

1 (9:15 a.m.)

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Good
3 morning. Just a couple of preliminary items, but I think
4 there's some agreement reached amongst counsel with
5 respect, first of all, to our restarting this hearing in
6 January, and I understand that the 8th is in order with
7 everybody. We'll proceed, I guess, along today and
8 see where we get, and if we sit tomorrow or not, I
9 guess, remains to be seen, and that will be with the
10 consent of all the parties, of course. If we do sit
11 tomorrow, we'll be starting at 10:00 rather than 9:00
12 because we have a commitment that gets in the way of,
13 I guess, starting at 9:00. I just wanted to mention one
14 other item, and it's ... we have been advised Messrs.
15 Martin, Whalen, Hennebury, and Stamp, of the three
16 individuals that are prepared to give evidence
17 representing the servicing carriers and the brokers, and
18 that letter came to us yesterday, I guess, dated the 17th,
19 anyway, of December, and I would assume that copies
20 of this went to the Consumer ...

21 MR. WHALEN, Q.C.: Well, it did because I meant to
22 send it out yesterday afternoon, and it got sent out
23 without me being there, so that was a draft, but you can
24 share that. That's the letter ... I had intended to copy it
25 to everybody, but I know it didn't get done because I
26 wasn't there.

27 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, we
28 can ... I'll get the Clerk to make copies and ...

29 MR. WHALEN, Q.C.: Yes, if you would, I'd appreciate
30 that. I apologize. I had intended to copy that to ...

31 MR. SAUNDERS, PRESIDING CHAIRMAN: I think
32 that might have been an oversight.

33 MR. WHALEN, Q.C.: Well, it was.

34 MS. NEWMAN: I believe that the staff here had
35 noticed the oversight, and I think they circulated it to
36 the Consumer Advocate in any event, so ...

37 MR. WHALEN, Q.C.: That's fine.

38 MR. SAUNDERS, PRESIDING CHAIRMAN: You're
39 saying that they should be called as Board witnesses,
40 so I'll leave that to Ms. Newman to deal with.

41 MR. WHALEN, Q.C.: Yeah, I think that's the ...

42 MR. SAUNDERS, PRESIDING CHAIRMAN: ... with the
43 people on that.

44 MR. WHALEN, Q.C.: Yeah.

45 MR. SAUNDERS, PRESIDING CHAIRMAN: And to
46 set the dates and so on, but that will be ...

47 MR. WHALEN, Q.C.: I guess whenever the Board
48 chooses.

49 MR. SAUNDERS, PRESIDING CHAIRMAN: It will be
50 the 8th or later, depending on how we do today and
51 tomorrow.

52 MR. WHALEN, Q.C.: Yeah.

53 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,
54 these are all the items that I had. Any other preliminary
55 matters?

56 MS. NEWMAN: Mr. Chairman, there is a couple of
57 matters, I guess we did provide colour copies of those
58 graphs to everybody yesterday afternoon. I want to
59 make sure they got those and they were able to piece it
60 all together. My apologies for the mix-up yesterday,
61 and also, Mr. Pelly has been kind enough to provide on
62 a timely basis, a response to my request that he update
63 page A-222 for the corrections to the total column. I
64 don't think that has yet been circulated so perhaps the
65 Clerk can pass that around now.

66 MR. O'FLAHERTY: Mr. Chairman, there is one matter
67 arising from the letter of December 17th and the witness
68 list. I'll just ask my partner to speak to that.

69 MR. GOODLAND: Good morning, Mr. Chairman, just
70 upon review of the witness list, I note that Mr. Geoff
71 (*phonetic*) LeGrow is scheduled to give evidence, I
72 guess, as a Board witness ... as per the request of the
73 Applicant that they be considered Board witnesses, I
74 just want the Board to be aware, and the parties
75 involved in the process, that Mr. LeGrow is both a
76 personal friend and business client of my law firm,
77 Goodland O'Flaherty, and I just want to make sure that
78 that's clear on the record now so it's not raised as an
79 issue later on in the process when Mr. LeGrow attends.
80 If it's going to be an issue from either the Board's
81 perspective, or the Applicant's perspective, it should be
82 dealt with now so it won't slow the process in January.
83 So if the Applicant deems it advisable to have another
84 representative attend on behalf of the brokers, that will

1 then give the Applicant ample opportunity between
2 now and January 8th when we resume to provide
3 another spokesperson, if in fact that is deemed
4 necessary, but Mr. LeGrow and I do go back quite a
5 ways with a personal friendship and with a business
6 relationship as well, so I just want to put that on the
7 record.

8 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank
9 you, Mr. Goodland. Mr. Whalen?

10 MR. WHALEN, Q.C.: Mr. Chairman, first of all, these
11 are the officials of the Brokers Association. They're not
12 really chosen or put forward by us, but certainly, if Mr.
13 Goodland doesn't feel uncomfortable with the situation,
14 or the witness doesn't feel uncomfortable with the
15 situation, then let's carry on, and in fairness to
16 everybody, if during the process, it certainly won't be
17 us, but if somebody sees that there's a difficulty or if,
18 you know, we just carry on ... I was aware that there
19 was some connection, but I hadn't perceived it as a
20 problem, and wouldn't expect it to be. We can't look
21 around corners, but you know ...

22 MS. NEWMAN: I don't have any issue with this
23 matter.

24 MR. GOODLAND: Well, I am concerned with the
25 perception in the event that there's an element of cross-
26 examination of this witness. Obviously, I can insulate
27 myself by having Mr. O'Flaherty cross-examine the
28 witness, but still, that really would be a thin wall,
29 protecting at least the perception, or trying to avoid the
30 perception of a conflict. I think the Board should
31 consider the matter and possibly, for everyone's sake
32 who is involved with this process possibly reconsider
33 whether Mr. LeGrow is the most advisable or best
34 witness that the brokers can offer. I can only assume
35 that there would be other brokers, such as past-
36 presidents or a present vice-president, who would
37 possess the same knowledge that Mr. LeGrow has
38 regarding the general relationship that the brokers have
39 in this larger scheme that we now know as Facility
40 Association, so I am concerned about the perception,
41 and I would feel, to be perfectly honest, if the matter
42 arises that we have to enter an element of cross-
43 examination with that particular spokesperson, I
44 certainly would feel uncomfortable having myself or
45 Mr. O'Flaherty cross-examine someone who I have had
46 a business relationship with for the last 15 years.

47 MR. SAUNDERS, PRESIDING CHAIRMAN: Well, they
48 say confession is good for the soul, so I can tell you
49 too, that I have a problem with Mr. LeGrow, because he
50 happens to be related to my wife, and he also is the
51 person that I look for, or I look to for my auto and home
52 insurance, so I think we have probably a representative
53 here of the brokers in Mr. Hickey, and we also have a
54 representative of the servicing carriers, do we, in Mr.
55 Anthony? Would he be a representative of the service
56 carriers?

57 MR. WHALEN, Q.C.: That's my understanding.

58 MR. SAUNDERS, PRESIDING CHAIRMAN: So I don't
59 know if it's necessary to go beyond that. We have one
60 of each, if you like.

61 MR. STAMP, Q.C.: Mr. Chairman, if I just might add,
62 we didn't pick these people.

63 MR. SAUNDERS, PRESIDING CHAIRMAN: No, I
64 understand.

65 MR. STAMP, Q.C.: They just were here, they came
66 forward, they advised us that they would be willing to
67 participate, and we provided the information. My view
68 is the yellow pages are there ...

69 MR. SAUNDERS, PRESIDING CHAIRMAN: Sure, pick
70 one.

71 MR. STAMP, Q.C.: Counsel can help herself.

72 MR. SAUNDERS, PRESIDING CHAIRMAN: Right.

73 MR. GOODLAND: And Mr. Chairman, just on that
74 point, we're not making any suggestion that the
75 Applicant has intentionally picked that particular
76 witness.

77 MR. SAUNDERS, PRESIDING CHAIRMAN: I
78 understand that, but I think there's a good reason to
79 leave Mr. LeGrow out and we'll go with the other two.

80 MR. STAMP, Q.C.: Well, especially, Mr. Chairman, if
81 he's put you in Facility (*laughters*).

82 MR. SAUNDERS, PRESIDING CHAIRMAN: I hadn't
83 thought of that. Okay, we can deal with that, I'm sure.
84 I'll leave that with you, Ms. Newman.

85 MS. NEWMAN: Very well, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Now then, are we ready to resume with Ms. Elliott? Good morning, Ms. Elliott.

MS. ELLIOTT: Good morning.

MR. SAUNDERS, PRESIDING CHAIRMAN: Are you ready to resume?

MS. ELLIOTT: I am.

MR. SAUNDERS, PRESIDING CHAIRMAN: Good, and I'm sure you're anxious to get back to Toronto to spend Christmas.

MS. ELLIOTT: I think it had something to do with my speed yesterday. I do apologize.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah, well ...

MS. NEWMAN: Very well.

MR. SAUNDERS, PRESIDING CHAIRMAN: You're in a good place. Most people in Newfoundland can understand people who talk fast because we do so ourselves. Okay, Ms. Newman.

MS. NEWMAN: Good morning, Ms. Elliott. I guess we'll start the day, we were in the trend analysis section, and I wanted to touch on the issue of unemployment rate. Can you please explain to me why you do not recommend the use of the unemployment in this filing?

MS. ELLIOTT: Well, we don't recommend the use of unemployment in this filing and we have a couple of general concerns, and these were mentioned by Mr. Pelly in his testimony earlier, and first, the unemployment rate, it's dependent upon a forecast provided by another source, and in this case, the Conference (*phonetic*) Board of Canada, and if that source is perhaps wrong in its projections, then the estimate of the future costs will be wrong, and this is a big unknown to enter into the model, and that's our first concern.

And the second one is that the frequency becomes very sensitive to this unemployment variable, as Mr. Pelly had testified, that for every one point drop in the unemployment rate, the frequency will drop, sorry, the frequency will increase to close to 7 percent,

so the model is now highly dependent upon the unemployment rate projections, so they are our two general concerns with unemployment rate.

MS. NEWMAN: On the issue of the ULAE, can you please remind me what that stands for?

MS. ELLIOTT: Sure, ULAE stands for unallocated loss adjustment expense.

MS. NEWMAN: Okay, and what does that do?

MS. ELLIOTT: Well, it's used to provide a provision, with the losses there is an expense that's incurred when the claims adjusters have to settle claims, there's the rent, the overhead, the lighting, the salaries involved, so it's a component to include for those costs in the pricing model.

MS. NEWMAN: And what's the source for the ULAE factor?

MS. ELLIOTT: In the filing that FA has prepared, they used the IBC, it's an industry standard. This information is published once a year.

MS. NEWMAN: Why did you comment on this issue in your report?

MS. ELLIOTT: Well, we commented on ULAE in our report as it happened that this, the most recent information had just become available, had recently become available, and we would not have expected FA to include that in their analysis as it wasn't available to them at the time that they prepared their report, but we thought it would be appropriate to alert the Board of its availability if the rate level indicated are to be recasted. It's a fairly easy change to do and we thought it would be appropriate in that case.

MS. NEWMAN: I'd like to ask you a question on the accident and conviction surcharge now. Was there any basis for you to recommend the proposed changes as presented by FA on the accident and conviction surcharge, and the new discount?

MS. ELLIOTT: The FA has presented a very detailed chart of the vehicles that are eligible for the current and proposed surcharges, and the new discount that is being proposed, but we couldn't recommend to the Board that the change be approved because there was no analysis available for us to review, so we're saying

1 that we have no opinion at this point. There is no data
2 to support an opinion from an actuarial perspective,
3 and that's what we were saying in our report.

4 MS. NEWMAN: Thank you very much, those are all
5 my questions on direct testimony for this witness.
6 She's available for cross-examination.

7 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank
8 you, Ms. Newman. I think we agreed yesterday that
9 you would start, Mr. Stamp?

10 (9:30 a.m.)

11 MR. STAMP, Q.C.: Thank you. Ms. Elliott, first of all,
12 if I could, I'd just like to get a little bit more information
13 about your work in any other jurisdictions. I think you
14 indicated that you and ... Mercer's, and yourself in
15 particular presumably, do work for the Ontario
16 regulator.

17 MS. ELLIOTT: That's correct.

18 MR. STAMP, Q.C.: That's FISCO (*phonetic*), is it?

19 MS. ELLIOTT: It's known as FISCO.

20 MR. STAMP, Q.C.: Yes, and how long have you done
21 that work?

22 MS. ELLIOTT: Mercer's has been engaged by FISCO,
23 I believe, since 1988.

24 MR. STAMP, Q.C.: And how long yourself have you
25 done it?

26 MS. ELLIOTT: Since I joined Mercer's, which is
27 approximately 4 3/4 years.

28 MR. STAMP, Q.C.: And so when you started with
29 Mercer's, was that your main, was that your main, I
30 guess, area of interest, the Ontario regulator's work?

31 MS. ELLIOTT: Yes.

32 MR. STAMP, Q.C.: Well, perhaps I can ask this. At
33 that time, what other regulators were you doing work
34 for Mercer's?

35 MS. ELLIOTT: FISCO was the one regulator that when
36 I joined Mercer's, I was doing work for that regulator.

37 MR. STAMP, Q.C.: Alright, and when did you actually,
38 when did Mercer's become, I guess, the consulting
39 actuary for the Newfoundland Board?

40 MS. ELLIOTT: That was in the beginning of ... we met
41 with the Board in 2001. I don't recall the exact date of
42 our contract, but I suspect that it was the beginning of
43 2001, the spring of 2001.

44 MR. STAMP, Q.C.: And you mentioned as well doing
45 work for Nova Scotia, and I had the impression it was a
46 one-time retainer.

47 MS. ELLIOTT: Yes, it was a very large assignment that
48 we were given with the Nova Scotia board, it was very
49 intensive. Nova Scotia doesn't have rate regulation per
50 se, they have a file and use environment, so we were
51 retained to do a study for Nova Scotia.

52 MR. STAMP, Q.C.: When was that?

53 MS. ELLIOTT: We were retained in May of 2002.

54 MR. STAMP, Q.C.: This year.

55 MS. ELLIOTT: Correct.

56 MR. STAMP, Q.C.: Alright, and you mentioned, I
57 believe, as well, Alberta.

58 MS. ELLIOTT: Correct.

59 MR. STAMP, Q.C.: What's your connection with the
60 Alberta regulator?

61 MS. ELLIOTT: We'd prepare what one would consider
62 benchmark rates for the Alberta board. We have done
63 that for the past two years.

64 MR. STAMP, Q.C.: Do you prepare reports for the
65 Alberta board in respect of Facility Association
66 matters?

67 MS. ELLIOTT: No, I do not.

68 MR. STAMP, Q.C.: And in the Nova Scotia setting,
69 were you doing the Facility review as well?

70 MS. ELLIOTT: No, I was not.

71 MR. STAMP, Q.C.: Does Mercer's in Canada, and I
72 gather they're in both Canada and the States.

1 MS. ELLIOTT: Correct.

2 MR. STAMP, Q.C.: In Canada, does Mercer's do
3 actuarial auto rate making for any other, I guess, for any
4 P and C company in Canada?

5 MS. ELLIOTT: No, sir, we do not. We don't want to
6 have a conflict of interest, so no, sir, we do not.

7 MR. STAMP, Q.C.: So you won't accept work from P
8 and C insurers in Canada.

9 MS. ELLIOTT: That is correct. We do not accept any
10 pricing work for automobile insurance from insurance
11 companies.

12 MR. STAMP, Q.C.: Okay, and has that been the case
13 as long as you've been employed with Mercer's?

14 MS. ELLIOTT: I have never prepared a rate filing while
15 I've been employed with Mercer's for any insurance
16 company, any property and casualty insurance
17 company.

18 MR. STAMP, Q.C.: I'm not sure if I got the answer
19 there. Did, has Mercer's prepared in Canada, rate filings
20 for insurers, P and C insurers, while you've been
21 employed there?

22 MS. ELLIOTT: No.

23 MR. STAMP, Q.C.: Okay, so when you started 4 3/4
24 years ago with Mercer's, the only client, the only, I
25 guess, rate making sort of client, if I can express it that
26 way, was the Ontario regulator?

27 MS. ELLIOTT: I have done other rate making work
28 while employed with Mercer's for clients out of the
29 country.

30 MR. STAMP, Q.C.: Okay, is that auto insurance?

31 MS. ELLIOTT: No.

32 MR. STAMP, Q.C.: What kind of work is it?

33 MS. ELLIOTT: They are captives (*phonetic*) that are in
34 Barbados and lovely places like that, where we would
35 do reviews for those captives in terms of products that
36 they would be insuring.

37 MR. STAMP, Q.C.: It would not be auto insurance?

38 MS. ELLIOTT: Correct.

39 MR. STAMP, Q.C.: So perhaps I can ask you this then.
40 It sounds like this is a philosophical line that Mercer's
41 has drawn in Canada. They will not do P and C work, or
42 at least auto rate making work in Canada, and is that
43 then one of the promotional sort of features that
44 Mercer's brings to the table when they look to be
45 selected as a consulting actuary for a regulator?

46 MS. ELLIOTT: In any engagement that we would come
47 upon, we would share with the regulator what type of
48 work that we do, and if there were any conflicts of
49 interests, we would want to share that with the
50 regulator, yes.

51 MR. STAMP, Q.C.: So you would share with the
52 regulator, for example, in Newfoundland when you ...
53 presuming Mercer applied for the position that it now
54 has. It must have been open for any number of
55 actuaries to do that, and Mercer's would have applied
56 for it, I presume.

57 MS. ELLIOTT: Correct.

58 MR. STAMP, Q.C.: And one of the features that they
59 would have advanced to the Newfoundland Board
60 would be that we don't do any private rate making for
61 auto insurance companies?

62 MS. ELLIOTT: I think they would have advanced our
63 experience, our vast experience with FISCO, that's
64 really, I think quite important to the regulators, that we
65 have a vast knowledge.

66 MR. STAMP, Q.C.: I'm sure it is, but would you have
67 also advanced the, I guess, promotional sort of view
68 that you don't do rate making work for auto insurers in
69 Canada?

70 MS. ELLIOTT: I don't do rate making work for
71 automobile insurers, so if that question was asked to
72 me by the regulator, I would have stated that.

73 MR. STAMP, Q.C.: Well, let's just come right to it then.
74 Did you tell the Newfoundland Board that this was
75 Mercer's philosophical approach?

76 MS. ELLIOTT: I, well I spend the majority of my time
77 doing work for regulators. I don't do any pricing work
78 for auto insurers, so I don't recall my exact words, so if
79 that helps answer the question.

1 MR. STAMP, Q.C.: No, it doesn't really, but so you
2 have no recollection if you've told the Newfoundland
3 Board when you were applying, when Mercer's was
4 applying for this role, that this was your philosophical
5 position.

6 MS. ELLIOTT: Well, it is the focus of my work, doing
7 regulator ...

8 MR. STAMP, Q.C.: Oh, I realize that.

9 MS. ELLIOTT: Yes.

10 MR. STAMP, Q.C.: That's clear from your evidence.

11 MS. ELLIOTT: I'm sorry, I don't have my proposal in
12 front of me, so I'm unable, I don't want to answer that I
13 said that if I did or didn't.

14 MR. STAMP, Q.C.: Well, just on that same topic then,
15 how is it relevant, do you perceive that if you did rate
16 making work for an auto insurer, that you would be in
17 a conflict?

18 MS. ELLIOTT: Yes, I would perceive it, perhaps, as a
19 conflict. I don't do any work for any insurance
20 companies. I don't think it would be appropriate.

21 MR. STAMP, Q.C.: What's Mercer's relationship with
22 Marsh McLennan?

23 MS. ELLIOTT: It's a separate entity.

24 MR. STAMP, Q.C.: Is it wholly owned by Marsh
25 McLennan?

26 MS. ELLIOTT: Well, the organizational chart is rather
27 complicated but the company that I am employed by,
28 Mercer's Risk, Finance and Insurance Consulting
29 Limited, is a separate entity. There is a top, a parent
30 company that's like a holding company which you
31 mentioned.

32 MR. STAMP, Q.C.: Which is the holding company?

33 MS. ELLIOTT: The MMC. I'm afraid I'm not
34 remembering the specific name but the MMC Group,
35 Marsh McLennan Companies.

36 MR. STAMP, Q.C.: And does that group include
37 Marsh McLennan?

38 MS. ELLIOTT: I guess it would.

39 MR. STAMP, Q.C.: And what do they do?

40 MS. ELLIOTT: They would be a brokerage firm.

41 MR. STAMP, Q.C.: What does that mean?

42 MS. ELLIOTT: Well, they typically deal with insurance
43 companies in not automobile but, say, commercial
44 property, industrial buildings. They do a lot of
45 commercial business.

46 MR. STAMP, Q.C.: So they sell insurance for
47 insurance companies.

48 MS. ELLIOTT: They would be a broker. They don't
49 sell insurance, no, sir.

50 MR. STAMP, Q.C.: Okay. They would facilitate the
51 sale of insurance for insurance companies.

52 MS. ELLIOTT: That would be correct.

53 MR. STAMP, Q.C.: Ms. Elliott, just so we're clear on
54 the actual work that's been done for this Board, there's
55 the current filing of course and I think you've already
56 testified that to a very considerable extent this is based
57 upon your own work and that this is, you're the author
58 of this report.

59 MS. ELLIOTT: I take responsibility for the report.

60 MR. STAMP, Q.C.: And would the same be true for the
61 2001 Facility report, that's Mercer's report or Mercer's
62 response to their filing in May 2001.

63 MS. ELLIOTT: Yes, I would take responsibility for that
64 report.

65 MR. STAMP, Q.C.: And what about the benchmarks
66 for Newfoundland 2002/2003, they were prepared by
67 Mercer's, is that essentially your work as well?

68 MS. ELLIOTT: Yes, it is.

69 MR. STAMP, Q.C.: And the present review, just tell us
70 for, briefly how this was engaged, in other words, the
71 review to do, to do the review of the 2002 FA filing.

72 MS. ELLIOTT: Well, we received the filing document,
73 as I recall, directly from FA. We reviewed all the

1 components of the filing. We create models where we
2 validate various components of the model.

3 MR. STAMP, Q.C.: I'm sorry, Ms. Elliott, I may have
4 asked the question improperly and I know you're
5 describing the work that you did. I was actually
6 wondering about how you, how the work was engaged.
7 How did you become notified by the Board that it
8 would be required and when was that?

9 MS. ELLIOTT: We would have been notified through
10 Mr. Bob Byrne that the FA was submitting a rate filing
11 application to the Board and we would have been
12 advised that we, they would request us to review the
13 rate filing. I think for speed, as I mentioned, we
14 received it directly from FA.

15 MR. STAMP, Q.C.: Okay. And in terms of Mercer's
16 work in this particular jurisdiction this year, then I take
17 it one of the pieces of work that you would have had to
18 do of course would be the 2003 benchmark.

19 MS. ELLIOTT: Yes.

20 MR. STAMP, Q.C.: And you would have done this
21 Facility filing review and I presume you would have
22 done non-benchmark filing reviews by the regular
23 market insurers.

24 MS. ELLIOTT: I'm sorry, which province are you
25 speaking to?

26 MR. STAMP, Q.C.: Well, I'm wondering what other
27 work did you do for Newfoundland besides the 2003
28 benchmark and the Facility Association review that
29 we're now working on.

30 MS. ELLIOTT: We reviewed another rate filing that Mr.
31 Byrne had asked us to review.

32 MR. STAMP, Q.C.: And is this a rate filing by a private
33 insurer, if you like? I call it private but what I mean is a
34 regular insurance company, not FA.

35 MS. ELLIOTT: Yes.

36 MR. STAMP, Q.C.: Okay. And it was just the one
37 filing you reviewed?

38 MS. ELLIOTT: In this time frame that you're referring
39 to?

40 MR. STAMP, Q.C.: In 2002.

41 MS. ELLIOTT: I believe it is just one but I would have
42 to check my files.

43 MR. STAMP, Q.C.: Okay. I'd just like to talk to you a
44 bit about the issue of Facility market share, which has
45 been a bit of a topic, as you know. Based upon your
46 own report, I presume it's evident in other
47 documentation as well, looking at private passenger,
48 the mechanism of Facility provides insurance for
49 something like 3.8 percent of the private passenger
50 vehicles, is that right?

51 MS. ELLIOTT: Would you like me to check my notes
52 to validate that?

53 MR. STAMP, Q.C.: Sure.

54 MS. ELLIOTT: Yes. In our report on page six we
55 reference the number of written vehicles in the FA in
56 2001 compared to the industry, and that was 3.8 percent
57 for the 2001 ...

58 MR. STAMP, Q.C.: And then looking at the chart at
59 page six that you've referred us to, it shows the
60 premium for the two groups, Facility on the one hand,
61 that mechanism, and the industry generally and
62 indicates that, I think, Facility premium represents 6.2
63 percent of industry premium, is that correct?

64 MS. ELLIOTT: Correct.

65 MR. STAMP, Q.C.: Now, I'm just wondering why it
66 would be, I guess I know, I guess I think I know the
67 answer, but why would it be that they would have
68 under four percent of the vehicles and over six percent
69 of the premium?

70 MS. ELLIOTT: The premiums are higher in Facility
71 Association.

72 MR. STAMP, Q.C.: Okay. I'll ask why.

73 MS. ELLIOTT: Why the premium is higher?

74 MR. STAMP, Q.C.: Hmm.

75 MS. ELLIOTT: Well, the premiums are in the rate
76 manual. I'm sorry, I'm not sure I understand your
77 question.

MR. STAMP, Q.C.: Well, why would this particular market carry less than four percent of the vehicles and more than six percent of the premium?

MS. ELLIOTT: Well, I guess what I could answer to you is that there was a chart provided by Mr. Pelly earlier that showed the relationship of the premium of FA to the regular market where it showed a percentage basis.

MR. STAMP, Q.C.: Yeah, I know about that.

MS. ELLIOTT: Why are the premiums higher?

MR. STAMP, Q.C.: That's my question, yes.

MS. ELLIOTT: FA, when FA provides a rate filing, they're provided on the data that they have available to them. We don't know why the data is what the data is. The rate level indications are based on data. I'm sorry, I really am not understanding your question. I'd like to answer for you. Maybe ...

MR. STAMP, Q.C.: Well, I think you must be trying to answer a very difficult question. I'm asking a very easy one, I think. So I'll try again. We only have in Facility 3.8 percent of the vehicles. Intuitively, that's a word that actuaries like to use, I understand, I would think that would mean that they'd have 3.8 percent or thereabouts of the premium, but they have 6.2 percent of the premium in private passenger. So why do you think they have a disproportionate amount of premium to vehicles exposure?

MS. ELLIOTT: Well, maybe I could simplify the answer and that might help. If the average premium in the regular marketplace was \$1,000 and the average premium for the FA was \$1,500, the premium would be higher, so then when you would look at the premium column that you're referencing, the number would expect, you would expect that number to be higher.

MR. STAMP, Q.C.: Okay, that's the arithmetic of it. I'm sure I follow that. I guess I'm trying to find the underlying cause, the underlying reason for the \$1,000 premium and the \$1,500 premium in general.

MS. ELLIOTT: In general, I suggest that we review the rate filing applications that FA has submitted because they provide those rate applications for approval to the Board for the rate level that's in effect. This reflects the

written premium during that period for the rates that have been approved by the Board.

MR. STAMP, Q.C.: So you can offer no explanation about why premiums in Facility are higher other than they have filed for them, is that correct?

MS. ELLIOTT: Well ...

MR. STAMP, Q.C.: If that's your answer, that's fine.

MS. ELLIOTT: I think if that's the question that you're asking me, then that's my answer.

(9:45 a.m.)

MR. STAMP, Q.C.: And that's the only answer you can give.

MS. ELLIOTT: Well, if you ask me another specific question related to this, if you like to elaborate I could provide more information.

MR. STAMP, Q.C.: Is there anything special about the Newfoundland marketplace relative to other, say, Atlantic jurisdictions?

MS. ELLIOTT: What do you mean by special?

MR. STAMP, Q.C.: Well, is there anything unusual or peculiar about it, do you think? You've done, as you say, a pretty extensive and exhaustive review somehow in Nova Scotia, you've done it here for a number of years. Is there anything peculiar or distinct or unusual about this marketplace and the other Atlantic Provinces, to your knowledge?

MS. ELLIOTT: Well, each province is distinct in its own way. There are a number of issues with automobile insurance across the land, I think, as everyone knows. To say that Newfoundland is distinct or special, there is nothing that comes to mind.

MR. STAMP, Q.C.: And what about the Facility Association market, and I don't just mean in Newfoundland, I mean generally in comparison with the industry market, the regular market? Is there anything special about it, unique?

MS. ELLIOTT: I wouldn't say that it's special or unique. Again I'm not sure really what you mean by special or unique but not in my opinion.

1 MR. STAMP, Q.C.: Let me ask you this then perhaps,
2 you mentioned Mr. Pelly's, some of Mr. Pelly's exhibits,
3 and I perhaps think you may have been referring in part
4 at least to BGP-4, which is the fly (phonetic) spec chart,
5 maybe you could describe it that way, showing a
6 cluster of Newfoundland market share and percentage
7 premium to industry and some of the other jurisdictions
8 as well. Are you familiar with the chart?

9 MS. ELLIOTT: I don't have it here. Should I reference
10 it?

11 MR. STAMP, Q.C.: Yeah, maybe you could, please.

12 MS. ELLIOTT: Sorry for the delay.

13 MR. STAMP, Q.C.: That's fine. You have it now, do
14 you, Mr. Elliott?

15 MS. ELLIOTT: Yes.

16 MR. STAMP, Q.C.: And you've had the benefit of
17 hearing Mr. Pelly give some evidence about this and I
18 guess it does appear at least to suggest that as Facility
19 Association rates get higher and higher, their market
20 share appears to be somewhat lower. Would you agree
21 with that observation?

22 MS. ELLIOTT: Well, each province, Ontario is a
23 different structure for the FA operation than
24 Newfoundland, so I think it's difficult to make
25 comparisons from this chart without looking at all the
26 information, all the differences.

27 MR. STAMP, Q.C.: Okay. Well, actually that's
28 probably a good place to take it because you have
29 extensive involvement in Ontario for the regulator so
30 you'd have, I guess, a good understanding of that
31 market as well, and we've heard the term "grey market
32 insurers" or at least that's a phrase that's been used
33 here sometimes. Do you know what's meant by that?

34 MS. ELLIOTT: I believe I do. I believe it's ... yes.

35 MR. STAMP, Q.C.: What do you think that means,
36 please, just for the record so we ...

37 MS. ELLIOTT: As I understand it, some insurance
38 companies will provide rates to risk (phonetic) that the
39 regular market would prefer not to write according to
40 their eligibility rules and rather than going to the
41 Facility Association they would go to the grey market.

42 MR. STAMP, Q.C.: Okay. And so presumably they are
43 setting rates that, those grey market insurers, that are
44 sort of on average higher than the, we'll call the regular
45 market.

46 MS. ELLIOTT: Presumably.

47 MR. STAMP, Q.C.: To pick up those kinds of risks ...
48 I've heard the phrase used, insuring the best of the
49 worst, if you like. Is that something that would sort of
50 fit with what you understand to be what the grey
51 markets are trying to achieve?

52 MS. ELLIOTT: There are a number of grey market
53 insurers. I'm not sure of how they represent themselves
54 from a marketing perspective.

55 MR. STAMP, Q.C.: Are there a number of grey market
56 insurers operating, non-standard insurers operating in
57 Ontario, to your knowledge?

58 MS. ELLIOTT: Yes, there are.

59 MR. STAMP, Q.C.: How many are there, do you know
60 offhand?

61 MS. ELLIOTT: I don't know how many offhand.

62 MR. STAMP, Q.C.: I mean, is it a big number? Is it 20?

63 MS. ELLIOTT: I don't know how many there are
64 offhand.

65 MR. STAMP, Q.C.: You have no idea?

66 MS. ELLIOTT: I haven't counted them.

67 MR. STAMP, Q.C.: Could you name them if you
68 started to list them now?

69 MS. ELLIOTT: Probably not.

70 MR. STAMP, Q.C.: Do you know how many are
71 operating in Newfoundland?

72 MS. ELLIOTT: I don't know specifically how many
73 there are operating in Newfoundland. There are fewer
74 insurers who operate in Newfoundland so all I could
75 offer is that there'd be fewer in Newfoundland than in
76 Ontario.

MR. STAMP, Q.C.: I'm just ... I'm looking at the, you know, the fairly wide range of rates evidenced by BGP-4, and, you know, the Ontario rates relative to industry are in the order of, I don't know, perhaps 280 or, 280 percent or so plus whereas the grouping in Newfoundland is sort of in the range of between 150 and 175 percent plus the industry average, so if a grey market insurer wants to operate, a non-standard writer wants to operate, as you say, presumably his rates would have to be somewhat higher to pick up the kind of risk that he would be attracting.

MS. ELLIOTT: That would be the general theory.

MR. STAMP, Q.C.: Okay. And so if you have the number of non-standard writers who are prepared to write, is it not foreseeable that some of the better risks in Facility could be attracted to or that those non-standard writers would be attracted to those kinds of risks?

MS. ELLIOTT: I'm sorry, could you repeat the question, please?

MR. STAMP, Q.C.: I say would it not be reasonable, foreseeable, that if you had a number of non-standard writers in Newfoundland, that they would be attracted to sort of the best risks in Facility?

MS. ELLIOTT: I'm sorry, I'm not familiar with the underwriting rules or the criteria that those grey market insurers, as you call them, what they put forth, so I would hesitate to answer that question.

MR. STAMP, Q.C.: I think there's some commentary, I think there was some correspondence from one individual, one company, Pembridge, which I think writes under the name Pembridge and Pavco (phonetic), and I think Mr. Tisdale (phonetic) wrote to the Board, I think it's part of the record, I stand to be corrected on that, Ms. Newman, indicating that he felt for his company to continue to operate in Newfoundland, Facility rates would have to climb, that is to say he couldn't sell insurance at the rates he needed if Facility rates were as low as they currently are because Facility would be competing with his company. Is that a concept that you can understand?

MS. ELLIOTT: Yes.

MR. STAMP, Q.C.: Well, I'm wondering what is the sort of, what is the theory behind having a situation

occur where a voluntary market insurer is willing to provide insurance, albeit at a higher rate, than, say, some other insurers, but which is being competed with by Facility Association?

MS. ELLIOTT: Well, as I said, I could understand the concept that you put forth as an idea, I've not reviewed Pembridge's rate-making data to provide any comment for this specific situation.

MR. STAMP, Q.C.: But if that were the case, if Mr. Tisdale's comments were accurate, what does it say about the process if his company, a voluntary market insurer, is prepared to provide insurance but can't find customers because they are attracted to Facility because of lower rates? What does it say about the process?

MS. ELLIOTT: I'm not sure what it says about the process. As I said, you'd have to study the data, you know, perhaps whatever Pembridge's is trying to do in this particular case and their portfolio of risks that they have. It would be very difficult for me to make a comment about that particular situation as I haven't analyzed that data.

MR. STAMP, Q.C.: But let's just look at it in the general sense then. If any insurance company is willing to sell insurance and finds that the rates at which they are able to sell it, given their underwriting philosophy, can't find customers because Facility Association rates are intruding into their area ...

MS. ELLIOTT: Well, as I understand it, people are insured in Newfoundland and if the insurer does not want to take that risk, they go to FA.

MR. STAMP, Q.C.: Right, I understand that. I'm just wondering about ... well, let me ask you this then, what's the criteria, the mandate for Facility in Newfoundland? What's its actual mandate?

MS. ELLIOTT: I am not ... Facility Association is not my clients and I don't have any of the documentation in front of me, but, as I understand it, it's a market of last resort, so if you're an individual and you can't find insurance or you're not offered insurance through a broker, you have the option to go to another broker to look for insurance and then another broker, and if you so decide to accept the rates, if you're given those, for Facility Association, if you so accept those, then that's what you would do.

MR. STAMP, Q.C.: That actually is in the area that, I guess, I'm interested in. So what happens when you make your inquiry, you're, you know, a consumer and you're interested in getting the best rate and you shop around and you find out that the best rate that you can get happens to be in Facility although it's not the only rate that you can get, you can also get a rate with another, let's say, non-standard writer but it would be higher? Do you understand that that is a situation where the process is working properly?

MS. ELLIOTT: Well, I suspect if I'm the individual and my best rate is Facility Association, then I would take the Facility Association rate.

MR. STAMP, Q.C.: Oh, sure, and I would too, but what I'm saying is, what happens when there is another ... let's supposing there are several non-standard writers who are writing here and let's suppose they all have rates published that I fit, you know, as an underwriting sort of sell or package I fit into any one of those companies, the risk that they're willing to accept, but the rate that I have to pay to them is higher than the Facility rate, as you say, like you, I would go to Facility, but what does that say about the Facility mandate? I mean, I could get insurance some place else, I just would have to pay more money for it some place else. Do you understand that that's, that the system is then working properly if that happens?

MS. ELLIOTT: I don't know what it says about the system, as you call it. If the insured can't get an insurance premium from the regular market, they will get insurance through the FA, and so that mechanism is working.

MR. STAMP, Q.C.: Well, but as you say, a situation can easily occur and you've said what you would do, and I agree with you, I would do the same thing, I would pick the lowest rate on the consumer, and if I can buy my insurance for \$1,500 from Facility Association or through that mechanism and have to pay, for argument's sake, \$1,800 to another non-standard insurer to buy the same coverage, I gather, like you, I would be going to Facility Association, but there is insurance available to me, albeit at \$1,800, but I don't take that. Does that satisfy the Facility Association legislative mandate?

MS. ELLIOTT: I'm unable to answer that question but I think if the issue is can insureds get insurance in

Newfoundland, I understand they can get insurance in Newfoundland.

MR. STAMP, Q.C.: Yes. So your view, let me just see if I can understand, your view is that there is no difficulty as long as they can buy the insurance, it doesn't matter that they're buying it at a cheaper rate from Facility than they could get it for in the voluntary market. That doesn't concern you.

(10:00 a.m.)

MS. NEWMAN: Mr. Chairman, I just wonder if we're gone beyond the realm of this witness' expertise here, talking about the insurance industry context rather than the actuarial evidence, opinions on legislative ...

MR. STAMP, Q.C.: Well, I don't think we're gone very far beyond it at all, Mr. Chairman.

MS. NEWMAN: Opinions on legislative interpretation.

MR. SAUNDERS, PRESIDING CHAIRMAN: I'm just wondering, too, Mr. Stamp, as to whether or not the witness is capable from her experience of answering the questions that you're putting in that regard. I think I know where you're getting at, what you're getting at, but ...

MR. STAMP, Q.C.: Well, I guess to the extent that Ms. Newman's remarks constitute an objection, let me say that, I mean, the purpose of this process and, as I understand particularly your own comments, Mr. Chairman, the Board is interested, the panel is interested in sort of a wider understanding of all of this. Mr. Powell himself raised a number of questions directly with Mr. Pelly at the end of his evidence that sort of went to this type of topic as well. This is the Board's actuarial expert and consultant and I'm just trying to find out whether that actuarial consultant has a view or perspective as to whether the process works, and I'm thinking about the process that is the statutory mandate for Facility. We know what that is, it's legislated. Whether the witness knows whether the process is working, if I can choose to buy in Facility just to get a lower rate. So I think the question is simple enough. The witness can't, doesn't understand it or can't answer it or is not, you know, hasn't got the knowledge, well she can tell me that, I guess, sir.

MR. SAUNDERS, PRESIDING CHAIRMAN: I thought she told you that.

1 MR. STAMP, Q.C.: Well ...

2 MR. SAUNDERS, PRESIDING CHAIRMAN: She said
3 the system is working. Did you say that?

4 MS. ELLIOTT: My understanding, if we want to recall,
5 the system is working, an insured can get insurance, so
6 I understand that's the case in this province.

7 MR. STAMP, Q.C.: Well, I guess this is the view that,
8 this is the concern I have, this is cross-examination of
9 course. Mr. Chairman, I will say that it isn't just the
10 availability of insurance that is the measure of whether
11 the system is working. When I look at the legislation
12 and the basis on which Facility exists, and I'm
13 motivated to the view that there's more than you've
14 bought the insurance, what has happened in, I guess in
15 connection with the voluntary market when you've
16 bought it? Have you bypassed the voluntary market?
17 So that's what I'm interested in having Ms. Elliott try
18 and deal with.

19 MR. SAUNDERS, PRESIDING CHAIRMAN: I have no
20 difficulty with the questions. I'm just wondering if this
21 witness is able to answer the question. She's ...

22 MR. STAMP, Q.C.: I understand, sir. Well, I'll ...

23 MR. SAUNDERS, PRESIDING CHAIRMAN: She is an
24 actuarial consultant to the Board but she's not an
25 actuary and a consultant. I don't think the Board uses
26 Ms. Elliott or her firm for any other insurance related
27 matters other than actuarial matters.

28 MR. STAMP, Q.C.: But, Mr. Chairman, Ms. Elliott did
29 explain her long-standing experience in the insurance
30 industry and in particular with Halifax Insurance where
31 she worked for some 15 years doing rate-making ...

32 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

33 MR. STAMP, Q.C.: ... and pricing, and I'm interested in,
34 you know, getting at that knowledge so the Board has
35 the benefit of it, how does she feel if she's at Halifax
36 Insurance, has a rate that she'll sell insurance for and
37 Facility is undercutting her.

38 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.
39 Let's proceed and if the witness is not able to answer,
40 she'll tell you.

41 MR. STAMP, Q.C.: Thank you.

42 MR. SAUNDERS, PRESIDING CHAIRMAN: And if we
43 don't think it's relevant, I'll tell you.

44 MR. STAMP, Q.C.: Yes, I understand. Thank you for
45 the opportunity to go further, a little bit further with
46 this, Mr. Chairman. Ms. Elliott, you've heard the
47 exchange and if I can bring it back to your past
48 experience with Halifax Insurance where you did pricing
49 and where you held a senior position, would it be
50 distressing to you in your pricing, I guess, efforts, if
51 your pricing properly, you know, properly established
52 and properly set, required a price for individual risk and
53 Facility Association was selling insurance for that same
54 risk at a cheaper rate?

55 MS. ELLIOTT: Well, based on my experience when I
56 was at Halifax Insurance, Halifax Insurance is not a grey
57 market insurer.

58 MR. STAMP, Q.C.: No, I understand that.

59 MS. ELLIOTT: The company didn't enter into, while I
60 was employed there, that area because it was felt it's a
61 different skill set, so I don't have pricing knowledge per
62 se, like hands-on experience of pricing grey market
63 portfolios, so I didn't encounter what you are
64 suggesting.

65 MR. STAMP, Q.C.: And what if you had encountered
66 that, what if you encountered, what if you'd bumped
67 into this problem in Nova Scotia or Ontario or wherever
68 you were doing rate-making for Halifax Insurance,
69 setting rates, properly setting the rates, as I say, based
70 upon, you know, a proper assessment of the risk that
71 you're underwriting, and finding that the Facility
72 Association mechanism was selling insurance at a
73 cheaper rate, what would be your reaction in those ...

74 MR. O'FLAHERTY: Mr. Chairman, I'm going to object
75 at this stage because now the witness is being asked
76 the answer to a hypothetical question in an area she
77 has not been qualified as an expert witness, so you've
78 given Mr. Stamp plenty of latitude on her personal
79 experience. She says she has none. Now she's being
80 asked to opine on an area that she said she has no
81 experience in. I don't believe that's a proper question
82 for the witness.

83 MR. STAMP, Q.C.: Again, Mr. Chairman, I, you know,
84 I heard the witness tell us about 15 years experience in
85 pricing and that sort of work with Halifax Insurance,
86 P&C insurer, and that she estimated 50 percent of her

1 time in that environment was spent on automobile
2 insurance pricing, so I really think this is an area that
3 she's competent to make some comment on. If she's not
4 willing to make a comment, then that's fine, I'll leave it.
5 Thank you.

6 MR. SAUNDERS, PRESIDING CHAIRMAN: Are you
7 able to answer Mr. Stamp's question?

8 MS. ELLIOTT: Well ...

9 MR. SAUNDERS, PRESIDING CHAIRMAN: Or do you
10 feel comfortable answering the question, Ms. Elliott?

11 MS. ELLIOTT: Well, what I will share, which I think
12 might be insightful, is companies when they decide to
13 enter a certain segment, a market segment, and whether
14 it's to offer insurance through the internet or through
15 brokers, they need to understand their marketing, they
16 need to understand their underwriting and their pricing,
17 where they're trying to target, so it's not always just a
18 simple element. As I said, Halifax Insurance, where I
19 did my work, didn't work in the grey market
20 environment. It knew it was a tough market to work in.
21 It's complicated, more complicated than the regular
22 market. So I don't have any hands-on experience with
23 the, what's been put forth as a, you know, hypothetical
24 example.

25 MR. STAMP, Q.C.: Thank you. Ms. Elliott, I'm just
26 going to ask you one further question in this area. You
27 do, as you say, work for the Ontario regulator and
28 insofar as this chart that you have in front of you, BGP-
29 4, indicates, the cluster of Ontario rates and its market
30 share are indicated being at the far right of the chart and
31 on the lower end of it, I guess, so that the rates appear
32 to be, I don't know that there's a single rate in any of
33 the other jurisdictions that are compared on this chart
34 at any time that is as high as the Ontario rate, and that's
35 just a visual observation. But my question really is
36 this, as the advisor to the Ontario regulator, are you of
37 the view that the rates that they have been charging
38 through the Facility Association mechanism are
39 essentially reasonable?

40 MS. ELLIOTT: We review the rates on behalf of FISCO
41 for the Facility Association. Each marketplace is
42 different. What we look at is the data that's available to
43 support the rate application, so Ontario, the
44 environment is very different from Newfoundland, so to
45 answer your question, yes, we review the rate filings
46 and we're able to provide our commentary to the

47 Financial Services Commission of Ontario, so we
48 participate in that review.

49 MR. STAMP, Q.C.: Yeah, so let me ask you this
50 question, put it this way to you, the Ontario rates that
51 they are charging in Facility aren't, in your view, I'll put
52 it this way, off the wall? They're not ridiculous rates,
53 they're justified?

54 MS. ELLIOTT: Well, I guess if you're paying it you
55 might think differently, but Ontario is quite different
56 than Newfoundland and I wouldn't want to mislead the
57 Board and say, yes, you know, this is the same thing.
58 Ontario has a take all-comers rule, unless it meets
59 specific criteria set out for eligibility in FA. They have
60 a risk sharing pool mechanism. I know there were
61 questions alluded to that earlier. It's quite different.
62 And I know in the past, Ontario was at a very different
63 place on this chart. So it's a different situation but I will
64 say that the rate filing that's prepared by FA and
65 provided to FISCO that we would review, it is reviewed
66 thoroughly and supported.

67 MR. STAMP, Q.C.: And so therefore the rates that
68 Facility charges in Ontario are proper rates in your
69 opinion.

70 MS. ELLIOTT: At this point I have no reason to say
71 that they're not.

72 MR. STAMP, Q.C.: We have the Facility Association
73 report of course and we have your, I guess, we have
74 Mercer's opinion that the, that Facility Association
75 rates are too low at the present time.

76 MS. ELLIOTT: That Facility Association rates are too
77 low?

78 MR. STAMP, Q.C.: Are presently too low.

79 MS. ELLIOTT: That would be correct.

80 MR. STAMP, Q.C.: And they are, I suppose, even from
81 your perspective, significantly too low.

82 MS. ELLIOTT: We provided what we believe an
83 alternative rate level indication and that would be a
84 very substantial increase, in my opinion as well, the
85 number that we've provided.

1 MR. STAMP, Q.C.: Right, and in the order of 24, I
2 think, percent for private passenger, which you would
3 agree, I think, is a pretty significant increase ...

4 MS. ELLIOTT: Yes, I would.

5 MR. STAMP, Q.C.: ... even in a general sense. And are
6 you quite unreservedly of the view that this is an
7 accurate number, your 24 percent for private
8 passenger?

9 MS. ELLIOTT: Subject to errors that we perhaps
10 unfortunately (inaudible), but, yes, I believe our number
11 is correct.

12 MR. STAMP, Q.C.: Okay. Is it fair to say as a general
13 proposition that the risks underwritten by Facility
14 Association are generally more risky than the risks
15 underwritten in the general market?

16 MS. ELLIOTT: What do you mean by risky?

17 MR. STAMP, Q.C.: More likely to result in a claim and
18 more likely for the claims to be a higher magnitude.

19 MS. ELLIOTT: I would agree that it's definitely more
20 likely to have a claim, the frequency is higher in the FA
21 risk than the regular market risk, yes.

22 MR. STAMP, Q.C.: And is it also a phenomena that the
23 risks on average tend to be more severe or, sorry, the
24 incidents or accidents or events tend to be more severe
25 than they are in the regular market?

26 MS. ELLIOTT: I would not describe it as more severe.

27 MR. STAMP, Q.C.: Would you agree that Facility
28 Association business is quite volatile?

29 MS. ELLIOTT: I'm sorry, would you clarify that for me?

30 MR. STAMP, Q.C.: Well, is the work that they do, the
31 business that they conduct, is it volatile in its nature?
32 I mean, does it have big swings, can it have big swings,
33 more so than the industry sector?

34 MS. ELLIOTT: I'm sorry, what has big swings, that the
35 number of ...

36 MR. STAMP, Q.C.: The results, Facility results, its
37 claims exposure from time to time.

38 MS. ELLIOTT: Well, if their risk count is changing, that
39 would be, that would change the volume of premium
40 and losses that you would expect.

41 (10:15 a.m.)

42 MR. STAMP, Q.C.: Just looking for a moment, Ms.
43 Elliott, at the, at Tab 4 of the Consumer Advocate's file
44 materials. It's Mr. Morris' pre-filed evidence and Tab 4
45 of it, and I guess in connection with this question of
46 the volatility of Facility I want to just look at the results
47 from operations shown on this report, looking at the
48 2000/2001 results. Now, as I understand this document,
49 it indicates that Facility results from operations were to
50 leave a surplus of about two and a half million for the
51 fiscal year ended 31 October 2000.

52 MS. ELLIOTT: I see that number.

53 MR. STAMP, Q.C.: And it appears to suggest that
54 there was a deficit the following year ended 31 October
55 2001 of over eight and a half million, and I'm looking at
56 a swing there of about \$11 million in that two-year
57 period, and that's close to the value of the written
58 premium in the recent years. Does that not appear to be
59 a large swing to you?

60 MR. O'FLAHERTY: Mr. Chairman, just at this stage I
61 should point out that this document, we haven't
62 established whether or not these assessments are done
63 on an accident year basis or on a premium year basis at
64 this stage, so that may be something that, you know,
65 needs to be taken into consideration here in the
66 question that Mr. Stamp is asking.

67 MR. SAUNDERS, PRESIDING CHAIRMAN: I
68 understand that. Does the witness understand that?

69 MS. ELLIOTT: Yes, I do understand the point being
70 made.

71 MR. SAUNDERS, PRESIDING CHAIRMAN: So your
72 answer then will be in conjunction with that provision.

73 MS. ELLIOTT: I would answer that I'm not familiar with
74 this particular exhibit and how the numbers were
75 derived. It may speak to the loss development factors
76 that are included in the rate filing, the rate filing
77 application, and if there's a relationship there, if those
78 loss development factors are too high within the rate
79 application and if, and, as I said, I don't understand
80 how this particular page was derived, and ...

1 MR. STAMP, Q.C.: I'm assuming that ... let's just take
2 it as ... let's just assume that it's correct.

3 MR. SAUNDERS, PRESIDING CHAIRMAN: Correct in
4 what way now?

5 MR. STAMP, Q.C.: That the numbers are accurate, that
6 the results from operations for the year I indicated, in
7 2000, showed a net surplus of two and a half million or
8 so, and the results of operations in 2001 showed a loss
9 from operations of in excess of eight and a half million.
10 I take it that that is correct.

11 MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah.
12 Getting back to Mr. O'Flaherty's point, we don't know if
13 these numbers reflect all of the, I'm trying to find a word
14 here, if it reflects the future years' estimates of cost of
15 claims. Is this amount, for instance, in 2001, showing a
16 net result from operation, eighty-six sixty, a bracketed
17 amount, reflective of future years' estimates of claims?

18 MR. STAMP, Q.C.: I think, Mr. Chairman, I'm looking
19 at this as an accounting result that's been presented
20 here and it simply shows a significant swing in activity
21 from the one year to the next year from an accounting
22 perspective. I'm wondering if Ms. Elliott can suggest or
23 conclude from that that it is an indication of the
24 volatility of the work that FA does.

25 MS. ELLIOTT: Well, I guess I could point to the '97/98
26 number, the six and a half and the 10.2 million, and
27 that's a reflection, I think, as was stated earlier, in
28 hindsight the reserves were too large when they looked
29 back to 1997, and again I don't know how these
30 numbers were derived. If they are tied to the rate filing,
31 well we have put forth that we think the loss
32 development factors should be lower than what were
33 selected, if those numbers are related I would be very
34 cautious about making any comment on those numbers,
35 but you can look through the history and see changes
36 in the numbers year over year.

37 MR. STAMP, Q.C.: Okay. As an actuary, when you
38 address the rate-making exercise or review Facility's
39 filing, are you motivated to consider the past year's
40 results in terms of surpluses or deficits in the financial
41 statements?

42 MS. ELLIOTT: I'm not motivated by any such number,
43 no.

44 MR. STAMP, Q.C.: So it doesn't get factored into your
45 rate-making review at all?

46 MS. ELLIOTT: We look at the rate application that's
47 been provided to us.

48 MR. STAMP, Q.C.: Yeah. You don't ... I mean, if they
49 lost a billion dollars last year, it's not a concern for the
50 rate-making process, I take it.

51 MS. ELLIOTT: Rate-making is prospective in nature,
52 not retrospective.

53 MR. STAMP, Q.C.: I've heard Mr. Pelly say that, but
54 that's, and that's the implication of that, isn't it, that you
55 don't look behind at whatever size surplus or deficit
56 there has been from a financial perspective?

57 MS. ELLIOTT: We look behind, if you will, to the prior
58 accident years and try to project that loss experience
59 forward.

60 MR. STAMP, Q.C.: But you don't study the balance
61 sheet, for example, you don't study the income
62 statement ...

63 MS. ELLIOTT: No.

64 MR. STAMP, Q.C.: ... to say, look, they've lost \$10
65 million last year, we have to set the rates a bit higher so
66 they'll recover the \$10 million.

67 MS. ELLIOTT: I do not do that.

68 MR. STAMP, Q.C.: And that's not actuarially correct to
69 do it in any event, is it?

70 MS. ELLIOTT: That would be correct.

71 MR. STAMP, Q.C.: Okay. I just want to touch briefly
72 on the comments in your report, I guess dealing with
73 the data that was reviewed, and I'm just trying to find ...
74 I think it's at page one perhaps of your report. I think
75 I'm looking at the bottom half of the page. This is the
76 data that was reviewed and your further comment that
77 both Mercer's and Facility Association relied upon data
78 provided by the Insurance Bureau of Canada, that
79 neither Mercer nor FA have audited or independently
80 verified the data, but it's been checked for
81 reasonableness. I take it you don't, that's not a criticism
82 of, in any way of what's been done by Facility in this
83 filing?

1 MS. ELLIOTT: That is correct, it's not a criticism.

2 MR. STAMP, Q.C.: I thought ... I didn't think it was.
3 And you say it has been checked for reasonableness.
4 Is this a process that actuaries go through?

5 MS. ELLIOTT: Yes, when you have data and it would
6 depend on the situation, but you would certainly look
7 at it and try to understand the data to the best of your
8 knowledge for reasonableness.

9 MR. STAMP, Q.C.: And you'll agree, and you're aware,
10 I'm sure, that the data that IBC collects, they collect as
11 the statistical agency for the Superintendent of
12 Insurance.

13 MS. ELLIOTT: Correct.

14 MR. STAMP, Q.C.: Okay. So this is what they relied
15 upon and you have no criticism whatever of their
16 relying on this data?

17 MS. ELLIOTT: I have no reason to believe that the
18 data that was provided for FA individually, the group
19 or the industry is incorrect.

20 MR. STAMP, Q.C.: Thank you. Ms. Elliott, I'm just
21 going to paraphrase and ask you to tell me whether you
22 would agree with this, these comments, that from a
23 financial reporting perspective, Facility Association
24 residual market operates as a flow through pool
25 whereby each member is allocated a share of farms
26 (phonetic) premiums claims and expenses and
27 investment income and that business is recorded by
28 each member as direct business. Would you agree with
29 that?

30 MS. ELLIOTT: It is a mechanism that the results are
31 shared amongst all the companies writing automobile
32 insurance in the province.

33 MR. STAMP, Q.C.: Yes, and I'll go on, as a result,
34 members are required to allocate capital to cover their
35 share of FA business as if it were their own direct
36 business. Would you agree with that?

37 MS. ELLIOTT: Correct.

38 MR. STAMP, Q.C.: We know of course, and this has
39 been spoken about, that the Facility Associates rates in
40 this jurisdiction, and I presume in Ontario as well, are
41 advanced anticipating zero percent return.

42 MS. ELLIOTT: Correct.

43 MR. STAMP, Q.C.: And, so I guess if, you know, I
44 guess if actuaries really could predict the future
45 precisely, then Facility would arrive at the end of any
46 particular period with just enough of a surplus to pass
47 onto the members to pay their direct expenses.

48 MS. ELLIOTT: It would be a break even operation, is
49 that what you're inferring?

50 MR. STAMP, Q.C.: That's what I guess I'm suggesting,
51 it would be a break even ... they would need to have a
52 surplus for to be break even because some of the
53 expenses are paid directly by member companies, I
54 understand.

55 MS. ELLIOTT: That's my understanding.

56 MR. STAMP, Q.C.: So with precision then, we could
57 have, they would have just enough left to pay those
58 expenses, and some of the expenses have been talked
59 about and I think you, I'm sure, are fully aware of those.
60 There's health levies in Newfoundland and association
61 dues and premium taxes and so on. I'm wondering
62 about this, the cost of capital as an expense. As you
63 confirmed, companies are required to allocate capital,
64 you know, for this aspect of the business that's
65 attributed directly to them. Is that a cost, a real cost to
66 companies?

67 MS. ELLIOTT: Well ...

68 MS. NEWMAN: Again, Mr. Chairman, I'm just
69 wondering, we don't have an economist on the stand
70 here, we've got an actuary, so I just ask that we ...

71 MR. SAUNDERS, PRESIDING CHAIRMAN: I had the
72 same thought about the question. Why don't you ...

73 MR. STAMP, Q.C.: Mr. Chairman ...

74 MR. SAUNDERS, PRESIDING CHAIRMAN: Why
75 don't we break and you can think about it over the
76 break and ...

77 MR. STAMP, Q.C.: Well, we can certainly take a break,
78 sir.

79 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.
80 Let's break and come back at quarter to.

1 MR. STAMP, Q.C.: Thank you.

2 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank
3 you.

4 (10:30 a.m.)

5 (break)

6 (10:50 a.m.)

7 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.
8 Stamp, if you're ready to resume.

9 MR. STAMP, Q.C.: Thank you. Ms. Elliott, when you
10 do the benchmark work in Newfoundland, I understand
11 you arrive at the benchmark including some kind of rate
12 of return for insurance companies in the regular
13 industry?

14 MS. ELLIOTT: An investment rate of return, is that
15 what you asked?

16 MR. STAMP, Q.C.: No, I'm thinking just a return on
17 capital, a return on equity.

18 MS. ELLIOTT: Yes.

19 MR. STAMP, Q.C.: And I'm not sure of the numbers,
20 about 8 1/2 percent it appears. I'm not sure if that's
21 exactly correct or not.

22 MS. ELLIOTT: It's in the 8 percent range.

23 MR. STAMP, Q.C.: Okay, and I think when you did the
24 study for Nova Scotia you essentially did a benchmark
25 over there and looked at something in the order of 10
26 percent for return on equity.

27 MS. ELLIOTT: That's correct.

28 MR. STAMP, Q.C.: And that is intended to be, I guess,
29 a nominal return for the insurance companies built into
30 the rates to give that return to them in their doing of the
31 business.

32 MS. ELLIOTT: That's correct.

33 MR. STAMP, Q.C.: And certainly when Facility does
34 its filing, and you do the review of the filing, there is no
35 similar rate of return in the rates that are proposed.

36 MS. ELLIOTT: There is a zero in the filing.

37 MR. STAMP, Q.C.: Yeah, no rate of return.

38 MS. ELLIOTT: Did you say no rate of return?

39 MR. STAMP, Q.C.: Correct.

40 MS. ELLIOTT: As in zero?

41 MR. STAMP, Q.C.: Return on equity.

42 MS. ELLIOTT: Correct.

43 MR. STAMP, Q.C.: So, and we know that the regular,
44 the voluntary market or regular market insurers are
45 assigned this business from Facility Association, to
46 record it on their own books?

47 MS. ELLIOTT: Yes.

48 MR. STAMP, Q.C.: So is it correct that whatever rate of
49 return insurance companies are to achieve must come
50 out of the work that they do in the regular market?

51 MS. ELLIOTT: That is my understanding.

52 MR. STAMP, Q.C.: Okay, so in terms of the numbers
53 you spoke about which are in, I think, page 6 of your
54 report, the rate of return would have to, would have to
55 be generated from the insurance that they sell to the
56 approximately 96 percent, because it doesn't come from
57 the 4 percent or so that insured through Facility.

58 MS. ELLIOTT: Well, the rate of return that they would
59 reflect would be from their regular business that you
60 mentioned, plus any operating surpluses that are
61 returned back to them. I don't know how that's
62 necessarily reflected, but presumably it's all
63 encompassing.

64 MR. STAMP, Q.C.: Okay, now in the specifics of the
65 filing itself, Ms. Elliott, and we've heard lots of evidence
66 about this, and you've already testified yourself ... the
67 filing is broken down into private passenger and
68 commercial, and you've done your review on the same
69 division. Facility has filed for a 41.3 increase in private
70 passenger across the range of coverages and so on
71 that's in that grouping, and your report concludes that
72 24.4 percent is required to bring the rates to breakeven.

73 MS. ELLIOTT: Yes.

1 MR. STAMP, Q.C.: And so in the case of commercial
2 there's about 17 points difference between the two
3 positions?

4 MS. ELLIOTT: Thereabouts.

5 MR. STAMP, Q.C.: Now, you did mention yesterday
6 that there was some error. Is this in the area of private
7 passenger, or was it in commercial that that came up?

8 MS. ELLIOTT: I'm sorry, which came up?

9 MR. STAMP, Q.C.: I thought you mentioned
10 yesterday, maybe earlier today, but I thought it was
11 yesterday, that there had been some, there was two
12 points you made mention of where your report needed
13 to be modified?

14 MS. ELLIOTT: Right, commercial was, it's (inaudible)
15 an 18 percent difference. I can refer to the number if
16 you'd like, but ...

17 MR. STAMP, Q.C.: Okay, well I'll come back to that,
18 but it's in the commercial setting that that occurred.

19 MS. ELLIOTT: Right.

20 MR. STAMP, Q.C.: The actual private passenger
21 numbers don't, haven't changed.

22 MS. ELLIOTT: Correct.

23 MR. STAMP, Q.C.: Yeah, and, and Mr. Pelly, in giving
24 his evidence, indicated that he understood from your
25 report that that 17 or so point spread between the two
26 of you in private passenger was made up from loss
27 development, about 12 percentage points, about three
28 points for trend in private passenger, and about a
29 percentage point in ULAE, and about a percentage
30 point in third party liability analysis, is that about
31 correct?

32 MS. ELLIOTT: That's my ... they were rough
33 approximations to derive the total difference.

34 MR. STAMP, Q.C.: Thank you. He also indicated, and
35 you hopefully can speak to this, that he understood
36 that the bulk of, the great bulk of the 12 percentage
37 points which are attributable to the difference in loss
38 development views is made up by the, in your case, the
39 non-exclusion, I guess, of the data points, and not by

40 the weighted average, which is also a feature of your
41 report in that area.

42 MS. ELLIOTT: Correct.

43 MR. STAMP, Q.C.: Is that correct? So that it is, the
44 great bulk of the 12 percentage points is from the, in
45 your case, the non-exclusion of data points.

46 MS. ELLIOTT: That's correct.

47 MR. STAMP, Q.C.: Okay, and if you just return to your
48 report for a few moments on this topic, Ms. Elliott, at
49 page 11, there is, it's clear, I think, that there's no
50 disagreement with the source of the data, and no, you
51 don't actually disagree with the five year average, in
52 fact, as well.

53 MS. ELLIOTT: That's correct.

54 MR. STAMP, Q.C.: Although not disagreeing with the
55 five year average, you actually prefer a five year
56 weighted average.

57 MS. ELLIOTT: That's correct.

58 MR. STAMP, Q.C.: But it's not a disagreement as to
59 methodology, it's just your own preference.

60 MS. ELLIOTT: That's correct.

61 MR. STAMP, Q.C.: But the real difficulty that you had,
62 of course, was the exclusion of some data points.

63 MS. ELLIOTT: Uh hum.

64 MR. STAMP, Q.C.: So what I want to try and make
65 clear is that in terms of loss development factors, your
66 position is that you would use all the data points
67 regardless of variability.

68 MS. ELLIOTT: We would use all the data points. It's
69 a random selection that's provided. We don't know
70 why they are what they are. We don't know the various
71 ... we have not been advised that there's any errors in
72 the data, so the data that's provided in terms of loss
73 development factors, what's there, we believe could
74 possibly happen again. No one has stated that there
75 was an error in the data.

76 MR. STAMP, Q.C.: Okay, so well I'm not sure if I
77 understand but you recommend in this case that the,

1 that there not be any exclusion of data for bodily injury,
2 right?

3 MS. ELLIOTT: Bodily injury is the major coverage.

4 MR. STAMP, Q.C.: Right, I understand it is, yes, and
5 you recommend that there be no exclusion of data
6 points for this, but just ... I'm not sure if I heard you
7 correctly a moment ago, are you saying that you may
8 well exclude data points in loss development if you are
9 satisfied they're outliers, or is it ... I'm sorry, is that the
10 case, or is it that you prefer to do loss development
11 with no exclusions as a general practice?

12 MS. ELLIOTT: No, not as a general practice.

13 MR. STAMP, Q.C.: Okay.

14 MS. ELLIOTT: I think judgement, exclusion of data
15 points, I think every actuary over the course of their
16 work will occasionally exclude data points. What we're
17 referring to here is the fact that in every case the
18 exclusion was a low point. We had no reason to
19 believe, we were not provided any information to say
20 this was wrong, this will never happen again. We see
21 low numbers, we've seen them in the last five years,
22 we've seen them in the prior history. They could
23 possibly happen again. There's been no evidence that
24 they wouldn't happen again.

25 MR. STAMP, Q.C.: Okay.

26 MS. ELLIOTT: So we want to take the five year
27 weighted average, be sure that that's unbiased.

28 MR. STAMP, Q.C.: So it's, your disagreement is with
29 this particular case selection of outliers, not in a general
30 sense that you don't want to exclude outliers in loss
31 development.

32 MS. ELLIOTT: Correct, I think there's certainly cases
33 where you'd have a balance of high numbers excluded
34 and low numbers excluded.

35 MR. STAMP, Q.C.: But if you have only outliers on the
36 one side or the other side, would you exercise your
37 judgement to exclude them if they are outliers, even
38 though there is no corresponding outlier on the other
39 side?

40 MS. ELLIOTT: I'm sorry, could you be more specific for
41 me?

42 MR. STAMP, Q.C.: Well, you said you would want to
43 use, you would want to be balanced and excluded the
44 high ones and the low ones, and I'm saying if the outlier
45 or the outliers are only on one side, they aren't all on
46 the high and low, you know, they're not on both sides,
47 they are on one side only, high or low, is it appropriate
48 if they are outliers to exclude them, even though there's
49 no corresponding outlier on the opposite side to
50 exclude?

51 MS. ELLIOTT: I think we're focusing on this rate filing,
52 there are outliers that were high that were not excluded.

53 MR. STAMP, Q.C.: I'm just trying to get your general
54 position. You're not, I want to make sure that I
55 understand you, that's all. You're not saying that you
56 have to have outliers on both sides of the line so as to
57 exclude either one of them.

58 MS. ELLIOTT: I think we should be specific. It's easy
59 to make generalities about a lot of judgement. When
60 you review a rate filing, or you compare a rate filing,
61 you have to study the data, and in our case, we looked
62 at the data, we saw numbers that were low, we saw them
63 in the current five years, we saw them in the history.
64 We had no reason to believe that they should not be
65 excluded. We didn't believe that they should be
66 excluded, pardon me, and we felt that a five year
67 weighted average was appropriate. There was no
68 information provided to say, gee, a mistake has been
69 made, this number is low, it shouldn't be in this average
70 ... something happened, it will never happen again. I
71 haven't been told that.

72 MR. STAMP, Q.C.: I don't want to deal with the
73 specifics of it just yet at least, I want to deal with the
74 generalities of it. If you have an outlier on the low side,
75 and you're satisfied it's an outlier in loss development
76 factors, is it proper to exclude it?

77 MS. ELLIOTT: Well, you'd have to look at it and
78 understand that data and what that outlier is.

79 MR. STAMP, Q.C.: No, I asked you, you find what you
80 are satisfied is an outlier, it's on the low side, there
81 doesn't have to be in the hypothetical that I'm giving to
82 you, any outlier that you found on the high side. You
83 just find one outlier on the low side. Is it appropriate to
84 exclude it?

85 MS. ELLIOTT: If you understand why that outlier is
86 what it is. If you go back, and as an actuary working

1 for a company, certainly you have knowledge of the
2 data and you can find out, you know, and that's the
3 actuary's job, to find out why is this so low, what
4 happened here, and you go back and you investigate,
5 and you may find out, it's just the randomness in the
6 data, or you may find out, oh, you know, the claims
7 adjusters, they made this big mistake and it will never
8 happen again, so it's the actuary's job to understand
9 the data, and if you can't provide a rationale for why the
10 numbers are what they are, then, you know, to be
11 unbiased, you really shouldn't exclude very many
12 points.

13 MR. STAMP, Q.C.: Well, I'm curious now. You think
14 the actuary goes back to look at the adjuster's
15 valuations?

16 *(11:00 a.m.)*

17 MS. ELLIOTT: In my working experience at Halifax
18 Insurance Company, if I looked at the data and I didn't
19 understand a data point, I would definitely meet with
20 the vice-president of claims and figure out what
21 happened, that's my job.

22 MR. STAMP, Q.C.: Right, and that's with the Halifax
23 Insurance Company, and of course, this is Facility
24 Association, it is an entirely different animal, isn't it?

25 MS. ELLIOTT: It's a conglomeration of the three or
26 four servicing carriers.

27 MR. STAMP, Q.C.: Right, and, and you're looking at
28 IBC data.

29 MS. ELLIOTT: No, we're looking at Facility
30 Association data.

31 MR. STAMP, Q.C.: But supplied by IBC to Facility
32 Association.

33 MS. ELLIOTT: We're looking at the Facility
34 Association data.

35 MR. STAMP, Q.C.: Where does it get it?

36 MS. ELLIOTT: It's supplied by IBC.

37 MR. STAMP, Q.C.: Right, but your view is you think
38 the actuary should go back in the case of a data, let's
39 say we have a low data point, you should track that low
40 data point back, going to each of the individual service

41 carriers, to try and find out if there's an event or a claim
42 or a transaction in a particular year that brought that
43 about, is that what you're saying?

44 MS. ELLIOTT: Yes, I'm saying that the actuary should
45 understand the data in terms of making exclusions. If
46 we're looking at, the five year was selected, we find that
47 reasonable, and so when we look at that we don't
48 understand why those selections were made, that hasn't
49 been articulated specifically, like why all the low values
50 were excluded, and we see that they've happened in the
51 past, the prior five year period, and we have no reason
52 to believe that they won't happen again.

53 MR. STAMP, Q.C.: Yeah, but you've confirmed already
54 that you're quite satisfied with the data that they used,
55 which is the IBC generated data. They don't go to the
56 individual insurance companies.

57 MS. ELLIOTT: That's correct, so as we understand the
58 data, it is not an error, and that these data points have
59 occurred, and it's possible that they will occur again,
60 and a five year average is a good balance between
61 responsiveness and stability, and we think that FA's
62 selection of the five year period of time is reasonable,
63 yes.

64 MR. STAMP, Q.C.: I'm not concerned about the five
65 year period, I'm interested in the outlier discussion that
66 we're having. You won't exclude an outlier, you're
67 saying, if I interpret you correctly, until in this particular
68 case, Mr. Pelly goes back to look at the individual
69 service carriers and to canvass the claims adjusters at
70 those companies to try and find the explanation among
71 the service carriers for a low number.

72 MS. ELLIOTT: In our opinion, using the five year
73 average without any exclusions is unbiased. It includes
74 the random nature of the data that's been presented,
75 which we understand is not in error. We're not
76 suggesting that Mr. Pelly goes back to the carriers,
77 we're just suggesting that we feel taking the five year
78 average is reasonable.

79 MR. STAMP, Q.C.: But now you're back to a rule. I
80 just want to use the five years and exclude no data,
81 which is what I thought your report was saying in the
82 first instance, but I thought you had moved away from
83 that.

84 MS. ELLIOTT: We don't understand the exclusions
85 that were provided in the rate filing. They're all the low

1 values. We saw the charts that we've provided. It did
2 not appear to be balanced, if you will. There were no
3 high values excluded, there were just the low values
4 excluded in all cases. We looked at four major
5 coverages.

6 MR. STAMP, Q.C.: I think we're talking about, you
7 know, two aspects of this matter now, and I'm more
8 intrigued by the second aspect. You're saying you
9 want to use the five year data, no exclusions, that's the
10 better rule to follow.

11 MS. ELLIOTT: If a reason was provided to us to
12 explain the data, to say this is what happened, we were
13 not provided any information to explain those outliers.
14 We see from the graph, one could see outliers above
15 the five year average and below the five year average.
16 Our point that we've made in the report is that FA has
17 excluded low values, all the low values are the
18 exclusions.

19 MR. STAMP, Q.C.: What's an outlier, Ms. Elliott, what
20 is an outlier? How would you define that?

21 MS. ELLIOTT: Well, that's a very difficult element to
22 define when you're looking at loss development factors.

23 MR. STAMP, Q.C.: But you're the expert and we have
24 to ask you that, and you tell us what it is. What do you
25 understand it to be?

26 MS. ELLIOTT: Something that you would suggest
27 would change the average materially, so if a data point
28 is in there and you feel that it would change your
29 findings ... we looked at that with loss trend for
30 commercial BI, we saw those outliers for this famous
31 winter, where those values were far in excess of the
32 prior 12 months, and we looked at those as outliers.

33 MR. STAMP, Q.C.: No, but I mean, okay, is it, is an
34 outlier a data point that ought to be excluded?

35 MS. ELLIOTT: If you understand ...

36 MR. STAMP, Q.C.: No, is an outlier a data point that
37 ought to be excluded?

38 MS. ELLIOTT: And if you can understand why that
39 outlier is there. We are looking at five years of data,
40 random loss development factors. If you go to the
41 data, you look at how those loss development factors
42 were derived ...

43 MR. STAMP, Q.C.: But the data that you have, I really
44 want to pursue this, the data that you have is the IBC
45 data reported by all insurers, and for Facility
46 Association reported by the service carriers to IBC, and
47 this is somehow amalgamated in some way and
48 presented to ...

49 MS. ELLIOTT: This is the FA by the servicing carriers
50 in Newfoundland.

51 MR. STAMP, Q.C.: But the FA gets that data for the
52 purposes of this exercise, this filing, they get that data
53 from the IBC.

54 MS. ELLIOTT: I just want to clarify that's not industry
55 data, it is FA data.

56 MR. STAMP, Q.C.: Right, but they get it from IBC?

57 MS. ELLIOTT: Correct.

58 MR. STAMP, Q.C.: And your view is, to make sure I'm
59 clear on this, your view is that when they study that
60 data on a macro level, and try and decide what their
61 loss development factors ought to be, and they see
62 what they regard as a very unusual data point, which
63 they then conclude based upon their review of the
64 overall data that they have for this particular coverage
65 over many years, is an outlier. Your view is you can't
66 call it an outlier until you go back and mine down into
67 the service carriers' individual claims experience to try
68 and find an explanation for it?

69 MS. ELLIOTT: In terms of this outlier that we're
70 referring to in a hypothetical example, we've seen
71 outliers that were excluded, if you will, the red points,
72 and you look at those red points and you can look back
73 in history and see a number, in some cases even lower
74 than that so-called outlier that were excluded, so we're
75 keeping in the specifics here of this rate filing, our
76 feeling is that the numbers were excluded, were biased
77 in the sense that they were all the low values. There
78 were high values that we saw that were not excluded.
79 It is our view that it is better to take the data that was
80 provided, realize that it's random data, take a five year
81 period of time that's both responsive and stable, and
82 use that number.

83 MR. STAMP, Q.C.: So then if we just go to Mr. Pelly's
84 exhibit, BGP-3, I think the first page is page 12. He has
85 identified an outlier.

1 MS. ELLIOTT: These don't have page numbers.

2 MR. STAMP, Q.C.: Alright, if you would just count
3 down through that, Ms. Elliott, it's the twelfth page in
4 any event.

5 MS. ELLIOTT: There we go. This is the private
6 passenger ...

7 MR. STAMP, Q.C.: It is, bodily injury loss
8 development factor selection. Do you have that page,
9 the twelfth page in?

10 MS. ELLIOTT: Yes.

11 MR. STAMP, Q.C.: Okay, and in the second interval
12 there is what Mr. Pelly has determined in the Facility
13 data, an outlier, right?

14 MS. ELLIOTT: Uh hum.

15 MR. STAMP, Q.C.: Now, your, this is what I want to be
16 clear about, your evidence is you can't be persuaded
17 that that's an outlier just by looking at all the data that's
18 displayed here on this chart, the historical data going
19 back more than five years, in fact ... you ... to decide if
20 Mr. Pelly is right in excluding that outlier, you want him
21 to go to the four service carriers in Newfoundland to
22 mine down into their data, into their claims history,
23 what particular event or events occurred to create that
24 data point, what was unusual about it?

25 MS. ELLIOTT: Mr. Stamp, may I just confirm you're
26 looking at the second column here, that black dot at the
27 bottom?

28 MR. STAMP, Q.C.: Yes, I am.

29 MS. ELLIOTT: Right, no, I'm not suggesting that Mr.
30 Pelly go back to FA. I have suggested that an actuary
31 working in a company, that's one of the things that I
32 would do. If I don't understand the data, if I don't ...
33 and I'm not told that there's anything wrong with it,
34 which is the case here, then I would use the average. I
35 would also look at this chart and see in column one this
36 number way up there at the top, why is it included, is
37 that an outlier?

38 MR. STAMP, Q.C.: Which number are you referring
39 to?

40 MS. ELLIOTT: The 12/24 column.

41 MR. STAMP, Q.C.: Is that the yellow triangle in the
42 first, in the first interval?

43 MS. ELLIOTT: Well it's the number, the data point is
44 the one point reference here ... 1.4106.

45 MR. STAMP, Q.C.: Okay, you're looking at the blue
46 dot, are you?

47 MS. ELLIOTT: Yes, it would be blue, yeah.

48 *(11:15 a.m.)*

49 MR. STAMP, Q.C.: Alright, so we're talking about the
50 same, you're looking at the first, the first interval,
51 number one.

52 MS. ELLIOTT: Correct.

53 MR. STAMP, Q.C.: And the blue dot on top of the red
54 line, above the red line, that's your point.

55 MS. ELLIOTT: That's correct.

56 MR. STAMP, Q.C.: And you're saying why exclude the
57 black dot in the second interval at the bottom if you're
58 not going to exclude the blue dot in the first interval
59 above the red line.

60 MS. ELLIOTT: That would be one example where we
61 don't understand the outliers that were chosen which
62 all are the low values which drive the rate level
63 indications higher.

64 MR. STAMP, Q.C.: Well, we're going to, we're going to
65 sort this out, I know, but I do want to make sure I'm
66 clear. It isn't necessary now then for Mr. Pelly, or for
67 Facility to go back to the service carriers to mine down
68 into particular claims history, to try and find an
69 explanation for that black data point in the second
70 interval?

71 MS. ELLIOTT: We suggest what we've put forth, that
72 the five year weighted average is a reasonable
73 approach. It uses the data, the random nature in the
74 data.

75 MR. STAMP, Q.C.: I know you suggest that, I'm just
76 trying to clarify, because I've heard you say this now a
77 couple of ways, and I think I'm hearing it different ways.
78 I had understood you to say at one point from your
79 report, you just wanted to use all the data. There

1 should be no exclusions in loss development factors.
2 That's what I interpreted your report to say. In the
3 course of your evidence now I think you've said to us,
4 oh (inaudible), I will exclude loss development factors,
5 data that is outliers, if I'm satisfied it's an outlier, is that
6 correct so far?

7 MS. ELLIOTT: Typically I want to understand the data,
8 at least believe I have a balanced approach.

9 MR. STAMP, Q.C.: Well, okay, now how are you ever
10 going to understand, I mean in the sense of go find the
11 actuarial ... go find the claims experience to exactly
12 explain that black point in the second interval ...

13 MS. ELLIOTT: Well, I think that's our point. We don't
14 really understand why it's so low. We see that it's
15 happened in the past, in the prior periods of time, and
16 there's no reason to believe that it won't happen again,
17 it's plausible, so given that a five year period of time
18 has been put forth, which we find reasonable, to
19 include all the data points would be unbiased in our
20 opinion.

21 MR. STAMP, Q.C.: You're saying, I'll just adopt a
22 general rule to include a five year average, and in that
23 five years I won't exclude any data?

24 MS. ELLIOTT: In this particular case this is our
25 suggestion, our recommendation.

26 MR. STAMP, Q.C.: Right, but again, you don't ... I
27 mean it's a question of judgement, is it not, when you
28 look at any particular point, it's a question of actuarial
29 judgement, how, what is the relationship of this black
30 data point, and this is where it's located on the chart,
31 what's the, what is it about that data point that tells us
32 that it's a good indicator of where we're going to go in
33 the future and we should rely upon it, or alternatively,
34 no, it's not a good data point, it isn't representative of
35 where we're going to go, we should exclude it ... that's
36 a judgement, isn't it?

37 MS. ELLIOTT: Yes, and we have no reason to believe
38 that the last five data points are not representative of
39 what could possibly happen in the future, that has not
40 been presented to us.

41 MR. STAMP, Q.C.: But the only, it can only be
42 presented, if you like, on a macro level. I mean Mr.
43 Pelly can't tell you that there was a particular, you
44 know, year, with a particular service carrier where some

45 claim was perceived, some special low level of claim or
46 batch of claims resulted in a very low loss development
47 factor.

48 MS. ELLIOTT: That's exactly my point, we don't know
49 why it's low. All we know is that it's happened before
50 and there's no reason to say that it won't happen again.
51 It's very plausible. We can look back in time and see
52 low factors in the prior five year history. We see it
53 again in the current five year history, we think it's
54 appropriate to include the data point.

55 MR. STAMP, Q.C.: Right.

56 MS. ELLIOTT: We believe it's responsive and
57 unbiased.

58 MR. STAMP, Q.C.: Let me ask you this then, if the blue
59 data point that you referred to in the first interval was
60 located where the yellow, the top yellow mark is in that
61 first interval, okay, and if the yellow marker whose place
62 I'm taking now with the blue data point is moved to the
63 second interval at the same level ...

64 MS. ELLIOTT: Uh hum.

65 MR. STAMP, Q.C.: Would you regard the blue data
66 point in the first ... relocated for you now, would you
67 regard that as an outlier?

68 MS. ELLIOTT: Well, I think one of the things you need
69 to look at is the results of a weighted average, that
70 volume of that data. You could have a factor of two,
71 because if you go, and you'd have to work through the
72 numbers, but if you go from \$100 to \$200, you're going
73 to have a factor of two, but the volume of data is small
74 and you could have another year where it's a different
75 dollar amount, so you have to look at that data point
76 and look at it in context of the weighted average that
77 you're using.

78 MR. STAMP, Q.C.: So let's just do that. There's a data
79 point now, a blue data point, because it's within the
80 current five years.

81 MS. ELLIOTT: Uh hum.

82 MR. STAMP, Q.C.: And it's at the level in the first
83 interval just over the 2.1 horizontal line, so it's at 2.15 or
84 something. That's a data point now, and it's a blue data
85 point, not a yellow one ...

1 MS. ELLIOTT: Uh hum.

2 MR. STAMP, Q.C.: Therefore, it's not older than five
3 years, it's more current than five years. Would you
4 exclude that data point in this case?

5 MS. ELLIOTT: I think it's appropriate to look at the
6 entire selection process, actually go through, you look
7 at the data, and it's not unreasonable for an actuary to
8 use their judgement, and understand the data, and if
9 one can make a case that they're balanced in their
10 approach, that there's some high outliers excluded and
11 some low outliers excluded, that's very important, so
12 there's a balanced approach in reviewing the data, so
13 you're taking this particular number, of course, wasn't
14 considered in the last five years, you're looking at that,
15 but we would look at the entire, the entire history, and
16 make sure that we're balanced in our review, and it's
17 possible that you could exclude one very high point
18 because you felt, you know, you studied the data and
19 you felt we've never seen this before in the history,
20 then perhaps you might exclude it, but we're not talking
21 about that here in the exclusions that were made by the
22 FA. We're talking about exclusions in some cases
23 where similar numbers, even lower numbers were in the
24 prior five year periods, so there's a little difference here.

25 MR. STAMP, Q.C.: So to answer the question then, if
26 that blue, if that yellow spot in the first interval that I
27 pointed out to you was a blue spot, you might well be
28 prepared to exclude it as an outlier?

29 MS. ELLIOTT: It's certainly possible that you would
30 use your judgement and have outliers, but you want to
31 look at the whole picture and make sure that you are
32 balanced in your choice of exclusions.

33 MR. STAMP, Q.C.: And it doesn't matter then, really,
34 whether it's below the line or above the line, if it's an
35 outlier, it should come out?

36 MS. ELLIOTT: In our view in this case, we looked at
37 the data and felt that five years ...

38 MR. STAMP, Q.C.: I mean from a general perspective,
39 not just in this case, in a general way.

40 MS. ELLIOTT: If you're asking me if outliers can be
41 above the line and below the line, yes, of course.

42 MR. STAMP, Q.C.: And if they're just above the line,
43 let's say they're just above the line, the outliers, it's not
44 a problem to exclude them, even just because you ...

45 MS. ELLIOTT: Which line are you referring to?

46 MR. STAMP, Q.C.: The line that is your average, that
47 you're working with. If you have an outlier, you talk
48 about above and below the line, you want to be
49 balanced to take out the ones ... if you're going to take
50 out above the line, they should come out below the
51 line, you're saying.

52 MS. ELLIOTT: There should be a balanced approach.

53 MR. STAMP, Q.C.: Right.

54 MS. ELLIOTT: That's why we didn't make any
55 exclusions.

56 MR. STAMP, Q.C.: But if you don't have any
57 correspondingly, for example, high data points to match
58 the particularly low data points that you want to
59 exclude, you're not saying you can't exclude them
60 because you can't be balanced, they aren't there to be
61 balanced.

62 MS. ELLIOTT: There are many cases where we review
63 the data points that were too, that were excluded that
64 were low, and there was a similar data point way above
65 the line on the other side that was not excluded.

66 MR. STAMP, Q.C.: Well, let's just turn to page 28 of
67 the same chart, and I'm looking at interval four.

68 MS. ELLIOTT: Now, these don't have page numbers so
69 I'm going to have to ...

70 MR. SAUNDERS, PRESIDING CHAIRMAN: It's four
71 from the back? My numbering is worse than I thought
72 it was.

73 MR. STAMP, Q.C.: I have it six from the back.

74 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, I'll
75 take your word on that, Mr. Stamp.

76 MS. ELLIOTT: Six from the back?

77 MR. STAMP, Q.C.: It is Facility Association
78 commercial vehicle collision loss development factor
79 selection.

1 MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah.
2 MR. STAMP, Q.C.: Do you have that chart, Ms.
3 Elliott?
4 MS. ELLIOTT: Yes.
5 MR. STAMP, Q.C.: So let's just look at interval four
6 which has a black dot, and therefore because it's black
7 in this case, that was the colour identification for Mr.
8 Pelly's outliers. Right?
9 MS. ELLIOTT: Is this collision, I'm sorry?
10 MR. STAMP, Q.C.: Yes, collision, do you have that
11 one?
12 MS. ELLIOTT: Yes, yes.
13 MR. STAMP, Q.C.: Now, I'm looking at the fourth
14 interval.
15 MS. ELLIOTT: Uh hum.
16 MR. STAMP, Q.C.: And I'm looking at the particular ...
17 there's a black data point, the data point coloured black.
18 MS. ELLIOTT: Uh hum.
19 MR. STAMP, Q.C.: Okay, you have it?
20 MS. ELLIOTT: Yes.
21 MR. STAMP, Q.C.: Now, what I'm trying to understand
22 is why you would not see this as an unusual feature,
23 given that as you look at that same year data points, all
24 of the other data points within the five year period are
25 tightly grouped in a single location, are they not?
26 MS. ELLIOTT: Correct.
27 MR. STAMP, Q.C.: And even in fact, all of the data
28 points earlier than five years are also very tightly
29 grouped at the same location.
30 MS. ELLIOTT: Correct.
31 MR. STAMP, Q.C.: So when you see the five year data,
32 the five years of data points, and even the longer
33 historical data points for that interval so tightly
34 grouped, except for this one particular data point, why
35 would you not consider it to be an unusual data point
36 and an outlier?
37 MS. ELLIOTT: Well, in point of fact here, we did not,
38 we focused on the main coverages for Facility
39 Association, and for this particular coverage, because
40 the volume of data is so small, we did not make a
41 replacement for this coverage in our rate level
42 indications, so although you're pointing to a specific
43 one, and we did not, in terms of our findings, make that
44 substitution for collision.
45 MR. STAMP, Q.C.: Now, so are you saying then, Ms.
46 Elliott, that in fact this particular data point ... you can
47 see that it might be excluded?
48 *(11:45 a.m.)*
49 MS. ELLIOTT: I'm sorry, I misspoke, we did make that
50 substitution, I apologize there.
51 MR. STAMP, Q.C.: I know you did.
52 MS. ELLIOTT: Yes.
53 MR. STAMP, Q.C.: But quite aside from that, can you
54 not see that this particular data point is very unusual to
55 all of the other data points for that same interval?
56 MS. ELLIOTT: I can see that, and I can also see in
57 many of the other coverages, the coverages that
58 represent the majority of the volume of premium, where
59 there were data points that were above the line that
60 were included and that would be considered outliers,
61 and data points below the lines.
62 MR. STAMP, Q.C.: So then ...
63 MS. ELLIOTT: Which were considered outliers, and
64 when we look at a rate filing, when we review it, we
65 want to look at it from, if you will, we look at the
66 judgements that were made and sit back and say is this
67 balanced, is the judgement that's being used here
68 balanced.
69 MR. STAMP, Q.C.: Alright, and I want to just look at
70 this particular coverage. It was necessary for Facility to
71 generate a rate filing for collision, was it not?
72 MS. ELLIOTT: Correct.

1 MR. STAMP, Q.C.: And it was prudent, I presume, for
2 them to try and look at the collision data.

3 MS. ELLIOTT: Correct.

4 MR. STAMP, Q.C.: And this is looking at the collision
5 data, is it not?

6 MS. ELLIOTT: Yes, that's correct.

7 MR. STAMP, Q.C.: And what I've said to you is that,
8 as I interpret this chart, and please correct me if I've got
9 this wrong, that interval, all of the data points are so
10 closely clustered, that is within the five years, except
11 for one, and behind the five years for all the other years
12 that were looked at, they're so closely clustered, you
13 can't even see the blue colour, they're all overlapping
14 one another, so it appears, on this chart. Why then
15 would it be unreasonable, and if you extend this
16 discussion and look behind that interval to even older
17 intervals, you see not one example of a data point that
18 low for this coverage.

19 MS. ELLIOTT: For this particular column, I think that
20 that is something that you're pointing out, I will
21 acknowledge that that point is low for this particular
22 column, but again, as I stated, we tried to take a
23 consistent approach. We tried to step back and look at
24 what are the exclusions, let's look at the major
25 coverages, what's happening, what has FA selected to
26 do in its judgement, and when we looked at that, and
27 when we sat back we saw that the data points that were
28 excluded, they weren't ones above the line, they were
29 only below the line.

30 MR. STAMP, Q.C.: Well, I can't ...

31 MS. ELLIOTT: And there were many cases where there
32 were points above the line that one would consider
33 outliers.

34 MR. STAMP, Q.C.: I'm looking at the collision
35 coverage now, and I'm focused only on it. Now if your
36 evidence is you can't take out an outlier in the collision
37 coverage area unless you can find an outlier in, I don't
38 know, accident benefits above the line, if you're going
39 to take out as well ... if that's your evidence, fine, but if
40 you're looking only at this coverage, and the analysis
41 of the data for this coverage, what is wrong with the
42 conclusion that that is an outlier?

43 MS. ELLIOTT: Given the volume of business in
44 collision, looking at it from the big picture perspective,
45 the volume is extremely small for collision. We can refer
46 to that.

47 MR. STAMP, Q.C.: Well, is the point you're making,
48 Ms. Elliott, that you would never exclude an outlier
49 because the coverage is small in collision?

50 MS. ELLIOTT: No, no, that's not my point.

51 MR. STAMP, Q.C.: So you would exclude it if you saw
52 one.

53 MS. ELLIOTT: My point is that in terms of looking at
54 the big picture, what is the rate level indications, what's
55 the impact of the decision, the judgement that was
56 used. We want to look at that. If this ... excluding this
57 point will have minimal impact in the overall rate level
58 indications, so, you know, this particular point that you
59 are referring to, there's only \$58,000, \$59,000 of premium
60 here, so in the big scheme of it, this is not an important
61 issue.

62 MR. STAMP, Q.C.: Oh, I understand what you're
63 saying there.

64 MS. ELLIOTT: Our issue is to look at the larger
65 coverage, the coverages, the larger volume, understand
66 the impact of the judgements that were made.

67 MR. STAMP, Q.C.: Uh hum.

68 MS. ELLIOTT: And that's what we have pointed out to
69 the Board in our report.

70 MR. STAMP, Q.C.: But you have responded, have you
71 not, in your reply report to the indicated rate increase
72 for commercial collision.

73 MS. ELLIOTT: We took a consistent approach, if that's
74 what you're asking me.

75 MR. STAMP, Q.C.: No, I'm asking you did you
76 respond ... Facility Association filed what they saw as
77 an indicated rate increase for collision, for commercial
78 collision.

79 MS. ELLIOTT: Yes.

80 MR. STAMP, Q.C.: And did you respond specifically
81 to that rate increase?

1 MS. ELLIOTT: Yes.

2 MR. STAMP, Q.C.: And did you come to the
3 conclusion that that collision increase that they saw as
4 indicated should be lower?

5 MS. ELLIOTT: I don't have the ... I could refer to the
6 numbers (inaudible) if you'd like to.

7 MR. STAMP, Q.C.: Let's do that.

8 MS. ELLIOTT: The FA proposed rate was 20.4 percent.

9 MR. STAMP, Q.C.: I'm sorry, what page are you
10 reading from, Ms. Elliott, please?

11 MS. ELLIOTT: Page three of our findings ...

12 MR. STAMP, Q.C.: Page three.

13 MS. ELLIOTT: Our findings were 19 percent, they're
14 very similar.

15 MR. STAMP, Q.C.: Alright, so they proposed 20.4
16 percent, you proposed 19 percent.

17 MS. ELLIOTT: Correct.

18 MR. STAMP, Q.C.: So they analyzed the collision data,
19 they developed loss development factors for that data,
20 and they came to a conclusion as to what they needed
21 as an increase for that data, right?

22 MS. ELLIOTT: Correct.

23 MR. STAMP, Q.C.: You looked at the collision data
24 analysis and on the collision data analysis you came to
25 a different conclusion, not a large difference, but ...

26 MS. ELLIOTT: We came to the conclusion that it was
27 appropriate to use the five year weighted average
28 across the coverages because we have no reason to
29 believe that the factors that have happened in the past
30 will not happen again, and due to the, just the random
31 nature of the data, it was a balanced responsive
32 approach.

33 MR. STAMP, Q.C.: Well, you see, when you look back
34 at this data point again that I've been referring to ...

35 MS. ELLIOTT: Uh hum.

36 MR. STAMP, Q.C.: There has been no history of that
37 data point, I ...

38 MS. ELLIOTT: Well, see ...

39 MR. STAMP, Q.C.: How far back does this go, Ms.
40 Elliott, the yellow, blue, and ... the yellow and black and
41 blue points, how far, how many years of, how many
42 years of history are we looking at when Facility does
43 this?

44 MS. ELLIOTT: Well, I'll have to refer here, but the fact
45 that is part of history, it did occur, that's the point. It's
46 part of the data, it could possibly ...

47 MR. STAMP, Q.C.: It did occur.

48 MS. ELLIOTT: It did occur.

49 MR. STAMP, Q.C.: Yeah.

50 MS. ELLIOTT: And it possibly could occur again,
51 that's the random nature of the data.

52 MR. STAMP, Q.C.: Sure, but what that tells me then is
53 that once it occurs once, you won't exclude it because
54 it might occur again.

55 MS. ELLIOTT: In this particular case we don't know
56 that it won't occur again.

57 MR. STAMP, Q.C.: So this material, as I understand it,
58 Ms. Elliott, that's depicted on age 28, the page we're
59 looking at, has data included in it back to and including
60 1984.

61 MS. ELLIOTT: Yes.

62 MR. STAMP, Q.C.: Right, and going all the way back
63 to that period for this particular interval, which is the 48
64 to 60 interval, is it not?

65 MS. ELLIOTT: I believe, yes.

66 MR. STAMP, Q.C.: As I say, we see this very, very
67 close clustering of all data except for one data point.

68 MS. ELLIOTT: Correct.

69 MR. STAMP, Q.C.: Do I understand your evidence to
70 be that because it's happened once, it might happen
71 again, and therefore it should not be excluded?

1 MS. ELLIOTT: We believe that, we have not been told
2 of any errors in the data, it has happened, it could
3 possibly happen again.

4 MR. STAMP, Q.C.: Alright, I'm assuming that the data
5 is accurate, and you are too, I guess, so we're assuming
6 the data is accurate.

7 MS. ELLIOTT: We're not ... right.

8 MR. STAMP, Q.C.: We're not going to be coming here
9 looking to explain this is an outlier because it's incorrect
10 data.

11 MS. ELLIOTT: Right.

12 MR. STAMP, Q.C.: We're assuming it's correct data.

13 MS. ELLIOTT: Mr. Stamp, we have no objection for
14 actuaries using balanced judgement to exclude outliers,
15 high outliers and low outliers. We believe that that is
16 appropriate but if you look to the rate filing and if we
17 only have the low, we're looking at the major coverages
18 here, and if we have all the outliers that were selected to
19 exclude, that FA has identified as outliers and they
20 want to exclude them, they're all the low points.

21 MR. STAMP, Q.C.: But we're ...

22 MS. ELLIOTT: We want to be consistent in our
23 approach here.

24 MR. STAMP, Q.C.: I want to look at this coverage, I
25 want to look at this data because it required an
26 indication from Facility, and it required, I guess, a
27 response and reply from Mercer's. We have both of
28 those here. Now I don't have, I don't have a data point
29 on the high side somewhere that I can, you know,
30 cancel out with this low data point to make you
31 comfortable.

32 MS. ELLIOTT: And I'm not saying that you have to
33 cancel out with a high point, I'm saying that this data
34 point occurred, we've selected to use a five year
35 weighted average on a consistent basis. If this was the
36 only data point that FA excluded ... this is not the only
37 data point.

38 MR. STAMP, Q.C.: No, I know it's not the only data
39 point, but it's at that particular interval, and in fact,
40 every interval that we have recorded before that
41 interval, it is the only unusual data point, is it not?

42 MS. ELLIOTT: Yes.

43 MR. STAMP, Q.C.: But your view is that it is not that,
44 and I'm not looking at accident benefits, and I'm not
45 looking at private passenger bodily injury, I'm looking
46 at commercial collision, and the analysis of it. Why
47 would you not agree that this looks like an outlier?

48 MS. ELLIOTT: I didn't say that it doesn't look like an
49 outlier.

50 MR. STAMP, Q.C.: Okay, well why is it not an outlier?

51 MS. ELLIOTT: Why is it not an outlier?

52 MR. STAMP, Q.C.: Yes, why is it, in the context of the
53 data that we have on this chart, for this coverage, why
54 is that not an outlier?

55 MS. ELLIOTT: Are you asking me why did FA exclude
56 it and we used a five year weighted average?

57 MR. STAMP, Q.C.: No, I'm asking you why you won't
58 accept that it's an outlier?

59 MS. ELLIOTT: I think that the point is low in
60 comparison to the other points. It did occur.

61 MR. STAMP, Q.C.: Why didn't you exclude it?

62 MS. ELLIOTT: Pardon me?

63 MR. STAMP, Q.C.: Why didn't you exclude it?

64 MS. ELLIOTT: Because the approach that we took was
65 consistent to use a five year weighted average, to not
66 have any bias, to not exclude some points that were
67 low, we wanted to have a consistent approach.

68 MR. STAMP, Q.C.: Alright, I understand you, I think
69 you're saying you developed a rule to use five year
70 data without exclusions and that's the rule you're going
71 to stay with.

72 MS. ELLIOTT: In this particular filing, as I stated, no
73 one has provided to us an explanation for all the
74 random data that's here. We've taken a five year
75 weighted average.

76 MR. STAMP, Q.C.: But I mean on this data point, what
77 ...

1 MS. ELLIOTT: If this were the only ...

2 MR. STAMP, Q.C.: What explanation could Facility
3 provide to you as to why it is there. It's a data point,
4 it's an accurate data point, it happened, it's history, it's
5 real.

6 MS. ELLIOTT: Exactly, it's history, it's real.

7 MR. STAMP, Q.C.: Right.

8 MS. ELLIOTT: We, it's in the average, I agree fully, it
9 is history, it is real, it happened.

10 MR. STAMP, Q.C.: So, but why, when it is as you
11 agree, so low, why aren't you also so agreeable that it
12 should be an outlier?

13 MS. ELLIOTT: As I hope I've stated, and I will restate
14 again, if this was the only data point that was to be
15 excluded, we would not have a concern, but that is not
16 the case. We see outliers excluded that are all the low
17 values for the major coverages in this rate filing, and
18 that is our concern.

19 MR. STAMP, Q.C.: So ...

20 MS. ELLIOTT: We wanted to take a consistent
21 approach, and that's what we did.

22 MR. STAMP, Q.C.: So you, as you say, I think
23 developed a rule that you would apply across the
24 board, five years data, and no exclusions in any cases
25 from the five years data.

26 MS. ELLIOTT: We're looking, we're focusing on the
27 major coverages when we're making that comment.

28 MR. STAMP, Q.C.: But you're focused on collision
29 too. You've given us an MMC proposed or indicated
30 rate for collision.

31 MS. ELLIOTT: Correct.

32 MR. STAMP, Q.C.: That's a very focused ... I mean it's
33 not like okay, we're okay because this is not an
34 important coverage. You've turned your mind to it, and
35 you've done a lot of work on it, and you've come to a
36 different conclusion, and one of the conclusions you've
37 come to is that you will not accept this data point as an
38 outlier, although as I understand you now, you perhaps
39 do agree that in isolation, it is an outlier.

40 MS. ELLIOTT: Yes, I would agree in isolation, that's
41 the only factor. All the other factors are quite distant
42 from it.

43 MR. STAMP, Q.C.: So it really comes down to, Ms.
44 Elliott, that you've applied a rule across the board in
45 loss development factors, you're going to include five
46 years of history, and you're going to exclude nothing
47 from that.

48 MS. ELLIOTT: Yes.

49 MR. STAMP, Q.C.: Now, Mr. Pelly testified, I believe,
50 that the Facility approach to their assumptions in the,
51 in the way that they prepared the 2001 filing and the
52 2002 filing was similar, they followed the same
53 approach?

54 MS. ELLIOTT: I would disagree with that.

55 *(11:45 a.m.)*

56 MR. STAMP, Q.C.: Well, I'm thinking about the issue
57 of, in terms of ... you can turn to the May 10th
58 application. Mr. Chairman, too many books, I'm afraid.

59 MR. SAUNDERS, PRESIDING CHAIRMAN: Always a
60 problem, isn't it.

61 MR. STAMP, Q.C.: I just want to turn for a moment,
62 Ms. Elliott, to the Mercer's 2001 report.

63 MS. ELLIOTT: October 16th?

64 MR. STAMP, Q.C.: Well, yes, that's right, yes, it is, and
65 to page number four. Have you located that, Ms.
66 Elliott?

67 MS. ELLIOTT: Just about, just about.

68 MR. STAMP, Q.C.: Okay.

69 MS. ELLIOTT: Yes.

70 MR. STAMP, Q.C.: Okay, and the point I want to make
71 is at page four of this report, which is a response, I
72 guess, to the May 10th, 2001, Facility Association
73 filing, you, you indicated at the first paragraph after the
74 heading of loss development factors that the factors
75 selected by FA to develop FA's reported incurred
76 losses are primarily based on FA's loss development
77 experience in Newfoundland and Labrador as published

1 in the Facility Association's '99 AIX development
2 exhibits. For those coverages where the data was not
3 deemed to be sufficiently credible, the FA also
4 considers its loss development experience in the
5 Atlantic region as well as that of industry. And this
6 next sentence I'm really interested in ... we find the
7 selected factors to be reasonable. That's your words.

8 MS. ELLIOTT: Correct.

9 MR. STAMP, Q.C.: Now, if you turn to, if you turn to
10 the actual application, and exhibit, or Appendix A, Tab
11 8, page 8.1.6, there are data points excluded, are there
12 not?

13 MS. ELLIOTT: Yes, there are?

14 MR. O'FLAHERTY: I'm sorry, where are we on this
15 please?

16 MR. STAMP, Q.C.: 8.1.6, Tab 8 of Exhibit, or sorry,
17 Appendix A.

18 MR. SAUNDERS, PRESIDING CHAIRMAN: Tab 8?

19 MR. STAMP, Q.C.: Yes.

20 MR. SAUNDERS, PRESIDING CHAIRMAN: I only
21 have Tab 7.

22 MR. STAMP, Q.C.: This is May 2000, Mr. Chairman?

23 MR. SAUNDERS, PRESIDING CHAIRMAN: Oh, I'm
24 sorry, I thought you were referring to the current, Tab
25 8?

26 MR. STAMP, Q.C.: No, May 2001, rate filing.

27 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, and
28 the page number?

29 MR. STAMP, Q.C.: 8.1.6.

30 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

31 MR. STAMP, Q.C.: So what you've said in your report
32 in respect to this filing, that you found the selected
33 factors to be reasonable, but they did, in fact, exclude
34 data points.

35 MS. ELLIOTT: Correct.

36 MR. STAMP, Q.C.: So, and the exclusion of those data
37 points in that context was not objectionable to you?

38 MS. ELLIOTT: What FA did in that particular filing
39 might not have been what we would do if we were
40 doing an independent review, but ...

41 MR. STAMP, Q.C.: You did an independent review.

42 MS. ELLIOTT: Sorry, if we were doing an independent
43 rate filing, we're doing a review, pardon me, I misspoke,
44 but when we reviewed what was prepared, there was a
45 balance, in our opinion, between the exclusions. In this
46 particular filing that we're reviewing today, all the
47 exclusions are the low points. When we go back to this
48 page 8.1.6, there are high values excluded and low
49 values excluded. While it might not have been what we
50 would have done, there were exclusions both high and
51 low. From that perspective it was more balanced than
52 what we're seeing in today's rate filing application.

53 MR. STAMP, Q.C.: And so in the, in this particular ...
54 sorry, I'll get to the mic ... in this particular chart I've
55 shown you at 8.1.6, and I'm looking at, let's just take a
56 look at interval 18/12.

57 MS. ELLIOTT: Uh hum.

58 MR. STAMP, Q.C.: You have a history of one, two,
59 three, four, five, six, seven, eight ... it looks like ten
60 years' history?

61 MS. ELLIOTT: Ten half years.

62 MR. STAMP, Q.C.: Ten half years, and of those ten
63 data points two are excluded.

64 MS. ELLIOTT: That's correct.

65 MR. STAMP, Q.C.: And the two that are excluded are
66 both low?

67 MS. ELLIOTT: That's correct.

68 MR. STAMP, Q.C.: There's no high point excluded.

69 MS. ELLIOTT: That's correct.

70 MR. STAMP, Q.C.: Okay, and looking at the
71 comparative chart in the present filing ...

1 MR. O'FLAHERTY: Can we have the page number
2 please?

3 MR. STAMP, Q.C.: Yes, 4.4, so it's Appendix A, Tab 4,
4 4.4, and this is a major coverage, is it not, Ms. Elliott?

5 MS. ELLIOTT: That's correct.

6 MR. STAMP, Q.C.: There's an excluded data point in
7 the second column, 36/24?

8 MS. ELLIOTT: That's correct.

9 MR. STAMP, Q.C.: And it is the lowest point again?

10 MS. ELLIOTT: Correct.

11 MR. STAMP, Q.C.: So two data points were excluded
12 last time and it was reasonable. A data point is
13 excluded this time and it's not reasonable?

14 MS. ELLIOTT: Well, I would point you again to page
15 8.1.6, from the prior filing, I would point you to the
16 column labelled 30/24.

17 MR. STAMP, Q.C.: 8.1.6?

18 MS. ELLIOTT: Yes, you were there moments ago.

19 MR. STAMP, Q.C.: Which column are you looking at
20 now?

21 MS. ELLIOTT: 30/24, in this particular column it is our
22 understanding there are many exclusions made, but
23 there was a point that's a third from the bottom, the
24 number is 1.1913.

25 MR. STAMP, Q.C.: Uh hum.

26 MS. ELLIOTT: That was excluded from the average.

27 MR. STAMP, Q.C.: Right.

28 MS. ELLIOTT: So again, as I stated earlier, it is not the
29 same approach that was taken in the prior filing where
30 we ... in this current filing ... in the prior filing there were
31 exclusions that were high, exclusions that were low.
32 Although it's not necessarily, if we were doing the rate
33 application ourselves, what we would have done, but
34 we found this to be reasonable.

35 MR. STAMP, Q.C.: So if we had had a high one on the
36 collision, on the chart we've looked at at page 28, if we
37 had had a high one that we could have crossed off with
38 the low one, you'd have been more comfortable?

39 MS. ELLIOTT: For that one particular coverage there
40 aren't any high ones to cross off, Mr. Stamp.

41 MR. STAMP, Q.C.: But if there were you would have
42 felt more comfortable crossing off a low one.

43 MS. ELLIOTT: What I think I have said, I hope I have
44 said, is that we prefer a balanced approach, a consistent
45 approach.

46 MR. STAMP, Q.C.: A consistent approach, a rule that's
47 all five years, all the data points for all of the five years
48 is included without exception.

49 MS. ELLIOTT: Given, Mr. Stamp, that no one has
50 explained to me that there is in any errors in the data,
51 we understand ...

52 MR. STAMP, Q.C.: Assume there's none.

53 MS. ELLIOTT: ... that we understand the data to be
54 random, that we think it is appropriate to be responsive
55 and balanced.

56 MR. STAMP, Q.C.: Mr. Chairman, this is probably a
57 good time for the morning break if that's convenient to
58 the panel.

59 MR. SAUNDERS, PRESIDING CHAIRMAN: Very
60 good.

61 MR. STAMP, Q.C.: Mr. Chairman, just one point before
62 you adjourn, please.

63 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

64 MR. STAMP, Q.C.: Ms. Elliott perhaps has not had a
65 lot of experience giving evidence, and since she's in
66 cross-examination, I would ask in particular that she be
67 cautioned that she should not discuss her evidence
68 with anybody while that's going on.

69 MS. ELLIOTT: I'm aware of that, Mr. Stamp, thank you.

70 MR. STAMP, Q.C.: Thank you.nn

1 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay,
2 very well, we'll return at 12:15.

3 (break)

4 (12:20 p.m.)

5 MR. SAUNDERS, PRESIDING CHAIRMAN: Ms.
6 Elliott, are you ready to resume?

7 MS. ELLIOTT: I am.

8 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.
9 Stamp.

10 MR. STAMP, Q.C.: Thank you, Mr. Chairman. Ms.
11 Elliott, just one final question on that area we've been
12 talking about. There have been data exclusions for loss
13 development purposes in the benchmark reports that
14 you've done from time to time.

15 MS. ELLIOTT: That is correct.

16 MR. STAMP, Q.C.: And the data that you use is IBC,
17 AIX data?

18 MS. ELLIOTT: That is correct.

19 MR. STAMP, Q.C.: And I take it on none of those
20 occasions would you have gone to the individual
21 insurers to investigate down into the claims history
22 what the explanation was for those data points
23 occurring.

24 MS. ELLIOTT: My reference to that was when I was
25 working with an insurance company, so in the case of
26 industry data, no.

27 MR. STAMP, Q.C.: Now, still dealing with the issue of
28 loss development, however, and private passenger,
29 which as we all know is the most important element in
30 this process, you've prepared a chart which is at page
31 12 and then two supplementary charts, actually three,
32 I guess, in the responses.

33 MS. ELLIOTT: Yes.

34 MR. STAMP, Q.C.: And the response is, I think, is FA
35 Exhibit 4. I'll just check that, Mr. Chairman. It's Exhibit
36 FA 2, exhibit page one.

37 MS. ELLIOTT: I'm having trouble locating that. I have
38 it now.

39 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr.
40 Stamp.

41 MR. STAMP, Q.C.: Thank you. Ms. Elliott, first of all
42 I think I read somewhere that you'd been provided with
43 the Board's report or decision, I guess, in the previous
44 Facility Association hearing.

45 MS. ELLIOTT: On the operating surpluses?

46 MR. STAMP, Q.C.: Yes.

47 MS. ELLIOTT: Yes.

48 MR. STAMP, Q.C.: And the transcripts and so on
49 associated with the evidence given at that time?

50 MS. ELLIOTT: That's correct, although I did not
51 refresh my memory.

52 MR. STAMP, Q.C.: No, that's fine. I guess the one
53 point that I, and it's in Information No. 1 that we've
54 already seen here anyway, that Milliman and
55 Robertson, who were then doing the reviews, gave the
56 opinion or, you know, conclusion that the fact that the
57 estimates had overstated the, had been overstated in
58 earlier periods was not, once they reviewed all of this
59 material, was not an indication in their mind of any
60 systematic bias toward over or underestimation.

61 MS. ELLIOTT: That's my understanding.

62 MR. STAMP, Q.C.: Right. So that can certainly occur,
63 an overestimate or an underestimate, can certainly
64 occur being, doing very prudent actuarial work in any
65 event.

66 MS. ELLIOTT: I did not review these prior filings upon
67 which this is based, but that's my understanding, the
68 conclusion that was reached.

69 MR. STAMP, Q.C.: But it can occur. I'm assuming you
70 agree that that's not a surprise in an actuarial sense that
71 you can find you were wrong in the past but having
72 acted perfectly prudently as an actuary in developing
73 those estimates.

74 MS. ELLIOTT: Hindsight is 20/20.

MR. STAMP, Q.C.: I understand it is. So you do agree then?

MS. ELLIOTT: Yes, you can make an estimate and after a time has passed and the claims are all closed and settled, then you'll know whether your original estimate was accurate or not.

MR. STAMP, Q.C.: And this chart at page 12 of your report dealing with loss development in private passenger, what should the Board conclude from this? What's the information they should take away from this in their review?

(12:30 p.m.)

MS. ELLIOTT: Well, these claims that are presented here from 1992 to 1996, what we've shown here are the incurred losses as at December 31st, 1996, so, for example, the latest accident year, 1996, there's only 12 months of time has passed, and the estimate in the 1997 filing, based on that information, it's only 12 months old, if you will, 12 months mature, the estimate was 8., almost 8.7 million, and now that time has passed, not all these claims have closed but they're getting there for this particular year, now in 2001 a large majority are paid, closed and settled, so they know to reserve estimate is fairly small. Looking back one can observe that the original estimate, based on the information that was used to prepare that filing, looking back now you can see that the current estimate is much lower, and the same you could look back at 1995 and see from the original estimate to the new estimate there's a large difference.

MR. STAMP, Q.C.: Right, and so you've done, you've re-done the charts now at the request of Facility and they are attached to your response, FA-2, exhibit page one, and of course, except for one value in one of the charts, which is still a small positive range, all the values are now negative, so the favourable development that you were seeing in your chart at page 12 of your report seems to have disappeared.

MS. ELLIOTT: No. What we're referring to in the chart that's on page 12 and referenced in our response, that's with the benefit of hindsight due to the large percentage of claims that are now closed, these accident years are closed to, are nearly settled, finished, they won't change again. You can look back and observe that information. The more recent charts that you requested, the data is too immature to reach any

conclusion, so we provided this information, it was requested, but we can't reach a conclusion. There's still a large percentage of the reserves and that's the case reserves in the estimate by the actuary and the IBNR that compile the estimate of the ultimate losses here.

MR. STAMP, Q.C.: Can you tell us how much of the '96 accident year as of the time you did your latest two charts is based on actual paid amounts and estimated amounts?

MS. ELLIOTT: Can you repeat that, please?

MR. STAMP, Q.C.: For 1996, the accident year 1996, looking at the information as you've presented it now in the two new charts, let's take the middle chart, in the answer, how much of the data in 1996 ... you show a current rate filing estimate, ultimate incurred loss, or incurred losses of 6.430 million, right?

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: How much of that is actual paid dollars and how much is estimated?

MS. ELLIOTT: Well, the actual paid dollar amount has not been provided in the rate filing to us. I don't have a dollar amount to tell you.

MR. STAMP, Q.C.: Well, when you look at this number of \$6.4 million for '96, what is that intended to represent?

MS. ELLIOTT: It's intended to represent under the current, in the current rate filing, it would comprise both those claims that have been paid, the paid amounts, and some of those claims might be closed or open, but, and the reserve estimate, they ...

MR. STAMP, Q.C.: So it's all of the loss, the estimated losses for that particular accident year, whether it's yet paid or unpaid.

MS. ELLIOTT: Right. It represents the paid plus the outstanding amount.

MR. STAMP, Q.C.: So you can't tell the panel right now how much of that 6.4 million for accident year '96 has actually been paid ...

MS. ELLIOTT: I could reference a percentage. Would that be helpful?

1 MR. STAMP, Q.C.: Alright, if you can just check that,
2 please.

3 MS. ELLIOTT: It's my understanding based on the
4 data provided by FA, they provide a ratio of the
5 amount of dollars paid to their current estimate of the
6 ultimate losses, so based on that information I have
7 79.6 percent, so approximately 80 percent based on this
8 information.

9 MR. STAMP, Q.C.: So 20 percent is still being
10 estimated, even from 1996.

11 MS. ELLIOTT: Uh hum.

12 MR. STAMP, Q.C.: Now, and so the present estimates
13 that we now are looking at for that loss development
14 now show that the loss development is or the ultimate,
15 I'm sorry, the estimated ultimate incurred losses are
16 actually showing a negative number. What does that
17 mean?

18 MS. ELLIOTT: I'm sorry, I'm reading it as 1.0. Is that
19 not a positive number?

20 MR. STAMP, Q.C.: No. I'm looking at the other
21 negative numbers in the same chart.

22 MS. ELLIOTT: Oh, I'm sorry, I ...

23 MR. STAMP, Q.C.: The minus 8.2 and so on in the
24 other years, in the other accident years for that same
25 one.

26 MS. ELLIOTT: Right. Well, I guess for lack of
27 confusion, for 1996 there is a one percent, so it shows
28 from the prior filing the estimate that was prepared in
29 that filing versus the new estimate, the 4.3 million,
30 there's a one percent overage there that their estimate
31 was too high by one percent in comparison, but if
32 you're looking back to, well looking at 1997, it's minus
33 0.7 percent, so the five oh (phonetic) three, the 5.0
34 million compared to the 5., almost 5.1 million, again
35 that's a small negative, so their new estimate is slightly
36 higher in the current filing.

37 MR. STAMP, Q.C.: Right. And you don't challenge
38 those estimates, I take it?

39 MS. ELLIOTT: I beg your pardon?

40 MR. STAMP, Q.C.: You don't challenge those
41 estimates?

42 MS. ELLIOTT: I think we are providing an alternative
43 loss development factor within our report and that
44 would provide alternative estimated alternate incurred
45 losses.

46 MR. STAMP, Q.C.: Now, on the, in your narrative you
47 do explain that a similar chart for the May 2001 filing is
48 attached. Since the May 2001 filing provided estimated
49 ultimate incurred losses on two bases, (*sic*) data of
50 December 31st, '99, and June 30th, 2000, we have
51 provided both comparisons. We believe the loss
52 information from these years is too immature to
53 comment on the accuracy of FA's ultimate loss
54 estimates. But in fact it includes two of the years in the
55 previous chart, '95 and '96.

56 MS. ELLIOTT: Uh hum.

57 MR. STAMP, Q.C.: So is that immature?

58 MS. ELLIOTT: Well, I think as we commented earlier,
59 there's a larger percentage paid on the 1996 year than in
60 looking at the 1999 year. For 1999, 1998, 1997, certainly
61 two-thirds of it here, it is less mature than the original
62 chart provided in our report on page 12.

63 MR. STAMP, Q.C.: Yeah. But the point is that they
64 are, if they are immature, they're immature in all three
65 charts, are they not, '95 and '96?

66 MS. ELLIOTT: By far more immature in these last two
67 charts.

68 MR. STAMP, Q.C.: But they have to be estimated,
69 don't they ...

70 MS. ELLIOTT: Well, when all the ...

71 MR. STAMP, Q.C.: ... whether they're immature or not.

72 MS. ELLIOTT: When you look back in time and when
73 all the claims are closed and settled and we had our first
74 chart, and we can look back maybe two or three years
75 from now, we'll know exactly how high or how low the
76 estimate, the original estimates were. When all the
77 claims are closed and settled, then you can reach a
78 conclusion.

MR. STAMP, Q.C.: Now, I just want to turn to the issue of trend, and I'll look at it, Ms. Elliott, in the context of commercial, but a lot of the discussion of course will apply to both private passenger and commercial. I'm going to turn to, if I can, just turn to page 24 of your report under the heading of Loss Trend Rates. Do you have that?

MS. ELLIOTT: Yes.

MR. STAMP, Q.C.: Now, what this is saying is that for reasons of credibility and stability, FA relied upon industry Newfoundland data to determine appropriate loss trends for use in deriving the rate level indications. FA developed annual loss trend rates based on a regression model using historical accident year industry loss and loss adjustment expense data that has been projected to the ultimate level using IBC's loss development factors modified slightly by IBC and we find the selected loss development factors to be reasonable. But what I want to just come back to, I guess to the, your initial comment in this paragraph, that the reason that they bid this, and of course your agreement with that, was that it was done for reasons of credibility and stability.

MS. ELLIOTT: That would be a very common industry practice to use industry data, particularly when you consider FA only has a five percent, less than five percent market share to use industry data for loss trend regression analysis.

MR. STAMP, Q.C.: So it's because of the relatively small market that they have or the small share of the market?

MS. ELLIOTT: I would say I would be unaware of any insurer in Newfoundland that would not use industry data, so, yes, they only have, as I stated, less than five percent market share.

MR. STAMP, Q.C.: So it's to, for the confidence of where you're going, you don't just look at their data, you go look at the industry data when you're doing trend.

MS. ELLIOTT: Yes.

MR. STAMP, Q.C.: And this is, say, we're looking at trend in this particular paragraph, particular, you're looking at it in the context of commercial, but the same,

I guess, applies with respect to private passenger, does it not, for trend?

MS. ELLIOTT: To use industry data?

MR. STAMP, Q.C.: Yes.

MS. ELLIOTT: Yes.

MR. STAMP, Q.C.: And just by way of the order of magnitude that we're talking about here, if I can just confirm this, in the private passenger, Mr. Pelly, has, I guess, testified, is the great bulk of the Facility Association Book of Business.

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: And so that's the more crucial element in terms of, I guess, where this discussion takes us and the analysis that the Board will have to look at on these various topics. Private passenger is a very important volume of the business.

MS. ELLIOTT: That's a larger volume ...

MR. STAMP, Q.C.: Right, and it was in private passenger that loss development was the primary issue between yourselves and Eckler's.

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: And just by, just for clarification, make sure we understand, that in the commercial context, a smaller segment of what we're looking at, smaller value, but whatever that value is, I think Mr. Pelly mentioned there was \$623,000 of a premium versus \$11.4 million in private passenger, but in this sector, this aspect, looking at the commercial, it was trend that was more of an issue between yourselves and Eckler.

MS. ELLIOTT: In particular our issue was with the bodily injury commercial trend, but like the third party liability represents nearly 85 percent approximately, 85 percent of the volume, so that's where our focus should be.

MR. STAMP, Q.C.: Okay, yeah, okay. But I just want to just in a general sense now get, make sure I understand it, the thinking behind the concern that is raised, you know, at page 24, that the need to go to, I guess, broader database, is that what that is, going to a broader database to get a reliable trend?

1 MS. ELLIOTT: Yes.

2 MR. STAMP, Q.C.: And in fact I believe virtually the
3 same paragraph that I've just mentioned to you at page
4 24 is also found at page 13, you can even go to it, Ms.
5 Elliott, you probably know right offhand that virtually
6 the same paragraph is found in a discussion on trend in
7 private passenger, that that's the reason and the
8 explanation for doing it.

9 MS. ELLIOTT: Correct.

10 MR. STAMP, Q.C.: And you've taken us to the chart
11 already even today at page six of your report, and I
12 suppose the absolute numbers there probably do sort
13 of underscore the concern that you would have, and
14 the reasons for doing this.

15 MS. ELLIOTT: I beg your ... I'm sorry, I didn't
16 understand your question.

17 MR. STAMP, Q.C.: I say I guess when you turn to the
18 chart at page six of your report ...

19 MS. ELLIOTT: Yes.

20 MR. STAMP, Q.C.: ... I'm guessing when we look at the
21 absolute numbers there, for example, private passenger
22 vehicles written in Facility and industry, the absolute
23 numbers and looking at the same in commercial, that
24 does really underscore or highlight why it's necessary
25 to go to the industry data to get the wider database.

26 MS. ELLIOTT: Yes. As I stated earlier, that's a
27 common practice to use industry data for loss trend.

28 MR. STAMP, Q.C.: I'm very sure it is really. So just as
29 an example, if I could just use, if I can just use 2001 ...

30 MS. ELLIOTT: Which page are we on?

31 MR. STAMP, Q.C.: At page six still, sorry. The private
32 passenger 2001 FA written automobiles, A372.

33 MS. ELLIOTT: Yes.

34 MR. STAMP, Q.C.: What I guess I understand is being
35 said is that it's much better to look at the 218,000
36 industry vehicles to develop a trend rate rather than
37 look at the 8,300 Facility vehicles.

38 MS. ELLIOTT: Yes, we look at the larger volume of
39 data in developing a loss trend as does FA.

40 MR. STAMP, Q.C.: And is it because that's what's
41 really needed to have a proper, I mean, do you need the
42 218,000 to give you the confidence from a stability and
43 a credibility perspective?

44 *(12:45 p.m.)*

45 MS. ELLIOTT: I don't think I would ... I haven't done
46 an analysis to say that the 218 vehicles is necessarily
47 the right ...

48 MR. STAMP, Q.C.: No. I ...

49 MS. ELLIOTT: ... number to give you the credibility.

50 MR. STAMP, Q.C.: I guess what I'm saying is that,
51 maybe I said it the wrong way around, it probably
52 means that the 8,300 didn't give you the comfort that
53 you would have stability and credibility.

54 MS. ELLIOTT: The larger number gives us more
55 comfort.

56 MR. STAMP, Q.C.: And looking at commercial,
57 perhaps it's even more, I guess, more substantial the
58 difference, more significant the difference, in that there
59 are some 18,000 industry vehicles and only 400 or so
60 Facility vehicles.

61 MS. ELLIOTT: Correct.

62 MR. STAMP, Q.C.: So the data really is very, very
63 small in the Facility commercial sector. You need to
64 have the 18,000 or so or, industry data to study it and
65 rely, to come to a trend conclusion that is, that gives
66 you confidence from a stability and credibility
67 perspective.

68 MS. ELLIOTT: Whenever you have a larger volume of
69 data, you hopefully have more stable data.

70 MR. STAMP, Q.C.: So then you would not consider it
71 to be in this case actuarially sound for Facility to have
72 attempted to develop trend, for example, from the 8,300
73 Facility vehicles in private passenger they should have
74 gone to the industry data.

75 MS. ELLIOTT: They did go to industry data. I'm not
76 sure if I understood your question.

MR. STAMP, Q.C.: No. What I'm saying is that you would, if they had decided not to do that, if they had decided, no, we're going to just use Facility, not use industry, you would have disagreed with that?

MS. ELLIOTT: Well, that's hypothetical. They didn't do that.

MR. STAMP, Q.C.: But if they had, how would you react to it?

MS. ELLIOTT: I would have to look at what they did. I'm not able to answer your question precisely here. They didn't do it. I think if they did it and provided it to me, then perhaps I could answer you.

MR. STAMP, Q.C.: But your view in the two paragraphs we've referred to says that for credibility and stability purposes, this was why it was done.

MS. ELLIOTT: Yes, and I believe there's a comment close to that in the FA report.

MR. STAMP, Q.C.: Now, I'd like to look at the 2003 benchmark, Ms. Elliott, for a moment.

MS. ELLIOTT: Are we looking at commercial BI?

MR. STAMP, Q.C.: Going to look at commercial and I'm going to go to Exhibit 7, which I think is BI. I'm just going here for a moment, just to have you confirm ... this is renumbered page one, Mr. Chairman, Tab 7.

MR. SAUNDERS, PRESIDING CHAIRMAN: Tab 7, page one.

MR. STAMP, Q.C.: Of Appendix C, Tab 7.

MR. SAUNDERS, PRESIDING CHAIRMAN: Appendix C.

MR. STAMP, Q.C.: Appendix C, yeah.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. STAMP, Q.C.: Tab 7, page one of the 2003 benchmark.

MR. SAUNDERS, PRESIDING CHAIRMAN: Right.

MR. STAMP, Q.C.: Ms. Elliott, first of all I just want to confirm that the information on this page, this

benchmark page, is the basis for the analysis, for the trend analysis, for commercial trend, that you did as an alternative to the FA trend analysis.

MS. ELLIOTT: That's correct.

MR. STAMP, Q.C.: And I want to just look at ... and we've renumbered that page one, Mr. Chairman, as you recall.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. STAMP, Q.C.: I'm going to look at the, I guess the column for earned exposures. Do you see that? And we have, I guess, vehicle count or exposure there as high as sort of 9,300 plus vehicles. Is that correct?

MS. ELLIOTT: On a half year basis, yes.

MR. STAMP, Q.C.: On a half year basis, yeah. So my question for you is that when you do your commercial trend analysis for Facility Association on the same basis that you've done it here, and you use, for example, 9,000 or so vehicles, aren't you using the very kind of data that you have recognized doesn't lend stability and credibility for trend analysis?

MS. ELLIOTT: I'm sorry, I don't understand your question.

MR. STAMP, Q.C.: Okay. The number of vehicles that are dealt with on each data point in this page one, the highest number is, I think, in the period of time that you took into account, I believe the highest number is 9,317 vehicles.

MS. ELLIOTT: I guess scanning the column, but they're in that range, yes.

MR. STAMP, Q.C.: And this particular Tab 7 of Appendix C, what is that tab, what's the purpose of that exhibit?

MS. ELLIOTT: I don't have that in front of me, I'm sorry.

MR. STAMP, Q.C.: Okay. You will need the 2003 benchmark.

MS. ELLIOTT: Okay, I'm sorry, I have the three in front of me that ...

MR. STAMP, Q.C.: Okay. Well, I just want to make sure that I understand what it is that Tab 7 of Appendix C is here for in benchmark. What does it do?

MS. ELLIOTT: Are you asking why we have loss trends here? I'm sure you're not asking why we have a tab. I don't want to say that.

MR. STAMP, Q.C.: Well, no, I know you have a tab to separate the page, but what is this information for? What are you doing with this information in Tab 7, Appendix C?

MS. ELLIOTT: Well, this information is similar to the information that FA used to derive its loss trends. The difference, if you will, in presentation is that this data is split into half accident years.

MR. STAMP, Q.C.: Right.

MS. ELLIOTT: We can readily merge the data into annual data points as well.

MR. STAMP, Q.C.: But you did your analysis in half years.

MS. ELLIOTT: Yes. We prefer to use the half year data because you can identify, and I think if you look at 2000-2, the last half of 2000, and the first half of 2001, to that, to us it identified data points that we, upon our testing, we realized influenced the annual trend rate.

MR. STAMP, Q.C.: We're going to study that in some detail, but for the moment I just want to confirm that on any one of these data points that you're looking at here, well, looking at the highest one, the number of vehicles, the count that you're looking at is 9,300.

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: And in your report at page 25 and at page 13, you suggested that the volume count in Facility, and the highest number that we have is in private passenger at 8,000 or so, was not sufficient to give you proper credibility and stability, you had to go to the industry data, the bigger numbers.

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: And my point is you yourself are going back to the smaller numbers when you do this.

MS. ELLIOTT: Well, sir, I am using the same data that FA used. It is industry data that is being used. Just like FA when it reviewed its trend analysis, it split the data into frequency and severity along with loss cost to get more insight into the data, we have done the same thing here. We're using the same volume of data. We've just split it in accident half year data to get more insight into the nuances of the data.

MR. STAMP, Q.C.: But you're actually splitting the exposure, I mean, forget about how you study any particular exposure of 18,000 vehicles or 200,000 vehicles, forget how you study that exposure, you're actually cutting the exposure down from 18,000 or so, 17 or 18,000, into half that amount.

MS. ELLIOTT: Well, we also double the number of data points in the regression model.

MR. STAMP, Q.C.: Okay. But you're doing each data point now, at the high side is about 9,000 vehicles.

MS. ELLIOTT: That is correct.

MR. STAMP, Q.C.: And you've said in your report at page 25 and at page 13, 18,000, I'm sorry, 8,000 vehicles is not adequate to give you stability and is not adequate to give you credibility.

MS. ELLIOTT: Yes, definitely what we've said, the larger volume of data is more appropriate. We're using the same data that FA has used. We've only split the data into half accident years as it is available by IBC in that format. Studying loss trend by half accident year is a very common practice. We have the same volume of data in aggregate. We have just split the data so we have insight, and it also allows us the advantage to remove only half accident years where appropriate as opposed to a full accident year.

MR. STAMP, Q.C.: You are familiar with Mr. Pelly's comments about the law of large numbers. There is comfort in large numbers, is there not, more comfort in large numbers?

MS. ELLIOTT: If you take comfort in numbers, yes, yeah.

MR. STAMP, Q.C.: Well, you're a numbers person, aren't you?

MS. ELLIOTT: I'm afraid I am, yes.

MR. STAMP, Q.C.: And you like big numbers, not little numbers.

MS. ELLIOTT: Yes, there is a lot of large numbers. We have the same data here.

MR. STAMP, Q.C.: But as I say, you pick your data points using half the volume of vehicles that Facility does.

MS. ELLIOTT: I use double the number of data points, if you want to put it in that perspective.

MR. STAMP, Q.C.: Oh, no ...

MS. ELLIOTT: I use the same volume of data, so if you look at the regression and say how many cars were used in that regression model, we're essentially the same, so it's not ...

MR. STAMP, Q.C.: On a particular data point, how many cars are you using?

MS. ELLIOTT: I think you've just stated that, sir.

MR. STAMP, Q.C.: Okay. So you are using the number that's shown here on each data point.

MS. ELLIOTT: If you were to add up all the cars that are associated with this regression model, whether you, on a half year basis or an annual year basis, you have the same volume of data.

MR. STAMP, Q.C.: And not only have you done that, but when you decide that a data point is an outlier, and I must say I have a lot of trouble with that because you so rigidly adhered to that rule in private passenger, but when you decide in trend that an outlier exists, you exclude the outlier and the effect of excluding the outlier, in this case you've got two half years in the last, in 2000 and 2001, you have kept in about 8 or 9,000 vehicles for the other half of each of those years, haven't you?

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: You've kept in data therefore by, just by volume that you found unacceptable for stability and credibility in your own report.

MS. ELLIOTT: In our analysis we've excluded for commercial BI, we've excluded four data points, the

equivalent of two years. In FA's analysis, they've excluded two full years as well. We are essentially using, looking at this period, we're looking at a period from 1994 forward and onward here. We're not convinced that the variation in the loss development factors is due to anything other than randomness. These data points that we've excluded, in particular this severe winter, we believe that there's an explanation for these high points so that we can exclude them. They make a material difference in the annual trend rate that is estimated. With these points, we're over 11 percent. Without these points, the loss trend rate is eight, just over eight percent.

MR. STAMP, Q.C.: But in the four data points that you exclude in doing your commercial trend analysis, they are each a data point that is one half of one year.

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: And in each of those cases you have kept the corresponding half year data point, remaining half year data point in each of those years.

MS. ELLIOTT: Correct.

MR. STAMP, Q.C.: And the data point values for vehicles are, that you keep in, because if you look at 2001.2, (*sic*) you keep in 9,300 vehicles, if you look at 2000.1, (*sic*) it's 7,800 and some odd vehicles, if you look at '98.1, you keep in '98.2 8,300 vehicles, if you look at '96.1, you take out the .1, you therefore keep in 6,695 vehicles. What I'm saying to you is that those data points that you're keeping in are based on volumes of data, vehicles, that you have already said in your report will not give you a statistically reliable analysis from a credibility and stability point of view.

MS. ELLIOTT: We prefer, as most other actuaries, to use industry data. We are using the same industry data as FA has used. We have split the data into half accident years to have more insight into the data. If we were not to have done that, we would not see these two points that jump dramatically. As Mr. Pelly testified, for one particular point it's nearly 70 percent over the prior 12-month period. The other point is in excess of 40 percent of the prior 12-month period. These data points materially affect the annual loss trend rate that is to be estimated.

MR. STAMP, Q.C.: But the choice to split the data into numbers that bring you down from, you know, 18 or, 17

1 or 18,000 vehicles to 9 or 8,000 vehicles, is your choice,
2 and when you do that you bring it right into the range
3 of data that by your own report you find unreliable for
4 developing trend.

5 MS. ELLIOTT: This is the same data that FA used.

6 MR. STAMP, Q.C.: No, they used whole years.

7 MS. ELLIOTT: This is the same IBC produced industry
8 commercial data that FA used. We split the data into
9 half accident year points. It's the same ...

10 *(1:00 p.m.)*

11 MR. STAMP, Q.C.: Did FA split the data, Ms. Elliott?

12 MS. ELLIOTT: They use the FA ... they use the
13 industry data in Newfoundland.

14 MR. STAMP, Q.C.: Did they split it?

15 MS. ELLIOTT: They did not split it, and the
16 disadvantage of splitting that is they missed these
17 outliers.

18 MR. STAMP, Q.C.: Now, you've talked about the
19 exclusion of these data points and now I guess when
20 you come to trend, as I see it, you're much more
21 inclined and willing to exclude data points when you
22 were fairly rigid in your loss development review that
23 you would not do that. You wanted to follow a rule in
24 loss development that you'd take the five years, add all
25 the data points for the five years and include them all.
26 Here now you're looking at saying, well, now we'll look
27 at actual data, it actually happened, but we will exclude
28 it.

29 MS. ELLIOTT: As I said, we're not convinced that the
30 variation in the loss development factors is due to
31 anything other than randomness.

32 MR. STAMP, Q.C.: Right. And this exclusion here, is
33 it done on any kind of test basis?

34 MS. ELLIOTT: Yes.

35 MR. STAMP, Q.C.: You do a test for this, do you, to
36 exclude it?

37 MS. ELLIOTT: We look at the loss trend with those
38 points included and with those points excluded.

39 MR. STAMP, Q.C.: Well, but, I mean, do you have a
40 test that you apply to decide whether 2001.1 should be
41 excluded, and, if you do have a test, what's the test?

42 MS. ELLIOTT: No, I'm sorry if I misspoke. We look at
43 the analysis with and without the data points to see the
44 impact on the loss trend. We would not expect the
45 inclusion or exclusion of two data points to change a
46 loss trend so materially, so ...

47 MR. STAMP, Q.C.: Okay. And we'll come back to that
48 too, but the point is that I gather you're telling me that
49 it's a judgemental thing, it's subjective, it's not a test.
50 It's not like we've designed a mechanism to decide
51 when it is done, we use our judgement.

52 MS. ELLIOTT: Yes, we look at a number of factors.
53 We look at the percentage change of that point from the
54 prior 12 months. As we stated, it's nearly 70 percent
55 higher. We're looking at a loss trend estimate of about
56 eight percent. That points to the data being a little odd.
57 One ought to look at this closer.

58 MR. STAMP, Q.C.: Well, we'll look at that, but the
59 natural question flows to my mind in all of this is why
60 you so rigorously adhere to the five year rule, inclusion
61 of all data points in loss development, and are so open
62 to excluding data points that you don't like in trend.

63 MS. ELLIOTT: As I said, we believe that the loss
64 development data is random variation, that we avoid
65 any bias by not excluding the points. In this particular
66 example, we believe that the winter, the famous winter
67 materially affects the loss trend for commercial BI and
68 as such as we excluded those two data points.

69 MR. STAMP, Q.C.: Yeah. And so, as you've so
70 frequently told us, you've left out the second half of the
71 year 2000 and the first half of the year 2001 and two
72 other years, two other data points, two other half years,
73 and you've no doubt in your mind all four are outliers,
74 right? They're all outliers, aren't they?

75 MS. ELLIOTT: In my opinion it's appropriate to exclude
76 them.

77 MR. STAMP, Q.C.: Of course. But we never had a
78 famous winter in '96, but you found an outlier.

79 MS. ELLIOTT: Uh hum.

80 MR. STAMP, Q.C.: Is that correct?

1 MS. ELLIOTT: That's the same data point ...

2 MR. STAMP, Q.C.: No, no. I'm talking about your
3 data.

4 MS. ELLIOTT: Yes. We ...

5 MR. STAMP, Q.C.: You excluded '96 ...

6 MS. ELLIOTT: We excluded '96.

7 MR. STAMP, Q.C.: ... 1.

8 MS. ELLIOTT: That's correct.

9 MR. STAMP, Q.C.: We never had a famous winter.

10 MS. ELLIOTT: Not to my knowledge.

11 MR. STAMP, Q.C.: Okay. And we excluded '98.1.

12 MS. ELLIOTT: That's correct.

13 MR. STAMP, Q.C.: And to your knowledge we never
14 had a famous winter.

15 MS. ELLIOTT: Well, that's a low point. That would
16 have reduced the loss trend if we had included that
17 point so we excluded it. We felt it was, it would lower
18 the loss trend inappropriately, so we excluded it.

19 MR. STAMP, Q.C.: But the point is you can't point to
20 a winter and say I feel the comfort for deleting it
21 because it was a severe winter or a summertime winter,
22 it was just a winter. You just found them to be outliers
23 and excluded them.

24 MS. ELLIOTT: Yes, we feel that these particular points
25 of percentage change from the prior 12-month period is
26 dramatic. In terms of the \$415 for 1996-1, that's quite a
27 large increase over the prior period of \$262. Yes, we
28 think that these numbers are significant. We think the
29 \$217 for '98-1 is a very low number, and to include that,
30 we would even lower the loss trend. We don't believe
31 that is appropriate either.

32 MR. STAMP, Q.C.: So when I look at your report at
33 page 25, in where you're discussing loss trend rates in
34 a commercial setting, I'm looking at the first full
35 paragraph, I'm going to read to you the sentence, the
36 second sentence. "We note that the worst winter in
37 history," this is your famous winter, isn't it?

38 MS. ELLIOTT: I was here, yes.

39 MR. STAMP, Q.C.: Okay. "The worst winter in
40 history, late 2000, carried into 2001, inflated the loss
41 experience for two half accident year periods, and as a
42 result the loss cost trend estimated by FA is inflated."
43 Right?

44 MS. ELLIOTT: Correct.

45 MR. STAMP, Q.C.: And the question has been raised
46 by Mr. Pelly in his evidence is why don't we see the
47 results of the famous winter in private passenger
48 results?

49 MS. ELLIOTT: There were a number of ideas that were
50 put forth by the Consumer Advocate earlier and ...

51 MR. STAMP, Q.C.: But you did this before the
52 Consumer Advocate put anything forward.

53 MS. ELLIOTT: You're asking me why we don't see it,
54 sir, and I'll continue, but there are a number of ideas and
55 I will reiterate those here. This is with regard to the fact
56 that we all need our gas and we all need our bread and
57 milk. But when we looked at the private passenger
58 data, the percentage change for this period of time was
59 ... and let's go to the work by FA, let's just go there. Go
60 to Tab 5, Appendix A.

61 MR. SAUNDERS, PRESIDING CHAIRMAN: That's the
62 Eckler Report?

63 MS. ELLIOTT: Yes. So ...

64 MR. O'FLAHERTY: Can we get a page reference,
65 please?

66 MS. ELLIOTT: Yes, I'm sorry, page 5.2, Tab 5,
67 Appendix A.

68 MR. O'FLAHERTY: Thank you.

69 MR. STAMP, Q.C.: I'm sorry, what page are you going
70 to again, Ms. ...

71 MS. ELLIOTT: 5.2, Appendix A.

72 MR. STAMP, Q.C.: Of the application, filing?

73 MS. ELLIOTT: Of the application.

1 MR. STAMP, Q.C.: Yeah.

2 MS. ELLIOTT: And if you look at the value for 1999,
3 it's \$396, this is FA's estimate, and if you look at the
4 next year, 2000, there's \$440, that loss cost, the ultimate
5 loss cost column, this is the data that's used in the
6 regression analysis. That percentage change is
7 approximately 11 percent.

8 MR. STAMP, Q.C.: Okay.

9 MS. ELLIOTT: Okay. So let's jump over to page 5.2 in
10 the commercial section we were just looking at.

11 MR. STAMP, Q.C.: Yeah.

12 MS. ELLIOTT: And again FA's estimate of the ultimate
13 loss costs for 1999 is \$374, for 2000 it's \$562. That's a 50
14 percent increase. And the other interesting point, in
15 2001 the loss cost decreases to 552, so it's nearly a two
16 percent decrease from 2000 to 2001, while FA estimates
17 a loss trend in excess of 11 percent going forward,
18 whereas in the latest year we actually see a decline of
19 nearly two percent. So back to your point. The
20 increase that we see on FA's own data is 50 percent for
21 commercial and 11 percent for private passenger, so
22 when we look at the decide should we exclude a point,
23 we look at it and say how will that distort the trend? If
24 I keep that data in, what happens when I take it out?
25 That's how we look at it.

26 MR. STAMP, Q.C.: Go back to the first chart you took
27 us to, bodily injury, third party liability, private
28 passenger, 5.2. Do you have it?

29 MS. ELLIOTT: Yes.

30 MR. STAMP, Q.C.: You've shown us that the change
31 from '99 to 2000, which is 396 to 440, is what
32 percentage?

33 MS. ELLIOTT: Approximately 11 percent.

34 MR. STAMP, Q.C.: You think that's significant?

35 MS. ELLIOTT: Pardon me?

36 MR. STAMP, Q.C.: Is that significant?

37 MS. ELLIOTT: In comparison of an estimate of a seven
38 percent trend that's driven out of the regression
39 analysis and that changed 11 percent, then if you go to

40 the commercial analysis, the change is 50 percent in
41 comparison to what Mr., what FA has estimated as over
42 11 percent trend. That relationship of the 11 and 50,
43 there's a real spread there, versus 7 and 11, so.

44 MR. STAMP, Q.C.: Well, just go back to the year
45 before that, '98 to '99, what's the percentage there?

46 MS. ELLIOTT: I'll calculate that for you.

47 *(1:15 p.m.)*

48 MR. STAMP, Q.C.: Thank you.

49 MS. ELLIOTT: Seven percent.

50 MR. STAMP, Q.C.: So three ... the percentage between
51 324 and 396.

52 MS. ELLIOTT: Sorry, I made a mistake.

53 MR. STAMP, Q.C.: I haven't got a calculator but that
54 doesn't sound quite right to me.

55 MS. ELLIOTT: No, I did the wrong number. 396, 22
56 percent.

57 MR. STAMP, Q.C.: Uh hum. How do you explain that?

58 MS. ELLIOTT: How do I explain that?

59 MR. STAMP, Q.C.: Yeah.

60 MS. ELLIOTT: You know, unfortunately, the data, I
61 don't understand what all the nuances that create the
62 actual losses, there's legal fees, there's all various
63 components, so I don't always know what creates the
64 difference.

65 MR. STAMP, Q.C.: Okay, you can't explain why '98/'99
66 is twenty-odd percent, and '99/2000 was 11 percent.

67 MS. ELLIOTT: No, nor the most recent year is six
68 percent, it's declined further there.

69 MR. STAMP, Q.C.: But I don't see still ... I mean I know
70 you're saying the difference in the private passengers,
71 the calculations are done by FA in their filing, it shows
72 one kind of event, and the numbers in the commercial
73 setting show a different kind of event, but the question
74 I guess I'm really asking you is why aren't they the
75 same event, why didn't the winter that you are so

1 certain is the reason for these two outliers in 2000/2001,
2 why didn't they reveal themselves, why didn't the
3 winter, I mean it was snowing for everybody, why
4 didn't the private passenger vehicles display the kind of
5 change you see in commercial?

6 MS. ELLIOTT: I don't know why that would be the
7 case, but what I do know is the, the change for these
8 particular points from the prior period, it's very extreme
9 to see a point increase by nearly 70 percent, the other
10 point by over 40 percent. That is very extreme. I think
11 it's a plausible reason to assume it was the winter. I
12 think maybe if I hadn't been here I might have a
13 different opinion, but there was a lot of snow.

14 MR. STAMP, Q.C.: Did you drive when you were here?

15 MS. ELLIOTT: Did I drive when I was here? Well, I'll
16 tell you, I had white knuckles holding on the handle of
17 the taxi.

18 MR. STAMP, Q.C.: Does that mean yes?

19 MS. ELLIOTT: Yes.

20 MR. STAMP, Q.C.: Were you driving a commercial
21 vehicle or were you driving a private passenger
22 vehicle?

23 MS. ELLIOTT: I'm not licensed for commercial.

24 MR. STAMP, Q.C.: Okay, so you got around okay.

25 MS. ELLIOTT: I had white knuckles, but ...

26 MR. STAMP, Q.C.: I just want to, while we're on this
27 topic for your expectation for the, the comparison
28 features to be the same, you're really saying, you know,
29 intuitively I want to see the rate for commercial trend to
30 be like the rate for private passenger trend, isn't that
31 what you're saying?

32 MS. ELLIOTT: It's not unreasonable for a private
33 passenger trend and a commercial trend to be similar,
34 that's not unreasonable.

35 MR. STAMP, Q.C.: But you took some comfort in that,
36 did you not?

37 MS. ELLIOTT: I would have less comfort if the
38 numbers were really far apart between private
39 passenger and commercial, I ...

40 MR. STAMP, Q.C.: Well, but I mean if I understand
41 you correctly, it props up your argument, you say to a
42 panel that if we use FA's trend without excluding its ...
43 I think you said 11 or 12 percent or something, if you
44 don't include it's 8 percent, 8.3 or something I think you
45 said, and I compare that, you said, to the private
46 passenger at 7 1/2 or whatever it was, something in that
47 neighbourhood, and I, you know, this is, it's putting
48 you in a comfort zone really, is what you're saying, I
49 thought.

50 MS. ELLIOTT: True, having the relationship between
51 the numbers be relatively close, you get some comfort
52 from it.

53 MR. STAMP, Q.C.: Sorry for the delay, Mr. Chairman,
54 but my trusty assistant is doing all he can to find pages
55 for me. Thank you, Mr. Pelly. Ms. Elliott, could you
56 just turn to, in the 2003 benchmark, please, to Appendix
57 B, Tab 8, page 7? Looking at page 7 and page 9 jointly
58 actually.

59 MS. ELLIOTT: Can you tell me the coverage, please?

60 MR. STAMP, Q.C.: Accident benefits, private
61 passenger, Appendix B, Tab 8, page 7 and page 9.

62 MS. ELLIOTT: Okay, I'm afraid this copy doesn't have
63 page numbers on it, so I apologize for fumbling.

64 MR. STAMP, Q.C.: Take your time, that's fine.

65 MS. ELLIOTT: Is it titled, "Province of
66 Newfoundland", at the top?

67 MR. STAMP, Q.C.: Oh yes, this is a benchmark.

68 MS. ELLIOTT: Yes, if you tell me a number I'll know if
69 I'm on the right page or not here. Page page is it?

70 MR. STAMP, Q.C.: On page 7 and page 9.

71 MS. ELLIOTT: I'm sorry, I was in the completely wrong
72 section.

73 MR. STAMP, Q.C.: Do you have it now?

74 MS. ELLIOTT: Yes, I do.

75 MR. STAMP, Q.C.: And I'm looking, just so we're clear
76 what we're doing, I'm looking at Appendix B, Tab 8,
77 page 7, accident benefits. It's 2003 private passenger

1 benchmarks ... and page 9, the same general heading,
2 accident benefits as well, okay?

3 MS. ELLIOTT: Yes.

4 MR. STAMP, Q.C.: And the first of those pages, the
5 first of those pages is a severity page, is that right?

6 MS. ELLIOTT: Yes.

7 MR. STAMP, Q.C.: Which you've assumed to be zero.

8 MS. ELLIOTT: Yes, what we saw on this page is we
9 saw that the severity was declining and for a coverage
10 like accident benefits, you would not typically see
11 severity declining, so here in this case ...

12 MR. STAMP, Q.C.: The numbers were showing it
13 declining but intuitively it didn't feel right, you set it at
14 zero.

15 MS. ELLIOTT: For severity because you have an
16 inflationary impact, the cost going up, we have
17 assumed zero in this particular case.

18 MR. STAMP, Q.C.: Yeah, so even though the numbers
19 were taking you down, you set it at a flat zero.

20 MS. ELLIOTT: That's right, it did not make sense to
21 me.

22 MR. STAMP, Q.C.: And then, and going to page 9 now
23 that I've mentioned to you as well, this is the frequency
24 component, is it not?

25 MS. ELLIOTT: Correct.

26 MR. STAMP, Q.C.: And so the two components
27 combined, severity and frequency, would give you loss
28 cost?

29 MS. ELLIOTT: Correct.

30 MR. STAMP, Q.C.: So one being set at zero, the other
31 being as it is, 4.6 or so percent, our accident benefits
32 loss cost is 4.6 percent, the trend.

33 MS. ELLIOTT: Correct.

34 MR. STAMP, Q.C.: I'd like you to turn now to the
35 comparable chart in commercial, which is Tab 7,
36 Appendix C now, Tab 7, page 6. In my copy, if it's

37 helpful, Ms. Elliott, I have two page sixes, two pages
38 six, whatever way you say that, in any event I have two
39 of them. One is a chart and one is some graphs. I'm
40 looking at the chart page.

41 MS. ELLIOTT: Yes.

42 MR. STAMP, Q.C.: Have you located that?

43 MS. ELLIOTT: I'm just sort of orienting myself here,
44 sorry, I apologize.

45 MR. STAMP, Q.C.: I thought this was your report.

46 MS. ELLIOTT: I have so much paper on my desk, it's
47 difficult.

48 MR. STAMP, Q.C.: It's in the very back of the book,
49 Ms. Elliott, Appendix C, it's the commercial benchmark
50 analysis, and I think it's the second last tab.

51 MS. ELLIOTT: Thank you.

52 MR. STAMP, Q.C.: Do you have it? What is the trend
53 percentage for accident benefits, commercial, it's the
54 past trend?

55 MS. ELLIOTT: Right, the number shown here is 19.7.

56 MR. STAMP, Q.C.: Right, so we have private
57 passenger accident benefits trend, 4.6 percent, and
58 commercial accident benefits, 19.7 percent.

59 MS. ELLIOTT: That's what's shown on the exhibit, yes.

60 MR. STAMP, Q.C.: But this is your document.

61 MS. ELLIOTT: Yes.

62 MR. STAMP, Q.C.: Okay, so there's a very, very
63 significant swing between private passenger and
64 commercial in this coverage?

65 MS. ELLIOTT: Yes, I will also point out this coverage
66 is an optional coverage here in this province, and as
67 such it's a very small volume of data.

68 MR. STAMP, Q.C.: (inaudible) you mean?

69 MS. ELLIOTT: Small volume of data.

70 MR. STAMP, Q.C.: Now ...

1 MR. O'FLAHERTY: Mr. Chairman, I just wanted to ask
2 the Board how much longer we might be going forward,
3 I guess, in this session today.

4 MR. SAUNDERS, PRESIDING CHAIRMAN: I guess
5 about another minute.

6 MR. O'FLAHERTY: Okay, thank you, because we ...

7 MR. SAUNDERS, PRESIDING CHAIRMAN: I'm
8 assuming that Mr. Stamp has his eye on the clock as
9 well.

10 MR. STAMP, Q.C.: Well, I wasn't paying particular
11 attention, but if the Consumer Advocate has a need
12 that he feels like he wants to go, I don't have trouble
13 with stopping here.

14 MR. O'FLAHERTY: Yeah, we have a staff lunch, so ...

15 MR. STAMP, Q.C.: If this is convenient for the panel,
16 I'm fine, Mr. Chairman.

17 MR. SAUNDERS, PRESIDING CHAIRMAN: So we'll
18 resume at 10:00 in the morning?

19 MR. STAMP, Q.C.: 10:00, yes.

20 MR. SAUNDERS, PRESIDING CHAIRMAN: Very
21 good. Thank you, Ms. Elliott.

22 *(hearing adjourned to December 20, 2002)*