go from
 6 there.
 7 KENNEDY, Q.C.:
 8 Q. Okay, well let's just break that down. So
 9 essentially you're saying, well there's a
 10 cost involved, but the cost of paying a
 11 lawyer, as good as Mr. Rowe and Mr. Stamp
 12 are, they're not going to cost you as much
 13 as you've been paying out in claims for
 14 minor injuries from what you're saying, is
 15 that correct, the test one case.
 16 MS. DEAN:
 17 A. We wanted to participate fully within this
 18 hearing and that's what we're here to do.
 19 KENNEDY, Q.C.:
 20 Q. You wanted to participate fully in the
 21 hearing and I'm asking you, you've had this
 22 prevailing medical literature since 2014 and
 23 you're suggesting that perhaps nothing has
 24 gone to court because it's too expensive for
 25 lawyers?

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1 MS. DEAN:
 2 A. It could be one of the options.
 3 ROWE, Q.C.:
 4 Q. Madam Chair, just stop, Ms. Dean. This is
 5 not a fair line of questioning for Ms. Dean.
 6 She doesn't deal with claims. What Mr.
 7 Kennedy is talking about is down at the very
 8 basic level, an insurance company, there's
 9 an examiner, an adjuster dealing with the
 10 claim. That person may or may not have
 11 defence counsel engaged. There are a whole
 12 raft of considerations that go into whether
 13 or not a matter goes to court, and Ms. Dean
 14 is way above being involved in that level of
 15 decision-making. I mean, she's at a high
 16 altitude with IBC; she's not down in the
 17 trenches with claims' examiners making a
 18 decision whether this should go to court or
 19 whether we should try to settle it. I mean,
 20 that's an unfair question for her.
 21 KENNEDY, Q.C.:
 22 Q. The IBC have made a presentation to this
 23 Board. We see that Aviva had done, put
 24 forward a similar presentation. There is,
 25 what I would suggest to you, Madam Chair,

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1 Commissioners, an—well it's an attack on
 2 lawyers and the role that lawyers play in
 3 the system. There's also, I would suggest
 4 to you, an implicit attack on the courts
 5 because prevailing medical literature should
 6 determine what awards are, as opposed to our
 7 tried and trusted court system. My
 8 questions have only been you had prevailing
 9 medical literature since 2014, why haven't
 10 you gone to court and tested your prevailing
 11 medical literature against the current
 12 awards or damages that are out there. She
 13 says it takes a long time and I agree with
 14 that, but December 2014 is four years. They
 15 have capable lawyers representing them. I
 16 don't know how that question is unfair when
 17 they're coming before this Board and
 18 suggesting as one of their recommendations
 19 that a minor injury definition should be in
 20 line with prevailing medical literature when
 21 they've had the chance to test it. All I am
 22 trying to find out is why haven't you tested
 23 it if your prevailing medical literature is
 24 so strong? If you feel that the question,
 25 the issue has been examined, fine, I'll move

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1 on. But the IBC have put this in their
 2 submission and while the blame the lawyer's
 3 routine may be something that they try to
 4 work with, it's something that we should be
 5 allowed to explore and so if you feel I've
 6 explored enough, I'll move on.
 7 CHAIR:
 8 Q. I think the question has been explored, but
 9 you will have the opportunity, Mr. Kennedy,
 10 to make a submission at the –
 11 KENNEDY, Q.C.:
 12 Q. Oh, there will be other lawyers coming
 13 before this Board to talk about this.
 14 CHAIR:
 15 Q. Absolutely.
 16 KENNEDY, Q.C.:
 17 Q. And maybe a judge or two. Okay, so now I
 18 want to now move into the May 2018 report.
 19 If we go to page 5. So if I understand you
 20 correctly, if you look at this—I understand
 21 IBC, Ms. Dean, I don't mean to personalize
 22 it with you, if I understand IBC's position
 23 that even though Ms. Elliott has outlined
 24 different frequencies and different cap
 25 amounts that could apply, it's IBC's

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1 position that there should be a \$5,000 cap
 2 because higher caps provide more financial
 3 incentive for the personal injury lawyers to
 4 take on minor injury claims, so we're back
 5 to the lawyers again, aren't we? Do you see
 6 the comment there?
 7 MS. DEAN:
 8 A. I do see that.
 9 KENNEDY, Q.C.:
 10 Q. Yes.
 11 MS. DEAN:
 12 A. The lower cap amount would provide more
 13 stability as evidenced by the frequency
 14 change that had been presented in Oliver
 15 Wyman's report.
 16 KENNEDY, Q.C.:
 17 Q. Okay, but what you're saying there is that
 18 the higher caps provide more financial
 19 incentives for personal injury lawyers who
 20 take on minor injury claims. So in other
 21 words, the converse of that is that we don't
 22 want lawyers involved, is that what—is that
 23 the IBC's position, let me put it to you
 24 that way and I'll that alone, is that your
 25 position?

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1 MS. DEAN:
 2 A. Again, we are comparing the legal
 3 representation as evidenced by the Closed
 4 Claims Study versus that of neighbouring
 5 provinces, that is high.
 6 KENNEDY, Q.C.:
 7 Q. And then you go on to state, this is page 8,
 8 excuse me, should be page 8, and use "The
 9 litigation process to increase cash
 10 payments, even though those common claims
 11 could easily settle without legal
 12 involvement." That's again, we've gone
 13 through that, I'm not going to question you,
 14 same point as we talked about earlier,
 15 correct?
 16 MS. DEAN:
 17 A. Uh-hm.
 18 KENNEDY, Q.C.:
 19 Q. Now, would you not agree with me, Ms. Dean,
 20 that when you take an experienced insurance
 21 adjuster and someone who has been in an
 22 accident, an innocent accident victim, that
 23 there was a power imbalance in the
 24 negotiation between the innocent accident
 25 victim and an experienced insurance

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1 adjuster?
 2 MS. DEAN:
 3 A. That accident victim is also a client of an
 4 insurance company and insurance companies
 5 would not exist without their customers.
 6 KENNEDY, Q.C.:
 7 Q. But they're also—part of the job is to save
 8 as much money as you can for your employer.
 9 MS. DEAN:
 10 A. I would suggest that the job would be to get
 11 people better as quickly as possible and as
 12 we're exploring in these submissions, there
 13 is a better way to get treatment for those
 14 with minor injuries.
 15 KENNEDY, Q.C.:
 16 Q. Okay, I'm going to finish with this line of
 17 questioning. I'll put this to you and then
 18 we're finished with this. And hopefully
 19 we'll get to question Aviva. The bottom
 20 line, I'd suggest to you, is that the
 21 insurance companies want to get able to
 22 determine what peoples' rights are and who
 23 will get what. Do you agree with that
 24 statement?
 25 MS. DEAN:

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1 A. I do not.
 2 KENNEDY, Q.C.:
 3 Q. Okay. Let's now go to the—I'm almost
 4 finished, Commissioners. Let's go to page 4
 5 of 17 which would be the February
 6 submission.
 7 MS. KEAN:
 8 A. What page again?
 9 KENNEDY, Q.C.:
 10 Q. It would be page 4 of 17. Now this sets out
 11 the bodily injury claims by province for
 12 2016, the average claims cost. Do you see
 13 that?
 14 MS. DEAN:
 15 A. Yes.
 16 KENNEDY, Q.C.:
 17 Q. Okay. So, PEI which has a cap has an
 18 average claims cost of almost \$73,000.00,
 19 \$72,938.00
 20 MS. DEAN:
 21 A. Um-hm.
 22 KENNEDY, Q.C.:
 23 Q. Correct?
 24 MS. DEAN:
 25 A. Correct.

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1 KENNEDY, Q.C.:

2 Q. New Brunswick which has a cap is at 69,666,

3 almost \$70,000.00.

4 MS. DEAN:

5 A. Um-hm.

6 KENNEDY, Q.C.:

7 Q. Correct?

8 MS. DEAN:

9 A. Correct.

10 KENNEDY, Q.C.:

11 Q. And then New Brunswick is—I've done New

12 Brunswick and PEI. Now, we just went

13 through your—the comment at page 5 that the

14 average size of bodily claims costs is

15 inconsistent with prevailing medical

16 literature on motor vehicle injuries.

17 Correct? You remember we just referred to

18 that a couple of minutes ago.

19 MS. DEAN:

20 A. Um-hm.

21 KENNEDY, Q.C.:

22 Q. So, are New Brunswick's almost \$70,000.00

23 claim, is that inconsistent with the

24 prevailing medication literature, even

25 though there is a cap?

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1 MR. STEIN:

2 A. I think you can make the case that even New

3 Brunswick's is a little high, probably a

4 product of the cap being increased a few

5 years ago.

6 KENNEDY, Q.C.:

7 Q. And PEI at approximately 73,000 or almost

8 73,000, that that is inconsistent with the

9 prevailing medical literature even though

10 they have cap. Is that the position?

11 MR. STEIN:

12 A. Saying it's probably a product of also them

13 having a higher cap than they used to have.

14 KENNEDY, Q.C.:

15 Q. Now, I'm assuming that and please correct me

16 if I'm wrong, but out of the—we started out

17 with 1977 cases or whatever it was with the

18 Closed Claims Study. We went down to 1741

19 because there was 236 Intact files

20 eliminated. Does that sound right, those

21 numbers should generally right?

22 MS. DEAN:

23 A. Yes.

24 KENNEDY, Q.C.:

25 Q. Okay. None of those cases—did any of those

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1 cases go to court?

2 MS. DEAN:

3 A. I'm not aware that they did.

4 KENNEDY, Q.C.:

5 Q. They wouldn't be involved in the Closed

6 Claims Study if they'd gone to court, would

7 they?

8 MR. STEIN:

9 A. If they were closed, they would be.

10 KENNEDY, Q.C.:

11 Q. Yes, okay. So, do you know if any of those

12 cases had gone to court?

13 MS. DEAN:

14 A. I would not know that information.

15 KENNEDY, Q.C.:

16 Q. Now, Ms. Dean, you've heard Ms. Elliott's

17 testimony and so with the \$5,000.00 cap, the

18 range of savings for the premium that we

19 currently have could be from a hundred and

20 dollars to below a hundred dollars, for the

21 consumer of this province.

22 MS. DEAN:

23 A. I believe –

24 KENNEDY, Q.C.:

25 Q. Do you agree with that?

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1 MS. DEAN:

2 A. - her report said that that savings amount

3 would be for the required average premium

4 which she noted in her report would be about

5 17 percent higher than what it was in 2017.

6 KENNEDY, Q.C.:

7 Q. So, what she's put in her report, does that

8 include the increase of 17 percent or is

9 that another 17 percent onto that?

10 MS. DEAN:

11 A. That was in the footnote, so she did do the

12 calculations.

13 KENNEDY, Q.C.:

14 Q. Okay, so maybe I missed that, but does the

15 projected savings on the \$5,000.00 cap, does

16 that include the 17 percent increase? Or

17 would the 17 percent increase be on top of

18 that?

19 MS. DEAN:

20 A. It would be beyond that which was the

21 average in 2017.

22 KENNEDY, Q.C.:

23 Q. Okay. So, we bring in the cap, we can save

24 even less than \$100.00 and then put 17

25 percent onto it right away. Is that what

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1 you're suggesting?

2 MS. DEAN:

3 A. That's not a decision that I'm in a position

4 to make.

5 KENNEDY, Q.C.:

6 Q. I want to end with one example and see if

7 this would come within your minor injury

8 definition, or the minor injury definition,

9 excuse me, not yours, the minor injury

10 definition New Brunswick, Nova Scotia—so,

11 this is my last question for you. So,

12 whiplash 1 and 2 would be considered, under

13 those definitions, minor injuries, correct?

14 MR. STEIN:

15 A. It would depend on if it resulted in a

16 serious impairment which is also defined in

17 those legislation regulations.

18 KENNEDY, Q.C.:

19 Q. Okay, but whiplash 1 and 2 by their very

20 nature, they're the—I think the Oliver Wyman

21 definition, they were in number 1. Oliver

22 Wyman definition number 1—Ms. Dean, you were

23 here for that, remember?

24 MS. DEAN:

25 A. Um-hm, yes.

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1 KENNEDY, Q.C.:

2 Q. So, they would be minor injuries within the

3 legislation, wouldn't they?

4 MR. STEIN:

5 A. They would be eligible to be minor injuries,

6 depending on if the injury resulted in a

7 serious impairment on the individual.

8 KENNEDY, Q.C.:

9 Q. Now, have either one of you examined closed

10 claims files?

11 MS. DEAN:

12 A. No.

13 MR. STEIN:

14 A. No.

15 KENNEDY, Q.C.:

16 Q. Okay. So, you get a closed claims file, it

17 could be going on for two years, 12 months,

18 two years, not days or weeks because the

19 person is represented by a lawyer. They get

20 medical clearance. The doctor says your

21 injury is either as good—the injury has

22 resolved as good as it's going to or you're

23 better. That's when the claims process,

24 negotiations process would commence. So

25 that person who has a whiplash 1 or 2 could

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1 have had 50 physiotherapy treatments, 50

2 massage treatments, not able to lift

3 anything, wash the house, clean the house,

4 lift the laundry, pick up the child, play

5 with a child, sleep properly, driving

6 uncomfortably, can't go to the gym, play

7 regular sports, could miss some work, is

8 that the person now that you, the IBC says

9 should be subject to the five—the accident

10 innocent, innocent accident victim, this

11 person should be subject to a \$5,000.00 cap?

12 MR. STEIN:

13 A. That's not what we're saying. The

14 definition that is being used in the other

15 provinces and the ones that we've

16 recommended here is that it's a combination

17 of the person's injury, is it some of the

18 injuries you're speaking about? Yes. But

19 did that injury have a functional impact,

20 meaning did it substantially affect the

21 injury person's daily life? You put the two

22 of those together that would determine if

23 that individual is a minor injury in

24 relation to the cap.

25 KENNEDY, Q.C.:

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1 Q. And Ms. Elliott has stated in her Closed

2 Claims Study or the Minor Injury Reform,

3 MIR, Minor Injury Reform Cost Estimates,

4 that 66 to 76 percent of the closed claims

5 files would come within that minor injury.

6 Are you aware of that, Ms. Dean?

7 MS. DEAN:

8 A. I am aware of that number.

9 KENNEDY, Q.C.:

10 Q. I don't have any further questions, thank

11 you very much.

12 CHAIR:

13 Q. Thank you, Mr. Kennedy, Mr. Feltham. Mr.

14 Gittens, are you –

15 MR. GITTENS:

16 Q. Thank you, Madam Chair. Ms. Dean, I just

17 wanted to confirm an item that Mr. Kennedy

18 bought to your attention and there was some

19 very slight discussion about it and that was

20 the question of whether or not in the 1,741,

21 I think it was, 1,741 closed claims that was

22 part of the Oliver Wyman study, I believe

23 there was a comment to the effect that none

24 of those had gone to court. Do you have any

25 knowledge to contradict that?

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1 MS. DEAN:
 2 A. I do not.
 3 MR. GITTENS:
 4 Q. Okay. I believe in the report, if I'm
 5 correct, that there was comment earlier that
 6 none of those closed claims showed any court
 7 involvement. I'm not saying lawyer
 8 involvement, but court involvement. Anyhow,
 9 bearing that in mind, the two areas I just
 10 want to check on; in one context if none of
 11 these were a court directed result, then I
 12 presume, it makes sense, that all of these
 13 was a result of negotiations between either
 14 the party or the injured party lawyer on
 15 behalf of the injured party and one of the
 16 members of the IBC.
 17 MS. DEAN:
 18 A. It would be with the insurer. IBC would not
 19 be involved.
 20 MR. GITTENS:
 21 Q. No, no, the members of the IBC which would
 22 be the insurer.
 23 MS. DEAN:
 24 A. Insurers.
 25 MR. GITTENS:

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1 Q. That was just another way of saying the
 2 insurance company, that's alright, okay.
 3 So, if you're talking about a negotiated
 4 outcome, that is an outcome that both
 5 parties participate in.
 6 MS. DEAN:
 7 A. Um-hm.
 8 MR. GITTENS:
 9 Q. So, if there is a suggestion as there is
 10 clearly a suggestion throughout the entirety
 11 of these proceedings that the awards that
 12 are being paid out are too high. Am I
 13 misinterpreting that?
 14 MS. DEAN:
 15 A. You are not, in reference to minor injuries.
 16 (10:45 a.m.)
 17 MR. GITTENS:
 18 Q. In reference to minor injuries. So, let me
 19 see if I'm back off again. You, on behalf
 20 of the IBC, on behalf of its members are
 21 saying the settlements that have been
 22 reached for minor injuries in this province
 23 are too high in terms of the sustainability
 24 of the system. Am I getting that correct?
 25 MS. DEAN:

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1 A. You are, as it is increasing or making
 2 claims costs incredibly high, unsustainably
 3 high and premiums are not keeping up. So,
 4 it comes down to there's either large
 5 premium increases or the product is reviewed
 6 and repaired, for lack of a better word.
 7 MR. GITTENS:
 8 Q. There is a more direct solution, of course.
 9 If both of these parties are coming together
 10 and settling on amounts that are too high,
 11 one of those parties can draw the line.
 12 MS. DEAN:
 13 A. Well, in those –
 14 MR. GITTENS:
 15 Q. Nobody is twisting anybody's arm, in other
 16 words, this is a negotiated settlement.
 17 MS. DEAN:
 18 A. Within the current constraints of the
 19 legislative and regulatory framework in this
 20 province.
 21 MR. GITTENS:
 22 Q. Within the current constraints of the
 23 legislative framework and the judicial
 24 determination.
 25 MS. DEAN:

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1 A. Um-hm.
 2 MR. GITTENS:
 3 Q. I believe that's what drives—I know it
 4 what's drives the lawyers in picking an
 5 amount that they feel is appropriate for the
 6 settlement of a minor injury. I guess the
 7 question would be what is it that drives the
 8 insurance companies in terms of settling on
 9 that particular amount?
 10 MS. DEAN:
 11 A. I do not work within a claims department. I
 12 would not be able to answer.
 13 MR. GITTENS:
 14 Q. So, therefore, the insurance companies have
 15 to take some responsibility for settling at
 16 amounts that, at the end of the day, your
 17 industry is saying is too high.
 18 MS. DEAN:
 19 A. Well, and certainly we're saying that loud
 20 and clear now. We've been saying it for
 21 some time, but the process had not allowed
 22 for a review of the product until this point
 23 in time.
 24 MR. GITTENS:
 25 Q. Yes, but let's stop for a second. In the

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1 existing process, and let's pick some of the
 2 numbers that has been thrown around. I
 3 don't even try to grab these numbers; there
 4 are just too many of them here. But I think
 5 there was a figure of about \$38,000.00 being
 6 an average for the minor injury. Did one of
 7 your tables show that figure? We can pick
 8 another. I don't care what figure we pick,
 9 but the 38 comes to mind. Let me ask you
 10 then, what's the average for a payout on a
 11 minor injury claim? As I say, I don't
 12 really care what the number is, but you must
 13 have something in one of your reports there.
 14 MR. STEIN:
 15 A. We have it in our report. It would have
 16 come from the Oliver Wyman report and we're
 17 just trying to find it.
 18 MR. GITTENS:
 19 Q. Okay, just tell us what the number is. I
 20 don't care about the actual amount or –
 21 MS. DEAN:
 22 A. I don't want to cite an incorrect number.
 23 MR. STEIN:
 24 Q. Okay, so the average, I think you're
 25 referring to the average total settlement in

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1 the entire Closed Claims Study was around
 2 \$39,000.00.
 3 MR. GITTENS:
 4 Q. Thirty nine thousand. For the exercise I
 5 want to go through, that's just as good as
 6 any other number. So, what you're saying,
 7 when you looked at, when Ms. Elliott looked
 8 at all 1,741 files and developed this
 9 number, she said the average settlement
 10 amount for a minor injury claim was
 11 \$39,000.00. Is that a fair statement on my
 12 part?
 13 MR. STEIN:
 14 A. She said that number for—that would be total
 15 settlement, all of the claims that were in.
 16 MR. GITTENS:
 17 Q. Of all of the claims –
 18 MR. STEIN:
 19 A. In the study, yes.
 20 MR. GITTENS:
 21 Q. - 39?
 22 MR. STEIN:
 23 A. Yeah.
 24 MR. GITTENS:
 25 Q. Alright. So, let's just go with that

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1 number, 39,000. Let's walk through what
 2 happens if the insurance company said, I'm
 3 not giving you \$39,000.00 for that injury.
 4 Anybody knows what happens then? The lawyer
 5 or the claimant has one of two choices, no
 6 three actually. They can walk away and say
 7 keep your damn 39,000, that's one choice, I
 8 suppose. They can accept it or they can
 9 litigate it. Does anyone have a fourth
 10 option? Are you aware of a fourth option?
 11 MS. DEAN:
 12 A. Other than reforming the system? No.
 13 MR. GITTENS:
 14 Q. No. On the day, on the ground that this
 15 person has to make a decision to accept the
 16 39,000, they can either reject it, walk
 17 away, accept it or say to the lawyer, take
 18 them to court so I can get more because I
 19 think my injury is worth more. Would you
 20 agree that those are the options
 21 realistically speaking apart from the review
 22 that happens every, what is it, 14 years?
 23 MS. DEAN:
 24 A. Based on how you're framing it, certainly -
 25 MR. GITTENS:

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1 Q. Based on how I'm framing it.
 2 MS. DEAN:
 3 A. - it seems reasonable.
 4 MR. GITTENS:
 5 Q. So, basically you're accepting that the
 6 insurance company does have the option of
 7 saying no, I'm not giving you \$39,000.00
 8 because we don't think—well, either we don't
 9 think it's fair or we don't think it's
 10 sustainable to the industry, whatever their
 11 reason, they can simply draw the line.
 12 MS. DEAN:
 13 A. Well, the options are different than what an
 14 insurance company would say. I would take
 15 issue with the insurance company saying no,
 16 I'm not going to pay. Certainly any
 17 insurance company who has a customer who has
 18 been injured in a motor vehicle collision
 19 would want that individual to get better and
 20 would want to put them back to the place
 21 that they were prior to the loss. So, that
 22 would absolutely include lost wages.
 23 MR. GITTENS:
 24 Q. Not arguing about what the insurance company
 25 would like to do. They would like to see

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1 everybody happy and everybody go to heaven.
 2 I'm talking about that on that decision
 3 about how much they're going to pay out on
 4 this particular claim, they have the option
 5 because we've just seen in 1,741 claims, I'm
 6 suggesting, there was no referral to court.
 7 So, they get to draw the line.
 8 MS. DEAN:
 9 A. Well, I'm not an adjuster, so I—there would
 10 be a process with an adjuster to review the
 11 claim and come up with a proposed amount.
 12 MR. GITTENS:
 13 Q. But we're all big boys and girls here, we
 14 know how the process works. The adjuster
 15 comes to some sort of settlement amount with
 16 the lawyer or the claimant. And if the
 17 adjuster says no, there is not settlement
 18 amount. I just don't see where you say that
 19 this 39,000 is too high and it's all the
 20 fault of the lawyers who are representing 82
 21 percent of the claimants and negotiating
 22 this amount when for that amount to have
 23 been negotiated, the insurance company has
 24 to participate, co-operate and agree to the
 25 process.

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1 MS. DEAN:
 2 A. I have stated that it would be the fault of
 3 the current insurance system within this
 4 province which includes the regulatory and
 5 legislative framework that everyone whether
 6 it's legal counsel, whether it's the
 7 victims, whether it's the insurers, all have
 8 to work within. There is a better way. And
 9 Newfoundland and Labrador is in a unique
 10 position where there have been changes that
 11 have been tried and tested in other
 12 provinces. So, let's take the best case
 13 examples, apply them here and control the
 14 cost, make this a sustainable insurance
 15 market so that drivers in this province are
 16 not paying an exorbitant amount for their
 17 auto insurance, but on the flip side of that
 18 let's ensure that victims are getting the
 19 care that they need.
 20 MR. GITTENS:
 21 Q. And I appreciate the talking points, but the
 22 reality is you haven't addressed the
 23 question I've put to you which is that in
 24 the current system which is a negotiated
 25 settlement system which requires both the

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1 claimant and the insurance company to agree
 2 on an amount that the insurance company has
 3 just as much power and authority to affect
 4 that settlement amount as does the client,
 5 as does the insured. And if the insurance
 6 company is saying we're paying out too much,
 7 they have control of saying, we're going to
 8 pay less and if you don't like it, you take
 9 us to court and see if we are correct or you
 10 are correct. Is that not a fair statement
 11 of the current system?
 12 MS. DEAN:
 13 A. I'm not a claims manager. I'm not an
 14 adjuster. I'm not involved in -
 15 MR. GITTENS:
 16 Q. But we are all reasonable people, we all can
 17 understand, same way I don't pretend to
 18 understand how the insurance industry does
 19 its figures to determine growth. I'll you
 20 some questions about that in a second. But
 21 we all know that the current legal system
 22 which has been around for about 800 years
 23 and has developed a process of balancing the
 24 interests of competing parties, can result
 25 in the system that we have here where if one

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1 of the parties feels aggrieved by it, they
 2 can force the other party to take them to
 3 court and make their argument before an
 4 impartial third party, a judge. So, my
 5 question to you is do you acknowledge that
 6 if these figures are too high, the insurance
 7 companies themselves have an option that
 8 they have chosen not to exercise. You may
 9 not know why; I may not know why, but
 10 they've chosen not to exercise that option.
 11 Is that a fair statement?
 12 ROWE, Q.C.:
 13 Q. Madam Chair, she's answered this. I mean,
 14 the matter is negotiated and it's done and
 15 the option is there for everybody to go to
 16 court.
 17 MR. GITTENS:
 18 Q. So therefore the suggestion that this
 19 \$39,000.00 average is too high in the
 20 current circumstances is not a fault to be
 21 put at the feet of the claimant or the
 22 claimant's lawyer, it is a fault on both
 23 sides of the system because the insurance
 24 companies are participating in coming up
 25 with that \$39,000.00 average figure.

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1 MS. DEAN:
 2 A. Given the environment and the legislative
 3 and regulatory framework that they are
 4 working in within this province, yes.
 5 MR. GITTENS:
 6 Q. Okay. Anyhow, we just wanted to nail that
 7 down. It wasn't a one sided—the lawyers
 8 don't get to drive that truck. The
 9 insurance company is driving it as well.
 10 Let's get to the essence of what is before
 11 this Board and the questions I'm going about
 12 here are very general, but it suggests to
 13 the Board what it needs to know in order to
 14 make an assessment of what the insurance
 15 company is claiming on one side and what
 16 victims or the lawyers representing victims
 17 are claiming on the other side. Was Mr.
 18 Stern, is it?
 19 MR. STEIN:
 20 A. Stein.
 21 MR. GITTENS:
 22 Q. Stein, Mr. Stein, obviously in trying to
 23 make these assessments one has to pick units
 24 of time to deal with. And when you're
 25 dealing with it, your most convenient unit

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1 of time is a year or a number of years, I
 2 understand that. So, let us now deal on the
 3 fundamental question that's being posed
 4 between one side and the other and on one
 5 side I understand you to have been focussed
 6 or the industry, IBC to be focussed on the
 7 fact and I believe it's a fact that the cost
 8 of the paying out on third party claims
 9 exceeds the premiums that are being paid in
 10 to get that type of coverage. Is that a
 11 fair statement of the general calculation
 12 that's going on here, competition that's
 13 going on here?
 14 MS. DEAN:
 15 A. It's –
 16 MR. GITTENS:
 17 Q. On one hand, the insurance industry is
 18 saying the costs that we are paying out--and
 19 I'm narrowing it down to third party claims--
 20 the third party claims on one hand exceeds
 21 greatly the amount of money we are bringing
 22 in through premiums for that type of
 23 coverage.
 24 MR. STEIN:
 25 A. I would think that we're more focussed on

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1 the fact that premiums in Newfoundland and
 2 Labrador are a few hundred dollars higher
 3 than they are in the Maritime Provinces.
 4 And that the cost of third part bodily
 5 injury claims when we look at all the
 6 different coverages that make up insurance,
 7 that third party liability bodily injury
 8 claims are also several hundred dollars
 9 higher than in the Maritime Provinces. And
 10 so that explains—so those are the two
 11 outliers that were focussed on.
 12 MR. GITTENS:
 13 Q. But the calculation that this Commission has
 14 to make is to determine—they're being asked
 15 to determine if, and I think the word has
 16 been used, it's not sustainable, that these
 17 premiums that are being collected and I'm
 18 focussing on premiums for the moment versus
 19 what's being paid out for those bodily
 20 injury claims is quite askew, that the
 21 payouts are much greater than the total in
 22 premiums being collected.
 23 MR. STEIN:
 24 A. In general over the last few years,
 25 insurance companies have collected fewer

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1 dollars in revenue than they have paid out
 2 in claims cost and they're operating
 3 expenses.
 4 MR. GITTENS:
 5 Q. Isn't that the same, slightly different way
 6 of saying what I just said in terms of on
 7 one hand, one side of the equation you have
 8 the premiums, on the other side you have the
 9 payouts and adjusted—and costs, if you want
 10 to add that to it. And as a result of that,
 11 you're here saying this is not sustainable.
 12 MR. STEIN:
 13 A. That's what I was saying, I was adding in
 14 the cost to that.
 15 MR. GITTENS:
 16 Q. Right, fair enough, no issue there. I'm
 17 glad you can clarify it. But if we focus on
 18 only those two sides of the equation, we
 19 ignore what on the trail lawyers side
 20 they're saying, you're ignoring the real
 21 profits that the insurance company is making
 22 as a result of the combination of—and here
 23 is what I'm going to suggest the equation
 24 should be—on one hand, the incomes to the
 25 insurance company which is the premiums and

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1 secondly, the investment income. That's
 2 what should be on one side of the equations;
 3 premiums and investment income. And on the
 4 other side of the equation would be the
 5 payouts on the bodily injury plus the
 6 operating costs plus the reserves that have
 7 been put aside. There's two levels of
 8 reserves. I think you've already
 9 established that. Reserves that are put
 10 aside by the insurance company themselves
 11 and the reserves that are put aside by the
 12 IBC on behalf of the insurance companies, or
 13 has been designated by the Ernst and Young,
 14 for instance.

15 MR. STEIN:
 16 A. Yeah, it's not IBC; it's Ernst & Young or
 17 GISA, yes.

18 MR. GITTENS:
 19 Q. Okay, Ernst & Young or GISA? Alright. So,
 20 I'm saying if we're going to look at what's
 21 really going on here, it's not sufficient,
 22 and that's my only point, it's not
 23 sufficient to simply look the figures of the
 24 payouts on the personal injury costs and the
 25 operating costs and compare that with what's

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1 being paid in on premiums. That's my only
 2 point, that the more comprehensive analysis
 3 requires an equation that has, on one side
 4 the premiums because that's income to the
 5 insurance company, but then the insurance
 6 company takes those premiums and invests it.
 7 So, their total revenues are going to be a
 8 total combination of premiums and investment
 9 income.

10 MR. STEIN:
 11 A. We agree that that would be --

12 MR. GITTENS:
 13 Q. That's correct.

14 MR. STEIN:
 15 A. - how you would assess profitability and I
 16 believe that's all covered in the Oliver
 17 Wyman profitability report.
 18 (11:00 a.m.)

19 MR. GITTENS:
 20 Q. And then on the other side of the equation,
 21 the elements that go into that are the
 22 payouts, the operating costs, the reserves
 23 on the first level plus the reserves at the
 24 second level. Is that a fair statement? Am
 25 I missing anything?

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1 MR. STEIN:
 2 A. I don't think you're missing anything.

3 MR. GITTENS:
 4 Q. Okay then. So then, before this Board at
 5 the end of the day, can make either a
 6 recommendation or an observation, it has to
 7 have one, two, three, four, five, six pieces
 8 of information for any given fiscal year.
 9 Is that a fair statement?

10 MS. DEAN:
 11 A. Yes.

12 MR. STEIN:
 13 A. That's a fair statement.

14 MR. GITTENS:
 15 Q. Okay. So, therefore, until this Board is
 16 able to construct from the information given
 17 to it a chart that has for any given fiscal
 18 year, the premiums, the investment income,
 19 let me repeat that, the investment income
 20 and also know what the reserves are and how
 21 much of those reserves may be available
 22 years later because we can't tell for—this
 23 is 2018, we certainly can't tell for 2017
 24 whether those reserves are adequate or not.
 25 Is that a fair statement?

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1 MR. STEIN:
 2 A. It depends on which year you're referring
 3 to.

4 MR. GITTENS:
 5 Q. Yes, I'm saying today. If this is 2018,
 6 even if we had the figures for 2017 and the
 7 reserves, we still wouldn't be at a point
 8 where we can make a determination as to how
 9 much of those reserves would be required as
 10 part of the payout. It'll take several
 11 years before the reserves can be truly
 12 assessed. Is that a fair statement?

13 MR. STEIN:
 14 A. It'll take several years until you know the
 15 ultimate value of those claims, yes.

16 MR. GITTENS:
 17 Q. Okay, well you say ultimate value of those
 18 claims, I say be assessed. We are both
 19 saying the same thing, are we not?

20 MR. STEIN:
 21 A. I think we are.

22 MR. GITTENS:
 23 Q. Okay, good stuff. So now if we go to the
 24 Board and say, Board, your report needs to
 25 have these six pieces of information before

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1 you can make an assessment or a
 2 recommendation to assess whether or not the
 3 premiums are, in fact, deficient for the
 4 payouts on personal injury. That would be a
 5 fair statement to the Board. That they need
 6 to have that full picture going back several
 7 years before they can make any, draw any
 8 conclusions.
 9 MR. STEIN:
 10 A. I believe that the Board would need that
 11 information and that they have that
 12 information in the actuarial reports that
 13 they have commissioned already.
 14 MR. GITTENS:
 15 Q. But the actuarial reports that have been
 16 commissioned goes back to 2010. It doesn't
 17 go back to 1990, it doesn't go back 20
 18 years. Are you aware of that?
 19 MR. STEIN:
 20 A. I don't think you need that information to
 21 determine that premiums are too high here
 22 and that third party liability claims costs
 23 are too high.
 24 MR. GITTENS:
 25 Q. Maybe not, but if you want to determine the

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1 profitability of the insurance industry
 2 where we know that in certain years they
 3 make fantastic profits, 30 percent
 4 sometimes, as compared to the 10 percent
 5 that is mandated or agreed upon. Then for
 6 us to make an assessment as to whether or
 7 not this was a bad year or a year that
 8 indicates that it will be unsustainable, we
 9 need to know if they had years in which they
 10 made 30 percent profit and are now coming
 11 back before the Board for the year they made
 12 a 9 percent loss.
 13 MR. STEIN:
 14 A. I do not believe you need to go back all the
 15 way into the '90s or the early 2000s to make
 16 an assessment that right now the market is
 17 not healthy and is not good for consumers.
 18 MR. GITTENS:
 19 Q. But as –
 20 CHAIR:
 21 Q. Mr. Gittens, I'm trying to find a place
 22 where I won't break your train of thought,
 23 but you can tell me if this is good time or
 24 a bad time for us to take our break.
 25 MR. GITTENS:

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1 Q. No, by all means, Madam Chair, I'm always
 2 accommodating to the Chair taking a break.
 3 CHAIR:
 4 Q. We'll see you in 30 minutes.
 5 (BREAK – 11:06 A.M.)
 6 (RESUME – 11:39 A.M.)
 7 CHAIR:
 8 Q. Back to you, Mr. Gittens.
 9 MR. GITTENS:
 10 Q. Thank you, Madam Chair. Mr. Stein, I think
 11 we had, just before the break, at least
 12 determined the items that should have been
 13 looked at in order to come to a
 14 determination of profitability or non-
 15 profitability of the insurance industry.
 16 And we had talked about six components to
 17 that and I think where we differ in the last
 18 of the question was you were saying that you
 19 don't think you need to go all the way back
 20 to determine what the Board needs to
 21 determine. That you felt that looking at
 22 one year, you can tell what the cost versus
 23 the premiums are for that particular—maybe
 24 I'm misquoting you, so do you want to
 25 correct that for me?

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1 MR. STEIN:
 2 A. Yeah, I just said you don't have to go back
 3 all the way into the '90s and early 2000s.
 4 I didn't say one year, I think looking at
 5 multiple years, I think, is responsible.
 6 MR. GITTENS:
 7 Q. Fair enough. Madam Chair, I'm wondering if
 8 we can refer to the chart that Paula Elliott
 9 provided that had Newfoundland and all the
 10 other provinces.
 11 MS. GLYNN:
 12 Q. So, the one with Newfoundland was an IBC
 13 exhibit, you want Newfoundland included?
 14 MR. GITTENS:
 15 Q. Yes, I'd like to see the one with
 16 Newfoundland included.
 17 CHAIR:
 18 Q. That's the IBC exhibit.
 19 MS. GLYNN:
 20 Q. Yes.
 21 MR. GITTENS:
 22 Q. That was the IBC one, right?
 23 CHAIR:
 24 Q. Yes.
 25 MR. GITTENS:

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1 Q. Okay, So Mr. Stern (sic.), as you were
 2 saying, you don't have to go back a whole
 3 bunch of years, right, but if you do go back
 4 a bunch of years and that's my expression,
 5 not yours, I like very precise terms like
 6 "bunch of years" as you can tell, you would
 7 want to include the period back in 2002,
 8 2003, 2004 because in 2002, 2003, 2004 you
 9 can see there was a significant decline in
 10 the frequency of incidents, events I think
 11 it's called in your industry, that
 12 precipitated a major drop in the costs of
 13 the injury, the personal injury claims. Is
 14 that a fair statement?
 15 MR. STEIN:
 16 A. This is the frequency of bodily injury
 17 claims.
 18 MR. GITTENS:
 19 Q. Right. And if I recall the evidence given
 20 in here earlier and you may not have been
 21 present for that, it's that the industry,
 22 insurance industry or the IBC didn't
 23 anticipate that significant drop in the
 24 frequency at that time. Is that a—are you
 25 aware of that?

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1 MR. STEIN:
 2 A. I've heard that before.
 3 MR. GITTENS:
 4 Q. You've heard that –
 5 MR. STEIN:
 6 A. I was not around IBC at that time.
 7 MR. GITTENS:
 8 Q. Right, but you're the policy guy for IBC and
 9 I take it you've looked at these figures.
 10 Do you have an explanation as to why they
 11 got it so wrong? The last time they were
 12 before the Board when they said that, you
 13 know, we have to close up shop, leave the
 14 province, you know, the sky is falling, but
 15 in fact, what happened was there was there
 16 was a major decline in the frequency and
 17 consequently the cost and consequently the
 18 profitability of insurance companies
 19 rocketed for the following years between '03
 20 and '07 to the highest level in recent years
 21 around 20 to 30 percent. Did you, in your
 22 policy discussions, come across this anomaly
 23 and have an explanation as to why it
 24 occurred? Why the IBC got it so wrong the
 25 last time?

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1 MR. STEIN:
 2 A. First, my name, Mr. Gittens is Mr. Stein, so
 3 just so you –
 4 MR. GITTENS:
 5 Q. Forgive me, with a name like Gittens, I got
 6 to get it right, someone else's, Mr. Stein.
 7 MR. STEIN:
 8 A. I just don't want you to get it wrong on the
 9 record all the time. Okay. So, the purpose
 10 of this slide was in response to Oliver
 11 Wyman's report saying that the frequency, if
 12 you were to impose a cap in Newfoundland and
 13 Labrador, the frequency of bodily injury
 14 claims would decline. And the Oliver Wyman
 15 report referenced what happened in the early
 16 2000s in Nova Scotia and New Brunswick. And
 17 what we wanted to show with this, by
 18 throwing in Newfoundland and Labrador is
 19 that other factors besides the minor injury
 20 cap could have or likely did cause the
 21 frequency decline. And some of them could
 22 be, you know, improvement in vehicle safety,
 23 you know, road safety efforts, stuff like
 24 that, but it's hard to know exactly for sure
 25 why the frequency declined. But we feel—we

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1 do not think it was the cap on it. We do
 2 not believe that it was the cap on its own
 3 that caused that decline in Nova Scotia and
 4 New Brunswick. If you look at one year, you
 5 might think so. If you look at multiple
 6 years and you see it continuing to decline
 7 indicates that other factors were at play.
 8 (11:45 a.m.)
 9 MR. GITTENS:
 10 Q. Okay, but what we're saying here and I'm not
 11 disagreeing with you that there were other
 12 factors involved and I think you, very
 13 accurately, and I thank you for not
 14 suggesting it was just the caps that were
 15 imposed; this existed prior to the caps
 16 being imposed in Nova Scotia and New
 17 Brunswick, but it was a decline that the
 18 industry obviously because they were here
 19 asking for the cap to be put in place
 20 because they had all these dire concerns as
 21 to what would happen in '03, '04, '05 and in
 22 fact, despite all the wonderful calculations
 23 that were put before the Board at that time
 24 they were completely wrong. Is that a fair
 25 statement?

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1 MR. STEIN:
 2 A. I don't think they were completely wrong. I
 3 think they were right that bodily injury
 4 claims costs were quite high at that time
 5 and that if you were to put on a cap, cost
 6 control such as a minor injury cap, that it
 7 would reduce those costs and eventually it
 8 led to some pretty significant, you know,
 9 premium savings for consumers.
 10 MR. GITTENS:
 11 Q. Led to—but wasn't those years, '03 to '07,
 12 years in which the insurance industry made
 13 record profits?
 14 MR. STEIN:
 15 A. I don't know if they were record profits. I
 16 don't know what they did in each individual
 17 year, but I would anticipate that they made
 18 profits.
 19 MR. GITTENS:
 20 Q. They didn't die off and fly away as they
 21 alleged that they would.
 22 MR. STEIN:
 23 A. No, they did not.
 24 MR. GITTENS:
 25 Q. Okay. Those are all the questions I have

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1 for this witness. Thank you, Madam Chair.
 2 CHAIR:
 3 Q. Thank you, Mr. Gittens. Mr. Fraize?
 4 MR. FRAIZE:
 5 Q. Yes, I have a couple. So, I'll aim a
 6 question at both of you, I suppose. Do you
 7 agree that a victim of an accident may not
 8 be an insured?
 9 MS. DEAN:
 10 A. Yes.
 11 MR. FRAIZE:
 12 Q. Okay. So, there will be some victims that
 13 are injured which are not paying premiums.
 14 MS. DEAN:
 15 A. Correct.
 16 MR. FRAIZE:
 17 Q. So, in our discussions today we should be
 18 looking at a triangle, insurance company,
 19 insured, victim, correct?
 20 MS. DEAN:
 21 A. Correct. It would fair to also say that if
 22 there were an uninsured victim, there is
 23 coverage -
 24 MR. FRAIZE:
 25 Q. No, I'm thinking about someone that doesn't

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1 have a driver's license, because of medical
 2 reasons, they don't drive.
 3 MS. DEAN:
 4 A. Correct.
 5 MR. FRAIZE:
 6 Q. They are a pedestrian walking down the
 7 street.
 8 MS. DEAN:
 9 A. Yes.
 10 MR. FRAIZE:
 11 Q. They are persons in a wheelchair crossing a
 12 crosswalk and gets hit by a car.
 13 MS. DEAN:
 14 A. Yes.
 15 MR. FRAIZE:
 16 Q. They don't have insurance premiums.
 17 MS. DEAN:
 18 A. Correct.
 19 MR. FRAIZE:
 20 Q. Now, so the cap that insurance companies
 21 seem to want to have is going to affect the
 22 victim, correct?
 23 MS. DEAN:
 24 A. In terms of -
 25 MR. FRAIZE:

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1 Q. Is that a yes?
 2 MS. DEAN:
 3 A. In terms of the payout in addition to -
 4 MR. FRAIZE:
 5 Q. No, no, I'm not talking about -
 6 MS. DEAN:
 7 A. - the medical bills.
 8 MR. FRAIZE:
 9 Q. The cap is going to affect the victim in
 10 terms of what the victim will receive as
 11 compensation resulting from the accident, is
 12 that correct?
 13 MS. DEAN:
 14 A. Correct, in that it is over and above any
 15 medical treatment in addition to loss wages.
 16 MR. FRAIZE:
 17 Q. Yes, but going back to what I'm saying. The
 18 cap would affect the victim which is one of
 19 three parties that are involved in our
 20 discussions. Is that a yes?
 21 MS. DEAN:
 22 A. Correct, it -
 23 MR. FRAIZE:
 24 Q. Okay.
 25 MS. DEAN:

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1 A. - would impact the end.
 2 MR. FRAIZE:
 3 Q. Now, do you agree that we have to find our
 4 victim as we find, like, when an accident
 5 occurs, we don't know that victim may have
 6 other medical issues whereby an accident
 7 would have a greater effect on that person
 8 than another person. Correct?
 9 MS. DEAN:
 10 A. Correct.
 11 MR. FRAIZE:
 12 Q. Okay. So, when we talk about the cap and
 13 I'm going to talk about this concept of
 14 minor in a few minutes. You could have a
 15 situation where, let's take an example of a
 16 person that's in a wheelchair and they have
 17 what would classify as one of your minor
 18 injuries, but the injury itself on that
 19 person has much greater effect than on a
 20 person without being in a wheelchair. Do
 21 you agree with that?
 22 MS. DEAN:
 23 A. That is part of why we are recommending the
 24 diagnostic treatment protocols. It is a
 25 system in place in other provinces where a

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1 particular injury, there's a pre-approved
 2 schedule of treatments. So, the individuals
 3 get into treatment immediately. However,
 4 not everyone is created equal and responds
 5 to an injury in the same way. You and I
 6 would heal differently if we were hit by the
 7 same car. So, there's -
 8 MR. FRAIZE:
 9 Q. What I was thinking about -
 10 MS. DEAN:
 11 A. Sorry.
 12 MR. FRAIZE:
 13 Q. What I was thinking about, I know where
 14 you're going with this, but my comment is
 15 when someone has got limitation to begin
 16 with and using your words, "minor injury",
 17 that so-called minor injury, that injury
 18 affecting a muscle have a far greater effect
 19 because their mobility may be using fingers
 20 or their arms or they can't move their head.
 21 My point is injuries affect people in
 22 different ways. So, when we start talking
 23 about putting a cap and defining a set of
 24 injuries that will not, would come under the
 25 cap and have a certain amount, you're going

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1 to end up affecting those that are
 2 dramatically affected by what you would call
 3 a minor injury. Is that assumption, is that
 4 proposition you're able to -
 5 MR. STEIN:
 6 A. No, we look at it a little differently. So,
 7 -
 8 MR. FRAIZE:
 9 Q. I think you would.
 10 MR. STEIN:
 11 A. And well, let me explain. I think we talked
 12 about this; we did talk about this earlier.
 13 The minor injury definition that's used in
 14 other jurisdictions and that we've
 15 recommended be used here doesn't just take
 16 any—doesn't just say okay, you have a
 17 sprain/strain or whiplash, you are
 18 automatically minor. There's a functional
 19 assessment associated with that. Does that
 20 sprain/strain or whiplash that resulted from
 21 the collision cause the individual to have a
 22 serious impairment? Meaning, does it affect
 23 their daily lives, able to go to school,
 24 work, do daily activities? Recognizing that
 25 the same injury can affect people

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1 differently. So, based on that definition,
 2 if the injury results in the person having a
 3 serious impairment, they can't do their
 4 daily activities, they would not be subject
 5 to the cap.
 6 MR. FRAIZE:
 7 Q. Do you agree that having a cap in motor
 8 vehicle accidents is going to create a two-
 9 tier system? And now, where I'm going with
 10 this, if an individual happens to come in
 11 this building and slips and has a slip and
 12 fall and they suffer a so-called injury that
 13 will fall under your cap, they would have an
 14 action against the owner of the building
 15 without a restriction on damages, correct?
 16 MR. STEIN:
 17 A. I believe so.
 18 MR. FRAIZE:
 19 Q. Because what we're doing is for automobile
 20 accidents we're going to have the injuries
 21 restricted in terms of what quantum is
 22 given. Now, do you agree that there is more
 23 cars now than 10 years ago?
 24 MR. STEIN:
 25 A. I haven't checked the numbers, but if you

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1 say that's right, let's assume.
 2 MR. FRAIZE:
 3 Q. There seems to be more cars, let's assume
 4 there more.
 5 MR. STEIN:
 6 A. Yes, there does seem to be more cars.
 7 MR. FRAIZE:
 8 Q. And we got less accidents; more cars, less
 9 accidents. Picking up on discussions here
 10 this morning, the settlements are all
 11 negotiated between the negotiating parties.
 12 So, what you're trying to do once, going
 13 back to the victim, you're trying to put a
 14 lid on what their damages are worth. Is
 15 that what you're trying to do?
 16 MR. STEIN:
 17 A. We're trying to find balance –
 18 MR. FRAIZE:
 19 Q. You got three parties in this whole game,
 20 the victim, the insured –
 21 MR. STEIN:
 22 A. We're trying to find balance in the system
 23 recognizing that all those more cars, that
 24 means lots more people buying insurance in
 25 this province at premiums that are a few

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1 hundred dollars higher than everywhere else.
 2 MR. FRAIZE:
 3 Q. You say a few hundred dollars, are you
 4 talking about a hundred dollars?
 5 MR. STEIN:
 6 A. No, two to three.
 7 MR. FRAIZE:
 8 Q. Oh, okay, a little less than a dollar a day,
 9 is that what you're talking about?
 10 MR. STEIN:
 11 A. If that's what it comes out to?
 12 MR. FRAIZE:
 13 Q. Your words.
 14 MR. STEIN:
 15 A. Yes, \$300.00 higher.
 16 MR. FRAIZE:
 17 Q. Okay. Now, when we have a disagreement with
 18 an insurance company, whether it's on
 19 disability insurance or how much damages are
 20 worth, we go to court to have it determined,
 21 especially on disability insurance. We seem
 22 to have a lot of that going on, trying to
 23 figure out if a person is disabled or not.
 24 But when we go to court, we have to prove
 25 our case and I think it was on page 5 of the

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1 report. You say, "legal decisions and the
 2 associated compensation amounts often do not
 3 align with prevailing medical literature."
 4 MS. DEAN:
 5 A. February report.
 6 MR. FRAIZE:
 7 Q. February report. My only point being, when
 8 we disagree and we can't agree on
 9 settlement, you go to court. In my
 10 experience in court, we got to prove our
 11 case. We bring out medical evidence and a
 12 judge listens to us and looks the prior case
 13 authority and determines the amount. By
 14 putting a cap in, what you've done is you've
 15 taken away or are you saying that the prior
 16 decisions of the courts were too high?
 17 MS. DEAN:
 18 A. What we're saying is the system needs to
 19 change. We're seeing upward pressures on
 20 claims, premiums are not covering claims.
 21 These systems and proposals that we are
 22 discussing in our reports have worked in
 23 other provinces, and we believe that they
 24 could work in this province in terms
 25 controlling costs for the many to pay for

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1 the claims of the few. In addition, we're
 2 also proposing options to get people better
 3 quicker.
 4 MR. FRAIZE:
 5 Q. Don't you think if we can't agree or come to
 6 a negotiated settlement--when we have
 7 disputes in our society, regardless of what
 8 they are, we go to a court and have our say,
 9 either we win or we lose. But what we're
 10 saying here, going back to my triangle,
 11 insurance company, insured, victim, the
 12 victim, excuse the pun, gets the short end
 13 of the stick; you've capped them. Shouldn't
 14 the victim has his right in court, if we
 15 can't prove, or he or she can't prove their
 16 damages?
 17 MS. DEAN:
 18 A. In these systems in neighboring provinces,
 19 people are getting better and people are
 20 getting compensated. The only difference is
 21 that claims costs are controlled and kept at
 22 a sustainable level.
 23 MR. FRAIZE:
 24 Q. Are they getting better or are they giving
 25 up?

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1 MS. DEAN:
 2 A. They're getting better.
 3 MR. FRAIZE:
 4 Q. Now, I'm not trying to give you a hard time.
 5 I represent a group here that are affected
 6 by accidents, and a variety of them. I have
 7 a problem when you create a two-tier system
 8 being auto accident and non-auto accident.
 9 And you take away a person's right to go to
 10 court to prove their case. If you can't
 11 prove it, the case rules against you. And
 12 when I look at accidents, I see an accident
 13 like a pie and what you're doing is you're
 14 going to define a portion of the pie which
 15 you're going to say this is how much it's
 16 worth. We keep in our discussions here
 17 talking about minor injuries. They're not
 18 minor injuries. They're a group of injuries
 19 which the insurance companies want to
 20 identify as into a pot which they can put a
 21 cap on. Am I correct?
 22 MS. DEAN:
 23 A. According to medical literature and the
 24 practice in other provinces.
 25 FRAIZE, Q.C.:

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1 Q. Now I've had the opportunity to see how
 2 doctors react in court and they defend their
 3 positions, they say this is an injury and so
 4 forth, so I presume the medical doctors read
 5 the same literature that you're referring
 6 to, right. So going back – a couple of
 7 further comments. Just going back, let's
 8 not call it minor injuries, let's just call
 9 it a group of injuries that the insurance
 10 companies wants to put in a little box and
 11 say this is the amount it's worth.
 12 MR. STEIN:
 13 A. We also want to give them pre-approved
 14 evidence based treatment through the
 15 diagnostic treatment protocols.
 16 FRAIZE, Q.C.:
 17 Q. But you just want – I'm just saying let's
 18 not mislead ourselves. Don't call it –
 19 because there's quite a bunch of injuries in
 20 that box. It's not just minor, but there is
 21 a bunch of injuries in that box. Let's call
 22 the injuries that you want to apply to the –
 23 in other words, you want to have those group
 24 of injuries excluded from the tort system.
 25 Let's not call it minor injuries. I think

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1 those are all my comments. Thank you.
 2 MR. STEIN:
 3 A. Just to respond, we don't want to exclude
 4 anyone from the tort system. We're just
 5 talking about non-pecuniary damages. We're
 6 also talking about providing access to
 7 evidence based treatment on a pre-approved
 8 basis for people with those injuries.
 9 FRAIZE, Q.C.:
 10 Q. No further questions.
 11 CHAIR:
 12 Q. Thank you, Mr. Fraize. Consumer Advocate.
 13 (12:00 p.m.)
 14 BROWNE, Q.C.:
 15 Q. Thank you, Chair. If we can go to your
 16 presentation, the average written premium,
 17 page 1, and for consumers, consumers are
 18 monitoring their premiums and consumers are
 19 concerned with the increase in premiums, and
 20 we see that the average premium, and we
 21 don't know exactly what the components are o
 22 average here, but be that as it may, it
 23 seems to be higher than other provinces.
 24 Now when – and if we can go to the – if we
 25 can just move from that for a second, the

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1 average premium by province, if we go to
 2 page 3 of the – yeah, the average premium by
 3 province, page 3, the top diagram there –
 4 sorry, page 5 of your presentation. It's
 5 number 5 of your presentation, sorry. We
 6 see there the average premium just going
 7 right back to 2001 according to this, it was
 8 always a bit higher in this province than in
 9 the other provinces, according to that, if
 10 it's average premium by province, but I
 11 bring you back to 2004 for a minute because
 12 in 2004 the government of the day introduced
 13 a \$2,500.00 deductible and brought in other
 14 measures, and subsequently there were some
 15 changes. People were promised cheaper
 16 rates, good insurance coverage, balanced
 17 rate reductions. Now if we look just at
 18 2004 and 2005 based on this, we see that the
 19 cost of premiums for consumers did go down
 20 for a couple of years, but then in 2006, we
 21 see the average premium by province – I
 22 mean, Newfoundland has taken off there, and
 23 right up to now, 2016. My question is this,
 24 at what point did you make representation to
 25 government regarding these increases in

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1 premiums that were being paid by consumers
 2 to ask for some action, or did you?
 3 MS. DEAN:
 4 A. We have been sharing data from the insurance
 5 industry for a number of years with
 6 government in this province, as we do in
 7 every province. So every year, GISA
 8 releases its reports publicly, we collect
 9 that information and prepare slide deck such
 10 as this, and will share some of that
 11 information with government with the hope
 12 that if there are pressures building within
 13 any given system, we can have conversations
 14 and perhaps a review before we get to the
 15 point where premiums are prohibitive for
 16 consumers, and particularly those on fixed
 17 incomes due to the rising of claims pressure
 18 within a market.
 19 BROWNE, Q.C.:
 20 Q. Now you've given evidence or you stated that
 21 you lobby, you're a lobbyist?
 22 MS. DEAN:
 23 A. Yes, I am.
 24 BROWNE, Q.C.:
 25 Q. Did you at any point lobby any of the

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1 administrations from 2004 forward to bring
 2 in changes to effect what you're trying to
 3 do here?
 4 MS. DEAN:
 5 A. We have suggested that a review would be a
 6 good thing to do, to take a look at what's
 7 happening within the market. We have been
 8 doing that for years since the mid 2000's
 9 most certainly.
 10 BROWNE, Q.C.:
 11 Q. So you've lobbied government to seek
 12 changes. From what year within your
 13 experience did you commence the lobbying?
 14 MS. DEAN:
 15 A. Within my experience, I would recall late
 16 '08/09.
 17 BROWNE, Q.C.:
 18 Q. And what were you lobbying for at that
 19 point?
 20 MS. DEAN:
 21 A. For a review of the auto insurance product.
 22 We don't profess to have all the answers. As
 23 an industry trade association, we collect
 24 information, we collect data, and we share
 25 that information. We want to be able to

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1 provide the best information we possibly can
 2 to any government, and from my office, any
 3 of the four Atlantic provinces.
 4 BROWNE, Q.C.:
 5 Q. So that was 2008. This is 2018. Was there
 6 any result to your efforts to bring in some
 7 systemic changes?
 8 MS. DEAN:
 9 A. There was not. There was always hope the
 10 market would turn around. It clearly
 11 hasn't, and as we can see with the
 12 trajectory of that line, it's not going to
 13 turn around any time soon, and we certainly
 14 know that when the other Atlantic provinces
 15 conducted more recent reviews of their
 16 products, we do mention what's going on in
 17 those provinces to those who regulate our
 18 industry in this province, but each province
 19 must make its own decisions.
 20 BROWNE, Q.C.:
 21 Q. And one of the governments attempted to deal
 22 with some of this expense by reducing or
 23 eliminating the retail sales tax on
 24 insurance. This diagram, does it, in fact,
 25 include these reductions or any reductions

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1 or is it ex any kind of RST or HST?
 2 MR. STEIN:
 3 A. I mean, everything that's included in a
 4 premium would be included in this. So if
 5 you pay taxes on your premium, it's there.
 6 BROWNE, Q.C.:
 7 Q. Now here you are suggesting a \$5,000.00 cap?
 8 MS. DEAN:
 9 A. Yes.
 10 BROWNE, Q.C.:
 11 Q. And why \$5,000.00 when New Brunswick has
 12 found that they needed to increase their cap
 13 to \$7,500.00, and I do believe it's a
 14 similar cap in the other Atlantic provinces?
 15 Why would you suggest \$5,000.00?
 16 MS. DEAN:
 17 A. It comes down to what was the numbers that
 18 were presented in the Oliver Wyman Reports.
 19 So Oliver Wyman presents that there was a
 20 premium deficiency in 2017, premiums need to
 21 increase by 17 percent, which is about
 22 \$200.00. If we look at the required – the
 23 average accompanying required premium
 24 reductions that was presented by Oliver
 25 Wyman as well, and it's on page – we did an

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1 excerpt on page 5 of our May, 2018 report.
 2 The cost savings for 15 percent frequency
 3 change is \$140.00 to \$175.00. So best case
 4 scenario, if reforms are implemented,
 5 frequency drops 15 percent, there's still a
 6 \$25.00 increase that would be needed to get
 7 to the required premium amount for 2017. So
 8 a long way of saying the best case scenario
 9 with frequency drop, that amount as
 10 estimated by Oliver Wyman is still not the
 11 increase that is needed to break even, or as
 12 Oliver Wyman had included in the report, to
 13 assume a 10 percent ROE, which is allowed
 14 within this province. So we need these
 15 numbers to be right as an industry, quite
 16 frankly, based on where the results are.
 17 We're also looking at the frequency
 18 discussion that has occurred within this
 19 hearing over the past number of days, in
 20 that in the early 2000's the frequency drop
 21 in New Brunswick, Nova Scotia, and
 22 Newfoundland and Labrador, cannot solely be
 23 attributed to reforms. There could be a
 24 number of different factors. We can't
 25 predict consumer behaviour, we can't predict

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1 that frequency will actually decline
 2 further, so we needed to in order to break
 3 even according to these numbers as presented
 4 by Oliver Wyman, so the \$5,000.00 cap is the
 5 closest thing to get industry out of the
 6 red.
 7 BROWNE, Q.C.:
 8 Q. So the \$5,000.00 cap will give you a 10
 9 percent rate of return?
 10 MS. DEAN:
 11 A. Well, according to Oliver Wyman's
 12 calculations and a 15 percent decrease, and
 13 let's be perfectly honest, no one in this
 14 room or driving on the roads in this
 15 province are losing sleep over insurance
 16 companies losing money. The real problem
 17 comes from what happens when insurers are
 18 short money, and that means premiums must go
 19 up, and that puts additional pressure on the
 20 consumers of this province.
 21 BROWNE, Q.C.:
 22 Q. But when insurers are making a lot of money
 23 too, if they go beyond the range of rate of
 24 return that's expected, what happens then?
 25 MS. DEAN:

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1 A. Well, that is certainly a conversation that
 2 would happen with the rate regulator, the
 3 PUB; as well as the insurer in question.
 4 BROWNE, Q.C.:
 5 Q. Because we saw another jurisdiction where
 6 the cap came in, the rate of return went up
 7 dramatically for insurance companies. Is
 8 that not true?
 9 MS. DEAN:
 10 A. I'm trying to remember the exhibits that
 11 were--there's been many.
 12 MR. STEIN:
 13 A. That is true, and also during that time,
 14 premiums were declining and, you know, going
 15 back to the previous graph that we had from
 16 the slide presentation, you saw premium
 17 declines, Nova Scotia, New Brunswick and
 18 Prince Edward Island, just showing that the
 19 market's healthy, you know, consumers
 20 benefit by lower and stable premiums.
 21 BROWNE, Q.C.:
 22 Q. But was there a--was it commensurate with
 23 the--was the decline commensurate with the
 24 increases in profits that the industry was
 25 receiving?

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1 MR. STEIN:
 2 A. It's not--because they're projecting the
 3 actuaries for the companies are projecting
 4 forwards, it's, you know, there's quite a
 5 bit of degree of uncertainty in general,
 6 best of times. Then when you add in a
 7 reform where you're trying to predict what
 8 the effect is, there's even a little bit
 9 more uncertainty, so, you know, you can look
 10 back in time and say, "hey, you know, that
 11 profit seemed a little bit high". Okay, it
 12 was hard to know at that time what the
 13 experience was going to be, but the positive
 14 experience from all of this is that premiums
 15 just kept going down and down and down and
 16 down in those provinces and that's why
 17 people are paying about \$300 less for
 18 insurance and people there have access to
 19 more accident benefits than they do here.
 20 BROWNE, Q.C.:
 21 Q. So, if the Public Utilities Board was to set
 22 a range in your rate of return, let's say
 23 10, 12 percent, 13 percent, something like
 24 that, and you go up to 20 percent, what
 25 remedy is available to consumers to claw

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1 back what it wasn't--not intended in the
 2 premiums for you to realize?
 3 MR. STEIN:
 4 A. Well, it's not--you can't really go back in
 5 time, but, you know, that graph showed, they
 6 were--insurers responded the next year,
 7 lower premiums, consumers benefited, lower
 8 premiums the year after that.
 9 BROWNE, Q.C.:
 10 Q. Is there any formula that was derived in
 11 these jurisdictions to ensure that consumer
 12 premiums went down commensurately with the
 13 increases that the insurance industry was
 14 receiving?
 15 MR. STEIN:
 16 A. I mean, I don't think that there was any--I
 17 mean, I don't think--I mean, it would work
 18 as if the companies would have now more
 19 experience in this new environment and then
 20 be able to predict, okay, here is what next
 21 year is likely going to be, here's how we
 22 can respond, and they felt that they could
 23 respond by lowering premiums. All these
 24 rate changes have to be approved by the
 25 provincial regulators, rate boards and, you

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1 know, through that process felt that the
 2 premiums set at that time, which were lower
 3 than the year before, were adequate.
 4 BROWNE, Q.C.:
 5 Q. You're making a proposal here and it was in
 6 your February 2018 first filing, and it's
 7 found on page 12 of 17 and down below under,
 8 "Reform Proposal", it says, "IBC recommends
 9 that the Newfoundland and Labrador
 10 government transitioned to a market-based
 11 approach for rate regulation by replacing
 12 the prior approval framework with a use-and-
 13 file framework focussed on regulating
 14 overall rate levels. The intent is to
 15 create an environment for consumers to reap
 16 the benefits of increased competition and/or
 17 more accurate premiums relative to risk and
 18 for the regulator to position itself to be
 19 able to identify a remedy and a solvency or
 20 market conduct concerns efficiently by
 21 focusing its limited resources and
 22 overseeing the market." And in Appendix B
 23 are the components of IBC's proposed use-
 24 and-file framework. What exactly are you
 25 proposing here? Can you put it in common

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1 language?
 2 MS. DEAN:
 3 A. Sure, well, first to address, we recognize
 4 that this proposed piece of reform is
 5 outside the scope of this particular hearing
 6 and we recognize that Service NL will be
 7 taking a look at this proposal; however, for
 8 the sake of transparency, we prepared one
 9 submission that would come through--to the
 10 PUB through this process and that same
 11 submission is going to Service NL again, so
 12 all parties are aware of everything that IBC
 13 is putting out there. One of the things
 14 that this would address would be the cost of
 15 filing, which is, I'm to understand, again,
 16 I don't work with an insurance company, but
 17 I'm to understand that rate filings are a
 18 costly endeavor and when you have, let's say
 19 just hypothetical numbers, if you had a
 20 \$200,000 rate deficiency in premium, so a
 21 premium deficiency to cover your claims, yet
 22 the process costs \$500,000 in order to file
 23 for a rate increase, you're going to wait
 24 until you have perhaps a \$600,000 rate
 25 deficiency to make that cost worthwhile.

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1 So, it's recommending taking a look at the
 2 rate regulation process within this
 3 province.
 4 BROWNE, Q.C.:
 5 Q. So, you want some kind of automated
 6 adjustment formula, the same way electric
 7 utilities used to have in this Province some
 8 years ago where the adjustment would take
 9 place based on a formula, rather than a
 10 hearing?
 11 MS. DEAN:
 12 A. Well, and I'm not familiar with that
 13 process, but there would still be checks and
 14 balances and a huge role for the rate
 15 regulator in another system.
 16 (12:15 p.m.)
 17 BROWNE, Q.C.:
 18 Q. And you look like you're trying to say
 19 something there?
 20 MR. STEIN:
 21 A. No, I'm just looking at you. I don't have
 22 anything to add.
 23 BROWNE, Q.C.:
 24 Q. Okay. I thought you might have had
 25 something to offer. So, these reformed

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1 proposals are all based on, and page 14 of
 2 17 there, we see them. You have Appendix A
 3 and then you go on to proposed rate
 4 regulation framework and Appendix B. Now,
 5 why did you settle on a cap to recommend, as
 6 opposed to say, a \$10,000 deductible?
 7 MS. DEAN:
 8 A. Based on the experience of a minor injury
 9 damages cap in other neighbouring provinces
 10 and taking a look at claims costs where,
 11 quite frankly claims costs are coming from
 12 in this province, and what could be
 13 implemented in order to control those costs
 14 and based on the experience in other
 15 provinces with the cap, that is how we
 16 arrived at this proposal.
 17 BROWNE, Q.C.:
 18 Q. But other provinces have a deductible, such
 19 as Ontario, they went to a large deductible
 20 in the 30,000 range, but has anyone tried a
 21 deductible in the 10,000 range to see if
 22 that would give any relief to the cost of
 23 premiums for consumers, which is what our
 24 objective is here?
 25 MR. STEIN:

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1 A. I think it's--the Ontario deductible is not
 2 the--it's not like it's the Newfoundland
 3 deductible, it's just instead of 2,500, it's
 4 like 3,700. It's a completely different
 5 system. In Ontario you cannot sue for non-
 6 pecuniary damages unless your injury is
 7 serious and permanent, then if you meet that
 8 threshold, which is only the most serious
 9 injuries, then you have the ability to
 10 pursue a bodily injury claim and then the
 11 deductible is applied; whereas in
 12 Newfoundland it's just, as you know, 2,500
 13 on all. So, the Ontario system, if you're
 14 talking about access to tort is quite a bit
 15 more restrictive than what we're talking
 16 about here with caps.
 17 BROWNE, Q.C.:
 18 Q. In reference to Facility Association and the
 19 taxi industry, is there any discussion
 20 within Facility Association of deriving
 21 various products to assist those who find
 22 themselves in Facility to get out? It seems
 23 once you're caught in there, there's no
 24 escape card.
 25 MS. DEAN:

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1 A. I'm unfortunately not aware, I don't work
 2 for the Facility Association, but if we are
 3 talking about taxis, I do know from an
 4 insurer perspective the rate of claims is
 5 certainly higher than those insurers would
 6 consider at this point in time.
 7 BROWNE, Q.C.:
 8 Q. Okay. I think my colleague might have some
 9 questions.
 10 MR. WADDEN:
 11 Q. Thank you. Ms. Dean, now we've met; Mr.
 12 Stein, we haven't. My name is Andrew
 13 Wadden, I'm counsel for the Consumer
 14 Advocate. I've just got a few questions,
 15 some points of clarification.
 16 MR. STEIN:
 17 A. Sure.
 18 MR. WADDEN:
 19 Q. Can we just go to page three of your initial
 20 submission, I guess that's the February
 21 submission. Under "Consumer Outcomes", that
 22 first paragraph there, just something I
 23 wanted to get a better understanding of. If
 24 you go about three lines down, it indicates,
 25 "Maritime consumers also have access to more

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1 medical rehabilitation and disability income
 2 benefits". I'm sort of hooked on the word,
 3 "more", there, can you just elaborate on
 4 that a bit more for me? Exactly what does
 5 "more" mean? Flush it out for me.
 6 MR. STEIN:
 7 A. More means a few things. So, the accident
 8 benefits limits in, we'll just focus on the
 9 two main ones, medical rehabilitation in
 10 Newfoundland and Labrador is \$25,000; in the
 11 Maritime provinces it's \$50,000. Income
 12 replacement is, in Newfoundland and
 13 Labrador, \$140 per week; in the Maritime
 14 provinces, it's \$250 per week. And then the
 15 third thing which we've put an emphasis on
 16 is Nova Scotia has it and Alberta has it, no
 17 other jurisdiction in the Maritimes has it.
 18 I use the diagnostic and treatment
 19 protocols, which is four people with
 20 sprains, strains or whiplash, they get
 21 access to pre-approve--they get access to
 22 evidence based treatment on a pre-approved
 23 basis. So, you don't have to apply for it,
 24 you just go into treatment, the treatments
 25 designed to last for, you know, 21 treatment

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1 visits or 90 days for physiotherapy,
 2 chiropractor, if you need to visit a
 3 physician and then, you know, some massage
 4 and some acupuncture is also available.
 5 MR. WADDEN:
 6 Q. Okay. Just to get an understanding of how
 7 the two issues are tied together, is it the
 8 view of IBC that, for that to happen, for
 9 Newfoundlanders to be able to access these,
 10 we'll say added benefits, more robust
 11 accident benefits program, is that reliant
 12 upon the institution of a cap or could that
 13 be done in any event?
 14 MR. STEIN:
 15 A. It could be done in any event, of course,
 16 but, you know, adding in more treatment does
 17 have a cost and one of the ways of reducing
 18 those costs is to, you know, reduce the cash
 19 payments on the other end.
 20 MR. WADDEN:
 21 Q. Okay. To your point on cost, you know, you
 22 reference the idea of grossing up a \$25,000
 23 benefit to 50K, making a larger, weekly
 24 indemnity. I understand all that, it sounds
 25 great, but have you costed that out? I'm

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1 curious what that would do to premium for
 2 consumers?
 3 MR. STEIN:
 4 A. We have not costed it out, but if you look
 5 at like, the other jurisdictions that have
 6 those levels, their costs aren't that much
 7 different or higher than in Newfoundland.
 8 MR. WADDEN:
 9 Q. But you don't have exact numbers on it?
 10 MR. STEIN:
 11 A. We do not, not for this province, no.
 12 MR. WADDEN:
 13 Q. Yeah, and I'm only asking you, Mr. Stein,
 14 because one of the things as counsel for the
 15 Consumer Advocate and as a Consumer Advocate
 16 one of the things we have to do is sort of
 17 make a determination of what we're going to
 18 recommend in terms of all the things that
 19 the PUB is looking at, and one of those
 20 things is accident benefits.
 21 MS. DEAN:
 22 A. Right.
 23 MR. WADDEN:
 24 Q. So, I understand the changes you're
 25 proposing, in terms of the benefits under

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1 Section B, are there any proposed changes in
 2 terms to accessibility to them? Let me ask
 3 this by way of example, perhaps I'd be
 4 clearer. In my experience, and you both
 5 probably know this, I've acted for insurers
 6 in my past, I've acted for injured victims,
 7 I've been on both sides of this coin and on
 8 both sides, one thing I've seen is that some
 9 companies, perhaps some more than others
 10 tend to, in certain circumstances, put up
 11 some barriers that perhaps don't need to be
 12 there when it comes to their insureds, their
 13 customers accessing accident benefits. It's
 14 not just as simple as making a phone call
 15 and saying, "I had an accident", even though
 16 it's a no-fault product. Do you have any
 17 suggestions, any recommendations in to how
 18 to make it easier? Will there be specific
 19 ways for the customer to access the
 20 benefits?
 21 MR. STEIN:
 22 A. Yeah, and I think, you know, the diagnostic
 23 and treatment protocols is exactly that,
 24 it's pre-approved in Nova Scotia and
 25 Alberta. You go to your physician, you go

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1 to your physiotherapist, you know, they file
 2 the papers and you're put into the system
 3 and the auto insurer is also the first payer
 4 when you're in the protocol, so it's not
 5 like the--you know, you got to deal with
 6 your other insurance providers, whether it's
 7 a health benefit from work or whatnot. Auto
 8 insurance is the first payer, so it's meant
 9 to be like no hassles; get into treatment,
 10 get into treatment fast. It's evidence
 11 based, go through it, let's see how you are
 12 at the end of the, you know, the 21
 13 treatment visits or the 90 days and then it
 14 goes into the regular no-fault system.
 15 MR. WADDEN:
 16 Q. Okay. Is the idea, Mr. Stein, that the
 17 customer would be able to access the
 18 accident benefits and avail of them fully,
 19 up to the maximum, say the 50,000 and
 20 without having to go--revert back to their,
 21 say, work insurer or would they only be able
 22 to access part of it?
 23 MR. STEIN:
 24 A. No, it's only for the--it would only be for
 25 what's within the protocols, which would be

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1 the--which is designed to be for the first
 2 three months of treatment for people that
 3 have sprain, strains or whiplash injuries.
 4 MR. WADDEN:
 5 Q. Okay. So, they'd be an initial go to, but
 6 not necessarily the only go to, the customer
 7 would still likely have to avail of their
 8 own insurance if they had it?
 9 MR. STEIN:
 10 A. Yeah, so it's pre-approved, first payer
 11 during the protocols, that timeframe, and
 12 then if more treatment is required after it,
 13 it would revert back into the regular
 14 accident benefit system, yeah.
 15 MR. WADDEN:
 16 Q. Okay. While we on the topic briefly of, you
 17 know, what it's going to cost in terms of
 18 premium, one of the other proposals within
 19 your submissions, I can't remember what
 20 page, but is the idea of DCPD. Have you
 21 looked at how that's going to impact on
 22 premiums for the consumer?
 23 MS. DEAN:
 24 A. We haven't looked at it in terms of premium,
 25 we do recognize that it does save costs over

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1 the long run, so the insureds are dealing
 2 with their insurer when faced with just a
 3 property damage claim. So, you and I are in
 4 a collision, no bodily injuries, just damage
 5 to vehicles. Your insurer pays to fix your
 6 car, my insurer pays to fix my car. I'm at
 7 fault for the collision, so I have that on
 8 my record, you do not; however, your insurer
 9 still pays to repair your car and the
 10 thought is there the insurance companies can
 11 provide that level of customer service to
 12 their own insurance, there's no subrogation
 13 with a third-party insurance company, it
 14 happens quicker and the--it levels out
 15 eventually, because your insurer will have a
 16 number of at fault drivers in these
 17 situations as they will have a number of not
 18 at fault drivers in these situations.
 19 MR. WADDEN:
 20 Q. Okay. Thank you, and I do appreciate the
 21 utility of it. Again though, I guess I'm
 22 just wondering, we really can't say at this
 23 point, can we, other than looking at other
 24 jurisdictions, what that does to an
 25 individual's premium, we don't know how much

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1 it's going to mean an increase?
 2 MS. DEAN:
 3 A. Correct.
 4 MR. WADDEN:
 5 Q. Okay. Is there a way to figure that out?
 6 MS. DEAN:
 7 A. I'm not an actuary, but -
 8 MR. WADDEN:
 9 Q. No, I understand.
 10 MR. STEIN:
 11 A. No, I don't--I mean, maybe a company can
 12 kind of figure it out because they'll have
 13 access to, you know, the individual vehicles
 14 of their, you know, they'll know the details
 15 of the vehicles of their customers. You
 16 know, overall, you know, it's just changing
 17 who pays, it really shouldn't have much of a
 18 cost impact, though it will on the
 19 individual, because depending on, you know,
 20 the nature of their car, you know, the
 21 insurer will know in advance they type of
 22 car that they're going to be repairing, but
 23 ultimately, it's just, you know, it's
 24 probably just a better customer experience
 25 versus, you know, you're in a collision

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1 having to, you know, figure out, you know,
 2 okay, now how do I work to get my car
 3 repaired, I wasn't at fault here, you deal
 4 with your own insurance company.
 5 MR. WADDEN:
 6 Q. Okay. There are a number of instances
 7 within your submissions and I don't think I
 8 need to point to a particular one where you
 9 use BC as sort of a comparative and we know
 10 that they're undergoing some changes out
 11 there now. It looks like their instituting
 12 a cap and I think, in the amount of, I think
 13 it's 5,500?
 14 MR. STEIN:
 15 A. That's correct.
 16 MR. WADDEN:
 17 Q. And I understand they have a public
 18 insurance system, I'm just wondering, I just
 19 want to get your views on this, is BC a good
 20 province to be using as a comparator,
 21 notwithstanding are the obvious population
 22 difference. Our understanding as lawyers,
 23 and I think any lawyer would tell you in the
 24 room that injury claims in BC, ones that go
 25 to court at least we know of, have

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1 traditionally been significantly higher from
 2 a reward perspec—award’s perspective rather,
 3 in terms of non-pecuniary lost and they have
 4 been anywhere else in the country, certainly
 5 in Newfoundland. In fact, when you go to
 6 court here and you raise a BC case with the
 7 judge, they’re almost dismissive of it at
 8 times. Is that a province we should be
 9 using in terms of cap comparator, should we
 10 be going--because you’re recommending five
 11 grand, they’re at about 5,500, what are your
 12 views on that?
 13 MR. STEIN:
 14 A. I think, you know, if you’re looking at a
 15 cap comparator, you can also look at
 16 Alberta, which is, you know, started at
 17 4,000, linked to inflation is now just
 18 upwards of 5,000. I think what’s unique
 19 about looking at BC is that other than, you
 20 know, Newfoundland and Labrador, they’re the
 21 only province with a predominantly tort-
 22 based auto insurance that didn’t have a cap
 23 or any significant cost control and, you
 24 know, them--now moving in that direction, I
 25 mean, it’s quite--it’s just an interesting

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1 case study happening at an interesting time.
 2 (12:30 p.m.)
 3 MR. WADDEN:
 4 Q. Okay. Can we go briefly to your second
 5 submission, I think around page three.
 6 Yeah, I think it’s up there, just up--yeah,
 7 and I know Mr. Browne asked you a bit about
 8 this and so did some of the other counsel, I
 9 just want to make sure I’m understanding
 10 this. I’m looking at the second table,
 11 average company required premium reductions.
 12 So, let’s make this as--and sometimes when I
 13 ask these questions, I just want you to
 14 understand, obviously transcripts are
 15 produced, this stuff is in the news. We act
 16 for consumers, we want to make this stuff so
 17 everybody can get it, okay?
 18 MS. DEAN:
 19 A. Absolutely.
 20 MR. WADDEN:
 21 Q. Let’s assume for the moment that a \$5,000
 22 cap is introduced as you’re suggesting. So,
 23 am I to read that table to suggest that
 24 premiums would go down, assuming also a 10
 25 percent return on investment remains, we’ll

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1 say 130, 140 bucks?
 2 MR. STEIN:
 3 A. So, that table is what’s called the required
 4 premium -
 5 MR. WADDEN:
 6 Q. Yeah.
 7 MR. STEIN:
 8 A. So, you know, you have the required premium
 9 is what insurance companies are, you know,
 10 according to Oliver Wyman, should be
 11 charging to cover their claims costs, their
 12 operating expenses and to earn a reasonable
 13 rate of return. That required premium right
 14 now is around \$200 higher than the current
 15 premiums and so, what this table is showing
 16 is that you put in the \$5,000 cap, it really
 17 takes away a good chunk or almost all of
 18 that risk of those higher premiums.
 19 MR. WADDEN:
 20 Q. Okay. Allow me to put it another way. The
 21 cap comes in, let’s assume it’s a \$5,000
 22 cap, what do you think the average consumer
 23 in Newfoundland can expect their insurance
 24 bill, in terms of their car, to go down by?
 25 MR. STEIN:

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1 A. I don’t know what they expect.
 2 MR. WADDEN:
 3 Q. What do you think it will go down by? What
 4 can a consumer expect? If the consumer is
 5 being asked to accept a cap, let’s just say
 6 we recommend, okay, we’re fine with a cap,
 7 we’re going to have a \$5,000 cap in
 8 Newfoundland and Labrador, and we’re
 9 recommending it, because we assume there’s
 10 going to be some sort of quid pro quo here,
 11 the consumer is going to benefit in terms of
 12 their annual insurance bill for the vehicle.
 13 How much is it going to go down?
 14 MS. DEAN:
 15 A. In this scenario, it would stay the same
 16 until claims pressures are relieved and
 17 premiums can act accordingly.
 18 MR. WADDEN:
 19 Q. It would stay the same, initially?
 20 MS. DEAN:
 21 A. Initially, according to the scenario and the
 22 actuarial numbers as presented by Oliver
 23 Wyman.
 24 MR. WADDEN:
 25 Q. Okay. How long would it stay the same?

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1 Give me an estimate? I'm not trying to nail
 2 you down, I know you're not an actuary, I
 3 get that.
 4 MS. DEAN:
 5 A. Yeah.
 6 MR. WADDEN:
 7 Q. But we're just trying--we got to be able to
 8 tell the consumers, "here's what you can
 9 expect, folks, if you accept this cap.
 10 Here's what's going to happen to your bill
 11 and here's when it's going to happen".
 12 MS. DEAN:
 13 A. It would depend on--number one, it would
 14 depend on company experience, so, some
 15 companies may do a lot better in, let's say
 16 the first three years than others. Those
 17 companies would be able to adjust their
 18 rates quicker than some others. So, again,
 19 we get back to trying to predict consumer
 20 behaviour and how all of this is going to
 21 impact those claims costs and, of course,
 22 the frequency. Will we have no change, will
 23 we have increased frequency, or will we have
 24 a frequency drop?
 25 MR. STEIN:

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1 A. And consumers will also benefit from the
 2 other side of the proposal, which is the
 3 access to the—the higher accident benefits,
 4 the access to more, to preapproved evidence
 5 based treatment, all designed to get them
 6 into treatment faster, get them better
 7 faster and get them to move on with their
 8 lives. It's looking at auto insurance
 9 differently.
 10 MR. WADDEN:
 11 Q. Right, I get that and I fully appreciate
 12 that it's more robust provisions that are
 13 provided for. Of course, a lot of people
 14 aren't going to have accidents, thankfully,
 15 so they won't care about the accident
 16 benefits provision; in fact, some of them
 17 probably aren't even going to buy them
 18 unless it's mandatory.
 19 MR. STEIN:
 20 A. Which we're recommending.
 21 MR. WADDEN:
 22 Q. So, I understand you're recommending that,
 23 so let's assume we're talking about the
 24 consumer who is never ever going to avail of
 25 these more robust Section B provisions,

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1 which I do see value in for the person
 2 that's hurt. All they care about is how
 3 much is my insurance premium? What am I
 4 paying to insure the car out in the
 5 driveway? And you've seen, obviously, as
 6 you've mentioned several times, we are the
 7 last jurisdiction, last full tort
 8 jurisdiction really, right, so you've seen
 9 the experiences elsewhere, you're very
 10 familiar with what's gone on in Nova Scotia,
 11 as we all are, given the numerous testimony
 12 we've heard, are you able to give me some
 13 estimate, some number, what can we tell
 14 consumers about in terms of their reduction
 15 in premiums? It's going to vary from
 16 company to company, you've said that; I get
 17 it. But we got to give them some idea of
 18 what they're getting if we're going to tell
 19 them at the same time they're giving up a
 20 right. Can I get any kind of estimate?
 21 MS. DEAN:
 22 A. Well the challenging thing from our
 23 perspective too is, as a trade association,
 24 we can only speak about the aggregate
 25 numbers, so again, company performance is

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1 going to be different, company underwriting
 2 manuals based on their filings, they're
 3 going to—that's when the driver experience
 4 comes into account in creating individual
 5 premiums. That is a detail that I certainly
 6 can't get into, as I'm not part of an
 7 underwriting department.
 8 MR. WADDEN:
 9 Q. Okay. In your, I think it's your initial
 10 submission at page 13, let me just double
 11 check that to make sure I'm right. Yes,
 12 page 13. Now, Ms. Dean, you and I—you,
 13 rather and your counsel met with myself and
 14 the Consumer Advocate recently and I
 15 mentioned this in a meeting we had, but I'll
 16 mention it now publicly, and we've said from
 17 the very beginning one of the areas we are
 18 focussing on for the consumers is the idea
 19 of accident and prevention, right, so to use
 20 a somewhat rough analogy, if the premium
 21 issue is a cancer, then the cap, perhaps,
 22 can be characterized as the radiation to
 23 reduce the premium or get rid of it, or in
 24 some cases maybe it won't fix it. Our
 25 thought has always been if the premium is a

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1 cancer what we should really do would be

2 stopping people from smoking.

3 MS. DEAN:

4 A. Uh-hm.

5 MR. WADDEN:

6 Q. Prevent the cancer from happening in the

7 first place, right?

8 MS. DEAN:

9 A. Correct.

10 MR. WADDEN:

11 Q. Your report, while it mentions at page 13

12 the idea of improving highway safety and

13 preventing collisions, and I understand as

14 well from your earlier testimony at one

15 point I think you met with the Minister of

16 Transportation?

17 MS. DEAN:

18 A. Uh-hm.

19 MR. WADDEN:

20 Q. Which I think is a very positive move.

21 MS. DEAN:

22 A. Absolutely.

23 MR. WADDEN:

24 Q. The report doesn't talk much about this

25 stuff, not a report other than this

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1 paragraph, can you give me some ideas, has

2 IBC been doing anything else in this regard?

3 You mandate is you lobby for insurers; I

4 know what your mandate is.

5 MS. DEAN:

6 A. Uh-hm, yes.

7 MR. WADDEN:

8 Q. But certainly insurers would benefit from

9 the idea, the possibility that we could

10 reduce accidents in Newfoundland and reduced

11 accidents lead to reduced claims. I don't

12 think too much of a jump, right.

13 MS. DEAN:

14 A. Uh-hm.

15 MR. WADDEN:

16 Q. So have you guys been doing anything in that

17 regard? Are you doing anything to try and

18 get accidents down, to help insurers not

19 have the claims in the first place?

20 MS. DEAN:

21 A. We do undertake from time to time campaigns

22 on road safety, so whether it's—I know

23 before the seat belt laws were brought in,

24 that was something that we were quite active

25 in being involved with, whether it's anti

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1 distractive driving campaigns or the use of

2 snow tires and the safety measures that come

3 with using snow tires, so those types of

4 campaigns we have absolutely been involved

5 with in the past, and those things do,

6 hopefully, work to prevent collisions from

7 happening. However, again, you're coming

8 back to the consumer behaviour piece of it

9 and it could take a longer period of time in

10 order to see those results. This province,

11 for example, was the first in Canada to

12 bring in anti cell phone laws as well. So

13 it's, you know, those types of things are

14 helpful, but they are slower to produce

15 results because it's changing the mindset

16 and it's changing behaviour.

17 MR. WADDEN:

18 Q. Slower to produce results in terms of

19 ultimately ending up in reduced premiums, is

20 that what you mean?

21 MS. DEAN:

22 A. Well, claims drive premiums, so –

23 MR. WADDEN:

24 Q. Right, okay. As of last week here in

25 Newfoundland, I think June 7th was the date,

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1 a number of reforms did come into effect by

2 Service NL. I think one of them is some

3 more severe penalties for distracted

4 driving, more severe penalties around blood

5 alcohol content, those types of things.

6 MS. DEAN:

7 A. Uh-hm.

8 MR. WADDEN:

9 Q. Did IBC have anything to do with—have any

10 meetings with any members of government

11 about any of that or is that solely separate

12 and apart from you guys? I'm wondering if

13 you had any influence on any of those things

14 that came in.

15 MS. DEAN:

16 A. We did not influence those things. We

17 certainly watched governments across the

18 country for these types of efforts. We

19 support governments who bring in these types

20 of initiatives and quite frankly, they are a

21 welcome addition to the driving landscape.

22 MR. WADDEN:

23 Q. Just so I have a full understanding and so

24 we can convey to consumers how your

25 submissions were created, aside from the

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1 data that you've received and provided, much
 2 of which, of course, is in the aggregate,
 3 was there any ground level work? Did you
 4 talk to any—did you actually speak to
 5 consumers? Were there any surveys? Did you
 6 speak to injured people, people who have
 7 injured in accidents, anything like that?
 8 MS. DEAN:
 9 A. We did not. We spoke with our member
 10 companies who work with injured parties when
 11 they place a claim.
 12 MR. WADDEN:
 13 Q. Okay. Now I know and I don't doubt the
 14 thrust of what you're saying because a
 15 number of times during your presentation
 16 today in answering your questions, you've
 17 referred to consumers, I think you were
 18 trying to do what's best for consumers.
 19 MS. DEAN:
 20 A. Uh-hm.
 21 MR. WADDEN:
 22 Q. So I take that at face value. Mr. Browne
 23 asked you some questions about Facility.
 24 Does IBC have any comments or any
 25 suggestions of what we can do in terms of

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1 Facility relative to the taxi drivers?
 2 We've heard the taxi drivers mentioned a lot
 3 of times over the past week or so. It's a
 4 big problem. As we've said before, we'd
 5 like to try and find solutions to get them
 6 out of Facility, if it's possible, have them
 7 working with insurers, create more of a
 8 competitive process for their business.
 9 Does IBC have any suggestions around that?
 10 Have you spoken to insurers about some work
 11 that can be done in that area?
 12 MS. DEAN:
 13 A. The only thing that I could comment on
 14 there, again because I'm not an employee of
 15 Facility Association, would be that the
 16 reform packages that we're proposing for
 17 private passenger vehicles, would also apply
 18 to the taxi situation, and would have
 19 results with that portion of FA's business
 20 accordingly.
 21 MR. WADDEN:
 22 Q. Mr. Stein, I just wanted to clarify a
 23 question that Mr. Fraize asked you, or
 24 perhaps digging a bit deeper because I
 25 didn't fully understand your answer. He was

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1 asking about people who were injured or
 2 already have an injury, essentially, so
 3 let's do it by way of example again.
 4 Perhaps a different example than Mr. Fraize
 5 provided. Someone who has pre-existing,
 6 we'll say disability on one hand is non-
 7 functional and I've seen, I've actually seen
 8 a file like this before, they're in an
 9 accident, the other hand is injured, so you
 10 know, someone is in an accident and they
 11 sprain a wrist, probably going to end up
 12 being qualified under the definition that's
 13 being proposed in terms of the minor injury.
 14 If someone is in an accident and has that
 15 same injury and they've got a serious pre-
 16 existing disability, just explain to me how
 17 the minor injury cap and the definition that
 18 you're proposing would impact on that
 19 person? Because, obviously the impact on
 20 their life is going to be a lot more, right?
 21 All of a sudden, they have two hands they
 22 can't use, so help me with that.
 23 MR. STEIN:
 24 A. So the definition that we've proposed is
 25 about, you know, would, besides the injury

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1 having to be a sprain, strain or whiplash,
 2 is the, because of the injury, is the person
 3 now, is the person not able or has the
 4 injury had a substantial effect on the
 5 injured person's daily life which is, you
 6 know, if you look at the Maritime
 7 definitions and the Alberta definition,
 8 that's—it's all defined, you can't go to
 9 school, work, daily activities, injuries
 10 supposed to be ongoing since the accident
 11 and so on. So if at the end of the injury,
 12 yeah, they have one of those injuries,
 13 sprain, strain or whiplash, but because of
 14 the injury, you know, it's a serious
 15 impairment as per that definition, they
 16 would not be subject to the cap. So there's
 17 two parts. You have to have the specific
 18 injury and then there's, is this injury
 19 having a substantial effect on your daily
 20 life? If the answer is "yes", then the
 21 person won't be subject to the cap. So it's
 22 recognizing that although these injuries
 23 could be minor or tend to be minor, in some
 24 cases they have a disproportionate effect on
 25 the person, as, you know, your example could

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1 be that, and then, you know, that injury is
 2 not minor.
 3 MR. WADDEN:
 4 Q. Okay, thanks very much.
 5 CHAIR:
 6 Q. Thank you. I guess in the interest of
 7 completeness in finishing the round of
 8 questioning, I go back to you, Mr. Rowe, is
 9 there anything you need to –
 10 (12:45 p.m.)
 11 ROWE, Q.C.:
 12 Q. Just a couple of items, Madam Chair, if I
 13 could just take a couple of minutes. There
 14 was a question from Mr. Feltham way back a
 15 couple of hours ago now, about a comparison
 16 with the Ontario experience in terms of
 17 costs and, or premiums and the response, it
 18 might have been you, Ms. Dean, said Ontario
 19 was very different from Newfoundland.
 20 MS. DEAN:
 21 A. Uh-hm.
 22 ROWE, Q.C.:
 23 Q. Then subsequently Mr. Stein gave a more full
 24 description of the ability to sue, the
 25 threshold, could you just elaborate on that

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1 for us again?
 2 MR. STEIN:
 3 A. Well I think those came up based on two
 4 different questions. The threshold—so one
 5 of the questions that I responded to was
 6 comparing the Newfoundland deductible to the
 7 Ontario deductible and I think it was about
 8 have you tried to, you know, thought of a
 9 deductible \$10,000 or some higher amount and
 10 I was just clarifying that Ontario, it's not
 11 just a deductible, it's you are not able to
 12 pursue non-pecuniary damages unless your
 13 injury is serious and permanent based on a,
 14 you know, a verbal threshold, that's the
 15 definition. And then, if you meet that
 16 threshold and you pursue non-pecuniary
 17 damages, then the deductible applies and
 18 it's 3700, so I was just trying to make the
 19 comparison that it's quite a bit—it's a lot
 20 different than in Newfoundland and it's not
 21 just the bigger deductible that makes it
 22 different, that verbal threshold is a main
 23 component of it.
 24 ROWE, Q.C.:
 25 Q. Okay, so in Ontario, you're not talking

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1 about a minor injury at all, you're talking
 2 about something that the injury has to be
 3 permanent and serious?
 4 MR. STEIN:
 5 A. To be able to pursue non-pecuniary damages,
 6 yes.
 7 ROWE, Q.C.:
 8 Q. Okay, and then you have a deductible of
 9 3700?
 10 MR. STEIN:
 11 A. That's right.
 12 ROWE, Q.C.:
 13 Q. And the system –
 14 MR. GITTENS:
 15 Q. 37,000.
 16 ROWE, Q.C.:
 17 Q. 37,000?
 18 MR. STEIN:
 19 A. Sorry, 37,000, yes.
 20 ROWE, Q.C.:
 21 Q. So 37,000 would be deducted off the non-
 22 pecuniary damage award in Ontario.
 23 MR. STEIN:
 24 A. In Ontario, yes.
 25 ROWE, Q.C.:

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1 Q. Assuming the person meets the threshold of
 2 being permanently and seriously injured.
 3 MR. STEIN:
 4 A. Correct.
 5 ROWE, Q.C.:
 6 Q. Okay, and the system that is being proposed
 7 here is much different from that?
 8 MR. STEIN:
 9 A. That's correct, so what we're talking about
 10 here would be a cap on non-pecuniary damages
 11 for people that meet the definition of minor
 12 injury which we're saying, a sprain, strain,
 13 whiplash, any clinically associated
 14 sequelae, whether physical or psychological
 15 in nature that does not result in a serious
 16 impairment, meaning affecting the person's
 17 daily life.
 18 ROWE, Q.C.:
 19 Q. Right, okay. And the person is still free
 20 to sue for the other types of damages
 21 without any regard to the cap?
 22 MR. STEIN:
 23 A. Correct.
 24 ROWE, Q.C.:
 25 Q. So any loss of income?

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1 MR. STEIN:
 2 A. Correct.
 3 ROWE, Q.C.:
 4 Q. And any special damages if they lost some
 5 personal property in the course of the
 6 accident, they could recover from that?
 7 MR. STEIN:
 8 A. Correct.
 9 ROWE, Q.C.:
 10 Q. And any additional medical expenses that
 11 wouldn't be covered by their accident
 12 benefits?
 13 MR. STEIN:
 14 A. Correct.
 15 ROWE, Q.C.:
 16 Q. There was reference to the chart in your
 17 February submission, page 4. There was
 18 reference to the—sorry, page 5, the chart on
 19 page 5 comparing Newfoundland with New
 20 Brunswick, Nova Scotia, Prince Edward Island
 21 and Alberta and the suggestion was made that
 22 this indicates that in fact costs have been
 23 stable since 2000, I think this was Mr.
 24 Feltham, because the changes up by 9
 25 percent. Do you see what I'm referring to

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1 there?
 2 MR. STEIN:
 3 A. Yes, correct.
 4 ROWE, Q.C.:
 5 Q. And I think the response was that that was
 6 from an already high level. Can you just
 7 elaborate on that?
 8 MR. STEIN:
 9 A. So what we're trying to show with this graph
 10 is looking into the early 2000s, before any
 11 of these provinces put in their reforms,
 12 which was the deductible in Newfoundland and
 13 the minor injury caps in the other provinces
 14 and trying to show what their experience
 15 was, so yeah, if you just look at
 16 Newfoundland, you know, moving from 376 to
 17 409, 9 percent change, it looks good, it
 18 looks stable. But then when you compare it
 19 to the other provinces, which have seen
 20 these, you know, massive declines ranging
 21 from 13 percent to 51 percent and are now
 22 several hundred dollars lower, you know, it
 23 really shows that Newfoundland is an
 24 outlier.
 25 ROWE, Q.C.:

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1 Q. So in looking at that table, New Brunswick
 2 and the next one to it, bodily injury claims
 3 costs have declined on an average of 51
 4 percent over that same time period?
 5 MR. STEIN:
 6 A. Correct.
 7 ROWE, Q.C.:
 8 Q. And as compared to Newfoundland which
 9 increased by 9 percent?
 10 MR. STEIN:
 11 A. Correct.
 12 ROWE, Q.C.:
 13 Q. All right, I don't have any further
 14 questions.
 15 CHAIR:
 16 Q. Do you have any questions?
 17 COMMISSIONER NEWMAN:
 18 Q. No.
 19 COMMISSIONER OXFORD:
 20 Q. No questions.
 21 CHAIR:
 22 Q. Okay, and I have no questions. I guess
 23 we're done. Thank you very much. Thank
 24 you, Mr. Rowe.
 25 MS. GLYNN:

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1 Q. So we're back to tomorrow morning at 9:00.
 2 We have six public presentations scheduled
 3 for tomorrow.
 4 CHAIR:
 5 Q. The schedule is available on the website?
 6 MS. GLYNN:
 7 Q. It is.
 8 CHAIR:
 9 Q. Okay, we'll see you in the morning.
 10 Upon conclusion at 1:12 p.m.
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CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the 2017 Automobile Insurance Review, heard on the 12th day of June, 2018 before the Board of Commissioners of Public Utilities, 120 Torbay Road, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 12th day of June, 2018.

Judy Moss

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