

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 8, 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
Barry Mason, Q.C.

Presenters

Paula Elliott, Oliver Wyman

Campaign to Protect Accident Victims

Colin Feltham
Jerome Kennedy, Q.C.

Consumer Advocate

Dennis Browne, Q.C.
Andrew Wadden

Insurance Bureau of Canada (IBC)

Amanda Dean
Kevin Stamp, Q.C.
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. I guess, I'll go
 4 straight to you, Ms. Glynn.
 5 MS. GLYNN:
 6 Q. Yes, Madam Chair, we do have one point of
 7 clarification that Ms. Elliott would like to
 8 make from her questions yesterday. We have
 9 brought up the transcript from yesterday,
 10 page 135, and it was in relation to a
 11 question from Mr. Fraize and where the cap
 12 amounts that she referred to in her report,
 13 where did they come from. Ms. Elliott, if
 14 you could provide that clarification,
 15 please.
 16 MS. ELLIOTT:
 17 A. Yes. Yesterday in response to the question,
 18 I referenced – I stated that the outline of
 19 the cap amounts and the deductible amounts
 20 were in the terms of reference. I
 21 incorrectly stated that they were, in fact,
 22 on the Board's website, but in the Board's
 23 letter which was dated August 11th, 2017, and
 24 I referenced that in my description in our
 25 report on the Closed Claim Study, there's

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1 footnote 1, where we referenced that those
 2 amounts were from the Board's letter dated
 3 August 11th, 2017, which I misstated
 4 yesterday in my response.
 5 MS. GLYNN:
 6 Q. Thank you, Ms. Elliott. With that
 7 clarification, Ms. Elliott is ready to make
 8 her presentation on the Profitability Review
 9 for the Private Passenger Automobiles.
 10 MS. ELLIOTT:
 11 Q. Okay. I'm going to briefly go over the
 12 highlights of the Profit Study that we
 13 prepared for this hearing. Our study is
 14 broken into three parts, if you will. One
 15 is the review of the historic profit levels
 16 for private passenger automobile in the
 17 Province of Newfoundland over a ten year
 18 period ending 2016. We also do a review –
 19 the second part is our estimate of the
 20 required average premium in hindsight for
 21 the years, the accident years 2012 to 2016,
 22 each of those five years. We compare that
 23 to what the actual premium was that was
 24 earned by the company in each of those years
 25 by coverage, and our third part of the study

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1 is an assessment of what the private
 2 passenger rate adequacy would be for the
 3 accident year of 2017. This report was
 4 prepared using industry-wide data for
 5 private passenger auto in the province as at
 6 to the end of June 30th, 2017. So we don't
 7 have the full – at the time of this study,
 8 we didn't have the complete 2017 year.
 9 On page 6 of the pdf counting, or page
 10 2 of the report, Table 1, this is the
 11 summary of the first part of the study
 12 looking back at the history of profit levels
 13 in the province for private passenger
 14 automobile, and first it's important to
 15 understand that each of the years are
 16 accident years, and we discussed what an
 17 accident year was earlier in the week, but
 18 to repeat myself for clarity here, it is a
 19 reflection of all the claims that occurred
 20 in that year regardless of when the claim is
 21 closed. It accounts for all the accidents,
 22 the events that occurred in that year, and,
 23 of course, accidents that would have
 24 occurred in 2016 would not, by any means, be
 25 all settled at the end of June 30th, 2017.

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1 So for each of these accident years, we
 2 are looking at what were the premiums that
 3 were collected, what were the amounts of
 4 investment income earned in that year, what
 5 is the estimate of the losses that would be
 6 paid for those accidents that occurred in
 7 that year, and what are the operating
 8 expenses of running the insurance operation
 9 for private passenger auto, those expenses
 10 such as premium taxes and commissions.
 11 Then we base our findings here of the
 12 profit level by accident year on two basis.
 13 One is the profit before tax as a percentage
 14 of the premium, and that's the POP. The
 15 other comparison was for a return on the
 16 amount of equity that is assigned on an
 17 after tax basis, and in this chart we're
 18 assuming that the return on equity is – that
 19 there would be \$1.00 of equity or capital
 20 for every \$2.00 of premium that is earned.
 21 You may wonder what is this equity, but
 22 the other day we looked at taxi experience
 23 for 2012, and approximately there were 6
 24 million dollars in losses, and 2 million
 25 dollars in premiums. So there's this 4

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1 million dollar gap, and that's what the
 2 equity would be used for. When there are
 3 losses well in excess of the premiums that
 4 are earned, something has to be used to pay
 5 those claims and that's where the equity has
 6 to step up and do that if there's not
 7 sufficient premium.
 8 So profit levels are often measured, as
 9 any business, as a return on equity and
 10 that's one of the purposes of the equity in
 11 the insurance company is to stand behind the
 12 policy holders if the premiums aren't
 13 sufficient to pay those claims.
 14 The components that we look at when we
 15 are determining this, there's three parts.
 16 For any rate setting and looking at the
 17 premiums, those are the losses that are paid
 18 or expected to be paid. They are the
 19 operating expenses for the company and then
 20 a provision for profit. So that's what
 21 makes up the premium. In this case, we're
 22 looking at what were the premiums paid, how
 23 much investment income was earned, a
 24 positive, if you will, and then what are the
 25 losses that would be paid or expected to be

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1 paid, and what are the expenses, and what's
 2 left over there is the profit and that's
 3 what we're measuring. Under the POP, that's
 4 the percentage of the premium for each of
 5 those years, and then return on equity as a
 6 percentage of the equity that is notionally
 7 allocated.
 8 In coming up with the estimate of the
 9 loss ratios, I'm going to go to Table 3 and
 10 4 in the report. Again these are by
 11 accident year, these are the loss ratios
 12 that we have estimated based upon our review
 13 using the data through to the first half of
 14 2017 for the prior ten years, and more
 15 recently we see an increase in the more
 16 recent five years, an increasing loss ratio.
 17 We also in Table 4 below compare it to
 18 GISA's published estimate of the loss
 19 ratios. GISA's data that was available for
 20 this exhibit is based on the date through to
 21 the end of December, 2016, whereas the data
 22 that we had when we were completing this
 23 report was more recent, an additional six
 24 months of information, and the loss ratios
 25 are fairly similar until we get to 2016, and

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1 I attribute this difference mainly due to
 2 the fact that in our review when we prepared
 3 this report, we had the more recent data
 4 available to us, whereas GISA hadn't
 5 published a new exhibit at the time of the
 6 preparation of this report we're discussing.
 7 At Table 5, these are the operating
 8 expenses. So this is the expenses for
 9 private passenger auto in Newfoundland.
 10 This is the information that is required to
 11 be reported by the companies, by the
 12 insurers, to GISA, and it's compiled. These
 13 are the expense ratios. The more recent
 14 five years it's a slightly lower loss ratio
 15 than the prior periods. These expense
 16 ratios would include the brokers'
 17 commissions, premium taxes which are now 5
 18 percent in the province, and the operating
 19 expenses of running an operation here in the
 20 province, so the salaries that are paid, the
 21 rents that are paid. These are the expenses
 22 associated with running the operation, they
 23 are not associated with any claims handling
 24 costs.
 25 Table 6 is the investment income

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1 assumptions. The investment income rates,
 2 these are pre-tax investment income rates.
 3 They have been declining since 2007 at a
 4 high of 6.1 over the ten year period. These
 5 investment income rates, return on
 6 investment rates, these are based on the
 7 published rates that insurers earn for their
 8 entire country-wide operation. The reason
 9 for that is each insurer will have an
 10 investment division, so all the investments
 11 that they have are managed and they would
 12 earn return on investment rate on all that
 13 pool of investments. We use that rate that
 14 is earned for the entire company, so the
 15 insurer is not earmarking investments, that
 16 these investments are for personal property
 17 in Alberta, and these investments are for
 18 personal property in BC, it's just one big
 19 pool of investments. This is the rate that
 20 they earn on their total investment
 21 portfolio pre-tax. That's how our tables
 22 are created. They are summary tables of the
 23 profit.
 24 I'm going to move over to Part 2 of our
 25 report, which starts on page 23 of the pdf

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1 accounting.
 2 MS. KEAN:
 3 Q. Page 19 in the paper copy.
 4 MASON, Q.C.:
 5 Q. Thank you.
 6 MS. ELLIOTT:
 7 Q. In Table 11 in this worksheet page, we
 8 present our estimate of what the required
 9 average premium would be in hindsight
 10 looking at the information that's available
 11 as at June 30th, 2017. We compare that to
 12 what the actual premium was and then what
 13 the dollar difference is, and in each of the
 14 last five years our estimate of the required
 15 premium was lower than what the actual – I'm
 16 sorry, was higher than what the actual
 17 average premium was that was charged. In
 18 making our calculations, we use our estimate
 19 of the losses, as we had discussed earlier
 20 here this morning. We use the expense
 21 ratios, as I showed you the table earlier
 22 here. We assume 10 percent after tax return
 23 on equity as the provision for profit, and
 24 we assume a premium to surplus ratio of 2 to
 25 1. So for every dollar of premium, there is

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1 one dollar of equity or surplus capital.
 2 Those terms are used interchangeably. We
 3 assume an investment rate pre-tax of 2.8
 4 percent, and based on our calculations this
 5 is the estimate that we derived.
 6 (9:15 a.m.)
 7 MS. ELLIOTT:
 8 Q. Just to speak to Table 12 quickly on page
 9 21, we talked about the operating expenses,
 10 so this is the chart to just show the
 11 breakout by component. The commissions is a
 12 large component, and premium taxes, general
 13 expenses, that's really a catchall for all
 14 the rent and salaries that are paid to the
 15 staff that are working on the private
 16 passenger auto policies.
 17 I'm going to go to Part 3, the premium
 18 rate level adequacy for 2017. So here what
 19 we had, we were able to use – we used the
 20 three prior fiscal accident years ending
 21 June 30th, 2017, and projected those costs
 22 forward to an average date of July 1st, 2017,
 23 and calculated what we believed, based on
 24 those losses that we're projecting, based on
 25 an assumption for the expense ratios, and

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1 investment income, what we thought he loss
 2 ratio would be for those three years, and
 3 then again calculate similar to Part 1 what
 4 we believed the resulting after tax return
 5 on equity would be for 2017, and we
 6 estimated would be -9 percent. So that's
 7 the conclusion of my presentation.
 8 MS. GLYNN:
 9 Q. Thank you, Ms. Elliott. Ms. Elliott's
 10 available for questions.
 11 CHAIR:
 12 Q. I understand, Mr. Gittens, you're going to
 13 go first.
 14 GITTENS, Q.C.:
 15 Q. Mr. Mason will be going first. Thank you,
 16 Commissioner.
 17 CHAIR:
 18 Q. Okay.
 19 MASON, Q.C.:
 20 Q. Madam Chair, thank you for the opportunity
 21 to cross-examine today. Ms. Elliott, you
 22 were retained by the Board to provide a
 23 fair, independent and thorough review of the
 24 profitability of auto insurers in this
 25 province. Is that correct?

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1 MS. ELLIOTT:
 2 A. Yes.
 3 MASON, Q.C.:
 4 Q. In fact, the retainment letter that I looked
 5 at said that you were to review and assess
 6 historic profit levels realized by auto
 7 insurers in Newfoundland. That's what you
 8 understood your role was today? Is that
 9 correct?
 10 MS. ELLIOTT:
 11 A. Correct.
 12 MASON, Q.C.:
 13 Q. Right. And so, as you were reviewing the
 14 profitability of auto insurers in
 15 Newfoundland, you sought out to – or sought
 16 evidence that both proved and disproved the
 17 adequacy of rates in this province and the
 18 profitability of insurers in this province?
 19 Is that right?
 20 MS. ELLIOTT:
 21 A. Well, we measured what we believe in
 22 hindsight the profit was for various
 23 accident – for the ten-year accident history
 24 that we had.
 25 MASON, Q.C.:

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1 Q. Right. But you did a little bit more than
 2 that, did you not? Did you not look at
 3 these figures and say “well, these seem
 4 reasonable. Those don’t seem reasonable” in
 5 terms of let’s say operating expenses and
 6 other data that’s contained within the
 7 materials that we have before us?
 8 MS. ELLIOTT:
 9 A. Well, the operating expenses that we’ve
 10 stated are those that are – the data for
 11 expenses are each company is required to
 12 report them through to GISA. IBC compiles
 13 that and publishes that. So, we use that.
 14 The only exception to that that we made was
 15 in looking forward for 2017 with the change
 16 in the premium tax rate from four percent to
 17 five -
 18 MASON, Q.C.:
 19 Q. You increased it by .5 percent, I think. Is
 20 that correct?
 21 MS. ELLIOTT:
 22 A. Yes.
 23 MASON, Q.C.:
 24 Q. Yeah, I looked at that.
 25 MS. ELLIOTT:

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1 A. That would be an assumption that we made;
 2 that that would be – should be not applied.
 3 MASON, Q.C.:
 4 Q. We’ll get into the operating expenses in a
 5 minute, but in terms of the operating
 6 expenses, while I’ve got you on that topic,
 7 what you did was you just reviewed the
 8 information that was provided by GISA. You
 9 didn’t dig into it for reasonableness. Is
 10 that what you’re telling me?
 11 MS. ELLIOTT:
 12 A. Well, we look at the history of the – well,
 13 we do look at it for reasonableness.
 14 MASON, Q.C.:
 15 Q. Okay.
 16 MS. ELLIOTT:
 17 A. Don’t – but to be fair, if the reported
 18 expense ratio was 25 percent one year and 45
 19 percent the next year that would cause me to
 20 investigate it. But they were all in the
 21 range that would be expected and comparable
 22 to other provinces.
 23 MASON, Q.C.:
 24 Q. But did you see your role today – I want to
 25 go back to your role. Did you see your role

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1 today as a bit of a watchdog? I mean, we
 2 have potential or future accident victims in
 3 this province that clearly have a target on
 4 their back in terms of the assessments that
 5 are being done. Did you feel it was your
 6 duty today or your obligation today to be a
 7 bit of a watchdog to make sure that the
 8 numbers that are being provided by GISA and
 9 the IBC are accurate and fair?
 10 MS. ELLIOTT:
 11 A. Yes, and let me – I mean, I have been
 12 reviewing automobile insurance for a long
 13 time, so I’m able to look at some numbers
 14 and – not always, I’m human, but I do have a
 15 sense of a reasonable range of what numbers
 16 should be. And if you’re asking me is the
 17 number 24.3 correct versus 24.2, no, you
 18 know, my ability to finesse that out and
 19 understand which one might be right or
 20 wrong, no. But within a range of
 21 reasonableness, yes, I can look at the
 22 numbers and say “yeah, that passes the -
 23 MASON, Q.C.:
 24 Q. And just to answer my question, the reason
 25 that you would look at the reasonableness,

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1 if there was a significant difference in
 2 operating expenses, for an example, is that
 3 you see your role today as a bit of a
 4 watchdog to make sure that we are accurately
 5 assessing the premiums and return on equity
 6 and profitability of insurers in this
 7 province, right?
 8 MS. ELLIOTT:
 9 A. I don’t use the term “watchdog”. I don’t
 10 consider myself a watchdog. I guess that’s
 11 another role or profession that I’m not.
 12 I’m retained as an actuary to review the
 13 data and to provide cost estimates. You
 14 know, they -- in my view, I want to make
 15 sure that I’m using information that’s
 16 accurate and reasonable and I want to
 17 present findings that I believe are accurate
 18 and reasonable, but I don’t view myself as a
 19 watchdog in any manner whatsoever.
 20 MASON, Q.C.:
 21 Q. Okay. Well, we don’t have to go deeper than
 22 that. If you don’t feel that that was your
 23 position today or responsibility, that’s
 24 fine. But what you have said, I just want
 25 to be clear, is that if you saw trends or

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1 data, for example, operating expenses that
 2 were completely out of whack with previous
 3 years, that's something you would raise with
 4 this Board to say "look, there's something
 5 funny going on here that needs to be
 6 investigated", right?
 7 MS. ELLIOTT:
 8 A. Well, not necessarily the Board because the
 9 Board does not provide the data to us, but
 10 if the data was provided to us that we felt
 11 was not right, then we would reach out to
 12 the people providing the data, which would
 13 be GISA or IBC.
 14 MASON, Q.C.:
 15 Q. So, you'd dig into it and then you would
 16 report to the Board what was going on? Is
 17 that fair?
 18 MS. ELLIOTT:
 19 A. I would keep the Board apprised that I found
 20 an issue with data and that I'm working with
 21 whichever party to resolve it.
 22 MASON, Q.C.:
 23 Q. Yeah, but you'd put it in your report as
 24 well. If this was something that was
 25 significant, you'd put it in your report so

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1 we could all review it, not just the Board,
 2 correct?
 3 MS. ELLIOTT:
 4 A. Well, I guess if the data was resolved and
 5 fixed then it would depend upon the item,
 6 whether or not I put it in my report or not.
 7 MASON, Q.C.:
 8 Q. All right. You've mentioned that you've
 9 been involved in doing automobile insurance
 10 reviews for many years. Is that right?
 11 MS. ELLIOTT:
 12 A. Yes.
 13 MASON, Q.C.:
 14 Q. All right. And in fact, I've seen your
 15 reports before in different jurisdictions on
 16 closed claim studies. You've done a number
 17 of those. Is that correct?
 18 MS. ELLIOTT:
 19 A. Correct.
 20 MASON, Q.C.:
 21 Q. Right. Now, what I haven't seen in the past
 22 is I haven't seen you doing rate adequacy
 23 review hearings before. For example, in
 24 2002, when Nova Scotia had a rate review
 25 hearing, it was Mr. Zubulake, not yourself,

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1 that was there. Is that correct?
 2 MS. ELLIOTT:
 3 A. I believe I was there with -
 4 MASON, Q.C.:
 5 Q. You didn't testify though, did you?
 6 MS. ELLIOTT:
 7 A. I did not testify, no.
 8 MASON, Q.C.:
 9 Q. And it was Mr. Zubulake that produced the
 10 reports that were associated with that
 11 hearing? Is that correct?
 12 MS. ELLIOTT:
 13 A. No, I would have been involved in all those
 14 reports. We would have worked together.
 15 MASON, Q.C.:
 16 Q. You did? Okay.
 17 MS. ELLIOTT:
 18 A. Um-hm.
 19 MASON, Q.C.:
 20 Q. But Mr. Zubulake was the lead on those, I
 21 take it, was he?
 22 MS. ELLIOTT:
 23 A. He was my boss, yes.
 24 MASON, Q.C.:
 25 Q. Right. And in 2008 when the constitutional

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1 challenge took place in Nova Scotia, it was
 2 Mr. Zubulake that testified, not yourself,
 3 on the adequacy of rates in the province?
 4 Isn't that correct?
 5 MS. ELLIOTT:
 6 A. That's correct, and I was also involved in
 7 those reports.
 8 MASON, Q.C.:
 9 Q. All right, good. And in 2005 in Alberta,
 10 when they were doing a review on the
 11 adequacy of rates, it was Mr. Zubulake that
 12 testified in that jurisdiction, not
 13 yourself, correct?
 14 MS. ELLIOTT:
 15 A. And I was again involved in those reports.
 16 MASON, Q.C.:
 17 Q. But you didn't testify, did you?
 18 MS. ELLIOTT:
 19 A. That's correct.
 20 MASON, Q.C.:
 21 Q. And in 2010 when Nova Scotia carried out a
 22 utility review board hearing on the adequacy
 23 of rates in light of the new cap that was
 24 being brought in place, it was Mr. Zubulake
 25 that testified, not yourself, correct?

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1 MS. ELLIOTT:
 2 A. I did testify.
 3 MASON, Q.C.:
 4 Q. You did testify at that hearing?
 5 MS. ELLIOTT:
 6 A. I did.
 7 MASON, Q.C.:
 8 Q. All right. Was it Mr. Zubulake that
 9 testified with respect to rate adequacy?
 10 MS. ELLIOTT:
 11 A. We were a panel on that.
 12 MASON, Q.C.:
 13 Q. You were a panel, were you?
 14 MS. ELLIOTT:
 15 A. We were together on that specifically.
 16 MASON, Q.C.:
 17 Q. Was Mr. Zubulake the lead in that review
 18 from Oliver Wyman’s perspective?
 19 MS. ELLIOTT:
 20 A. Well, we were a panel. I think we both
 21 responded. I can’t recall exactly which –
 22 what each of us said at that hearing, but I
 23 definitely recall being at that hearing and
 24 sitting side by side and testifying.
 25 MASON, Q.C.:

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1 Q. And I notice that Mr. Zubulake co-authored
 2 the report that’s provided to this Board for
 3 today. Is that correct?
 4 MS. ELLIOTT:
 5 A. That’s correct.
 6 MASON, Q.C.:
 7 Q. And he’s not here because he’s retired? Is
 8 that my understanding is correct?
 9 MS. ELLIOTT:
 10 A. He just retired, yes.
 11 MASON, Q.C.:
 12 Q. I take it that you – you have great respect
 13 for Mr. Zubulake and his opinions with
 14 respect to rate adequacy applications that
 15 he’s done in the past? Is that fair?
 16 MS. ELLIOTT:
 17 A. I have great respect for all of Mr.
 18 Zubulake’s work.
 19 MASON, Q.C.:
 20 Q. Right. He was a bit of a mentor to you, was
 21 he not, as you were working through these
 22 various projects from 2000 forward in Canada
 23 on rate adequacy?
 24 MS. ELLIOTT:
 25 A. Well, we worked together for 20 years.

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1 MASON, Q.C.:
 2 Q. Right.
 3 MS. ELLIOTT:
 4 A. Every report that has been produced, we have
 5 both – in Canada over the 20-year period, we
 6 have worked on jointly. All the work
 7 product prepared by Oliver Wyman is peer
 8 reviewed. So, yes, we’ve worked together.
 9 He’s a well-admired actuary and it was an
 10 honour to work with him.
 11 MASON, Q.C.:
 12 Q. Right. He was your boss?
 13 MS. ELLIOTT:
 14 A. He was my boss.
 15 MASON, Q.C.:
 16 Q. Okay, thank you. Now, I’ve reviewed this,
 17 your report on rate adequacy in this
 18 province and the one thing that I’m
 19 surprised I didn’t see in your report is
 20 particularly with respect to the historical
 21 data of rate adequacy in this province was
 22 any kind of discussion or description of
 23 insurance cycles in Canada.
 24 MS. ELLIOTT:
 25 A. Well, we’re looking at the profitability of

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1 the results over the last ten years that has
 2 been presented. So, the reader can look at
 3 the Table 1, for example, and see the change
 4 in the profit level over that ten-year
 5 period.
 6 MASON, Q.C.:
 7 Q. So, let me dig into that a little bit so we
 8 know what we’re talking about, okay?
 9 MS. ELLIOTT:
 10 A. Sure.
 11 MASON, Q.C.:
 12 Q. So, in insurance cycles, as I understand it,
 13 there are hard cycles or hard markets and
 14 soft markets. You understand that, correct?
 15 MS. ELLIOTT:
 16 A. Well, yes, a hard market is when it’s more
 17 difficult to – premiums tend to be higher
 18 and more difficult to get insurance.
 19 MASON, Q.C.:
 20 Q. And in hard markets, you see improving
 21 profitability for insurers during hard
 22 markets, correct? As you’re exiting a hard
 23 market going into a soft market, you see
 24 improving profitability for insurers,
 25 correct?

Page 25

1 MS. ELLIOTT:
 2 A. Well, it depends upon the situation, but if
 3 there's a change in the amount of premium
 4 being charged, such that there's more
 5 sufficient premium to pay for the losses and
 6 allow for expenses and a provision for
 7 profit, as that increases the amount of
 8 premium being charged, then you would expect
 9 that the reasonable provision for profit, if
 10 it was not there previously, would now begin
 11 to increase.
 12 MASON, Q.C.:
 13 Q. Yeah, but Oliver Wyman's looked at insurance
 14 cycles throughout Canada over the past 50
 15 years, has talked about the kind of ups and
 16 downs of profitability of insurers
 17 throughout the country, correct?
 18 MS. ELLIOTT:
 19 A. Right. So, when there is insufficient
 20 premium, when the premium starts to increase
 21 to be sufficient to pay for the losses and
 22 expenses, then the amount of profit would
 23 start to perhaps go from negative to
 24 positive.
 25 MASON, Q.C.:

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1 Q. Right. And so, there's times during the
 2 cycle that the insurers are quite profitable
 3 and other times when they're less
 4 profitable, correct?
 5 MS. ELLIOTT:
 6 A. Over – yes, well, in some areas, yes. It
 7 depends on how things are managed.
 8 MASON, Q.C.:
 9 Q. And as you're presenting evidence to this
 10 Board, you want to capture the entire cycle
 11 so the people of this province can review
 12 and see how profitable auto insurers have
 13 been through a full cycle, right?
 14 MS. ELLIOTT:
 15 A. Well, we've presented ten years of profit,
 16 so -
 17 MASON, Q.C.:
 18 Q. Well, wait a sec. You want to show the
 19 whole picture, do you not, about both very
 20 high profitability of insurers, auto
 21 insurers in this province, as well as the
 22 period of time that they're not quite as
 23 profitable?
 24 MS. ELLIOTT:
 25 A. Well, it wasn't my intent to go back to 1980

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1 and review -
 2 MASON, Q.C.:
 3 Q. Right.
 4 MS. ELLIOTT:
 5 A. - what the profit levels were at that time.
 6 MASON, Q.C.:
 7 Q. No, I got you on that.
 8 MS. ELLIOTT:
 9 A. Yeah.
 10 MASON, Q.C.:
 11 Q. But, in terms of the profitability, you
 12 wouldn't deliberately exclude, would you,
 13 from this Board evidence of high
 14 profitability during a cycle that would skew
 15 someone's view of how profitable auto
 16 insurers have been in this province, would
 17 you?
 18 MS. ELLIOTT:
 19 A. No, I would not do that.
 20 MASON, Q.C.:
 21 Q. No. Okay. And you'd agree with me, and I
 22 believe if we look at your report – and
 23 perhaps we'll go to that. There have been,
 24 over the last few years in this province,
 25 based on your analysis – just give me a

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1 minute, I'll pull up the page for you. I'm
 2 looking at page two of your report and this
 3 is the return on equity that you've
 4 calculated for auto insurers in Newfoundland
 5 from 2007 to 2016.
 6 (9:30 a.m.)
 7 MS. ELLIOTT:
 8 A. Yes.
 9 MASON, Q.C.:
 10 Q. And as I understand your report, your view
 11 is that from 2007 to 2011 that auto insurers
 12 were achieving a reasonable rate of return
 13 as determined by some boards in this
 14 country, a ten percent return on equity. Is
 15 that right?
 16 MS. ELLIOTT:
 17 A. Correct.
 18 MASON, Q.C.:
 19 Q. Yeah. And if we are back in 2011, you would
 20 say, if you were before this Board, "look,
 21 doesn't look like there's a problem here.
 22 Looks like the industry is profitable. It's
 23 achieving a reasonable rate of return at ten
 24 percent return on equity", correct?
 25 MS. ELLIOTT:

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1 A. 2012 and prior look reasonable, yes, yeah.
 2 MASON, Q.C.:
 3 Q. Sure. And so, the issue that you have as
 4 you're presenting in terms of rate adequacy
 5 in this province is from 2012 to 2016 where
 6 we see lower periods of – or lower amounts
 7 of return on equity. The insurers aren't
 8 quite as profitable. Is that correct?
 9 MS. ELLIOTT:
 10 A. Right. So, we have a mixture of some years
 11 that were good and it's moving to years that
 12 are not so good.
 13 MASON, Q.C.:
 14 Q. Right. And we see from 2007 to 2011, return
 15 on equity ranging from 7 to 16 percent, yes?
 16 MS. ELLIOTT:
 17 A. Yes.
 18 MASON, Q.C.:
 19 Q. And was that the high part of a cycle, the
 20 most profitable period of the cycle for
 21 Newfoundland from 2007 to 2012?
 22 MS. ELLIOTT:
 23 A. Well, I think we're – over this period of
 24 time, the ten years that have been reviewed,
 25 the 16 percent is the high point over that

Page 30

1 ten years.
 2 MASON, Q.C.:
 3 Q. No, I got you on that, but is that – you
 4 were going to look at – you wouldn't just
 5 focus on the lower portion of the cycle, the
 6 lower return on equity part of the cycle.
 7 You're going to look at the full cycle and
 8 does this represent the full cycle to you?
 9 MS. ELLIOTT:
 10 A. This represents a very sufficient period of
 11 time to see that the insurance companies in
 12 one particular year have exceeded the target
 13 of ten percent.
 14 MASON, Q.C.:
 15 Q. Right.
 16 MS. ELLIOTT:
 17 A. Other years and certainly 2007, 2009,
 18 exceeded the ten percent. So, years that
 19 were below that, and then—but still positive
 20 and years that were negative. So, it's a
 21 good snapshot that they do not make
 22 consistently a target ten percent year in
 23 and year out.
 24 MASON, Q.C.:
 25 Q. Right.

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1 MS. ELLIOTT:
 2 A. Yeah.
 3 MASON, Q.C.:
 4 Q. And from your perspective, in terms of
 5 reasonableness and so on, it's not up to an
 6 insurer, it's not up to this Board looking
 7 at it that the insurers have to make ten
 8 percent each year. The idea is that they
 9 would make on average ten percent return on
 10 equity each year, right?
 11 MS. ELLIOTT:
 12 A. The idea is that the ten percent after tax
 13 return on equity is a provision that is
 14 allowed in their rate application.
 15 MASON, Q.C.:
 16 Q. Yes, I've got you on that, but in terms of
 17 the adequacy of rates and the adequacy of
 18 profitability, as we sit here today, you're
 19 not suggesting that an insurer should have a
 20 basement, each year they have to make a ten
 21 percent return on equity? They may be years
 22 they make 8, there may be years they make
 23 12, and that would suggest that there's
 24 reasonable profitability for the auto
 25 insurers during that time? Correct?

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1 MS. ELLIOTT:
 2 A. Right, it would -
 3 MASON, Q.C.:
 4 Q. Yes.
 5 MS. ELLIOTT:
 6 A. It would be exceptional to be able to
 7 actually achieve the exact number that was
 8 targeted.
 9 MASON, Q.C.:
 10 Q. Right, okay. So, in 2008 you said you were
 11 involved in the, at least the background of
 12 the constitutional challenge that took place
 13 in Nova Scotia, were involved in some of the
 14 data that was prepared that was filed as
 15 part of that constitutional challenge. Is
 16 that correct?
 17 MS. ELLIOTT:
 18 A. Yes.
 19 MASON, Q.C.:
 20 Q. Okay. So, I have—this was an exhibit that
 21 was provided a few days ago which is titled
 22 “Nova Scotia Automobile Insurance Discussion
 23 Document.”
 24 MS. GLYNN:
 25 Q. We'll mark this as Exhibit 5.

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1 MASON, Q.C.:

2 Q. That's actually the Board's decision. It

3 should be "Nova Scotia Automobile Insurance

4 Discussion Document: The Executive Summary."

5 MS. GLYNN:

6 Q. Is this the correct document?

7 MASON, Q.C.:

8 Q. That's the correct one.

9 MS. GLYNN:

10 Q. Okay.

11 MASON, Q.C.:

12 Q. Thank you.

13 MS. GLYNN:

14 Q. And we'll mark this as Exhibit 5.

15 EXHIBIT ENTERED AT HEARING AND MARKED AS EXHIBIT NO. 5

16 MASON, Q.C.:

17 Q. So, this was—was this a report that you were

18 involved in, the--in preparing for part of

19 the constitutional challenge?

20 MS. ELLIOTT:

21 A. Yes.

22 MASON, Q.C.:

23 Q. All right. And so, if we look at page 16,

24 Ms. Elliott, this is loss ratios for the

25 four Atlantic Provinces from 2002 to 2007.

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1 Do you see that?

2 MS. ELLIOTT:

3 A. Yes, yeah.

4 MASON, Q.C.:

5 Q. Okay. And we see in Nova Scotia—just so

6 we're clear on this, when you have a 75

7 percent loss ratio, an insurer has a 75

8 percent loss ratio, that equates to

9 approximately a ten percent return on

10 equity, correct?

11 MS. ELLIOTT:

12 A. In that range would be typical.

13 MASON, Q.C.:

14 Q. Right, okay.

15 MS. ELLIOTT:

16 A. Yeah.

17 MASON, Q.C.:

18 Q. And so, in Nova Scotia we see some very

19 healthy robust profits that are being made

20 by auto insurers, both before the cap comes

21 in place and after the cap comes in place.

22 Fifty-five percent loss ratio in 2003. Do

23 you see that?

24 MS. ELLIOTT:

25 A. Um-hm.

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1 MASON, Q.C.:

2 Q. And that translated, based on this report,

3 we know the cap came in on November 1st,

4 2003. So, we know most of the profits in

5 Nova Scotia were earned before the cap came

6 in place, is that correct? In 2003.

7 MS. ELLIOTT:

8 A. Yeah, well –

9 MASON, Q.C.:

10 Q. That's a fair assumption, is it not?

11 MS. ELLIOTT:

12 A. Right. In 2003, as a result of the drop in

13 frequency, the loss ration dropped

14 materially.

15 MASON, Q.C.:

16 Q. Right, right.

17 MS. ELLIOTT:

18 A. Yes.

19 MASON, Q.C.:

20 Q. And so, did--as we'll get into this, we talk

21 about reserves. The reserves came down

22 significant—subsequently when we review

23 them, correct? In Nova Scotia.

24 MS. ELLIOTT:

25 A. I don't have that in front of me to –

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1 MASON, Q.C.:

2 Q. Okay. We'll look at that in a minute, okay?

3 MS. ELLIOTT:

4 A. Okay. Um-hm.

5 MASON, Q.C.:

6 Q. That's a separate topic.

7 MS. ELLIOTT:

8 A. Yeah.

9 MASON, Q.C.:

10 Q. My point simply is in 2003 in Nova Scotia

11 where we see a 55 percent loss ratio, those

12 profits were earned primarily before the cap

13 came in place on November 1st, 2003, correct?

14 That's a fair assessment?

15 MS. ELLIOTT:

16 A. Yes.

17 MASON, Q.C.:

18 Q. Yes.

19 MS. ELLIOTT:

20 A. That's true.

21 MASON, Q.C.:

22 Q. And we know in 2003 at a 55 percent loss

23 ratio, if you go to page 12 of that report,

24 we see 2003. We see a startling return-on-

25 equity figure of 32.9 percent?

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1 MS. ELLIOTT:
 2 A. Yes.
 3 MASON, Q.C.:
 4 Q. A scandalous amount of profit that's being
 5 made by the auto insurance industry in Nova
 6 Scotia before the cap came in place,
 7 correct?
 8 MS. ELLIOTT:
 9 A. I agree, that's very high. Yeah.
 10 MASON, Q.C.:
 11 Q. Very high. Have you seen that? I know
 12 we've seen that in New Brunswick as well, a
 13 very high loss ratios, because we see in New
 14 Brunswick after their cap came in place, 47
 15 percent in 2004. Sorry, if we go back to
 16 page 16 of the documentation. If you look
 17 in the column under New Brunswick, we see,
 18 sorry, 2004, 42 percent loss ratio. We're
 19 probably talking, what, a return on equity
 20 in excess of 40 percent?
 21 MS. ELLIOTT:
 22 A. You know, the 42 percent loss ratio is 2004
 23 is, well, very low.
 24 MASON, Q.C.:
 25 Q. Right.

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1 MS. ELLIOTT:
 2 A. And so, as a result, they had very high
 3 profits in those years, yeah.
 4 MASON, Q.C.:
 5 Q. Yes. And we didn't see a real significant
 6 corresponding reduction in premiums in those
 7 provinces, did we, during that timeframe?
 8 MS. ELLIOTT:
 9 A. Well, with loss ratios that low, the
 10 subsequent year it was not causing the loss
 11 ratio to increase. Correct.
 12 MASON, Q.C.:
 13 Q. I'm sorry, I didn't follow that.
 14 MS. ELLIOTT:
 15 A. Well, if the loss ratio is to increase, that
 16 could be a result of two things; either
 17 reduction in premium or an increase in
 18 losses.
 19 MASON, Q.C.:
 20 Q. All right. Well, let's use Nova Scotia as
 21 an example in terms of the premium reduction
 22 because we see, if we go through Nova Scotia
 23 on the document we're looking at right now,
 24 we see 55 percent loss ratio in 2003, 54
 25 percent in 2004, 53 percent in 2005. I

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1 mean, these are very significant profits
 2 that are being earned by auto insurers in
 3 the province during that timeframe, correct?
 4 MS. ELLIOTT:
 5 A. Yes, those loss ratios, and we discussed
 6 this yesterday, in terms of--there was an
 7 unanticipated drop in the frequency rate.
 8 We have the graph provided by IBC, and
 9 myself, Oliver Wyman, in our report, there
 10 was a very steep drop in 2002 in the
 11 frequency rate --
 12 MASON, Q.C.:
 13 Q. Right.
 14 MS. ELLIOTT:
 15 A. - in Nova Scotia and New Brunswick, and
 16 also, following their introduction of the
 17 reform that wasn't anticipated. And we
 18 talked about, you know, it's hard to explain
 19 why the frequency rate dropped before the
 20 reforms very steeply, and after the reforms.
 21 And as a result of that, not being
 22 anticipated, this massive drop, the premiums
 23 didn't—that were set in 2002 that would be
 24 paid in 2003, the—you know, the rate setting
 25 is prior to that.

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1 MASON, Q.C.:
 2 Q. Right.
 3 MS. ELLIOTT:
 4 A. It didn't anticipate this massive drop in
 5 frequency either before the introduction of
 6 the reform, as well as after the
 7 introduction of reform, and a continual
 8 decline in the frequency rate.
 9 MASON, Q.C.:
 10 Q. Yes.
 11 MS. ELLIOTT:
 12 A. And as a result of that, the loss ratios
 13 plummeted.
 14 MASON, Q.C.:
 15 Q. Right.
 16 MS. ELLIOTT:
 17 A. And it was unexpected.
 18 MASON, Q.C.:
 19 Q. So, really what was happening was the
 20 reserves that were being held by insurers in
 21 2002, 2003, 2004, et cetera, were too high,
 22 correct?
 23 MS. ELLIOTT:
 24 A. No, each accident year we're looking at
 25 here, specifically what the estimate is for

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1 that accident year, and much of this drop in
 2 the loss ratio is due to a situation where
 3 the premiums were higher than required, for
 4 course.
 5 MASON, Q.C.:
 6 Q. Right.
 7 MS. ELLIOTT:
 8 A. And they were set on a basis of a frequency
 9 being here.
 10 MASON, Q.C.:
 11 Q. Right.
 12 MS. ELLIOTT:
 13 A. But in fact, it was down there.
 14 MASON, Q.C.:
 15 Q. Okay, all right. Let me get back to my
 16 point here. The initial point is that with
 17 loss ratios of 55 percent, 54 percent, 53
 18 percent and 56 percent in Nova Scotia from
 19 2003 to 2006, in terms of profit over and
 20 above 10 percent return on equity, we're
 21 talking hundreds of millions of dollars,
 22 aren't we?
 23 MS. ELLIOTT:
 24 A. In Nova Scotia –
 25 MASON, Q.C.:

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1 Q. In Nova Scotia, yes.
 2 MS. ELLIOTT:
 3 A. - and New Brunswick, I don't know the dollar
 4 amount, but it would be well in excess of a
 5 ten percent target as we refer to it.
 6 MASON, Q.C.:
 7 Q. Right.
 8 MS. ELLIOTT:
 9 A. Yes.
 10 MASON, Q.C.:
 11 Q. It could be in the hundreds of millions of
 12 dollars, couldn't it? Over and above the
 13 ten percent return on equity.
 14 MS. ELLIOTT:
 15 A. Likely.
 16 MASON, Q.C.:
 17 Q. Yes.
 18 MS. ELLIOTT:
 19 A. Yeah.
 20 MASON, Q.C.:
 21 Q. And so, if we go to page 7 of this report,
 22 this is the report that you worked on with
 23 Mr. Zubulake. And you'll see in the top
 24 paragraph, "As a result of the freeze, the
 25 mandated 20 percent rate level reduction,

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1 the Board's review and approval of
 2 automobile insurance rates charged in the
 3 province, at the end of 2004 following an
 4 average premium increase of 23.5 percent in
 5 '02," and this is the part that I want you
 6 to focus on, "premiums rose on average by
 7 4.1 percent in 2003." So, premiums went up
 8 in 2003 when insurers were sitting on a 32.9
 9 percent return on equity?
 10 MS. ELLIOTT:
 11 A. Well, the—in terms of the premiums
 12 increasing in 2003 –
 13 MASON, Q.C.:
 14 Q. Right.
 15 MS. ELLIOTT:
 16 A. - those calculations were premiums that will
 17 be sold.
 18 MASON, Q.C.:
 19 Q. I've got you.
 20 MS. ELLIOTT:
 21 A. They're done in 2002 using data from 2001.
 22 MASON, Q.C.:
 23 Q. I bet, sure.
 24 MS. ELLIOTT:
 25 A. And with that, the information regarding the

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1 massive drop in frequency when we look at
 2 the chart from IBC –
 3 MASON, Q.C.:
 4 Q. We'll come to that.
 5 MS. ELLIOTT:
 6 A. - that information was not available.
 7 MASON, Q.C.:
 8 Q. Right, okay.
 9 MS. ELLIOTT:
 10 A. Yeah.
 11 MASON, Q.C.:
 12 Q. So, then it says they declined by 3.4
 13 percent in 2004. Do you see that?
 14 MS. ELLIOTT:
 15 A. Um-hm.
 16 MASON, Q.C.:
 17 Q. And we know from the returns on equity in
 18 Nova Scotia that the return in equity in
 19 Nova Scotia was over, was 30. I think it
 20 was 30 percent in 2004. And rates went down
 21 by 3.4 percent. Then, in 2005, declined by
 22 6.2 percent, and declined by 2.3 percent in
 23 '06, and declined by .7 percent in 2007. I
 24 aggregated that to 8.5 percent over that
 25 five-year period, an 8.5 percent reduction

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1 in premiums over that five-year period. So,
 2 what we see is we see auto insurers in Nova
 3 Scotia over that timeframe making hundreds
 4 of millions of dollars in excess profits,
 5 over and above the reasonable rate of
 6 return, a ten percent return in equity, and
 7 reducing premiums by 8.5 percent over a five
 8 -year period?
 9 MS. ELLIOTT:
 10 A. Um-hm.
 11 MASON, Q.C.:
 12 Q. Is that accurate?
 13 MS. ELLIOTT:
 14 A. Yes, what you're stating would be accurate,
 15 yes.
 16 MASON, Q.C.:
 17 Q. Well, okay. So, if I understand the deal in
 18 Nova Scotia, accident victims
 19 (unintelligible) a cap was imposed on them,
 20 auto insurers made hundreds of millions of
 21 dollars in excess of the ten percent return
 22 on equity, and consumers received an 8.5
 23 percent reduction in premiums over that
 24 timeframe. That was the deal?
 25 MS. ELLIOTT:

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1 A. I'm not sure if I'd reference it as a deal.
 2 MASON, Q.C.:
 3 Q. All right.
 4 MS. ELLIOTT:
 5 A. But that's what occurred.
 6 MASON, Q.C.:
 7 Q. Okay. Let's go to Newfoundland and
 8 Labrador. Look at page 16 of the—of this
 9 chart. And this was data, Ms. Elliott, that
 10 you had presumably on your company server at
 11 Oliver Wyman as you were preparing for this
 12 hearing for today, correct? This data from
 13 Newfoundland and Labrador.
 14 MS. ELLIOTT:
 15 A. Yes, sorry. Let me catch up with you there.
 16 MASON, Q.C.:
 17 Q. It's page 16.
 18 MS. ELLIOTT:
 19 A. Yeah, okay. Um-hm.
 20 MASON, Q.C.:
 21 Q. Do you have that?
 22 MS. ELLIOTT:
 23 A. Um-hm.
 24 MASON, Q.C.:
 25 Q. This was data that you had at your company

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1 offices, presumably on your company server,
 2 showing the profitability of auto insurers
 3 in Newfoundland from 2002 to 2007?
 4 MS. ELLIOTT:
 5 A. These are the loss ratios.
 6 MASON, Q.C.:
 7 Q. Right, got you on that.
 8 MS. ELLIOTT:
 9 A. Yeah, um-hm.
 10 MASON, Q.C.:
 11 Q. And we'll talk about returns on equity in a
 12 minute, but with a click of the mouse, this
 13 data could have been brought into this
 14 hearing, correct?
 15 MS. ELLIOTT:
 16 A. Well, it is actually. It's right here now.
 17 MASON, Q.C.:
 18 Q. Oh, it's here now, but you—it was the Trial
 19 Lawyers Association that had to bring it
 20 here; not the independent watchdog as I
 21 would call you, Ms. Zubulake (sic.), who is
 22 supposed to be providing this information to
 23 the Board.
 24 MS. ELLIOTT:
 25 A. My name is Ms. Elliott.

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1 MASON, Q.C.:
 2 Q. Sorry, Ms. Elliott.
 3 MS. ELLIOTT:
 4 A. And I'm not a watchdog.
 5 (9:45 a.m.)
 6 MASON, Q.C.:
 7 Q. Okay, fair enough, but in terms of doing an
 8 independent and thorough review, why didn't
 9 you provide this documentation?
 10 MS. ELLIOTT:
 11 A. Well, I think that what we have provided
 12 gives a good snapshot to the Board.
 13 MASON, Q.C.:
 14 Q. Yes.
 15 MS. ELLIOTT:
 16 A. That companies have earned higher than your
 17 target provision that is allowed in this
 18 province, the after-tax ten percent ROE.
 19 The fact that they would have earned higher
 20 returns in the past and have subsequently
 21 managed the process through the rate filing
 22 process such that those returns have not
 23 been in the last ten years in excess of the
 24 30 percent and whatnot that you have quoted,
 25 they have now a snapshot of what has

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1 occurred in the last ten years.
 2 MASON, Q.C.:
 3 Q. Right.
 4 MS. ELLIOTT:
 5 A. To look back and say that the companies made
 6 profits that would have been higher than
 7 that in 2003 and '04 and '05 and '06, that
 8 is water under the bridge.
 9 MASON, Q.C.:
 10 Q. Oh, okay.
 11 MS. ELLIOTT:
 12 A. Yeah. Yeah, that –
 13 MASON, Q.C.:
 14 Q. I'm going to have to stop you there.
 15 MS. ELLIOTT:
 16 A. They have earned those—that has occurred.
 17 The claims occurred, the premiums were
 18 collected, and that was what was achieved in
 19 that timeframe. It's—you know, the
 20 information is available. I do not believe
 21 that we have misled the Board or the public
 22 in any manner whatsoever with presenting the
 23 results for ten years. We do indicate in
 24 our report that the results that have been
 25 achieved are not intended to mean that the

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1 same results would have been achieved in any
 2 prior period. It's a reflection of ten
 3 years.
 4 MASON, Q.C.:
 5 Q. Here's my problem, I have to tell you. I
 6 asked you, "Are you going"—or "Was it your
 7 mandate to do a thorough review of auto
 8 insurance in this province, and you said,
 9 "Yes." I said that you would want to get a
 10 full picture of a full cycle so that you
 11 could establish the profitability of auto
 12 insurers in Newfoundland.
 13 MS. ELLIOTT:
 14 A. Um-hm.
 15 MASON, Q.C.:
 16 Q. I believe you said yes to that?
 17 MS. ELLIOTT:
 18 Q. Um-hm.
 19 MASON, Q.C.:
 20 Q. This data, let's go through it, okay,
 21 because we've got a 72 percent loss ratio in
 22 Newfoundland and Labrador in 2002. We
 23 discussed previously that a 75 percent loss
 24 ratio would equate to approximately a 10
 25 percent return on equity. I'd suggest to you

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1 that in 2002 automobile insurers were making
 2 maybe 11 percent return on equity, that
 3 would be a fair estimate based on the 72
 4 percent loss ratio, correct?
 5 MS. ELLIOTT:
 6 A. That's in the ballpark, yeah.
 7 MASON, Q.C.:
 8 Q. Right, sure. In 2003, we see a loss ratio
 9 of 63 percent. Do you have a guess for me
 10 on what the return on equity is for
 11 Newfoundland in 2003 at a 63 percent loss
 12 ratio?
 13 MS. ELLIOTT:
 14 A. Likely higher than 10 percent.
 15 MASON, Q.C.:
 16 Q. Well we know that, thank you, that's not
 17 terribly helpful, but do you have an idea
 18 what the number is?
 19 MS. ELLIOTT:
 20 A. Not off the top of my head.
 21 MASON, Q.C.:
 22 Q. Could it be 20 percent?
 23 MS. ELLIOTT:
 24 A. I haven't done the math, I'm not doing it on
 25 the spot right now.

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1 MASON, Q.C.:
 2 Q. Right. And a 58 percent loss ratio in 2004,
 3 do you see that?
 4 MS. ELLIOTT:
 5 A. Yes.
 6 MASON, Q.C.:
 7 Q. All right, so we know a 55 percent loss
 8 ratio in Nova Scotia equated to a 32.9
 9 percent return on equity. Is it fair to say
 10 that a 58 percent loss ratio in Newfoundland
 11 would equate to a 30 percent return on
 12 equity?
 13 MS. ELLIOTT:
 14 A. Likely they would be similar, there are
 15 differences in tax rates, differences in
 16 operating expenses, but likely similar and
 17 definitely higher than 10 percent.
 18 MASON, Q.C.:
 19 Q. Right, and the same with 2005 and 2006, 66
 20 percent loss ratios, 67 percent loss ratios,
 21 much higher than a 10 percent return on
 22 equity, correct?
 23 MS. ELLIOTT:
 24 A. Depending upon the expense ratios, but yeah.
 25 MASON, Q.C.:

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1 Q. We'll look at those in a minute too. So as
 2 we look through these figures, these would
 3 be record profits. If we were looking at
 4 the chart that you presented in—that you
 5 chose to present from 2007 to 2016, these
 6 profit figures would far exceed what the
 7 profits that were earned between 2007 and
 8 2016, correct?
 9 MS. ELLIOTT:
 10 A. Well, that is correct, but you know, we do
 11 appreciate that insurance companies don't go
 12 back and say "I made these profits for this
 13 particular year, the losses were less than
 14 anticipated for the premiums that were
 15 charged", and use those past, rate making is
 16 prospective, so we want to use the loss
 17 experience for the past to help predict the
 18 future, but companies, like, they don't go
 19 back to their historical profits that have
 20 been achieved.
 21 MASON, Q.C.:
 22 Q. I know the companies don't.
 23 MS. ELLIOTT:
 24 A. Right, and use those going forward, yeah.
 25 MASON, Q.C.:

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1 Q. But my question is why didn't you look at
 2 these figures and present it to this Board
 3 today?
 4 MS. ELLIOTT:
 5 A. Well, we chose to present 10 years. My
 6 intention was not to, in any manner, we felt
 7 that and we still do, believe that the 10
 8 years was a good snapshot to look at what's
 9 happened and not go back to a longer period.
 10 MASON, Q.C.:
 11 Q. Let me ask you a similar question to what I
 12 threw out about Nova Scotia from 2003 to
 13 2007, I said over and above the 10 percent
 14 return on equity, we're probably talking
 15 hundreds of millions of dollars in profit.
 16 I see a similar trend in Newfoundland. Are
 17 we talking a hundred, a hundred and fifty
 18 million dollars in Newfoundland in profit
 19 that was earned between 2002 and 2006, to
 20 what was being earned in Nova Scotia?
 21 MS. ELLIOTT:
 22 A. If you know the number that we've stated as
 23 Oliver Wyman in this report, you can point
 24 us to it, but I don't have that at my
 25 fingertips. In this exhibit, we have

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1 presented six years of data and in this that
 2 you have on our screen here and discussing,
 3 in the report that we presented for this
 4 hearing, we presented 10 years of data, so,
 5 you know, we presented more data than in
 6 this exhibit that we're discussing here, you
 7 know, and definitely the loss ratios were
 8 lower over this period going from 2007 to
 9 2002, that's a statement of fact, yeah.
 10 MASON, Q.C.:
 11 Q. Well I got you on that, but I mean, you're
 12 our expert here that is trying to help us to
 13 figure out what's going on in Newfoundland
 14 and so what I'm asking you is can you give
 15 me an estimate of what, in terms of money
 16 that was earned by auto insurers in
 17 Newfoundland between 2002 and 2006, because
 18 that's the period that was not included in
 19 your report, how much money was earned by
 20 auto insurers during that timeframe over and
 21 above the 10 percent reasonable rate of
 22 return that's been established by this Board
 23 and some others?
 24 MS. ELLIOTT:
 25 A. Yes, I mean, I don't have the number in

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1 front of me and I'm not prepared to stop the
 2 hearing to do an hour's calculation for you.
 3 So I don't have it, I don't have the number
 4 in front of me.
 5 MASON, Q.C.:
 6 Q. All right, well let me ask you this because
 7 you did say in Nova Scotia it was likely in
 8 excess of a hundred million dollars,
 9 correct? The over and above the 10 percent
 10 return on equity, it was likely in excess of
 11 a hundred million dollars, right?
 12 MS. ELLIOTT:
 13 A. Uh-hm.
 14 MASON, Q.C.:
 15 Q. And so we can assume, without you doing your
 16 calculation for an hour, we can assume that
 17 there were similar results in Newfoundland,
 18 in terms of profit that would be over and
 19 above that 10 percent return, correct?
 20 MS. ELLIOTT:
 21 A. We know that it would be over 10 percent
 22 return on equity, I don't know the dollar
 23 amount.
 24 MASON, Q.C.:
 25 Q. No, sorry, in terms of the profits that were

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1 earned by auto insurers in Newfoundland over
 2 and above the 10 percent return on equity,
 3 we can assume, can we not, that the numbers
 4 would be similar to Nova Scotia, it would be
 5 in excess of a hundred –
 6 MS. ELLIOTT:
 7 A. I don't know what the numbers are, I don't
 8 have it in front of me and I'm not prepared
 9 to give you a number that I'm not able to
 10 calculate on the spot, so we're in agreement
 11 with these loss ratios that are presented.
 12 The return would be over 10 percent, you
 13 know, point stop. After that, if you want a
 14 dollar amount, I'm unprepared, unable to do
 15 it on the spot for you here.
 16 MASON, Q.C.:
 17 Q. All right. Where did that money go?
 18 MS. ELLIOTT:
 19 A. Where did the money go?
 20 MASON, Q.C.:
 21 Q. Yeah, in Newfoundland, where did that money,
 22 over and above the 10 percent return on
 23 equity, where did it go?
 24 MS. ELLIOTT:
 25 A. The insurance companies would retain any of

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1 the earnings.
 2 MASON, Q.C.:
 3 Q. Right, they put it in their back pocket,
 4 right?
 5 MS. ELLIOTT:
 6 A. Well, front, back, I'm not sure about that.
 7 MASON, Q.C.:
 8 Q. Yeah, okay, fair enough. And so they get to
 9 keep their money over and above the 10
 10 percent return on equity from 2002 to 2006,
 11 yet accident victims in 2017 have to give up
 12 their rights when there may be, they may be
 13 and we're going to talk about this in a
 14 minute, may be making less than a 10 percent
 15 return on equity, is that your evidence
 16 today?
 17 MS. ELLIOTT:
 18 A. Well, my evidence today is regarding the
 19 profit levels that have been achieved over
 20 the last 10 years, which is a—that's what
 21 our report is a presentation of.
 22 MASON, Q.C.:
 23 Q. Ms. Elliott, I must say, I'm troubled that
 24 this information wasn't provided to the
 25 Board because it provides a full picture of

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1 the cycle in Newfoundland in terms of auto
 2 insurance profitability, and my question is,
 3 is the reason that this was not provided
 4 because Oliver Wyman is owned by Marsh &
 5 McLennan, one of the world's largest –
 6 MS. ELLIOTT:
 7 A. No, -
 8 MASON, Q.C.:
 9 Q. Just a second, let me finish my question,
 10 one of the world's largest reinsurers that
 11 relies on insurance companies, like Intact
 12 and Aviva, for business?
 13 MS. ELLIOTT:
 14 A. Marsh & McLennan is not a reinsurer, to
 15 begin with, and my report was presented with
 16 integrity to present the data, the
 17 experience for the last 10 years, there was
 18 definitely no intention to misrepresent
 19 anything to the Board or to the public. It
 20 was provided to show the experience and the
 21 profits over the last 10 years. That was
 22 that. No intention to mislead or hide any
 23 information.
 24 MASON, Q.C.:
 25 Q. All right. Marsh & McLennan is—sorry,

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1 Oliver Wyman is a subsidiary of Marsh &
 2 McLennan, is that correct?
 3 MS. ELLIOTT:
 4 A. We're a separate operating company within
 5 the –
 6 MASON, Q.C.:
 7 Q. Got you on that. You're the child of the
 8 parent company, is that fair?
 9 MS. ELLIOTT:
 10 A. That's a terminology you can use, sure.
 11 MASON, Q.C.:
 12 Q. All right, and you said that Marsh &
 13 McLennan is not a reinsurer, perhaps I
 14 misspoke on that, they're into insurance
 15 broking, insurance program management
 16 services, is that correct?
 17 MS. ELLIOTT:
 18 A. That's correct.
 19 MASON, Q.C.:
 20 Q. So they deal with companies like Intact and
 21 Aviva and other insurers that operate out of
 22 this province across the country and across
 23 the world, right?
 24 MS. ELLIOTT:
 25 A. Yeah, it's completely a separate operation

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1 from the work that Oliver Wyman, the
 2 actuaries, do.
 3 MASON, Q.C.:
 4 Q. No, that wasn't my question, but that's what
 5 they do, don't they?
 6 MS. ELLIOTT:
 7 A. Well that was my answer. Yes, that's
 8 correct.
 9 MASON, Q.C.:
 10 Q. Right, okay. So Marsh & McLennan relies on
 11 insurance companies in this province for
 12 business, correct?
 13 MS. ELLIOTT:
 14 A. Yes, that's correct.
 15 MASON, Q.C.:
 16 Q. So, I asked you at the beginning of this
 17 year that your role was to provide
 18 independent and thorough review of
 19 automobile insurance in this province, can
 20 you tell me why you didn't disclose that
 21 little nugget to us?
 22 MS. ELLIOTT:
 23 A. I'm sorry, which little nugget?
 24 MASON, Q.C.:
 25 Q. Sorry, that Oliver Wyman is owned by Marsh &

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1 McLennan who does business with the auto
 2 insurers that you're reviewing today?
 3 MS. ELLIOTT:
 4 A. I think that's publicly available, it's very
 5 clear in our report with our logo that we're
 6 part of the Marsh & McLennan Group, that is
 7 no secret to anybody, certainly any of my
 8 arrangements that I have with my clients
 9 across the country, our clients are fully
 10 aware of the Marsh & McLennan operation. As
 11 an actuary, myself, and Ted, who is now
 12 retired, Ted Zubulake, we do not do any work
 13 for insurance companies, any work for the
 14 Insurance Bureau of Canada, GISA, any
 15 entity, all our clients are regulators
 16 across Canada. We keep a very, you know,
 17 distant operation that is strictly focussed
 18 on automobile regulation and do not do any
 19 work at all, in any manner, for insurance
 20 companies.
 21 MASON, Q.C.:
 22 Q. I'll get to that, but we have—just so I'm
 23 clear on this, we have the subsidiary of a
 24 parent company doing an investigation,
 25 right, or a review, an independent thorough

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1 review of insurers that have a profitable
 2 relationship with the parent company. I
 3 just want to make sure I got it correct.
 4 MS. ELLIOTT:
 5 Q. Well, I think what should be correct and
 6 that you should get correct is that I have
 7 been doing this work for Oliver Wyman for
 8 more than 20 years. My integrity has never
 9 been questioned in terms of presenting bias
 10 in any manner in our reports. We prepare
 11 the reports as thoroughly, completely and
 12 accurately and independently as we believe
 13 possible and appropriate. And I have no
 14 relationship whatsoever with any company,
 15 insurance companies or any concern of what
 16 Marsh & McLennan might be doing for any of
 17 its clients.
 18 MASON, Q.C.:
 19 Q. I'm going to get to that.
 20 MS. ELLIOTT:
 21 Q. Completely independent.
 22 MASON, Q.C.:
 23 Q. But that's not an answer to my question.
 24 MS. ELLIOTT:
 25 Q. Well, I hope that thorough enough to, for

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1 all the parties to understand that my work
 2 is independent and I do not do anything,
 3 present any reports, I am not influenced in
 4 any manner whatsoever by any operation
 5 that's ongoing in Marsh & McLennan.
 6 MASON, Q.C.:
 7 Q. Ms. Elliott, this is going to be long day
 8 because I just want an answer to my
 9 question. The question I put to you was
 10 simply this, we have the subsidiary of a
 11 parent company doing a fair independent and
 12 thorough investigation of insurers that have
 13 a profitable relationship with the parent
 14 company. That's what I just want to
 15 understand. Do you agree with that?
 16 MS. ELLIOTT:
 17 Q. Well, the profits that Oliver Wyman would
 18 make, like any subsidiary, roll up to the
 19 parent company.
 20 MASON, Q.C.:
 21 Q. Alright, so there we go, okay. So, we've
 22 got money that's going from Oliver Wyman to
 23 the parent company. The parent company has
 24 a relationship with the insurance companies.
 25 And now we have the subsidiary company

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1 investigating, doing a thorough and
 2 independent investigation for the people of
 3 this province of the insurance companies
 4 that deal with the parent.
 5 MS. ELLIOTT:
 6 Q. Yes, and that would be the same situation as
 7 you raised earlier for all the various
 8 reports and testifying at various hearings
 9 that you've been in attendance with with Mr.
 10 Zubulake and myself in the Atlantic
 11 provinces and in other provinces in this
 12 country. The same issue has arisen
 13 questioning whether we're independent. I
 14 believe that's it's been established that
 15 through the quality of our work and what we
 16 do, that we are independent.
 17 (10:00 a.m.)
 18 MASON, Q.C.:
 19 Q. So maybe what we should have is we should
 20 have Donald Jr. investigating the Russians
 21 with respect to the collusion arguments with
 22 Donald, Sr., maybe that's the same thing.
 23 CHAIR:
 24 Q. Mr. Mason, Mr. Mason, please
 25 MASON, Q.C.:

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1 Q. Let me talk to you about operating expenses.
 2 This is one of the critical factors that
 3 goes into pricing and premiums and return on
 4 equities, are the operating expenses that
 5 are being charged by auto insurers in this
 6 province, correct?
 7 MS. ELLIOTT:
 8 Q. Yes.
 9 MASON, Q.C.:
 10 Q. And you described earlier that operating
 11 expenses are comprised of broker conditions
 12 that are paid and premium taxes that are
 13 paid, you described that. And there are
 14 other operating expenses you mentioned as
 15 well, correct?
 16 MS. ELLIOTT:
 17 Q. Correct.
 18 MASON, Q.C.:
 19 Q. Right. And you mentioned that the cost of
 20 doing business, so the cost to pay salaries,
 21 for rent, cost of doing business within the
 22 province is something that's included within
 23 those operating expenses, is that correct?
 24 MS. ELLIOTT:
 25 Q. Right.

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1 MASON, Q.C.:
 2 Q. Right. And so in terms of company
 3 executives, their salaries would be included
 4 within the operating expenses, is that
 5 right?
 6 MS. ELLIOTT:
 7 Q. Yes, there would be an overhead, head office
 8 overhead might be a terminology for that for
 9 all the IT, actuaries, accountants, yes.
 10 MASON, Q.C.:
 11 Q. And that would include any bonuses that are
 12 paid to executives based on the
 13 profitability of insurance throughout the
 14 country, is that right? That would be part
 15 of the expenses that are paid by premium
 16 holders of this province –
 17 MS. ELLIOTT:
 18 Q. Yeah.
 19 MASON, Q.C.:
 20 Q. - as part of the operating expenses, right?
 21 MS. ELLIOTT:
 22 Q. Yes, that would be allocated across all
 23 lines of business, yes, all provinces.
 24 MASON, Q.C.:
 25 Q. And it would include as well monies that are

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1 paid by the insurance companies of this
 2 province, by the premium holders who pay the
 3 insurance companies of this province monies
 4 to the IBC, to lobby on their behalf,
 5 correct?
 6 MS. ELLIOTT:
 7 Q. Yes, there's—that would be included as a
 8 cost, that's correct.
 9 MASON, Q.C.:
 10 Q. And any bonuses that are paid to Mr.
 11 Forgeron, for example, if he's successful in
 12 getting a cap on pain and suffering awards
 13 in this province, that would be the kind of
 14 expense that auto insurers in this province
 15 as part of their operating expenses.
 16 MS. ELLIOTT:
 17 Q. I'm not familiar with IBC –
 18 STAMP, Q.C.:
 19 Q. Madam Chair, this is getting very boring, I
 20 must say.
 21 FRAIZE, Q.C.:
 22 Q. I don't find it boring.
 23 STAMP, Q.C.:
 24 Q. The issue that we're focussed on here is
 25 consultative process to try and understand

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1 what these expenses would be. It doesn't
 2 have to throw rocks. That's not what we are
 3 here for; this is not a cross examination.
 4 Ms. Elliott is not even sworn. I think that
 5 the approach to take is to try and
 6 understand the background. We know that
 7 there is a connection between Oliver Wyman
 8 and Mercer, whatever the name of that firm
 9 is, but the world knows that.
 10 MASON, Q.C.:
 11 Q. So, Madam Chair, if I may speak to that,
 12 there's been no independent review of the
 13 expenses, operating expenses by Ms. Elliott
 14 as I think we're going to establish here in
 15 a minute. What comprises those operating
 16 expenses, I think, is highly relevant. It's
 17 one of the critical factors in determining
 18 what are appropriate terms of rates in this
 19 province? What is the appropriate terms of
 20 a return on equity? It's part of the
 21 calculation.
 22 CHAIR:
 23 Q. Does anyone else want to weigh in on this?
 24 KENNEDY, Q.C.:
 25 Q. Yes, I do, Madam Chair. Although we're not

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1 in a courtroom, one of the issues you have
 2 to look at in examining weight or how you're
 3 going to look at an expert's evidence is the
 4 level of independence or the potential for
 5 bias. Although we're not in a courtroom
 6 right now—we could be. So, therefore we
 7 have to lay, at some future point, so we
 8 have to lay the record that is necessary to
 9 show that an expert is not independent but
 10 is potentially biased. So, we've spent the
 11 week trying to outline the problems with the
 12 report and the lack of independence. The
 13 points being made by Mr. Mason go to that
 14 independence. You may say it's an
 15 information hearing and people may refer to
 16 her as Paula, but for the rate payers of
 17 this province, for the victim of accidents,
 18 they're very interested in hearing all of
 19 this. So, I would suggest to you that this
 20 is very relevant information. The witness,
 21 again, the body language of the witness is
 22 not going to show up on the transcript.
 23 She's very defensive. She's—in fact, some
 24 of the questions, her answers to Mr. Mason,
 25 I would suggest that let's take a break and

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1 do your calculations. This is important and
 2 relevant evidence and I would suggest that
 3 he should be allowed to continue.
 4 FRAIZE, Q.C.:
 5 Q. Also, I have to reiterate, our function
 6 here, as an Intervenor, we want to hear this
 7 information because the victims are the ones
 8 paying the price for this cap or deductible.
 9 And the profits generated by the insurance
 10 companies in relation to the return is very
 11 relevant to us. If you're taking away
 12 rights from someone, they need the chance to
 13 hear what is going on. So, I think we have
 14 to keep proceeding the way we are, otherwise
 15 we're not going to get a true picture and
 16 that would be unfair to the victims.
 17 CHAIR:
 18 Q. Mr. Browne, do you have anything you wish to
 19 add to this?
 20 BROWNE, Q.C.:
 21 Q. No, I don't. In terms of the questioning
 22 and some of the questioning, suspicion and
 23 innuendo can only go so far. If there's
 24 hard evidence to bring forward to undermine
 25 or to reject or suggest that the evidence

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1 should be rejected, please bring it forward.
 2 Dropping suspicion on the character of the
 3 expert witness, I don't think is appropriate
 4 unless you have facts to back it up. That's
 5 my comment.
 6 CHAIR:
 7 Q. Thank you. We were going to take a short
 8 break. We're going to take our break now,
 9 15 minutes.
 10 (BREAK 10:06 a.m.)
 11 (RESUME – 10:27 a.m.)
 12 CHAIR:
 13 Q. Okay, before we continue I do have one
 14 issue. It appears to us that there has been
 15 issue of independence raised with respect to
 16 Ms. Elliott and while we've allowed the
 17 issue to be canvassed, I'm not prepared to
 18 let that proceed. And if there's anything
 19 else that the Atlantic Provinces Trial
 20 Lawyers Association would like to raise with
 21 respect to that, it will have to be done in
 22 the way of a formal motion with supporting
 23 documentation evidence and we'll deal with
 24 it.
 25 MR. GITTENS:

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1 Q. We understand that to be ruling on your
 2 behalf, Madam Commissioner?
 3 CHAIR:
 4 Q. I'm just saying that any further examination
 5 of the issue of independence of our
 6 consultant will have to be done by way of
 7 formal motion with supporting evidence and
 8 documentation please.
 9 MR. GITTENS:
 10 Q. So, you are ruling that if we want to make
 11 any further issues on the independence that
 12 we make a formal application, do I
 13 understand that to be your -
 14 CHAIR:
 15 Q. Yes.
 16 MR. GITTENS:
 17 Q. Thank you. I'm wondering if we may have
 18 five minutes please because we have to
 19 decide what we are going to do about that
 20 ruling.
 21 CHAIR:
 22 Q. Are you going to continue with your
 23 questioning? We only have -
 24 MR. GITTENS:
 25 Q. Yes, we'd like to continue with the

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1 questioning, but we are asking for five
 2 minutes break so I can consult with a number
 3 of the other counsel to decide what we want
 4 to do about the ruling you have just made.
 5 STAMP, Q.C.:
 6 Q. We're going to break, Madam Chair if I might
 7 say, in an hour and a half anyway, I think
 8 the questioning should continue on the
 9 merits of the matters and let the discussion
 10 that my friend wants to have occur at 12:00.
 11 CHAIR:
 12 Q. I agree. There will be sufficient time. Do
 13 you have further questions on other areas
 14 for Ms. Elliott?
 15 MR. GITTENS:
 16 Q. Yes, we do.
 17 CHAIR:
 18 Q. Okay, well, could you continue with the
 19 questioning and then you can take up your
 20 discussions with other parties after.
 21 MR. GITTENS:
 22 Q. Very well, thank you.
 23 MASON, Q.C.:
 24 Q. Thank you, Madam Chair. Ms. Elliott, let's
 25 turn to page 7 of your report on

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1 profitability of insurers in Newfoundland,
 2 under operating expenses. And I just want
 3 to be clear that—and I read in the first
 4 sentence, “we use the average industry
 5 operating expenses cost as reported by IBC
 6 and GISA”. Yes?
 7 MS. ELLIOTT:
 8 Q. That's correct.
 9 MASON, Q.C.:
 10 Q. Alright. And so you've done no independent
 11 review of the operating expenses that have
 12 been supplied by the IBC to GISA, is that
 13 correct?
 14 MS. ELLIOTT:
 15 Q. That's correct.
 16 MASON, Q.C.:
 17 Q. Yes. And it's your understanding that when
 18 IBC submits that data to GISA, GISA accepts
 19 the data. It doesn't so any kind of
 20 independent review of the operating expenses
 21 either, does it?
 22 (10:30 a.m.)
 23 MS. ELLIOTT:
 24 Q. The expense information that is provided to
 25 IBC would be for each province, the

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1 information is submitted and those expenses
 2 reconciled tot the financial statement
 3 reports that are audited by an independent
 4 auditor for each company. So, there is
 5 that, if you will, check and balance to the
 6 total amounts that they would all sum and
 7 aggregate and be correct. And that then
 8 each are allocated to each province.
 9 MASON, Q.C.:
 10 Q. Right. So, but I guess my question wasn't
 11 clear, let me be clear. GISA doesn't do any
 12 type of independent review as to the
 13 appropriateness of the operating expenses,
 14 is that correct?
 15 MS. ELLIOTT:
 16 Q. No, it's my understanding that GISA uses IBC
 17 as its service provider to do a check and
 18 validation of all the data that is collected
 19 and compiled by them.
 20 MASON, Q.C.:
 21 Q. Okay. So, I'm not sure I understand what
 22 that means. Does GISA go out and actually
 23 inspect the company's books that have
 24 provided the data to the IBC to make sure
 25 that the operating expenses are appropriate?

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<p>1 MS. ELLIOTT: 2 Q. Well, there is a reconciliation of the data 3 that is submitted by the individual 4 companies that it reconciles. So, they 5 would submit information for each province, 6 so for automobile insurance and that 7 information is then reconciled and signed 8 off by their auditor that it is accurate and 9 correct. 10 MASON, Q.C.: 11 Q. But that's the company's auditor that does 12 that, correct, not GISA's auditor? 13 MS. ELLIOTT: 14 Q. Well, no, that would be the independent, say 15 Ernst and Young or PWC or whoever they hire. 16 MASON, Q.C.: 17 Q. Right. So, it's a fairly simple question 18 because I think the answer is pretty clear, 19 that GISA does not do their own independent 20 audit of the operating expenses. It relies 21 on the data provided by the company, 22 provided to the IBC which may be audited 23 independently by some other company, but 24 GISA itself doesn't do any type of 25 independent audit of that data, correct?</p>	<p>1 of 29.2 percent for operating expenses 2 through that timeframe. 3 MS. ELLIOTT: 4 Q. Um-hm. 5 MASON, Q.C.: 6 Q. My math may be off a little bit, I'm not an 7 actuary, but it looks essentially correct, 8 yes? 9 MS. ELLIOTT: 10 Q. Yes, sure, yeah. 11 MASON, Q.C.: 12 Q. And I ended up between 2013 and 2016 because 13 the expense ratio dropped and I understand 14 why it dropped--2e'll talk about that in a 15 second—but it dropped on average to 24.4 16 percent over that timeframe. 17 MS. ELLIOTT: 18 Q. Um-hm. 19 MASON, Q.C.: 20 Q. So, a difference of about 4.8 almost 5 21 percent, the expense ratio from 2007 to 2012 22 versus 2013 to 2016. And I believe in your 23 report you say that the expense ratio 24 dropped because of the way the insurance 25 companies—I don't know if it's GISA or the</p>
<p>Page 78</p> <p>1 MS. ELLIOTT: 2 Q. GISA doesn't—GISA is the general insurance 3 statistical agency and they contract through 4 to IBC to manage the collection of the 5 validation of data. 6 MASON, Q.C.: 7 Q. Right. And again, the IBC is the lobby 8 group for the insurers who is receiving this 9 data from the insurers, correct? 10 MS. ELLIOTT: 11 Q. That is one arm of IBC, yes, that's correct. 12 MASON, Q.C.: 13 Q. Okay. So, if we look at the operating 14 expenses at page seven of your report, we 15 see from 2007 to 2012, operating expenses 16 are an expense ratio. And the expense ratio 17 is a percentage, some kind of derivation of 18 a percentage of the premium, correct? 19 MS. ELLIOTT: 20 Q. Yes, it's those aggregate costs divided by 21 premium. 22 MASON, Q.C.: 23 Q. And we see 29.7 percent in '07 up to 2012, 24 28.1 percent. And I added those up and 25 average it and it worked out to an average</p>	<p>Page 80</p> <p>1 insurance companies or the IBC started 2 reporting that data. They did it—rather 3 than net expense, net premium, they went to 4 direct expense, direct premium, is that 5 right? 6 MS. ELLIOTT: 7 Q. Right. There was a change from a voluntary 8 reporting of expense information, a survey 9 approach to a required mandatory reporting. 10 MASON, Q.C.: 11 Q. Right. 12 MS. ELLIOTT: 13 Q. And that transition happened in that 14 timeframe, 2012/2013. 15 MASON, Q.C.: 16 Q. And that's what you say led to that drop, 17 was from 29.2 to 24.4 on average was that 18 change in reporting data, is that correct? 19 MS. ELLIOTT: 20 Q. We could, yes, attributed to that, yes. 21 MASON, Q.C.: 22 Q. Okay, thank you. Now, I've heard through 23 newspaper articles and so on from Mr. 24 Forgeron, his position and that the IBC's 25 position that Newfoundlanders pay the</p>

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1 highest auto insurance premiums in the
 2 country.
 3 MS. ELLIOTT:
 4 Q. Well, not in the country, but maybe in the
 5 Atlantic area.
 6 MASON, Q.C.:
 7 Q. Okay. So, I don't know if that's an empty
 8 sound bite on his part or not, but let's say
 9 he's right. Let's say that the highest
 10 premiums, auto insurance premiums are paid
 11 in Newfoundland. Would you agree with me
 12 that if a province has the highest premium
 13 where the expense ratio is based on a
 14 percentage of the premium, that in terms of
 15 operating expenses, you would expect the
 16 expense ratio to be lower in areas where the
 17 premium is higher?
 18 MS. ELLIOTT:
 19 Q. Yes, that's correct.
 20 MASON, Q.C.:
 21 Q. Makes sense, right, because –
 22 MS. ELLIOTT:
 23 Q. But I will—we should clarify that Ontario
 24 does have higher premiums than Newfoundland,
 25 is not the highest.

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1 MASON, Q.C.:
 2 Q. Okay, alright, well thank you for that.
 3 Thank you for that as well about the
 4 premium. So, if the premium is higher, the
 5 expense ratio should be a little bit lower
 6 because if we had, for example, if
 7 Newfoundland, I'm paying \$1,000.00 premium
 8 and there's a 30 percent operating expense,
 9 \$300.00 goes towards operating expenses. If
 10 I'm in Nova Scotia and I pay \$500.00 and we
 11 have the same operating expense at 30
 12 percent, they only get \$150.00, right. So,
 13 you would expect in Newfoundland that the
 14 percentage would be a little lower, right.
 15 MS. ELLIOTT:
 16 Q. Right, um-hm.
 17 MASON, Q.C.:
 18 Q. Okay, thank you. Now, in your report at
 19 page 7 you say under "discussion", you say,
 20 "while the commission expense ratio is
 21 specific for private passenger automobile
 22 and the premium tax rate is the same rate
 23 for all automobile risks, the reported costs
 24 under the other expense category are not
 25 specific to private passenger automobiles,

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1 but include commercial automobiles as well.
 2 As such, due to the more complex nature of
 3 some commercial automobile risks, the IBC
 4 total expense ratios may be slightly
 5 overstated for private passenger
 6 automobiles". Do you see that?
 7 MS. ELLIOTT:
 8 Q. Um-hm.
 9 MASON, Q.C.:
 10 Q. And if we look –
 11 MS. ELLIOTT:
 12 Q. Just for clarification, that's for the first
 13 five years.
 14 MASON, Q.C.:
 15 Q. Oh, is it the first—that's not—that doesn't
 16 continue to this day?
 17 MS. ELLIOTT:
 18 Q. No.
 19 MASON, Q.C.:
 20 Q. Okay, all right. Because I didn't see an
 21 adjustment for that in your figures when you
 22 were calculating what was an appropriate—or
 23 what was the return on equity of 2016 in
 24 Newfoundland.
 25 MS. ELLIOTT:

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1 A. Oh, the top of the next paragraph –
 2 MASON, Q.C.:
 3 Q. Right.
 4 MS. ELLIOTT:
 5 A. - we reference that it's specific to private
 6 passenger.
 7 MASON, Q.C.:
 8 Q. All right, okay, that's fair. Thank you.
 9 Now, Mr. Zubulake testified in Alberta in
 10 2005 at their rate review hearing. Were you
 11 a part of that process in Alberta in 2005?
 12 MS. ELLIOTT:
 13 A. I might have been in attendance at the
 14 meeting. I did not testify, and I would
 15 have been—participated in the writing of the
 16 report.
 17 MASON, Q.C.:
 18 Q. Right. And I guess in terms of expense
 19 ratios and operating expenses, you would
 20 anticipate that the expense ratio would be
 21 higher all things being equal, will be
 22 higher in provinces where the cost of living
 23 is a little higher than where it's lower.
 24 Yes?
 25 MS. ELLIOTT:

<p style="text-align: right;">Page 85</p> <p>1 A. In general. I mean there's some things—it 2 varies of course, the expense ratio. 3 MASON, Q.C.: 4 Q. Right. 5 MS. ELLIOTT: 6 A. The premium tax rate is higher in 7 Newfoundland than it is in Alberta. 8 MASON, Q.C.: 9 Q. Right. 10 MS. ELLIOTT: 11 A. And the commission rate for brokers is 12 standard at 12½ percent, plus a contingent 13 profit commission that they're allowed. So, 14 those parts are a big component of the 15 expense ratio. 16 MASON, Q.C.: 17 Q. Right. So, the commission expenses that 18 you're talking about, the broker commissions 19 that are being paid, those are the same 20 across the country, is that right or – 21 MS. ELLIOTT: 22 A. Well, that would be a standard for a broker. 23 MASON, Q.C.: 24 Q. Right, yes. 25 MS. ELLIOTT:</p>	<p style="text-align: right;">Page 87</p> <p>1 MASON, Q.C.: 2 Q. Okay. 3 MS. ELLIOTT: 4 A. That's fair to say. 5 MASON, Q.C.: 6 Q. All right. 7 MS. ELLIOTT: 8 A. But I don't know specifically. 9 MASON, Q.C.: 10 Q. So, Mr. Zubulake, who I know you have great 11 respect for, was your boss for a period of 12 time, testified—and I'm going to pull up the 13 Annual Industry Wide Adjustment Rates Basic 14 Coverage for Alberta, July 27th, 2005. 15 That's it. 16 MS. GLYNN: 17 Q. And we mark it. 18 MASON, Q.C.: 19 Q. Thank you. 20 MS. GLYNN: 21 Q. We'll mark that as Exhibit 6. 22 EXHIBIT ENTERED AT HEARING AND MARKED AS EXHIBIT NO. 6 23 MASON, Q.C.: 24 Q. Thank you. And if we go to page--this is 25 the decision of the Board back in 2005. If</p>
<p style="text-align: right;">Page 86</p> <p>1 A. A 12½ percent rate, yes. 2 MASON, Q.C.: 3 Q. Got you. 4 MS. ELLIOTT: 5 A. And I get the premium tax is tax—each 6 province, it varies a little bit, but in 7 terms of operating expenses, you would think 8 that if I'm in downtown Toronto, trying to 9 operate an insurance company, and my costs 10 might be greater than if I'm in Gander, 11 Newfoundland. Yes? 12 MS. ELLIOTT: 13 A. Yes, presumably that would be the case. 14 MASON, Q.C.: 15 Q. Right. 16 MS. ELLIOTT: 17 A. Yeah. 18 MASON, Q.C.: 19 Q. And I would think, look--you may have looked 20 at this, but in terms of in 2005, the cost 21 of living in Alberta would have been higher 22 than it was in Newfoundland during that 23 timeframe. Is that a fair statement? 24 MS. ELLIOTT: 25 A. I guess so. I don't—I assume, yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 you go to page 18, thank you, and if we look 2 under 4.4.1, there was a discussion of the 3 issue of expense provision. Do you see 4 that? 5 MS. ELLIOTT: 6 A. Um-hm. 7 MASON, Q.C.: 8 Q. And Mercer was who Mr. Zubulake worked for 9 at that particular time, I believe. Is that 10 correct? 11 MS. ELLIOTT: 12 A. Yes. 13 MASON, Q.C.: 14 Q. Okay, and – 15 MS. ELLIOTT: 16 A. The same entity, but different name. 17 MASON, Q.C.: 18 Q. Right, go you. Mercer selected an expense 19 provision of 23 percent, and you'll see 20 that's in the second line. As we go down a 21 couple of paragraphs, "Several presenters 22 expressed the view that the expense 23 provision selected by Mercer may be too 24 low." So, they were arguing that it should 25 be about 27 or even 28 percent. And the</p>

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1 Board, if we look at page 20 of this
 2 decision, and I'm happy if you want to
 3 review this, but page 20 of the decision,
 4 the bottom paragraph says, "The Board finds
 5 that Mercer's selection of a 23 percent
 6 expense provision to be reasonable."
 7 MS. ELLIOTT:
 8 A. Um-hm.
 9 MASON, Q.C.:
 10 Q. "And encourages the IBC the industry
 11 statistical agent be in a position to
 12 provide the Board and its actuary with more
 13 timely and complete expense information in
 14 the future." So, we know that in Alberta,
 15 the—Mr. Zubulake and the Board, where the
 16 cost of living is likely higher, concluded
 17 that a 23 percent expense ratio is
 18 appropriate. Now if we compare that to the
 19 chart we looked at in your report at page 7,
 20 the average was 29.2 percent and we're
 21 comparing apples and apples, because they
 22 were both under the regime at that time.
 23 MS. ELLIOTT:
 24 A. Um-hm, um-hm.
 25 MASON, Q.C.:

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1 Q. Net expenses that made for the—and direct
 2 expense made a difference in 2012, but we've
 3 got an average of 29.2 percent during that
 4 timeframe for 2007 to 2012 in Newfoundland,
 5 yet we have Mercer, Mr. Zubulake, your
 6 company, saying that 23 percent is the
 7 appropriate expense ratio?
 8 MS. ELLIOTT:
 9 A. Um-hm. Well, that, you know, clearly is the
 10 statement that was made, but in terms of
 11 Newfoundland, you know, another component is
 12 with a larger volume of premium, there are a
 13 larger base to spread the costs over. So,
 14 some of the differences that occur between
 15 the provinces is due to the volume of
 16 premium over the fixed expense of the
 17 salaries that are paid for the staff, the
 18 rent that they're paying, is the volume of
 19 premium that they are working with. There
 20 are fewer vehicles in Newfoundland than
 21 there would be in the Alberta. In Alberta
 22 they have a larger volume of premium that
 23 they're underwriting and handling, and that
 24 may contribute to a lower expense ratio as
 25 well.

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1 MASON, Q.C.:
 2 Q. So, is that the reason you did not advise
 3 this Board when you were looking at these
 4 expense ratios from 2007 to 2012 that it was
 5 much higher than the data that you looked at
 6 in a province where the cost of living is
 7 much higher or is higher at 23 percent?
 8 MS. ELLIOTT:
 9 A. Um-hm.
 10 MASON, Q.C.:
 11 Q. Is that the reason why you didn't advise the
 12 Board of that difference?
 13 MS. ELLIOTT:
 14 A. No, we're reporting on a presenting what the
 15 operating expense ratios were in hindsight,
 16 reported by the companies presenting that.
 17 This is the information that's reported by
 18 GISA. And as we discussed earlier, for the
 19 years 2012 and prior, it was under a
 20 different reporting structure where it was
 21 voluntary. Not all companies were
 22 reporting, and then there was a change as
 23 well to be mandatory and a different basis
 24 in the calculation. So, it wasn't my view
 25 that the information reported was flawed by

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1 what was reported to the companies and then
 2 compiled and reported by IBC through the
 3 GISA, that it was incorrect or flawed.
 4 There was a change, but it wasn't my
 5 understanding that it was incorrect.
 6 MASON, Q.C.:
 7 Q. Right, because that's a pretty big
 8 difference in terms of the –
 9 MS. ELLIOTT:
 10 A. Well, we –
 11 MASON, Q.C.:
 12 Q. Let me finish this, my question.
 13 MS. ELLIOTT:
 14 A. Um-hm.
 15 MASON, Q.C.:
 16 Q. For an expense ratio to be 23 percent at one
 17 province and 29.2 percent in the Province of
 18 Newfoundland, it's a big difference.
 19 MS. ELLIOTT:
 20 A. Well, it doesn't make the percentages of the
 21 expense ratio incorrect. It just makes them
 22 different.
 23 MASON, Q.C.:
 24 Q. Right, but does it make it reasonable I
 25 guess is the question.

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1 MS. ELLIOTT:
 2 A. No, it's not so much—we're not measuring—our
 3 report here is a hindsight look at the
 4 profit based on the reported data.
 5 MASON, Q.C.:
 6 Q. Right.
 7 MS. ELLIOTT:
 8 A. You may suggest that you find it high, but
 9 it is the amount that was reported, and we
 10 believe it to be correct. The issue of
 11 whether the expense ratio that's currently
 12 in the, sort of 25 percent range, whether
 13 that's reasonable or not, and are there
 14 alternatives suggested as to how to lower
 15 that expense ratio?
 16 MASON, Q.C.:
 17 Q. Yes.
 18 MS. ELLIOTT:
 19 A. That's a different discussion.
 20 MASON, Q.C.:
 21 Q. Right.
 22 MS. ELLIOTT:
 23 A. We're just presenting and reporting what it
 24 was.
 25 MASON, Q.C.:

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1 Q. Yes. I just would have thought because you
 2 presented across the country in different
 3 jurisdictions, so that we have an
 4 independent and thorough investigation, that
 5 you might raise with this Board and the
 6 parties here that, look, in other
 7 jurisdictions, the expense ratios are much
 8 lower than they are here, but you didn't
 9 feel that that was within your mandate or
 10 not necessary to do, is that right?
 11 MS. ELLIOTT:
 12 A. Well, I think there are components that
 13 cause the expense ratios to be different in
 14 different provinces. And certainly, the
 15 premium tax rate is one; the percentage of
 16 companies that operating in the province as
 17 either direct writers with lower commission
 18 acquisition costs versus broker-based
 19 companies, that can make a difference. So,
 20 and then, after that we're left with the
 21 cost of salaries and rent in the province.
 22 MASON, Q.C.:
 23 Q. Right, got you.
 24 MS. ELLIOTT:
 25 A. So, we're not—this is a hindsight review of

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1 what the profit was, and we've presented
 2 what the expense ratios were.
 3 MASON, Q.C.:
 4 Q. Right. And you've mentioned a few things
 5 there. In terms of the premium tax, you say
 6 that makes a difference, but in terms of the
 7 29.2 percent average that I've suggested,
 8 the premium tax makes up a very, very small
 9 part of that percentage. It's around three
 10 percent, isn't it?
 11 MS. ELLIOTT:
 12 A. No, it's four actually.
 13 MASON, Q.C.:
 14 Q. Four, okay. All right, four out of 29.
 15 It's a small part of—we know that the
 16 commissions as you've testified are
 17 generally the same right across the country.
 18 So, we're left with the operating expenses,
 19 the cost of the companies that operate in
 20 different jurisdictions, is really the
 21 factor that would make a difference between
 22 a 23 percent expense ratio in Alberta and a
 23 29.2 percent expense ratio in Newfoundland,
 24 correct?
 25 MS. ELLIOTT:

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1 A. And currently the expense ratio in 2015,
 2 we've got 23.9. 2016, 25.7. So, these are
 3 the most recent expense -
 4 MASON, Q.C.:
 5 Q. But that's because of the change though. I
 6 mean, I don't mean to interrupt you, but
 7 that's - the reason they came in
 8 significantly, as you testified just a few
 9 minutes ago, was because the way it was
 10 reported change.
 11 MS. ELLIOTT:
 12 A. It's more - it's private passenger specific.
 13 MASON, Q.C.:
 14 Q. Right, I got you. And it's direct versus
 15 net premium. That's what made the
 16 difference in terms of it going from 29.2 on
 17 average to 24.4 percent on average, right?
 18 MS. ELLIOTT:
 19 A. That contributes to the difference, yes.
 20 MASON, Q.C.:
 21 Q. Well, I think that's what you said in your
 22 report.
 23 MS. ELLIOTT:
 24 A. Yes, yes, yes. I said it.
 25 MASON, Q.C.:

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1 Q. Yeah. So, it's not fair to compare a 23
 2 percent return in Alberta in 2005 to an
 3 expense ratio in Newfoundland where the
 4 criteria of how it's measured have changed.
 5 MS. ELLIOTT:
 6 A. Well, I think that -- you're suggesting the
 7 comparison to Alberta. We could make
 8 comparisons to Ontario, Nova Scotia, New
 9 Brunswick as well. But, their expense
 10 ratios in those provinces, each of the
 11 provinces, the data all adds up together to
 12 make the total, which has been reconciled
 13 and data that is reviewed and signed off by
 14 an independent auditor. The fact that the
 15 costs are lower for this particular year
 16 that you're referring to, although I know
 17 it's higher now in Alberta than 23 percent,
 18 the fact that there is a difference is just
 19 a fact that there is a difference. It
 20 doesn't make the data that was reported at
 21 the time for those years wrong. It's just
 22 what they were. We're reporting on what it
 23 was and it has lowered since 2007. It's a
 24 lower expense ratio. So, albeit the number
 25 that was used in a prior report going back

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1 several years is lower, that's just a
 2 statement of fact. But other provinces
 3 would have other numbers that would be
 4 higher.
 5 MASON, Q.C.:
 6 Q. I'm not going to badger you on this. I just
 7 want to make sure I've got it right though
 8 because the difference between Alberta and
 9 Newfoundland, when we're looking at 2005,
 10 the 23 percent expense ratio, and the
 11 figures between 2007 and 2012, before -- in
 12 Newfoundland before they started reporting
 13 them differently, the expense ratio
 14 comprised of the premium tax rate, which is
 15 you said is around four percent in
 16 Newfoundland and maybe a little lower than
 17 that in Alberta. That's not the major
 18 component of a 29.4 percent expense ratio,
 19 of course. The broker fees are the same.
 20 They're 12 and a half percent. So, we're
 21 down to operating expenses as being the
 22 driver that makes a difference between
 23 Alberta and Newfoundland.
 24 MS. ELLIOTT:
 25 A. Yes.

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1 MASON, Q.C.:
 2 Q. Right. Would you agree with me on it?
 3 MS. ELLIOTT:
 4 A. And there's also a component for brokers for
 5 their contingent commission, which can be an
 6 additional two to three percentage points.
 7 MASON, Q.C.:
 8 Q. All right. But even if you add that two to
 9 three percent in, the different really is
 10 the operating expenses in Newfoundland
 11 versus the operating expenses in Alberta?
 12 MS. ELLIOTT:
 13 A. Right, and the smaller volume of business in
 14 the province may contribute to some extent
 15 to the higher.
 16 MASON, Q.C.:
 17 Q. Maybe. But that may be offset as well by
 18 the fact that the cost of living in Alberta
 19 is higher than it is in Newfoundland,
 20 correct?
 21 MS. ELLIOTT:
 22 A. Well, it's really a matter of the salaries
 23 that are paid to the people in Newfoundland
 24 versus Alberta.
 25 MASON, Q.C.:

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1 Q. Right.
 2 MS. ELLIOTT:
 3 A. I'm not sure about those differences amongst
 4 the provinces.
 5 MASON, Q.C.:
 6 Q. So, this Board, looking at this particular
 7 issue, they say "well, gosh, you know what,
 8 why do we not have operating expenses at 23
 9 percent?" Make a ruling like they did in
 10 Alberta and say 23 percent was appropriate.
 11 How do they find out -- how do they examine
 12 the reasonableness of those operating
 13 expenses if not through you?
 14 MS. ELLIOTT:
 15 A. Well, in terms of this report,
 16 this is a presentation of what the
 17 aggregated expenses are for private
 18 passenger for this review, albeit there was
 19 a merger or mixture with some commercial
 20 information, commercial auto for the older
 21 years due to the reporting structure.
 22 Individual companies, when they submit their
 23 rate application for the rates that they
 24 charge in this province, they need to
 25 provide support for their expense ratios and

<p style="text-align: right;">Page 101</p> <p>1 they would provide typically at least three 2 years of history of what those expenses are 3 and we would review that and look at what 4 the values are, see what their contingent 5 commission provision might be, their 6 expectation, what provision they have in 7 there, and then if it is supported, the 8 provision in that, we would make that 9 statement to the Board. So, these numbers 10 here are the aggregated that's been 11 reported. 12 MASON, Q.C.: 13 Q. I get you, yeah. 14 MS. ELLIOTT: 15 A. Which is not the same as what each 16 individual company submits to the Board for 17 review. 18 MASON, Q.C.: 19 Q. So, I think I follow you. So, what you're 20 saying is when they make a rate application, 21 individual insurer, that's the time where an 22 individual could come in and question those 23 operating expenses if they wanted to? 24 MS. ELLIOTT: 25 A. Yes, it can be questioned.</p>	<p style="text-align: right;">Page 103</p> <p>1 CHAIR: 2 Q. It may be. 3 MASON, Q.C.: 4 Q. Okay. I didn't know if it was on the - 5 MS. GLYNN: 6 Q. If you can tell us which document it is, we 7 might be able to find it. 8 MASON, Q.C.: 9 Q. All right. So, it's the decision, order of 10 the Board, Order No. A.I.1 (2005). 11 MS. GLYNN: 12 Q. It was 1, right, A - 13 MASON, Q.C.: 14 Q. Oh, sorry, yes. A - 15 MS. GLYNN: 16 Q. 1 (2005)? 17 MASON, Q.C.: 18 Q. A.I.1 19 MS. GLYNN: 20 Q. Thank you. 21 MASON, Q.C.: 22 Q. Thank you. 23 MS. GLYNN: 24 Q. We'll mark that as Exhibit 7. 25 MASON, Q.C.:</p>
<p style="text-align: right;">Page 102</p> <p>1 MASON, Q.C.: 2 Q. Right. But today we can't do that because 3 we have aggregate data, correct? 4 MS. ELLIOTT: 5 A. Yes, it is aggregated for the industry. 6 MASON, Q.C.: 7 Q. So, let me ask you this. You were involved 8 in 2005 in the Newfoundland review of 9 automobile insurance rates? Is that 10 correct? 11 MS. ELLIOTT: 12 A. Yes. 13 MASON, Q.C.: 14 Q. Yeah. And at that time, and I'm not sure if 15 this is in evidence, but it's a decision of 16 the Board. The Board found that the expense 17 ratio of 25 percent was appropriate. Do you 18 recall that? 19 MS. ELLIOTT: 20 A. Well, not off the top of my head, but - I 21 don't have the decision in front of me. 22 MASON, Q.C.: 23 Q. I have a copy of the decision. I thought 24 where this was a document of the Board that 25 it may be available, but -</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Okay. And I'm looking at page 18 of this 2 decision. 3 MS. GLYNN: 4 Q. I will note, Mr. Mason, that Ms. Elliott was 5 not provided with this document, so she may 6 need to take some time to review. 7 MASON, Q.C.: 8 Q. Oh yeah, sure, that's fine. So, if you can 9 look at page 18 of the decision. There we 10 go. If you can just scroll down a bit, it 11 says "after review, the Board finds" - in 12 bold print, do you see that, Ms. Elliott? 13 MS. ELLIOTT: 14 A. Um-hm. 15 MASON, Q.C.: 16 Q. "The Board finds that an expense ratio of 25 17 percent for the Total Operating Expense 18 Ratio is reasonable for use in the 2005 19 benchmark analysis", right? 20 MS. ELLIOTT: 21 A. Um-hm. 22 MASON, Q.C.: 23 Q. So, we didn't use - in your report, you 24 didn't use a 23 percent rate that was 25 recommended by your company in Alberta and</p>

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1 you didn't use the 25 percent rate that was
 2 recommended – or not recommended, but
 3 ordered by this Board in 2005, and I didn't
 4 see any reference in your report, in your
 5 analysis, of different rates that could have
 6 been imposed or used. I'm wondering why
 7 that is.

8 MS. ELLIOTT:
 9 A. We were presenting in this discussion the
 10 report, this part one, our understanding of
 11 what the actual expense costs were. So,
 12 albeit it could have been higher or lower
 13 than 25 percent, we were reporting what was
 14 provided to GISA and through IBC and
 15 published.

16 MASON, Q.C.:
 17 Q. Sure. So, let me just take you through
 18 this. So, if the average back in the 2005-
 19 2006 range, if the average – if it was a 23
 20 percent expense ratio or a 25 percent
 21 expense ratio versus the 29.2 percent
 22 expense ratio that we see from 2007 to 2012
 23 in Newfoundland and Labrador, according to
 24 your chart, you would agree with me that if
 25 all of the factors were kept the same that

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1 if we use a lower operating expense ratio or
 2 expense ratio, it's going to drive the
 3 return on equity up, correct?

4 MS. ELLIOTT:
 5 A. Yes, if the expense ratio – if you were to
 6 assume that it was lower than it actually
 7 was, as provided, then there would be an
 8 increase in the return on equity, yes.

9 MASON, Q.C.:
 10 Q. Right. So, if we say that – if we say that
 11 the appropriate expense ratio is 23 percent
 12 when we look at Alberta, if the Board said
 13 that, and you – and kind of transported that
 14 into today's world at 2016-2017, and we know
 15 that there's a different way that it's
 16 reported, and the difference constitutes a
 17 change of about 4.8 percent between before
 18 the change was made and after the change was
 19 made. So, if we say 23 percent is the
 20 expense ratio and we take 4.8 percent off of
 21 that, what is that, 18 – anyway, whatever
 22 the number is. If we use that as the
 23 expense ratio, are you able to calculate for
 24 me what the return on equity would be in
 25 Newfoundland based on all the other factors

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1 being the same; claims costs being the same,
 2 premium being the same and so on? Are you
 3 able to calculate that figure for me?

4 MS. ELLIOTT:
 5 A. Yes, not at – not right here, sitting here,
 6 but yes.

7 MASON, Q.C.:
 8 Q. All right. I know in some other utility
 9 review board hearings, I've asked the
 10 witness as an undertaking to do that
 11 calculation for me and they've agreed to do
 12 that. Is that something you're prepared to
 13 do; to calculate what it would be in terms
 14 of the return equity, if we use the exact
 15 same premium and claims costs and so on,
 16 what it would be in terms of a return on
 17 equity at 23 percent versus the 29.7 percent
 18 or 29.2 percent that I quoted in this
 19 figure?

20 MS. ELLIOTT:
 21 A. I'm prepared to complete any undertaking
 22 that the Board would request me to do.

23 MASON, Q.C.:
 24 Q. And it would be helpful, I think, as well,
 25 I'll put one more out there, is if you run

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1 it at 23 percent and also 25 percent that
 2 this Board had recommended in 2005 as an
 3 appropriate expense ratio.

4 CHAIR:
 5 Q. Mr. Mason, could I just suggest though, just
 6 to be clear for the record, could you
 7 actually put that undertaking in writing
 8 following today?

9 MASON, Q.C.:
 10 Q. I'm happy to do that, Madam Chair, sure.

11 CHAIR:
 12 Q. That would be a bit easier, make sure we all
 13 understand what's being asked and what Ms.
 14 Elliot is being requested to answer.

15 MASON, Q.C.:
 16 Q. And the reason that I'm asking that
 17 question, just so everybody is clear on it,
 18 if the expense ratio is lower and we keep
 19 all the other factors the same, the return
 20 on equity is going to improve for the
 21 insurers, right?

22 MS. ELLIOTT:
 23 A. Yes. So, you're asking to – in how I would
 24 view it is test an assumption. If it was
 25 this, what would it have been?

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1 MASON, Q.C.:

2 Q. Correct.

3 MS. ELLIOTT:

4 A. But in fact, it wasn't, but we can test

5 that.

6 MASON, Q.C.:

7 Q. All right. One of the other significant

8 factors in determining rate adequacy are

9 claims costs, yes?

10 MS. ELLIOTT:

11 A. Um-hm.

12 MASON, Q.C.:

13 Q. Sorry, you're nodding your head yes?

14 MS. ELLIOTT:

15 A. Yes, yes, yes, sorry.

16 MASON, Q.C.:

17 Q. Thank you. And the ultimate loss and

18 allocated adjusting expenses, that's

19 comprised of claims payouts and reserves?

20 Is that correct?

21 MS. ELLIOTT:

22 A. Yes, for older years, the claims get closer

23 to being completely settled and paid and

24 closed, the files close. In more recent

25 years, there are more estimates, referred to

Page 110

1 as reserve.

2 MASON, Q.C.:

3 Q. Right. And the data that's provided by auto

4 insurers in this province that goes to the

5 IBC, and then in turn is sent by the IBC to

6 GISA, is the data that you're relying upon

7 in determining the loss ratios – or sorry,

8 not the loss ratios, but the return on

9 equity in your calculations here? Is that

10 correct?

11 (11:00 a.m.)

12 MS. ELLIOTT:

13 A. Well, what we use is the paid amounts that

14 are reported, of course.

15 MASON, Q.C.:

16 Q. Right.

17 MS. ELLIOTT:

18 A. All this is reported. The amounts that are

19 set for each individual file, referred to as

20 a case reserve.

21 MASON, Q.C.:

22 Q. Right.

23 MS. ELLIOTT:

24 A. So, each individual file would have a

25 different estimate of what it will

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1 ultimately cost to close and settle that

2 file. So, those amounts are reported and

3 that's the data that we received and then we

4 use that aggregated data of all the

5 insurance companies together, the amounts

6 paid and the amounts by each – the case

7 adjuster that does the file, and we look at

8 that aggregated data and we make estimates,

9 is that an aggregate sufficient or

10 insufficient for when all the claims are

11 closed and settled for a particular accident

12 year. And we would adjust that amount,

13 those totals paid in the case reserve for

14 any change in that amount for when the claim

15 is filed, closed and settled. We refer to

16 that as an IBNR, the actual reserve. So,

17 we're looking at that, Oliver Wyman, and

18 estimating that.

19 MASON, Q.C.:

20 Q. So, what you're looking at when you're

21 preparing your charts is you're looking at

22 the case reserve that's being provided by

23 the adjuster on the file?

24 MS. ELLIOTT:

25 A. Um-hm.

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1 MASON, Q.C.:

2 Q. And – but, you're not looking at the

3 supplemental reserve that's being put on the

4 aggregate data by the IBC before it goes to

5 GISA?

6 MS. ELLIOTT:

7 A. There's no aggregated supplemental reserve

8 that goes to GISA.

9 MASON, Q.C.:

10 Q. Is that the way it's always been?

11 MS. ELLIOTT:

12 A. Yes. The companies report for each

13 individual claim file the amount paid on

14 that file and the case reserve as set by the

15 adjuster on that file.

16 MASON, Q.C.:

17 Q. All right. I'm going to take you through

18 the constitutional challenge, part of the

19 transcript between – a cross-examination

20 between myself and Mr. Zubulake. I'm

21 looking at page 10-010.

22 MS. GLYNN:

23 Q. Exhibit 5, Mr. Mason, the discussion

24 document?

25 MASON, Q.C.:

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1 Q. Thank you.

2 MS. GLYNN:

3 Q. Is this the correct document?

4 MASON, Q.C.:

5 Q. No, it would be the transcript from the

6 cross-examination.

7 MS. KEAN:

8 Q. October 15, 2008?

9 MASON, Q.C.:

10 Q. That's it, yes. Thank you. And it's page -

11 MS. GLYNN:

12 Q. Okay. So, this is a new exhibit actually

13 then. So, this would be marked as Exhibit

14 8.

15 MASON, Q.C.:

16 Q. Thank you. Looking at page 10-10. All

17 right. So, there's a question, about a

18 quarter of the way up, between Mr. Zubulake

19 and myself.

20 "Okay. And as I understand your

21 evidence, when this information was provided

22 by the insurance companies to the IBC, the

23 claims cost data that is, the IBC's actuary

24 actually reviews the claims cost data?

25 That's correct. Reviews, I call them

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1 reserves? Yes, I didn't want to use that

2 term", he said. I say "reserves. Okay.

3 And I understand from your evidence the

4 IBC's actuary can increase or reduce those

5 reserves, correct? Well, to answer that

6 question, let me just take a step back. All

7 right. The companies report to - there are

8 two types of reserves, as you put it. When

9 a claim is reported to a company, it's

10 assigned to a claim adjuster and that claim

11 adjuster estimates what he thinks the

12 company - he or she thinks the company is

13 going to pay out on that claim and that's

14 done for each and every claim that's

15 reported to an insurance company by the

16 policy holders."

17 That's what you've referred to so far

18 in your evidence, yes?

19 MS. ELLIOTT:

20 A. Um-hm.

21 MASON, Q.C.:

22 Q. He said "that reserve is referred to a

23 reserve - or it's referred to as the case

24 reserve or the claim reserve." I believe

25 you used similar language. And I said "yes.

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1 We know actuaries know from the work that we

2 do, that an aggregate, the claim reserve set

3 out by individual claim adjusters tends to

4 be too low, inadequate. It doesn't fully

5 provide for the claims costs that the

6 companies are going to actually have to pay

7 out on those claims and so, what actuaries

8 do is they actually calculate what we - what

9 I'll call an actuarial reserve, a

10 supplemental reserve that is an addition to

11 the sum of all the claim reserves."

12 Now, I just want to stop there for a

13 minute because I read your evidence, I

14 believe it was Monday or Tuesday, and you

15 were saying that the reserve sometimes comes

16 down?

17 MS. ELLIOTT:

18 A. For some lines of business, yes.

19 MASON, Q.C.:

20 Q. Yeah. Have you ever seen that in

21 Newfoundland where the actuarial reserve or

22 the supplemental reserve has gone down for

23 auto insurance in Newfoundland over let's

24 say the last five years?

25 MS. ELLIOTT:

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1 A. Well, certainly for some coverages.

2 Collision would be a good example. For

3 bodily injury that might happen out at the

4 tail end, you know, ten years out, long

5 periods of time. But for more recent years,

6 it would be an addition and some of the

7 older accident years, it could be, you know,

8 slightly less than one.

9 MASON, Q.C.:

10 Q. Okay. So, just so I'm clear on this, I said

11 the last five years, are you aware, in terms

12 of bodily injury private passenger auto

13 where the claims - sorry, the supplemental

14 reserve has been reduced?

15 MS. ELLIOTT:

16 A. I don't - no, I don't remember that. It's

17 possible, plausible, but it doesn't come to

18 mind.

19 MASON, Q.C.:

20 Q. Because Mr. Zubulake certainly makes it

21 sound like it seldom happens.

22 MS. ELLIOTT:

23 A. Yeah, right. It would be typically greater

24 than one than less than one, but it's

25 possible.

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1 MASON, Q.C.:

2 Q. But again, in terms of Newfoundland and

3 claims reserves or supplemental claims

4 reserves, we've only seen increases in the

5 supplemental claims reserves over the past

6 five years, not decreases with respect to

7 bodily injury claims? Is that right?

8 MS. ELLIOTT:

9 A. That would be typical, right. Typically, it

10 would be an add-on for years, five years or

11 less.

12 MASON, Q.C.:

13 Q. All right. And if we carry on, he says "and

14 now to get to your question, what the

15 companies report to IBC as their claim

16 reserve, the case reserve estimates they do

17 not report to IBC. They're supplemental

18 actuarial reserves. It's the actuarial

19 reserve estimate, that supplemental reserve

20 with IBC, is what IBC's actuary estimates."

21 Right?

22 MS. ELLIOTT:

23 A. Right. So, IBC makes their estimate.

24 MASON, Q.C.:

25 Q. Right.

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1 MS. ELLIOTT:

2 A. And Oliver Wyman, we make our estimate.

3 MASON, Q.C.:

4 Q. I got you on that, okay. I'm just trying to

5 get the flow of the data here because what

6 happens is the case reserve is put on by the

7 adjuster at the claims level.

8 MS. ELLIOTT:

9 A. Um-hm.

10 MASON, Q.C.:

11 Q. The IBC puts a supplemental reserve on the

12 figures that comes before it that typically

13 is always higher on bodily injury claims and

14 that data goes off to GISA, right?

15 MS. ELLIOTT:

16 A. No, no. No, you have that wrong.

17 MASON, Q.C.:

18 Q. All right.

19 MS. ELLIOTT:

20 A. The data that goes to GISA is the amount

21 that is paid on that individual claim file,

22 paid for lost wages or whatever the item is,

23 the amounts paid. The case – the adjuster

24 that's working on that file, their estimate

25 of what it will be when it ultimately all

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1 closed and settled, that is the data that

2 goes to IBC.

3 MASON, Q.C.:

4 Q. Right.

5 MS. ELLIOTT:

6 A. Then that aggregated data is looked at by

7 IBC's actuary -

8 MASON, Q.C.:

9 Q. Right.

10 MS. ELLIOTT:

11 A. - independently, to evaluate what they think

12 will ultimately be the total amount when all

13 claims are settled and closed for that

14 accident year. IBC's actuary does that

15 independently. Oliver Wyman, myself, we

16 also do that independently. So, we look at

17 the amounts that have been paid. We look at

18 the case reserve that's set on that

19 individual file. We take that information

20 and then we, Oliver Wyman, create this

21 additional actuarial reserve, supplemental

22 reserve.

23 MASON, Q.C.:

24 Q. Okay.

25 MS. ELLIOTT:

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1 A. Separately from IBC.

2 MASON, Q.C.:

3 Q. But if we read what Mr. Zubulake -

4 MS. ELLIOTT:

5 A. I know what – I know what he said.

6 MASON, Q.C.:

7 Q. Okay, but -

8 MS. ELLIOTT:

9 A. And I'm telling you what he – this is what

10 he was trying to express to you. Things

11 have not changed since then. That is how it

12 works.

13 MASON, Q.C.:

14 Q. Okay, thank you. He says "I've got you".

15 As we carry on in this conversation or

16 discussion I'm having with him, "I think

17 I've got it. Okay", he says. "So, we've

18 got the claim reserve that's set by an

19 adjuster that historically is too low?

20 Yeah. And then you've got the – is it the

21 IBC's actuary that puts in the supplemental

22 reserve? Only for the purposes of the

23 reporting, the numbers that are reported to

24 GISA."

25 MS. ELLIOTT:

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1 A. In the exhibits that are published.
 2 MASON, Q.C.:
 3 Q. Right.
 4 MS. ELLIOTT:
 5 A. So, they produce an exhibit that would
 6 include IBC's estimate of this supplemental
 7 actuarial reserve, a bulk number. It's not
 8 case specific. It's not claimant specific.
 9 MASON, Q.C.:
 10 Q. Right.
 11 MS. ELLIOTT:
 12 A. IBC does that. They do their work. We take
 13 the data and do our own work independently
 14 from the IBC's actuary and we calculate our
 15 estimate of the sort of bulk supplemental
 16 reserve.
 17 MASON, Q.C.:
 18 Q. Yeah, I got you on that. And that's – but
 19 in terms if I went on GISA right now, looked
 20 at the GISA data, that would include the
 21 claims reserve put on by the adjuster and it
 22 would include the aggregate or supplemental
 23 reserve that's put on by the IBC's actuary,
 24 correct?
 25 MS. ELLIOTT:

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1 A. Well, we didn't use that, but -
 2 MASON, Q.C.:
 3 Q. Okay. Well, we'll talk about that in a
 4 minute. But that's what I would find on
 5 GISA, both the case reserve and the
 6 supplemental reserve, correct?
 7 MS. ELLIOTT:
 8 A. On?
 9 MASON, Q.C.:
 10 Q. On the data on GISA?
 11 MS. ELLIOTT:
 12 A. On a published report that indicates that it
 13 includes such provision, yes.
 14 MASON, Q.C.:
 15 Q. Right. And just to cement this issue in
 16 terms of reserves, supplemental reserve by
 17 the IBC's actuary going up, if we look at
 18 page 10-13, "I've got a question. Okay,
 19 then" – okay, we'll wait until it's pulled
 20 up here. About halfway down, "okay, and
 21 then it would go to the IBC's actuary who
 22 has rein to increase or in theory, decrease
 23 the reserves, right? In theory, but again,
 24 as I said, typically the reserves and
 25 aggregate are too low, so it is usually the

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1 case, it's the reserves that's put up by the
 2 IBC actuary in this case tends to increase
 3 the numbers that are coming into GISA."
 4 And so, I think I understand what
 5 you're saying. He's saying if I looked at
 6 the published data at GISA, it would include
 7 the claims reserve and the supplemental
 8 reserve by the IBC's actuary. But you did
 9 your own kind of review of the supplemental
 10 reserve before you prepared some of these
 11 documents? Is that correct?
 12 MS. ELLIOTT:
 13 A. We looked at the data that had been paid and
 14 the case reserves that are set and then did
 15 our own review of the supplemental reserve.
 16 MASON, Q.C.:
 17 Q. All right, okay. And when I look at your
 18 report, the attachments at the end of your
 19 report, there are two different documents
 20 that I see. I see Newfoundland and Labrador
 21 private passenger auto retrospective review?
 22 MS. ELLIOTT:
 23 A. Um-hm.
 24 MASON, Q.C.:
 25 Q. You see that?

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1 MS. ELLIOTT:
 2 A. Um-hm.
 3 MASON, Q.C.:
 4 Q. Is that the GISA data?
 5 MS. ELLIOTT:
 6 A. Well, the earned premiums and the cars, that
 7 would be provided to us by GISA.
 8 MASON, Q.C.:
 9 Q. And the ultimate loss is -
 10 MS. ELLIOTT:
 11 A. That would be our estimate.
 12 MASON, Q.C.:
 13 Q. That's yours.
 14 MS. ELLIOTT:
 15 A. Using the amounts that have been provided
 16 that are paid, the amounts that are set by
 17 the individual case adjuster, what their
 18 estimate is, and then our supplemental
 19 reserve would be applied to that.
 20 MASON, Q.C.:
 21 Q. Because then if I go through in subsequent
 22 pages, I see a retrospective review from
 23 2000 – sorry, I see a prospective review.
 24 MS. ELLIOTT:
 25 A. Appendix B?

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1 MASON, Q.C.:

2 Q. Yeah, the same – well, five pages in.

3 MS. ELLIOTT:

4 A. Um-hm.

5 MASON, Q.C.:

6 Q. And I thought when I was reviewing that that

7 the retrospective was the GISA data and the

8 prospective was your analysis.

9 MS. ELLIOTT:

10 A. No, no, the first Appendix A is in reference

11 to our Part 2 of the report where we look at

12 the most recent five years, 2012 to 2016, to

13 look at what our estimate, Oliver Wyman’s

14 estimate, of the required premium by

15 coverage compared to what the premiums

16 charged actually were, and then in Appendix

17 B, Part 3, we are trying to forecast what

18 2017 would be, but again it’s Oliver Wyman’s

19 estimate of the reserves.

20 MASON, Q.C.:

21 Q. Got you. I think I follow you, okay. So

22 you would agree with me that as claims cost

23 and reserves go up, if we hold the other

24 factors, equal premiums and operating

25 expenses, as they go up the return on equity

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1 is going to go down, correct?

2 MS. ELLIOTT:

3 A. Yes, there’s a – if it’s underestimated what

4 the losses will be and then in hindsight

5 looking back if the losses are more than

6 were expected for what the premium was

7 charged, then it would be lower than what

8 the profit provision included in those rates

9 when they were set.

10 MASON, Q.C.:

11 Q. Thank you for that, and the opposite is

12 true, that if the claims cost – well, not so

13 much the claims cost because they’ve been

14 paid out, but if the reserves, the

15 supplemental reserve of the case reserve, is

16 too high as history may show, we keep the

17 other factors steady, premiums and operating

18 expenses, then what’s going to happen those

19 claims costs are going to come down and the

20 return on equity is going to be better,

21 correct?

22 MS. ELLIOTT:

23 A. So the claims cost terminology, just to be

24 clear, it includes all amounts, whether

25 they’re paid or reserved. It’s an all

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1 encompassing terminology, but when rates are

2 set, if in hindsight the losses are less

3 than anticipated –

4 MASON, Q.C.:

5 Q. Right.

6 MS. ELLIOTT:

7 A. When those premiums were set, then there

8 will be more allowed, if you will, that will

9 flow into profit, and if they are higher

10 than estimated when those premiums were set,

11 then they will be less.

12 MASON, Q.C.:

13 Q. Got you, and in Nova Scotia, we know, and we

14 can go through this documentation, we know

15 that the estimates for the supplemental

16 reserve and the case reserves were too high

17 in 2002, 2001 and 2002, when Mr. Zubulake

18 was testifying before the Utility Review

19 Board, correct?

20 MS. ELLIOTT:

21 A. Yes, the premiums that were set were based

22 on an estimate of losses that in hindsight

23 showed to be too high. The ultimate loss

24 ratios were less than initially anticipated.

25 (11:15 a.m.)

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1 MASON, Q.C.:

2 Q. And you’ll remember, Ms. Elliott, back in

3 2001/2002 at the Nova Scotia Utility Review

4 Board, that it was – I believe the trial

5 lawyers, a coalition for injured workers,

6 had made the argument that the premiums –

7 sorry, not the premiums, the claims cost,

8 sorry, reserves were too high at that time

9 and the Board did not accept that evidence?

10 MS. ELLIOTT:

11 A. Yeah, and so I think it’s – I do recall

12 that, yes, and the issue is that the

13 premiums that are set today if a rate filing

14 comes in in 2018, that may apply to premiums

15 that are being sold in 2019 into 2000, with

16 the lapse, you know, of implementation time,

17 and today the – only about a week ago, the

18 full year, 2017, data is available. So

19 often they are using data from 2016. There

20 could be a year, a year and a half gap with

21 the data. So there’s quite a large window

22 of time looking forward for rate setting

23 using data that’s older, so as a result the

24 estimates sometimes are close and other

25 times they’re too high, and other times too

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1 low.
 2 MASON, Q.C.:
 3 Q. Yeah, and Nova Scotia, it's fair to say that
 4 the estimates that were provided, because at
 5 the Utility Review Board, Mr. Zubulake was
 6 arguing that there was a requirement for
 7 another 10 to 20 percent rate increase in
 8 order to establish a fair rate of return for
 9 insurers in the province back in 2002?
 10 MS. ELLIOTT:
 11 A. Yes, and at that time, and I think the graph
 12 really tells – you know, a picture tells a
 13 thousand words, there was a very steep
 14 decline in the number of claims that were
 15 ultimately reported. It was not anticipated
 16 that the total losses, because there were so
 17 many fewer claims, would be the result, and
 18 so the premiums were, in hindsight, too
 19 high. It didn't anticipate the drop in the
 20 number of claims before the minor injury
 21 reform, and the continued drop in the number
 22 of claims after the reform, and then that
 23 continued drop in the frequency rate.
 24 MASON, Q.C.:
 25 Q. I've heard you talk about that, the

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1 continuous drop in claims frequency is what
 2 you're getting at?
 3 MS. ELLIOTT:
 4 A. Uh-hm.
 5 MASON, Q.C.:
 6 Q. After the cap was brought in place in Nova
 7 Scotia in November of 2003?
 8 MS. ELLIOTT:
 9 A. Yes, Nova Scotia, New Brunswick, and other
 10 provinces, including Newfoundland, there's
 11 been a drop, a decline in frequency rate,
 12 yes.
 13 MASON, Q.C.:
 14 Q. When you talked about it yesterday, you
 15 talked about the sharp decline in claims
 16 cost, and as I – based on claims frequency,
 17 the sharp decline in claims frequency that
 18 continued to occur after the cap was placed
 19 in Nova Scotia on November 1st, 2003. I
 20 think that's what you were testifying to
 21 yesterday, is that right?
 22 MS. ELLIOTT:
 23 A. Yes, graphically it's there, yeah.
 24 MASON, Q.C.:
 25 Q. Can we pull that graph up from your report?

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1 I believe it was at –
 2 MS. GLYNN:
 3 Q. Did you want the graph from her report or
 4 the graph that includes Newfoundland?
 5 MASON, Q.C.:
 6 Q. Her report, please. The graph I'm looking
 7 at is at page 22.
 8 MS. GLYNN:
 9 Q. I think we have it there on the screen now,
 10 Mr. Mason.
 11 MASON, Q.C.:
 12 Q. And this is an extremely difficult graph to
 13 read, I must tell you that I almost lost my
 14 eyesight last night trying to go through it,
 15 but if we look at this particular graph, it
 16 appears that in – if we're looking at Nova
 17 Scotia, what I'm looking at is Nova Scotia,
 18 and if we look at June, 2001 for Nova
 19 Scotia, it's the dark turquoise or blue
 20 line, we see a fairly significantly high
 21 claims frequency. It's around 8. Do you
 22 see that?
 23 MS. ELLIOTT:
 24 A. Uh-hm.
 25 MASON, Q.C.:

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1 Q. Are you able to make that out? All right.
 2 Then if we go to December of 2001, we see a
 3 decrease in Nova Scotia. It's about maybe
 4 7.5.
 5 MS. ELLIOTT:
 6 A. Yeah.
 7 MASON, Q.C.:
 8 Q. Do you see that?
 9 MS. ELLIOTT:
 10 A. Uh-hm.
 11 MASON, Q.C.:
 12 Q. And then if we go to December, 2003 – June
 13 of 2002, we see a little uptake, not much.
 14 This is all pre-cap, right?
 15 MS. ELLIOTT:
 16 A. Yes.
 17 MASON, Q.C.:
 18 Q. Go to December, 2002, we see another drop.
 19 Do you see that?
 20 MS. ELLIOTT:
 21 A. Yes.
 22 MASON, Q.C.:
 23 Q. All right. In June, 2003, we see a
 24 significant drop. Do you see that?
 25 MS. ELLIOTT:

<p style="text-align: right;">Page 133</p> <p>1 A. Uh-hm. 2 MASON, Q.C.: 3 Q. And then it appears that the number kind of 4 levels out. It goes up a little bit in 5 December, 2004, and then kind of peters out 6 after that, consistent with what's going on 7 in Newfoundland and New Brunswick at that 8 particular point? 9 MS. ELLIOTT: 10 A. Uh-hm. 11 MASON, Q.C.: 12 Q. What I'd suggest to you is, based on this 13 particular graph, we actually see an 14 increase in claims frequency happening as 15 early as 2001, and we see that it appears to 16 me that the claims frequency has flattened 17 out by December, 2003? 18 MS. ELLIOTT: 19 A. I don't believe the claims frequency 20 flattened out. It continued to decline. 21 MASON, Q.C.: 22 Q. At a very slow level? 23 MS. ELLIOTT: 24 A. Well, the number in June, 2008, is 25 significantly lower than it was in –</p>	<p style="text-align: right;">Page 135</p> <p>1 MS. ELLIOTT: 2 A. Well, if I can explain my point on the other 3 graph. 4 MASON, Q.C.: 5 Q. Okay, go ahead, sure. 6 MS. ELLIOTT: 7 A. So you can see that prior, to the left of 8 the thick grey line, there was a period from 9 the second half of '98, a period of somewhat 10 flat, but up and down, but certainly a peak 11 for both New Brunswick and Nova Scotia, and 12 in both provinces there was a decline in the 13 frequency rate prior to the effective date 14 of the introduction of the reforms, but it's 15 important to remember that those reforms 16 were introduced based on data that was 17 available in the 2001 period when those 18 studies were being done. So at that time 19 there wasn't the advantage of hindsight to 20 see that a decrease in the frequency rate 21 was coming that was not clear from the data 22 prior to 2002. It declined before the 23 reforms and continued to decline pretty 24 steeply for both Nova Scotia and New 25 Brunswick after the reforms, and has</p>
<p style="text-align: right;">Page 134</p> <p>1 MASON, Q.C.: 2 Q. Consistent with what was going on in the 3 provinces, but, I guess, my point is this, 4 you talked about the importance of the sharp 5 decline that you missed in 2003. The sharp 6 decline actually happened well in advance of 7 the cap coming in place in November, 2003? 8 MS. ELLIOTT: 9 A. Oh, I agree, yes, it did. 10 MASON, Q.C.: 11 Q. In fact, if you look, I mean, it appears 12 that sharp decrease, if not stopped, has 13 slowed significantly by December, 2003, just 14 one month after the cap came in place? 15 MS. ELLIOTT: 16 A. Well, there are many factors that affect it. 17 I mean, we look at more than just one data 18 point, and there is seasonality, it goes up 19 and down just like prior to the – if we look 20 at the page, if we could, the pie graph on 21 page – 22 MASON, Q.C.: 23 Q. Well, let's just stay on this one for a 24 minute, if we can, but do you agree with me 25 that –</p>	<p style="text-align: right;">Page 136</p> <p>1 continued to decline since the reforms. 2 MASON, Q.C.: 3 Q. Yeah. The part that I'm focused on, just so 4 we're clear on this, and maybe we just don't 5 have an agreement and it's up to the Board 6 to look at this graph, but it certainly 7 appears to me that sharp decline you're 8 talking about occurs almost exclusively 9 before the cap comes in place in November, 10 2003, that sharp decline? 11 MS. ELLIOTT: 12 A. Well, it's a very sharp decline, I agree 13 fully with you, before the reforms were 14 introduced and it's more marked, the 15 decline, after the reforms in New Brunswick, 16 but both declined after the reforms. 17 MASON, Q.C.: 18 Q. All right. We'll leave that for a minute, 19 okay. So in terms of the supplemental 20 reserve that we talked about – we talked 21 about the claim reserve and the supplemental 22 reserve, and you performed your own analysis 23 in determining what was an appropriate 24 supplemental reserve in determining the data 25 that's here before us today to contemplate</p>

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1 what are the claims payouts as we move
 2 forward, is that correct?
 3 MS. ELLIOTT:
 4 A. Yes.
 5 MASON, Q.C.:
 6 Q. All right, and as I understood your evidence
 7 I heard yesterday, you've estimated that
 8 claims payouts or claim severity, sorry,
 9 claim severity, is going to increase or has
 10 increased at 7 percent per year and it's
 11 going to continue to increase at 7 percent
 12 per year?
 13 MS. ELLIOTT:
 14 A. Well, our measurement is looking to the
 15 past, what has occurred, and barring any
 16 changes, we would expect that the past would
 17 predict the future, so, yes.
 18 MASON, Q.C.:
 19 Q. So how long have claims severity been
 20 increasing in this province at the rate of 7
 21 percent per year?
 22 MS. ELLIOTT:
 23 A. Well, that's an average number, and the
 24 timeline is likely over a period since 2004,
 25 so I don't –

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1 MASON, Q.C.:
 2 Q. Since 2000.
 3 MS. ELLIOTT:
 4 A. The timeline would be at least over the last
 5 five years. I'd have to open our – I'd have
 6 to refresh the basis for the 7 percent, but
 7 it would be a number of years.
 8 MASON, Q.C.:
 9 Q. Okay.
 10 MS. ELLIOTT:
 11 A. There would be some years that it would be
 12 higher, lower, but it's been increasing.
 13 MASON, Q.C.:
 14 Q. And part of that 7 percent that you're
 15 looking at is the claims reserve that's
 16 going up?
 17 MS. ELLIOTT:
 18 A. Uh-hm.
 19 MASON, Q.C.:
 20 Q. And the supplemental reserve that's being
 21 put onto the file, is that correct, or put
 22 onto the aggregate data?
 23 MS. ELLIOTT:
 24 A. It would be what we applied to the data,
 25 yes, our estimate of what is –

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1 MASON, Q.C.:
 2 Q. Right, and that's how we arrive at a 7
 3 percent increase in claim severity?
 4 MS. ELLIOTT:
 5 A. Yes, and we do look at excluding the most
 6 recent year because that data can be more
 7 volatile and subject to change as the
 8 reserves may change for the more recent
 9 years.
 10 MASON, Q.C.:
 11 Q. Right.
 12 MS. ELLIOTT:
 13 A. So we test it in many different ways. We
 14 also test, you know, looking at over a
 15 period of time how it– so many, many
 16 different ways in coming up with our 7
 17 percent estimate.
 18 MASON, Q.C.:
 19 Q. So when you're looking at the 7 percent
 20 increase in claim severity, you exclude
 21 2016, is that right?
 22 MS. ELLIOTT:
 23 A. We will test with and without that year,
 24 yes.
 25 MASON, Q.C.:

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1 Q. Did you exclude 2016 when you did your
 2 calculations for rate adequacy in this
 3 province, did you exclude the claims
 4 reserves and claims payouts for that
 5 particular year?
 6 MS. ELLIOTT:
 7 A. Well, we did look at – yes, effectively, we
 8 did because we looked at the data. In
 9 Appendix B, we looked at the data using the
 10 fiscal year ending June 30th, 2017, and then
 11 in Appendix B, sheet 2 of 3, June, 2015,
 12 ending June, 2016, and ending June, 2017, so
 13 we did go back in time and see what those
 14 results were for forecasting 2017, so
 15 excluding the most recent data, the answer
 16 is yes, yeah.
 17 MASON, Q.C.:
 18 Q. So a 7 percent increase in claim severity
 19 over the past several years?
 20 MS. ELLIOTT:
 21 A. Uh-hm.
 22 MASON, Q.C.:
 23 Q. And one thing I didn't see in here was the
 24 actual dollar amount. I saw cost per car,
 25 but I didn't see dollar amount. Why didn't

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1 you provide that information?
 2 MS. ELLIOTT:
 3 A. I'm sorry, what did you –
 4 MASON, Q.C.:
 5 Q. When I look at your exhibits that are
 6 attached to your report, you put in cost per
 7 car under the ultimate loss and allocated
 8 expenses, adjustment expenses.
 9 MS. ELLIOTT:
 10 A. Uh-hm.
 11 MASON, Q.C.:
 12 Q. But you don't put in the actual dollar
 13 amounts, cost per car, is that right?
 14 MS. ELLIOTT:
 15 A. That is a dollar amount.
 16 MASON, Q.C.:
 17 Q. Okay, but, I guess, what I'd have to do is
 18 add up – or multiply the number of cars by
 19 the cost per car, is that right?
 20 MS. ELLIOTT:
 21 A. I don't understand your question.
 22 MASON, Q.C.:
 23 Q. Is it 100 million dollars that's being paid
 24 out that you've reserved in claims payouts
 25 for 2016/2017? Is it 200 million dollars,

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1 the gross data?
 2 MS. ELLIOTT:
 3 A. Oh, I see what you're asking. We could show
 4 that information to you if you wanted to
 5 know.
 6 MASON, Q.C.:
 7 Q. Yeah, I'd like to see that, if I could, and
 8 can we get that information going back, of
 9 course your data, that you provided, did you
 10 look at GISA data as well?
 11 MS. ELLIOTT:
 12 A. Yeah, we could pull GISA data up for you.
 13 MASON, Q.C.:
 14 Q. Can you? And can we go back more than 5
 15 years, can we go back 10 years like you've
 16 done for your reporting purposes?
 17 MS. ELLIOTT:
 18 A. I think so.
 19 MASON, Q.C.:
 20 Q. All right, I'd ask for that information if I
 21 could get it.
 22 MS. ELLIOTT:
 23 A. Yeah, I think Sarah should be able to –
 24 MASON, Q.C.:
 25 Q. I can put that in writing to the Board if

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1 that would be –
 2 MS. GLYNN:
 3 Q. You want that provided as an undertaking?
 4 You don't need it brought up here today, is
 5 that correct, Mr. Mason?
 6 MASON, Q.C.:
 7 Q. Pardon me?
 8 MR. GITTENS:
 9 Q. I think (inaudible).
 10 MS. GLYNN:
 11 Q. I'm asking that you want that information as
 12 an undertaking to be provided, you don't
 13 need us to bring that –
 14 MASON, Q.C.:
 15 Q. Yes. Not today, yeah, I don't need it
 16 today, that's fine, thank you.
 17 MS. GLYNN:
 18 Q. Thank you.
 19 CHAIR:
 20 Q. And he's going to put that in writing.
 21 MS. GLYNN:
 22 Q. And you will put the undertaking in writing.
 23 MASON, Q.C.:
 24 Q. And this is really where the science is, is
 25 it not, Ms. Elliott, is trying to figure out

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1 what those claims reserves are because if
 2 you've estimate too high, that is going to
 3 really blow out of the market here what the
 4 return on equity figures are at the end of
 5 the day, correct? It's going to blow up
 6 those numbers.
 7 MS. ELLIOTT:
 8 A. Right, and if we look at data that's three
 9 years old at this point, those numbers are
 10 much more mature, data that would be after
 11 36 months, the estimates are much firmer,
 12 yeah.
 13 MASON, Q.C.:
 14 Q. Got you on that, okay. Now, the 7 percent
 15 increase in claims severity, that is an
 16 indication, from your perspective, that over
 17 a number of years claims costs are going up
 18 by that amount, bodily injury claims costs
 19 are going up by that amount, right?
 20 MS. ELLIOTT:
 21 A. Bodily injury, the amount per claim that's
 22 paid out which is offset by drops, the
 23 anticipated declining frequency are the two
 24 –
 25 MASON, Q.C.:

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1 Q. Got you, okay, frequency is also a factor.
 2 MS. ELLIOTT:
 3 A. Yes, and it's declining, yes.
 4 MASON, Q.C.:
 5 Q. Okay. Now, the claims payouts by an
 6 insurance adjuster that makes up, we're
 7 coming up with a case reserve and all that,
 8 that's based on precedent, based on court
 9 awards, correct?
 10 (11:30 a.m.)
 11 MS. ELLIOTT:
 12 A. That would be my understanding that they are
 13 aware of amounts paid in other similar
 14 cases, yeah.
 15 MASON, Q.C.:
 16 Q. Right, so they're not paying somebody
 17 because they like their good looks, they pay
 18 them because they say, look, this is what
 19 the courts have awarded for pain and
 20 suffering damages and therefore, this is
 21 what we're going to offer you for your
 22 claim?
 23 MS. ELLIOTT:
 24 A. The bodily injury claim adjusters are the
 25 more senior staff, right, they would be

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1 aware of court cases and what's being paid
 2 in prior settlements, either inside their
 3 company or outside their company.
 4 MASON, Q.C.:
 5 Q. I guess what I find interesting or difficult
 6 to comprehend is we know that the reserving
 7 practices are highly volatile because we saw
 8 what happened in Nova Scotia where insurers
 9 were over reserved indicated that there was
 10 a very low return on equity; in fact, a
 11 negative return on equity, that turned out
 12 to be a 10.8 percent return on equity in
 13 2002 because of the changes with reserves.
 14 Is why, either you or you haven't made a
 15 recommendation to this Board, there isn't
 16 some type of analysis indicating that court
 17 awards have gone up in this province by 7
 18 percent each year. Do you have any
 19 statistical evidence that would show that?
 20 MS. ELLIOTT:
 21 A. Well there are very few claim files that
 22 actually go to court in our Closed Claims
 23 Study where we had 1471 claimant files,
 24 there were, no event did it indicate that
 25 any of those claimants actually went to

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1 court. They were settled between the
 2 parties. So we look at the past average
 3 cost from year to year for the payments that
 4 have been made or are expected to be made,
 5 and then use a regression analysis to
 6 determine what that average year to year
 7 change has been.
 8 MASON, Q.C.:
 9 Q. Right, and we'll look at that, I'm going to
 10 look at it in just a minute, but if the
 11 court awards-we have no statistical evidence
 12 that court awards have gone up in this
 13 province and you're indicating that claims
 14 payouts are going up by 7 percent in claims
 15 severity each year.
 16 MS. ELLIOTT:
 17 A. Uh-hm.
 18 MASON, Q.C.:
 19 Q. Don't we need statistical evidence that
 20 would indicate that there is some type of
 21 thing, something going on with the courts
 22 that's driving those awards up?
 23 MS. ELLIOTT:
 24 A. Well there could be many reasons that are
 25 driving the awards up, but if we go back and

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1 look at amounts that are estimated for 2014
 2 and 15 and look at the history of data, so
 3 we're not looking at the more recent years
 4 and look at the trend rate there, we do that
 5 work to support the estimate that we present
 6 as a severity trend rate of 7 percent.
 7 MASON, Q.C.:
 8 Q. Did you ask the IBC if they've done any
 9 statistical analysis throughout the country
 10 even to show that court awards have gone up
 11 by 7 percent in any jurisdiction each year?
 12 MS. ELLIOTT:
 13 A. I don't ask IBC for any analysis, no.
 14 MASON, Q.C.:
 15 Q. All right, and perhaps that's a question
 16 we'll ask them. So I do want to go back to
 17 your report and the exhibit that is attached
 18 in your report and I want to look at the
 19 first page of that exhibit which is marked
 20 "Accident Year 2016 as of June 30, 2017".
 21 MS. ELLIOTT:
 22 A. Okay, yes.
 23 MASON, Q.C.:
 24 Q. You have that? Okay, and if we look under
 25 the ultimate loss and allocated adjustment

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1 expenses and cost per car, do you see that?

2 MS. ELLIOTT:

3 A. Uh-hm.

4 MASON, Q.C.:

5 Q. And so this data would be, as you would say,

6 less reliable because it's newer data, would

7 have the reserve and the supplemental

8 reserve where we're trying to estimate what

9 claims are going to be costed out at, is

10 that right?

11 MS. ELLIOTT:

12 A. I would say that it's, I describe it as less

13 mature and more subject to change than an

14 older accident year, yes.

15 MASON, Q.C.:

16 Q. Right. And we see the cost per car at

17 \$396.75, do you see that?

18 MS. ELLIOTT:

19 A. I do.

20 MASON, Q.C.:

21 Q. All right, so if we go one page further,

22 this is accident year 2015 as of June 30,

23 2017.

24 MS. ELLIOTT:

25 A. Uh-hm.

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1 MASON, Q.C.:

2 Q. We see the ultimate loss and cost per car at

3 \$413.33?

4 MS. ELLIOTT:

5 A. Uh-hm.

6 MASON, Q.C.:

7 Q. So this would be a little more reliable, I

8 take it, than the data that we looked at in

9 the last page?

10 MS. ELLIOTT:

11 A. Well the year is a little bit older, more

12 mature.

13 MASON, Q.C.:

14 Q. Right, okay. If we go to the next page,

15 accident year 2014 as of June 30, 2017, now

16 this figure presumably would be even more

17 accurate, is that right, because more of the

18 claims have settled at this point?

19 MS. ELLIOTT:

20 A. Yes, that's correct, yeah.

21 MASON, Q.C.:

22 Q. Right. And so, we see there a much lower

23 ultimate loss cost payout, \$354.37.

24 MS. ELLIOTT:

25 A. Uh-hm.

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1 MASON, Q.C.:

2 Q. If we look at the subsequent years, we see

3 approximately a 12, 13 percent increase in

4 the ultimate loss numbers which I suspect is

5 largely due to increases in reserves and the

6 supplemental reserve?

7 MS. ELLIOTT:

8 A. Well, I mean, if we go to the next year,

9 accident year 2013, you will see that number

10 goes up to 380, so this is Appendix 4, is

11 higher, so –

12 MASON, Q.C.:

13 Q. Right. And the year before that, just for

14 the record, is 368, right, so it's a lower

15 number.

16 MS. ELLIOTT:

17 A. Yeah, so it goes up and down, it's not

18 necessarily--and it's a product, as we said

19 earlier, changes in claims frequency rate

20 over time is affected, of course, the

21 frequency rate by the weather in that

22 winter, so the fact that 2014 may be lower

23 than the 2015 and '16 here could be due to

24 more reasons than just the case reserve

25 estimates. It could be due to the frequency

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1 in that year as well.

2 MASON, Q.C.:

3 Q. But you looked at this and I take it that in

4 2015—sorry, get on the right page here, at

5 2015 and 2016, the increases that we see in

6 a cost per car for ultimate loss during that

7 timeframe is reserves going up and a

8 supplemental reserve going up s that right?

9 MS. ELLIOTT:

10 A. It reflects the amounts that have been paid

11 and the amounts that the case adjuster has

12 set, yes, that's what that, there's no—it

13 reflects the data that's reported by the

14 company.

15 MASON, Q.C.:

16 Q. If the adjuster and you are too high on that

17 number –

18 MS. ELLIOTT:

19 A. On which number?

20 MASON, Q.C.:

21 Q. Sorry, the subsequent years, at 411, 413,

22 sorry, 413.33 and 396.75, if those numbers

23 are too high because of the reserve and the

24 supplemental reserve, and the number should

25 be more like 2014 which is 354.37, that's

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1 going to have a significant impact on the
 2 return of equity figure that you've put in
 3 your report, correct?
 4 MS. ELLIOTT:
 5 A. Well each year is independently, so the
 6 following year, accident year 2013, it was
 7 380, higher than the more recent year, so
 8 there are certainly years that will be
 9 higher and lower and of course, as a result
 10 of how many accidents and the severity of
 11 the accidents that happen in that year.
 12 MASON, Q.C.:
 13 Q. Right.
 14 MS. ELLIOTT:
 15 A. So it's not unusual to see some differences
 16 from year to year, up and down, but we're
 17 looking at how are the average costs
 18 increasing for claims settlement over time
 19 and there are obviously bumps in that
 20 because of the type of claims that might
 21 occur that year, but this is not unusual.
 22 MASON, Q.C.:
 23 Q. Right, but if we look at the first year,
 24 which is I think 2012, it's 368 and then we
 25 go up in 2013, it's 380, and then it's down

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1 at 350 in 2014.
 2 MS. ELLIOTT:
 3 A. Uh-hm.
 4 MASON, Q.C.:
 5 Q. It almost sounds like you're saying 350 is
 6 an outlier –
 7 MS. ELLIOTT:
 8 A. No, I'm not saying that.
 9 MASON, Q.C.:
 10 Q. You're not saying that, okay.
 11 MS. ELLIOTT:
 12 A. I'm not saying that, I'm just saying that's
 13 likely due to better weather that year or
 14 lower number of claims or possibly no large
 15 claims that year, but the change from year
 16 to year that we're observing here is not
 17 unusual, but I think it's fair, as you had
 18 said, I'm not disagreeing that the more
 19 recent years there's more uncertainty in
 20 that estimate, it's not as mature compared
 21 to the older years, so the 2012 and 2013,
 22 they're more mature years and those
 23 estimates are less likely to change, but
 24 they still may change.
 25 MASON, Q.C.:

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1 Q. Got you. If the number is used at 350, cost
 2 per car, that is going to significantly
 3 change—if we keep the other items steady,
 4 operating expenses, premium, and we just
 5 adjust in terms of your numbers the cost per
 6 car, the ultimate loss, at \$350.00 versus
 7 your estimates that you've put forward,
 8 that's going to significantly drive up the
 9 return on equity, correct? That figure? If
 10 we say that the baseline for claims costs in
 11 this province are \$350.00 per car, as we see
 12 in 2014, we keep your calculation for
 13 premiums steady, we keep your calculation
 14 for operating expenses steady, that is going
 15 to drive up that return on equity which you
 16 suggested is minus 9 percent, it's going to
 17 significantly improve the profitability of
 18 the insurers in this province, right?
 19 MS. ELLIOTT:
 20 A. Well I think what you're saying is what we
 21 presented in Table 1 in our report, you
 22 know, there are changes, these are the
 23 accident year, so for the year with the
 24 lower estimate of the ultimate losses, we
 25 have a positive –

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1 MASON, Q.C.:
 2 Q. Yeah, 6 percent return on equity, right?
 3 MS. ELLIOTT:
 4 A. Yes. And then for the years where it's
 5 higher, but we looked at each year
 6 individually, so—and clearly the data, the
 7 number of claims that occur and the types of
 8 claims that do occur are not the same each
 9 year.
 10 MASON, Q.C.:
 11 Q. Right, I'm just saying though if the claim
 12 reserve and the supplemental reserve is too
 13 high and it should be \$350.00 per car,
 14 right, that's going to significantly change
 15 the return on equity at the end of the day,
 16 as you've mentioned, like in 2014 it's a 6
 17 percent return on equity, not minus 9
 18 percent return on equity.
 19 MS. ELLIOTT:
 20 A. Right, it works both ways. If it's too low,
 21 if it should be higher, the profit will be
 22 less. It works both ways, so yes, and when
 23 all of the claims are settled and closed and
 24 we look back and say was this number, you
 25 know, how did it change over time from this

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1 initial estimate, it likely is going to be
 2 higher or lower than what's presented. The
 3 likelihood that it will be exactly as we
 4 presented here, is pretty slim. It's going
 5 to be higher or lower.
 6 MASON, Q.C.:
 7 Q. So if you get it wrong, like you did in Nova
 8 Scotia in 2002 and estimate reserves much
 9 higher than they actually should be, then
 10 we've got a problem today, correct?
 11 MS. ELLIOTT:
 12 A. Well, I think that's one of the issues that
 13 we presented to the Board for consideration
 14 is that there could be a change in frequency
 15 which, you know, clearly we've discussed it
 16 that the frequency rate has declined and it
 17 appears to be, the change in that frequency
 18 is attributed to—part of the change I the
 19 frequency is attributed to the reforms, that
 20 that needs to be taken into consideration,
 21 so I agree with you that looking back to see
 22 what happened in other provinces is
 23 important and that when the government or
 24 the Board makes a decision, that those
 25 changes that occurred in the frequency rate

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1 that affected the profitability in the Nova
 2 Scotia, New Brunswick should be considered,
 3 yeah.
 4 MASON, Q.C.:
 5 Q. So if we—another undertaking I'm going to
 6 look for, I'm going to ask you to do, is
 7 that if we use a 23 percent operating
 8 expenses, the appropriate calculation I
 9 referred to earlier, and if we say that the
 10 cost per car on a go-forward basis is
 11 \$350.00 per car, as set out in 2014, can you
 12 calculate, leaving all the other figures the
 13 same, return on investment and so on, all
 14 the other figures the same, can you
 15 calculate the return on equity for me under
 16 that scenario?
 17 MS. ELLIOTT:
 18 A. I can do any calculation that the Board
 19 would require in an undertaking to do. If
 20 you set it out specifically, we're happy to
 21 do that.
 22 MASON, Q.C.:
 23 Q. Right. Those are my questions, thank you.
 24 CHAIR:
 25 Q. Thank you, Mr. Mason.

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1 MR. FELTHAM:
 2 Q. Madam Chair, I'm looking at the clock.
 3 There is certainly no way that I can begin
 4 and be finished by noon.
 5 CHAIR:
 6 Q. I assumed as much.
 7 MR. FELTHAM:
 8 Q. Yeah, so let's make a request that Ms.
 9 Elliott be made available at some future
 10 point that's agreeable to continue the
 11 questions on the profit report and there's
 12 an additional report, of course, which
 13 hasn't been presented.
 14 CHAIR:
 15 Q. I think the process that's allowed provides
 16 for that certainly, so –
 17 MR. FELTHAM:
 18 Q. I just want to be clear, thank you.
 19 CHAIR:
 20 Q. Sure.
 21 MR. FELTHAM:
 22 Q. There is another issue and I raised it with
 23 Board counsel, I don't know if that's
 24 something we need to deal with today, is
 25 with respect to the presentation of Aviva.

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1 Ms. Glynn, I don't know how you, if that's
 2 been raised with the Board at this point or
 3 where that sits.
 4 MS. GLYNN:
 5 Q. It has been raised with the Board and as
 6 indicated in my discussions this morning, we
 7 did not have a chance to discuss this
 8 morning as we were preparing for today's
 9 session, we will have discussions when we're
 10 finished here.
 11 MR. FELTHAM:
 12 Q. Okay, that's fine. Thank you.
 13 CHAIR:
 14 Q. And we'll communicate with you as soon as
 15 possible.
 16 MR. FELTHAM:
 17 Q. All right, thank you very much.
 18 CHAIR:
 19 Q. Certainly before the end of the day.
 20 MR. FELTHAM:
 21 Q. Thank you.
 22 STAMP, Q.C.:
 23 Q. Sorry, Madam Chair, I just want to know what
 24 the discussion is.
 25 MS. GLYLNN:

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1 Q. The Campaign has asked to ask questions of
 2 one of the public presenters and this is
 3 something that will be dealt with with all
 4 the parties once we finish here this
 5 morning. It wasn't something that we could
 6 deal with this morning. Anything further?
 7 CHAIR:
 8 Q. Is there anything else? No?
 9 BROWNE, Q.C.:
 10 Q. Just in the interest of efficiency, I was
 11 wondering if counsel who have similar issues
 12 or have a similar position would not get
 13 together and take different segments of the
 14 cross-examination to avoid repetition so
 15 that there is efficiency into the hearing
 16 because we are seeing, and if you review the
 17 transcripts, a lot of repetition, so it
 18 starts with counsel for the Campaign and
 19 then it goes to counsel for the trial
 20 lawyers and then it goes to counsel, the
 21 other counsel here, but the positions
 22 generally are all the same, so if the
 23 positions are the same, can't there be some
 24 direction here to make the hearing more
 25 efficient so we can use our time value,

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1 really, that's my point.
 2 CHAIR:
 3 Q. That would be useful.
 4 KENNEDY, Q.C.:
 5 Q. Madam Chair, if I could make a comment, in
 6 fact one of the things that myself and Mr.
 7 Feltham had discussed, based on the
 8 procedure utilized by the Consumer Advocate,
 9 we were going to split up the questions
 10 among ourselves. I mean, they're asking,
 11 they have two counsel asking questions, so
 12 we see no reason why we can't do the same.
 13 So if you're going to talk about making the
 14 process more efficient, then they have two
 15 counsel asking questions, so we should be—we
 16 propose to do the same.
 17 BROWNE, Q.C.:
 18 Q. Just in fairness now, the questions we've
 19 asked and the time, we've been looking to
 20 efficiency because they've all been asked by
 21 the time they get to us; in fact, they've
 22 all been asked more than once by the time
 23 they get to us in many cases, so I don't
 24 think the problem is right here. It's my
 25 understanding that if you have two counsel

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1 at least as long as the other counsel is not
 2 asking repetitive questions, as long as the
 3 other counsel is doing a different topic,
 4 that's what we've gone by, so in fairness in
 5 terms of the timing I invite the other
 6 parties to look at the transcripts and see
 7 how long we've been with our questions and
 8 do comparisons how long they've been.
 9 KENNEDY, Q.C.:
 10 Q. That's not the point, the point is that the
 11 Consumer Advocate has, is the one who have
 12 been having two counsel ask questions. No
 13 one else has done that and that does not add
 14 to the efficiency of the process. So we had
 15 proposed ourselves we are going to do the
 16 same thing.
 17 STAMP, Q.C.:
 18 Q. Madam Chair, if I could just –
 19 BROWNE, Q.C.:
 20 Q. Well, if that is a problem for counsel, we
 21 can come to grips with that, but I would ask
 22 that you would reciprocate and come to
 23 grips, that the counsel who have similar
 24 positions get together and take different
 25 aspects of it to make sure that the areas

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1 are thoroughly canvassed, but to ensure that
 2 there is no repetition.
 3 KENNEDY, Q.C.:
 4 Q. Commissioner, we are here representing the
 5 Campaign, we have our specific clientele.
 6 We are not going to tell or suggest to Mr.
 7 Gittens or to Mr. Fraize or to Mr. Stamp how
 8 they should do things. The last I, if the
 9 Commission wants to give direction, fair
 10 enough, but I'm not sure that this should be
 11 an issue for the Consumer Advocate who is
 12 here representing the consumers of this
 13 province as to what questions we ask in
 14 relation to our particular clientele. I
 15 find that somewhat offensive.
 16 BROWNE, Q.C.:
 17 Q. I'm not talking about the questions you ask;
 18 I'm talking about the efficiency and
 19 approach. You can ask what you want as long
 20 as they're relevant, that is not my issue.
 21 My issue is a more efficient approach and
 22 something for counsel to probably consider
 23 in the interest of an efficient hearing.
 24 CHAIR:
 25 Q. I'll leave that to counsel. Mr. Stamp?

1 STAMP, Q.C.:

2 Q. Just a brief point, Madam Chair. My friend,

3 the Consumer Advocate does raise a worth-

4 while issue. One of the things that current

5 counsel has asked for is undertakings, I

6 guess he's going to ask for information,

7 additional information to be presented one

8 way or another and since Ms. Elliott will

9 come back, I'm going to suggest that it

10 might be appropriate if anybody else has

11 additional questions arising already, that

12 that be put to, at this time as well,

13 because otherwise, we're into a delay all

14 the way through.

15 CHAIR:

16 Q. The process that we've laid out allows for a

17 written question.

18 STAMP, Q.C.:

19 Q. Sure.

20 CHAIR:

21 Q. My sense here was we were just starting that

22 process in advance and just as well to get

23 it started, so absolutely if there are

24 questions arising as a result of the last

25 three and a half days, put them forward and

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript of a 207 Automobile Insurance Review hearing heard on the 8th 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 8th day of June, 2018

Judy Moss

1 we'll get them—the idea would be to get the

2 responses back as soon as possible.

3 CHAIR:

4 Q. It's been a long week, I think we'll close

5 it there. We'll see you on Monday.

6 STAMP, Q.C.:

7 Q. Thank you.

8 BROWNE, Q.C.:

9 Q. Thank you, Chair, Commissioners.

10 Upon concluding at 11:50 a.m.

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